

1 NORTH CAROLINA
2 COUNTY OF WAKE

BEFORE THE
STATE BOARD OF ELECTIONS

3

4 IN RE: PROTEST OF ELECTION OF |
LESLIE McCRAE DOWLESS, JR. |
5 G.S. 162-182.10(a) and |
G.S. 163-182.12 and |
6 G.S. 163-182.10(b)-(d) |
7 _____ |

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North Carolina Board of Elections

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441 N. Harrington Street

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Raleigh, North Carolina

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SATURDAY, DECEMBER 3, 2016

15

1:30 p.m.

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19

Board members present:

20

Mr. Grant A. Whitney, Chairman

Ms. Rhonda K. Amoroso, Secretary

21

Dr. Maja Kricker

Mr. Joshua D. Malcolm

22

Judge James L. Baker

23

Also Present:

Ms. Kim Westbrook Strach, Executive Director

24

Mr. Joshua Lawson, General Counsel

MS. Katelyn Love, Special Counsel

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PROCEEDINGS

1:30 p.m.

CHAIRMAN WHITNEY: I'd like to call this meeting to order. My name is Grant Whitney. I'm the chairman of the North Carolina State Board of Elections.

Before we start, I'm required to read a statement regarding ethics from the North Carolina General Statute 138-15(e). In accordance with the State Government Ethics Act, it is the duty of every board member to avoid both conflicts of interest and appearances of conflict.

Does any board member have any known conflict of interest or appearance of conflict with respect to any matters coming before the board today?

(No response)

CHAIRMAN WHITNEY: Thank you. If so, please identify the conflict or appearance of conflict and refrain from any undue participation in the particular matter.

And for the record, Counsel has not advised me of any conflicts of which Counsel is aware.

We are here to conduct two hearings, one dealing with the Dowless matter, which is a--which at a previous hearing we assumed jurisdiction. These are both out of Bladen County. And the second, if I'm not mistaken, was appealed to us, and that is the Register case.

We're going to start with the Dowless hearing and we will need to determine whether probable cause exists to

1 move forward. I'm open to comments from the Board at this
2 time as to whether the protest petition or any other
3 documents that are in the record that we've been provided
4 provides enough information to establish probable cause, or
5 if you do not feel that is the case, we can hear from the
6 parties to make a probable cause determination.

7 So Board members, what say you on probable cause?

8 MR. MALCOLM: I'd like to hear from Dowless.

9 CHAIRMAN WHITNEY: Okay. That's fine.

10 MS. AMOROSO: Could I make a motion to move
11 forward?

12 CHAIRMAN WHITNEY: Yeah, on the probable cause
13 part of this, yes.

14 MS. AMOROSO: And is it based on the--hold
15 on--based on what we've--what I see here regarding the
16 absentee ballot issue; that alleged absentee ballot, I think
17 that is enough grounds to move forward and hear this matter.

18 Do we need a motion on this or--

19 MR. MALCOLM: I think you do.

20 MS. AMOROSO: Yes, we do.

21 MR. MALCOLM: I think you do.

22 MS. AMOROSO: I move that we--that there is
23 probable cause and we move to a full hearing on the matter.

24 MR. MALCOLM: I'll second the motion. I
25 want to hear it all, too.

1 MS. KRICKER: Yes, absolutely.

2 CHAIRMAN WHITNEY: So this is that we hear from
3 the parties.

4 MS. AMOROSO: Yes, sir.

5 CHAIRMAN WHITNEY: Yeah, okay. I'm fine with
6 all that. So motion, second. All in favor say aye.

7 (Unanimous vote in favor of the motion.)

8 CHAIRMAN WHITNEY: Opposed, no.

9 (No response)

10 CHAIRMAN WHITNEY: Okay. Would the attorney or
11 other representative for Mr. Leslie McCrae Dowless, Jr.,
12 please appear, identify yourself, and--

13 MR. MALCOLM: Where is Mr. Dowless?

14 CHAIRMAN WHITNEY: Mr. Dowless is here with us.

15 MS. AMOROSO: Whose mic? Is that right?

16 Maya, excuse me. Your mic--make sure your mic is on.

17 (Whereupon,

18 LESLIE McCRAE DOWLESS, JR.,

19 having first been duly sworn, was
20 examined and testified as follows:)

21 MR. LAWSON: Can I want to clarify, Mr.

22 Chairman; are you calling this witness?

23 MR. MALCOLM: I want to hear from Mr.

24 Dowless

25 MR. LAWSON: Okay.

1 MR. MALCOLM: Because he's the protestor,
2 certainly he can be represented by counsel, but I want Mr.
3 Dowless--I want to hear directly from him under oath.

4 MR. JOYNER: Mr. Chairman--

5 MS. AMOROSO: Normally we allow counsel to
6 get started, open up the--

7 MR. MALCOLM: Yeah, I'm fine with--I'm fine
8 with that, Ms. Amoroso.

9 MR. JOYNER: Mr. Chairman? Mr. Chairman?

10 CHAIRMAN WHITNEY: Yes.

11 MR. JOYNER: I'm Irving Joyner, and I
12 represent the Bladen County Improvement Association PAC,
13 and we want to note our appearance and also--

14 CHAIRMAN WHITNEY: I'm sorry?

15 MR. JOYNER: We want to note our
16 appearance, and also be in a position to cross-examine Mr.
17 Dowless with respect to his testimony.

18 CHAIRMAN WHITNEY: I have no problem with that.
19 Anybody else?

20 MR. JOYNER: Then should we take a seat?

21 MR. MALCOLM: You're asking if you should
22 be at the table?

23 MR. JOYNER: That's correct.

24 CHAIRMAN WHITNEY: I'm fine with you being there,
25 sure.

1 MR. JOYNER: Okay. And my co-counsel.

2 CHAIRMAN WHITNEY: Of course.

3 MR. JOYNER: Okay. Thank you.

4 CHAIRMAN WHITNEY: But let's all identify each
5 other while we're at it. So counsel for Mr. Dowless, tell
6 me who's here.

7 MR. KNIGHT: Mr. Chairman, my name is Roger
8 Knight. I'm an attorney here in Raleigh. I represent the
9 McCrory Committee and Mr. Dowless.

10 CHAIRMAN WHITNEY: All right.

11 MR. KNIGHT: With me is Mr. John Branch.

12 CHAIRMAN WHITNEY: All right. Slow down. All
13 right. And he represents--

14 MR. KNIGHT: The McCrory Committee and Mr.
15 Dowless.

16 CHAIRMAN WHITNEY: Okay.

17 MR. KNIGHT: Mr. Dowless is present.

18 CHAIRMAN WHITNEY: Okay. And--

19 MR. KNIGHT: Also at the table is Ms.
20 Charlotte Ware.

21 CHAIRMAN WHITNEY: All right. And she
22 represents--

23 MR. KNIGHT: She is a witness.

24 CHAIRMAN WHITNEY: All right. We'll just hold
25 on that one for now, and then--

1 MR. JOYNER: Irving Joyner.

2 CHAIRMAN WHITNEY: Okay.

3 MR. JOYNER: On behalf of the Bladen County
4 Improvement Association and its members, assisted by Caitlin
5 Swain.

6 CHAIRMAN WHITNEY: All right.

7 MS. SWAIN: Thank you.

8 MR. HAMILTON: Excuse me, Mr. Chairman.

9 Kevin Hamilton on behalf of the Cooper for North Carolina
10 and the North Carolina Democratic Party.

11 CHAIRMAN WHITNEY: You never got back to Seattle,
12 did you?

13 MR. HAMILTON: Never did.

14 CHAIRMAN WHITNEY: I never got back to Charlotte,
15 either. I think our teams are playing tomorrow, right?

16 MR. HAMILTON: Tomorrow I'm even a little
17 tied up.

18 CHAIRMAN WHITNEY: Josh, we're limited to the
19 probable cause up to this point, right?

20 MR. LAWSON: Motion--you had a--you're at
21 your typical hearing now.

22 CHAIRMAN WHITNEY: We're good.

23 MR. _____: We're full speed ahead.

24 CHAIRMAN WHITNEY: I'm sorry. All right.

25 MR. JOYNER: Mr. Chairman?

1 CHAIRMAN WHITNEY: Yeah.

2 MR. JOYNER: On behalf of the Bladen County
3 Improvement Association, I want to, on the record, state our
4 objection to your finding of probable cause without any
5 evidentiary basis or hearing to ascertain the factual and
6 legal basis for that determination.

7 CHAIRMAN WHITNEY: Does any member of this Board,
8 given his objection, have any problem just limiting it to
9 a probable cause issue at this point?

10 MR. MALCOLM: I'll say on the record, Mr.
11 Joyner, it's nice to see you again, sir.

12 MR. JOYNER: Good to see you again, too.

13 MR. MALCOLM: You all know Professor Joyner
14 was one of my instructors in law school. I will--based on
15 me being the one that seconded Ms. Amoroso's motion, the
16 reason for which I seconded it, that probable cause had been
17 established; it was based on the four corners of the protest
18 and the information contained therein, which leads me to
19 believe that this Board needs to take appropriate action to
20 determine the facts and circumstances related to the
21 assertions that have been made by Mr. Knight's client.
22 That's the basis, sir.

23 MR. JOYNER: And--and I understand that,
24 but for the record, I want to indicate that, looking at the
25 four corners of the document, which is full of conclusions

1 and hearsay, that there isn't a factual or a legal basis to
2 move forward. But that's for the record. You've already
3 taken the action that you've taken, so we will deal with
4 that, but I just wanted on the record our objection.

5 CHAIRMAN WHITNEY: It's on the record. All
6 right. Is there any problem proceeding at this point?

7 MR. LAWSON: No. You all have been--and
8 you're proceeding.

9 CHAIRMAN WHITNEY: Thank you, Professor. Okay.
10 In that case, we know who all the players are, so Mr.
11 Knight, please proceed. Oh, and we need to--

12 MR. LAWSON: So this is slightly different
13 than the kind of appellate hearings that we have here where
14 this is establishing their case in chief.

15 CHAIRMAN WHITNEY: I just want to be fair, but
16 I mean--

17 MR. LAWSON: I'm happy to keep time,
18 whatever you like.

19 CHAIRMAN WHITNEY: What are we going to do, the
20 30 minute plus the ten rebuttal for each side? Any
21 objection on the Board for that?

22 (No response)

23 CHAIRMAN WHITNEY: Okay. Y'all are going to have
24 30 minutes, ten minute rebuttal. Y'all are going to have
25 30 minutes, ten minute rebuttal, okay, and Josh is keeping

1 time.

2 MR. BRANCH: Mr. Chairman, John Branch.
3 For clarification, is it 30 minutes for the opening
4 statement, or does that also include the presentation of
5 evidence via witnesses?

6 If I may suggest to the Board, perhaps the time
7 limitation apply to the opening statements of the different
8 interested parties here, and then the witnesses' testimony,
9 given the concerns that the Board members have with them,
10 it possibly could take longer.

11 CHAIRMAN WHITNEY: I don't have a problem with
12 that in concept, except maybe the 30 minutes is a little
13 too long if we're going to say it doesn't include, so I'm
14 going to--

15 MR. KNIGHT: I can assure you my opening
16 statement will not take 30 minutes.

17 CHAIRMAN WHITNEY: All right. Let's do--

18 MR. MALCOLM: Thank you.

19 CHAIRMAN WHITNEY: Why don't we do this: Fifteen
20 minute opening statement, 15 minute rebuttal for each. That
21 cuts it down a little. And then we're just not going to
22 worry too much about time frame for witnesses.

23 I want to keep it as quick as possible but I don't
24 want to limit valuable testimony to witnesses that can shed
25 some light on the issues here. So 15, 15, 15, and 15. How

1 about that? Y'all good with that?

2 MR. MALCOLM: I'm fine. It's going to go
3 wacky either way.

4 CHAIRMAN WHITNEY: Well, yeah. Okay. All right.
5 Proceed, Mr. Knight.

6 MR. KNIGHT: Thank you, Mr. Chairman.
7 Thank you, members of the Board. This is a protest filed
8 under NCGS Section 163-182.9, .10, and .12. The protest
9 concerns the tabulation of votes or other irregularity
10 requiring the intervention of the State Board of Elections.

11 The relief we seek today is to adjust the
12 tabulation of the final vote in Bladen County by declining
13 to count votes cast in violation of the General Statutes,
14 and/or take other such action as the Board shall determine
15 as appropriate pursuant to 163-182.12.

16 Now, there are two distinct parts of this protest.
17 There is the determination of evidence and whether there is
18 evidence of a violation or fraud in the casting and counting
19 of ballots, and there is the legal argument as to what to
20 do with those ballots in the event that there is a violation
21 found.

22 So I want to begin with the evidentiary part of
23 it. We can proceed to the legal arguments at the conclusion
24 of our presentation of evidence. We can await presentation
25 of opposing evidence and then go to the legal argument after

1 you determine whether there's a violation or fraud, as the
2 conduct of that is, of course, up to you.

3 In summary, inspection of approximately 275 mail-
4 in absentee envelopes in Bladen County, and inspection of
5 approximately 400 mail-in absentee ballots, with the write
6 in votes in a particular race, indicates a scheme or an
7 organized efforts, where it appears the purported voter did
8 not actually vote the ballot himself or herself, but the
9 ballot was voted by one or more persons who may have also
10 served as a witness for the absentee ballot.

11 The affected ballots did not indicate that the
12 voter had requested or certified assistance in marking his
13 or her ballot, and the ballot must be discounted because it
14 is impossible to determine the intent of the voter.

15 This scheme affected an unknown number of ballots,
16 but specifically, we are talking about approximately 400 to
17 419 absentee write-in ballots, which included a write in for
18 Soil and Water District Supervisor in Bladen County.

19 MR. MALCOLM: Mr. Knight.

20 MR. KNIGHT: Yes, sir.

21 MR. MALCOLM: So you just used a pretty
22 important phrase. So it's your position and it's the
23 Republican Party's position, because you're here on behalf
24 of your client and on behalf of the Republican Party,
25 correct?

1 MR. KNIGHT: Specifically--well, I--
2 specifically, I represent the McCrory Committee and Mr.
3 Dowless.

4 MR. MALCOLM: Okay. So it's the position
5 of all your clients, you said that the ballot--since we
6 don't know the voter's intent, did you say the vote should
7 be discounted or the ballot should be discounted?

8 MR. KNIGHT: The entire ballot should be
9 discounted.

10 MR. MALCOLM: What if we knew the voter's
11 intent? Would you have a different position on that?

12 MR. KNIGHT: I think--I believe there is
13 case law, and we can argue the legal part of it later--is
14 that if you--you cannot interview the voter necessarily
15 later to determine an intent, if the vote on its face--if
16 the ballot on its face--is flawed.

17 MR. MALCOLM: And so is that what you're
18 proposing, that while part of the ballots that you looked
19 at--that you and your clients looked at--is the part that's
20 flawed. The ballot.

21 MR. KNIGHT: The ballot was flawed, yes.

22 MR. MALCOLM: What part of the ballot is
23 flawed?

24 MR. KNIGHT: The entire ballot. And the
25 only--the only--

1 MR. MALCOLM: Does the ballot have the
2 witness signature on it?

3 MR. KNIGHT: The ballot doesn't have a
4 witness signature. The envelope has a witness signature.
5 But there is a--on these particular ballots, there is a
6 write in which contains handwriting, and the handwriting,
7 as we will determine, is consistent across numerous ballots,
8 indicating that one or more individuals filled in the ballot
9 instead of the voter.

10 MR. MALCOLM: I understand that's been--and
11 that's why I want to sort of pin you down now, so at least
12 in my mind I can ask it. So you're saying the ballot is
13 flawed because the envelope either has a signature that you
14 don't agree with or the signature is not there, so that lack
15 of signature affects the ballot. That's the--that's where
16 you're saying the ballot is flawed; is that correct?

17 MR. KNIGHT: What I'm saying is this. The
18 write-in for Soil and Water District Supervisor indicates
19 that the voter did not fill out that--did not write that in.

20 MS. AMOROSO: Right. And that would affect
21 the entire ballot, the rest of the ballot. Is that what
22 you're alleging here?

23 MR. KNIGHT: That's exactly what I'm
24 alleging here.

25 MR. MALCOLM: That's my question, too.

1 MR. KNIGHT: That it's impossible to
2 determine the intent of the voter because we don't know what
3 part of that vote--that ballot the voter voted. I mean, did
4 the voter vote for a couple of races and the person who
5 wrote in the name vote for a couple of races? Did the voter
6 vote for all of them except for the write-in? Did the
7 person who wrote it in--

8 MR. MALCOLM: So that's great that you're
9 saying that, because that's the evidence that I'm--I'll wait
10 for your evidentiary, because that's exactly what I want--
11 that's exactly the evidence that I want in a couple of
12 minutes when you get to it, to show that. That's exactly
13 what I'm asking.

14 MR. KNIGHT: Okay. Ordinarily this type
15 of scheme or plan or organized event would be difficult, if
16 not impossible, to discover. But as we already discussed,
17 in Bladen County in 2016, there was a write-in campaign for
18 the office of Soil and Water District Supervisor. And the
19 candidate of this write in campaign was a Franklin Graham,
20 and he received over 3,700 votes, write-in votes.

21 It was the writing part of the write in that
22 caught the attention of the local Board of Elections, and
23 before Election Day, the Bladen County Board of Elections
24 contacted the State Board of Elections about concerns
25 concerning the witnesses and the handwriting on the write

1 in portion of the ballots.

2 MS. AMOROSO: So Mr. Knight, that was a
3 bipartisan conclusion by the Bladen County Board of
4 Elections--

5 MR. KNIGHT: You can--

6 MS. AMOROSO: --during one of their absentee
7 ballot meetings.

8 MR. KNIGHT: You can ask Mr. Brian Hehl
9 who is here and will--is prepared to testify, but I believe
10 so.

11 MS. AMOROSO: Thank you.

12 MR. KNIGHT: Examination of the mail-in
13 absentee ballots that included a write-in vote for Franklin
14 Graham does show that the writing among groups is
15 startlingly similar.

16 Brian Hehl, a member of the County Board, wrote
17 to the State Board investigator that while he was no expert,
18 even he could see that there were similarities. The letter
19 that Mr. Hehl signed is a part of your--is part of the
20 petition and it's a part of your record.

21 The McCrory campaign was notified about the
22 problem with the write in ballots and commissioned a
23 document examiner to go to Bladen County and review those
24 ballots that we were allowed to review. There were
25 restrictions placed on the time, place, and circumstances

1 for the review.

2 I believe the ballots themselves were copied,
3 redacted, and copied again, which was both time-consuming
4 and arduous. We were allowed to see the copies of the
5 envelopes. So there were certain restrictions, but
6 nevertheless, she identified several groups of the write in
7 ballots that had similar handwriting for the write in for
8 Franklin Graham. You have her report as a part of your
9 materials, and she is here today to talk to you about her
10 process, her findings, and her conclusions.

11 CHAIRMAN WHITNEY: What's her name?

12 MR. KNIGHT: Charlotte Ware, W-a-r-e.

13 CHAIRMAN WHITNEY: Thank you. All right.

14 MR. KNIGHT: There is--and here is--there
15 is also the involvement of Mr. Joyner's client, a local
16 political action group called the Bladen County Improvement
17 Association PAC, and we have been able to establish--now the
18 Bladen County Improvement Association is registered with the
19 state and therefore files campaign finance reports. And
20 this is not a Johnny come lately organization. They have
21 been active since 1989.

22 Because they file campaign finance reports, we
23 are able to look and see where their money went. The
24 majority of their money went to individuals in payments for
25 what is listed as GOTV, which we assume means Get Out the

1 Vote.

2 An examination of the names of the witnesses on
3 the write-in absentee ballots shows the following: Mary
4 Johnson signed as a witness to at least 74 ballots. So this
5 is the witness part of it, so bear with me for just a
6 moment.

7 Mary Johnson signed as a witness to at least 74
8 ballots. Deborah Moore signed as a witness to at least 67
9 ballots. Lola Wooten signed as a witness to at least 58
10 ballots. Barbara Cogdell, the wife of a candidate for
11 Bladen County Commissioner, signed as a witness to at least
12 45 ballots, including one to which she signed as both
13 witnesses. Bridgette Keaton signed as a witness to at least
14 16 ballots, and there were five other persons who signed as
15 a witness between five and 16 times.

16 Keeping in mind that there may be, and probably
17 are more, we only reviewed the ballot envelopes of about
18 250 of the absentee write-in ballots.

19 The campaign finance reports filed by the Bladen
20 County Improvement Association showed that during 2016 the
21 following expenditures were made, all for GOTV: Mary
22 Johnson \$350, Deborah Moore \$550, Lola Wooten \$830, Barbara
23 Cogdell \$300, Bridgette Keaton \$250.

24 G. Michael Cogdell, the aforementioned candidate,
25 was paid \$1,323, although some of that, to be fair, was

1 listed as "GOTV stamps."

2 There were several others that were paid hundreds
3 of dollars, all for GOTV. In fact, almost all of their
4 expenditures are listed for GOTV.

5 It appears that this organization incentivizes
6 obtaining absentee ballots, and to establish that, I call
7 your attention to an affidavit that's a part of your record,
8 from a Mrs. Heather Register. I believe it was amended
9 (sic) to the Dowless complaint, but certainly a part of Mr.
10 Register's complaint.

11 The Heather Register affidavit indicates that
12 individuals came to her door, suggested that if she would
13 file a request for an absentee ballot, this individual would
14 be paid.

15 There is another affidavit from a Ms. Baldwin
16 that's amended to or attached to the Register complaint,
17 and which we would like to incorporate by reference, which
18 states that individuals came to her door, asked her to fill
19 out a request for an absentee ballot, and saying that if she
20 would do so, they would--they, meaning the people that came
21 to the door, would be paid.

22 So there is an incentive to--not necessarily to
23 help people vote, but to generate absentee ballot requests.

24 MR. MALCOLM: And that's a problem?

25 MR. KNIGHT: I think it shows an overall

1 pattern of what was happening, in that there is an incentive
2 to--it's not necessarily an incentive to help people. It's
3 an incentive to generate absentee ballot requests.

4 And I also note--and in the Heather Register
5 affidavit, Ms. Register in her affidavit says that the
6 absentee ballots that she requested never came to her, and
7 that when she went on Election Day to vote, she was told
8 that she had already voted by absentee ballot and so had her
9 family members, which she denies doing.

10 The descriptions, in fact, of the affidavits do
11 not describe people going out to see the sick, the disabled,
12 the infirm, the blind, or the illiterate. It goes--they
13 would go door to door, asking for, "May we help you, or talk
14 you into asking for an absentee ballot?"

15 CHAIRMAN WHITNEY: You have two minutes.

16 MR. KNIGHT: Thank you. In addition, a
17 representative of the Bladen Improvement Association--Bladen
18 County Improvement Association--admitted in a media
19 interview that his group violated the election laws.

20 From a story on WNCN on November 15, a Mr. Horace
21 Munn said that his volunteers--although he called them
22 volunteers, but apparently they were being paid--manually
23 filled out ballots for voters who requested it, something
24 they had done for years.

25 And we note that there were no--in the envelopes

1 we examined, there were only, I believe, two, that had a
2 certification of assistance in it. So the two, out of all
3 those ballots.

4 That's the conclusion of my opening statement.
5 If you have any questions; if not, I will move straight to
6 the evidentiary portion of our presentation.

7 CHAIRMAN WHITNEY: All right. Well, we're going
8 to let Professor Joyner talk.

9 MR. KNIGHT: Sure.

10 MR. JOYNER: Mr. Chairman and members of
11 the Board, thank you for--very much for giving me these
12 first 15 minutes. And I was sitting there just kind of
13 stunned at the creative storytelling that's been developed
14 on behalf of Mr. Dowless in this matter, and the ingenious
15 way that they are attempting to merge separate complaints
16 into one.

17 The Register complaint has absolutely nothing to
18 do with any activity on behalf of the Bladen County
19 Improvement Association, and the attempt to merge them
20 together is confusing, misleading, and, well, improper.

21 CHAIRMAN WHITNEY: I believe that we are going
22 to be conducting separate hearings, right?

23 MR. LAWSON: Yes, sir.

24 CHAIRMAN WHITNEY: Okay. Just--yeah.

25 MR. JOYNER: Combining, then, the opening

1 statement--

2 CHAIRMAN WHITNEY: Right. Okay. Yeah.

3 MR. JOYNER: --trying to merge the two
4 into--

5 CHAIRMAN WHITNEY: I'm not speaking for him. I'm
6 just talking.

7 MR. JOYNER: Okay. I just want to be, you
8 know, clear--

9 CHAIRMAN WHITNEY: Yeah.

10 MR. JOYNER: --on this. But we have a--
11 have what has been described as a--as a scheme. In my
12 community, GOTV is not a crime. Organizations engaged in
13 efforts to get out the vote do not participate in criminal
14 activities, and helping absentee voters, or people to vote
15 absentee ballots, is sanctioned by North Carolina law.

16 Contrary to popular opinion, North Carolina law--
17 -and there's a whole section in the statute which allows for
18 absentee ballots. There is no prohibition on an individual
19 assisting five people to vote an absentee ballot.

20 MS. AMOROSO: What section are you referring
21 to right now, sir?

22 MR. JOYNER: Well, I was--I'm sorry.

23 MS. AMOROSO: I'd like to know what section
24 of the law you're referring to.

25 MR. JOYNER: I have my statute right here.

1 163. 163--223--I'll get that for you in a second. We'll
2 get to that. But that's not a crime, and it is not
3 improper, and it is, and ought to be, encouraged by this
4 Board.

5 JUDGE BAKER: I think, to save you some
6 time, sir, no one is disputing that. As I understood the
7 problem, though, it's that it's the same handwriting on
8 multiple ballots, multiple absentee ballots, without any
9 indication of assistance or witnessing or that sort of
10 thing, and I think that's the problem.

11 MR. JOYNER: Well, I mean, that's what's
12 presented as the problem, which really isn't a problem.

13 JUDGE BAKER: Is it legal, do you think?

14 MR. JOYNER: Is what? Helping?

15 MR. JOYNER: No, no. The writing of the-
16 -to write in the names on a ballot by someone other than the
17 voter, without any indication on the ballot that someone
18 else has done it. My understanding, sir, is that that is
19 against the law and it is not the proper procedure with
20 absentee ballots.

21 MR. JOYNER: Well, let's examine that. I
22 mean, that wasn't part of what I was getting ready to say,
23 but--

24 JUDGE BAKER: Well, I'm sorry to interrupt
25 you. It's just that what you were saying, I don't think any

1 of us would disagree that the getting out the vote is--

2 MR. JOYNER: Well, apparently Ms. Amoroso
3 did. But I mean, to get to your point, the evidence--

4 MS. AMOROSO: I'm not saying that, sir. I
5 want to know what section you're relying upon, because when
6 somebody votes an absentee ballot, there are strict rules
7 on how the absentee ballot is done. You know that, right?

8 MR. JOYNER: Well, we'll get--we'll get to
9 that. Let me get--let me deal with him first and then I can
10 deal with you.

11 The record seems to show--and I've looked at the
12 ballots as well--that there were a number of ballots in
13 which one or more people wrote in in the write-in section
14 of the Soil and Sewer (sic) campaign the name Franklin
15 Graham.

16 Writing that in is not illegal, because
17 particularly when you have a section in that particular
18 ballot that says, "Write in," which would suggest that you
19 had--if you had an alternate candidate, you can write that
20 person in, and the law allows that.

21 JUDGE BAKER: And I'm just trying to save
22 you some time. I'm not going to argue with that at all,
23 sir. The problem is only when one person does it on many,
24 many ballots.

25 MR. JOYNER: And--and the point that I want

1 to make is whether one person does it or one person does it
2 on ten ballots, 1,500 hundred ballots, it does not make it
3 illegal. It does not make it illegal. It means that that
4 person has been aiding that--those number of individuals
5 cast a valid absentee ballot.

6 There is a certification component there, which
7 asks the person who has aided the voter in marking or
8 signing their signature, to sign that they have assisted
9 that ballot. That is very particular and specific, and
10 that's on the ballot.

11 CHAIRMAN WHITNEY: But do you--

12 MR. JOYNER: Merely writing in a person's
13 name--

14 CHAIRMAN WHITNEY: Do you agree with the letter
15 from--I don't know if you've seen it--from Kevin Hamilton
16 that says, and I quote, that it is a felony, quote, "for any
17 person except the voter's near relative or the voter's
18 verifiable legal guardian to assist the voter to vote an
19 absentee ballot when the voter is voting an absentee ballot
20 other than the procedure under GS 162-227.2," which that
21 exception deals with one stop voting.

22 Do you agree with Mr. Hamilton's statement?

23 MR. JOYNER: Let me--let me--

24 CHAIRMAN WHITNEY: Now, do you--

25 MR. JOYNER: Let me just finish my

1 statement.

2 CHAIRMAN WHITNEY: Well, I'd like you to answer
3 that question.

4 MR. JOYNER: I don't--I don't know at this
5 point. I haven't thought about it. I'm just trying to
6 think about it.

7 CHAIRMAN WHITNEY: Okay. Well, this was a letter
8 that was written presumably in support of the Respondent.

9 MR. JOYNER: Right. The--the ballot
10 envelope certification says that if a person aids another--
11 -an absentee voter, marking the ballot, not putting a mark
12 on the ballot but marking the ballot--that means voting for
13 a person--they must sign that they assisted that individual.
14 Or if they are assisting the person signing the ballot, then
15 they have to sign that they assisted the person who is
16 signing the ballot. It does not require a person to sign
17 that section if they have provided other assistance.

18 JUDGE BAKER: You mean they can--if they
19 put a check mark by someone, they have to sign that?

20 MR. JOYNER: Judge, Judge, these are your
21 rules.

22 JUDGE BAKER: But if they actually write
23 someone's name in, you're saying they don't have to sign
24 it?

25 MR. JOYNER: Judge, these are your rules.

1 These are rules--

2 JUDGE BAKER: But that's totally illogical.

3 MR. JOYNER: Well, they may be--they may
4 be illogical, but they're not my rules. I didn't write
5 this.

6 JUDGE BAKER: That's not the rules.

7 MR. JOYNER: I didn't write this.

8 JUDGE BAKER: That's not the rules.

9 CHAIRMAN WHITNEY: What rule--

10 MR. JOYNER: I didn't write this.

11 CHAIRMAN WHITNEY: What rule are you citing?

12 MR. MALCOLM: Can we get a copy? Can we
13 get a copy of that?

14 MR. JOYNER: Well, let's look at--let's
15 look at the certification.

16 CHAIRMAN WHITNEY: Yeah.

17 MR. JOYNER: The certification is very
18 clear.

19 (Pause)

20 MR. JOYNER: "Certification of person
21 assisting voter. I certify that I assisted the voter in
22 marking his or her ballot according to his or her
23 instructions, and/or I assisted the voter in signing this
24 certificate because the voter is unable to complete and/or
25 sign this certification."

1 Now, that's on the absentee application and
2 certification.

3 MR. MALCOLM: Would you mind handing that
4 up? I personally would like to see it.

5 (Document handed to Mr. Malcolm.)

6 MR. MALCOLM: Thank you, sir.

7 MR. JOYNER: So in reliance on this
8 document from the State Board of Election, a person who
9 writes in or writes on a ballot the name of a person does
10 not have to certify that. They only have to certify it if
11 they mark the ballot, which is blacken--blacken that circle
12 in, which is the vote.

13 JUDGE BAKER: Writing a name on it is not
14 marking the ballot?

15 MR. JOYNER: No. No. Writing a name--

16 JUDGE BAKER: What is the difference; what
17 is the difference between checking a name that's already
18 printed there or exercising the write in option to actually
19 write in the name? What is the difference?

20 MR. JOYNER: Well, Judge, I'm sure you
21 know.

22 JUDGE BAKER: No, no. What is the
23 difference?

24 MR. JOYNER: Okay. I'm sure you know that
25 when you vote, you blacken in the part--the icon next to the

1 person's name, and that indicates your choice of the person
2 that you're voting for.

3 JUDGE BAKER: I understand that.

4 MR. JOYNER: Writing a person's--

5 JUDGE BAKER: If it says write in, though,
6 there's nothing to check. There's nothing to check. You
7 have to write it in.

8 MR. JOYNER: No, there is a--there is, on
9 this ballot, on the ballot--

10 JUDGE BAKER: No, it says--

11 MR. JOYNER: --a separate slot.

12 JUDGE BAKER: --if you wish to exercise the
13 write in to vote, you have to write in a vote. So what is
14 the difference in checking a name or writing in if you have
15 the option to write in a name?

16 MR. MALCOLM: Judge, I think the difference
17 is, you can write in all the names you want to.

18 JUDGE BAKER: Yes, but--

19 MR. MALCOLM: If you don't--if you don't
20 fill in the oval, it's not a vote.

21 MR. JOYNER: It's not a vote.

22 MR. MALCOLM: In my six and a half
23 years--

24 JUDGE BAKER: Isn't that what he's saying?

25 MR. MALCOLM: I'm telling you, for six and

1 a half years of counting ballots that go into the out stack
2 in Robeson County, on more than one occasion we would pull
3 a ballot--any time there's a write in, it's fed through an
4 M-100. It goes to what I call the out stack.

5 If a person writes in a name in the write in area
6 but they don't circle in that oval, the interpretation that
7 I have, and every board I've ever been associated with, is
8 that that voter did not vote for that person. They vote for
9 that person and the counter counts, that we just debated the
10 other day, when you actually fill in the oval.

11 JUDGE BAKER: I understand that, sir. I can
12 really understand that that is his argument.

13 MR. JOYNER: That is exactly my argument,
14 that until you fill in the oval, you are not marking the
15 ballot. If you fill in the oval for someone, then you are
16 required to certify that by signing. If you do anything
17 else to the ballot, you don't have to do that, number one.

18 Number two--

19 MS. AMOROSO: It sounds crazy, doesn't it?

20 MR. JOYNER: Oh, my God, it's crazy, but
21 this is what y'all are doing.

22 MS. AMOROSO: I think you read a statute--

23 MR. JOYNER: No, this is what you're doing.
24 This is what you're doing. I'm not doing this. I did
25 not--

1 MS. AMOROSO: We don't write the laws, sir.

2 MR. JOYNER: I did not write the law, nor
3 did I prepare this ballot.

4 MS. AMOROSO: Well, if the way I look at
5 it, if you're referring to this section here, I don't--you
6 go down and look up the word "marking." I mean, you're
7 relying on the definition of marking his or her ballot.

8 If somebody writes a name in, I don't really know
9 that I--that there's a distinction there. But go ahead.
10 Go ahead.

11 MR. JOYNER: Well, you know, I mean, it's
12 one of those things that Stevie Wonder could see.

13 MS. AMOROSO: Continue on.

14 MR. JOYNER: Second point. The other--if
15 I could have--

16 MR. MALCOLM: You want it back?

17 MR. JOYNER: Yeah.

18 (Document handed to Mr. Joyner.)

19 MR. LAWSON: You have two and a half
20 minutes, Professor.

21 MR. JOYNER: A person who signs the
22 certification as a witness indicates by signing their name
23 that they have assisted the voter in marking or witnessing
24 the signing of his or her ballot, and that is in the
25 certification that is here.

1 "I certify that I am at least 18 years of age and
2 not disqualified to assist this voter in marking or
3 witnessing the signing of his or her absentee ballot."

4 So a person who signs as a witness, based on this
5 document, certifies and attests to the fact that they have
6 provided assistance to that absentee voter. That's what
7 this says right here on this document, and every person who
8 serves as a witness to an absentee ballot must fill that
9 out. And in these cases, two persons must fill that out.

10 And filling that out or being a witness, it is
11 providing assistance to the absentee voter. When we look
12 at the certification of persons assisting, that refers to
13 actions by a third party, another individual, who has been
14 engaged in assisting the person to mark their ballot,
15 because it would be redundant now for the witness to also
16 sign that they have aided a person marking their ballot when
17 their certification indicates that they are assisting that
18 person to mark their ballot.

19 Now, that's the direction that's given to people
20 who are witnesses, and in reading that and the plain meaning
21 of those words, there was absolutely nothing improper.

22 CHAIRMAN WHITNEY: I have a question. Again, on
23 Mr. Hamilton's letter, he says, "Improper assistance may be
24 a crime on the part of the assister, but it is certainly not
25 a crime committed by the voter, much less reason to

1 disregard his or her ballot." Do you agree with that
2 statement?

3 MR. JOYNER: Off the top, I would--I would
4 agree with that. That here--what we're talking about here
5 is a dispute about one--

6 CHAIRMAN WHITNEY: So two persons acting in
7 concert, assuming one person is committing a crime and the
8 other is cooperating in that effort, that second person--

9 MR. JOYNER: Mr. Whitney--

10 CHAIRMAN WHITNEY: --did not commit a crime?
11 That's what I'm--

12 MR. JOYNER: What I see here is--

13 CHAIRMAN WHITNEY: I'm just--

14 MR. JOYNER: --that there is no argument
15 that the absentee voter properly signed these ballots.
16 There's no evidence that's been presented that the voter
17 did not sign this as the voter. So there--you know, so
18 that--that stands alone. So that affects the person's vote.

19 Now, if a person fraudulently assists, then both
20 of them may be criminally liable--

21 CHAIRMAN WHITNEY: Right.

22 MR. JOYNER: --if there is an intent and
23 a conspiracy to do so where they are acting in concert.
24 But where a person who is a witness properly indicates in
25 the witness section that they have witnessed the marking of

1 and provided assistance to that individual as noted here in
2 this section, then their conduct is perfectly legal and in
3 compliance with every rule that's established under the
4 North Carolina statutes.

5 Final point. I have yet to see the statutory
6 provision which says that a person must sign the
7 certification of person assisting voters. There is a
8 statute which says that when this certification is prepared,
9 that it must have a place on the ballot for people to sign,
10 but there is not one law in North Carolina statute which
11 requires that person to sign that they are assisting the
12 person in marking their ballot or helping them with their
13 signature. That's not in the statute.

14 Now, that may be a rule created by the State Board
15 of Election, but that is not what information is going out
16 in the community of people who are assisting GOTV efforts,
17 which are not criminal events, but public service
18 opportunities.

19 CHAIRMAN WHITNEY: All right. Just one question
20 before you sit down. The payments that are made to these
21 various people by the BCIP and the various amounts, are
22 those people treated as employees or as independent
23 contractors just for tax reporting purposes? I'm just
24 trying to get the relationship between those people and--

25 MR. JOYNER: It would seem to me that those

1 payments are for reimbursement or for gas, mileage, and
2 those things.

3 MR. MALCOLM: Actual cost.

4 MR. JOYNER: And that--the actual cost that
5 they are involved in. And then--

6 CHAIRMAN WHITNEY: So they're independent
7 contractors. They're not employees of your organization.

8 MR. JOYNER: Well, it's not my
9 organization.

10 CHAIRMAN WHITNEY: No, I know. I'm sorry. Your
11 client. They're not employees of your client.

12 MR. JOYNER: No, they're not employees,
13 nor is there any evidence that they are being paid for the
14 purpose of going out harvesting absentee--despite the
15 creative storytelling that has been--

16 CHAIRMAN WHITNEY: Well, I looked at a lot of
17 those. It did say "GOTV" on the forms as reason for payment
18 or whatever, so that's what it appears from what we've been
19 presented. And I'm not saying that's wrong. I'm just
20 saying that's--it says "GOTV" on a number of these things.

21 MR. MALCOLM: And Mr. Whitney, Get Out the
22 Vote--Get Out the Vote campaigns, especially in economically
23 depressed areas like Robeson, Hoke, and Scotland, happen all
24 the time.

25 CHAIRMAN WHITNEY: No, I'm--

1 MR. MALCOLM: Get Out the Vote campaigns
2 include going to knock on people's doors, handing out
3 pamphlets at Wal-Mart, so it's a--just based on my
4 experience, it's a pretty large swath.

5 CHAIRMAN WHITNEY: Oh, I agree, and we--you know,
6 I--in my past history as a--you know, in Republican years,
7 we had our GOTV campaign. Yeah, I mean, that's a big--
8 nobody's disagreeing that the GOTV's a bad thing; I think
9 we all agree it's a good thing. Just make sure it's
10 conducted in an appropriate fashion.

11 MR. JOYNER: Mr. Chairman, and what it
12 evidences to me is proper bookkeeping by the organization
13 to report on their income and their disbursement, but the
14 reason for the disbursement is not as salary--

15 CHAIRMAN WHITNEY: Right.

16 MR. JOYNER: --but as expenses--

17 CHAIRMAN WHITNEY: Right.

18 MR. JOYNER: --that they have--that they
19 have incurred, and the evidence will point to that. Or
20 there is no evidence at all that it is anything but that--

21 CHAIRMAN WHITNEY: Right.

22 MR. JOYNER: --if you--unless you buy into
23 this creative storytelling developed by the Knight (sic)
24 campaign.

25 CHAIRMAN WHITNEY: Thank you, Professor. Yeah.

1 We'll--15 minutes?

2 MR. HAMILTON: I doubt I'll need 15 minutes.

3 CHAIRMAN WHITNEY: Well, that's fine. I mean,
4 knock yourself out.

5 MR. HAMILTON: I'll try. Good afternoon,
6 members of the Board, Mr. Chairman. My name is Kevin
7 Hamilton. As you know, I represent the Cooper for North
8 Carolina and North Carolina Democratic Party.

9 I'd like to just take a moment--I don't know what
10 evidence will be presented, but to talk about the law for
11 a moment that governs your decision here today.

12 In the opening statement a moment ago there were
13 a number of numbers cited to you about witnesses who signed
14 the outside envelope. We're not talking about the write-in
15 portion now, just--that Mary Johnson, for example, it was
16 alleged signed, as a witness, 74 absentee ballots. That's
17 really interesting. That's also really not illegal.

18 There is nothing illegal about a citizen of this
19 state witnessing a number of absentee ballots, and often it
20 happens after church on a Sunday that folks will be all in
21 one place where there's--it's easy to--or other places where
22 voters vote, or instances of campaign volunteers walking
23 around assisting voters who might live alone and need
24 somebody to witness their ballot.

25 So there's nothing illegal about that, and all of

1 those numbers, 74, 67, 58, 45, 16, all interesting, all
2 irrelevant to the task before you because that's perfectly
3 legal.

4 Second, Mr. Chairman, you read a quote from the
5 letter and you read it accurately except that you stopped
6 before the end of the statute. The full sentence reads that
7 the statute makes it a felony, quote, "for any person except
8 the voter's near relative or the voter's verifiable legal
9 guardian to assist the voter to vote an absentee ballot when
10 the voter is voting an absentee ballot other than under the
11 procedure of Gen Stat 163-227.2." That's where you stopped.

12 Then the statute continues, "Provided that if
13 there is not a near relative or legal guardian available to
14 assist the voter, the voter may request some other person
15 to give assistance."

16 CHAIRMAN WHITNEY: Okay. Define--define the
17 difference between giving an assistance and voting for the
18 voter. That's really what I'm looking for, so I would be
19 interested in your thoughts about that.

20 MR. HAMILTON: Sure. Well, there--I mean,
21 these statutes appear in every state in the union because
22 we--you know, not all of us are able-bodied, so for
23 example--

24 CHAIRMAN WHITNEY: Yep.

25 MR. HAMILTON: --if you're disabled and can't

1 write, that's an instance in which you're--if you're
2 crippled with arthritis, like many of our elderly people
3 are, those are instances where it's painful to actually
4 write, and you might ask your guardian, you might ask a near
5 relative, or if neither are available, you might ask a
6 trusted friend or some other person. "Some other person."
7 That's the language of the statute.

8 So I just want to--I think the Board needs to keep
9 in mind that it's not improper--now, it may be that if they
10 provide that assistance, they have to fill out the
11 certification form that you were talking about a moment ago,
12 and if they didn't, then perhaps that's some violation of
13 the law about improper assistance.

14 CHAIRMAN WHITNEY: Okay. Just tell me what--in
15 general terms, what you think this assisting person can do
16 and cannot do.

17 MR. HAMILTON: I think that a person
18 assisting a disabled voter or a voter who has requested
19 assistance can probably fill out any part of the ballot for
20 them as long as they fall within the statute--the provision
21 of this statute.

22 But the allegation here--I think it's important
23 that we separate out the two strains of the allegation,
24 which were blurred together in the opening statement there.

25 First there is the question of, did one person

1 witness more than one ballot. That is irrelevant and should
2 be put aside.

3 Second is the question of, did one--did the--did
4 one person other than the voter write in the write-in names
5 on a lot of these ballots and then fail to fill in the
6 outside envelope. If that--if that evidence is proven, and
7 I haven't seen it and I don't know what will be presented
8 to this Board, then you may have a case of improper
9 assistance. And the statute, thankfully, gives you
10 direction on what to do. We're looking at that second--Gen
11 Stat 163-226.3, which, in this Subsection A, is the part we
12 were just looking at.

13 It's important to look at Subsection B of that
14 statute. The State Board of Elections or County Board of
15 Elections, upon receipt of a sworn affidavit from any
16 qualified voter of the state or the county, as the case may
17 be, attesting to first person knowledge of any violation of
18 Subsection A of this section, shall transmit that affidavit
19 to the appropriate district attorney, who shall investigate
20 and prosecute any person violating Subsection A. So that's
21 got a lot of important parts in that.

22 First, it tells you what the standard of proof
23 is. You need to have a sworn affidavit from a qualified
24 voter attesting to first person knowledge. You can't just
25 come in and say, "Gee, I think something wrong happened

1 here." You have to have first person knowledge.

2 And then it tells you what to do. When you have
3 that, you transmit that affidavit to the district attorney,
4 who shall investigate and, in appropriate circumstances,
5 prosecute the individual.

6 Which individual? There is nothing in here about
7 the voter. The person who's violating Subsection A is the
8 person providing the improper assistance, so in an
9 appropriate case, that person could be prosecuted, but
10 there's nothing here about prosecuting the voter.

11 Of course, the voter didn't do anything wrong.
12 The voter, by definition, is somebody who was asking for
13 assistance, and the person providing the assistance may have
14 failed to fill out the form. But other than that, there's
15 no--there's no hear (sic) here.

16 So that statute, I think, is important to note.
17 It's also important to note that Gen Stat 163-182.1 provides
18 that no official ballot shall be rejected because of
19 technical errors in marking it, unless it's impossible to
20 clearly determine the voter's choice.

21 So again, I don't know what evidence is going to
22 be presented today. I'll be listening with interest, but
23 the law tells us that the voter's vote should count, and
24 even listening and taking everything as true from the
25 opening statement, the only allegation here is for improper

1 assistance with--in connection with a Water and Soil
2 Conservation Supervisor position.

3 So it may be that, in the event that they come
4 forward with sworn affidavits from registered voters in the
5 county, attesting to first person knowledge with respect to
6 the improper assistance, that we might--that this Board
7 might find improper--an improper ballot with respect to
8 those--that race, but that's not a reason to discount the
9 ballot as to the rest of the votes cast on that ballot
10 and--

11 CHAIRMAN WHITNEY: Tell me what you think a
12 technical error is. And I see that from your letter.

13 MR. HAMILTON: Sure.

14 CHAIRMAN WHITNEY: It says "shall not be--no
15 ballot--official ballot shall be rejected because of a
16 technical error." What--when does--

17 MR. HAMILTON: A technical--

18 CHAIRMAN WHITNEY: What is a technical error and
19 when does it become something that's worse than a technical
20 error that wouldn't be--wouldn't be disregarded?

21 MR. HAMILTON: Sure. It's--for example,
22 where there's a witness and a date next to the witness sign,
23 and the witness fails to fill in the date. That's generally
24 considered a technical error.

25 There--the states in the United States deal with

1 this in two different ways. There are strict compliance
2 states and there are voter intent states, and this state is
3 a voter intent state. And you see it in this statute right
4 here. "Technical errors are not going to prevent a ballot
5 from counting."

6 Other states have a completely different rule.
7 It's--nope, absentee ballot is a privilege and you've got
8 to follow the line and dot the T or your ballot gets thrown
9 out the back of the caboose. But this state takes a more
10 generous view, and--as do many states--and says, "No, the
11 whole point of voting is to count our citizens' votes, the
12 ballots, and so mere technical problems, we're not going to
13 prevent."

14 So that, I think, is important here. If there
15 was improper assistance, then fine. The statute tells you
16 what to do in those circumstances, but it's not discount the
17 vote of the voter.

18 And I think that if you look at the ballot
19 envelopes, and we'll be talking a little bit in cross-
20 examination of the expert witness that I think is about to
21 be presented to you, the signatures of the voters are not
22 being called into question at all. The voter signatures are
23 all different. The voters are all registered voters. The
24 voters are all American citizens and citizens of North
25 Carolina that were fully entitled to vote in this election,

1 and it would be inappropriate for this Board to discount
2 those ballots with any race other than the Soil and Water
3 Conservation.

4 CHAIRMAN WHITNEY: Thank you.

5 MR. HAMILTON: Thank you, Mr. Chairman.

6 CHAIRMAN WHITNEY: Well, I guess we're ready to
7 hear the presentation of evidence by the protestor,
8 protestor, whichever. Mr. Knight, please proceed.

9 MR. KNIGHT: Thank you, Mr. Chairman. I
10 note to begin with, the following. The--you have, as part
11 of your records, the report from Ms. Ware. You have, I
12 believe--

13 CHAIRMAN WHITNEY: Ms. Ware, will you stand up?

14 MS. WARE: Yes.

15 (Whereupon,

16 CHARLOTTE WARE

17 having first been duly sworn, was
18 examined and testified as follows:)

19 CHAIRMAN WHITNEY: Thank you. Proceed,
20 Counselor.

21 MR. KNIGHT: You have--your investigator
22 has, I believe, interviewed Mr. Brian Hehl on one or more
23 occasions, and I also note that the State Board investigator
24 spent several days in Bladen County investigating--
25 investigating the absentee ballots and other things that we

1 are not privy to, and obviously we are not privy to what
2 evidence has been generated by that.

3 My point being that you, in fact, as the State
4 Board, have more evidence than we do, and evidence that we
5 are not privy to, and that may or may not impact your
6 decision. But we will present the evidence that we have.
7 I would like to know, and I'm sure everyone would like to
8 know, the results of the investigation and whether that will
9 impact the Board's determination in this matter.

10 Having said that, I'd like to proceed with first,
11 and I know you're going to need to swear him, and to the
12 extent what--we will do this, and I don't want to drag it
13 out so much, I will present the individual, ask them some
14 questions, ask them to address the Board, and then if the
15 Board has any questions of the individuals, certainly we'll
16 be happy to have them answer those questions.

17 And I'm sure that Mr. Joyner--Professor Joyner and
18 Mr. Hamilton will probably ask questions also.

19 CHAIRMAN WHITNEY: I'm okay with all that.

20 MR. KNIGHT: Okay. We'll start with Brian
21 Hehl, and he is present here. And I'm going to ask Mr.
22 Dowless if he would--

23 CHAIRMAN WHITNEY: Do you swear to tell the
24 truth--you've already been sworn, right?

25 MR. KNIGHT: Mr. Dowless has been sworn.

1 CHAIRMAN WHITNEY: All right.

2 (Whereupon,

3 BRIAN HEHL

4 having first been duly sworn, was

5 examined and testified as follows:)

6 CHAIRMAN WHITNEY: Thank you. State your name.

7 MR. HEHL: Brian Hehl.

8 CHAIRMAN WHITNEY: Spell your last name, please.

9 MR. HEHL: H-e-h-l.

10 CHAIRMAN WHITNEY: Proceed, Mr. Knight.

11 MR. KNIGHT: Thank you. You can sit down.

12 Can he sit down, sir?

13 MR. HEHL: I'm all right. Whatever.

14 CHAIRMAN WHITNEY: I'm okay with that. You're

15 under oath whether you're standing or seated.

16 MR. LAWSON: You don't think

17 (unintelligible) maybe we can cross-examine him at the same

18 place.

19 CHAIRMAN WHITNEY: Well, then, so put him--all

20 right. Can they stand there together, then?

21 MR. LAWSON: That's what it was initially

22 put there for.

23 CHAIRMAN WHITNEY: Okay, great. Well, just make

24 sure your mic's on, Mr. Knight.

25 DIRECT EXAMINATION OF MR. HEHL BY MR. KNIGHT:

1 Q Mr. Hehl, I was just going to start by having you
2 tell everyone your name, and I suppose you've done that.
3 Can you confirm your county of residence, please?

4 A I live in Bladen County.

5 Q And how are you employed in Bladen County?

6 A I am a member of the Board of Elections. I
7 actually am not employed in Bladen County, I work in
8 Cumberland County, but I serve on the Board of Elections in
9 Bladen County as the member.

10 Q How long have you been on the Board of Elections?

11 A Since--this is just the first term, so June of
12 last year. Yeah, last year. It's all running together now.

13 Q All right. In October of this year, did you
14 notify the State Board of Elections regarding irregularities
15 you noticed with respect to the mail-in absentee ballots in
16 Bladen County?

17 A I did. And if you'd like, I'd expand on that a
18 little bit, because there's a little bit of a story behind
19 that as to how we actually found all that.

20 Q Can you please describe what it was that caught
21 your attention and caused your concern?

22 A So the way this all started, in one of our Board
23 meetings, the second absentee meeting, we had a couple of
24 complaints that came from--and I believe, if I'm not
25 mistaken, it was Linda Baldwin and one other complaint, that

1 there was some concern about this whole Get Out the Vote
2 thing, and whoever brought that complaint in, I don't know.

3 I do know that it came from Linda Baldwin, and she
4 was concerned about the fact that somebody came to her door
5 wanting to do absentees, and then they didn't show up, they
6 did show up, they--

7 MR. JOYNER: Mr. Chairman, I'm going to
8 object, and this might be a good time for you to advise us
9 on how hearsay is going to be accepted and evaluated by this
10 Board.

11 MR. MALCOLM: I was getting ready to ask
12 the same exact question.

13 MR. JOYNER: And we're--because we're
14 dealing with a host of hearsay or hearsay within hearsay.

15 THE WITNESS: I was just giving you the
16 process by which I found the irregularities.

17 MR. MALCOLM: That you found irregularities?

18 THE WITNESS: Yes, that we found--we found
19 irregularities--

20 MR. MALCOLM: I thought you noticed problems
21 with the signatures, sir. I didn't know you had determined
22 that you--

23 THE WITNESS: We did. That's what I'm
24 getting to, sir.

25 MR. MALCOLM: So you--hold on one second.

1 Let me finish, please. Thank you. So are you saying that
2 you--you can testify to what you know to be true, if you
3 wouldn't mind.

4 THE WITNESS: I am.

5 MR. MALCOLM: Can you tell me--you said,
6 "problems with Get Out the Vote." Can you tell me what that
7 means?

8 THE WITNESS: I'm just referring to Linda
9 Johnson--or Linda Baldwin, where they stated earlier they
10 thought this might be Get Out the Vote. I'm not implying
11 Get Out the Vote whatsoever. I'm just--what I'm stating is,
12 in our Board meeting, there was a complaint that was brought
13 by Linda Baldwin. We discussed that. Al Daniels, the--

14 MR. LAWSON: Is that in the record of that
15 meeting?

16 THE WITNESS: Yes. Yes, it is.

17 CHAIRMAN WHITNEY: All right.

18 THE WITNESS: He had concerns that there
19 may be issues with absentee voting.

20 MR. MALCOLM: Where is that in the record?
21 Hold on one second. Where is that in the record, Mr.
22 Lawson?

23 MR. LAWSON: It's not in the record before
24 us. If it's in, maybe, minutes that they have, I don't
25 know.

1 MR. MALCOLM: Do you have a copy of a signed
2 minutes from Bladen County, sir?

3 THE WITNESS: I do not.

4 MR. MALCOLM: Thank you.

5 THE WITNESS: Anyways, during that meeting,
6 we discussed that there was issues--we felt like there was
7 issues with absentees--

8 MR. JOYNER: Mr. Chairman, I'm going to
9 renew my objection to the hearsay, and some ruling as to
10 whether hearsay is going to be admissible because we can't
11 cross-examine--

12 CHAIRMAN WHITNEY: Let's limit your testimony to
13 what--

14 THE WITNESS: Okay.

15 MR. BRANCH: Your Honor, I just noticed
16 that the Rules of Civil Procedure are not applicable in
17 proceedings in front of this Board.

18 MR. MALCOLM: This Board always applies
19 hearsay.

20 MR. BRANCH: But there is--the Board
21 does--

22 MR. MALCOLM: We always apply that, sir.

23 MR. BRANCH: The Board does have some
24 discretion to allow in testimony that has some hearsay
25 implications, and I do note that Mr. Hehl is testifying as

1 to what other people told him personally. So it's not
2 hearsay upon hearsay. He has personal knowledge--

3 MR. MALCOLM: Is it hearsay?

4 MR. BRANCH: It was personal--he has
5 personal knowledge of--

6 MR. MALCOLM: (unintelligible) law school,
7 would it be hearsay?

8 (Crosstalking)

9 JUDGE BAKER: Not if it's being presented
10 (unintelligible) other than to be the truth of the matter
11 asserted.

12 MR. BRANCH: The truth of the matter
13 asserted.

14 MR. MALCOLM: Well, he--he did not present
15 it that way, Judge Baker.

16 JUDGE BAKER: No, sir. I understood him to
17 say--

18 MR. MALCOLM: Because he's not a lawyer.

19 JUDGE BAKER: Well, sir, let me finish.

20 Thank you. As I understood him to say that the person
21 brought something to his attention and this is why we did
22 what we did.

23 THE WITNESS: This is where it began, yes.

24 JUDGE BAKER: All right. So I don't think
25 it's hearsay. It's just being presented to show why they

1 took action that he did. Now, if he's presenting it for the
2 truth of what Linda Baldwin said, it would be hearsay, but
3 I'm not considering what Linda Baldwin said, whatever she
4 might have said, to be truth and presented at this hearing
5 because she's not here and she's not under oath.

6 But if he's saying, "Linda Baldwin came before us
7 and told us this and this and this, and as a result of
8 hearing that, we then took this action. This is what we
9 did," that would be, in my courtroom, perfectly proper to
10 do that.

11 MR. MALCOLM: And so that happened at this
12 meeting of the Board?

13 THE WITNESS: That's exactly--that's exactly
14 what happened in the meeting of the Board. That's where I
15 was leading.

16 JUDGE BAKER: That's what I understood him
17 to be saying, so I don't think it's hearsay.

18 MR. MALCOLM: The meeting of the Board that
19 we don't have the meeting minutes for to verify that.

20 JUDGE BAKER: That is, sir, because it's
21 not being presented for the truth of the matter asserted.
22 He can tell us what he heard and then what they did, and I,
23 as a member of this Board, am not going to consider what
24 Linda Baldwin said to them as evidence because it's not
25 being presented to us here under oath, and therefore what

1 she said would be hearsay. What he did--

2 MR. MALCOLM: As a result of it.

3 JUDGE BAKER: --as a result of it is not
4 hearsay.

5 MR. MALCOLM: I agree with that.

6 CHAIRMAN WHITNEY: All right. Well, I'll let
7 you--

8 MR. JOYNER: Mr. Chairman. Mr. Chairman,
9 let me--and I agree with those comments. He's absolutely
10 correct. But is that the position of the other members of
11 the Board, that they are not going to accept this hearsay
12 for the truth of the matter asserted?

13 And that's the object of my--of my objection,
14 because while Judge Baker may take that view, there are four
15 other members of this Board, and they may take that
16 statement as being truthful, and we don't want it being
17 accepted as truthful when it is hearsay unless there is some
18 exception to the hearsay rule for which it should apply.

19 CHAIRMAN WHITNEY: Well, I think in this case,
20 what he's testified to falls into a hearsay exception, so
21 I'll allow that, but--

22 MR. MALCOLM: So are we all--can we all
23 agree to that, Mr. Chairman? Can each Board member
24 acknowledge that, what Judge Baker just said?

25 CHAIRMAN WHITNEY: Yes.

1 MR. MALCOLM: I agree with what Judge Baker
2 just said.

3 CHAIRMAN WHITNEY: I'm fine with that.

4 MS. AMOROSO: I don't know. I'm going to
5 reserve judgment at this point. I'd like to hear Mr. Hehl
6 go forward and talk about what he personally knows.

7 CHAIRMAN WHITNEY: Yeah. Well, I think we're
8 saying the same thing. We want to hear what you--first
9 thing--

10 MR. MALCOLM: Does that mean you agree with
11 it, Dr. Kricker?

12 MS. AMOROSO: We've got a Board member, so
13 let's hear what happened at their meeting. That's why
14 you're here, so let's hear it.

15 THE WITNESS: So like I said, we had a
16 complaint come in from a citizen about an absentee vote.
17 We discussed in the meeting that we felt like that this was,
18 for lack of better terms, not right, and that we were
19 concerned that somebody's vote was not going to be counted
20 or somebody's vote was going to be wrongly counted, so we
21 felt like that we needed to look into that. But Mr. Daniels
22 felt like that this was not an isolated incident, and I
23 agreed.

24 So a motion was made, I seconded the motion, that
25 we needed to look into absentees, but I made the--the motion

1 was made that all absentees would be looked into.

2 Following that, we had to run all the first group
3 of absentees through the machine to start the vote count,
4 and we noticed that there was a high number of out stacks,
5 as you know, Board Member Kricker said, he refers to them
6 as out stacks.

7 As we were running through the out stacks, we
8 noticed there was nothing written on the voter assistance,
9 on the envelopes, and as we pulled the out stacks out to
10 keep them separated, we noticed lots of handwriting that
11 appeared very similar.

12 As I said in the letter, and I will stand by here
13 today, I am not a handwriting expert. I have never claimed
14 to be a handwriting expert.

15 CHAIRMAN WHITNEY: But you personally saw--

16 THE WITNESS: Yes, I did.

17 CHAIRMAN WHITNEY: --this handwriting and/or
18 signatures that you're testifying to.

19 THE WITNESS: That is correct.

20 CHAIRMAN WHITNEY: Okay.

21 MR. MALCOLM: So can I ask a question? So
22 how many--how many mail in ballots did you have,
23 approximately?

24 THE WITNESS: That day we had 561.

25 MR. MALCOLM: So your staff brought those

1 ballots in and put them on the table? I mean the envelopes.

2 THE WITNESS: Our procedure is, the
3 envelopes come in. Obviously you go through and look at
4 the envelope and decide whether it's acceptable or not,
5 based upon the criteria on it.

6 And I understand what he was saying about
7 discretion and error. Some of them, it was discretion made
8 that they may have put the witness and everything in the
9 wrong line, but we realized that yes, this was probably a
10 mistake. We gave them the discretion and we counted them.
11 We counted as many as legally possible.

12 We pulled the envelopes out, and they are kept
13 separate by the precinct so that we can keep--for whatever
14 purpose. I think it's got to do with the assimilation after
15 the fact.

16 Then we go back and we run the ballots through.
17 A locked, secured location, run the ballots through the
18 machine and start the count for the absentee. I think it's
19 a DS-200 is the machine that we use now. And then those
20 ballots are secured.

21 But obviously, as the normal ballots come through
22 one side we put them in a blue bag. The out stacks go in
23 a yellow bag, and as they were brought to put in the yellow
24 bag, that's when the signatures were noticed.

25 At that point we were separating those out and

1 looking for irregularities because Chairman Ludlum had made
2 a comment to Cynthia--

3 MR. JOYNER: Objection.

4 THE WITNESS: --that there was issues and
5 to get direction from the state.

6 MR. JOYNER: Objection to the hearsay.

7 CHAIRMAN WHITNEY: Objection noted. Continue.

8 MR. MALCOLM: So to make sure I understand,
9 when the ballot envelopes came in--

10 THE WITNESS: Uh-huh (affirmative).

11 MR. MALCOLM: --you're saying they were
12 segregated by precincts.

13 THE WITNESS: Yes.

14 MR. MALCOLM: How many precincts?

15 THE WITNESS: We have 17 in Bladen County.

16 MR. MALCOLM: So there were 17 piles.

17 THE WITNESS: Yes. They're all in one
18 stack, but they're separated by a--

19 MR. MALCOLM: By a rubber band.

20 THE WITNESS: --rubber band or a paper clip.
21 Yes, they're separated.

22 MR. MALCOLM: Yes. I'm familiar with that.
23 So then the staff recommends to the Board whether to accept
24 the entire ballot.

25 THE WITNESS: No, they do not. They just

1 give us the stack and we go through them as a Board, and it
2 just so happened in our procedure, they would come to me
3 first and they would go to Chairman Ludlum, they'd go to Mr.
4 Daniels, only because that's the--just the way we were
5 seated--

6 MR. MALCOLM: So when you got the envelope,
7 what determination would you be making?

8 THE WITNESS: We looked for a voter
9 signature.

10 MR. MALCOLM: Okay, so the things you just
11 mentioned a minute ago.

12 THE WITNESS: The--and two witnesses with
13 the--I believe you have to have addresses with the
14 witnesses, but there was nothing on there with a date. The
15 date didn't say "Required" under it.

16 MR. MALCOLM: Yes, sir.

17 THE WITNESS: And then obviously the stamp
18 that says what their ballot was supposed to be and that they
19 did request the envelope.

20 MR. MALCOLM: And so then you would say,
21 "This envelope's good to go." "This envelope I've got a
22 question about."

23 THE WITNESS: We would pass them around,
24 and as long as they looked good, we'd pass them around, and
25 once they were done, we set them--you know, we would approve

1 these. The ones that we had issue on, we'd automatically
2 set to the side and we'd discuss them.

3 MR. MALCOLM: So the ones that were
4 approved, they would all be put together, correct?

5 THE WITNESS: They'd--we still kept them
6 separated by precinct.

7 MR. MALCOLM: By precinct.

8 THE WITNESS: Yes, that's--

9 MR. MALCOLM: And then at some point after
10 your discussion, you would make the decision to accept all
11 those; is that correct?

12 THE WITNESS: That's correct.

13 MR. MALCOLM: And would the Board members
14 open the container, the envelope itself?

15 THE WITNESS: Not those.

16 MR. MALCOLM: Who opened them?

17 THE WITNESS: Cynthia Shaw or one of the
18 ladies in the office would have opened those.

19 MR. MALCOLM: Okay. And did that occur, and
20 do you have firsthand knowledge of that? Did you see them?

21 THE WITNESS: I was not--I was not at that
22 meeting because these ballots that we're looking at was a
23 meeting that I was absent at. This was the first--this was
24 the first meeting, and they ran them through the machine.

25 There was an issue, and I don't know what the

1 issue was. There was an irregularity in the numbers. So
2 in the meeting that I showed up on the second meeting, the
3 decision was made to completely wipe the machine, take those
4 secured ballots, and re-run them through the machine to get
5 the numbers correct.

6 MR. MALCOLM: So are you saying everything
7 that you just talked about, you weren't at the meeting?

8 THE WITNESS: The second meeting when we
9 did them, yes. But I didn't approve them. I never said
10 that I approved them in the first meeting. That's the
11 process.

12 MR. MALCOLM: Okay, and that--sir, that's
13 why it's important for us to know what you're testifying
14 that you saw, so--

15 MR. HEHL: When I was at the meeting, we
16 went back to run them through the machines.

17 MR. MALCOLM: So when you say "run them
18 through the machine," had they already gone through this
19 little hand around process--

20 THE WITNESS: Yes.

21 MR. MALCOLM: --between the Board members?

22 THE WITNESS: Yes.

23 MR. MALCOLM: For which you were not
24 present?

25 THE WITNESS: For which I was not present

1 for.

2 MR. MALCOLM: So--and you're saying that at
3 some point during that process, you had noticed something
4 that stood out to you.

5 THE WITNESS: That is correct. And I'm not
6 saying who did it. I know something was stood out, and
7 that's why I suggested to the State Board that they look
8 into it and not us.

9 MR. MALCOLM: Okay. And by the time that
10 you came to the second meeting, isn't it true that the
11 ballots had already been separated from the envelopes from
12 which they arrived?

13 THE WITNESS: Because they had been run
14 through the machine one time and there was--

15 MR. MALCOLM: If you could just say yes or
16 no. By the time when you came to the second meeting, isn't
17 it true that the envelopes had been separated from the
18 ballots that were contained therein?

19 THE WITNESS: Yes, sir. That is correct.

20 MR. MALCOLM: So, and it's--are you saying
21 that just you, by you looking at those ballots, that somehow
22 you were able to go back and make an association with the
23 envelope that had been discarded at the meeting before? I'm
24 just trying to understand how you made that connection.

25 THE WITNESS: The envelopes are not

1 discarded. They are kept with the ballots, even though
2 they're out of the envelope, and then the CIV number is
3 written on both the ballot and the envelope.

4 MR. MALCOLM: I see.

5 THE WITNESS: So yes, you can assimilate
6 them.

7 MR. MALCOLM: Yes, sir, and I'm not
8 saying--I shouldn't have used "discard." I should have used
9 segregated.

10 THE WITNESS: Yeah, segregated.

11 MR. MALCOLM: Segregated. So I want to make
12 sure. So what stood out to you was the write in name?

13 THE WITNESS: So the procedure that we were
14 told to follow by the State Board at that point, I had not
15 been told anything about the write-ins, about any kind of
16 handwriting other than we had a lot of out stacks and we
17 were to--Chairman Ludlum had contacted the State Board that
18 there were issues, or saying that there might have been
19 issues with the ballots.

20 I was not told what those issues were, but we had
21 to re-run those through the machine because there was--
22 somehow or another, a number got missed, and we think--we
23 can't be for sure, but we think that a military ballot-

24 MR. JOYNER: Objection.

25 THE WITNESS: --had gotten run twice.

1 MR. JOYNER: Objection to what he thinks.

2 CHAIRMAN WHITNEY: Yeah.

3 THE WITNESS: Okay. Whatever.

4 CHAIRMAN WHITNEY: Just tell us what you know,
5 not what you think.

6 THE WITNESS: Okay. We re-ran them. We--
7 they zeroed the machine, took these--the ballots, from what
8 I understand, were kept locked in the ballot room. We re-
9 ran them through the machine, got the exact same number, so
10 they were--when we re-ran them, at that point we were
11 directed by the State Board to, when we re-ran them, when
12 we had to look at the--when we took the out stacks, to look
13 and see if there were any consistencies for us to look at.

14 So when we did that, Mr. Daniels and Mr. Ludlum
15 re-ran them through the machine, I was within 15 foot of
16 the machine, right outside of the cage with Director Shaw,
17 and as they would run out stacks, they would bring them back
18 to us at the table, and we would separate them by ballot at
19 the direction of the State Board, and that's when I started
20 noticing--that's when I started noticing consistent--
21 somewhat consistent handwriting, and we were able to marry
22 them up to the envelopes.

23 MR. MALCOLM: And did y'all do that, that
24 last part, marrying up? Did you?

25 THE WITNESS: Yes.

1 MR. MALCOLM: Did you do that?

2 THE WITNESS: I did.

3 MR. MALCOLM: Every Board member did that.

4 So somebody--

5 THE WITNESS: They were next to me and then
6 they came and looked at the ones that I did and did a
7 randomized audit to make sure that the numbers did match,
8 and Cynthia was with me the whole time.

9 CHAIRMAN WHITNEY: Was this appearance of
10 similarity of handwriting on the envelopes or on the ballots
11 or both?

12 THE WITNESS: Both.

13 MS. AMOROSO: Is Director Shaw here today?

14 THE WITNESS: No, I don't think--I don't
15 believe she was coming today.

16 CHAIRMAN WHITNEY: Any other Board members here
17 today?

18 THE WITNESS: Mr. Daniels is in the back,
19 I believe.

20 MR. DANIELS: I am. Al Daniels is here.

21 MS. AMOROSO: Okay.

22 MR. DANIELS: Thank you.

23 CHAIRMAN WHITNEY: Proceed, Counselor.

24 DIRECT EXAMINATION OF MR. HEHL BY MR. KNIGHT (continued):

25 Q Just to be clear, the second time you ran the

1 ballots, when this second meeting that you were at, you
2 basically started over again.

3 A That's exactly right.

4 Q Did you observe anything about the handwriting
5 with the writing the name of Franklin Graham? Can you tell
6 us about your personal observations about that?

7 A When I looked at that particular name, it--in my
8 opinion, it appeared that there was lots of similarities
9 between--there was several different handwriting styles, but
10 of those handwriting styles, a lot of them appeared to be
11 the same, or the same--we felt like it--

12 MS. AMOROSO: Had you seen this before?
13 You've been on the Board for a little while. Last election,
14 did you have any problem with the absentee ballots?

15 THE WITNESS: We hadn't, no. None that I
16 remember.

17 MS. AMOROSO: Okay. But this stood out to
18 you. It was pretty clear--

19 THE WITNESS: Yes.

20 MS. AMOROSO: --that you thought something
21 was amiss.

22 THE WITNESS: We rarely get an out stack.
23 A lot of times it's a stray mark or if we do have a write
24 in, but when it was--I would say almost half of the ballots
25 going through at a time would be out stacked. It really

1 threw a red flag to all of us.

2 CHAIRMAN WHITNEY: That's unique from your prior
3 experience.

4 THE WITNESS: That's correct.

5 CHAIRMAN WHITNEY: Continue, Counselor.

6 DIRECT EXAMINATION OF MR. HEHL BY MR. KNIGHT (continued):

7 Q To your knowledge, is the--did the State Board of
8 Elections initiate an investigation with regard to the
9 absentee ballots in Bladen County?

10 A Once we sent the letter, we were instructed to
11 make sure that the ballots and the envelopes were secured,
12 and the investigative division had requested that we make
13 copies of the container envelopes that we had identified,
14 and the copies were sent to the State Board.

15 And then they notified us that they would be down
16 some time the following week, and I could not tell you the
17 exact date right off, what that day was.

18 Q Were you interviewed by the investigator?

19 A She asked us a little bit, but not a formal
20 interview, no. But she did ask us questions. She felt--
21 from what I could understand, she didn't have anything else
22 to ask because my--everything I wrote in the letter, but she
23 did not do any kind of formal interview with me, no.

24 Q As to Professor Joyner's argument that there is
25 no vote unless the circle is marked on a write in, is it

1 true that there is no vote if there is no write in beside
2 the circle?

3 A You have to have both. You have to have the
4 circle and you have to have the write in, because we will
5 not tally--the machine won't tally a write in if the circle
6 is not circled.

7 Q So if the circle is marked for a write in and the
8 write in is left blank--

9 A They will get a write in, but there will be no--
10 nobody will get credited for the vote.

11 MR. KNIGHT: So there'll be no vote. I
12 don't--do you have any questions from the Board? That's
13 all.

14 MR. MALCOLM: That's all for him?

15 MR. KNIGHT: Yes, sir.

16 CHAIRMAN WHITNEY: Yeah, his, but we need to
17 allow Mr. Hamilton and Professor Joyner to ask some
18 questions. Professor, would you like to start?

19 MR. JOYNER: Thank you. I appreciate that.

20 CROSS-EXAMINATION OF MR. HEHL BY MR. JOYNER:

21 Q Can you hear me okay?

22 A Yes, sir.

23 Q Okay. I want to start with the last question.

24 A person who is on the regular ballot--for a person who is
25 on the regular ballot, the name appears typed by the Board

1 of Elections.

2 A That's correct.

3 Q When is that--what causes the Board to count that
4 ballot?

5 A Whenever that circle beside it has some mark in
6 it whatsoever, and we have taken check marks where we've had
7 to spoil a ballot and redo the ballot for them because the
8 machine wouldn't take it. But yes, as long as there is some
9 identifying mark in that circle, we will count it.

10 Q So the process of blacking in that circle is what
11 is called marking the ballot; is that correct?

12 A That's correct.

13 Q And where there is just a name that's written in
14 on the ballot but the accompanied circle is not blackened
15 in, is that vote counted?

16 A No.

17 Q Why not?

18 A Because that's the way the--from what I
19 understand, that's the way the ballot works. You have to
20 mark that circle; you have to fill in that circle for the
21 vote to count for the machine to get it.

22 Q So merely writing in the name is not marking the
23 ballot.

24 A I would defer to the lawyer and the law on that
25 one, but that's the way I understand it. That is correct.

1 Q So it is not until someone actually blackens in
2 the circle that that ballot is marked for that particular
3 candidate.

4 A That's correct.

5 Q Now, in the 2016 general election, was there a
6 write in position for any other office in contention?

7 A Presidential election, and I--there was one other
8 but I don't remember what it was. I think it was a state
9 level, but I can't remember now.

10 Q Do you know why there would be a write in
11 opportunity on some ballots but not others?

12 MR. MALCOLM: Do you mean some races and
13 not others?

14 MR. JOYNER: Right.

15 Q For some races but not others.

16 A If it's not in--if the--if those districts are
17 not in somebody's precinct. For instance, we have two State
18 House races in Bladen County. One of them's a very small
19 district down in the bottom end of Bladenboro. I'm not in
20 that, so that race wouldn't be on there.

21 If there happened to be a write in for that race,
22 it wouldn't be on my ballot because I don't fit in that
23 district, but I don't believe that was the case in Bladen
24 County, because I think all of the write ins were countywide
25 or statewide or federal elections.

1 CHAIRMAN WHITNEY: Does each office have a slot
2 for a write in?

3 THE WITNESS: No.

4 MR. MALCOLM: That's the question you're
5 asking.

6 THE WITNESS: No. Not from what I under--
7 not what I remember. What I remember on the ballot was
8 federal--the presidential had a write in, the Soil and Water
9 had a write in, and then, again, like I said, I'd have to
10 look at the ballot, but I believe it was a state level
11 position that had a write in, but I don't remember.

12 CHAIRMAN WHITNEY: But what I'm saying is, if
13 you take all of the names--

14 THE WITNESS: No.

15 CHAIRMAN WHITNEY: --on the ballots, and in each
16 office there are some places where you don't have a choice
17 on the write ins?

18 THE WITNESS: That is correct. There--most
19 of them--all but three had no places for write in.

20 CHAIRMAN WHITNEY: That's not. All right.
21 That's weird, but it is what it is. Proceed, Professor.

22 CROSS-EXAMINATION OF MR. HEHL BY MR. JOYNER (continued):

23 Q With respect to that, who makes the determination
24 of whether there will be a write in slot for a particular
25 race?

1 MR. KNIGHT: Objection. That's assuming
2 knowledge that this witness does not have. It's more
3 properly directed to the director of elections.

4 MR. MALCOLM: He can just say, "I don't
5 know."

6 A I don't know. That's what we pay Cynthia Shaw
7 for, to work with the State Board to make those decisions.

8 Q But that's not a decision that you make?

9 A No, it's not.

10 Q That's a decision that was made, and it resulted
11 in a ballot that had a write in slot for that position,
12 right?

13 A That is correct.

14 Q Now, the other point. How many candidates did
15 you have in that race for Soil and Water--the Soil and Water
16 office?

17 A On the ballot, one.

18 Q One. And under that one name was then an
19 opportunity for someone--or any voter to write in another
20 person?

21 A On any--on every ballot that we issued, yes.

22 Q Now, you--you indicated earlier that--

23 CHAIRMAN WHITNEY: Could I--

24 MR. JOYNER: I'm sorry.

25 CHAIRMAN WHITNEY: Was Franklin Graham the only

1 name that was written in?

2 MR. HEHL: No. There were--for lack--

3 CHAIRMAN WHITNEY: Donald Duck, Mickey Mouse.

4 THE WITNESS: From--for lack of lying to
5 you, I don't know, but it seems like there was three or four
6 total names, but that's just--

7 CHAIRMAN WHITNEY: But by and large, it went--
8 when it was written in, it was Franklin Graham.

9 THE WITNESS: That is correct.

10 MS. AMOROSO: And Franklin Graham is a
11 registered--is a resident of the county, correct?

12 THE WITNESS: That's what I understand, yes.

13 Q (By Mr. Joyner) Do you recall if you remember
14 seeing the name Elbert Watson?

15 A I do.

16 Q And Roger Davis?

17 A I do.

18 Q And what about Frank Graham?

19 A I do remember seeing Frank Graham, but as far as
20 voter intent, we--as I looked at it, it was another vote for
21 Franklin Graham, but we haven't gotten to the canvass part
22 of that yet to really determine if it was going to make any
23 difference or not, so that one was not something we've
24 addressed yet.

25 Q And did you recall seeing one with the name Graham

1 Franklin?

2 A That I don't remember.

3 Q You don't remember that. And what about Franklin
4 Gorman (phonetic)?

5 A Don't remember that one.

6 Q But there were a number of different names written
7 in to the write-in section.

8 A That's correct. That is correct.

9 Q And with respect to all of those write ins that
10 you just named, did the certification section indicate that
11 the person had received assistance?

12 A I don't remember. I don't believe so.

13 Q But you don't recall.

14 A But I don't recall. I do remember seeing one or
15 two that had assistance, but I did not assimilate to what
16 those were. When I realized--honestly, when I realized
17 there was this much, I said, "This is beyond us," and that's
18 why I made the notification to the state.

19 Q All right. Now, with respect to the--to the
20 ballot, your concern was raised because you saw the name
21 Franklin Graham seemingly written by the same person or
22 someone with the same handwriting; is that correct?

23 A That is correct.

24 Q All right. Did--did you see any dissimilarity in
25 the blacking in of the circle?

1 A That's a hard question to answer, and the reason
2 I say that is that we see so much dissimilarity with the
3 blacking in of the circles on every ballot across the county
4 when it comes to everything we see, because we see check
5 marks, people in and out--inside the circle, outside of the
6 circle.

7 So I guess to answer your question, if there was
8 dissimilarity, it would have been no different than the rest
9 of the 13,000 ballots that were cast in the county.

10 Q So it would have been, then, counted without any
11 hesitation if there were some dissimilarity in the marking
12 of the ballot?

13 A Oh, yes. Those machines--those machines have a
14 large--I would say a large room for making sure that a vote
15 does count.

16 Q Okay. So then the writing in of the name Franklin
17 Graham, without the circle being blackened in, would have
18 been a harmless experience.

19 A As far as the vote count goes, yes.

20 Q It wouldn't have affected it in any way.

21 A That's the way I understand it.

22 Q Okay. Now--

23 CHAIRMAN WHITNEY: Meaning the vote wouldn't
24 count?

25 THE WITNESS: If the--if the circle does

1 not--is not filled in beside the write in, from the way I
2 understand it, the machine will not tally that as a vote.

3 CHAIRMAN WHITNEY: Okay. And I think we've heard
4 before already that it's got to be in both places.

5 THE WITNESS: Got to be both. That's the
6 way I understand it.

7 CHAIRMAN WHITNEY: Okay. Thank you.

8 Q (By Mr. Joyner) Now, to the best of your
9 recollection, when was the last time that there was a write
10 in candidate on the--on the ballot during the time that
11 you've been on the Board?

12 A On the Board?

13 Q Yes.

14 A This is the first time I remember it.

15 Q Oh, I see.

16 A Because the--the only elections we have had that
17 were--well, I may be wrong. There may have been last year
18 because we had municipals last year, and there--in Bladen
19 County historically, not a lot of people running, so there
20 may have been. I can't attest to that, but I don't remember
21 there being one in the primary.

22 Q Now, is it the position of you, as a member of
23 the Bladen County Board of Elections, that an individual
24 cannot assist more than one person to cast an absentee
25 ballot?

1 A No, there's not.

2 MR. KNIGHT: Objection. He's not here to
3 give the legal position of the Board. He's here to testify
4 as to what he knew and what happened.

5 MR. JOYNER: I'm asking about his
6 understanding.

7 MR. KNIGHT: Well, you asked about the
8 position of the Board.

9 THE WITNESS: Yeah.

10 MR. JOYNER: I'm asking about his under--
11 I said, "your understanding."

12 THE WITNESS: Mr. Chairman, I have no
13 problem answering that. It's--and I am not speaking for
14 the Board. This is my--this is mine.

15 CHAIRMAN WHITNEY: I'm going to allow it as your
16 personal--

17 A No. I have no problem with that as long as they
18 followed the law. Personally, it doesn't matter whether
19 you're Republican, Democrat, Libertarian, whichever, I want
20 you to vote. Everybody has the right to vote, and I do not
21 like a bully, and I want to make sure everybody's vote
22 counts.

23 And my concern is--obviously y'all have--y'all
24 have seen some of the evidence. I want to make sure that
25 people get their vote and not somebody else's vote. That

1 was the only reason I brought this whole thing to somebody's
2 attention.

3 Q Let me then ask you in terms of the process, there
4 was a number of ballots which apparently was provided to the
5 protester in this case for the purpose of having the
6 handwriting examined by a forensic expert.

7 A Uh-huh (affirmative).

8 MR. KNIGHT: Objection. Misstates facts.
9 The ballots were not provided to the protester. The
10 protester has never seen the ballots. Counsel for the
11 protester has seen the ballots.

12 MR. JOYNER: If I can finish my question.
13 I know he knows the question before I ask it.

14 CHAIRMAN WHITNEY: Go ahead with your question.
15 Objection noted.

16 Q All right. Can you--can you tell this Board what
17 the process was for the ballots to be taken from the Board's
18 office and provided to this forensic document examiner?

19 A So the process was--and this was at the direction
20 of the State Board--was we--the ballots never left the Board
21 of Elections in Bladen County. We--I did the majority of
22 them myself, with the help of a--someone we contracted to
23 come in and we paid her to do it. She was one of our sworn
24 election officials.

25 We took the ballots. We photocopied the ballots.

1 We redacted any information that a--that would assign that
2 to a voter, so that they could look at the ballot but they
3 would have no clue whose ballot it was.

4 Then, once we--once I redacted that with a Sharpie
5 marker, I re-ran it through the photocopy machine to make
6 sure that you couldn't look through the writing. The
7 ballots were secured back in.

8 And during the entire time, there's a log that the
9 state investigator has, where any time anybody went in or
10 came out of the room where the ballots were being handled,
11 there is a constant log of somebody with those at all times
12 to make sure they were secured.

13 Once that was done, the ballots were secured back
14 in the ballot room. The original photocopies that she
15 wanted for her investigation, the first redacted
16 photocopies, were also given to her so they stayed secure,
17 and then the second photocopy was taken to the--basically
18 it's an old garage in the building that used to be the EMS
19 building.

20 They were taken in there and set out on the table
21 for everybody to look, and during that process, several
22 people were allowed to look at the redacted ballots and look
23 for any handwriting.

24 They were also able to look at the envelopes, but
25 again, there was no way to determine which envelopes were

1 which ballots, so the ballots were kept confidential to
2 somebody's vote.

3 Once that was done, they were all secured back up
4 in the ballot room.

5 Q Now, the--on the ballot, the voter's name appears
6 at two separate places; is that correct?

7 A Yes. Should be, like, on a sticker, and it should
8 be on where they actually sign it. And maybe a third time
9 where it--because it's just a mail envelope, so their name
10 may be on the outside--on the other side.

11 Q Okay. But I'm just talking about the ballot
12 itself now.

13 A Oh, the ballot? The ballot has no name on it.
14 The ballot itself only has the absentee number for where it
15 was issued so we can make sure it stays with the envelope.

16 Q Okay.

17 A However, when the--when people look at it, that
18 number was gone. It was redacted.

19 Q So that number was--all right. Now, on the
20 certification form--

21 A Right.

22 Q --that the voter's name appears in two different
23 places; is that correct?

24 A That's correct.

25 Q All right. And were those names blacked out

1 before they were provided to the forensic examiner?

2 A No, they were not.

3 Q They were not. So the voter's name still appeared
4 on the certification that they received.

5 A Well, that goes through the mail, so it's not
6 private record anyways.

7 Q Right. But I'm saying those--those names--

8 A But yes, it is on the envelope.

9 Q All right. But even with that, then there was no
10 way to match up the outside or the certification page with
11 the actual ballot that the person voted.

12 A Not by the people viewing them. That is correct.
13 We did that before we made the photocopies.

14 Q All right. How--

15 A But then--but then, so you understand, the
16 envelopes were on one table, the ballots--the redacted
17 ballots were on the other table. They were not together.
18 There was no way for them to go, "Okay, these two meet."
19 They had them both to look at, but there was no way for them
20 to assimilate which was which.

21 Q So you couldn't take the certification page and
22 then match it--

23 A And match it to--no, you could not.

24 Q --with a particular ballot.

25 A No, you could not.

1 Q Okay. So there is no way for anyone, other than
2 looking at the actual--the original ballot and the original
3 certification, to make a connection between what is on the
4 certification and the ballot that was cast by that person.

5 A That is correct.

6 MR. BRANCH: Objection. He's not
7 testifying as an expert.

8 CHAIRMAN WHITNEY: Objection noted. Continue.

9 A That is correct. There's no way for them to do
10 that.

11 Q Okay. Now, you indicated that there was an
12 initial counting of the ballots and you were absent at that
13 meeting; is that correct?

14 A That's correct.

15 Q All right. And then at the second meeting, you
16 re-ran the first stack of that--of absentee ballots; is that
17 correct?

18 A That's correct.

19 Q Now, was there a vote taken to do that?

20 A Yes.

21 Q And was that a unanimous vote?

22 A Yes.

23 Q It was?

24 A It was. There was no motion. We--it was a
25 discussion that the option to do, that since there--now,

1 mind you, this is hearsay because I was not at the first
2 meeting, but there was some concern as to why the numbers
3 didn't--didn't add up to the envelopes like they did before.

4 I don't know the answer to that or why that
5 happened, but in the meeting that I was in, we discussed and
6 we felt like that the best way to make sure it was done
7 right and above board and we didn't miss anything, is that
8 that DS-200 was zeroed out and those ballots were re-run so
9 that they were counted correctly.

10 MR. JOYNER: Could I just have one second?

11 CHAIRMAN WHITNEY: Pardon me?

12 MR. JOYNER: Could I just have one second,
13 please?

14 CHAIRMAN WHITNEY: Yeah. I do--would like you
15 to finish up because we want to give Mr. Hamilton--

16 MR. JOYNER: And I want to do that, too.
17 Just one second.

18 CHAIRMAN WHITNEY: Yeah. I'm trying to give as
19 much equal time here as I can.

20 (Pause)

21 Q The letter that you sent to the State Board, was
22 that a decision made by the Board--the Bladen County Board
23 of Elections?

24 A No, that was mine.

25 Q That was yours.

1 A That was mine. I saw--

2 Q So you did this on your own.

3 A I did that on my own.

4 MR. JOYNER: I have no other questions, Mr.
5 Chairman.

6 CHAIRMAN WHITNEY: Mr. Hamilton.

7 MR. HAMILTON: Where would you like me to
8 sit, Mr. Chairman?

9 MR. BRANCH: You can sit here.

10 CHAIRMAN WHITNEY: Just pull up a chair.
11 Wherever you've got a place.

12 MR. BRANCH: You're fine.

13 CROSS-EXAMINATION OF MR. HEHL BY MR. HAMILTON:

14 Q I'll be brief. I don't have very many questions
15 for you. Good afternoon. My name is Kevin Hamilton. I
16 represent the Cooper Campaign and the North Carolina
17 Democratic Party.

18 You looked at these envelopes and ballots pretty
19 carefully, it sounds like.

20 A Yes, sir, I did.

21 Q And the process, if I understand it correctly, is
22 when you first came out, I think it was referred to by
23 Commissioner Malcolm as the pass around meeting that you
24 weren't at, but the process is, you're looking at the
25 absentee ballot envelopes when they first come in to make

1 sure they're all filled out appropriately, correct?

2 A Correct.

3 Q And one of the things you look at is the voter's
4 signature to make sure they signed it.

5 A That's right.

6 Q And then you look at the witness signatures to
7 make sure the witnesses signed it, right?

8 A Actually, I don't even believe it requires a
9 signature. It just says, "Witness name."

10 Q Okay. You look at the witness name to make sure
11 it's there.

12 A Right.

13 Q And the address filled out.

14 A Yes.

15 Q And it's only after all of that that you put them
16 in the pile to say, "These are all good. We approve these.
17 We're going to open them and then run them through the
18 tabulator."

19 A That's right.

20 Q And so all of the--when you noticed the
21 handwriting similarity, that was in the out stack from the
22 machines that were--from the ballots that were getting
23 kicked out of the machine, right?

24 A That's correct.

25 Q So in every one of these instances where a ballot

1 got kicked out into the out stack, we know, because your
2 process ensured, that everything looked right on the outside
3 of that ballot envelope.

4 A That's right.

5 Q Every one of them was signed.

6 A That's correct.

7 Q Every one of them had witness names on them.

8 A That's right.

9 Q Every one of them had witness addresses.

10 A That's right.

11 Q And there was--there was nothing wrong with the
12 outside of the ballot. From the outside of the ballot, this
13 ballot should have been counted.

14 A That's right.

15 Q Okay. Now, you don't know--you're not here--I
16 mean, you said you noticed that some of these--the
17 handwriting on the fill-in line looked pretty similar on
18 some of these?

19 A That's right.

20 Q You're not an expert.

21 A No.

22 Q I guess we have one here, so we'll ask her those
23 questions, but you don't know who wrote the names on that
24 write-in line.

25 A No, I never--never claimed that.

1 Q Right. You're not here to identify who wrote
2 those names because you don't know.

3 A I don't.

4 Q It certainly wasn't Governor McCrory.

5 A No.

6 Q It wasn't any of Governor McCrory's campaign
7 representatives that were involved in this as far as you
8 know.

9 A Not that I know of.

10 Q Okay. It wasn't Roy Cooper that did this.

11 A Not that I know of.

12 Q It wasn't any of his campaign representatives as
13 far as you know.

14 A As far as I know of.

15 Q There's no indication in anything that you've seen
16 that anybody involved with either the McCrory or the Cooper
17 campaign had anything to do with this, right?

18 A Because I don't know anybody that's affiliated
19 with either of those campaigns.

20 MR. HAMILTON: Thank you, sir. No further
21 questions.

22 CHAIRMAN WHITNEY: Thank you. Okay. Mr. Knight,
23 are we good? I think--are we finished with this witness?
24 Everybody--

25 MR. KNIGHT: We're finished.

1 CHAIRMAN WHITNEY: Okay. Would you have a seat,
2 but please don't leave, and Mr. Knight, will you present
3 your next witness, please.

4 MR. KNIGHT: All right. The next witness
5 is Charlotte Ware.

6 CHAIRMAN WHITNEY: All right. She's already been
7 sworn, so thank you for being with us, Ms. Ware.

8 DIRECT EXAMINATION OF MS. WARE BY MR. KNIGHT:

9 Q All right. Ms. Ware, could you give us your name
10 and county of residence, please?

11 A Charlotte Ware, and I live in Gaston County.

12 Q And how are you employed?

13 A I work for Forensic Document Examination Services.

14 Q And are you also what would be called a
15 handwriting examiner?

16 A That's true.

17 Q And can you please tell the Board about your
18 training and certifications?

19 A Sure. I have a bachelor's degree in biology and
20 a master's of science in forensic science. And I began my
21 career at the Texas Department of Public Safety crime lab,
22 training as a forensic document examiner. Our training
23 consists of two years full time training in the field of
24 forensic document examination.

25 At the conclusion of my training, I was competency

1 tested and then began case work. I worked towards my board
2 certification.

3 I am certified by the American Board of Forensic
4 Document Examiners. To be a candidate for certification,
5 you first have to show that you've been through the full two
6 year training program.

7 At the beginning, then, they give you a written
8 test--a written examination. If you pass the written
9 examination, you move forward to practical examinations, and
10 then you defend your practical examination conclusions
11 before an oral board.

12 Q Right.

13 A If you pass all of those steps, then you become
14 certified, which I did, and then I maintain continuing
15 education hours to be re-certified every five years, and I
16 have ever since I was certified.

17 Q What experience do you have since you moved back
18 or after your time in Texas? Can you tell us about that?

19 A Sure. I stayed in Texas for five years, and then
20 I was employed by a federal agency, and I still work for
21 them today.

22 CHAIRMAN WHITNEY: What federal agency?

23 THE WITNESS: U.S. Postal Inspection
24 Service.

25 CHAIRMAN WHITNEY: Thank you.

1 MR. KNIGHT: Mr. Chairman, to the extent
2 that it's necessary that I submit Ms. Ware as an expert, I
3 will do so at this point. If you have any other questions
4 about her qualifications, I'm sure she'll be happy to answer
5 them.

6 CHAIRMAN WHITNEY: She already answered. My
7 question was, have you been with a government agency, which
8 was--I was getting ready to ask and she said that. So do
9 the other Board members have any questions about her
10 qualifications?

11 (No response)

12 CHAIRMAN WHITNEY: Okay. Well, I think we can
13 proceed with her testimony.

14 MR. JOYNER: We don't object to her
15 qualifications.

16 CHAIRMAN WHITNEY: Thank you, Professor.

17 MR. KNIGHT: Thank you, Professor.

18 CHAIRMAN WHITNEY: Mr. Hamilton, I assume you're
19 okay, too?

20 MR. HAMILTON: Yes. No objection.

21 CHAIRMAN WHITNEY: Thank you.

22 DIRECT EXAMINATION OF MS. WARE BY MR. KNIGHT (continued):

23 Q Ms. Ware, could you explain to the Board, please,
24 how do you examine handwriting? You know, what do you do?

25 A Sure. So when you examine handwriting, you are

1 looking for identifying features and characteristics. So
2 something that you guys might have noticed is handwriting
3 in a friend or a relative, and you can identify that when
4 you get the letter out of the mailbox because you have
5 recognized those individualistic characteristics.

6 So what we do as handwriting examiners is spend
7 a lot of time learning about handwriting features, studying
8 handwriting, and seeing what is individualistic in the
9 population.

10 So when we learn handwriting in school, we all
11 learn that same handwriting system. We all learned to write
12 the same. But over time, you start to vary your
13 handwriting. Those variations become habit. So it's the
14 habit that we're looking for.

15 When we look at handwriting examination, we have
16 the experience to know what variation is common in the
17 population and what variation is not. So when I do a
18 handwriting examination, I'm going to look for many features
19 that are habit or individualistic features, and I'm going
20 to compare those to handwriting I've seen in the past: How
21 individualistic is this handwriting, how often do I see it
22 in the public, and how individualistic it is to one person.

23 There are many features in your handwriting that
24 can be individualistic, and so when you look at those as a
25 whole, you could be looking at many, many different features

1 together that combine to make someone's handwriting
2 individualistic.

3 Q On November 14th of this year, did you travel to
4 Bladen County at the request of the McCrory Committee?

5 A I did.

6 Q And can you tell us--tell the Board members what
7 you did there.

8 A Sure. So I was asked to examine ballots when I
9 got there, that from what I understood--

10 MR. MALCOLM: Ballots?

11 A Yes. That's what I was told before I got there.
12 Once I got there, I realized they were going to be
13 photocopies of the ballots.

14 MR. MALCOLM: Okay.

15 A So the--we waited around for the photocopies to
16 be made, and as he's explained, they obliterated some parts,
17 but made the photocopies again. And then in the late
18 afternoon, the photocopies were made available to everyone
19 to examine.

20 So there were photocopies of the ballots and then
21 photocopies of, I think, the envelopes they talked about
22 with the signatures on them. And those were made available
23 to basically everybody that was there. They laid them out
24 on tables in the large garage section of the election
25 building.

1 Q How did you examine the ballots themselves?

2 A So what I did is, the only thing I was looking for
3 on the ballot was the write-in candidate and the name of
4 Franklin Graham. You cannot compare Fs to Rs to Ls. So I
5 was looking at the name Franklin Graham in all of these
6 ballots.

7 So what I started doing was looking for features
8 and characteristics that were similar and different in each
9 Franklin Graham name that was written on the photocopies of
10 the ballots.

11 And I started looking at them--as I looked for
12 similarities and differences, I started putting those kind
13 of in separate stacks. So I would just group them up and
14 say, "This stack has similar characteristics. This has--
15 stack has similar characteristics."

16 Now, this is an incredible time crunch I was
17 under, and this is not--by any means, it wasn't typical of
18 document examination because it was done, you know, with the
19 lighting that was in this garage and it was done on
20 photocopies, you know, things like that. So it was very
21 quickly done, and I didn't even have a chance to examine
22 every single ballot that was there.

23 So what I did was I began to put them in stacks,
24 and then I made sure that my stacks--I was very sure about
25 the stacks that I had, and that--then we had to stop--we had

1 to quit the examination before I could continue examining
2 the entire stack.

3 MR. MALCOLM: You put them in stacks based
4 on what, ma'am?

5 THE WITNESS: Based on individualistic
6 characteristics and similarities and differences that I saw
7 within that Franklin Graham name.

8 MR. MALCOLM: So just in my simple mind--

9 THE WITNESS: Yes.

10 MR. MALCOLM: --this is a stack where they
11 loop it at the top, here's a stack where they maybe go down.
12 So you're just trying to segregate it based on something so
13 you can go back and then further look at it?

14 THE WITNESS: Exactly. Exactly. And what
15 I did was, the ones that I reported on, I had been through
16 that stack several times. I was--I was very sure about the
17 ones that were in that particular stack. If I had any
18 question about it being the same writer, I would put--pull
19 that out of the stack and put it aside.

20 Q Now, just to be clear--and I think, Mr. Malcolm,
21 because I was going to ask about, you know, the process of
22 how do you divide them into stacks. Is there something that
23 you can tell the Board about how they were similar or
24 different? Sure.

25 A And first of all, you can't compare print to

1 cursive, so I would automatically separate the print and
2 cursive ones, because cursive handwriting is obviously a
3 different system than prints. So I would divide those into
4 different stacks, and then I would look for individualistic
5 characteristics.

6 There were--again, like I talked about, some
7 features and characteristics you don't see very often in the
8 public, and in one particular stack, I saw some things that
9 I very rarely see, and so those were very easy to pick out.

10 This particular stack right here, I saw some
11 letter differences--I'm sorry, letter similarities between
12 them and differences between the rest of the stack that were
13 very obvious to me, and so I separated those further, so I
14 have a stack of print. Okay, this one has these features
15 here. This group has these features here which are
16 different from these features. Does that explain it?

17 Q Yeah. Were there other people there examining the
18 ballots at the same--or the copies of the ballots at the
19 same time?

20 A There were.

21 Q You produced a report with my name on it, or
22 addressed to me, did you not?

23 A I did.

24 MR. KNIGHT: And I believe the Board has
25 a copy of that in your materials. If you don't, I have

1 copies here.

2 MR. MALCOLM: Yeah.

3 MS. AMOROSO: We do.

4 CHAIRMAN WHITNEY: Is that already part of the
5 record?

6 MS. AMOROSO: It's dated November 15, 2016;
7 is that correct?

8 MR. KNIGHT: That's correct.

9 MS. AMOROSO: Okay. We have that.

10 CHAIRMAN WHITNEY: Well, I think we've already
11 got it, okay.

12 Q (By Mr. Knight) Can you please tell us about your
13 report and what you found after looking at the copies of the
14 ballots? And I understand you were looking at the name, at
15 the write in for Soil and Water District Supervisor for the
16 name Franklin Graham.

17 A That's correct. That's the only thing I was
18 examining on the ballots.

19 Q Okay. Please tell us about your findings.

20 A Sure. So as I put these into stacks, again, we
21 weren't allowed to make photocopies or take pictures or
22 anything, so I'm just handwrite--I'm just writing my notes,
23 you know, what I have in certain stacks and making sure that
24 the numbers were correct.

25 So I had a group of seven stacks that I was able

1 to make notes on before I left. The first writer
2 association was 71 ballots, and I found indications that
3 there was one writer on those 71 ballots.

4 There were 46 ballots in the second group, 18 in
5 the third, 10 in the fourth, 11 in the fifth, 6 ballots in
6 the sixth group, and 5 in the seventh group.

7 Now, if I had had a longer time, I would have been
8 able to address all--all of the ballots that were there.
9 I just did not have enough time to, you know, to do any
10 further work.

11 CHAIRMAN WHITNEY: What were those numbers again?

12 THE WITNESS: It's on Page 2 of the report,
13 but Group 1 is 71 ballots, Group 2 is 46 ballots, Group 3
14 was 18 ballots, Group 4 was 10, Group 5 was 11 ballots,
15 Group 6 was 6 ballots, and Group 7 was 5 ballots.

16 CHAIRMAN WHITNEY: Thank you. I had just missed
17 one. Thank you.

18 THE WITNESS: Uh-huh (affirmative).

19 Q Now, just to be clear, when you say Group 1 had
20 71 ballots, that means that of those 71 write in, mail in
21 absentee ballots, for the write in for Franklin Graham,
22 those were written by the same person?

23 A There was indications those were written by the
24 same person, yes.

25 Q All right. Tell me about the indications--is

1 that--how sure are you?

2 A So in the guidelines for forensic document
3 examination, conclusions are a range. You can have
4 identification at one end, elimination at the other end, and
5 in the center, inconclusive.

6 There are varying stages of levels on the other
7 side. Some people use a nine point scale; some people use
8 a seven point scale. Basically, "indications" means that
9 there is more evidence that someone wrote it than that there
10 isn't. You're on the causative side leading towards
11 identification. It is not a full, one hundred percent
12 identification.

13 There is a possibility that you could get to that
14 if you had the original ballots and the time to do the
15 examination, but in this case, there--I felt comfortable
16 with saying there's indications, because of the similarities
17 that were exhibited in these groups, that these were written
18 by one writer.

19 MR. MALCOLM: When you prepared the report,
20 when you broke it down in Groups 1 through 7, why didn't you
21 further qualify between highly likely--that scale you just
22 talked about. Remind me what that scale's called again?

23 THE WITNESS: It's the Scale of Forensic
24 Document Examination Conclusions.

25 MR. MALCOLM: Yes, ma'am.

1 THE WITNESS: You mean why I didn't break
2 down each group into individual findings?

3 MR. MALCOLM: Because I noticed in your--
4 yeah, on Page--on Page 8--excuse me, Page--I guess that's
5 Roman Numeral II.

6 THE WITNESS: Yes.

7 MR. MALCOLM: But yes, it's Roman Numeral
8 II in the top right hand corner.

9 THE WITNESS: Yes.

10 MR. MALCOLM: And you prefaced the listing
11 of 1 through 7 by underlining the word "indications."

12 THE WITNESS: Uh-huh (affirmative).

13 MR. MALCOLM: But you didn't break it down
14 like you just described.

15 THE WITNESS: No, and that's because I felt
16 like I had the same finding on all of these. If I had had
17 the time to do more--when you do an examination, it's
18 mental. It's not a machine. But you're looking at this and
19 saying, "I see similarities here. Ooh, I see a difference.
20 I'm not going to go that far. Ooh, I see more
21 similarities."

22 As you do the examination, you're going to find
23 your way, basically, along that scale, and say, you know,
24 "I see more indications, more indications, more indications,
25 until you get to an ID, or you see differences in

1 elimination.

2 Handwriting theory that was established over a
3 hundred years ago said one significant difference means a
4 different writer. So you could have very similar
5 handwriting, but if there's something that I determine to
6 be a significant difference, that's excluded.

7 So when I say "indications," there are no--there
8 was nothing to show me that these were different writers.
9 It's actually the opposite. I saw many characteristics
10 saying the same writer.

11 MR. MALCOLM: So would it be fair to say
12 Groups 1 through 7, if I were to tally those up, in that--
13 if I were to aggregate that, you're from 51 percent sure
14 to--because you said it's more than--

15 THE WITNESS: It is more, yes.

16 MR. MALCOLM: Yeah. So it could be from 51
17 percent sure to 100 percent sure if you ever--I doubt you
18 ever say 100 percent because you don't want to lock yourself
19 in, but--

20 THE WITNESS: Yeah, you could say that. I'm
21 smiling because I'm asked on the stand many times to give
22 a number to this and we can't give numbers to it. It's--

23 MR. MALCOLM: But more likely than not. You
24 said it's more likely than not.

25 THE WITNESS: Yes. Yes. That it was one

1 writer on these, yes.

2 Q (By Mr. Knight) What equipment did you use in the
3 examination, if any?

4 A For these, I just used a magnifier. Typically I
5 use a microscope, but with photocopies, when you look at it
6 under the microscope, you're only seeing toner. So if it's
7 an original document, I can see pressure habits. I can see
8 a lot more with the originals and I would use a microscope
9 for that. But for this being on site and the time
10 limitations, I used my magnifier.

11 Q Can you tell the Board, if you were allowed to
12 examine the original ballots, would your conclusion be
13 different, or at least how would it be different?

14 MR. JOYNER: Objection. Calls for a
15 conclusion.

16 CHAIRMAN WHITNEY: But I'll--I want to hear that
17 answer.

18 THE WITNESS: I think with more time, and
19 I think I noted that in my report, that my findings would
20 more than likely be more definitive because I would have
21 more time to evaluate what I saw there.

22 CHAIRMAN WHITNEY: Thank you.

23 Q During your examination of the documents, did you
24 also have a chance to examine the--I think it was 275
25 ballots--or excuse me, envelopes?

1 A I did have a chance to look through them, yes.

2 Q Did you draw any conclusions between the
3 handwriting on the envelopes and the handwriting on the
4 write-in portion of the ballot?

5 A I did notice some similarities. That Group 1 with
6 71 ballots, again, it had some very individualistic
7 handwriting characteristics in that particular group, and
8 when I saw some of the handwriting on the envelopes, I did
9 see some of those similarities.

10 Now, again, it was not the time that I would have
11 needed to say, you know, definitively that this person wrote
12 that stack, but I saw that same--those same individualistic
13 characteristics that were in Group 1 on some of the--on some
14 of the handwriting on the outside of the envelopes.

15 MR. KNIGHT: I don't have any other
16 questions at this time. If the Board or other folks--

17 CHAIRMAN WHITNEY: Professor, please.

18 MR. JOYNER: I would defer to Mr. Hamilton.

19 CHAIRMAN WHITNEY: That'll be fine. Mr.
20 Hamilton.

21 CROSS-EXAMINATION OF MS. WARE BY MR. HAMILTON:

22 Q Good afternoon, Ms. Ware. As you know, I'm Kevin
23 Hamilton. I represent the Cooper for North Carolina
24 campaign. Let's start with, who hired you?

25 A Mr. Knight.

1 Q On behalf of what client, if you know?

2 A He--on the behalf of the Pat McCrory campaign.

3 Q A Republican campaign?

4 A Yes.

5 Q You're a federal government employee; is that
6 right?

7 A I am.

8 Q I see. And do you--you do this work on the side?

9 A I do.

10 Q Do you testify often?

11 A Not anymore, no. We don't testify as much as we
12 used to. I'm in management now, and so I don't testify as
13 much as we did when--in the olden days.

14 CHAIRMAN WHITNEY: Point of clarification. Are
15 you talking about testifying at the post office or just
16 testifying in all cases?

17 THE WITNESS: No, in--no, in all cases.
18 Usually--typically, it's federal court, but most of our
19 cases actually plead, so I don't testify as much anymore.

20 CHAIRMAN WHITNEY: But you are in a management
21 position for the post--

22 THE WITNESS: I'm in a management position
23 now. Yes, sir.

24 CHAIRMAN WHITNEY: Thank you.

25 MS. AMOROSO: But you were testifying on

1 behalf of the post office?

2 THE WITNESS: Yes.

3 MS. AMOROSO: Not private cases.

4 CHAIRMAN WHITNEY: Until you got--until you got
5 a promotion or whatever.

6 THE WITNESS: Yes, and--yes, so now that I'm
7 in management, I started doing this on the side.

8 CHAIRMAN WHITNEY: Okay. Proceed, Mr. Hamilton.

9 CROSS-EXAMINATION OF MS. WARE BY MR. HAMILTON (continued):

10 Q And on the side you testify for private parties
11 that hire you for money?

12 A Yes.

13 Q And how much are you being paid today?

14 A Today's fee is \$1,100.

15 Q \$1,100 per hour or--

16 A No. A flat fee for today's--

17 Q For however long you're here.

18 A Yes, sir.

19 Q I see. And are they also paying for your travel
20 expenses?

21 A No. That's everything. Flat fee.

22 Q And how much was your fee before today?

23 A \$160 an hour.

24 Q And how many hours did you spend performing your
25 examination and preparing your report?

1 A I think my total was around 15 hours. That
2 includes travel. That's travel, examinations, report,
3 everything.

4 Q All right. So it sounds like from your testimony
5 that you've had a fair bit of training in how to do document
6 examination, correct?

7 A Yes, sir.

8 Q You consider yourself a very highly trained
9 document examiner?

10 A I do, sir.

11 Q One of the things that you're taught in that
12 training is, in doing document examination, you should look
13 at originals if possible.

14 A That's correct.

15 Q You should look at them in a well lit room if
16 possible, correct?

17 A Uh-huh (affirmative).

18 Q Is that right? Yes?

19 A Yes, sir.

20 Q You should take your time and use as much time as
21 possible to form a conclusion, correct?

22 A Yes, sir.

23 Q I believe you said that you would use a microscope
24 in your normal examination of a document.

25 A If I had original documents, yes.

1 Q Right. But the preference is to have original
2 documents?

3 A Yes.

4 Q And it's you--are there other--are there other
5 elements of a well-constructed document examination?

6 A I think that you've covered them.

7 Q All right. Now, you've mentioned in your direct
8 examination that this was not by any means a typical
9 document examination. Those were your words, right?

10 A That's correct.

11 Q And what you mean by that was, this was not
12 original; it was copies, right?

13 A Yes.

14 Q This was not a well lit room. It was--the
15 lighting was less than optimal.

16 A That's correct.

17 Q That you didn't have your microscope with you and
18 it wouldn't have helped much anyway because these were
19 copies, so you're using a magnifier instead.

20 A Correct.

21 Q And that you didn't have as much time as you would
22 have liked.

23 A That's correct.

24 Q And I gather that's the reason for some of the
25 qualifying language in your report.

1 A Yes, and that's why I documented it that way, is
2 because, yes, it was less than ideal for doing the
3 examination.

4 Q There is nothing you--at the end of your
5 testimony, you talked a little bit about "noticed some
6 similarities on the ballot envelopes," and I just want to
7 put that aside at the beginning.

8 There's nothing in your report about the ballot-
9 -the signatures on the ballot envelopes.

10 A That's correct. I did not examine the signatures
11 on the ballot envelopes.

12 Q So in fact, there is no conclusion that you're
13 offering this Board with respect to similarities between the
14 ballot envelopes. You're--

15 A That's correct. I did not examine those.

16 MR. BRANCH: Objection. It's not--it
17 misstates her testimony.

18 MR. KNIGHT: Under Remarks on the report,
19 there is a reference to the ballot envelopes.

20 MR. HAMILTON: Well, I think that these are
21 points that counsel can make an argument if they want. The
22 witness actually agreed with me that there's nothing in the
23 conclusion of her report that says anything about
24 similarities in the signatures on the ballot envelope; isn't
25 that correct?

1 A I was only speaking to the voter signatures on the
2 ballot envelope, yes.

3 Q Great. Thank you. Let's talk a little bit--
4 you're an expert with respect to signature examination,
5 right?

6 A Yes, sir.

7 Q And looking at handwriting, it can tell us a lot,
8 but it can't tell us everything, can it?

9 A That's correct.

10 Q So for example, looking at this, there's nothing
11 in your conclusion--you haven't reached any conclusion about
12 whether Pat McCrory or any of his campaign representatives
13 had anything to do with this, correct?

14 A No, sir. I did not have any known writing from
15 a named individual for examination.

16 Q And you don't have and you're not offering any
17 opinion to this Board that the Roy Cooper campaign or any
18 of his campaign representatives was involved in this,
19 correct?

20 A No, sir.

21 Q And there is--in fact, there is no evidence that
22 either campaign had anything to do with it in any way,
23 right?

24 A Not that I'm aware of. No, sir.

25 Q Because that's the sort of thing you just can't

1 tell from a signature when you're looking on a cold piece
2 of paper, right?

3 A That's correct.

4 Q And you're not offering an opinion that any other
5 part of the ballot for any--other than the write-in line,
6 was voted improperly.

7 A I don't know what you mean by "voted improperly."

8 Q Well, you're not offering an opinion about the way
9 that the ovals were filled in was somehow similar or
10 improper.

11 A No, sir. There's no identifying individualistic
12 characteristics about those ovals.

13 Q You're not a bubble-filling-in expert.

14 A I am not a bubble-filling-in expert.

15 CHAIRMAN WHITNEY: Is there such a thing?

16 MR. HAMILTON: I--I wouldn't--

17 CHAIRMAN WHITNEY: Although I will tell you,
18 yeah, we once saw a manuscript--I believe it was from your
19 home state of Washington about the rules about filling in
20 bubbles.

21 MR. HAMILTON: I'm very familiar with that,
22 sir.

23 CHAIRMAN WHITNEY: That is not--

24 MR. HAMILTON: I actually think I might have
25 been the reason that that was created.

1 CHAIRMAN WHITNEY: Fortunately, we don't have
2 that in North Carolina, but we've even seen that. And Madam
3 Witness, please proceed.

4 CROSS-EXAMINATION OF MS. WARE BY MR. HAMILTON (continued):

5 Q Ms. Ware, the only evidence you examined and your
6 only conclusions are limited to the handwriting on the Water
7 and Soil Conservation District Supervisor write-in line.

8 A That's correct.

9 Q And one of those candidates was McCrae Dowless and
10 the other was Franklin Graham; is that right?

11 A Yes, sir. And I only examined Franklin Graham
12 write ins.

13 Q In your examinations as you were looking through
14 all of these, did you see the name Pat McCrory or Roy Cooper
15 filled in on any of the write-in lines anywhere in the
16 ballot?

17 A No, sir.

18 Q You also are not offering an opinion about any
19 discussions between the voter and whoever filled in these
20 write in ballots, correct?

21 A That's correct.

22 Q Don't know whether the voter asked for help.

23 A No, sir.

24 Q Don't know whether the voter was infirm or
25 disabled.

1 A No, sir.

2 Q Don't know whether the voter was elderly.

3 A No, sir.

4 Q Don't know whether the voter was able to write in
5 the name themselves.

6 A Right. I have no knowledge of that.

7 Q You also aren't offering a conclusion on whether
8 the voter thought that he or she was doing anything wrong
9 in asking someone to help, if that happened.

10 A That's correct, sir.

11 Q Other things from your examination. In looking
12 at the envelope and the ballots, you can't tell the
13 voter--whether the voter was qualified to cast that ballot
14 in the first place, correct?

15 A I have no knowledge of that.

16 Q Don't know whether the voter was over 18, a US
17 citizen, or a North Carolina citizen, correct?

18 A Correct.

19 Q You don't know and you weren't presented with that
20 information, with respect to these voters, whether they had
21 cast ballots in the 2014 election, correct?

22 A Correct.

23 Q Or the 2012 election.

24 A Correct.

25 Q Or the 2010 election.

1 A Correct.

2 Q Or I could keep going back for 40 years and you
3 won't be able to answer that question because you just don't
4 know.

5 A I don't know.

6 Q So let's talk about the other handwriting on the
7 envelopes, the voters' signatures. You don't have any
8 opinion about the voters' signatures. That's--

9 A That's correct. I did not examine the voters'
10 signatures.

11 Q That's nowhere in your report.

12 A That's correct.

13 CHAIRMAN WHITNEY: But just for the record,
14 weren't those marked out anyway? Weren't the voter
15 signatures--

16 MR. LAWSON: No.

17 CHAIRMAN WHITNEY: They were on there?

18 DIRECTOR STRACH: They were on there.

19 CHAIRMAN WHITNEY: Okay.

20 Q So there's--

21 CHAIRMAN WHITNEY: Well, that--I'm looking at
22 this. Not much help.

23 Q So you--as you sit here today, or stand here
24 today, you have no opinion on those signatures.

25 A That's correct.

1 Q There's no dispute from you that they appear to
2 be different or genuine or actual signatures; that you just
3 don't have an opinion on that.

4 A Correct. I didn't examine those.

5 Q And you--but you did look at the envelopes.

6 A Yes.

7 Q Right. I believe you said briefly you did.

8 A Yes.

9 Q They appeared to be fully completed?

10 A I am not familiar with what was there. I noticed
11 a witness address and name in the lower--I think it was the
12 lower left corner, and then the signature.

13 Q Okay. You don't hold yourself out as an expert
14 on how those envelopes should be filled out?

15 A No, sir.

16 Q In fact, these folks are probably the experts on
17 that.

18 A Yes. This is my first absentee ballot I've seen
19 because I vote in person.

20 Q All right. You're familiar with your report?

21 A Yes, sir.

22 Q You wrote this report?

23 A Yes, sir.

24 Q Did you have any assistance in preparing this
25 report?

1 A No, sir.

2 Q And I noticed in the complaint, it--and in
3 Counsel's opening statement, we were talking about hundreds
4 of ballots, but you've offered this Board a conclusion with
5 respect to seven different groups, right?

6 A Yes.

7 Q Group 1 was 71, Group 2 was 46, Group 3 was 18 and
8 so on?

9 A Uh-huh (affirmative).

10 Q Would you agree with me that that totals 167
11 ballots?

12 A I would have to get out my calculator, but it
13 sounds approximately right.

14 Q About right?

15 A Uh-huh (affirmative).

16 Q Certainly not hundreds.

17 CHAIRMAN WHITNEY: I added it up.

18 MR. HAMILTON: I checked it twice before I
19 asked the question.

20 CHAIRMAN WHITNEY: That's the number I got.

21 A But let me point out as well with those groupings
22 that I made, there may be more groupings. I simply did not
23 have enough time to write it all down.

24 Q Sure. There may be more groupings. There may be
25 less groupings. That's also a possibility?

1 A What do you mean by "less"? So--

2 Q If we were to go through the remainder of the
3 ballots that you didn't examine.

4 A I would say there's at least the seven groups that
5 I have here.

6 Q At least seven. There may be some additional.

7 A That's true.

8 JUDGE BAKER: May I ask a question about
9 that?

10 MR. HAMILTON: Sure.

11 CHAIRMAN WHITNEY: Of course.

12 JUDGE BAKER: I wanted to ask her--now is
13 a good time since that's exactly what you were going to ask,
14 and I apologize for the interruption, but as I understand
15 it, you did separate them for unique characteristics; is
16 that right?

17 THE WITNESS: Yes.

18 JUDGE BAKER: And you even divided some--
19 please correct me if I'm wrong--that were printed and some
20 were written out. Is that right?

21 THE WITNESS: That's correct.

22 JUDGE BAKER: Okay. There's no way to
23 really know, and I'm not insinuating it's true or not, but
24 you don't really know that perhaps one person did both of
25 those. Is that right?

1 THE WITNESS: That's entirely possible, yes.

2 JUDGE BAKER: So although you did seven
3 groups, that doesn't necessarily mean that there were seven
4 different writers.

5 THE WITNESS: That's correct.

6 JUDGE BAKER: And that's really not meant
7 for any conclusion or anything. It's just, other than--as
8 far as your testimony goes, the fact that there were seven
9 different groups is not--it is not your testimony that there
10 were definitely seven different writers.

11 THE WITNESS: That's correct. And these are
12 the ones--again, that I was very sure about, making sure I
13 was going to make a conclusion on these, because I wasn't.

14 CHAIRMAN WHITNEY: Is that because some were
15 cursive and some were printed, or--

16 THE WITNESS: Yes. Some were cursive and
17 some were printed.

18 JUDGE BAKER: Thank you, and I apologize for
19 the interruption, but it seemed like you were asking that
20 same question.

21 MR. HAMILTON: I was.

22 JUDGE BAKER: Thank you.

23 CROSS-EXAMINATION OF MS. WARE BY MR. HAMILTON (continued):

24 Q So let me ask you about that. You said you wanted
25 to be very sure about that, but your--your conclusion is

1 actually that "there are indications the ballots within each
2 group referenced below is written by a single writer." Do
3 you remember writing that?

4 A Yes.

5 Q And in fact, you underscored the word
6 "indications."

7 A That's correct.

8 Q So you didn't say, "I'm very sure these were all
9 written by the same." You just said there were indications.

10 A I said there were indications, yes, sir.

11 Q And then this is what we were--kind of referenced
12 earlier in our discussion here this afternoon, when I said
13 you added some qualifying language. That's an example of
14 qualifying language, where you're not really certain of
15 this.

16 A That's correct.

17 Q If we were to go back and collect and review the
18 whole library of all of your expert opinions, we'd certainly
19 find opinions that are much more definitive than this.

20 A Yes. You would find pretty much the range of
21 indications up to identification and elimination.

22 Q And those other ones would be instances where you
23 were looking at original documents.

24 A In some cases, yes.

25 Q And in some cases they would be instances where

1 you had a well lit room.

2 A Yes.

3 Q And in some cases they would be instances where
4 you had plenty of time.

5 A Uh-huh (affirmative). Yes, sir.

6 Q And then in some instances, there would be
7 instances where you were using your microscope.

8 A That's correct.

9 Q Okay. None of which you used here.

10 A That's correct.

11 Q And so in the Remarks section you said, "Time
12 constraints, the large number of exhibits to be examined,
13 and the fact that the ballots were not originals were
14 limiting factors in the examination. Do you remember that?"

15 A Yes, sir.

16 Q And then you went on and said, "If the ballots
17 were examined in the proper setting with ample time for
18 consideration and inter-comparisons, more conclusive results
19 would be possible."

20 A Yes. That's echoing what you asked me before;
21 could I be more definitive, yes.

22 Q Right.

23 A Yes.

24 Q This is not a conclusive result, in your opinion.

25 A Indications is not a completely conclusive result,

1 no.

2 Q Right. It's not even partially conclusive. It's
3 just an indication, right?

4 A Well, I would not have said "indications" if I
5 wasn't sure about my level of certainty on that level,
6 but--

7 Q Okay. And what your--what your opinion is--and
8 I notice Counsel didn't actually ask you to state it, but
9 it's--and I'll read it--quote, "Because of the existence of
10 handwritten and hand printed Franklin Graham entries and
11 the difficulty of inter-comparisons, it is possible that the
12 Franklin Graham entries in one or more groups may be the
13 product of one writer." Did I read that correctly?

14 A You did.

15 Q So your opinion is that it's possible that they
16 may be the product of one writer.

17 A Yes, sir. There's indications that they are.

18 MR. HAMILTON: Thank you. I have no further
19 questions. Thank you so much.

20 CHAIRMAN WHITNEY: Okay. I think before we let
21 y'all present your--are you finished with your witnesses?

22 MR. KNIGHT: No. I have some follow up
23 exam--questions.

24 CHAIRMAN WHITNEY: With her?

25 MR. KNIGHT: Yes, sir.

1 CHAIRMAN WHITNEY: All right. We're going to
2 have a bathroom break shortly. How long will your--you
3 take?

4 MR. KNIGHT: A matter of minutes.

5 CHAIRMAN WHITNEY: Okay. Let's let you follow
6 up, and then we're going to take a break, fifteen minutes,
7 shortly.

8 REDIRECT EXAMINATION OF MS. WARE BY MR. KNIGHT:

9 Q At the risk of going over ground that's been
10 somewhat covered, I want to make sure that the Board
11 understands the conditions and why you were operating under
12 those conditions. Did you--were you allowed to examine the
13 original ballots?

14 A No, I was not.

15 Q Were you allowed to move the ballots to a
16 brighter, well-lit room?

17 A No, I was not.

18 Q Were you allowed to use your microscope?

19 A Nope.

20 Q Were you allowed to copy or photograph the
21 ballots?

22 A No, I was not.

23 Q Were you allowed to connect the individual ballots
24 with any individual voter?

25 A No, sir.

1 MR. MALCOLM: I've got a question.

2 THE WITNESS: Yes, sir.

3 MR. MALCOLM: So one thing you said--he's
4 using the word "allowed," and I want to make sure I
5 understand that. You said you used--what piece of equipment
6 did you say you did use?

7 THE WITNESS: I had a hand magnifier.

8 MR. MALCOLM: Okay. Did somebody tell you
9 you could not use a light?

10 THE WITNESS: A light? No, sir. There was
11 no other light available.

12 MR. MALCOLM: Did someone tell you you could
13 not bring any kind of equipment into the room? Did someone
14 tell you all you could bring into the room was a hand
15 magnifier?

16 THE WITNESS: The equipment? No, sir. They
17 did not limit me in the equipment. They did tell me I was
18 not allowed to photograph it or make photocopies or view the
19 original ballots.

20 MR. MALCOLM: So you could have brought a
21 standing light if you wanted to? You could have lit it up
22 like the sun.

23 THE WITNESS: Yes, sir.

24 MR. MALCOLM: You could have--you could have
25 brought in a magnifying glass or a microscope if you wanted

1 to, or nobody told you you could not bring those things,
2 right?

3 THE WITNESS: Right. I did bring a
4 magnifier, but a microscope is kind of pointless with
5 photocopies.

6 MR. MALCOLM: So Counsel's question which
7 said you were not allowed, would you agree that someone told
8 you you were disallowed to bring those things?

9 THE WITNESS: Not those specific things,
10 yes.

11 REDIRECT EXAMINATION OF MS. WARE BY MR. KNIGHT (continued):

12 Q Just to follow up, you were not allowed to either
13 take the ballots from the room, correct?

14 A That's correct.

15 Q Or to examine the original ballots.

16 A That's correct.

17 Q And if the original ballots are here today and you
18 are allowed to examine them today or some other day, would
19 you--never mind. That's a hypothetical question.

20 MR. KNIGHT: I don't have any other
21 questions.

22 MS. AMOROSO: Were you told, Ms. Ware, why
23 you were not allowed to look at the original ballots?
24 What's your understanding of that, if you know?

25 THE WITNESS: I don't know.

1 MS. AMOROSO: Mr. Knight, is she--do you
2 know why she's not permitted to look at the original
3 ballots?

4 MR. KNIGHT: We were--and when I say "we,"
5 I mean also the McCrory campaign attorneys, the State Board
6 of Elections. I was in contact with Ms. Strach and Mr.
7 Lawson, and they were also in contact--well, that's--they
8 were in communication with Ms. Shaw and Mr. Ludlum, who is
9 the chairman--Ludlum--chairman of the Board of Elections.

10 And they, I believe, Mr. Lawson and Ms. Strach
11 prescribed the conditions under which the public--not just
12 us, but the public--would be allowed to examine the ballots.
13 Is that a fair and accurate statement?

14 DIRECTOR STRACH: The answer is because Josh and
15 I said so.

16 MR. MALCOLM: She's--that sort of clears it
17 up.

18 MR. KNIGHT: Yeah. She was much more
19 concise than I was.

20 CHAIRMAN WHITNEY: Do we have the ballots here
21 or in this--

22 DIRECTOR STRACH: We do.

23 CHAIRMAN WHITNEY: Okay.

24 MS. AMOROSO: I'm just trying to get--it's
25 not pursuant to statute that someone--the public is not

1 permitted to look at the original absentee ballot.

2 DIRECTOR STRACH: They're not allowed to be able
3 to identify a voter with the ballot.

4 MS. AMOROSO: Unless everything has been
5 redacted.

6 DIRECTOR STRACH: Right.

7 MS. AMOROSO: And it's almost--it's
8 impossible because there's a code on the absentee ballot.

9 DIRECTOR STRACH: That's right.

10 MS. AMOROSO: Okay. Just wanted to clear
11 that up for the record.

12 MR. LAWSON: Unless there's a court order.

13 MS. AMOROSO: Pardon?

14 MR. LAWSON: If there's a court order, it
15 can be linked to an individual voter. Absent that, the
16 Board can only allow it to be viewed and it can't be linked
17 to the voter.

18 CHAIRMAN WHITNEY: All right. So you're going
19 to have more witnesses after our little recess?

20 MR. KNIGHT: I'm not going to have any more
21 witnesses. I'm going to refer to some of the documents, and
22 then I'll be done.

23 MS. AMOROSO: I have a question. Is Mr.
24 Graham in the house, Franklin Graham?

25 (No response)

1 CHAIRMAN WHITNEY: All right. Well, we'll allow
2 you to do that when we get back. We're going to take a 15
3 minute break. Thank you, everybody.

4 MR. MALCOLM: Mr. Chairman, I want to be
5 expecting to hear from Mr. Dowless when we come back, just
6 so you can--

7 MR. BRANCH: Mr. Malcolm, is that--is the
8 Board going to be subpoenaing Mr. Dowless to testify?

9 MR. MALCOLM: His testimony is--I want to
10 hear from Mr. Dowless once Mr. Dowless comes up. You're
11 pretty smart on what the law requires. We can ask to hear
12 from Mr. Dowless at this break. Ms.--

13 MR. BRANCH: I under--

14 MR. MALCOLM: Hold on, sir. At the break,
15 Ms. Strach, would you please prepare a subpoena ready for
16 the signature of me and Dr. Kricker in case Mr. Dowless
17 decides he does not want to come forward and testify.

18 MR. BRANCH: And is the Board willing to
19 extend Mr. Dowless the protections of 163-277 if he--

20 MR. MALCOLM: We don't have to answer that.
21 I don't have to answer that question right now. Right now
22 what I've asked to at least two Board members, as you know,
23 either the chair or two Board members can issue a subpoena.

24 When we come back at a break--I guess whenever you
25 decide to represent your client, you can make your

1 assertions then when you think some legal protections need
2 to be attached to his testimony.

3 CHAIRMAN WHITNEY: Okay. 15 minutes. Five
4 minutes after 4:00, folks.

5 JUDGE BAKER: Is this witness needed
6 further? I'm sure she'd like to leave if she could.

7 CHAIRMAN WHITNEY: I'm sorry?

8 MS. AMOROSO: Can we excuse the witness?

9 CHAIRMAN WHITNEY: I'd kind of like to keep her
10 here for a while.

11 JUDGE BAKER: Sorry.

12 MS. AMOROSO: Okay.

13 (Whereupon, a brief recess was taken
14 from 3:51 p.m to 4:19 p.m.)

15 CHAIRMAN WHITNEY: Well, we're back--called back
16 to order. Mr. Malcolm had requested--he wanted to ask a few
17 questions. I'm going to let him speak his piece and do what
18 he requested.

19 MR. MALCOLM: Mr. Knight.

20 MR. KNIGHT: Mr. Malcolm.

21 MR. MALCOLM: Is it correct that you
22 represent Mr. Dowless from Bladen County, North Carolina?

23 MR. KNIGHT: For purposes of the hearing
24 today, it is.

25 MR. MALCOLM: Is it correct that your

1 client, who lives in Elizabethtown, P.O. Box 253, filed a
2 protest before the North Carolina State Board of Elections,
3 alleging improprieties in Bladen County related to the
4 November 8th election?

5 MR. KNIGHT: If we're talking about the
6 protest that's--

7 MR. MALCOLM: We are.

8 MR. KNIGHT: --part of the materials, then
9 obviously.

10 MR. MALCOLM: Is it correct that in your
11 opening statement you referenced and at some point later
12 attached to that protest was a supplement, and that
13 supplement included an affidavit from Heather Register?

14 MR. KNIGHT: I did reference that, yes,
15 sir.

16 MR. MALCOLM: Is it--would it be true that
17 that is--should be, by this Board, considered part of the
18 protest?

19 MR. KNIGHT: If it was not supplemental to
20 the protest, and I saw it as a part of the protest
21 documents, under the brief or the Board book that was put
22 online, I had not seen it as a part of the Dowless protest
23 until I saw it online. So my assumption--

24 MR. MALCOLM: You referenced it in--

25 MR. KNIGHT: My assumption was at that time

1 that it had been supplemented to the Dowless protest. If
2 that was a mistake, then I ask that it be incorporated by
3 reference from the Register complaint--or protest.

4 MR. MALCOLM: So are you saying it is part
5 of your client's protest or it isn't?

6 MR. KNIGHT: I'm asking that it be
7 incorporated by reference into the protest.

8 MR. MALCOLM: Okay. That's what I wanted.
9 So in light of that, you heard before the break--Mr. Lawson,
10 can you clarify for me, this Board, and everyone else in
11 attendance, statutory language or statutory citation
12 concerning what Mr. Branch brought up before the break?

13 MR. LAWSON: Yes, sir. I understood Mr.
14 Branch to bring up 163-277, which talks about immunizing for
15 purposes of criminal liability individuals who are compelled
16 to appear before you.

17 There's another that is 278.29. Both of them
18 appear in the campaign finance article and reference that
19 article in proceedings pursuant to it.

20 MR. MALCOLM: So is--are we here today
21 dealing with campaign finance, to your knowledge?

22 MR. LAWSON: We are not.

23 MR. MALCOLM: Okay.

24 MR. LAWSON: There were campaign finance
25 issues that went into an addendum. That's not the

1 underlying protest.

2 MR. MALCOLM: You're referring to the
3 campaign finance disclosure reports that were made part of
4 the record?

5 MR. LAWSON: That's right.

6 MR. MALCOLM: And that relates to the
7 organization that Mr. Joyner's representing. What's the
8 name of that, Mr. Joyner?

9 MR. JOYNER: Bladen County Improvement
10 Association.

11 MR. MALCOLM: Bladen County Improvement
12 Association. In light of all that, Mr. Branch--I don't know
13 if I should address Mr. Branch since he raised the issue
14 before the break, or Mr. Knight.

15 Does Mr. Dowless, the individual that's brought
16 all these folks from around the state today--we're being
17 broadcast all across this state and I'm sure there's a good
18 number of people down in southeastern North Carolina
19 watching us right now, your neighbors, your friends--does
20 your client intend to answer questions today without having
21 to be subpoenaed by the North Carolina State Board of
22 Elections in accordance with the law?

23 MR. KNIGHT: He is present and will answer
24 questions unless counsel instructs him otherwise.

25 MR. MALCOLM: Your counsel? I mean, you

1 mean you?

2 MR. KNIGHT: Well, certainly, like in
3 any--in any situation where I have a client that is under
4 questioning--

5 MR. MALCOLM: Yes, sir.

6 MR. KNIGHT: --I reserve the right to ask
7 him--or instruct him not to answer.

8 MR. MALCOLM: Yes, sir. And you understand
9 at this point, the North Carolina State Board of Elections
10 is requiring your client to answer any questions.

11 MR. KNIGHT: I also understand he doesn't
12 waive his Fifth Amendment right to refuse to incriminate
13 himself. I'm not stating that that will happen. In no
14 means am I insinuating that it will happen.

15 I am merely pointing out that we do not waive his
16 Fifth Amendment right not to incriminate himself because
17 you're asking me this question.

18 MR. MALCOLM: I agree with that. Mr.
19 Lawson, I think I agree with everything that Mr. Knight just
20 said. Is there anything else I need to be aware of?

21 It sounds like Mr. Knight properly has advised his
22 client that he can walk out the door any time, should he not
23 want to answer my questions. Is that correct, Mr. Lawson?

24 He's not--we're not bounding him to stay here.
25 We haven't subpoenaed him. But you're telling us he's going

1 to answer questions from this Board.

2 MR. KNIGHT: Certainly.

3 MR. MALCOLM: I'd like to hear from Mr.
4 Dowless, Mr. Chairman, relate--since he filed the protest.

5 CHAIRMAN WHITNEY: I'm sorry?

6 MR. MALCOLM: I'd like to hear from his
7 client since he's the one who filed the protest.

8 CHAIRMAN WHITNEY: All right. I think he's
9 already been sworn, correct?

10 MR. KNIGHT: Yes, sir.

11 CHAIRMAN WHITNEY: Could he take the podium,
12 please?

13 (Mr. Dowless takes the podium.)

14 MR. MALCOLM: How are you doing, sir?

15 MR. DOWLESS: Doing fine, Mr. Malcolm.

16 MR. MALCOLM: Is it true that you are the
17 winner--apparent winner as it relates to the election for
18 the Soil--the Soil race in Bladen County?

19 MR. DOWLESS: That's the unofficial results
20 at this time.

21 MR. MALCOLM: So since you're the winner--
22 apparent winner pending canvass by the Bladen County Board
23 of Elections, why are you protesting the contest?

24 MR. DOWLESS: It hasn't been canvassed yet.

25 MR. MALCOLM: Yes, sir.

1 MR. DOWLESS: That's the unofficial results.

2 MR. MALCOLM: Yes, sir.

3 MR. DOWLESS: I know that I have won the
4 election. But Mr. Malcolm, my point is, say years down the
5 road, say it could be your grandson or another person that
6 would likely run for office.

7 I'm not saying there's any wrongdoing here. I
8 just wanted it investigated because it was a high volume of
9 write ins. I had no means of knowing who the write in was.

10 MR. MALCOLM: So you don't believe there's
11 been any wrongdoing? Is that what you just said?

12 MR. DOWLESS: I didn't say that. I'm saying
13 as far as me, as a candidate, for write ins to be that high,
14 I would think that I would want it investigated. If you
15 were on the ballot, even though you have won, would you want
16 it investigated?

17 MR. MALCOLM: Are you asking me?

18 MR. DOWLESS: Yes, sir. I'm saying, if you
19 were a candidate, even though you won--

20 MR. MALCOLM: I'll oblige you, Mr.--if I was
21 the winning candidate by a couple hundred votes, I wouldn't
22 want anything investigated because I wouldn't want somebody
23 bringing some fictitious, unsubstantiated claims against me.

24 MR. DOWLESS: I don't think it's fictitious.

25 MR. MALCOLM: Okay. That's what I was

1 getting to, sir. In your--

2 MR. DOWLESS: And you know, you say a couple
3 hundred votes. That was 3,700 write ins, Mr. Malcolm.

4 MR. MALCOLM: Yes, sir.

5 MR. DOWLESS: 3,700.

6 MR. MALCOLM: 3,700 is what?

7 MR. DOWLESS: Write ins. Three thousand,
8 seven hundred write ins.

9 CHAIRMAN WHITNEY: I think that's what Franklin
10 Graham got voted.

11 MR. DOWLESS: And I'm not saying that he got
12 3,700.

13 MR. MALCOLM: Yes, sir.

14 MR. DOWLESS: I don't know that. I haven't
15 seen the ballots or anything like that to say that he got
16 3,700.

17 MR. MALCOLM: Yes, sir.

18 MR. DOWLESS: It's just a high volume of
19 write ins.

20 MR. MALCOLM: How did you become aware of
21 the issues? Who called you and told you that there were
22 some issues in Bladen County?

23 MR. DOWLESS: Did anyone call me?

24 MR. MALCOLM: Or spoke to you. How did you
25 find out about the issues?

1 MR. DOWLESS: I think when this came about
2 with the high volume of write ins, it was on election night.
3 I was getting the results. The next day, I got with the
4 Republican chairman.

5 MR. MALCOLM: The Bladen County Republican
6 chairman?

7 MR. DOWLESS: Republican chairman.

8 MR. MALCOLM: Who is that, sir?

9 MR. DOWLESS: Landon Bordeaux.

10 MR. MALCOLM: Landon Bordeaux?

11 MR. DOWLESS: Yes.

12 MR. MALCOLM: Okay.

13 MR. DOWLESS: And he talked with me and I
14 said, "That's a high volume of write ins." He says, "I'm
15 going to make a call, and somebody will be giving you a
16 call." So I think it was the next day, two days after the
17 election, that--I can't think of the gentleman's--it's
18 Steve. I can't remember his last name. Worked with Pat
19 McCrory.

20 MR. BRANCH: Objection to the extent
21 that--

22 MR. MALCOLM: Steve who, sir?

23 MR. BRANCH: You can answer. You can
24 identify him, but--

25 MR. DOWLESS: Steve.

1 MR. MALCOLM: Steve from the Pat McCrory
2 campaign?

3 MR. DOWLESS: Yes, sir.

4 MR. MALCOLM: Did you talk to him on the
5 phone or did he come see you?

6 MR. DOWLESS: I talked to him on the
7 telephone.

8 MR. MALCOLM: One or two times or more?

9 MR. DOWLESS: Once, I believe, Mr. Malcolm.

10 MR. MALCOLM: So do you mean he was the one
11 that called you and told you about this?

12 MR. DOWLESS: No, no, no, no.

13 MR. BRANCH: Objection. Don't--don't--
14 stop, please. I'm going to object. The Steve he's
15 referring to, I believe, is a gentleman by the name of Steve
16 Roberts, who is a lawyer for the Pat McCrory committee and
17 I believe also is representing Mr. Dowless in connection
18 with this.

19 And so to the extent that Mr. Dowless is
20 testifying in front of this Board, any conversations with
21 Mr. Roberts would be subject to the protections of the
22 attorney-client privilege.

23 The fact that he had those conversations,
24 absolutely. The content of those conversations, I'm going
25 to object to him revealing to the Board.

1 MR. MALCOLM: To be sure, Mr. Branch, you
2 know that the client has the authority to break privilege
3 any time he or she wants to. Would you agree with that
4 statement?

5 MR. BRANCH: It's the client's privilege.

6 MR. MALCOLM: You're exactly right. So it's
7 up to him to decide whether he wants to break privilege.
8 If you're saying--make sure I got this right and on the
9 record: Are you saying that Mr. Steve Roberts is
10 representing him in his personal capacity?

11 MR. BRANCH: My understanding is Steve
12 Roberts was a part of the group of lawyers that was--

13 MR. MALCOLM: Is Steve Roberts representing
14 you, sir?

15 MR. BRANCH: Wait, wait. Mr. Malcolm, may
16 I please finish my statement? My understanding is that Mr.
17 Roberts is part of a group of lawyers that was representing
18 both the McCrory campaign and the protester here in
19 connection with the protest that was filed.

20 MR. MALCOLM: Okay. That's great. Sir, do
21 you have a lawyer named Steve Roberts?

22 MR. DOWLESS: Yes, sir. He was the one that
23 we got to file that protest.

24 MR. MALCOLM: He's the one that--

25 MR. DOWLESS: Had it.

1 MR. MALCOLM: He prepared it?

2 MR. DOWLESS: Yes, sir.

3 MR. MALCOLM: Okay. For you to sign?

4 MR. DOWLESS: Yes, sir.

5 MR. MALCOLM: And he's the one that told you
6 about these things happening in Bladen County?

7 MR. BRANCH: Objection. Please--

8 MR. DOWLESS: No, sir. No, sir. He didn't
9 tell me that.

10 MR. MALCOLM: So how did you know about it?

11 MR. DOWLESS: Well, the night of the
12 election, that the write ins were so high--

13 MR. MALCOLM: Yes, sir.

14 MR. DOWLESS: --like I said, the next day
15 I talked to Mr. Landon Bordeaux, the Republican chair of
16 Bladen County. And we were talking. I said--I said,
17 "That's a high volume there," and he got to talking.

18 He said, "Well, I'm going to make some calls," and
19 he said, "Would you be good to file a protest?" I told him
20 yes. That was the Republican chair. That was not any of
21 the Pat McCrory lawyers that was talking to me at that time.
22 This was the man, the Republican chair.

23 MR. MALCOLM: Mr. Landon?

24 MR. DOWLESS: Yes, sir.

25 MR. MALCOLM: Okay. And at some later

1 point, you think maybe two days after the election, some
2 time on or about November 10th, you got a phone call from
3 a gentleman you referred to as Steve, that today Mr. Branch
4 is referring to as Steve Roberts, correct?

5 MR. DOWLESS: Yes.

6 MR. MALCOLM: Okay. That's fair enough.

7 MR. DOWLESS: I think it was a couple of
8 days after that, Mr. Malcolm. I--

9 MR. MALCOLM: And at some point--at some
10 point after that, Mr. Roberts prepared this protest for you?

11 MR. DOWLESS: Yes, sir.

12 MR. MALCOLM: And did he hand deliver that
13 to you?

14 MR. DOWLESS: No, sir.

15 MR. MALCOLM: How did you--how did you
16 attach your signature?

17 MR. DOWLESS: We--I believe it was the
18 second day on the phone, he asked me did--

19 MR. BRANCH: Objection. Mr. Dowless, do
20 not reveal the contents of your conversations with Mr.
21 Roberts. They are protected by the attorney-client
22 privilege. I'm advising you not to reveal that to this
23 Board.

24 MR. MALCOLM: Are you his client? Are you
25 his attorney, too, his--

1 MR. BRANCH: Yes.

2 MR. MALCOLM: So he's representing--to make
3 sure, is there any other lawyers I need to be aware of that
4 he has an attorney-client relationship with?

5 MR. BRANCH: Not at this point.

6 MR. MALCOLM: Okay. So Steve Roberts and
7 Mr. Branch are both representing you, sir?

8 MR. BRANCH: And Mr. Knight.

9 MR. DOWLESS: And Mr. Knight.

10 MR. MALCOLM: And Mr. Knight. Any other
11 lawyers?

12 MR. DOWLESS: Attorney Rob Davis in Bladen
13 County.

14 MR. MALCOLM: Rob Davis? Okay. Anyone
15 else?

16 MR. DOWLESS: No, sir.

17 MR. MALCOLM: All right. Probably you've
18 got more attorneys that anybody else I've met. You must be
19 pretty important.

20 So at some point after you filed the protest, is
21 it your belief--do you have any firsthand knowledge that
22 someone provided--wrote in names on ballots in Bladen
23 County, name Franklin Graham. Did you see anyone write the
24 names of Franklin Graham on any ballots?

25 MR. DOWLESS: No, sir.

1 MR. MALCOLM: Do you believe that occurred?

2 MR. DOWLESS: That's not my decision to
3 make.

4 MR. MALCOLM: Do you have any firsthand
5 knowledge that the same individual, on a repeated basis,
6 more than once, wrote the name Franklin Graham on any
7 ballots in Bladen County?

8 MR. DOWLESS: Mr. Malcolm, that's not my
9 decision. You know, I can't--I can't--I haven't seen the
10 ballots.

11 MR. MALCOLM: Yes, sir.

12 MR. DOWLESS: So I can't say.

13 MR. MALCOLM: Yes, sir. Well, in your--are
14 you familiar with your protest?

15 MR. DOWLESS: Yes, sir.

16 MR. MALCOLM: You're familiar with what you
17 allege in your protest. Do you know Deborah Monroe?

18 MR. DOWLESS: Do I know her? Yes, sir, I
19 do.

20 MR. MALCOLM: Can you tell her--tell us what
21 you--your relationship?

22 MR. DOWLESS: I just--I just know her, not
23 on a personal base. You know, as far as seeing her, yes,
24 I do know her.

25 MR. MALCOLM: You say in your protest that

1 she validated at least 67 mail in ballots. Do you know that
2 to be true, sir, and if so, how?

3 MR. DOWLESS: That--the 67 ballots is where
4 I've got information back from the attorneys that that
5 happened. And it come out in the paper, you know, that it
6 happened that way. But as far as me actually knowing that
7 she done it 67 times, no, I don't.

8 MR. MALCOLM: Do you know whether she did
9 it one time?

10 MR. DOWLESS: No, sir.

11 MR. MALCOLM: You state in your protest that
12 in further--quote, "In further shocking evidence of this
13 scheme, the Bladen County Improvement Action PAC filed
14 reports with the North Carolina State Board of Elections,
15 admitting they paid Ms. Monroe."

16 MR. DOWLESS: Well, I think that--

17 MR. MALCOLM: How do you know that to be
18 true?

19 MR. DOWLESS: I think that was brought up
20 earlier by the professor and the other lawyers, that that
21 was Get Out the Vote, GOTV.

22 MR. MALCOLM: Yes, sir. But I'm asking you.
23 When you signed this protest, how did you know that to be
24 true, because you--you're certifying at the end of this that
25 everything that you put in this protest is true, so how do

1 you know that to be true? How did you know at that time it
2 to be true?

3 MR. DOWLESS: That they paid the GOTV?

4 MR. MALCOLM: That supposedly the Bladen
5 Improvement PAC filed reports with the State Board admitting
6 they paid her. How did you know that to be true?

7 MR. DOWLESS: When I seen the report.

8 MR. MALCOLM: Which report are you referring
9 to?

10 MR. DOWLESS: The--

11 MR. MALCOLM: Are you referring to campaign
12 finance reports?

13 MR. DOWLESS: I've seen that, yes. I didn't
14 actually get that, but somebody else had it and I seen it.

15 MR. MALCOLM: Someone gave that to you?

16 MR. DOWLESS: Yes.

17 MR. MALCOLM: Who?

18 MR. DOWLESS: Sir?

19 MR. MALCOLM: Who gave that to you?

20 MR. DOWLESS: I'd rather take the Fifth on
21 that, who gave that to me.

22 MR. MALCOLM: Okay. So to make sure I'm
23 clear, you're taking the Fifth as it relates to who gave you
24 copies of disclosure reports.

25 MR. DOWLESS: Yes.

1 MR. MALCOLM: Any disclosure reports, sir,
2 or just the disclosure reports related to the Bladen County
3 Improvement Association PAC?

4 MR. DOWLESS: I just seen one of two copies.
5 There was two pages of it, is all I saw. Now, the rest of
6 it, I don't know.

7 MR. MALCOLM: Okay, sir. You alleged that
8 there was a scheme that was taking place in Bladen County,
9 correct? That's the words that you used? "Blatant scheme."
10 What did you mean by that?

11 MR. DOWLESS: A scheme?

12 MR. MALCOLM: Well, you used the words,
13 "resulting from a"--

14 MR. DOWLESS: Are you saying I used the
15 words or the attorney that wrote that up used the words?

16 MR. MALCOLM: Well, it's got your signature
17 at the end of it.

18 MR. DOWLESS: It's got my signature on it,
19 but as far as writing that personal--writing that up, I
20 didn't do that.

21 MR. MALCOLM: And you're not making that
22 assertion today, either, are you?

23 MR. DOWLESS: What?

24 MR. MALCOLM: You're not -- you haven't
25 said--that's not--so you didn't write that, so that's not

1 what you said.

2 MR. DOWLESS: I didn't. I didn't write
3 that.

4 MR. MALCOLM: Yes, sir.

5 MR. DOWLESS: The attorney did. The
6 attorney was the one drawing the protest up.

7 MR. MALCOLM: Yes, sir. Is the attorney
8 that drew the protest up today, without revealing attorney-
9 client relationship, is he here today?

10 MR. DOWLESS: No, sir.

11 MR. MALCOLM: Do you know where he is?

12 MR. DOWLESS: No, sir, I don't.

13 MR. MALCOLM: Have you seen him since this
14 protest was entered?

15 MR. DOWLESS: I talked to him.

16 MR. MALCOLM: Do you know--have you reviewed
17 in great detail the financial disclosure of the Bladen
18 Improvement Association PAC?

19 MR. DOWLESS: No, sir, but the attorneys
20 have.

21 MR. MALCOLM: Do you know how to retrieve
22 that disclosure report--those disclosure reports?

23 MR. DOWLESS: Do I know how to retrieve
24 them?

25 MR. MALCOLM: Yes, sir.

1 MR. DOWLESS: No, sir.

2 MR. MALCOLM: So does that--would it be
3 correct to say that you've never retrieved them yourself?

4 MR. DOWLESS: No, sir.

5 MR. MALCOLM: Do you believe, as you
6 related--as you stated in your protest when you referenced
7 Deborah Monroe, that there's some connection other than what
8 you have explained so far between Deborah Monroe and the
9 Bladen County Improvement Action PAC?

10 MR. DOWLESS: Run that again. Go through
11 that again.

12 MR. MALCOLM: Can you explain the connection
13 between Deborah Monroe--do you know her?

14 MR. DOWLESS: Yes, sir, I do.

15 MR. MALCOLM: --and the Bladen County
16 Improvement Association PAC?

17 MR. DOWLESS: I know that she works for
18 them.

19 MR. MALCOLM: Do you know who is the
20 president of the Bladen--

21 MR. DOWLESS: Mr. Horace Munn.

22 MR. MALCOLM: Mr. who?

23 MR. DOWLESS: Horace Munn.

24 MR. MALCOLM: Horace Munn. So you believe
25 that he's the president of this organization?

1 MR. DOWLESS: I think so.

2 MR. MALCOLM: Okay. At some point, you
3 heard earlier at the beginning of this series of questions
4 after the break, I asked Mr. Branch and Mr. Knight to
5 confirm that there was an attachment, an addendum to your
6 protest. You heard me ask that question, did you not?

7 MR. DOWLESS: Yes, sir.

8 MR. MALCOLM: And specifically, what I asked
9 Mr. Knight is whether the protest had been supplemented by
10 an affidavit. Do you recall that?

11 MR. DOWLESS: Yes, sir.

12 MR. MALCOLM: Do you know which affidavit
13 I was referring to?

14 MR. DOWLESS: No, sir.

15 MR. MALCOLM: Do you know Ms. Register?

16 MR. DOWLESS: I know of her. I do not
17 personally know her.

18 MR. MALCOLM: Heather Register. You do not
19 know her?

20 MR. DOWLESS: I know--I don't personally
21 know Ms. Register.

22 MR. MALCOLM: Have you ever spoken with her?

23 MR. DOWLESS: No, sir. Not to my knowledge.

24 MR. MALCOLM: Do you know someone named
25 Matthew Mathis?

1 MR. DOWLESS: I know of him, yes, sir.

2 MR. MALCOLM: Do you know someone named
3 Caitlin Croom?

4 MR. DOWLESS: I know Ms. Caitlin Croom.

5 MR. MALCOLM: How do you know them, sir?

6 MR. DOWLESS: Ms. Caitlin Croom, I don't
7 very well know. The Josh gentleman, or the gentleman you
8 said, Matthew? I know Caitlin because she helped me on
9 campaign.

10 MR. MALCOLM: What do you mean by that,
11 helped you on campaign?

12 MR. DOWLESS: Like the GOTV, Get Out the
13 Vote cards, and like the professor, and you said GOTV vote,
14 and doing the absentee request form on it.

15 MR. MALCOLM: So you had a GOTV enterprise
16 that you did; is that right?

17 MR. DOWLESS: No, sir, I didn't have no GOTV
18 enterprise. I said personally for me, I did, for myself.

19 MR. MALCOLM: Yes, sir.

20 MR. DOWLESS: No enterprise. I just had her
21 doing the request forms.

22 MR. MALCOLM: And when you say "request
23 forms," do you mean absentee by mail request forms--

24 MR. DOWLESS: Yes, sir.

25 MR. MALCOLM: --from the Bladen County Board

1 of Elections?

2 MR. DOWLESS: Yes, sir.

3 MR. MALCOLM: And when you say "her," do you
4 mean Caitlin Croom?

5 MR. DOWLESS: Croom. Yes, sir.

6 MR. MALCOLM: Did you pay her for that work,
7 sir?

8 MR. DOWLESS: GOTV. Yes, sir.

9 MR. MALCOLM: So you keep saying GOTV. Does
10 that mean you did pay her?

11 MR. DOWLESS: Yeah, but Get Out the Vote.
12 Get Out the Vote.

13 MR. MALCOLM: And what exactly was it that
14 she got paid to do?

15 MR. DOWLESS: To get request forms.

16 MR. MALCOLM: Request forms.

17 MR. DOWLESS: Yeah, absentee request forms,
18 and ask the voter did they need assistance. Then they would
19 turn the request forms in to the Board of Elections.

20 MR. MALCOLM: Who would? Ms. Croom or the
21 voters?

22 MR. DOWLESS: Ms. Croom. There's nothing
23 wrong that I know of for them turning in the request forms.

24 MR. MALCOLM: So to make sure I'm clear--I
25 want to make sure it's clear.

1 MR. DOWLESS: Yes, sir.

2 MR. MALCOLM: So Ms. Croom worked for you.

3 MR. DOWLESS: Yes, sir.

4 MR. MALCOLM: And you paid her, in your
5 words, GOTV money.

6 MR. DOWLESS: Right.

7 MR. MALCOLM: To go to individual voters to
8 help them. You didn't say "help." I don't mean to put
9 words--to get them to fill out a request form for an
10 absentee ballot.

11 MR. DOWLESS: If they would prefer one.

12 MR. MALCOLM: Okay. And so, would she be
13 paid for every person she got to request an absentee ballot?

14 MR. DOWLESS: No. No.

15 MR. MALCOLM: How did you pay her?

16 MR. DOWLESS: I believe that they got so
17 many--you know, like if they turned in 15 or 20 a week, or
18 maybe 25 request forms, I would pay them for their gas and
19 the use of their automobile.

20 MR. MALCOLM: But they had to--they had to
21 get to that 15 or 20--

22 MR. DOWLESS: No, sir. No, sir. If they
23 brought five. It's not a thing of whether you put a point
24 on something, that you've got to get so many.

25 MR. MALCOLM: Sure. Who else, other

1 than--and earlier I asked you whether you knew a gentleman
2 named Matthew Mathis.

3 MR. DOWLESS: I know Matthew Mathis, but I
4 did not have him working for me.

5 MR. MALCOLM: But after I said that and
6 asked you about Ms. Croom, you referred back to him as Josh.
7 Do you also call him Josh?

8 MR. DOWLESS: No, no, no. That was in the
9 report that--I can't think of the lady's name--Linda
10 Baldwin, or--

11 MR. MALCOLM: Ms. Baldwin.

12 MR. DOWLESS: Ms. Baldwin had referred back
13 to it.

14 MR. MALCOLM: So do you know--do you know
15 Josh?

16 MR. DOWLESS: No, sir. I don't know any
17 Josh. I knew the Matthew and--

18 MR. MALCOLM: Caitlin.

19 MR. DOWLESS: Yes, Caitlin.

20 MR. MALCOLM: Matthew Mathis and Caitlin
21 Croom.

22 MR. DOWLESS: Yeah.

23 MR. MALCOLM: Okay. So who else, other
24 than--and I'm going to--if it's okay, I'll just use their
25 last names. Who other than Mathis and Croom assisted you

1 in your GOTV effort, sir?

2 MR. DOWLESS: Assisted me in the GOTV?

3 MR. MALCOLM: Yes, sir.

4 MR. DOWLESS: I'd have to look and see. I
5 can't--there ain't but three more that helped.

6 MR. MALCOLM: Three more?

7 MR. DOWLESS: Yeah, and I--I'd just have to
8 look back and see.

9 CHAIRMAN WHITNEY: Just a quick question. Are
10 Caitlin and Matthew in any way related or have a
11 relationship, to your knowledge?

12 MR. DOWLESS: I don't understand.

13 MR. MALCOLM:: Are they boyfriend and
14 girlfriend; is that what you're asking?

15 CHAIRMAN WHITNEY: Yeah, something like that.
16 Are you aware of--

17 MR. DOWLESS: I guess. Now, I'm not for
18 sure.

19 MR. MALCOLM: You know he's got to be
20 careful saying that, don't you?

21 MR. DOWLESS: I'm not for sure.

22 CHAIRMAN WHITNEY: Well, I--I'm just asking if
23 you know.

24 MR. DOWLESS: I'm not for sure whether they
25 are or not. I can't--

1 CHAIRMAN WHITNEY: Okay. That's fine. I'm just
2 curious because they seem to be sort of appearing together
3 at different stages.

4 MR. MALCOLM:: Do you--so would you tell Ms.
5 Croom who to go talk to, to get them to fill out a request
6 form?

7 MR. DOWLESS: No, sir. They just done it
8 in, like, a precinct area.

9 MR. MALCOLM: So you would break--you broke
10 down Bladen County by precincts, and you'd have them--you'd
11 say, "Go work Precinct 1 and Precinct 3."

12 MR. DOWLESS: Well, actually, they stayed
13 in White's Creek or Hollow Township. I'd say, "Hey, go
14 knock on doors."

15 MR. MALCOLM: Yes, sir. And so--

16 MR. DOWLESS: As far as giving them a name,
17 no, sir, I hadn't done that.

18 MR. MALCOLM: Yes, sir. What would happen
19 when those--when she would bring those request forms back
20 to you?

21 MR. DOWLESS: What do you mean? Oh, when
22 she would bring the request forms back to me?

23 MR. MALCOLM: Yes, sir.

24 MR. DOWLESS: What I would do when she
25 handed them to me, I would put her initials up in the top

1 right-hand corner and take in to the Board of Elections to
2 turn in, and I'd say, "Caitie Croom got these request
3 forms."

4 MR. MALCOLM: So would you put CC?

5 MR. DOWLESS: Yes, sir.

6 MR. MALCOLM: In the top left hand corner.

7 MR. DOWLESS: I can't remember if it was the
8 top left or the top right.

9 MR. MALCOLM: Of what document?

10 MR. DOWLESS: On the absentee request form.

11 MR. MALCOLM: Okay. And what did that
12 symbolize to you? I mean, why would you do that?

13 MR. DOWLESS: That way, if you had any
14 problems with that particular request form, then you knew
15 exactly who to go back to.

16 MR. MALCOLM: And what were the other--what
17 were the other initials that you put on the other forms?

18 MR. DOWLESS: What other forms? I didn't
19 put them on but the request forms.

20 MR. MALCOLM: You said there were three more
21 individuals doing the same thing.

22 MR. DOWLESS: Yeah, and I can't remember.
23 One of them was Tanya Gordon, I think.

24 MR. MALCOLM: Tanya Gordon?

25 MR. DOWLESS: TG.

1 MR. MALCOLM: TG?

2 MR. DOWLESS: Yes.

3 MR. MALCOLM: Okay. And what else?

4 MR. DOWLESS: Might have been Kelly
5 Hendricks, KH, and I think that's it.

6 MR. MALCOLM: KH?

7 MR. DOWLESS: Anyway, the request forms that
8 we done would be initialed in the left-hand corner or the
9 right-hand corner.

10 MR. MALCOLM: Okay. And that's just so you
11 could keep track of it in case something went wrong later.

12 MR. DOWLESS: Well, had something come up,
13 we'd go to the director.

14 MR. MALCOLM: To the director. Who's that?

15 MR. DOWLESS: Of the state--of the Board of
16 Elections, Ms. Cynthia, and tell her there was a problem.

17 MR. MALCOLM: So give me an example where
18 there was a problem.

19 MR. DOWLESS: With the--Ms. Baldwin. Is
20 that her--

21 MR. MALCOLM: Ms. Baldwin.

22 MR. DOWLESS: Ms. Baldwin.

23 MR. MALCOLM: There was a problem with hers?

24 MR. DOWLESS: Yes, sir.

25 MR. MALCOLM: What was the problem with Ms.

1 Baldwin's?

2 MR. DOWLESS: They had got four requests.
3 One was Ms. Baldwin, her two sons, and a daughter. Turned
4 those in. Well, the daughter, from what I understand, was
5 not even registered in the state of North Carolina.

6 MR. MALCOLM: Yes, sir.

7 MR. DOWLESS: Two sons and Ms. Baldwin got
8 a ballot sent to them, from my understanding.

9 MR. MALCOLM: Yes, sir.

10 MR. DOWLESS: And Caitie had went there and
11 talked to Ms. Baldwin, to my knowledge, which I was not
12 there. And after they done it, she give him the ballot and
13 he took--and he called me and he says--now, this is hearsay.
14 I was not there. This is hearsay.

15 MR. MALCOLM: Yes, sir.

16 MR. DOWLESS: He said, "We done the
17 ballots."

18 MR. MALCOLM: When you say "done," you mean
19 absentee or the ballot?

20 MR. DOWLESS: The ballot, he says, "and we
21 signed our name to it as witness." Hearsay only. "And she
22 signed all three of them. What do we do with these
23 ballots?" I says, "You take them back to her and don't put
24 your hands on them."

25 MR. MALCOLM: Yes, sir.

1 MR. DOWLESS: So the next day, I go down and
2 tell Ms. Shaw, and I think after that Ms. Baldwin and Mr.
3 Cogdell of the Bladen Improvement comes into the office,
4 too, with Ms. Baldwin, and she wrote the statement. As far
5 as I know, that's what happened.

6 MR. MALCOLM: Yes, sir. How much did you
7 pay Mathis and Croom?

8 MR. DOWLESS: I didn't pay--I didn't pay
9 Mathis anything.

10 MR. MALCOLM: Zero.

11 MR. DOWLESS: Zero.

12 MR. MALCOLM: How much did you pay Croom?

13 MR. DOWLESS: Caitie?

14 MR. MALCOLM: Yes, Caitie Croom. I'm sorry.

15 MR. DOWLESS: It was--averaged out to about
16 \$20 per day. It was \$112.

17 MR. MALCOLM: Say that--when you said \$20.
18 I'm sorry. I misunderstood.

19 MR. DOWLESS: Averaged out about \$20 per
20 day.

21 MR. MALCOLM: \$20 per day?

22 MR. DOWLESS: Yeah. In fact, if I had the
23 receipts, I'd show them to you.

24 MR. MALCOLM: So you have receipts?

25 MR. DOWLESS: Yes, sir, I do, but I don't

1 have them with me.

2 MR. MALCOLM: So--and those receipts, would
3 those receipts have been written from Patriots for Progress.

4 MR. DOWLESS: No, sir. No, sir.

5 MR. MALCOLM: Do you know any organization
6 called Patriots for Progress?

7 MR. DOWLESS: Yes, I sure do. I was the one
8 that formed that back in 2014 and resigned, sent in a letter
9 to the state. As far as I know, the state has it at this
10 time. It was supposed to be sent in in January and a
11 Tabitha Joyce took that over.

12 MR. MALCOLM: January of what year?

13 MR. DOWLESS: This year.

14 MR. MALCOLM: January of '16.

15 MR. DOWLESS: Yes.

16 MR. MALCOLM: And you're saying Tabitha
17 Joyce?

18 MR. DOWLESS: Yes. In fact, the lady that
19 had took it in January, when she took it, she was killed in
20 January.

21 MR. MALCOLM: That's unfortunate.

22 MR. DOWLESS: And there was a time in there
23 that they had to get stuff redone to where Tabitha could
24 take over, and there was a letter sent to the state that the
25 lady had lost her life.

1 MR. MALCOLM: Yes, sir. Earlier you said
2 you paid, as you refer to as Caitie, correct?

3 MR. DOWLESS: Yes.

4 MR. MALCOLM: You call her Caitie?

5 MR. DOWLESS: Yes.

6 MR. MALCOLM: You said you paid her for her
7 gas and for her vehicle, and you just said--I want to make
8 sure--you said you paid her--that amounted to \$20 a day.

9 MR. DOWLESS: Yes. As far as I--

10 MR. MALCOLM: You never paid her for the
11 number of absentee requests that she gathered.

12 MR. DOWLESS: No, sir. I don't know where
13 that come from. It was just on the base of whatever they
14 brought. If they brought five, if they brought ten, if they
15 brought 15, they got the same thing. There was no base put
16 on it.

17 MR. MALCOLM: Yes, sir. So what would--and
18 do you know how many absentee request forms were brought to
19 you in total?

20 MR. DOWLESS: From Ms. Caitie?

21 MR. MALCOLM: Well, from Ms. Caitie or
22 these--or the TG or the KH, in total, how many absentee
23 request forms do you think came through?

24 MR. DOWLESS: Probably 168, I would say.

25 MR. MALCOLM: 168 absentee request forms

1 came through you.

2 MR. DOWLESS: Yep.

3 MR. MALCOLM: And on each one of those, you
4 would put initials either on the top left or top right-hand
5 corner?

6 MR. DOWLESS: That was on the request forms.

7 MR. MALCOLM: On the request forms.

8 MR. DOWLESS: Yes, sir.

9 MR. MALCOLM: And that's what you--when you
10 say 168, you're referring to the request forms.

11 MR. DOWLESS: Yes.

12 MR. MALCOLM: Okay. How many ballots came
13 to you, sir?

14 MR. DOWLESS: I have no idea how many
15 ballots are on there.

16 MR. MALCOLM: Do you think it was more than
17 a dozen or more than 100 ballots came to you?

18 MR. DOWLESS: I don't know. What you mean
19 "came to me"?

20 MR. MALCOLM: Well, I just asked you how
21 many ballots came through that process.

22 MR. DOWLESS: No ballots come to me.

23 MR. MALCOLM: You never saw any ballots?

24 MR. DOWLESS: No.

25 MR. MALCOLM: At all?

1 MR. DOWLESS: Onliest ballot I saw was mine.

2 MR. MALCOLM: Okay. So are you familiar
3 with the protest or the complaint filed by Ms. Baldwin?

4 MR. DOWLESS: Yes, I am.

5 MR. MALCOLM: Have you read that?

6 MR. DOWLESS: Briefly. Briefly.

7 MR. MALCOLM: So to you how does that
8 Baldwin compliant--is it connected to the concerns that you
9 have?

10 MR. DOWLESS: I don't quite understand what
11 you're saying.

12 MR. MALCOLM: The names that are set forth
13 in the Baldwin letter--is it in any way related to the
14 things that you answered my questions about so far?

15 (Pause)

16 MR. MALCOLM: In that letter it says she
17 answered her doorbell on the 24th and invited a gentleman
18 named Josh to come in, and it goes on to talk about
19 requesting and a absentee ballot form and some other things.
20 You're familiar with that, aren't you?

21 MR. DOWLESS: The absentee request form.

22 MR. MALCOLM: Yes, sir. And that's the 168
23 that you were referring to, right, that you saw during this
24 whole process, absentee request forms?

25 MR. DOWLESS: I would say that, or it

1 could've been less.

2 MR. MALCOLM: So one of your workers went
3 to Ms. Baldwin--

4 MR. DOWLESS: Not one of my workers, no,
5 sir. You're stating Josh.

6 MR. MALCOLM: Josh is the one that went?

7 MR. DOWLESS: Sir, I--I--I don't know any
8 Josh.

9 MR. MALCOLM: At all?

10 MR. DOWLESS: No, sir, I don't.

11 MR. MALCOLM: Do you know a Josh that worked
12 for the Improvement Committee on the--that Mr. Joyner is
13 representing? You just don't know a Josh at all related to
14 any of this?

15 MR. DOWLESS: Not that I know of, no. I
16 don't know a Josh.

17 MR. MALCOLM: Do you know Ms. Johnson
18 Baldwin directly?

19 MR. DOWLESS: No, sir. In fact if I'd see
20 her today, I wouldn't know who she was.

21 MR. MALCOLM: Have you ever spoken with her?

22 MR. DOWLESS: No, sir.

23 MR. MALCOLM: At some point--so would it--
24 and I think I know the answer to this, but I'll ask it
25 anyway. So are you saying that you never--did you ever see

1 an envelope that purportedly had Ms. Baldwin's ballot inside
2 of it?

3 MR. DOWLESS: No, sir.

4 MR. MALCOLM: Did you ever meet with
5 investigators for the North Carolina State Board of
6 Elections?

7 MR. DOWLESS: Did I meet with him?

8 MR. MALCOLM: Named Fleming or Tutor?

9 MR. DOWLESS: I have in the past met with
10 Mr. Tutor.

11 MR. MALCOLM: During this--

12 MR. DOWLESS: No, sir, I have not. I have
13 not met with Ms. Fleming or--in person, no, sir, I have not.

14 MR. MALCOLM: Have you spoke with them on
15 the phone?

16 MR. DOWLESS: I spoke to briefly--it's
17 probably been six weeks ago.

18 MR. MALCOLM: Did they ask you a series of
19 questions?

20 MR. DOWLESS: I can't remember.

21 MR. MALCOLM: Do you remember anything from
22 your conversation with Ms. Fleming or Mr. Tutor from the
23 State Board of Elections?

24 MR. DOWLESS: Oh, I told them that I knew
25 Kate and I would try to get up with her. At the time I

1 couldn't get up with her, and I believe I did tell them that
2 I had made Caitie to get the request forms. I believe I did
3 tell them that.

4 MR. MALCOLM: Is that all the information
5 you provided to them?

6 MR. DOWLESS: I think at that time, yes,
7 sir.

8 MR. MALCOLM: Was there anything you were
9 supposed to follow up with them on?

10 MR. DOWLESS: I told them that--I told Mr.
11 Tutor that I would try to get back with him and get the
12 phone number for Caitie, and I got the phone number and
13 tried to call Caitie and couldn't get in contact with her.

14 MR. MALCOLM: Oh, so you told them you were
15 going to call Caitie?

16 MR. DOWLESS: I told him--no, I told him I
17 would try to get in contact with her to call Mr. Tutor.

18 MR. MALCOLM: So you were going to basically
19 pass a message to call him.

20 MR. DOWLESS: Yes.

21 MR. MALCOLM: Have you spoke to Caitie? So
22 you didn't get up with her then? Did you speak to her at
23 all?

24 MR. DOWLESS: No.

25 MR. MALCOLM: You never got up with her?

1 MR. DOWLESS: No. I talked to her one time,
2 and she said--I believe she said that Ms. Fleming had called
3 her or something. I--to that matter. I said, "Tell her the
4 truth."

5 MR. MALCOLM: I think this is about my final
6 question. So is it your testimony that as it relates to the
7 November 8th election in Bladen County, you never handled,
8 filled out, or saw in any form or fashion anyone's ballot
9 other than your own.

10 MR. DOWLESS: Other than my own.

11 MR. MALCOLM: Whether you--you never like-
12 -let me make sure my question's clear. You never saw a
13 container, an envelope, or a package that may have had
14 someone else's ballot in it, to your knowledge?

15 MR. DOWLESS: To my knowledge, no.

16 MR. MALCOLM: Okay. I don't have any more
17 questions. Thank you, sir.

18 CHAIRMAN WHITNEY: Mr. Nichols or Mr. Branch, do
19 you have--can you stay up there, please. Do you have any
20 questions of your client?

21 MR. KNIGHT: Not that it matters, but it's
22 Knight. Not Nichols, it's Knight. But I don't have any
23 questions, no.

24 CHAIRMAN WHITNEY: Sorry. Okay. Would you like
25 to ask some questions?

1 MR. JOYNER: Yes. Could you pass the--

2 (Pause)

3 MR. MALCOLM: While Professor Joyner's
4 getting that, earlier in your testimony--who was it--who was
5 it that called you from the County Board of Elections?

6 MR. DOWLESS: That called?

7 MR. MALCOLM: Yeah.

8 MR. DOWLESS: It may--what reference?

9 MR. MALCOLM: Related to the problems with
10 the ballots. Who was it that called you from the Bladen
11 County Board of Elections and told you there were problems?
12 Was it a board member of Ms. Shaw or one of the workers?

13 MR. DOWLESS: Which ones are you talking
14 about? I don't know which--are you talking about with Ms.
15 Baldwin?

16 MR. MALCOLM: Uh-huh (affirmative).

17 MR. DOWLESS: Ms. Cynthia.

18 MR. MALCOLM: Ms. Cynthia?

19 MR. DOWLESS: Yes.

20 MR. MALCOLM: Were there other occasions
21 where other folks that work at the Bladen County Board of
22 Elections--

23 MR. DOWLESS: But now the reason why she
24 called me, because it had the cc on it.

25 MR. MALCOLM: Yes, sir.

1 MR. DOWLESS: And I told them when I went
2 in there, I said, "Hey, this is what I'm putting on the
3 request form so that if there is a problem, you know who to
4 contact without hearsay."

5 MR. MALCOLM: The CC that you're referring
6 to, do you mean the initials--

7 MR. DOWLESS: That's when I told you it was
8 Caitie Croom.

9 MR. MALCOLM: So would it be correct for me
10 to say Ms. Shaw or Ms. Cynthia knew that you were the ones
11 putting initials on the absentee request forms?

12 MR. DOWLESS: That they knew it?

13 MR. MALCOLM: Yes.

14 MR. DOWLESS: Yes. I told them I was doing
15 that so if there was a problem, we could find--get to the
16 problem, what was happening.

17 MR. MALCOLM: Before they processed them.

18 MR. DOWLESS: Yes.

19 CHAIRMAN WHITNEY: Just for clarification, every
20 absentee request form that was turned in had somebody's
21 initial on it.

22 MR. DOWLESS: Yes.

23 CHAIRMAN WHITNEY: Okay, Professor.

24 MR. JOYNER: Yes. I want to start back
25 with your protest itself. My understanding from what I

1 heard you say was that the document that has been provided
2 to the Board, very detailed, that you did not prepare it;
3 is that correct?

4 MR. DOWLESS: Yes, sir.

5 MR. JOYNER: And instead that this was
6 prepared by someone else, and signed your name to it; is
7 that correct?

8 MR. DOWLESS: That was my attorney.

9 MR. JOYNER: Your attorney. And that would
10 have been Attorney Roberts?

11 MR. DOWLESS: Yes, sir.

12 MR. JOYNER: So the initial SPR at the end
13 of the signature box would represent his name; is that
14 correct?

15 MR. DOWLESS: Yes.

16 MR. JOYNER: All right. Now, was this
17 protest notarized?

18 MR. DOWLESS: I have no idea.

19 MR. JOYNER: You don't know if it was
20 notarized or not?

21 MR. DOWLESS: I have no idea.

22 MR. JOYNER: And finally it's your
23 testimony that as to the contents of this protest, that you
24 don't have firsthand knowledge about any of the content; is
25 that correct?

1 MR. KNIGHT: That wasn't what he testified
2 to.

3 MR. JOYNER: Well, he can answer.

4 MR. KNIGHT: That wasn't what he testified
5 to. You said in his testimony that he testified that he
6 didn't have firsthand knowledge, and that's not what he
7 testified to.

8 MR. JOYNER: Mr. Chairman, we can let the
9 attorney testify as well, but I was asking the witness the
10 question.

11 CHAIRMAN WHITNEY: Excuse me?

12 MR. JOYNER: I was asking the witness the
13 question, but the attorney wants to testify for him.

14 CHAIRMAN WHITNEY: Oh. I'm sorry.

15 MR. BRANCH: Can you restate the question
16 maybe?

17 CHAIRMAN WHITNEY: Yeah.

18 MR. JOYNER: The question is: With respect
19 to the contents in your protest, is it correct to conclude
20 that you don't have any firsthand knowledge about any of
21 the details that's contained in it?

22 MR. DOWLESS: I have some knowledge of the
23 details in that, yes, sir.

24 MR. JOYNER: Now, what--you have firsthand
25 knowledge?

1 MR. DOWLESS: No, sir. I did not say that.

2 MR. JOYNER: So you don't have any--

3 MR. DOWLESS: I have some of the details
4 about it, not firsthand knowledge of it.

5 MR. JOYNER: Do you have firsthand
6 knowledge about any of the contents in it?

7 MR. DOWLESS: Are you defining that I--
8 define that for me, "firsthand knowledge."

9 MR. JOYNER: Did you see it, were you
10 there, and did you hear the person?

11 MR. DOWLESS: Like I had stated back when
12 I talked to Landon Bordeaux we had talked over that, and
13 then we got--Mr. Steve called me, and we went over this.

14 MR. JOYNER: So you--

15 MR. DOWLESS: As far as firsthand seeing it
16 and the attorney writing it up, no, but I mean he went over
17 this with me. So if that's what you're--

18 MR. JOYNER: So what you're testifying to
19 here is based on things that you heard someone else tell
20 you.

21 MR. DOWLESS: Some of that in there I knew,
22 but you know, I went over what my lawyer--we went over it,
23 my attorney.

24 MR. BRANCH: One question for the Board.
25 Mr. Dowless does not have a copy of the protest in front of

1 him. The copy I have is marked up. I would offer it to
2 him, but I don't want there to be any contention that I
3 was--

4 MR. MALCOLM: Let's get him one.

5 MR. BRANCH: --coaching him on how to
6 testify. So if there's a clean copy, that might be helpful.

7 CHAIRMAN WHITNEY: Mine's marked up. But we can
8 get you a copy.

9 JUDGE BAKER: This is a lot like a complaint
10 filed by an attorney on behalf of a client, isn't it? Are
11 we going to learn a lot by questioning him about what his
12 attorney drew up? I'm just trying to move things along.

13 MR. DOWLESS: I think Mr. Malcolm's asked
14 me questions, you know. I think I've answered them to the
15 best of my knowledge.

16 CHAIRMAN WHITNEY: If you would like a copy,
17 yeah, okay, you're welcome to have that.

18 (Document handed to Mr. Dowless.)

19 MR. JOYNER: Now that you have a copy of
20 the protest, let me just direct your attention to Paragraph
21 4. And with respect to Paragraph 4, do you have firsthand
22 information about the assertion that's made in that
23 paragraph?

24 MR. BAKER: Which assertions?

25 MR. DOWLESS: All of them.

1 JUDGE BAKER: That the election was on
2 November 8?

3 MR. JOYNER: Is that the only one that's
4 there?

5 JUDGE BAKER: I mean you said all of them.
6 I mean--

7 MR. BRANCH: Can you identify which topic
8 you're asking him about?

9 MR. JOYNER: Do you have Paragraph 4 in
10 front of you?

11 MR. DOWLESS: Yes.

12 MR. JOYNER: With respect to any of the
13 assertions that's made in Paragraph 4, do you have firsthand
14 knowledge about any of them?

15 MR. BRANCH: Objection.

16 MR. DOWLESS: I've told them that, you know,
17 the write-in votes, that me and the Republican Chair talked
18 about this the next day.

19 MR. JOYNER: So you do have firsthand
20 knowledge about the total--

21 MR. DOWLESS: Just the--

22 MR. JOYNER: --the total?

23 MR. DOWLESS: Just the total, the total
24 vote.

25 MR. JOYNER: Now, with respect to Paragraph

1 6, do you have personal knowledge that the voters of Bladen
2 County appears to be victim of a massive scheme to run an
3 absentee ballot mill?

4 MR. DOWLESS: Did they run a massive scheme
5 to do that?

6 MR. JOYNER: Let me direct your attention
7 to the Paragraph 6.

8 MR. DOWLESS: I see that, sir.

9 MR. JOYNER: And the first paragraph--

10 MR. DOWLESS: I see that too.

11 MR. JOYNER: Now, do you have firsthand
12 knowledge to support that assertion?

13 MR. DOWLESS: Where it's a scheme or
14 whatever, it's a high volume of write-in votes is what I
15 quoted at the very start of this meeting when they asked me
16 to testify.

17 MR. JOYNER: What evidence did you have
18 that this is an absentee ballot mill involving hundreds of
19 ballots?

20 MR. DOWLESS: Do what now?

21 MR. JOYNER: What evidence do you have or
22 firsthand knowledge do you have that this is a massive
23 scheme to run an absentee ballot mill?

24 MR. DOWLESS: As far as names, I haven't
25 seen a ballot, you know, to say--I haven't seen it.

1 JUDGE BAKER: Mr. Chairman, this line of
2 questioning really makes me uneasy. I mean in a courtroom
3 you're not even permitted to ask a client about the content
4 of a complaint. I mean are we really going to accomplish
5 anything by this?

6 And you certainly know that, sir, courtroom
7 procedure. You don't take a complaint or an answer and you
8 don't go line by line in asking him in front of a trier of
9 fact and there are, I think, procedural reasons. It's not
10 his language; it's the language of his attorney.

11 It will be for us to determine whether any of
12 these allegations are true or not. He didn't even write
13 this. So I'm just wondering, is this a good use of time?
14 I really don't see that. It's not even permitted in a
15 courtroom. And as a law professor, you certainly know that,
16 sir.

17 MR. JOYNER: Well, I've tried any number
18 of cases.

19 JUDGE BAKER: Yes, sir, and you know that
20 this is not an appropriate line of questioning in a
21 courtroom.

22 MR. JOYNER: And I do know that this is an
23 appropriate line of questioning in court.

24 JUDGE BAKER: It is?

25 MR. JOYNER: It is, yes.

1 JUDGE BAKER: Not in a courtroom that I'm
2 used to, sir.

3 MR. JOYNER: Well, I've never been in your
4 courtroom.

5 JUDGE BAKER: You would take a complaint in
6 front of a Plaintiff and ask him about the wording of their
7 complaint?

8 MR. JOYNER: Judge, the question was, is
9 there a factual basis to support the assertion that you
10 made.

11 JUDGE BAKER: Yes, sir, and I'm really not
12 trying to argue with you. I'm just trying to move this
13 along. We've been here a long time now, and it will be up
14 to us to determine if any of these allegations are right.

15 I know what he's going to say. You're going to
16 ask him about the wording, and he's going to stutter around
17 a little bit about the words that his attorney used, and
18 then we will go to the next one, and I just don't know that
19 that's an effective use of time for you or for your clients
20 or for any of us.

21 And I apologize if I'm wrong about saying that
22 it's not appropriate to question about the complaint or the
23 answer for the party in a courtroom in front of the trier
24 of fact. I don't think it is, and I don't really see that
25 this is an appropriate line of questioning. I just really

1 want to try to move this along if we can.

2 CHAIRMAN WHITNEY: Do you think you could wrap
3 it up just fairly quickly here?

4 MR. JOYNER: Well, Mr. Chairman, I think
5 it is always an appropriate question in any courtroom to ask
6 a witness if there is a factual basis for the assertions
7 that they are making.

8 CHAIRMAN WHITNEY: Okay, then ask that question
9 and let's move it on.

10 MR. JOYNER: Which question that I asked?

11 CHAIRMAN WHITNEY: Ask that question, and then
12 we're going to move on to the next item, okay?

13 MR. JOYNER: Now, with respect to Paragraph
14 6, is there a factual basis for the assertions that you have
15 made in that particular paragraph?

16 MR. DOWLESS: Well, they got us here with
17 the forensic handwriting expert, you know, her testimony.
18 I was not there on this.

19 MR. JOYNER: So you don't know.

20 MR. DOWLESS: You know, I--just going back,
21 I won't there. I've not seen the ballots, and I've said
22 that several, several times now.

23 MR. JOYNER: Mr. Malcolm has already asked
24 you about Ms. Deborah Monroe reference, but there's another
25 provision there dealing with Mary Johnson who was a witness

1 for 74 ballots and received \$450; Lola Wooten, a witness of
2 58 ballots and received \$500; Deborah Cogdell, a witness for
3 45 ballots and received \$300; and Bridgette Keaton, a
4 witness for 16 ballots, received \$630.

5 Do you have facts--did you have facts to support
6 this allegation?

7 MR. DOWLESS: Is this not public knowledge
8 off of the website, and I believe I answered Mr. Malcolm
9 that I didn't firsthand get this. Someone else got it, and
10 I took the Fifth on giving the name who give it to me.

11 CHAIRMAN WHITNEY: I think you've answered it.
12 Let's move on, Professor.

13 MR. BRANCH: I'm going to interpose a
14 standing objection to the extent that Counsel is covering
15 the grounds that Mr. Malcolm's already covered with the
16 witness.

17 CHAIRMAN WHITNEY: All right. Noted.

18 MR. JOYNER: I just have a few more quick
19 questions.

20 CHAIRMAN WHITNEY: Let's try to wrap it up. Will
21 Mr. Hamilton be asking questions?

22 MR. HAMILTON: Not so far, Your Honor.

23 CHAIRMAN WHITNEY: Well, you don't have to "Your
24 Honor" me. Okay, I'm going to assume you want and I'm going
25 to give you a couple more minutes, and then we're going to

1 be done with Mr. Dowless, okay?

2 MR. JOYNER: I want to ask you then, Mr.
3 Dowless, if in the prior election, if you were endorsed by
4 the Bladen County Improvement Association--

5 MR. BRANCH: Objection to relevance.

6 CHAIRMAN WHITNEY: I'll let him answer.

7 MR. MALCOLM: Can you restate the question?

8 MR. JOYNER: In prior elections were you
9 endorsed by the Bladen County Improvement Association?

10 MR. DOWLESS: They put me on their ballot.
11 Yes, sir, they had had me on their ballots in 2012, but I
12 give them no money.

13 MS. AMOROSO: What did you run for in 2012,
14 sir?

15 MR. DOWLESS: The Soil and Water.

16 MS. AMOROSO: Same?

17 MR. DOWLESS: Yes. Yes, ma'am, and this
18 will be my second term.

19 MR. JOYNER: In 2016 were you endorsed by
20 the Bladen County Improvement Association PAC?

21 MR. DOWLESS: No, sir.

22 MR. JOYNER: And in fact the write-in for
23 Franklin Graham was promoted by the Bladen County
24 Improvement Association PAC; is that correct?

25 MR. DOWLESS: If you say it is. Like I

1 said, I have not seen the ballots. You know, it could only
2 be 100 Franklin Grahams. All I'm saying the reason why I
3 brought the protest and me and the Republican Chair sat down
4 because of the high volume of write-ins, like I've stated
5 from the first time I walked up.

6 MR. JOYNER: And this is just--because it's
7 been a while since I've heard this. Your information is
8 that you did not observe any ballots and/or certification
9 forms other than your own; is that correct?

10 MR. DOWLESS: That's correct.

11 CHAIRMAN WHITNEY: All right, if we can limit
12 this to one more question because Mr. Malcolm has a couple
13 of questions in order to move on to the Respondent's
14 presentation.

15 MR. JOYNER: And you got me at a great
16 time, Mr. Chairman, because that was my last question.

17 CHAIRMAN WHITNEY: Thank you, Professor. Mr.
18 Malcolm.

19 MR. MALCOLM: Sir, a couple of questions.
20 Did you speak with Matthew Mathis after speaking with the
21 investigators from the State Board of Elections?

22 MR. DOWLESS: Did I speak with him? Yes,
23 and he came to me.

24 MR. MALCOLM: Came to see you?

25 MR. DOWLESS: Yes. He said he wanted to

1 meet me, and I met him and--

2 MR. MALCOLM: Where'd you meet him at?

3 MR. DOWLESS: Elizabethtown.

4 MR. MALCOLM: Where at, though, in
5 particular?

6 MR. DOWLESS: It was right there close to
7 Burger King.

8 MR. MALCOLM: Outside, or did y'all get a
9 Whopper?

10 MR. DOWLESS: No, no, no. I had pulled my
11 van up, and they got in the van.

12 MR. MALCOLM: Who's they?

13 MR. DOWLESS: Ms. Caitie and Mr. Mathis, and
14 we was talking, and I believe his words was, "I'm scared."
15 I said, "Well, Mr. Mathis, I didn't hire you." I said, "I
16 hired Caitie." I says, "Now, what you've done on your own
17 and if you've done something wrong, you need to tell the
18 people." That was my exact words to that gentleman.

19 I said, "If you have done something wrong, you
20 need to tell the investigators."

21 MR. MALCOLM: Do you recall when that was?

22 MR. DOWLESS: Maybe two and half weeks ago
23 or something like that. I'm just saying in a round about
24 area there, Mr. Malcolm.

25 MR. MALCOLM: Do you recall if it was during

1 the week or on the weekend?

2 MR. DOWLESS: It was on a Thursday or a
3 Friday, I believe.

4 MR. MALCOLM: Thursday or a Friday.

5 MR. DOWLESS: Yes, sir.

6 MR. MALCOLM: Do you remember what time of
7 day it was?

8 MR. DOWLESS: Probably around 5:30, 6:00.

9 MR. MALCOLM: You were just getting ready
10 to turn on the headlights.

11 MR. DOWLESS: I'm just saying--I'm just
12 saying within that time frame.

13 MR. MALCOLM: Subsequent to that
14 conversation in November near Burger King for which Caitie
15 an Matthew Mathis got in your van, have you had any other
16 conversations with either one of those in person, on the
17 phone, in an e-mail, text, or any other way?

18 MR. DOWLESS: Just that one time when they
19 called me.

20 MR. MALCOLM: Okay. Thank you.

21 JUDGE BAKER: Mr. Chairman, I have a
22 question.

23 CHAIRMAN WHITNEY: Go right ahead, Judge.

24 JUDGE BAKER: Just some background
25 information, I guess, sir. Are you the Soil and Water

1 Conservation officer?

2 MR. DOWLESS: Yes.

3 JUDGE BAKER: How long have you been the
4 Soil and Water Conservation officer?

5 MR. DOWLESS: I had one term. I was elected
6 in 2012.

7 JUDGE BAKER: That really was my question.
8 You have been elected one time before?

9 MR. DOWLESS: Yes, sir.

10 JUDGE BAKER: Out of curiosity, was there
11 a write-in candidate in--

12 MR. DOWLESS: No, sir.

13 JUDGE BAKER: Did you know there was a
14 write-in candidate that was going to get like 3,000 some
15 votes in this election?

16 MR. DOWLESS: I'd have never dreamed that.

17 JUDGE BAKER: Was there campaigning? Was
18 there campaigning by Franklin Graham?

19 MR. DOWLESS: Sir, if Mr. Franklin Graham
20 was to walk up today, I would not know him.

21 JUDGE BAKER: Did you see any signs, "Vote
22 Franklin Graham, Soil and Water Conservation person"?

23 MR. DOWLESS: No, sir, I didn't see any
24 signs or anything like that.

25 JUDGE BAKER: Publicity or anything like

1 that?

2 CHAIRMAN WHITNEY: E-mails?

3 MR. DOWLESS: I knew that--the past, you
4 know, from what I've seen, you know, it was the GOTV, get
5 out to Vote, and, you know, like I said, I have not seen the
6 ballots. I couldn't tell you--

7 JUDGE BAKER: No, I was just wondered really
8 if it was a surprise or not that--

9 MR. DOWLESS: Yes, it was a surprise to get
10 that many write-in votes.

11 JUDGE BAKER: But you knew he was a
12 candidate or that there was a person being pushed by a
13 group.

14 MR. DOWLESS: I had heard that.

15 JUDGE BAKER: All right, sir.

16 MR. DOWLESS: I had heard that.

17 JUDGE BAKER: Okay, the surprise then was
18 not that there was somebody named Franklin Graham that was
19 showing up as getting write-in votes. The surprise to you
20 was that there was that number.

21 MR. DOWLESS: That number of 3,700 write-in
22 votes.

23 JUDGE BAKER: All right. Thank you. I just
24 didn't understand if there was a big election by any means
25 or signs up campaigning or--

1 MR. DOWLESS: No.

2 JUDGE BAKER: Thank you, sir.

3 DR. KRICKER: I just have one question. You
4 mentioned that some guy called you and advised you that the
5 Baldwins had voted three ballots and asked you what to do?
6 I was just wondering who called you.

7 MR. DOWLESS: That was Caitie and Matthew.

8 DR. KRICKER: That was Caitie and Matthew.

9 MR. DOWLESS: Yes, ma'am. Yes, ma'am.

10 DR. KRICKER: Okay. Thank you.

11 MS. AMOROSO: Mr. Dowless, have you held
12 elected office prior to 2012?

13 MR. DOWLESS: No, ma'am.

14 MS. AMOROSO: So that was your first time?

15 MR. DOWLESS: Yes, ma'am.

16 DR. KRICKER: Oh, I'm sorry. I had one
17 more. I was just wondering, why did they call you, Caitie
18 and Matthew?

19 MR. DOWLESS: Well, I had told Caitie I put
20 the CC up, like I explained, on the request form. If the
21 person asked them--when they done their request, if they
22 asked them for assistance, don't press yourself on them.
23 You ask them if they tell you they want you to come back,
24 you go back. You don't touch the ballot. You don't
25 especially take a ballot.

1 But what they had told me--again, this is hearsay,
2 what I told you before, Mr. Malcolm, when I started. They
3 had called me and said that the lady had signed all three
4 of the ballots, and they witnessed it. She gave them the
5 ballot. He got the ballots and called me and asked me.

6 I said, "You take the ballots back to the people
7 and you don't bother it." Then I go to Ms. Cynthia Shaw,
8 Mr. Cogdell, and Mr. Baldwin at the Bladen Improvement,
9 Cogdell, that's the county Commissioner, when in and give
10 the statement. That's where the Josh came from. And I
11 don't know any Josh. That's the statement that Mr. Baldwin
12 got.

13 MS. AMOROSO: I have one more question.
14 Just clarify for me. In the Soil and Water race, it's
15 nonpartisan and there were no Republicans running; is that
16 correct?

17 MR. DOWLESS: I was nonpartisan on that
18 race, as unaffiliated. I had changed my affiliation to
19 unaffiliated, and here last Wednesday I changed my
20 affiliation to Republican. But as in the race itself I was
21 unaffiliated.

22 CHAIRMAN WHITNEY: Thank you. Do y'all have any
23 more evidence to put on?

24 MR. KNIGHT: Mr. Chair, we have no more
25 witnesses, and basically in the sense of time, based upon

1 what we've heard today, we ask on behalf of my clients that
2 the absentee ballots that I believe here are from Bladen
3 County be admitted into evidence or at least admitted onto
4 the record so that the Board can examine them at such time
5 as they deem appropriate, and with the absentee envelopes,
6 be admitted into the record. And with that, we have no more
7 evidence.

8 CHAIRMAN WHITNEY: Thank you. All right, care
9 to start, Professor?

10 MR. JOYNER: Yes, Mr. Chairman. Can we
11 have a three-minute break?

12 CHAIRMAN WHITNEY: Sure.

13 (Whereupon, a brief recess was taken
14 from 5:27 p.m. to 5:36 p.m.)

15 CHAIRMAN WHITNEY: Professor, have at it, sir.

16 MR. JOYNER: Yes, Mr. Chairman. We would
17 move at this point--we would move at this time this protest
18 be dismissed pursuant to 163-182.10(d)(2)(b) in that the
19 protest does not---the protester does not present
20 substantial evidence of a violation of the election law or
21 other irregularity or conduct, and specifically the
22 allegations that have been made in Paragraph 7 of its
23 complaint.

24 And that the results of this would not cast any
25 doubt on the results of this particular election. That if

1 you kind of drop all of the votes that is alleged to be
2 involved here, that it would have no impact on the outcome
3 of the election that is at issue here nor any other election
4 that may be--that was on the ballot.

5 CHAIRMAN WHITNEY: Mr. Hamilton.

6 MR. HAMILTON: Yes.

7 CHAIRMAN WHITNEY: Do you care to add to that or
8 present any evidence or will you stand with the Professor?

9 MR. HAMILTON: I agree with the--I would
10 support the Professor's motion. I certainly think it's well
11 founded. We don't intend to present any evidence. I would
12 like to address the Board briefly--

13 CHAIRMAN WHITNEY: Absolutely.

14 MR. HAMILTON: --in summation at the
15 conclusion, but we don't intend to present any evidence.

16 CHAIRMAN WHITNEY: Well, okay. Then we had
17 agreed to a rebuttal, right? So why don't we just grab some
18 final remarks from each of the three, and even though I'm
19 allocating ten minutes, please don't feel obligated to use
20 them all. We've heard a lot, and we appreciate the good
21 work of each of the counsel here. So I will start with Mr.
22 Knight or--

23 MR. KNIGHT: In fairness to counsel for the
24 PAC, I had just asked him prior to the Board gaveling back
25 in whether they intended to ask testimony from witnesses,

1 and I'm not sure if he was indicating to the Board whether
2 or not he was not going to call witnesses or whether he was
3 just going to stand on his motion. So can you--

4 MR. JOYNER: We're going to stand on our
5 motion, and at this point our determination is not to
6 present witnesses, but the motion is at the conclusion of
7 the protester's evidence and that is to dismiss for their
8 failure to satisfy any burden or produce any evidence that
9 would evidence a violation of any statute.

10 CHAIRMAN WHITNEY: Thank you. Help yourselves,
11 gentlemen.

12 REBUTTAL BY MR. BRANCH:

13 MR. BRANCH: Thank you, members of the
14 Board. Again, my name is John Branch, here on behalf of the
15 protester and the McCrory committee. In summation, in
16 hearing the motion from Mr. Joyner which argues that there
17 is no substantial evidence supporting the protest, and the
18 protest here--I think we need some clarity with regard to
19 exactly what the issues are with respect to the ballots that
20 are subject to this protest.

21 The issues are that there are signatures that
22 there is an expert report and expert testimony in the record
23 that match on a number of absent--mail-in absentee ballots
24 for the identification of the candidate for the Soil and
25 Water Conservation position as well as similar signatures

1 on the absentee ballots themselves that may match the same
2 handwriting on the listed name, Mr. Graham, as the candidate
3 for Soil and Water Conservation supervisor.

4 Now , Mr. Joyner's motion raised an interesting
5 point which is what is the burden here on the protester?
6 Is the burden fully on the protester in order to prove every
7 indicia of fraud that is raised in the complaint? Our
8 position is no. Our position is not that we can go through
9 and look at--as the protester, look at every ballot at issue
10 and identify for finality whether or not each specific
11 ballot has been fraudulently cast.

12 What we are asking, however, is that the Board
13 do that. We can't see the original ballots. We can't see
14 the names. We can't hide the names to the ballots. The
15 Board can. And that evidence is in front of the Board in
16 terms of the documents that have been brought over from
17 Bladen County, the original absentee ballots. The original
18 absentee ballot envelopes, and I would imagine that the
19 Board has some additional information in the form of the
20 investigation that's being conducted into this matter.

21 And so I understand Mr. Joyner's position with
22 regard to saying, well, the protester, an individual
23 candidate in a campaign, have not met and proved with, you
24 know, well, 100 percent certainty that fraud occurred.

25 The challenge here is that the Board has the

1 cards, and what we're asking is for the Board to look at the
2 evidence and on a ballot-by-ballot basis determine whether
3 or not fraud did occur.

4 We think there is an indication of fraud that
5 rises to the level that makes that analysis and that word
6 appropriate here. Now, in entertaining that analysis, I
7 think it's important to go back and look at the statute and
8 what the statute requires with regard to assistance on
9 absentee ballots.

10 And there are actually two statutes that are at
11 issue here because there's the 163-226.3(a)(1) which is the
12 statute in the absentee ballot article describing
13 circumstances which rise to felonies, and that's an
14 important point for this Board because the legislature saw
15 fit to codify into law that a failure to comply with certain
16 election rules rises to the level of a felony.

17 There is heightened importance attached to
18 compliance with these rules, heightened importance. The
19 rule here is, quote, "It shall be unlawful for any person
20 except the voter's near relative or the voter's verifiable
21 legal guardian to assist the voter to vote an absentee
22 ballot."

23 An argument was raised in opening, well, what does
24 "assist the voter to vote an absentee ballot" mean. Is
25 writing in the name of the Soil and Water Conservation

1 candidate but not actually bubbling in the vote--does that
2 constitute assistance in violation of this statute?

3 The testimony from the Bladen County Board of
4 Elections member in front of you today was this: That that
5 ballot is not voted in Bladen County without---for write-in
6 candidates without both the bubble and the name. And so you
7 have to have both of those elements in order for the ballot
8 to get voted.

9 If the ballot only has the bubble, it is not
10 counted for that candidate. So you have to have both
11 elements. So because in order for the ballot to get
12 counted, you have to have the name and the bubble, the fact
13 that the names were filled in absolutely qualifies as
14 assisting in filling out a ballot in violation of 163-
15 226.3(a)(1).

16 I'd also point the Board--

17 JUDGE BAKER: I'm sorry. May I ask a
18 question?

19 MR. BRANCH: Yeah. Certainly.

20 JUDGE BAKER: This came up earlier, and I
21 apologize for my confusion earlier. Is it your--are you
22 saying that for a write-in ballot to be counted, not only
23 there has to be the name written in, but also a marking
24 indicating that?

25 MR. BRANCH: That is correct.

1 JUDGE BAKER: How about 163-182.1 talking
2 about the principles in counting official ballots, talking
3 about write-in votes, "shall be counted in general elections
4 if all of the following are true, (a) it's written by the
5 voter or by a person authorized to assist the voter, (b) the
6 write-in vote is not cast for a candidate who's failed to
7 quality, or (c) the voter's choice can clearly be
8 determined." Why do you not count it if it can be clearly
9 determined?

10 MR. BRANCH: I believe there is case law,
11 and if you can give me one moment.

12 (Pause)

13 MR. BRANCH: And I don't have copies of
14 this unfortunately, but--

15 JUDGE BAKER: Is it a case decision?
16 Because I don't know of a case decision. I am just going
17 by the statute. Even in the administrative code it says,
18 "If a voter has done anything to a ballot other than mark
19 it properly with a pen and pencil, it shall be counted,
20 unless such action by the voter makes it impossible to
21 determine the voter's choice."

22 Obviously the voter wrote a name in; it's the
23 voter's choice.

24 MR. BRANCH: And one of the reasons I am
25 making the argument is not just because of the testimony

1 from here, but I'm looking at a case, In re: Protest of
2 Rocky Midget, 2 November 1993. It's 117 NC App 213, and the
3 case dealt with whether 36 ballots that had no name written
4 on them should have been counted for a write-in candidate.

5 So they punched the write-in without filling out
6 the name, and the county board counted the votes for the
7 write-in candidate, and the Court of Appeals overturned
8 that.

9 And then secondly, there were votes that were
10 counted as well, and it went through a number of other votes
11 where there were different iterations of the write-in
12 candidates name, R. Midget, Midget, Rocky, things like that,
13 and the language of the opinion indicated that those ballots
14 were both--they both had the different iterations of the
15 name and they had been punched.

16 And so there were both elements of that, and my
17 understanding from the election officials--from the
18 testimony today, and my experience, is that you have to have
19 both the name and actually filling in, circling, or marking
20 the bubble next to the name in order for it to be counted.
21 I don't think just writing in the name is sufficient.

22 JUDGE BAKER: So the decision really then
23 is case law rather than statute, because I can't--after we
24 started talking about it, I started looking, and I can't
25 find the statute. So it's a case law decision.

1 MR. BRANCH: That's the basis for what--

2 JUDGE BAKER: Thank you. That answers my
3 question.

4 MR. LAWSON: The case is 1993, and the
5 statute was written first in 2001, and subsequent to that,
6 it was our administrative code thereafter, so it's a pre-
7 dating case. It pre-dates the statute.

8 JUDGE BAKER: Oh. So, well, is it still up
9 in the air then?

10 MR. MALCOLM: Well, I'll tell you what, the
11 training--the training that I've been through over the years
12 agrees with what you're saying, involved the oval, as I call
13 it. The oval has to be (unintelligible) for the board to
14 determine--

15 JUDGE BAKER: I'm sorry to delay. Thank
16 you.

17 MR. BRANCH: No problem.

18 MR. LAWSON: I waited--potentially direct
19 your question to Ms. Strach because there is--the fact that
20 that is the practice in some counties has not been
21 consistent with our legal interpretation.

22 We are bound to conduct an analysis of voter
23 intent even when inappropriately marked, just like the
24 statute says and just like repeated different words in our
25 code.

1 JUDGE BAKER: So it is kind of up in the air
2 then. Apparently different counties do different things,
3 maybe?

4 DIRECTOR STRACH: I would hope not. We--our
5 instruction is they have to look at voter intent, and if
6 they can't determine voter intent, they should count the
7 ballot.

8 JUDGE BAKER: Even if it's not an oval
9 marked in and the names written in?

10 DIRECTOR STRACH: Even if there's not an oval.

11 JUDGE BAKER: Okay. Thank you.

12 CHAIRMAN WHITNEY: It was clear in the Washington
13 State manual.

14 MR. BRANCH: But I think the distinction
15 with the matter we have here though is by the indications
16 being that the name on the Soil and Water Conservation
17 write-in can be filled in not by the voter but by somebody
18 else. That does not rise to the level of being an
19 indication of the voter's intent. So that, I think,
20 distinguishes this matter from the case law.

21 So backing up a little bit, the framework we have
22 here makes it a felony for someone to inappropriately assist
23 the voter with regard to filling out the absentee ballot.
24 And we've got--the situation we have here is there are
25 similar names that were--or excuse me, what appears to be

1 the same people filled out the Soil and Water Conservation
2 candidate names that may have been witnesses as well, and
3 in addition if there was assistance rendered the application
4 in the absentee ballot return envelopes did not reflect that
5 someone assisted the voters with the ballots.

6 Now, we believe that this rises to the level
7 to--such that the Board should look on a ballot-by-ballot
8 basis and determine whether or not for each absentee ballot
9 for which was--had the write-in vote for Mr. Graham, the
10 Soil and Water Conservation in Bladen County, the Board
11 should determine whether or not those votes were lawfully
12 cast.

13 Now, I think the challenge next comes is for those
14 votes that the Board determines are not lawfully cast or
15 there were problems in casting them, what is the remedy?
16 What happens next?

17 And I will concede that it is not a very clear
18 question under the statutes, but what I have a--what I think
19 is challenging here is if the Board finds that there is
20 substantial evidence of fraud in connection with the casting
21 of certain ballots, I'm not sure that there is a way for the
22 Board to bifurcate that fraud out and somehow take the
23 position that, well, you know, the Soil and Water
24 Conservation piece may have been fraudulently written in
25 there, but we're going to count the rest of the ballot.

1 Our expert testified today that there is no
2 forensic way to try and go in and identify whether the same
3 person bubbled in all of the different bubbles on a ballot.
4 You're not able to do so.

5 And so for the ballots that this Board does the
6 analysis, which we certainly hope it will, and if it finds
7 that many of these ballots have been improperly or
8 fraudulently cast, which we think will happen, that
9 fraud--there's no evidence from which the Board can say,
10 well, wait a second; that fraud doesn't apply to the
11 entirety of the ballot.

12 CHAIRMAN WHITNEY: One minute.

13 MR. BRANCH: So that is why the remedy that
14 we're asking for today is that to the extent that the Board
15 makes this finding of fraud with respect to the casting of
16 the ballots, those ballots should not be counted.

17 Now, I'm aware of the last issue with regard to
18 there's some due process concerns in not counting those
19 ballots. I think--I have done a little bit of research on
20 it. I can't represent to the Board that it's exhaustive.
21 I do question exactly what process is needed, but I do
22 understand there is an increased time line on this.

23 But I do think that it's very fundamental that
24 there's been evidence presented today in terms of hard
25 documents, an expert witness, and a member of the Bladen

1 County Board of Elections would at least provide enough
2 evidence to allow this Board to look at a very detailed
3 level as to whether fraudulent votes have been cast, and if
4 those votes have been cast, we believe that they need to be
5 retrieved. Thank you.

6 CHAIRMAN WHITNEY: Thank you, Counsel.
7 Professor.

8 REBUTTAL BY PROFESSOR JOYNER:

9 MR. JOYNER: Mr. Chairman and members of
10 the Board, at this stage in the proceeding, the statute
11 calls for a showing of substantial evidence to support their
12 claim that the specific statutes, as outlined in the
13 complaint, have been violated.

14 In this instance, there is absolutely no evidence,
15 not a scintilla of evidence of a violation of the election
16 laws, not at all. So the question of whether there is
17 substantial evidence or not is really way--a level way above
18 where we are at in the evidence that has been presented.

19 And for this Board to conclude (1) that there is
20 substantial evidence would require them to engage in rank
21 speculation and conjecture and surmise about what may have
22 happened where there is no evidence that it did in fact
23 happen.

24 So fraud deals with intentional conduct which is
25 designed to deceive a person, intentional conduct, and there

1 is absolutely no evidence that's been presented here which
2 speaks to whomever, these unidentified people and their
3 intent to deceive anyone.

4 What we do have is evidence that there were a
5 number of ballots anywhere between 160 to 180-some ballots
6 in which the name Franklin Graham was inserted in the write-
7 in section of the ballot.

8 And with respect to them, those from the forensic
9 document examiner, they could separate those into seven
10 different groups of people that had similar handwriting, no
11 identification being given as to any one individual that fit
12 any group that was identified.

13 In addition to that, the evidence would further
14 say that it is impossible based on the record that we have
15 here to connect these 178 certifications to specific ballots
16 that's been cast.

17 Now, what we do know is that Franklin Graham
18 received 3,700 votes, 3,740 absentee votes. That's the only
19 way he could've gotten any votes. So you had 3,700 people,
20 yet we're here to deal with this notion of 178 people
21 allegedly who are unknown and undetermined that committed
22 some fraud that doesn't exist.

23 CHAIRMAN WHITNEY: Now, can you not write in a
24 candidate on election day?

25 MR. JOYNER: You can.

1 CHAIRMAN WHITNEY: I'm just trying to figure out
2 what the other 3,000 some odd--

3 MR. JOYNER: But they would also be write-
4 ins. They would all be write-ins--

5 CHAIRMAN WHITNEY: Right.

6 MR. JOYNER: --in order for--to get to
7 that--

8 CHAIRMAN WHITNEY: I'm just trying to figure out,
9 you know, where the big difference might have come from.

10 MR. JOYNER: The representative from the
11 Bladen County Board of Elections said that marking the
12 ballot, as they've been trained and as they do, is concluded
13 when you fill in the bubble. Merely writing the name is not
14 marking the ballot, and I think that testimony was very
15 clear.

16 And the absentee application and certificate that
17 I have before me says that the only time that a person has
18 to certify to assisting a voter is that when they have
19 assisted the voter in marking his or her ballot, and again,
20 that's not my language. That's the language that I'm
21 reading from the official form from the State Board of
22 Elections. Or if they've assisted the voter in signing this
23 certificate. And there is absolutely no evidence that
24 anyone of these people, unknown people at this point, did
25 either one or both that's been presented here.

1 Instead the attorney wants you to become
2 investigators and go back behind closed doors now and look
3 for what they are unable to present, and that is
4 inappropriate, improper, and untimely to do here.

5 The other witness certification with respect to
6 those people who signed as witnesses indicates that they
7 gave assistance to the voter. Implicit in being a witness
8 is giving assistance, and the certification that is
9 presented here indicates that they are acknowledging that
10 they are given assistance to that absentee voter. So--

11 CHAIRMAN WHITNEY: One minute, Professor. One
12 minute.

13 MR. JOYNER: So when the person signed as
14 a witness, they are saying that I have given to this
15 absentee voter assistance which is what the form provided
16 by the State Board of Elections provides.

17 So where you have this occurrence, no matter how
18 many times it occurs, it is still lawful and within the
19 guidelines that's been established by this State Board of
20 Election, and that, ladies and gentlemen of the Board, is
21 not fraud. That is not illegal.

22 That does not violate any statute that we have in
23 the code of--the election code for the State of North
24 Carolina. Rather what should happen is that the Bladen
25 County Improvement Association ought to be commended for

1 having members and volunteers who go out into the community
2 to help people who are unable to go into the polls on
3 election day to vote and spend their time working with them
4 to make sure that that their participation in the political
5 process is made real. But, no, what we are doing here is
6 demonizing them for their patriotic service to our state and
7 the voters to ensure that their right to vote is respected
8 and they're allowed to exercise it.

9 CHAIRMAN WHITNEY: Thank you, Professor. Mr.
10 Hamilton.

11 JUDGE BAKER: Could I ask a question before
12 Mr. Hamilton?

13 CHAIRMAN WHITNEY: Of course.

14 JUDGE BAKER: Were these votes counted for
15 Franklin Graham? There's been some speculation as to
16 whether or not they should've been counted unless they were
17 bubbled. Were they counted in this election?

18 DIRECTOR STRACH: Bladen County is probably--
19 may be presently counting the write-ins from absentee. So
20 we could certainly check and see, but they were doing it
21 yesterday and were going to do that early today too.

22 JUDGE BAKER: So I take it, it's the
23 contention of some party they shouldn't have been counted.

24 MR. BRANCH: Mr. Baker, if I may, the
25 number of absentee ballots that we got are for Mr. Graham

1 is the mail-in absentee number from the State Board of
2 Elections website which were counted for him as of, I
3 believe, election night. So they are at least posted
4 preliminarily on the State Board's website as being counted.

5 JUDGE BAKER: Okay. Thank you.

6 CHAIRMAN WHITNEY: Has Bladen County canvassed
7 yet or is that what they--

8 DIRECTOR STRACH: They're waiting on us. They
9 waiting on us. What they were tallying were write-ins from
10 their absentee by mail, not from election day.

11 MR. KNIGHT: And that's what we're
12 discussing.

13 MS. AMOROSO: Where are those ballots now?

14 DIRECTOR STRACH: We have them, but because they
15 use a DS200, they have an image log that they can use to
16 count the write-ins without even having that.

17 CHAIRMAN WHITNEY: Mr. Hamilton.

18 REBUTTAL BY MR. HAMILTON:

19 MR. HAMILTON: Thank you, Mr. Chairman and
20 members of the Board. The standard--I'm going to start, as
21 I started before, with the law because that's what
22 constrains us, that's what unites us, that's the task before
23 this board.

24 For a protest to succeed, the protester must come
25 forward with substantial evidence sufficient to change the

1 outcome of the election. I didn't bother with the citation
2 because we all know that. That is not a small hurdle,
3 substantial evidence, nor is the second prong, change the
4 outcome.

5 This protest appears to allege improper assistance
6 and nothing more. The prong that we didn't hear much about
7 at all in this complaint is that a single individual
8 witnessed multiple ballot envelopes. That's not a crime.
9 That's no illegal. It's not even argued to be illegal. It
10 was just apparently thrown in because the numbers were
11 there, and if you add that up, you get to a larger number
12 of ballots that we can cast a cloud over, but looked at in
13 the cold light of day, it's perfectly appropriate, and I
14 agree with Professor Joyner that's something you should
15 applaud, the volunteers who went out there and helped people
16 cast their ballots.

17 But even if you consider this protest as a case
18 of improper assistance, the case fails there too. We've
19 looked at--we've talked about the statute earlier, Gen Stat
20 163-226.3, and that's the one that specifically talks about
21 when you can have assistance and with a providing clause
22 that if there's no near relative or guardian available, the
23 voter may request some other person to give assistance.

24 So it specifically contemplates that someone other
25 than a relative or a legal guardian can provide that

1 assistance.

2 Now, of course, we know they're supposed to sign
3 the--the assistant sign. I hadn't noticed the language
4 before in the witness certification there. But what--in any
5 event, however you construe that statute, in the event that
6 a voter--in the event that there is evidence placed before
7 you of a violation of the statute, Section B requires the
8 Board upon receipt of a sworn affidavit from a resident of
9 the county attesting to first person knowledge of a
10 violation, then you are to refer to the district attorney.

11 As I said at the outset, there's no punishment
12 here in the statute for the voter. The voter isn't the one
13 who did something wrong. But it's the person providing the
14 improper assistance who is committing the felony who is to
15 be investigated and in an appropriate case then considered
16 for prosecution.

17 But we don't have that here. There is no sworn
18 affidavit. There's no sworn affidavit of a resident of the
19 county. There's no sworn affidavit of a resident of the
20 county with first person testimony of a violation, and even
21 if we put that aside, there's no witness that came in here
22 that said, "I saw him do it; he's the one who did this."
23 It's not there.

24 The evidence in fact is really remarkably weak.
25 The protester's expert qualified it to the point that I

1 would submit that that opinion would be excluded in every
2 court, federal or state, in this country because there's no
3 opinion there.

4 What she said was, there are indications the
5 ballots within each group was written by a single writer,
6 and then qualified it further: Because of the existence of
7 handwritten and hand-printed Franklin Graham entries, and
8 the difficulty in comparisons, it's possible that the
9 Franklin Graham entries in one or more groups may be the
10 product of one writer.

11 That is not an opinion that's admissible. That's
12 not an opinion you can rely on. That's not evidence.
13 That's speculation. That's fine. I mean--I don't mean that
14 by criticism of the expert who is no longer here. It's not
15 her fault.

16 I mean as she pointed out, this is far from a
17 typical examination. She didn't have the original
18 documents. It wasn't a well lit room. She didn't have her
19 microscope with her. She didn't have time to do a forensic
20 examination and create the sort of reliable evidence that
21 one would expect.

22 She weakened it so much that this Board can't
23 really rely on it and shouldn't really rely on it to strip
24 hundreds--over 100 voters of their right to vote, the most
25 precious freedom that we have as freeborn Americans, to cast

1 a vote. And on this evidence there's simply not a
2 sufficient record to do that.

3 So what else is there? No witness testified to
4 personal knowledge. No individual has been identified as
5 the culprit. They could've subpoenaed those people and
6 called them here, put them under oath, and made them take
7 the Fifth or not. But they didn't.

8 The statute here tells you what to do. If you
9 find based on your conclusion, your review of the evidence,
10 your own investigation that there is evidence to suggest
11 something went on here, then you should refer it to the
12 district attorney and let that individual conduct a thorough
13 investigation.

14 Of the ballots, these voters are all registered
15 voters. They're all citizens. They all did everything
16 right. There's no question that they signed their ballot,
17 that the ballot envelope itself was perfectly acceptable.

18 You've heard from the county Elections Board
19 official that that was their process. It would never have
20 even gotten to this stage if they weren't registered,
21 qualified to vote and did everything right on the envelope.

22 So I'd submit to the extent that you've got a case
23 of improper assistance, the statute tells you what to do.
24 The ballots should be counted.

25 CHAIRMAN WHITNEY: Thank you, Mr. Hamilton.

1 MR. KNIGHT: Mr. Chairman, can I ask a
2 question, please?

3 CHAIRMAN WHITNEY: Sure.

4 MR. KNIGHT: Mr. Hamilton reminded me about
5 the Board's own investigation, and so I would like to ask
6 whether or not this Board will take any information and
7 consider any information about the Board's ongoing
8 investigation of this exact incident, what's been going on
9 in Bladen County, and my understanding is that they had one
10 or more, I think more, investigators in Bladen County for
11 several days immediately after the election, and so that's
12 information obviously no one among us have had access to.

13 And we spoke to Mr. Lawson--I've actually spoken
14 to Mr. Lawson so much I don't remember when it was, but he
15 said that oftentimes the Board will take such information
16 or receive such information in a situation. Quite frankly
17 you have more evidence at your disposal.

18 And I believe--I'm really just asking a question,
19 so I'm not going to get in an argument. I mean I'm not
20 trying to make an extra argument. Thank you.

21 CHAIRMAN WHITNEY: Thank you. Any question from
22 any member of the Board to the folks out here or are you
23 ready to start deliberating?

24 MR. MALCOLM: I've got a question for Mr.
25 Knight.

1 CHAIRMAN WHITNEY: Okay.

2 MR. MALCOLM: So based on the information
3 that we are aware of at the State Board of Elections, do we
4 have any voter that is represented to us that a ballot was
5 marked and submitted to the Bladen County Board of
6 Elections, say the ballots would have--that say Graham on
7 them, that for the other races did not express their voter's
8 intent? Do we have any information to suggest--

9 DIRECTOR STRACH: No, we don't.

10 CHAIRMAN WHITNEY: Okay. I'll let the judge
11 start.

12 JUDGE BAKER: I think in the future service,
13 I'm going to request to be seated in a different area. It
14 seems like I end up getting called on early all the time.

15 Well, it seems to me, to be perfectly honest, what
16 we have before us are--is evidence of questionable handling
17 of ballots in the Soil and Water Conservation race. We have
18 handwriting that attracted the attention because there was
19 a written in candidate. It got to be very familiar to the
20 people tallying the votes.

21 I wonder if there had been on--in the proper place
22 an indication of assistance, if that would have gotten the
23 attention that--I wonder then if the main problem in this
24 case was actually a person not putting their name in the
25 assistance, not that I think the assistance would

1 necessarily have been valid because I believe there are only
2 certain conditions under which assistance such as writing
3 the name of a candidate in would be allowed, but it has not
4 been presented to me at all. I've not heard anything about
5 what I consider to be extremely important on whether a
6 ballot should be counted or not or totally discarded and
7 that is the signature of the voter.

8 There does not appear to be any dispute of the
9 signatures of the voters on all the ballots, and I think
10 that's something that I would have to hear before I would
11 want to throw out a lot of ballots.

12 It is certainly sounding questionable about the
13 Soil and Water Conservation supervisor race in Bladen County
14 in 2016, but the write-in candidate did not succeed. The
15 candidate who was printed on the ballot actually was the
16 prevailing candidate.

17 So I'm wondering what other than for us to examine
18 all the ballots, what remedy we might really seriously
19 consider, and if we examine all the ballots and if we
20 determine that on the ballots there's the write-in candidate
21 for the Soil and Water Conservation race and in fact the
22 handwriting is on many, many same ballots by a few people,
23 and if we determine then that the proper thing would have
24 been for the person who is assisting in that absentee ballot
25 who signed as a witness who have indicated that they were

1 assisting, and then if we further indicate that this person
2 had such disability that they needed someone to write the
3 name of the candidate in, then it should be counted and then
4 it was all right, but otherwise there is something not good
5 about that race, but fortunately democracy prevailed and the
6 candidate on the ballot did win.

7 I really can't see how we could be expected to
8 discard all of the ballots in that race, though, when we
9 have ballots that were signed by a--by the voters. I don't
10 see how we could deprive them of their vote to vote for
11 every other race because we have some pretty serious
12 misgivings about the Soil and Water race which fortunately
13 turned out all right anyway.

14 If we look at all the ballots one by one, I think
15 that's what we're going to see. We're going to see a lot
16 of similar writing for Franklin Graham. We're going to see
17 a lot of ballots that should have had assistance on the--in
18 the appropriate place, and then even then there would still
19 be questions about it, but we're not going to see any
20 ballots that I know of that don't have a voter's signature
21 on them, and we don't have anyone before us at all who has
22 said, "I didn't--that is my absentee ballot, and I didn't
23 intend to vote that way."

24 We do have one person who said that they weren't
25 permitted to vote which was a mistake. They should have

1 been allowed to vote provisionally, and then that should
2 have been investigated. So that was a mistake in Bladen
3 County, but that was just, what, three votes, I think.

4 I'm sorry, I've been skimming through he statutes
5 repeatedly trying to find the remedy that's being asked for
6 here and throwing out an entire ballot because of the
7 assistance is not proper and I can't do it, and even then
8 I don't know how many we would throw out. Would we throw
9 out 167? Would we throw out the 400 that we mentioned
10 earlier? Surely we wouldn't throw out 3,000 and something.
11 There's been nothing to indicate that that I know of. So
12 I guess I just sit here kind of puzzled. Thank you.

13 CHAIRMAN WHITNEY: Dr. Kricker.

14 DR. KRICKER: Yes. I certainly agree with
15 the Judge. I see from the evidence the evidence presented
16 simply showed that write-in signatures matched witness
17 signatures on the envelopes.

18 This is the--for at least the claim of the
19 protest, and there are indications that there may have been
20 a problem with inappropriate assistance. But you can't
21 blame the voter if there were inappropriate assistance, and
22 I would absolutely agree that these folks need to be
23 counted.

24 CHAIRMAN WHITNEY: Mr. Malcolm.

25 MR. MALCOLM: I too, Judge, I think during

1 the last five hours it seems like you and I especially have
2 been asking a lot of questions perhaps supportive of each
3 other about this notion of the oval, and I agree with you,
4 Ms. Strach, absolutely. As a county board member, that was
5 the standard, and we would look at ballots when they were
6 mismarked or not marked properly or something was written
7 and the oval wasn't--you're absolutely right; we try to
8 determine the voter's intent.

9 I too struggle in trying to understand how we
10 could discard thousands of votes, hundreds of votes as a
11 minimum, when there is no question about, nor has there been
12 any evidence admitted or proffered even in your protest,
13 sir, about anything to do with the actual voters casting the
14 ballots themselves. So I agree with you, Judge, in that
15 respect.

16 I say all that; I'm pretty clear in my mind, but
17 I do think some folks need to do some further looking down
18 in Bladen County. Now, Bladen County is down in my
19 neighborhood; it's down in southeastern North Carolina, and
20 you folks who have heard me speak before know that it
21 bothers me greatly for matters to come from the southeastern
22 part of the state because that's where I'm from, and I get
23 a little personally offended about matters coming to this
24 Board from Robeson, Bladen, Scotland, and all of those
25 counties' matters that come before us.

1 And so at the end of this discussion today,
2 irrespective of what this Board determines as it relates to
3 the protest, I will be making a motion that any and all
4 information that this Board has in its possession shall be
5 forwarded to the United States Attorney for the Eastern
6 District of North Carolina for him and her to make the
7 determination whether they think something inappropriately
8 happened.

9 And you'll notice that I'm not referring to the
10 district attorney from Bladen County, and the reason I'm not
11 is because there were federal races on the ballot. That's
12 different; that's a different matter than what Judge Baker
13 has talked about, and what I think in my mind I cannot vote
14 today to discard hundreds of ballots from individuals for
15 which I think they cast a lawful ballot.

16 CHAIRMAN WHITNEY: I diverge a little bit from
17 my three colleagues. I ask the question, are we supposed
18 to ignore votes in other contests and just allow that to
19 count even on ballots that were apparently tainted by
20 wrongdoing? We did have the testimony of a handwriting
21 expert.

22 So my thought would be to hold the disputed 167
23 ballots out of the canvass and due to the time frame
24 considerations we're all familiar with, allow the Bladen
25 County Board of Elections to go ahead and canvass the

1 remainder of the ballots less the 167.

2 Madam Secretary.

3 MS. AMOROSO: Okay. Well, what happens to
4 the other ones that the handwriting expert was unable to
5 look at? Weren't there several hundred in addition to the
6 ones that were talked about here today? You want to keep
7 those--you would keep those as is? I just--I'm asking you
8 a question, Mr. Chairman.

9 CHAIRMAN WHITNEY: I think she testified about
10 167.

11 MS. AMOROSO: All right, and I know she had
12 time constraints. I want to clear up one thing. The term
13 "mark" has been talked about today a number of times. Just
14 to clarify, the definition of a mark, and we're talking
15 about the oval or writing the name in. It's a visible trace
16 or impression, a line or a spot, also a symbol, name, or
17 other identifier, especially a name, a logo, et cetera.

18 So again, we mince words around here quite often.
19 I like to go to my dictionary which is quite helpful, so I
20 threw that out just for further clarification.

21 Now, in terms of the evidence here today, I would
22 like to also say that I didn't see any evidence here today
23 of the PAC assisting voters in nursing homes or other health
24 disabled individuals. So that's all conjecture. And to me
25 that was merely hypothetical, and I know you get out the

1 vote and doing the absentee ballots and the voter drives.

2 People do like to vote at health clubs that are
3 unable to complete the ballot on their own, but I do
4 question the validity and the integrity of actually checking
5 the box off or if you're assisting a voter, and there are
6 strict rules that we have in the statute book to prevent
7 that, and even so, the legislature, I guess in the last year
8 or two, also prevented folks in nursing homes--there are
9 additional rules now where somebody that works in a nursing
10 facility cannot witness or help anybody with a ballot.

11 So there are some protections, so there's a lot
12 or there's a little bit more here than meets the eye.

13 The other comment I'll say is sadly voter fraud
14 is not a high priority for the DA's office, state or
15 federal, and it's great that we have it available here, but
16 I don't ever see anything being referred over to the DA for
17 this type of event here, irregularities, fraudulent
18 activity. It's obviously out there because we keep coming
19 back here and having similar issues about it.

20 Anyway, in terms of what the evidence presented
21 here today, I--for one, I would love to see the ballots.
22 I would like to see for myself what we're actually looking
23 about. You know, we talked about it, the attorneys. I
24 haven't seen it.

25 The protester, I don't know if he--he didn't see

1 them either. And they're not being made available in Bladen
2 County if I'm correct. And even actually Durham County,
3 they're still waiting to look at the ballots absentee
4 ballots there. I know it's difficult. Identifiers need to
5 be redacted and we're in a crunch time right now.

6 We're in a crunch because we have the canvass on
7 the 9th, I believe that's the drop dead date. So everything
8 is a little bit more complicated than usual, I guess, based
9 on the time line.

10 However, again, I think there is a problem here
11 that's been demonstrated. I would love to see the ballots.
12 So I don't know that anybody else is interested, but that's
13 where I'm standing right now.

14 CHAIRMAN WHITNEY: Thank you. Do I have a
15 motion?

16 MR. MALCOLM: Mr. Chairman, I make a motion
17 that the protest brought from Bladen County by the
18 individuals represented by Mr. Branch and Mr. Knight, that
19 protest should be dismissed because there was not
20 substantial evidence of a violation of election law or other
21 irregularity or misconduct sufficient to cast doubt on the
22 results of the election, and therefore that we order this
23 protest be dismissed, and once that motion is done, we'll
24 have another motion based on my earlier remarks.

25 CHAIRMAN WHITNEY: Do I have a second?

1 MS. AMOROSO: Second.

2 CHAIRMAN WHITNEY: Any discussion?

3 (No response)

4 CHAIRMAN WHITNEY: All in favor say aye.

5 (Three votes in favor)

6 CHAIRMAN WHITNEY: Opposed, no.

7 (Chairman Whitney and Ms. Amoroso vote no.)

8 CHAIRMAN WHITNEY: Motion carries. Petition

9 dismissed. We have another motion.

10 MR. MALCOLM: Mr. Chairman, I make a motion
11 that this Board gather and prepare to make available to the
12 United States attorney for the Eastern District of North
13 Carolina any and all information in our possession, notes
14 and otherwise, regarding the election that took place in
15 Bladen County, North Carolina, concerning the federal
16 election for November 8, 2016, and make that--make that made
17 available immediately.

18 CHAIRMAN WHITNEY: Do I have a second?

19 MS. AMOROSO: Second.

20 CHAIRMAN WHITNEY: All in favor say aye.

21 (Unanimous vote in favor)

22 CHAIRMAN WHITNEY: Opposed, no.

23 (No response)

24 CHAIRMAN WHITNEY: Motion carries unanimously.

25 Okay. Thank you everybody for your participation. We have

1 another hearing. We'll take a ten minute recess.

2 (Whereupon, a brief recess was taken
3 from 6:33 p.m. to 6:45 p.m.)

4 CHAIRMAN WHITNEY: We're back to order. In re:
5 Protest of Kenneth Register. Want to tell me exactly what
6 we're doing here?

7 MR. LAWSON: Also out of Bladen from a very
8 recent dismissal for failure to show probable cause. So we
9 kicked out, not after a hearing on the merits, but that a
10 preliminary. So they have a right of appeal because there's
11 substantial overlap of fact, there was some tabulation
12 allegation submitted in the original protest, we figured
13 that we should get it up to you because we didn't want it
14 to delay canvass and canvass has to accomplished.

15 CHAIRMAN WHITNEY: So is this a probable cause
16 hearing or just a hearing?

17 MR. LAWSON: It's an appeal from that so
18 if you think that the lower three, either abused a
19 discretion or improperly applied a legal standard, then you
20 could proceed to a hearing, but I would advise you to just
21 go ahead and hear it first. You can see what--

22 CHAIRMAN WHITNEY: Why don't we let Mr. Register
23 present his case.

24 (Whereupon,
25 KENNETH REGISTER,

1 having first been duly sworn, was
2 examined and testified as follows:)

3 CHAIRMAN WHITNEY: State your name for the
4 record, please.

5 MR. REGISTER: Ken Register, Jr., Candidate
6 for District 3 County Commissioner in Bladen County.

7 CHAIRMAN WHITNEY: Thank you. Proceed.

8 MR. REGISTER: Well, I'm here to state that,
9 yes, I did get turned down or dismissed in Bladen County at
10 the county level, but the--their argument or reason for
11 turning me down or dismissing was because my protest
12 consisted of the absentee ballots argument, and they would
13 not hear it because the State advised them that they could
14 no longer talk about absentee ballots.

15 So that being one of my major arguments or a
16 portion of my protest, they would not hear it. So we
17 decided to escalate and appeal it to the state level.

18 The other portion of mine, substantial evidence
19 or they showed--said I showed lack of substantial evidence
20 to hear was the malfunction at the early voting polls at the
21 Bladen County library. And that was the memory stick issue.

22 There was a swap in memory stick on the third day
23 of early voting. And during the--I filed a complaint in
24 front of--that the Board heard there. I don't remember
25 exactly what day it was. It is--it should be in your

1 package. But at that date they said that their--they had
2 conversed with a professional or to some extent said that
3 swapping a memory stick in one sentence and ten minutes
4 later it totally changed.

5 In the first--the first explanation they said that
6 swapping a memory stick would in fact change the vote or
7 could alter the votes, that it could become corrupted, and
8 they could lose votes or add votes or it could just mix it
9 up, and then 15, 20 minutes later in the same meeting it
10 totally changed. That it couldn't be--it would not corrupt
11 it, would not change it; no votes were altered.

12 So I'm asking the Board to please consider at
13 minimum a hand-eye count because of this glitch. I don't
14 think it's too farfetched to go with District 3, and that's
15 another thing; if you read on my original protest, I had
16 asked the Bladen County Board to consider a state level.
17 On my appeal I have reduced that to further complicate
18 things for Mr. Cooper and other candidates that are going
19 to be affected by the canvass, to reduce mine down to a
20 District 3 consideration which will consist of a lot less
21 work by the county if they do a recount or a hand-eye count,
22 and I think that's--I'm showing a little consideration
23 myself there. I think we should move forward with that.

24 Any glitch during early voting or during election
25 day I think constitutes a hand-eye count. I don't think on

1 a District 3 level that's too many--that's too many votes
2 to count.

3 CHAIRMAN WHITNEY: Who is Heather Register?

4 MR. REGISTER: That is one of the--that is
5 the prior protest; that's the Caitlin Croon or Croom and
6 Matthew Mathis ordeal. That was the ballot that they
7 witnessed that was spoke of in the previous protest.

8 MS. AMOROSO: Is she related to you?

9 MR. REGISTER: No, ma'am.

10 MS. AMOROSO: Oh, okay.

11 CHAIRMAN WHITNEY: That's all I'm getting at.

12 MS. AMOROSO: No relation.

13 MR. REGISTER: No.

14 CHAIRMAN WHITNEY: Okay. That's fine. Thank
15 you. You had a comment about--

16 MR. MALCOLM: It just seemed--it seems like,
17 unless the one county member that's here--it seems like we'd
18 need to hear from the county directly. He's using the words
19 like "memory stick." Of course, we know that--maybe he's
20 referring to the PCMCIA card.

21 CHAIRMAN WHITNEY: Why don't you come up and
22 stand at the podium with Mr. Register and answer Mr.
23 Malcolm's questions, please, sir.

24 MR. MALCOLM: So are you--is this gentleman
25 behind you, is he from Bladen County as well?

1 MR. HEHL: I'm the Democratic Party
2 chair.

3 MR. MALCOLM: Oh, okay. Okay. So are you
4 familiar with this issue?

5 MR. HEHL: Yes, I am.

6 MR. MALCOLM: Do you want to just sort of
7 tell us your--

8 MR. HEHL: So what we understand is this
9 is the first time that we've used the DS200, and the--I
10 guess the rep that sold us the machines or the technical
11 advisor, whatever, told Cynthia that when--during early
12 voting the process for doing those machines was to shut the
13 lid, leave the machine on during the early voting, take the
14 ballots back to the office for keeping up with what we're
15 supposed to, but what they--I guess they didn't know or they
16 didn't inquire well enough, but what would happen is every
17 so often that machine would send an audit log into that
18 memory stick.

19 And on Monday or Tuesday--I think it was Monday,
20 before the polls opened, they started to do whatever they
21 were going to do that morning, and then the machine was
22 saying the memory stick was full.

23 At that point I think Cynthia either contacted or
24 the State or contacted them shortly thereafter, but she went
25 down there, and at the advisement of the State, replaced the

1 memory stick, put a new memory stick in and secured the
2 original memory stick, kept the ballots secure, and then we
3 were advised after the Saturday before election--we actually
4 did it on Monday about 11:00 a.m.--we called the same judges
5 down there, and they took the original ballots that were run
6 on the Friday--Thursday, Friday, and if they ran any on
7 Monday, I don't remember; I can't answer to that one without
8 telling you it's possibly fictitious information. But I do
9 know that the ones that were secured before the memory stick
10 was changed were secured.

11 On the Monday before the election those were run
12 back through the same machine with the second memory stick,
13 so all the ballots were accounted for on the one memory
14 stick in there, and the original memory stick was never put
15 into the system.

16 MR. MALCOLM: So would that be--and Kim, if
17 you would help me. That would be the equivalent--what he
18 just described under the M100 has--and Mr. Chairman, I
19 don't--I refer to it as the emergency bin; in that there's
20 an emergency pen. If something breaks down on the machine,
21 power goes out, you can always put ballots in the emergency
22 bin.

23 It seems like what he's describing--and Judge, I
24 don't know if you're familiar with what I'm talking about.
25 There's a little--and Ms. Amoroso, there's a little-

1 basically a little space you can open, so if something
2 happens with the power, you can keep putting ballots in the
3 machine and they're secured if something goes wrong
4 basically with the tabulator.

5 So that sort of what they did in a different kind
6 of way. Is that correct? And did they talk to anyone here
7 for direction?

8 DIRECTOR STRACH: He's right; they did. I spoke
9 with Cynthia about this. She had called out help desk when
10 this happened, and what should have been done, but she had
11 not been told that, is to power the DS200 down at night, but
12 what she was doing--it was secure because what was--she was
13 closing it and locking it, so no one could vote any ballots.

14 They secured the ballots away, and then once she
15 was able to talk to some ES&S technical staff, they were
16 able to see that putting all the ballots were on one memory
17 stick--they used a memory stick.

18 MR. MALCOLM: It is a memory stick.

19 DIRECTOR STRACH: Right, would be the proper way
20 so that you could keep all those ballots on one memory stick
21 for that site. So she followed protocol and she did contact
22 us immediately.

23 MR. MALCOLM: Sir, do you have any reason
24 to believe--this Board has talked recently about during the
25 one-stop period every night there's what's referred to as

1 a reconciliation that goes on and during the entire one-stop
2 period there's reconciliation? And that's when the local
3 Board--they know how many ballots they started with, they
4 know how many's in each packet, they open it, they count at
5 the beginning and at the end, and they look at the number
6 and the count on the machine. Do you have any information
7 or are you of the opinion that the reconciliation numbers
8 are off?

9 MR. REGISTER: No, but I have reason to
10 question because I haven't been given any proof and I've
11 asked for it from the County Board. Is there in fact proof
12 that filling this memory stick and a glitch like this taking
13 place will not alter the count, not necessarily the number
14 of votes but the way they are voted, the way they are
15 tallied? And no one can answer that except for that first
16 meeting it was told that, yes, that could possibly happen,
17 and then, like I say, 15 minutes later the answer was no.
18 And that was in fact--came from, directly from Mr. Brian
19 Hill.

20 MR. MALCOLM: Sir, do you know whether y'all
21 have gone through a reconciliation process or whether
22 there's been any issues with lost ballots or problems with
23 the audit?

24 MR. HEHL: From what I understand, the
25 reconciliation was done; it was done every night, and I've

1 not seen anything that says that a reconciliation was
2 (unintelligible due to a cough); I've not seen anything that
3 showed anything different between the ATVs and the actual
4 total number of voted votes.

5 And I will confirmatively said that there--I did
6 say that it's a piece of equipment; it's a piece of
7 machinery; it's a computer; there's always the possibility
8 of anything messing up, but the redundancies behind that did
9 show that we were able to do reconciliation.

10 Now, if he asked for--to actually look at the
11 ballots, I don't remember that. I'm not going to say that
12 he didn't say that, but I don't remember that. I did step
13 out for a minute. I think I went to use the bathroom at one
14 of those meetings.

15 But we do know that the reconciliation happened.
16 We do know that the ATVs matched the total number of votes,
17 so as a Board, we have no reason to believe that any of the
18 votes were incorrectly cast.

19 MR. MALCOLM: How many ballots--how many
20 votes are you down by, sir?

21 MR. REGISTER: 400. Approximately 400.

22 MR. MALCOLM: Do you know how many ballots
23 were cast on the Thursday, Friday, and the part of the
24 Monday?

25 MR. REGISTER: The majority of the early

1 voting took place the first three days.

2 MR. MALCOLM: Do you know how many ballots
3 were cast?

4 MR. REGISTER: Roughly 1,200. There were 400
5 solid average per day.

6 MR. MALCOLM: At this one location.

7 MR. REGISTER: Yes, sir. I was there every
8 day, every single day.

9 MR. MALCOLM: And this is the home location?

10 MR. HEHL: That sounds about right. I
11 would say that sounds about right. Without actually looking
12 at the numbers, I know--I know Bladenboro and Dublin was one
13 stop, were only five hours each day, and they probably were
14 200 a day, so I can see Elizabethtown being--I'd say that's
15 probably correct. I don't know that it would be 1200, but
16 without looking at numbers, I have no way of knowing.

17 I know that we probably did 5,000 in the two weeks
18 at Elizabethtown, so--and it was pretty consistent from
19 beginning to end.

20 MR. REGISTER: If I can go back on that,
21 there was an average of 400 per day during early voting at
22 this one location. The first three days were the stronger.
23 It was 430, 460, 470, and then at 300, 380, so the first
24 three days were without a doubt the strongest.

25 MR. MALCOLM: Other than this memory stick

1 issue, are you aware of any other things that you think are
2 irregularities or problems during the process, sir?

3 MR. REGISTER: Well, that's part of my
4 argument here as far as wanting the recount. When I asked
5 for the recount or the hand-eye count, there was two hand-
6 eye count, I guess, requested by the State or mandated by
7 the State, so they picked two locations to do. Is that
8 possible?

9 DIRECTOR STRACH: Correct. The sample audit
10 count.

11 MR. REGISTER: Right. Those were done at
12 the two smallest sites; they did hand-eye count with no
13 reported or no requested complaints at those two locations.
14 If there was one to pick, a location to pick, I would think
15 by Board, should have been picked where some of those
16 problems were reported at, and those--there was three
17 different locations out of 17 in Bladen County that reported
18 complications, and that being the White Oak precinct, the
19 Central precinct, and the early voting precinct, which was
20 the Bladen County hospital--I mean the Bladen County
21 courthouse--library.

22 But that being the larger of the number, that
23 first three days was crucial to my campaign as well as
24 others. That could have very well affected other county
25 commissioners or on a state level or whatever, but my

1 argument is for the District 3 Bladen County commissioner.

2 I don't think because of that glitch no one else
3 has called attention to it. I've questioned several others
4 about it. I think if we narrow it down to that level,
5 that's not too many votes to ask to make sure that just as
6 importantly as those absentee ballots are to the individuals
7 that went to the polls to vote and were turned away because
8 someone else had illegally voted for them. Those complaints
9 are in my file also for those absentees.

10 That is the second thing that I've asked them for
11 is that Ms. Croon and Mr. Mathis, those absentee ballots
12 that those two individuals witnessed, that each one of the
13 votes should not be used.

14 MS. AMOROSO: How many votes are you talking
15 about now, with the Croom and Mathis?

16 MR. REGISTER: Roughly 108.

17 MR. MALCOLM: Can you explain to us the
18 audit he's referring to?

19 DIRECTOR STRACH: I can. By statute, after each
20 election, there has to be a sample audit count, and that is,
21 it's a random--actually a computer program picks two voting
22 locations out of every county, and it could be a one-stop
23 site and a precinct; it could be two precincts; it could be
24 two one-stop sites, but it's totally random. It's not based
25 on any information from the county.

1 In Bladen actually it's sort of--some counties had
2 one-stop sites who had large numbers of voters and had a
3 hand-eye count. Sometimes they were 3,000 votes. So there
4 was no information used other than it just being random
5 which is what the statute requires.

6 MR. REGISTER: You're saying it was randomly
7 picked or those sites were chosen by the county?

8 DIRECTOR STRACH: No, the--it's randomly picked
9 here at the State. We actually did it--we did a public
10 viewing of it on the internet, of the selections being
11 chosen randomly. So, no, it's not the counties. They have
12 no decision making process.

13 MR. REGISTER: As far as which precinct it
14 was going to be done in.

15 DIRECTOR STRACH: It was completely random here.

16 MR. REGISTER: Okay.

17 MS. AMOROSO: It was based on a computer,
18 random thing.

19 DIRECTOR STRACH: Random, right.

20 MS. AMOROSO: You press a button and--

21 DIRECTOR STRACH: Right.

22 MS. AMOROSO: Yeah, okay. Just so you
23 understand that.

24 MR. REGISTER: Right. I just feel because
25 of the possibility because it has not been eliminated out,

1 that there's not error there. There is room for error. He
2 stated there was room for error there, and I think for an
3 accurate count, with the votes that close--400 sounds like
4 a large number, but that's only six percent, I think, of the
5 actual total number of voters that were in District 3
6 because it's one of your larger districts in Bladen County.

7 MS. AMOROSO: So you didn't make the one
8 percent automatic recount; is that correct then?

9 MR. REGISTER: Ma'am?

10 MS. AMOROSO: No. The one percent recount,
11 you didn't--

12 MR. REGISTER: No, no. My argument is
13 strictly because of error on the process.

14 MS. AMOROSO: So the tabulation error you're
15 questioning and as well as the absentee ballot--

16 MR. REGISTER: Those were the two parts, yes,
17 ma'am. Those are the two parts, and the absentee ballot
18 case was because--and there was a lot of evidence brought
19 here that I had no clue would surface.

20 I had no clue that Mr. Dowless was going to admit
21 hiring the two--well, one that he admitted hiring--that
22 were--in fact witnessed three or four of the ballots where
23 the folks could not vote because they--when they got to the
24 polls, they were turned away.

25 MR. MALCOLM: Are you talking about the

1 three individuals, the family, the Baldwin?

2 MR. REGISTER: Correct, the Baldwins and the
3 Heather Register.

4 MR. MALCOLM: Is that the first time you've
5 heard that, today, during this earlier hearing that that
6 individual worked directly for him?

7 MR. REGISTER: Not at all. It's very well
8 known. In Bladen County it's very well known around--

9 MR. MALCOLM: Well, we're going to help,
10 hopefully, getting to the bottom of some of that stuff, sir.

11 MR. REGISTER: I hope so. I hope so. He's
12 very well known in the political world there.

13 MS. AMOROSO: Are you a sitting elected
14 official at this point? Are you currently a sitting
15 official?

16 MR. REGISTER: No, ma'am. If I won, I
17 wouldn't be protesting.

18 MS. AMOROSO: You wouldn't. No, no, no, you
19 were--let me rephrase my question. Have you been an elected
20 official in the past in Bladen?

21 MR. REGISTER: No, ma'am.

22 MS. AMOROSO: So this is your first run for
23 office?

24 MR. REGISTER: Yes, ma'am.

25 MS. AMOROSO: Okay. Thank you.

1 CHAIRMAN WHITNEY: I'm sorry, I'm just reading
2 some of these letters.

3 MR. SNIDER: Could I ask a question?

4 CHAIRMAN WHITNEY: Yes.

5 MR. REGISTER: This is Mr. Ben Snider.

6 MR. SNIDER: I'm the Chairman of the
7 Democratic Party.

8 MR. MALCOLM: Come on up, sir.

9 MR. SNIDER: I used to be a--

10 CHAIRMAN WHITNEY: For Bladen County?

11 MR. SNIDER: Yes.

12 (Whereupon,

13 BEN SNIDER,

14 having first been duly sworn, was

15 examined and testified as follows:)

16 CHAIRMAN WHITNEY: And you are, again, for the
17 record?

18 MR. SNIDER: Ben Snider, Bladen County
19 party chair.

20 CHAIRMAN WHITNEY: Thank you, Mr. Snider.

21 MR. SNIDER: Of the Democratic Party.

22 CHAIRMAN WHITNEY: All right.

23 MR. SNIDER: I know--I know--I asked the
24 question at the preliminary hearing down in Bladen County
25 that resulted in the dismissal. After that I asked what

1 ballots they had sent to this Board, and they said they
2 could not answer that because they had been told not to say
3 anything about it.

4 And so I had no way of discovering what ballots
5 involving Ms. Croom and Mr. Mathis, whether you had those
6 or not. I don't think there's any way you can decide this
7 without those ballots, because there's three complaints that
8 involve those same people, all of which were sent up to the
9 State, and I understand there's an investigation going on
10 with those ballots too.

11 So my question is, if you don't have those, then
12 you don't really know what's going on as far as that part
13 of it's concerned. The absentee ballots, you have one which
14 the absentee ballot went to a post office box, and that's
15 the Register ballot, and they--when they went to vote, they
16 weren't allowed to vote, and they weren't given a
17 provisional, and so the ballot, the absentee ballot, we
18 haven't been able to look at that either, that particular
19 absentee ballot.

20 And then you have Ms. Baldwin which that one got
21 overdone today, and there's no reason for me to repeat that,
22 and then there was Ms. Register who is his mother who filed
23 a complaint because someone, a white woman which later
24 turned out to be Ms. Croom, came to her house and told her
25 she was from the Bladen County Board of Elections and there

1 to assist in taking absentee ballots if somebody wanted to
2 vote.

3 So you have three incidents of what probably
4 should be, if not fraud, at least breaking several laws.
5 And so that's why Ken is here asking that all those ballots
6 be thrown out because of these incidents, and they're the
7 same people. That's all I have.

8 CHAIRMAN WHITNEY: How many ballots are we
9 talking about?

10 MR. SNIDER: He said 108.

11 CHAIRMAN WHITNEY: This is this commissioners
12 race of partisan and nonpartisan race?

13 MR. SNIDER: It's partisan.

14 CHAIRMAN WHITNEY: Okay.

15 MR. REGISTER: 108.

16 MR. MALCOLM: So even if we threw those--
17 hypothetically if this Board was to throw all those out, did
18 I hear you right, that you're down by 400 votes?

19 MR. REGISTER: Yes, sir.

20 MS. AMOROSO: It was 433.

21 MR. REGISTER: So 433.

22 MR. MALCOLM: So how would that affect the
23 outcome?

24 MR. REGISTER: That along with--there's two
25 portions of--that along with the possible error in the early

1 voting with the memory stick issue; that together--I think
2 the early voting should substantiate it, but that alone is
3 about a hundred and--what'd he say, 108 votes, that's 216
4 votes.

5 MR. MALCOLM: You're not asking for us to
6 throw out any votes. You're just asking for a recount; is
7 that right?

8 MR. REGISTER: I would be satisfied for a
9 recount because if the recount--if the recount, the hand-
10 eye count didn't indicate the far--you know, the difference,
11 then--

12 CHAIRMAN WHITNEY: Where did you get your number
13 108?

14 MR. REGISTER: That was what she was--
15 reported in District---

16 CHAIRMAN WHITNEY: She who?

17 MR. REGISTER: My--I thought it was my
18 position. That is the absentee ballots that--

19 CHAIRMAN WHITNEY: She reported it to--

20 MR. REGISTER: --came in for her in District
21 3.

22 MR. MALCOLM: And you're alleging all those
23 are--

24 MR. REGISTER: Ms. Croom and--

25 MR. MALCOLM: Mathis?

1 MR. REGISTER: Yeah, Mathis were the only
2 ones doing absentee ballots in District 3 for Mr. Dowless.
3 Those were the two working district--

4 MR. MALCOLM: But you heard the testimony
5 earlier from him. Do you agree that there's nothing illegal
6 about going out and getting people to complete an absentee
7 request?

8 MR. REGISTER: Absolutely, but these three
9 were--the signatures were forged on them.

10 MR. MALCOLM: Those three. So are you
11 asking us to leap from those three to 108?

12 MR. REGISTER: Have you got the other 108?
13 That's what I'm asking. These have been investigated.

14 MR. MALCOLM: Yes, sir.

15 MR. REGISTER: And I'm not privy as well as
16 the county can't speak about it, so if you can't provide me
17 with evidence, we have to assume that the others are.

18 MR. MALCOLM: Yes, sir. I appreciate you
19 saying that that way. I appreciate you saying it that way
20 instead of--I appreciate you saying it that way. I think
21 that's an accurate way of saying it.

22 CHAIRMAN WHITNEY: Is there a representative of
23 the other candidate here or--

24 MR. REGISTER: No, sir.

25 CHAIRMAN WHITNEY: --anybody else that wishes to

1 speak?

2 (No response)

3 CHAIRMAN WHITNEY: Okay. If you could just stay
4 there, and Judge, we'll start at this end this time.

5 (Laughter)

6 CHAIRMAN WHITNEY: All right, Madam Secretary,
7 what are your thoughts?

8 MS. AMOROSO: Well, I hear the issue about
9 the tabulation issue and the absentee ballot mill situation
10 that we've heard about this morning, or this afternoon, I
11 should say. I don't know here that even if we ordered
12 another--if we ordered the recount, it sounds undeterminate,
13 but I know he's not requesting a protest under that section
14 exactly, but I think we can use 182.12, so that's sort of
15 my preliminary thoughts is that it's not outcome determinate
16 at this point, but I'd like to hear some of the others. So
17 I'll pass it back down.

18 CHAIRMAN WHITNEY: I may be missing something,
19 and if I am--you're 400 votes behind, you've alleged that
20 108 votes are tainted, but I'm kind of missing the
21 arithmetic here, but--

22 MR. REGISTER: That is one and one, one
23 problem with absentee votes, one problem with the error in
24 the early voting, That's two, two different issues.

25 CHAIRMAN WHITNEY: Okay. So you're saying the

1 stick would make up the 292--

2 MR. REGISTER: It may.

3 CHAIRMAN WHITNEY: Could.

4 MR. REGISTER: It very well could, and I
5 think it would if given the opportunity to make--several
6 more than that.

7 CHAIRMAN WHITNEY: But you're asking for a
8 recount for your whole district.

9 MR. REGISTER: I want to shed some light on
10 that. I was endorsed by the Bladen County Improvement.
11 There are in the first three days of early voting, out of
12 that--out of that--1200 is a good figure. 75 percent
13 minimum of those votes I was there from start to finish
14 every day. Those were minority votes. Minorities
15 predominantly vote Democrat.

16 CHAIRMAN WHITNEY: And you're a Democrat.

17 MR. REGISTER: Absolutely. Registered
18 Democrat. I do not vote straight ticket. I vote for the
19 person, but I am a registered Democrat. And there's a lot
20 of evidence. I'm not here just going and saying I lost by
21 400; I'd like a second chance. That's not the case.
22 There's a lot more evidence, but I'd like to get you home
23 before 12 o'clock.

24 CHAIRMAN WHITNEY: Mr. Malcolm.

25 MR. MALCOLM: I apologize on behalf of

1 Bladen County Board and this Board that some of your
2 concerns couldn't be answered down at the county level
3 because this Board exercises authority to grant the Bladen
4 County matters.

5 I want to apologize that you've been really--the
6 reason I said I appreciate your other comments, because
7 you've been in the lurch, and that's not the way that's
8 supposed to be.

9 MR. REGISTER: I understand.

10 MR. MALCOLM: But also what I said earlier,
11 I meant those things. It's my sincere hope that the matter
12 we just referred to earlier which we've referred--and I'll
13 say this, we've referred matters before, and not to be ugly,
14 I believe some of those matters should have led to people
15 being prosecuted.

16 MR. REGISTER: Absolutely.

17 MR. MALCOLM: They did not. I can't
18 control, this Board can't control local district attorneys,
19 and we can't control the U.S. Attorney's Office.

20 CHAIRMAN WHITNEY: Or the SBI.

21 MR. MALCOLM: Or the SBI, in that case;
22 you're exactly right, because that was part of the problem
23 with the matter that I made the motion--and I'll say it on
24 the record; I made the motion for Robeson County. It's my
25 belief it got stuck between the local district attorney and

1 the SBI.

2 MR. REGISTER: Can I make a statement real
3 quick? And I'll go just--

4 MR. MALCOLM: Sure.

5 MR. REGISTER: --that you added with the
6 previous protest. You asked Mr. Dowless who contacted him
7 when he--how did he learn about Ms. Register and Ms.
8 Baldwin's complaints. He stated to you that Ms. Cynthia
9 Shaw contacted him.

10 That is another reason that I'm requesting this
11 hand-eye count after the problem at early voting was because
12 she also was the individual that made the mistake to have
13 this memory stick replaced, swapped out.

14 MR. MALCOLM: Yes, sir.

15 MR. REGISTER: So.

16 MR. MALCOLM: And what I was going to--what
17 I can't do is despite, you know, your perception of what
18 should have happened--and I appreciate you acknowledging
19 that you're endorsed; there's things--I think that's a good
20 way of presenting that. If I were you, I'd say the same
21 thing. I need more, and I think the Board needs more. We
22 need some evidence.

23 You know, your belief that something happened
24 doesn't get us, in my opinion, over the threshold to order
25 a recount. That's just me. I'm just one of five. I'm just

1 one of five, sir.

2 I respect you coming here today and regardless of
3 the outcome I look forward to seeing your name on another-
4 -in a newspaper in the near future.

5 MR. REGISTER: I appreciate that. My whole
6 argument was there's not proof that it didn't; there's no
7 one that the Board, the County Board to challenge to say and
8 prove that there was not a glitch or not an error with that
9 swap, and it is--when it's been said that it's possible, why
10 can't we eliminate that curiosity?

11 What is it going to hurt? We've wasted county tax
12 dollars in worse ways than that. So I don't feel--I think
13 we should--we would be doing the Bladen County voters a
14 justice to see, instead of--

15 (Electronic broadcast interruption.)

16 MR. MALCOLM: I have no idea. I apologize.

17 MR. REGISTER: --instead of not proving
18 beyond a reasonable goal or doubt that that which did in
19 fact possibly tell us voter error.

20 CHAIRMAN WHITNEY: Dr. Kricker.

21 DR. KRICKER: Well, I'm in sympathy with
22 what you're saying. However, you know, again, as far as I
23 can see, very standard procedures were followed by the
24 county. We're going to have in pretty much any election
25 difficulties with equipment, and what we want to see, of

1 course, is indications that these are not losing votes or
2 somehow ending up with more votes than what we started with,
3 and what the Board essentially said was the number of
4 ballots counted in the memory stick matched the number of
5 voters.

6 MR. REGISTERED: Where has that been--where has
7 that been proven? Have you seen evidence of that?

8 DR. KRICKER: The Board, when they did their
9 reconciliation, they match the applications to vote, which
10 are paper applications filled out and signed by the voters,
11 and they have those, and they count those and they match it
12 against the number on the machine.

13 MR. REGISTER: Does the State have a
14 reconciliation like on hand?

15 DR. KRICKER: I believe the State--

16 MR. REGISTER: Can we take a look at it?

17 DIRECTOR STRACH: The County performs a
18 reconciliation after each night, but one of the things that
19 we can tell is we can see how many ballots have been voted
20 and compare that to voter history which is the scanning of
21 the ATV that Dr. Kricker's talking about. That's a way of
22 seeing do the number of votes match the number--the total
23 that we show showed up today.

24 MR. REGISTER: Okay.

25 DR. KRICKER: So basically those match. The

1 number are correct. There's no evidence from anyone that
2 changing out a--either a memory stick or any kind of mobile
3 memory source is going to change the number of votes for a
4 specific candidate, is going to change the results of a
5 race.

6 MR. REGISTER: Let's say a specific
7 candidate. It could change for all.

8 DR. KRICKER: Or change for all of them
9 without changing the numbers of voters. I just don't see
10 where there's any evidence for that.

11 MR. REGISTER: Do you see where there's
12 evidence that it didn't?

13 DR. KRICKER: Well, I think that it's harder
14 to prove--this is a standard procedure where if you have a
15 problem with the memory stick, you get a new one, and they
16 looked through the ballots. They got the expected count.

17 I just don't see the evidence that--there's no
18 evidence presented and no evidence that this process would
19 do what you say. We can speculate it could've done
20 anything; anything could've happened.

21 MR. REGISTER: But you can eliminate that
22 speculation with a hand count.

23 DR. KRICKER: Except that, again, you know,
24 we're using up resources, and it cannot be that every time
25 a candidate loses an election, that we go through these

1 extra processes when we have so many safeguards.

2 MR. REGISTER: Well, let me ask you, why
3 don't you take a chance and do it and prove in the future
4 that it's not necessary to do it. If you have got cases
5 where you haven't done it in the past--

6 DR. KRICKER: I believe--

7 MR. REGISTER: --why not?

8 DR. KRICKER: --the law says there must be
9 good and substantial reason to do a recount, that there must
10 be some evidence--

11 MR. REGISTER: A problem--

12 DR. KRICKER: --instead of a speculation,
13 and that's the difficulty here.

14 MR. REGISTER: I'm not speculating where
15 there weren't error. If I were standing here and saying
16 there was no error, but I would like a recount because I
17 lost by 400 votes, by 400 votes, totally different.

18 There was error here on the county elections part,
19 Board of Elections. On the direct--if there's one competent
20 person on a board, it should be at minimum the director.
21 That--it wasn't a board member that was lack of being--

22 CHAIRMAN WHITNEY: Okay, I want to give the Judge
23 a chance to talk.

24 JUDGE BAKER: I won't take very long, sir.

25 I've heard the argument about the 108 votes that, as I

1 understand it, that were presented by the, I'll call, any
2 allegations of impropriety intended, the Croom and Mathis
3 mill--I think it's been referred to in those terms before--
4 --to be 108 votes, then there's the memory stick tabulations
5 that I've heard about, but I really haven't heard anything
6 about any problem that really that caused.

7 It was an irregularity, but we know a lot of
8 things still about that. We know--well, we have no evidence
9 that there was any difference in numbers, between the voted
10 and end result.

11 For us to assume then that there was a problem
12 with the memory tabulations, we also would have to assume
13 since that it not before us, that somehow the number would
14 stay the same but the vote itself would be changed somehow
15 within--

16 (Feedback on PA system)

17 JUDGE BAKER: The burden of proof for us to
18 take action I think has to be more than there's not proof
19 that there wasn't an error. If that was the proof, we would
20 have to do every precinct in every county of the state. I
21 mean there has to be a showing to us pursuant to the
22 statutes that there was a problem.

23 My problem on this Board is that I'm trying to
24 follow these statutes as closely as I can, and sometimes
25 obviously it's not a very popular thing to do. But I can't

1 see a reason to order a recount. I'm sorry.

2 CHAIRMAN WHITNEY: Mr. Register, I'll give you
3 one minute to summarize and then we're done.

4 MR. REGISTER: I have nothing else to say.

5 CHAIRMAN WHITNEY: Thank you.

6 MR. REGISTER: I'll get you home like you're
7 wanting to go.

8 CHAIRMAN WHITNEY: Do I have a motion?

9 DR. KRICKER: I have a motion to dismiss the
10 protest for lack of evidence of any irregularities, any
11 difficulty that would change the outcome of the election.

12 CHAIRMAN WHITNEY: Do I have a second?

13 JUDGE BAKER: Second.

14 CHAIRMAN WHITNEY: Any discussion?

15 (No response)

16 CHAIRMAN WHITNEY: All in favor say aye.

17 (Unanimous vote in favor.)

18 CHAIRMAN WHITNEY: Opposed, no.

19 (No response)

20 CHAIRMAN WHITNEY: Motion carries unanimously.

21 All right, there's one final thing on the agenda.

22 Consideration of demand for mandatory recount. I'll ask

23 Madam Executive Director to walk us through that.

24 DIRECTOR STRACH: As we talked about the
25 canvass, we're trying to shoot the canvass for Friday. And

1 currently we only have Bladen County that has not canvassed,
2 and we've got the Durham County recount of the one-stop
3 sites that is currently going on now.

4 As soon as that is complete, whatever the results
5 are at the time, we'll need to open it up for any candidate
6 that's eligible for a recount to request that. My hope is
7 that Durham can wrap theirs up by Monday at 7:00, then we'll
8 have that, and then if there is a candidate that is still
9 eligible in this jurisdiction which would be a statewide or
10 something that's multi-district, that you'll open that up
11 and schedule the recounts to happen as quickly as possible.

12 So that's just sort to give you a status of where
13 we are and what our hopes and expectations are as to try to
14 wrap this up this week.

15 And I will tell you that you have received and
16 Veronica Degraffenreid--you have received a request from the
17 Durham County Board of Elections to extend the deadline from
18 Monday. Veronica has been there, and she will be there
19 through the continuation of the counting of the ballots.

20 I have told Chairman Bill Brian that if all of
21 the good efforts happened and they needed an extension, that
22 we would address it at that time, but I said my good will
23 was not enough. So I will let you know that if you wanted
24 to act on that, that's certainly something you could do.

25 MR. MALCOLM: I think without--correct me

1 if I'm wrong--the order that this Board signed the other day
2 did not give a specific deadline for them to complete a
3 recount and that we somewhat delegated that to you to get
4 it done.

5 CHAIRMAN WHITNEY: That seven o'clock--

6 MR. MALCOLM: It did say 7:00. I'm sorry.
7 The Board did say 7:00.

8 CHAIRMAN WHITNEY: I stuck that in.

9 MR. MALCOLM: Do we need to--yeah, I like
10 that. I mean obviously just from a few articles,
11 everybody's under a lot of pressure. My daughter's in here,
12 so I'm not going to say it. Everybody's under a lot of
13 pressure to get a lot of things done, and I think this Board
14 should fully authorize you to get it done because we need
15 to do what we're supposed to to finish this election by the
16 9th unless someone dutifully requests a recount and it
17 extends it. That's just my opinion Mr. Chairman. I don't
18 think we need to be involved in it.

19 CHAIRMAN WHITNEY: Well, my order stands at seven
20 o'clock Monday. And if we need to reiterate that to them,
21 but I am not up for an extension because it needs to be
22 done, and I'll--

23 DIRECTOR STRACH: We're going to do everything
24 we can to provide them whatever assistance they need, so
25 they'll meet that deadline.

1 CHAIRMAN WHITNEY: Well, that's right, and I
2 think we need to --

3 DIRECTOR STRACH: Veronica.

4 MS. DEGRAFFENREID: Yes.

5 DIRECTOR STRACH: And Veronica can probably give
6 us a--

7 CHAIRMAN WHITNEY: Yeah, please, Veronica.

8 DIRECTOR STRACH: She's been there all day.

9 CHAIRMAN WHITNEY: Yeah, I would love to hear
10 some good news.

11 MS. DEGRAFFENREID: We were able to count almost
12 20,000 ballots today in Durham County between 1:00 and
13 approximately six o'clock, with breaks, maybe about four
14 hours of counting. It averages about 400 ballots every hour
15 on those machines.

16 And so they're adding ten additional machines.
17 That will be there tomorrow. We're going to start counting
18 about nine o'clock in the morning and go until seven o'clock
19 in the evening. There's every expectation that we will be
20 done, that Durham County will be done probably early,
21 sometime early on Monday if not tomorrow.

22 CHAIRMAN WHITNEY: Great.

23 MS. DEGRAFFENREID: It's my, you know, every
24 anticipation that we'll be able--that they will be able to
25 meet the seven o'clock deadline.

1 MR. MALCOLM: What about this issue
2 supposedly that they're going to have to hand tally every
3 write-in ballot and it's going to take 36 hours. Can you
4 talk about--

5 MS. DEGRAFFENREID: That was just confusion as
6 we're going through the process of what they needed to do.
7 They will not be handling any write-ins. Those write-ins
8 have already been hand counted. They're write-ins. And so
9 this is just completely machine tabulation.

10 CHAIRMAN WHITNEY: Just please make it clear to
11 them that they do not have an extension.

12 MS. DEGRAFFENREID: We will.

13 CHAIRMAN WHITNEY: Okay?

14 MS. DEGRAFFENREID: Absolutely.

15 CHAIRMAN WHITNEY: Thank you.

16 MS. DEGRAFFENREID: Thank you.

17 CHAIRMAN WHITNEY: Mr. General Counsel, Madam
18 Executive Director, members of the Board--

19 JUDGE BAKER: One thought, Mr. Chairman.

20 CHAIRMAN WHITNEY: Yes, sir.

21 JUDGE BAKER: I would just like to say I
22 don't think I've ever seen a harder working group of people
23 than the employees of the North Carolina State Board of
24 Elections. It amazes me. They don't go home very often.
25 They work, it seems like, seven days a week, literally,

1 literally, seven days a week.

2 Hours--business hours are a commodity and a luxury
3 that are not known. It amazes me the work that these people
4 do, and it's because they have to do it. I'm so impressed
5 with the employees at the North Carolina State Board of
6 Elections, and I thank them for what they do.

7 CHAIRMAN WHITNEY: Well, I'm a witness to that
8 because I've been here at some off hours myself a good bit
9 lately and I'm never alone. Okay. I will entertain a
10 motion to adjourn.

11 MR. MALCOLM: So moved

12 CHAIRMAN WHITNEY: Do I have a second?

13 DR. KRICKER: Second.

14 CHAIRMAN WHITNEY: All in favor say aye.

15 (Unanimous vote in favor)

16 CHAIRMAN WHITNEY: Thank you everybody.

17

18

19

20 (Whereupon, the proceedings

21 concluded at 7:32 p.m.)

22

23

24

25

1 STATE OF NORTH CAROLINA

2 COUNTY OF ALAMANCE

3

4 C E R T I F I C A T E

5 I, G. Lynn Bodenheimer, Certified Verbatim
6 Reporter and Notary Public, do hereby certify that I was
7 present and served as court reporter for the foregoing
8 proceeding held at the North Carolina State Board of
9 Elections in Raleigh, North Carolina, on December 3, 2015;
10 that said proceeding was reported by me and transcribed
11 under my supervision; and that the foregoing two hundred and
12 fifty-two pages constitute a true and accurate transcription
13 of the proceeding.

14 I do further certify that I am not of counsel for
15 or in the employment of either of the parties to this
16 action, nor am I interested in the results of this action.

17 In witness whereof, I have hereunto subscribed my
18 name this 14th day of December, 2016.

19

20

G. LYNN BODENHEIMER
Certified Verbatim Reporter/
Notary Public No. 19942140002

21

22

My Commission Expires:

23

August 3, 2019