

STATE OF NORTH CAROLINA  
WAKE COUNTY

BEFORE THE STATE BOARD OF ELECTIONS

IN THE MATTER OF: CONSOLIDATED )  
PROTESTS OF ELECTION TO CITY OF )  
LUMBERTON COUNCIL DISTRICT 7 )  
BROUGHT BY LAURA B. SAMPSON and )  
LEON MAYNOR )

**ORDER**

THIS MATTER CAME BEFORE THE STATE BOARD OF ELECTIONS upon the request of the Robeson County Board of Elections (“Robeson Board”) from their hearing of protests brought by Laura B. Sampson and Leon Maynor regarding the election for the City of Lumberton Council District 7 (herein, collectively “Protest”). The State Board of Election heard this appeal on January 19, 2016 in Pembroke, during which the following appeared: the Laura B. Sampson, represented by counsel Adam Mitchell; Leon Maynor, represented by counsel Grady Hunt; Robeson County Board of Elections Chair Steve Stone, Robeson County Board of Elections Secretary Daniel Locklear, Robeson County Director of Elections G.L. Pridgen, and Robeson County Attorney Patrick Pait.

This Board conducted a review of all issues of law and based its decision on the record as a whole to determine whether there was substantial evidence to believe a violation of election law or other irregularity or misconduct occurred that might affect the outcome of the election or was sufficiently serious to cast doubt on the apparent results of the election. After reviewing the record and applicable precedent, and after hearing argument from the parties, the State Board finds, concludes and orders as follows:

FINDINGS OF FACT

1. Sampson filed protests before the Robeson Board on December 10, 2015 pursuant to G.S. § 163-182.9, incorporating also an initial protest filed November 24, 2015; and
2. Maynor filed a protest before the Robson Board on December 8, 2015 pursuant to G.S. § 163-182.9;
3. The Robeson Board heard the Protests in a hearing on January 4, 2015 and issued its order on January 15, 2015; and
4. All parties were notified of the hearing before the State Board of Elections;
5. One vote separated the top candidates in the election for the City of Lumberton Council District 7 race; and
6. State Board of Elections staff investigated allegations of election irregularities involving candidates for the City of Lumberton Council District 7 race; and
7. Uncertainty surrounded instructions given by Robeson Board staff during the recount process; and
8. The handling of the Protests by Robeson Board tainted the results of the election and cast doubts on its fairness.

CONCLUSIONS OF LAW

1. This State Board of Elections has jurisdiction to decide this matter pursuant to G.S. §§ 163-22, 163-182.12; and
2. The Robeson Board failed to issue its order in the manner prescribed by 8 NCAC 2.0110; and
3. There is substantial evidence to believe a violation of election law or other irregularity or misconduct occurred that affected the outcome of the election or was sufficiently serious to cast doubt on the apparent results of the election.

It is, therefore, **ORDERED**:

The Robeson Board shall hold a new election on March 15, 2016.

This the twentieth day of January, 2016.

A handwritten signature in black ink, appearing to read 'A. Grant Whitney, Jr.', is written over a horizontal line.

A. Grant Whitney, Jr., Chair  
State Board of Elections

1 NORTH CAROLINA BEFORE THE  
2 COUNTY OF WAKE STATE BOARD OF ELECTIONS

3

4 IN THE MATTER OF: |  
5 ELECTION PROTEST APPEALS |  
6 FROM THE NOVEMBER 2015 |  
MUNICIPAL ELECTIONS. |  
G.S. 163-182.11, 182.13 |

7

8

North Carolina Board of Elections

9

Auditorium of the Office for Regional Initiatives

10

115 Livermore Drive

11

Pembroke, North Carolina

12

13

TUESDAY, JANUARY 19, 2016

14

10:05 a.m.

15

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17

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Board members present:

20

Mr. A. Grant Whitney, Jr., Chairman

21

Ms. Rhonda K. Amoroso, Secretary

22

Mr. James L. Baker

23

Dr. Maja Kricker

24

Mr. Joshua D. Malcolm

25

Also Present:

26

Ms. Kim Westbrook Strach, Executive Director

27

Mr. Joshua Lawson, General Counsel

28

Mr. George McCue, Agency Counsel

29

Ms. Jackie Hyland, Public Information Officer

30

Ms. Joan Troy, Legal Analyst

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1 PROCEEDINGS 10:05 a.m.

2 CHAIRMAN WHITNEY: May I have your attention  
3 please. I'd like to call this meeting of the North  
4 Carolina State Board of Elections to order. I'm the  
5 Chairman Grant Whitney. I note that all members of the  
6 Board are present in unanimity.

7 To start with, I need to read a statement  
8 regarding ethics. The statement regarding ethics  
9 according to North Carolina General Statute 138-15(e):  
10 In accordance with the State Government Ethics Act, it  
11 is the duty of every board member to avoid both conflicts  
12 of interest and appearances of conflict.

13 Does any board member have any known conflict  
14 of interest or appearance of conflict with respect to any  
15 matter coming before the Board today?

16 (No response from the Board members.)

17 CHAIRMAN WHITNEY: I'll take that as a no.  
18 If so, please identify the conflict or appearance of  
19 conflict and refrain from any undue participation in a  
20 particular matter.

21 So I'll get that housekeeping out of the way.  
22 I'd like to rearrange the agenda. We are pleased to have  
23 Harvey Godwin here, the Chairman of the Lumbee Tribe.  
24 Where are you, Harvey? Okay. And we're glad to have you  
25 here with us. Come up and make a motion here.

1 MR. MALCOLM: I've got it ready.

2 CHAIRMAN WHITNEY: Yeah, please. Joshua will  
3 make a motion here.

4 MR. MALCOLM: I preparation for that  
5 motion, first on behalf of Chairman Kelly Blue and  
6 Chancellor Robin Cummings, I want to welcome the Board.  
7 This is one of the objectives of the chancellor and  
8 chairman, Chairman Godwin is to show our ability here  
9 locally to work with other agencies and other  
10 institutions in this state.

11 And to be honest with you this is not  
12 originally the idea where we were going to hold this  
13 meeting. We were going to hold it down at the tribal  
14 building which I think would have been symbolic in the  
15 fact that we're going to vote today on the motion I'm  
16 about to make.

17 For the council members or the Board members  
18 here, they've met--for the folks that are local, we  
19 gathered this morning right down the--right down in our  
20 board room, and each of these folks--most have never been  
21 to Pembroke before, or Robeson County for that fact,  
22 correct, Mr. Chairman?

23 CHAIRMAN WHITNEY: I've been to Robeson County  
24 plenty, but not to Pembroke.

25 MR. MALCOLM: Took a chance on their own

1 volition to look at the photos that are on the wall, and  
2 I just want to talk just for a minute about that. Those  
3 photos are seven photos of the seven men that founded  
4 this--founded UNC Pembroke over 129 years ago.

5           And I think it's absolutely appropriate today  
6 for the Board of Elections today, for North Carolina's  
7 only historical American Indian university and in fact  
8 the only American Indian designated institution in the  
9 United States of America that was founded by American  
10 Indians for American Indians to educate American Indians.  
11 I think that's all symbolic of the oath that we're about  
12 to take today.

13           So with that being in mind, Mr. Godwin, after  
14 we read this, I think maybe you could come up and shake  
15 the Chairman's hand on behalf of all the American  
16 Indians--on behalf of all the American Indians for this  
17 new recognition or the ability that we're going to bestow  
18 pursuant to North Carolina General Statute 163-166(e)(7).

19           I move that this Board adopt the staff's  
20 recommendation to approve the following tribal enrollment  
21 card for the following tribes other than those tribal  
22 cards that do not bear an expiration date. Those tribes  
23 shall include the Lumbee Tribe of North Carolina, the  
24 Meherrin Nation, the Coharie, and the Haliwa-Saponi  
25 Indian Tribe.



1           That's my formal motion, and what that will  
2 mean, for everyone in attendance, the members of those  
3 tribes will be able to use their tribal ID card effective  
4 March 15th for this election and all subsequent elections  
5 as a form of ID.

6           So those folks that are not understanding that,  
7 North Carolina adopted a Tribal ID--I mean an ID  
8 requirement. So these folks are going to be bringing  
9 their tribal IDs so they can cast their votes. So that's  
10 my motion.

11           CHAIRMAN WHITNEY: Do we have a second?

12           MR. BAKER: Second.

13           CHAIRMAN WHITNEY: Do we have any discussion?

14           (No response from the Board members.)

15           CHAIRMAN WHITNEY: All in favor say aye.

16           (Unanimous vote in favor of the motion.)

17           CHAIRMAN WHITNEY: Opposed, no.

18           (No response)

19           CHAIRMAN WHITNEY: Motion passes unanimously.

20           Chairman, congratulations.

21           (Applause)

22           CHAIRMAN WHITNEY: Okay. The election protest  
23 appeals from November 15th Municipal Elections, in re:  
24 Election Protest of Charles Gregory Cummings, Pembroke  
25 Mayor. Could I ask for the parties and their attorneys,

1 to the extent they're here, to come up front and tell me  
2 before we start testimony who you are and who you  
3 represent, please.

4 MR. WRIGHT: Can we stand, Mr. Chairman,  
5 right here?

6 CHAIRMAN WHITNEY: Certainly.

7 MR. WRIGHT: Don Wright, co-counsel with  
8 Grady Hunt. We represent Mr. Cummings who is the  
9 gentleman right here. Stand up, Mr. Cummings, Greg  
10 Cummings, candidate for mayor.

11 CHAIRMAN WHITNEY: Thank you. Now the other  
12 party.

13 MR. DIAL: Candidate Allen Dial.

14 CHAIRMAN WHITNEY: Thank you. Are you  
15 represented by counsel?

16 MR. DIAL: No, sir.

17 CHAIRMAN WHITNEY: Thank you. Okay. Well,  
18 I guess that you all are the moving parties. Could you  
19 come take the stand and/or you can stand there.

20 MR. DIAL: Mr. Chairman, I have  
21 considered your ethics statement. Mr. Malcolm is from  
22 this community, and I would like to ask him to rescuse  
23 (sic) himself from voting in this hearing.

24 MR. MALCOLM: I'll respond to that, Mr.  
25 Chairman.

1           MR. DIAL:           He knows both of the  
2 candidates. He's familiar with the community. When he  
3 responds, I have a basis that I would like to answer.

4           MR. MALCOLM:        With all due respect, Mr.  
5 Dial, if you're going to challenge my ability to be  
6 impartial, I think you've got a obligation to go ahead  
7 and say the basis for your challenge.

8           MR. DIAL:           Well, I base it on--

9           CHAIRMAN WHITNEY:   Will you stand up please.

10          MR. DIAL:           I base it on, I consider  
11 you being biased toward me for the reason of some signs  
12 that I put up on the University property--

13          MR. MALCOLM:        Yes.

14          MR. DIAL:           --or the railroad property  
15 of which inroads property I placed them. And I think  
16 you had something to do with the removal of them.

17          MR. MALCOLM:        Yes, sir.

18          MR. DIAL:           And then at a later date,  
19 you have Mr. Perez, Ms. Teresa, and Mr. Cummings on  
20 campus to have a tent set up and giving out all their  
21 material and stuff. So I think--

22          MR. MALCOLM:        I had them moved? I had  
23 them on campus?

24          MR. DIAL:           Well, they were on campus.  
25 You didn't have my signs out on the right of way that you

1 have, and I think by--did you remove them or did you have  
2 anything to do with removing them?

3 MR. MALCOLM: Is that a--

4 MR. DIAL: That's a question.

5 MR. MALCOLM: No, sir. Is that the basis  
6 of your challenge to me being impartial?

7 MR. DIAL: Yes, sir.

8 MR. MALCOLM: Once you get finished, I'll  
9 speak.

10 MR. DIAL: Okay.

11 MR. MALCOLM: Okay, you can take your  
12 seat. So let me make it clear for you and everyone in  
13 attendance: My name is Joshua Malcolm. I was born and  
14 raised on Bree (phonetic) Street in Pembroke. My  
15 grandfather was the first American Indian in Pembroke--  
16 is the first American Indian mayor in the United States  
17 of America.

18 I make my home at 308 Bree Street. I spent the  
19 last eight years working at my institution, University  
20 of North Carolina at Pembroke. Before that, I spent  
21 three and half years at Fayetteville State, the HVCU  
22 right down the road, and worked with some fine folks  
23 there.

24 I served this country for seven--about seven  
25 years in the United States Air Force. During that time

1 and every time subsequently, when you come before me  
2 yourself, Mr. Dial, when you challenge other people,  
3 including Mr. Cummings, who's your opponent in this race  
4 and other races, you've never questioned my integrity or  
5 my ability to be impartial.

6           As for my responsibility as the general counsel  
7 for University of North Carolina at Pembroke, if you go  
8 to my home right now, you'll see a 1997 Nissan Altima  
9 that I bought as a good deal from my brother. If you  
10 looked in the back seat, you'll see a yard sign, and  
11 guess what it says. Zeno's Italian Restaurant, the place  
12 where we're going to eat lunch from today.

13           That yard sign, guess where I discovered it?  
14 The same place I discovered your sign. The University  
15 of North Carolina at Pembroke has a policy. We do not  
16 allow signs to be put along our right of way. Every time  
17 I see a sign, I pull my vehicle over and I collect them,  
18 not just Allen Dial's sign, not just Zeno's sign. I  
19 would pick up Charles Graham's sign. I would pick up  
20 Senator Tillis's.

21           So if there's any question about my  
22 impartiality as to removing your signs and let me make  
23 it clear: I did remove your signs. I put them in the  
24 back of my car. They were in my trunk. The reason I  
25 remember it so distinctly, because it's about three days

1 before we broke ground on the new student Furman  
2 (phonetic) Building.

3 I was standing next to our police chief when  
4 I got an e-mail from him where you alleged that our  
5 facilities folks had removed your signs, and I got a good  
6 chuckle out of the fact that you blamed it on someone  
7 else.

8 And I looked at Chancellor Robin Cummings and  
9 I looked at my board chairman, and I said, "Let me  
10 clarify one thing right now. I removed Allen Dial's  
11 signs. I'll remove Senator Tillis's signs; I'll remove  
12 Governor McCrory's signs if they're put on the edge of  
13 our campus because I take pride in what we do at the  
14 University, and I'm treating you no different than I've  
15 treated anyone else.

16 Now, if there's some other basis for you  
17 challenging me, and I think, just for the Board and our  
18 esteemed general counsel sitting behind me, y'all need  
19 to hear my response to his assertion that I can't be  
20 impartial. And I think the Board needs to vote on it  
21 based on the Edgecombe case; is that correct, Mr. Lawson?

22 MR. LAWSON: As in the Knight case.

23 CHAIRMAN WHITNEY: That was what I was going  
24 to ask.

25 MR. MALCOLM: That's the case that I

1 submitted to the Court.

2 CHAIRMAN WHITNEY: And the Board vote?

3 MR. MALCOLM: That's right. Yeah. So  
4 if your assertion has something to do with signs, if  
5 that's the only basis, I'd like to hear more, Mr. Dial.

6 MR. DIAL: That was the only basis,  
7 that my signs were removed from University property.  
8 Others were allowed to be on University property.

9 MR. MALCOLM: Well, let me address that.  
10 I assume--are you referring to Pembroke Day?

11 MR. DIAL: I am.

12 MR. MALCOLM: Pembroke Day, just for  
13 everyone in attendance and for this Board, Pembroke Day  
14 was started by Chancellor Allen Meadors, one of the best  
15 chancellors, in my opinion, that this University had ever  
16 had, and as an attempt, to be honest with you, to Bridge  
17 the gap--the gulf, in some people's opinion, between the  
18 University and our community here in Pembroke.

19 Pembroke Day is a day that we have every  
20 September. We allow anybody and everybody including  
21 religious organizations to come onto our campus. In the  
22 last two years we imposed a fee of \$25 a tent.

23 If you had wanted to set up a tent, you  
24 could've set up one as well. We open it to everybody  
25 including businesses. We don't discriminate, nor do

1 we--we're viewpoint neutral.

2           To my chagrin, as the University's attorney,  
3 we let everybody and anybody. So if you're a Black  
4 Panther, if you're in the KKK, if you're the Methodist  
5 church out of St. Paul's, we're going to let you come,  
6 because the University is the marketplace of ideas.

7           MR. DIAL:           It was just my contention  
8 that one was allowed to do it and another was not allowed  
9 to do it.

10          MR. MALCOLM:        Yes, sir.

11          CHAIRMAN WHITNEY:   Are you finished with your  
12 statement, sir?

13          MR. MALCOLM:        I am.

14          CHAIRMAN WHITNEY:   Okay. General counsel  
15 advises that we need a vote on this. Does anybody want  
16 to make a motion here?

17          MR. BAKER:           I have a question.

18          CHAIRMAN WHITNEY:   Yes.

19          MR. BAKER:           Mr. Malcolm, of course no  
20 one knows better than yourself if you have any conflict.  
21 Do you feel, sir, you have conflict at all in your  
22 ability to be impartial in this hearing?

23          MR. MALCOLM:        I absolutely do not think  
24 I have a conflict.

25          MR. BAKER:           Thank you, sir. I make a



1 motion then that Mr. Malcolm not be recused from this  
2 hearing.

3 CHAIRMAN WHITNEY: Do I have a second?

4 MS. AMOROSO: Second.

5 CHAIRMAN WHITNEY: Do I have any further  
6 discussion?

7 (No response)

8 CHAIRMAN WHITNEY: We have a motion. We have  
9 a second. All in favor of the motion that Mr. Malcolm  
10 not be recused raise your hand and say aye.

11 (Unanimous vote in favor of the motion.)

12 CHAIRMAN WHITNEY: Opposed, no.

13 (No response)

14 CHAIRMAN WHITNEY: Motion carries. Okay,  
15 we'll ask the protestor to begin their presentation,  
16 please.

17 MR. WRIGHT: Mr. Chairman, thank you.

18 And will I have a chance to rebut as is the standard in  
19 appellate argument or will this be my one and only  
20 opportunity?

21 MS. AMOROSO: Excuse me, Mr. Wright. I  
22 know we have sort of poor acoustics. So if I can impress  
23 upon everybody to speak up so our court reporter can  
24 hear.

25 CHAIRMAN WHITNEY: There's a mike up there.

1 MS. AMOROSO: Is there a mike?

2 MR. WRIGHT: There is.

3 MS. AMOROSO: Thank you.

4 CHAIRMAN WHITNEY: I do want people to be at  
5 the stand please. Can some IT person help on the mike.

6 (Pause)

7 CHAIRMAN WHITNEY: Now it's working. Okay.  
8 Is there a stand up there?

9 MR. WRIGHT: There's not.

10 CHAIRMAN WHITNEY: Okay. Please, everybody,  
11 take the mike when it's your turn to talk.

12 MR. WRIGHT: Thank you, Mr. Chairman.  
13 It is definitely on. I'm Don Wright. I represent Mr.  
14 Cummings along with co-counsel Grady Hunt to my left, and  
15 I would ask some time for rebuttal if it's necessary  
16 after my presentation.

17 We come here based upon the referral of this  
18 matter for a new election in the town of Pembroke based  
19 upon unanimous decision of the Robeson County Board of  
20 Elections after a very lengthy hearing. It lasted ten  
21 hours actual hearing.

22 And I will compliment the Robeson County Board  
23 of Elections. They stuck to it, and they really perform  
24 a public service. People don't realize that. Ten hours  
25 of hearings, a hot-aired attorney talked about this

1 matter in front of them. So I do appreciate that.

2 I would note for the record, and the court  
3 reporter, when she--she refers to people lived on Main,  
4 M-a-i-n, Street in the record. It's actually Mabe, M-a-  
5 b-e, Street. So when you hear testimony about Mabe, M-  
6 a-b-e, it's actually referred to as Main, M-a-i-n, in the  
7 record. So those two are interchangeable.

8 But first let's look at what we're asking for.  
9 We're asking that the State Board of Election, a super-  
10 majority which is required by law, order a new election  
11 in the town of Pembroke, and obviously common sense will  
12 tell us the probable date for that would be March 15,  
13 which this is unique in North Carolina election history.

14 CHAIRMAN WHITNEY: Excuse me. A super-  
15 majority is four.

16 MR. WRIGHT: Four. It's unique in North  
17 Carolina history in that we have a regular election  
18 scheduled so quickly after the municipal election. I  
19 will (unintelligible) convenience of the elections, but  
20 it does make it easier.

21 So what's the standard of evidence in this  
22 matter. You have a lengthy record, a very lengthy  
23 record. But what does that show you? It shows you that  
24 the Robeson County Board of Elections and their general  
25 counsel--their counsel took this matter seriously. They

1 weren't flippant. They didn't just off the cuff. You  
2 saw the detailed questions were asked.

3           Every vote that was alleged to have  
4 difficulties by us in our protest was analyzed. The case  
5 was analyzed. So give them credit. So that's why you  
6 have such a lengthy record as opposed to just a few  
7 pages.

8           Now, the standard of evidence before the State  
9 Board at this time is there substantial evidence to  
10 believe that there was a violation set out in 163-182  
11 that would support a new election.

12           And I believe that it's set out there 182.13,  
13 Page 351 in your gray law book, and we say there is  
14 because irregularities or improprieties occurred to such  
15 an extent that they taint the results of the entire  
16 election and cast doubt on its fairness.

17           And you would look and you see the substantial;  
18 in the brief which I tendered to the Board and which is  
19 included in the record, the test is, is there substantial  
20 evidence?

21           Now, that is important because, as Judge Baker  
22 knows, substantial evidence is less than the greater  
23 weight of the evidence, which means that it's directly  
24 possible, as set out in that case, set out in your brief,  
25 that two reasonable people could look at the same

1 evidence and come to a different conclusion, but it is  
2 the decision of the Robeson County Board that  
3 determines--that's controlling in this matter.

4           So if I had been on the Robeson County Board,  
5 I wouldn't have gone that way with that case. I would  
6 have declared that voter ineligible. Well, that's a  
7 possibility, but it's what they decide as there is  
8 substantial evidence.

9           And substantial is can a rational person come  
10 to the same conclusion or finding of fact, conclusion of  
11 law or finding of fact using that evidence even though  
12 another person may come to a contrary decision.

13           So basically you're saying as appellate court  
14 here--

15           MR. MALCOLM:           Mr. Wright.

16           MR. WRIGHT:           Yes.

17           MR. MALCOLM:           With all due respect, I  
18 think we have--we just ordered three new elections last  
19 week. I think we understand the burden.

20           MR. WRIGHT:           Thank you.

21           MR. MALCOLM:           Would you mind?

22           MR. WRIGHT:           I don't mind. In fact, I  
23 appreciate it because if I'm telling you something you  
24 already know, let me get on to something that's more  
25 important.

1 MR. MALCOLM: Yes, sir.

2 MR. WRIGHT: Now, what we have here in  
3 this case, and I'm not asking anybody if they read the  
4 entire transcript, but I know you have reviewed it. What  
5 we have--and we have the margin of difference in the  
6 mayoral election was 11. What we have after ten hours  
7 of hearings, the determination that 11, 11 voters were  
8 ineligible to vote.

9 Now, what that would be--that's equal to the  
10 margin of victory. That means that with these voters  
11 being ineligible, that it affected the outcome of the  
12 election because we don't know how those voters voted.  
13 They could've all voted for Mr. Cummings. We don't know.  
14 They could've voted for Mr. Dial. We don't know. But  
15 it was sufficient in the number to have affected the  
16 outcome of the election.

17 Now, what's unique here? Let's not focus--  
18 let's not focus on 11. Let's get away from that number  
19 because this is somewhat unusual here in that let's add  
20 at least five more. If you will look in the back of the  
21 transcript, you will see--

22 MR. DIAL: I object to that, Mr.  
23 Chairman, because there was not five more. That was--  
24 the protest was withdrawn, and it would be a moot point.

25 MR. MALCOLM: Are you referring to the

1 five in the transcript that were brought by--what's the  
2 lady's name?

3 MR. WRIGHT: Ms. Smith.

4 MR. MALCOLM: Ms. Loretta, yes.

5 MR. WRIGHT: Yes.

6 MR. MALCOLM: And they were withdrawn.

7 MR. WRIGHT: They were withdrawn, but  
8 let me--may I proceed with my argument, because we're  
9 talking argument here; we're not talking about evidence.

10 If I may proceed.

11 CHAIRMAN WHITNEY: Well, let's make it brief.  
12 I mean if they've been withdrawn, I don't want to waste  
13 a lot of time on five votes.

14 MR. WRIGHT: Well, what it shows and  
15 what Mr. Dial said--you look on Page 431, Page 445 of the  
16 transcript, Page 462, and Page 336. Mr. Dial himself  
17 admitted that he filed those protests or had them filed  
18 because he felt there were additional, additional  
19 ineligible voters other than the ones that we brought.

20 MR. MALCOLM: Well, what's that--Mr.  
21 Wright, Mr. Dial or Ms. Loretta were exercising a right  
22 that's allowed by state statute or allowed by rules that  
23 have been implemented by this Board.

24 MR. WRIGHT: You're correct. Absolutely  
25 right.

1 MR. MALCOLM: She or anyone else filed  
2 something and then withdrew it. So why are we--

3 MR. WRIGHT: That shows their state of  
4 mind. That's basically--

5 MR. MALCOLM: State of mind of Ms.  
6 Loretta Smith?

7 MR. WRIGHT: Of Mr. Dial in that you can  
8 see in the transcript he directed Ms. Smith--

9 MR. MALCOLM: Well, who submitted--who  
10 submitted them?

11 MR. WRIGHT: Ms. Smith did, but her  
12 testimony--and she testified; I had her under oath, and  
13 she said, "I did it because Mr. Dial said so." And it  
14 shows that Mr. Dial, and I'll leave this in just a  
15 second, but it shows that he himself at the time of the  
16 election felt there were ineligible votes.

17 MR. MALCOLM: Everybody that's a  
18 politician in here that runs for election, if you can  
19 raise your hand. Mr. Cummings, Ms. Sampson, Ms. Wheetsie  
20 (phonetic), everybody that runs for office is trying to  
21 figure out who's ineligible voters and who's voters,  
22 correct? Who's an eligible voter--

23 MR. WRIGHT: Some are. Many are. Many  
24 are.

25 MR. MALCOLM: --so they know who they



1 are.

2 CHAIRMAN WHITNEY: Let me say something. I  
3 just looked at that part of the transcript, and it looked  
4 to me like there were--there was some discussion that Ms.  
5 Smith--

6 MR. MALCOLM: Loretta Smith.

7 CHAIRMAN WHITNEY: --Loretta Smith had signed  
8 these five protests or whatever at Mr. Dial's direction.  
9 They couldn't find a notary, or they were supposed to be  
10 notarized. A notary can only notarize a signature in  
11 person of the party that signed. So I don't know that  
12 they were ever submitted, or were they not?

13 MR. WRIGHT: The record shows there were  
14 submitted and subsequently they went through the  
15 challenges, but they weren't filed in a timely manner.  
16 The difficulty, Mr. Chairman, was that Loretta Smith had  
17 signed Mr. Dial's name not knowing it would be notarized.  
18 When they found out the error, she came in and she got  
19 five signing from the notary before the five o'clock  
20 deadline, and then a few days later Mr. Dial withdrew it.  
21 But I think we can end that with this--

22 CHAIRMAN WHITNEY: Let's move on to the 11,  
23 okay?

24 MR. WRIGHT: Okay. Now, on the 11--

25 MR. DIAL: If I may say so, Mr.

1 Chairman.

2 CHAIRMAN WHITNEY: You'll have your turn to  
3 speak. Let's let him make his presentation. You'll be  
4 given the same amount of time. I appreciate it.

5 MR. WRIGHT: I don't know if the Board  
6 wants--I was not prepared to go through each of the 11  
7 because it's found in the Board--in the Board's order,  
8 but I can talk about any particular situations. But the  
9 Board--the Robeson County Board, good judgment,  
10 credibility.

11 Now, what we saw on this was a pattern by Mr.  
12 Dial, and I'm not being critical only of Mr. Dial, but  
13 there's a pattern that basically the people that we  
14 subpoenaed--and we made good faith effort to subpoena  
15 everybody. That's in the record. That you saw Mr. Dial  
16 contact them, get an affidavit signed by his daughter  
17 saying "I authorize Mr. Dial to"--I quote, "I give  
18 permission for Allen G. Dial to represent my vote."

19 It's apparent that Mr. Dial contacted all these  
20 individuals who were subpoenaed, and I'm not saying  
21 that's unlawful. I'm just saying that as--

22 CHAIRMAN WHITNEY: Are you saying Mr. Dial or  
23 his people actually went in and voted for these people?

24 MR. WRIGHT: No. If you look at the  
25 affidavit that Mr. Dial filed, Mr. Chairman, in this

1 matter, he had on the affidavit the wording, "I give  
2 permission for Allen G. Dial to represent my vote."

3 CHAIRMAN WHITNEY: At the hearing.

4 MR. WRIGHT: At the hearing. And you're  
5 right; it doesn't seem to make sense, but that was what  
6 was on the affidavit. And so basically what they were  
7 trying to say is "I've given power of attorney," for lack  
8 of a better term, I guess, "to Mr. Dial."

9 And then you also said on Page 177,  
10 (unintelligible) to say, "Dial said, 'Sign these instead  
11 of showing up at the hearing.'"

12 And obviously--and you see there on Page 221  
13 and Page 224, Page 225 and 26, that Mr. Dial was shocked  
14 to learn that I--that my client actually paid the sheriff  
15 to serve subpoenas, and that (unintelligible) I was going  
16 to get charged by the sheriff to give my subpoenas.

17 CHAIRMAN WHITNEY: Can we kind of just stick  
18 to--we're getting--you're really side-tracking me here  
19 and just stay on these eligible voters.

20 MR. WRIGHT: Ineligible voters.

21 CHAIRMAN WHITNEY: Ineligible. Excuse me.

22 MR. WRIGHT: Yes, sir. So what we stand  
23 on as far as the ineligible voters, the 11, is you have  
24 read the transcript and you've seen that we provided and  
25 in most case--I would say in all cases, not only

1 substantial evidence but we contend evidence beyond a  
2 reasonable--excuse me, the greater weight of the evidence  
3 as to each voter, you saw the care in which the Robeson  
4 County Board of Elections took to determine each matter.

5           And as long as this Board finds that there was  
6 substantial, the lower level of evidence, substantial  
7 evidence to support the finding of the Robeson County  
8 Board, we have 11 ineligible voters which is an  
9 irregularity which affects the outcome of the election  
10 and takes the result, and I apologize for going to the  
11 other areas, but the tainting the results is the reason  
12 there, and I hear the Board saying that they are  
13 satisfied with not hearing any more--

14           MR. MALCOLM:           I've got a question for you  
15 though.

16           MR. WRIGHT:           Yes, sir.

17           MR. MALCOLM:           In the transcript, one of  
18 the voters--one of the voters, a Christopher Lynn Rose,  
19 and it goes back to what you were talking about. In the  
20 transcript it refers to him as living at 200 Main Street  
21 which in the transcript, if I'm to believe it, is a  
22 business known as S&E Brakes.

23           You brought a gentleman before the Board, a Mr.  
24 Harris who works with the Pembroke Water Works Department  
25 who testified that there was no--there's no water or

1 sewer service. But you went on to say--I think that's  
2 the gentleman, correct me if I'm wrong, his girlfriend,  
3 fiancée, or wife was living at public housing; is that  
4 correct?

5 MR. WRIGHT: I believe so.

6 MR. MALCOLM: And you made an assertion  
7 in the transcript about law, and you said that since he  
8 had went to register and put that address for that lady  
9 in the public housing, that he could not, nor could the  
10 local board, make a determination that his domicile  
11 remained at 200 Main Street, and you referred, if I'm  
12 correct, to Lloyd B. Babb.

13 So I need you to clarify. Are you telling this  
14 Board too that if someone puts an address on a  
15 registration form, that that shows that they've abandoned  
16 the prior address? Is that your assertion? You think  
17 this Board and all 100 other boards are bound by that?

18 MR. WRIGHT: Under the circumstances,  
19 if I recall correctly, Christopher Lynn Rose, basically  
20 he says, "I don't live at 304 Sixth Street, D," which is  
21 in public housing, and I believe I'm quoting the  
22 transcript; he said, "I just used my wife's address."

23 That's Page 65 of the transcript, Line 1  
24 through 5, Page 66, Line 8 through 14. "Just used my  
25 wife's address." He didn't say, "It wasn't my address."

1 He just said, "My wife's address."

2 MR. MALCOLM: That's not my question.

3 MR. WRIGHT: He was found--

4 MR. MALCOLM: I want to talk about the  
5 facts. I want to talk about the law.

6 CHAIRMAN WHITNEY: He was found to be an  
7 eligible voter.

8 MR. MALCOLM: I know he was, but--but I  
9 agree he was found to be eligible, but is it your  
10 assertion, because I think it's important for this Board  
11 to understand, you asserted at the county board level  
12 that if someone writes an address on a registration form,  
13 that that shows, under the law, prior case law, that  
14 they've abandoned the prior domicile. Is that your--is  
15 that your--

16 MR. WRIGHT: In this case, yes, because,  
17 let me tell you why, because Christopher Lynn Rose  
18 was--he was banned from public housing. When you assert  
19 an address in which you are lawfully banned by federal  
20 law, then you can't--that's constructive abandonment by  
21 law, and this Christopher Lynn Rose, he can't go back  
22 because his wife lived in public housing. That's the  
23 distinction.

24 MR. MALCOLM: So are you saying the  
25 County Board made a mistake by declaring him to be

1 eligible?

2 MR. WRIGHT: Yes, sir.

3 MR. MALCOLM: How many other--that's why  
4 I asked. How many of the other voters for which the  
5 county board determined that they were eligible do you  
6 now assert that they made a mistake on?

7 MR. WRIGHT: Okay, and I appreciate  
8 that. As you see here on my file, Christopher Lynn Rose,  
9 I have a full page--

10 CHAIRMAN WHITNEY: Who is the one you just  
11 acknowledged?

12 MR. WRIGHT: Christopher Lynn Rose, R-  
13 o-s-e.

14 CHAIRMAN WHITNEY: All right. That's the one  
15 you've--all right.

16 MR. WRIGHT: Mr. Chairman, if you look  
17 on Page 65 of your transcript, that's where the testimony  
18 concerning Mr. Rose--and I don't to have to tell you;  
19 you read the transcript. I argued long and hard that Mr.  
20 Rose should be ineligible there because we had that  
21 situation where the husband was removed from public  
22 housing on Mabe, M-a-b-e, not Main, but Mabe Street. He  
23 lived on Mabe Street, which is no more than--

24 CHAIRMAN WHITNEY: I think the question was  
25 which are the others other than Christopher. Give me a

1 list, if you would please.

2 MR. WRIGHT: May I ask a question  
3 please?

4 CHAIRMAN WHITNEY: No. I make the rules here.

5 MR. WRIGHT: I'm sorry. Yes, sir. My  
6 apology, sir.

7 CHAIRMAN WHITNEY: Okay. Who are the others  
8 that you think you disagree with the County Board that  
9 they should not be eligible and they made them eligible?

10 MR. BAKER: May I ask something then?

11 CHAIRMAN WHITNEY: Yes.

12 MR. BAKER: I would assume he disagrees  
13 with all of them since he brought the challenge.

14 MR. MALCOLM: But that wasn't in his--  
15 was that in your argument? Did you challenge--did you  
16 challenge the determination in your protest that you  
17 filed with us?

18 CHAIRMAN WHITNEY: Yes, because I heard you  
19 say a minute ago that--and maybe I wrote this down wrong,  
20 but I--the county board of election decision is  
21 controlling on us.

22 MR. BAKER: I'm wondering if we even  
23 need to discuss any of the others. He's talking about  
24 11, and 11 were found ineligible and 11 would change the  
25 results of the election. I'm wonder if we even need to



1 discuss the others.

2 CHAIRMAN WHITNEY: I think that what Mr.  
3 Malcolm is getting at. We're spending a lot of time here  
4 talking about stuff. What I think I hear you saying is  
5 that we should follow the decision of the county board  
6 of elections, if I'm understanding what you're saying,  
7 but you're also saying, "Yeah, but I also had some  
8 problems with the others." And I think that's already  
9 been ruled on.

10 So I think we need to decide are we moving  
11 forward on these 11, and if we could just dispense with  
12 any further testimony unless you can show this Board a  
13 really strong reason why we need to rehash those.

14 MR. WRIGHT: So, Mr. Chairman, do you  
15 want me to answer Mr. Malcolm's question?

16 CHAIRMAN WHITNEY: I'll ask Mr. Malcolm.

17 MR. MALCOLM: Yes. Just tell me the--

18 MR. WRIGHT: I also am concerned--

19 MR. MALCOLM: Just tell me their names.

20 MR. WRIGHT: --with a Paul Amos

21 Locklear.

22 MR. MALCOLM: So Rose and Locklear. Is  
23 that it?

24 MR. WRIGHT: And then a Connie Johnson  
25 Oxendine with Split Mobile Home on--that's Jud (phonetic)

1 Street, and then the three voters who lived on Main  
2 Street, Ricky Rogers, Stephanie Rose Roberts, and I  
3 believe Brock Locklear. So, yeah, I--

4 CHAIRMAN WHITNEY: Do we have all this in the  
5 record? All right, is that your list?

6 MR. WRIGHT: Yes, Mr. Chairman, and I  
7 did not put that in because I know the State Board looks  
8 at the totality of the record, and we're urging you to  
9 follow--you know, to order the election based upon the  
10 order.

11 CHAIRMAN WHITNEY: That's really what I'm  
12 saying.

13 MR. WRIGHT: Right.

14 CHAIRMAN WHITNEY: I want us to follow the  
15 order or look beyond it because I'm hearing--

16 MR. WRIGHT: I think the order is  
17 sufficient. I honestly do.

18 CHAIRMAN WHITNEY: All right, we have the  
19 names of the other people that you did not want to be  
20 eligible; they've been ruled eligible, so if we can move  
21 on to your next point please.

22 MR. WRIGHT: Well, the next point is I  
23 think the order speaks for itself, to be honest you. It  
24 shows 11 ineligible voters, and that--

25 CHAIRMAN WHITNEY: All right, I'm going to

1 take (unintelligible). I'd like, while you're still  
2 here, if--and we've already touched of this, Mr. Malcolm.

3 MR. MALCOLM: Yes, sir.

4 CHAIRMAN WHITNEY: Any of the members of the  
5 Board, I'd like for them to tell--to ask counsel here if  
6 they have any particular questions about the people that  
7 were ruled ineligible. I think you said--

8 MS. AMOROSO: Mr. Chairman, I have a  
9 question for Mr. Wright. Typically if somebody--you--  
10 the people need to protest or make a challenge at the  
11 time these folks are voting. Was that done here or was  
12 that not done? What's your contention on that issue?

13 MR. WRIGHT: The brief which I submitted  
14 to the Board, the second issue, because I had heard that  
15 that might be some concern. Madam Secretary, as to the  
16 precedent of the State Board of Elections in regards to  
17 hearing protests on ineligible voters, was mandated that  
18 you file a challenge at the time.

19 I so know that just Friday you ordered a new  
20 election in Trinity where there was an ineligible voter,  
21 a lady who had moved out of town. There was no challenge  
22 there. This is the same thing; it's just it's 11 as  
23 opposed to one. But there in the brief which was  
24 admitted as part of the record, I believe you see a long  
25 history in Onslow County, the Boward (phonetic) case, the

1 case in Scotland Neck, the Asheville case which I think  
2 some of you on the Board ruled on, and other cases where  
3 even though it was done in 2013, there were concurrent  
4 challenges and a protest in Pembroke in 2013.

5 I'd note with interest that the time that the  
6 State Board ordered a new election in 2013 in Pembroke,  
7 the challenges were on appeal to the superior court, and  
8 that appeal was never heard because, as I said in my  
9 brief, there's a danger because the challenge appeals go  
10 to the General Court of Justice, Superior Court. The  
11 election protest, you have the exclusive jurisdiction  
12 over that, as to get two jurisdictions involved.

13 So I can tell you precedent, a long history,  
14 because I've given examples in the briefs. I attached  
15 those. The fact that you entered a new election Friday  
16 for a lady that was not a challenge in that Trinity case  
17 and the fact that you start mixing jurisdictions up, and  
18 Judge Baker knows that; when you have an agency going  
19 concurrently with the General Court of Justice, they're  
20 not going to operate at the same speed, and so I would  
21 argue that though you could; I'm not saying you can't,  
22 but it's not required. Also importantly--

23 CHAIRMAN WHITNEY: What's not required?

24 MR. WRIGHT: To file a challenge  
25 concurrently with the election protest when you're

1 alleging ineligible voters.

2 MR. MALCOLM: Were any of these voters  
3 same day registrants during a one-stop period, to your  
4 knowledge?

5 MR. WRIGHT: According to Mr. Pridgen  
6 and his testimony in the transcript, they did not--they  
7 voted one-stop, but they didn't register at one stop.

8 MR. MALCOLM: So this isn't a--this  
9 isn't--it has nothing to do with this perception that a  
10 one-stop, same-day registration process is a fraudulent  
11 process. This is totally separate and distinct.

12 MR. WRIGHT: That was asked during the  
13 hearing, and Mr. Pridgen indicated that none of these  
14 had registered at one stop. They had voted the one-stop.  
15 One-stop being in Lumberton, ten miles down the road.

16 MS. AMOROSO: Did some of them update  
17 their address at one-stop? Therein lies the problem.  
18 That's why we're having trouble.

19 DR. KRICKER: Well, I'm having trouble  
20 with this because if they voted at one-stop, it seems to  
21 me these are retrievable ballots, and things could get  
22 adjusted--

23 MR. MALCOLM: That's what I was going to  
24 ask next.

25 DR. KRICKER: --without a new election.

1                   MR. MALCOLM:           How many of the 11 are  
2 retrievable?

3                   MR. WRIGHT:            I do not know. You have  
4 to ask Mr. Pridgen, the director of Robeson County, but  
5 I believe we discussed that, and I would defer to him on  
6 that, but--

7                   MR. MALCOLM:            But what you--I mean, Mr.  
8 Wright, wouldn't you know that? Before you brought this  
9 protest, wouldn't you know whether these ballots are  
10 retrievable or not so this matter could be settled?

11                  MR. WRIGHT:            I would defer to the  
12 director who would know better on that. But retrievable,  
13 to reconstruct, I do know in 2013, that when this Board  
14 heard the Pembroke matter in 2013, they chose not to  
15 reconstruct the election when some could.

16                  MR. MALCOLM:            I agree with that, and I  
17 voted for that. I made the motion, but that's because  
18 in that election there were other allegations; is that  
19 not true? It wasn't just about voters. There were other  
20 assertions that were made that are still being looked  
21 into, is my understanding.

22                  MS. AMOROSO:            That was the basketball  
23 kids, students, right?

24                  MR. MALCOLM:            Yes.

25                  DR. KRICKER:            So there was a systemic

1 problem--

2 MS. AMOROSO: Right.

3 DR. KRICKER: --with some procedures at  
4 the board of elections.

5 MR. MALCOLM: And that was--and so Mr.  
6 Shepherd--Mr. Shepherd is a--in the transcript there was  
7 quite a bit of discussion about a gentleman named Mr.  
8 Shepherd, and there was someone that testified by the  
9 last name of Mercer. I call him Johnny Mercer. And  
10 there seemed to be some confusion about which Shepherd  
11 was being referred to. Do you know the individual I'm  
12 referring to?

13 MR. WRIGHT: It's on Page 269 of the  
14 transcript which basically Mr. Pridgen testified that Mr.  
15 Dial said that Shepherd--and I don't think it was ever  
16 clarified, but what was clear was this: That Mr.  
17 Shepherd, whatever his first name was, contacted Mr.  
18 Pridgen after he voted and said, "I wanted to change my  
19 voting address but was not allowed to." That's on Page  
20 272 of the transcript.

21 272 of the transcript Mr. Pridgen made an error  
22 in not getting the change done at the time, and I made  
23 a comment about that, but you're--Madam Secretary, you're  
24 right. And that on page 46 of the transcript Kim  
25 McCartney testified that she was not asked as required

1 by 163-166.7 to state your name and address but she was  
2 asked for a license. She showed her license, and that's  
3 how it was done. That's on Page 47.

4 MR. MALCOLM: So that's two. You've just  
5 mentioned two, McCartney and Shepherd, and it gets to Ms.  
6 Amoroso--are you--were there procedural mistakes made by  
7 the county board of elections as to how these voters were  
8 handled when they were proceeded in during a one-stop  
9 process as to updating their addresses which has led to  
10 these problems today?

11 MR. WRIGHT: Yes, sir. An additional  
12 one was Mr. Lee Cummings on page 345, basically said that  
13 he needed--he said, "I changed my address." Then he  
14 said, "And I don't have time to change it."

15 Well, as Mr.--the chairman, Mr. Stone said on  
16 Page 347, he said--after Mr. Cummings quit and left the  
17 testimony, he said, "Mr. Cummings, change your address,"  
18 and quoted Mr. Stone, "It only takes a minute."

19 Actually it takes less than that with the key  
20 strokes, but yes, through this we have seen that there  
21 are problems, at least in these three cases, and one  
22 would assume that in other cases too, just the simplest  
23 thing, "State your name and address."

24 And what's important, folks, if you look on  
25 Page 133, the statute book, 163-82.15(a), it says,



1 "Registrants," look at the word, "duty." It doesn't say  
2 "shall." It says "duty." It's affirmative action to  
3 report, and that's why they say that when you go to vote,  
4 you walk up and you state your name and address.

5           And these people--obviously, it was three cases  
6 here. One was just "give your license," and yes, I think  
7 we've all heard from poll workers why they ask for  
8 license, because we can't understand people. We get the  
9 license to make sure it's done correctly, that sort of  
10 thing.

11           But at least Cummings and Shepherd said,  
12 "Nobody asked me." And Shepherd wanted to make the  
13 change. Cummings was flippant and said, "I don't have  
14 time to do it." But, yes, there is a problem.

15           And in fact you will see that basically on Page  
16 277--and I'll give Mr. Dial credit. He talked about--  
17 Page 183, excuse me, Mr. Dial, Lines 11 through 22,  
18 himself talked about a lack of training. On Page 183  
19 Mr. Dial did too. He recognized it.

20           And then on Page 277, Chairman Stone in  
21 reference to basically the Shepherd matter said--I'm  
22 quoting Chairman Stone, "There was--that we can say that  
23 there was irregularity, without a doubt," according to  
24 Chairman Stone in regards to where Shepherd was not  
25 allowed to change his address at the time he voted.

1 MS. AMOROSO: All right, let me stop you  
2 there, Mr. Wright. We've all read the 800--well,  
3 whatever, the testimony. It's quite a lot to digest, and  
4 this is our second one in less than two weeks.

5 Okay, I'm concerned about the county in general  
6 here. We've been here before. Mr. Dial, we've seen you  
7 before two years ago. I recall when you came before us.  
8 I'm concerned about Robeson County in general how the  
9 elections here--we seem to come back.

10 You folks, somebody is making a challenge or  
11 a protest almost every election cycle. That to me is  
12 troubling. I don't have the answer right now, but I  
13 think that needs to be discussed at some point.

14 But are you asking for--you would like to have  
15 a new election ordered. That's what you're asking for,  
16 your relief today. You're here on behalf of Mr.  
17 Cummings. You would like a new election ordered.

18 Let me ask you, like Mr. Dial was saying, like  
19 a recount perhaps. You'll have your turn. Why not a  
20 recount, Mr. Wright?

21 MR. WRIGHT: Because the recount is not  
22 authorized. It's basically is it's a new election. A  
23 recount lets you remove the votes. It would not--and  
24 you heard Mr. Dial's request for a recount; you read it  
25 in the transcript.

1           And what they did, the Robeson County board,  
2 just like in 2013, they tendered it up to the State Board  
3 for your consideration. And what we have shown is 11  
4 ineligible voters sufficient in number to affect the  
5 outcome of the election and to taint this result.

6           Now, I understand and I think I--I can't assume  
7 what I know the Board is thinking. I'm sensing that the  
8 way the one-stop was handled was somewhat irregular,  
9 because you've got three specific incidents that came out  
10 in the transcript, and that would add to our argument of  
11 taintness, for lack of a better term, to the election as  
12 a whole and would support the new election showing we got  
13 rock solid 11 numbers.

14           The way the one-stop was handled added to the  
15 taint, and I'll keep quiet about what I said earlier,  
16 about what I think would be additional taint.

17           So, Madam Secretary, I'm not a member of the  
18 State Board of Elections. You all have excellent staff  
19 behind you. I think this transcript does clarify and  
20 maybe help pinpoint maybe some specific situations where,  
21 according to Mr. Dial, additional training and he said  
22 additional money; I don't know what additional money  
23 would do because, in my opinion, it wasn't that difficult  
24 to basically change an address. I used the term in the  
25 transcript that I thought it was incredible that it

1 wasn't done.

2           But I'm not here to beat up on the Robeson  
3 County Board.

4           CHAIRMAN WHITNEY:   In your brief, Page 2,  
5 Paragraph E, it says, "If the county board makes this  
6 conclusion, it may order any of the following as  
7 appropriate," and then go down to 2, "That votes be  
8 recounted."

9           Are you suggesting that we don't have at least  
10 as much authority as the county board to recount votes?  
11 Because you said that was inapplicable or not permitted,  
12 and maybe I misunderstand your brief, but it says that  
13 votes be recounted.

14           MR. WRIGHT:           Mr. Chairman, I've always  
15 stated that the State Board of Elections is the election  
16 god. And I get that from 163-22 which is "State Board  
17 of Elections shall have general supervision over the  
18 primaries and elections in the state."

19           And so in essence, you all are the blank check;  
20 you all are god. And if a recount is appropriate and if  
21 it will give you result--I'm not say--it's within your  
22 jurisdiction, but I'm arguing what we have out there, we  
23 have a very--I think it's pretty simple.

24           Maybe I made it complicated, and I apologize  
25 if I made it complicated, but we have 11 ineligible

1 voters found by substantial and greater evidence that  
2 affected the outcome of the election.

3           The Robeson County Board issued the order  
4 tendering the matter for your consideration based upon  
5 the 11. There were other--other incidents that would  
6 cause elections professionals like yourselves some  
7 concern; yes, there were, and yes, that I agree with--  
8 obviously I disagree with them ruling against me on some.  
9 I'm not going to deny that to the point of--actually you  
10 saw my notes.

11           CHAIRMAN WHITNEY: Can we finish this up so  
12 we can--

13           MR. WRIGHT: Yes, sir, Mr. Chairman.  
14 I will, and if there are no further questions, I reserve  
15 the right for rebuttal if there's further questions, and  
16 I'll tender the matter to Mr. Dial.

17           CHAIRMAN WHITNEY: Before he takes his seat,  
18 does the board have any further questions?

19           MS. AMOROSO: I'd like to hear from Mr.  
20 Dial, I think.

21           CHAIRMAN WHITNEY: Okay. All right. Thank  
22 you, sir.

23           MR. DIAL: First of all, I want to--  
24 so I can stand away from the podium over here?

25           CHAIRMAN WHITNEY: Just one second.

1 (Pause)

2 CHAIRMAN WHITNEY: We need to have you sworn  
3 in please.

4 MR. DIAL: Yes, sir.

5 (Whereupon,

6 ALLEN DIAL,  
7 having first been duly sworn,  
8 testified as follows:)

9 MR. DIAL: By being an attorney, you  
10 don't have to be sworn in? Just a question.

11 MR. LAWSON: It's been the practice.

12 CHAIRMAN WHITNEY: That's right. Go ahead.

13 MR. DIAL: I said by being an  
14 attorney, Mr. Wright didn't have to be sworn in?

15 CHAIRMAN WHITNEY: It is not customary.

16 MR. DIAL: Not customary. Okay. My  
17 contentions on the election--I understand Mr. Wright has  
18 asked for a new election. But my contentions the whole  
19 time, because he waited too long in his protest to  
20 challenge--the challenge for these votes, the time had  
21 already surpassed.

22 When he did file his challenge, or protest,  
23 they said it was in a timely manner. And they stated  
24 information that they didn't get the names of people and  
25 stuff that voted until Thursday afternoon or Thursday

1 night at 8:59.

2           It was my contention the people that he  
3 protested were one-stop voters. Those one-stop voters  
4 are considered absentee voters, and to rule that they got  
5 this information, I'd like to call Mr. Pridgen to the  
6 stand to testify.

7           CHAIRMAN WHITNEY: Certainly.

8           MR. DIAL: Because I asked for this  
9 information, and I couldn't get it.

10          MR. MALCOLM: Just--Mr. Dial, just--so  
11 you're offering him--come on up, Mr. Pridgen, if you  
12 don't mind.

13          MR. DIAL: I'm offering him to  
14 collaborate my testimony.

15          MR. MALCOLM: That what?

16          MR. DIAL: That Mr. Hunt got the  
17 information prior to on the absentee, the one-stop voters  
18 before Thursday at 8:59.

19          MR. LAWSON: Mr. Chairman, in the past  
20 we've considered county board directors as officers and  
21 have an obligation to tell the truth, but you can swear  
22 him in.

23          CHAIRMAN WHITNEY: Let's go ahead.

24          (Whereupon,

25                   G. L. PRIDGEN,

1           having first been duly sworn, was  
2           examined and testified as follows:)

3           EXAMINATION OF PRIDGEN BY MR. DIAL:

4           Q     I'm going to have to ask you to  
5           (unintelligible). Mr. Pridgen, do you have any  
6           documentation, and what I was referring to, that Mr. Hunt  
7           was sent the information about the one-stop voters from  
8           the Board of Elections? Do you have any testimony or any  
9           documentation to show the Board here to substantiate what  
10          I said?

11          A     Yes, sir. You came by and asked this question,  
12          and so we looked it up, and every morning after one-stop,  
13          the information from the day before on who had voted one-  
14          stop was sent to Mr. Hunt, e-mailed to Mr. Hunt.

15                 MR. MALCOLM:            You're referring to Mr.  
16          Grady Hunt?

17                 MR. PRIDGEN:            Yes, sir.

18                 CHAIRMAN WHITNEY:      Who is counsel for the  
19          protester.

20                 MR. MALCOLM:            As it relates--

21                 CHAIRMAN WHITNEY:      Co-counsel.

22                 MR. MALCOLM:            You know the 11 individuals  
23          that's in Mr. Wright's protest to us.

24                 MR. PRIDGEN:            I don't know them, but I  
25          know their names.



1 MR. MALCOLM: You know their names.

2 MR. PRIDGEN: Yes.

3 MR. MALCOLM: So you're testifying, to  
4 make sure I'm clear, that those names the morning after  
5 they voted, if they voted in one-stop, were transmitted  
6 to Mr. Grady Hunt. Is that your assertion?

7 MR. PRIDGEN: Yes, sir.

8 MR. MALCOLM: Those 11 names, were they  
9 all one-stop voters?

10 MR. PRIDGEN: Seven of them were one-  
11 stop. Three of them were same-day. We were, you know-  
12 -I'm sorry. Seven--three of them were on election day.  
13 One of them we cannot find that they even voted.

14 MR. MALCOLM: What's that mean? Do you  
15 mean--okay, seven plus three, and you're saying there's  
16 one other--what's that now? You can't find them?

17 MR. PRIDGEN: Crystal Cummings, we cannot  
18 find where she even voted.

19 MR. MALCOLM: Was her name on the list  
20 that you provided to anybody as being a voter?

21 MR. PRIDGEN: They gave us the list of  
22 the people they were, you know, appealing. We just gave  
23 them the list of people who had voted.

24 We didn't give--we just gave everybody that  
25 voted that day, gave it to them each day.

1           MR. MALCOLM:           Make sure I'm clear. Are  
2 you saying that the 11 names that's in Mr. Wright's  
3 protest to the State Board, one of those 11 isn't even  
4 a voter?

5           MR. PRIDGEN:           Did not vote in this  
6 election, according to everything we have looked at.

7           MR. MALCOLM:           Tell me that name again.

8           MR. PRIDGEN:           Crystal Cummings.

9           MR. BAKER:            Number 13.

10          MR. MALCOLM:           Didn't vote at all.

11          MR PRIDGEN:           We can't find where she  
12 voted in this election.

13          MR. MALCOLM:           Do you have her voting  
14 history?

15          MR. PRIDGEN:           Yes, she had--she was  
16 registered and everything, but she did not vote in this  
17 election.

18          MR. MALCOLM:           Number 13, Judge?

19          MR. BAKER:            On the order, yes, it's  
20 number 13, and that person was found to be not an  
21 eligible voter. That's one of the 11.

22          MS. AMOROSO:           Yeah, she's number 8 out  
23 of the 11 on my list as it was in here, as they testified  
24 as they were brought up.

25          MR. MALCOLM:           Did you disclose--what

1 we're talking about now, was this part of the hear--I  
2 don't recall seeing this in the transcript.

3 MR. PRIDGEN: Nobody ever asked us about  
4 that. They just gave the names and nobody ever asked us,  
5 you know, about that, so we didn't even look it up till  
6 this week.

7 CHAIRMAN WHITNEY: So the order says that  
8 Crystal Cummings is not an eligible voter, but you're  
9 saying she didn't even vote?

10 MR. PRIDGEN: Not in this election.

11 MR. BAKER: Oddly enough, though, she's  
12 about the only one that everyone agreed on was not an  
13 eligible voter. I think even Mr. Dial, correct me if I'm  
14 wrong, conceded that she was not an eligible voter, and  
15 now we're hearing she did not vote.

16 MR. MALCOLM: So you weren't--I'm going  
17 to put you on the spot, Mr. Pridgen.

18 MR. PRIDGEN: Okay.

19 MR. MALCOLM: You're on the hot spot here  
20 in our county.

21 MR. PRIDGEN: I've been there before.

22 MR. MALCOLM: Yes, sir. You've read Mr.  
23 Wright's protest.

24 MR PRIDGEN: Yes, sir.

25 MR. MALCOLM: Is there any other germane

1 information for which you were not asked that you want  
2 to proffer to this Board now so we can fully understand  
3 what took place here in the fall so we can get this  
4 right?

5 MR. PRIDGEN: No, sir. Just whatever  
6 anybody had asked me, we looked up for them.

7 MR. MALCOLM: Yeah, I'm not ask--I don't  
8 want to ask you. I want you to tell me; is there  
9 anything else you know that has been either  
10 misrepresented, left out, or somehow has not been brought  
11 to our attention that you think it would be important for  
12 us to know so we can get this as right as we can?

13 MR. PRIDGEN: No, sir, not as I know of.  
14 That's the only thing. You know, I was asked that  
15 question, and anybody that asked a question we tried our  
16 best to answer, to the best of our ability, on everything  
17 they were requesting from us.

18 MR. MALCOLM: Did you personally look up  
19 the voting information related to Crystal Cummings or  
20 did one of the folks that works in your office do that  
21 for you?

22 MR. PRIDGEN: I know her name was pulled  
23 up, and you know, that--you know, because once they gave  
24 it to us, we just pull their names up as far as making  
25 sure that they were registered voters.

1           CHAIRMAN WHITNEY:    What is the difference in  
2 the vote tally that currently stands?

3           MR. PRIDGEN:           Eleven.

4           CHAIRMAN WHITNEY:    And so--and Crystal--and  
5 the county board ruled that 11 people were ineligible  
6 including Crystal Cummings, but you said she didn't vote.  
7 So does that make the ineligible voter tally 10?

8           MR. PRIDGEN:           It would seem so.

9           MR. BAKER:            Mr. Chairman, could we  
10 perhaps ask Mr. Wright why this person was challenged?

11          CHAIRMAN WHITNEY:    Yeah.

12          MR. BAKER:            Why was Crystal Cummings  
13 challenged, Mr. Wright, if you know since we're hearing  
14 that this person didn't vote or they have no record of  
15 the person's vote?

16          MR. WRIGHT:           This person who made the  
17 comment in this matter with the hearing we were not  
18 informed of this, and Cummings, we don't know how this  
19 name was looked up, Mr. Pridgen. You didn't look the  
20 name up, did you? Is it with an S at the end or C-u-m-  
21 m-i-n-g?

22          MR. BAKER:            C-u-m-m-i-n-g.

23          MR. WRIGHT:           Do you know how the  
24 Cummings was spelled?

25          MR. PRIDGEN:           C-u-m-m-i-n-g-s.

1                   MR. WRIGHT:           And you didn't look it up,  
2 did you?

3                   MR. PRIDGEN:           I have looked it up.

4                   MR. WRIGHT:           And did you look it up at  
5 the time of the hearing?

6                   MR. PRIDGEN:           Except just to make sure  
7 that she was a registered voter.

8                   MR. WRIGHT:           And the basis of the number  
9 of people that were challenged, Mr. Baker, was my client,  
10 Mr. Cummings and co-counsel Grady Hunt provided me with  
11 information which was incorporated in the protest.

12                           And so we in good faith--and we're not so sure  
13 that she did vote, and I'm wondering if staff back there  
14 has access to the database.

15                   MR. MALCOLM:           But before you get to that,  
16 Mr. Wright, come on now, you've been doing this for a  
17 couple of decades. So you of all people, before you  
18 challenge someone, wouldn't be a first elementary step  
19 that you would first make a determination whether the  
20 person actually voted or not?

21                   MR. WRIGHT:           I would rely on co-counsel,  
22 basically Grady Hunt who provided me with the  
23 information.

24                   CHAIRMAN WHITNEY:   Mr. Hunt, will you address  
25 us please.

1           MR. HUNT:            Yes, Mr. Chairman. Mr.  
2 Chairman, I am sure that if we get the list, the  
3 difference in this thing, Crystal Cummings, the S was  
4 left off when this person voted. It's the same person  
5 as far as the identifiable information. The only  
6 difference is in the printout, and I apologize, and I  
7 don't have that printout with me, but the S was left off.

8           CHAIRMAN WHITNEY:   Left off of what?

9           MR. HUNT:            The last name, Cummings.

10          CHAIRMAN WHITNEY:   On what document?

11          MR. HUNT:            The voter list.

12          MR. MALCOLM:         So are you saying there's  
13 two voting histories, one for a Crystal Cummings and one  
14 for a Crystal Cumming?

15          MR. HUNT:            I'm not sure whether it's  
16 two--all I'm saying is on the one-stop voting--

17          CHAIRMAN WHITNEY:   What's her real name?

18          MR. HUNT:            I think her real name is  
19 Cummings with an S.

20          CHAIRMAN WHITNEY:   All right, do you have a  
21 listing on the record for Crystal Cumming or Crystal  
22 Cummings? How can we find that out? Can you call  
23 somebody over there?

24          MR. McCUE:            Mr. Chairman, I have pulled  
25 up our voter information, did a search for Crystal

1 Cumming. We do have a voter listed at 728 Roberts  
2 Avenue, Pembroke, and--

3 CHAIRMAN WHITNEY: Did she vote?

4 MR. McCUE: Municipality, town of  
5 Pembroke. As for voter history, we do have voter history  
6 for 11/3/2015 as a one-stop.

7 MR. HUNT: And that's what I  
8 remembered. I remembered, Mr. Chairman, there being--at  
9 the end of the day, the same person because this person  
10 lived in public housing, the same address, Cummings--as  
11 Crystal Cummings. I just took it to be an error as far  
12 as her leaving the S off on that particular day.

13 MR. MALCOLM: Can I make a suggestion,  
14 Mr. Chairman, since you like the hot seat? Can we--I  
15 think it's incumbent upon this Board to get the--we need  
16 you--we need you to tell us unequivocally that this lady  
17 voted in November.

18 What do you need to do to make that happen,  
19 other than you telling us we can look on line? Do you  
20 need to look online or do you need to go do something?  
21 Can you call somebody back at the office?

22 CHAIRMAN WHITNEY: I would like them to come  
23 here now.

24 MR. PRIDGEN: Crystal Cummings is, you  
25 know--



1                   CHAIRMAN WHITNEY:     No, I mean somebody from  
2 your--somebody that can tell us did she or did she not  
3 vote. Is there somebody here on your staff that can  
4 confirm that?

5                   MR. PRIDGEN:            No, sir.

6                   MR. MALCOLM:            Why is that?

7                   MR. PRIDGEN:            Because all we can do is  
8 pull up the records. We don't--you know, we don't know  
9 who actually--if their name's not there, we go by the  
10 name that voted, but I mean here we don't have any--our  
11 records or anything else.

12                  MR. MALCOLM:            Hold on just a minute. You  
13 don't have any what? I'm sorry.

14                  MR. PRIDGEN:            We don't have the records  
15 of that right here with us.

16                  MR. MALCOLM:            Okay, what would it take  
17 for you under oath to certify to this Board that this  
18 lady did vote as Mr. Hunt and Mr. Wright are now  
19 asserting based on the name misspelling?

20                  MR. PRIDGEN:            I would have to call the  
21 office to have them pull it up, but he's already pulled  
22 up the same information we would pull up. So if he says  
23 that--

24                  MR. MALCOLM:            No, we need to rely on you.

25                  MS. AMOROSO:            Mr. Pridgen, you have a

1 smart phone here or a laptop or something? Do you have  
2 the ability to go right down to your seat and pull it up?

3 MR. PRIDGEN: I'd have to call the  
4 office.

5 MR. BAKER: Well, wait a minute. I may  
6 be confused. You've said that seven of the 11 voted one-  
7 stop, three voted on election day, and one we can't even  
8 find, which is of course a major thing.

9 MR. MALCOLM: Yes.

10 MR. BAKER: And now we're hearing--  
11 you've said, sir, that "We've looked, and we can't find  
12 this person." Now we're hearing, "Crystal Cumming voted,  
13 but we didn't find Crystal Cummings."

14 I mean that's just a simple misspelling. Did  
15 you all find a Crystal Cumming instead of a Crystal  
16 Cummings, and if so, didn't you think "Maybe that's the  
17 same person," and then check and see? I mean that  
18 changes the whole outcome if it's 10 instead of 11.

19 MR. PRIDGEN: And to answer that, we went  
20 by the name we were given. Normally if it doesn't come  
21 up, then we try every way to find it and--

22 MR. BAKER: But trying every way you  
23 could to find it, you didn't find a Crystal Cumming  
24 instead of a Crystal Cummings?

25 MR. PRIDGEN: We found Crystal Cummings,

1 but we did not--once the name came up, when we go to do  
2 that is--usually when we have an error that comes up and  
3 says there's no such person, then we go and we try  
4 different spellings.

5 CHAIRMAN WHITNEY: One of the first things I  
6 learned when I started practicing law with my beloved  
7 deceased partner Francis Parker was there's a rule called  
8 "idem sonans," which means same names sound alike or  
9 something to that effect, and if you're searching a title  
10 and if you're looking at Cummings only and don't find a  
11 conveyance there, you'd better be looking at Cumming too  
12 because that's a very close name.

13 So the point that the judge makes is important  
14 to us--we have a problem if it gets somehow kicked out  
15 and y'all can't even trace it because of the missing one  
16 letter, because normally I don't know anything about  
17 computers, but when you punch in the first part of a  
18 name, you get the grantor list from the Register of  
19 Deeds. So I would hope that your records are as good as  
20 theirs because this is a very important function, the  
21 right to vote.

22 MR. MALCOLM: So who was noticed for the  
23 hearing, Crystal Cumming or Crystal Cummings? Who  
24 subpoenaed her? Who subpoenaed her?

25 MR. WRIGHT: We did.

1 MR. MALCOLM: Okay, can you look at your  
2 subpoena, Mr. Wright?

3 MS. AMOROSO: While Mr. Wright is  
4 looking, I just have a couple of background questions for  
5 you, Mr. Pridgen. Could you refresh my recollection, how  
6 long have you been the director there? I know it's not  
7 that long. A couple of years? I don't remember now.

8 MR. PRIDGEN: I guess it'll be going on  
9 two years.

10 MS. AMOROSO: Two years, okay. And how  
11 many folks do you have in the office full time?

12 MR. PRIDGEN: We have five now. Just  
13 hired another one. We have five now.

14 MS. AMOROSO: And you had four at the  
15 time of this election.

16 MR. PRIDGEN: I think she came on right  
17 at the time at the time of the election, but, you know,  
18 she just came on.

19 MS. AMOROSO: Okay. All right. Thank  
20 you.

21 CHAIRMAN WHITNEY: Just out of curiosity, do  
22 we even have any idea whether this person's name is  
23 Cumming or Cummings? I know we're--

24 MR. HUNT: Mr. Chairman, I'm sure that  
25 it was a misspelling on the day of the election. They

1 just left off--

2 CHAIRMAN WHITNEY: Which is right, Counselor?

3 MR. HUNT: Cummings, with an S.

4 CHAIRMAN WHITNEY: Okay, and--

5 MR. HUNT: And I have--

6 CHAIRMAN WHITNEY: And on the records it's

7 Cumming?

8 MR. HUNT: We subpoenaed it just like

9 it was on the printout, Cumming, C-u-m-m-i-n-g.

10 CHAIRMAN WHITNEY: The board of election

11 printout.

12 MR. HUNT: Yes. That's what the

13 subpoena will show. We left the S off because--but I'm

14 positive this is the same person with an S, Mr. Chairman.

15 The address is the same.

16 CHAIRMAN WHITNEY: Do we have any sort of non

17 Board of Elections evidence as to whether she's Cummings

18 or Cumming? A birth certificate or--

19 MR. HUNT: Driver's license check, ID,

20 you would see Cummings with an S, same address, Mr.

21 Chairman of the Board.

22 MS. AMOROSO: Sir, that's a fairly common

23 name here in Robeson because we have at least three or

24 four Cummings in this record. Am I correct?

25 MR. HUNT: Yes.

1 MS. AMOROSO: With the S.

2 MR. HUNT: Yes.

3 MS. AMOROSO: All right.

4 MR. MALCOLM: All right. I think--Mr.

5 Lawson, will you make a suggestion as to, or Ms. Strach,

6 exactly what is the document that Mr. Pridgen needs to

7 testify to us that is accurate to solve this mystery?

8 MS. STRACH: I think, Mr. Pridgen, we

9 need a voter registration card of both Crystal Cumming

10 and Crystal Cummings. They both are in the database.

11 And we need a one-stop application for this voter.

12 There is voter history for Crystal Cumming.

13 If we could pull the one-stop application to see the

14 signature on that.

15 MR. BAKER: Do we have an address? Are

16 they the same address?

17 MR. STRACH: The Crystal Cumming and

18 Crystal Cummings do not have the same address.

19 MR. MALCOLM: Can we get--

20 CHAIRMAN WHITNEY: All right, this says 396

21 Canal Road, and that's the Crystal Cummings with an S,

22 and what is this; it's something about pending citation.

23 Is that like a traffic ticket or something?

24 MR. HUNT: Yes.

25 CHAIRMAN WHITNEY: All right. Is there

1 something in the record about where--I mean this says 396  
2 Canal Road. Where was it in the record that her address  
3 is?

4 MR. MALCOLM: Do you want the index, Mr.  
5 Chairman?

6 (Pause)

7 MS. AMOROSO: Was she at Melissa Street  
8 or--

9 CHAIRMAN WHITNEY: She was subpoenaed at  
10 Roberts Avenue, 728 Roberts Avenue.

11 MR. PRIDGEN: Which is public housing.

12 MS. AMOROSO: That's the PHA, correct?

13 CHAIRMAN WHITNEY: Okay. Well, the Cummings  
14 with an S, with the pending citation in Robeson County,  
15 the 396 Canal Road, and that one is 728 Roberts. Go  
16 ahead.

17 MR. PRIDGEN: The ATV would have the  
18 (unintelligible). That would be in the office, and we  
19 would have to get that if we would have go back through  
20 the--with the ATV if you'd like to have that.

21 CHAIRMAN WHITNEY: I think we need it here.  
22 How quickly can you get it here?

23 MR. PRIDGEN: It would probably be at  
24 least a couple of hours.

25 CHAIRMAN WHITNEY: Where is your office?

1 MR. PRIDGEN: In Lumberton. Hold on.

2 MS. AMOROSO: How far is that?

3 MR. MALCOLM: Mr. Stone.

4 MR. STONE: Yes, sir, Mr. Malcolm.

5 MR. MALCOLM: Tell me what you can make  
6 happen, sir.

7 MR. STONE: I think we need to look for  
8 the voter registration cards in the computer and we need  
9 to locate the ATV forms or the absentee app for one-stop.

10 CHAIRMAN WHITNEY: I think somebody needs to  
11 call somebody over there and have it pdf'd over here.  
12 I mean it takes five minutes. I don't know--I'm prepared  
13 to look at a pdf that says it comes from the County Board  
14 of Elections just to expedite this thing. Okay? Rather  
15 than we're just doing on an online search over here.

16 MR. STONE: All of our staff is here,  
17 and we have part-time staff there running the office  
18 right now. One of our staff has already gone to do it,  
19 and it might take a little bit of time, no two hours.

20 CHAIRMAN WHITNEY: Have them--

21 MR. STONE: It won't take two hours.

22 MR. MALCOLM: It's all electronic.

23 CHAIRMAN WHITNEY: Yeah, have them e-mail it  
24 to one of y'all and the nice lady at the front desk will  
25 print it up for us.



1 MR. STONE: They'll have to manually  
2 locate that absentee application.

3 CHAIRMAN WHITNEY: Well, that's fine.

4 MR. STONE: I mean it will be, but  
5 they're on it.

6 CHAIRMAN WHITNEY: I mean we'll--I mean we've  
7 got to get this right. I mean we can't even--

8 MR. STONE: That's been our goal ever  
9 since November.

10 MR. MALCOLM: I think Ms. Strach is also.  
11 Mr. Stone, can we also pull at the same time all of the  
12 seven one-stop that--Mr. Pridgen, correct me if I'm  
13 wrong. You said seven of these individuals were one-  
14 stop. Is that true?

15 MR. PRIDGEN: Yes, sir.

16 MR. MALCOLM: Can we get those documents  
17 too?

18 MR. STONE: Seven one-stops?

19 MR. MALCOLM: Those seven.

20 MR. STONE: As well as Crystal?

21 MR. MALCOLM: Yes. Seems like that would  
22 be germane. Don't you think it would help us?

23 MR. WRIGHT: Mr. Chairman, may I speak  
24 just a short moment?

25 CHAIRMAN WHITNEY: Yeah, but we're going to

1 let him finish. But go ahead. One question and then  
2 let Mr. Dial--

3 MR. WRIGHT: I would note that Mr. David  
4 Locklear throughout the hearing would call up his staff,  
5 as he should have, to get voting history information.  
6 So throughout this ten-hour hearing Mr. Locklear was the  
7 one that would get electronic records on each voter that  
8 was appearing before him, and then when Mr. Locklear at  
9 the time didn't raise the issue and wasn't raised at all,  
10 but I do credit Mr. Locklear that he was double-checking.

11 MR. MALCOLM: So did he double-check  
12 Crystal Cumming/Cummings?

13 MR. WRIGHT: MR. Locklear is here. I  
14 cannot speak for him.

15 MR. LOCKLEAR: I've got a printout right  
16 there.

17 MR. STONE: We have a copy of her voter  
18 registration and her voter card here.

19 MR. MALCOLM: Would you look at that, Mr.  
20 Pridgen, and tell us--we need to really--we really need  
21 you to interpret all this for us to help us understand  
22 it.

23 MR. PRIDGEN: Yes, sir. This is the  
24 voter profile for Crystal Lynn Cummings. The address was  
25 408 West Fifth Street, and--

1 MR. MALCOLM: Did you say 408 West Fifth  
2 Street?

3 MR. PRIDGEN: Yes, sir.

4 MR. MALCOLM: So it's not 728 Roberts  
5 Avenue, nor is it 396 Canal Road?

6 MR. PRIDGEN: That's what we have on the  
7 system.

8 MR. MALCOLM: And what was her middle  
9 name?

10 MR. PRIDGEN: Lynn, L-y-n-n.

11 CHAIRMAN WHITNEY: This says "Crystal May  
12 Helena Cummings." And the subpoena says "Crystal  
13 Cumming."

14 MR. PRIDGEN: And then we have her  
15 registration application where she registered.

16 CHAIRMAN WHITNEY: I'm sorry. Who--what is  
17 the name of the--

18 MR. PRIDGEN: Crystal Cummings is  
19 what's--

20 CHAIRMAN WHITNEY: With an S?

21 MR. PRIDGEN: With an S, yes.

22 CHAIRMAN WHITNEY: All right.

23 MR. PRIDGEN: And the third thing we have  
24 is her voter registration card that, you know, was sent  
25 out to her when she--after she registered.

1           CHAIRMAN WHITNEY:    Could I see that please.

2                               (Documentation handed to Chairman Whitney.)

3           CHAIRMAN WHITNEY:    Pass these to the other  
4 Board members, and I'll look at this.

5                               All right, is it fair to say that Crystal Lynn  
6 Cummings is the only person--the only Crystal Cumming or  
7 Cummings that's registered to vote in Pembroke?

8           MR. PRIDGEN:           Yes, sir, as far as  
9 Crystal.

10          CHAIRMAN WHITNEY:    I'm saying is this it?

11          MR. PRIDGEN:           Yes, sir.

12          CHAIRMAN WHITNEY:    There's not a Crystal  
13 Cumming?

14          MR. PRIDGEN:           I cannot answer that at  
15 this time.

16          CHAIRMAN WHITNEY:    Well, we need to know that.  
17 I mean call back to the office. I need somebody to tell  
18 me there's no Crystal Cumming that's registered to vote  
19 because we're having some--

20          MR. STONE:             We have two of our staff  
21 members on the way to the office. It's approximately  
22 about 12 miles. Once they get there, they probably can  
23 give you an immediate answer on that. That could also  
24 probably be retrieved online.

25          CHAIRMAN WHITNEY:    All right. Mr. Dial. I'm

1 going to get Mr. Dial to--

2 MR. MALCOLM: Continue.

3 CHAIRMAN WHITNEY: Could you continue with  
4 your examination of Mr. Pridgen please.

5 MR. DIAL: Well, that's what I wanted  
6 from Mr. Pridgen to bring to the Board.

7 CHAIRMAN WHITNEY: All right.

8 MR. DIAL: With all the confusion  
9 here, it's knocked my train of thought off just a little  
10 bit.

11 CHAIRMAN WHITNEY: All right, before Mr.--

12 MR. DIAL: --to regroup here.

13 CHAIRMAN WHITNEY: Well, okay. Before--so  
14 you're about--you're finished with him?

15 MR. DIAL: Yes.

16 CHAIRMAN WHITNEY: Before we finish, Board  
17 members, do you have any more questions for Mr. Pridgen  
18 at this time?

19 MR. MALCOLM: Not at this time.

20 CHAIRMAN WHITNEY: All right, Mr. Pridgen,  
21 will you stay here but take your seat. And Mr. Dial,  
22 will you proceed with your testimony or your  
23 presentation.

24 MR. DIAL: It is my contention that  
25 counsel for Mr. Cummings did quite a bit of shabby work

1 because on their protest, the first thing, and I brought  
2 it out down at the preliminary hearing, that they had  
3 down there that in fact all these people do live at the  
4 address that they contend.

5 And do y'all need copies of the preliminary  
6 hearing?

7 CHAIRMAN WHITNEY: We have copies of the  
8 county board hearing.

9 MR. DIAL: Yeah, the county board  
10 hearing. You've got a copy of Mr.--the original copy of  
11 the protest for Mr. Cummings.

12 MR. MALCOLM: Why is that germane, Mr.  
13 Dial? Help me with that. Why is that germane? I mean  
14 are you trying to impeach the credibility of the lawyers?

15 MR. DIAL: I am, and the stuff--the  
16 incorrect information that they used through this total  
17 hearing.

18 MR. MALCOLM: Let's say that's true.  
19 Let's say Mr.--let's say that your assertion against Mr.  
20 Hunt and Mr. Wright is true, but that's why those three  
21 well-trained, appointed individuals that we appointed  
22 sorts through all that stuff.

23 MR. DIAL: Well, there's things that  
24 they didn't look at, Mr. Malcolm.

25 MR. MALCOLM: Well, hold on a second.

1 Stone, Locklear, and Ms. Tiffany, that's their job on the  
2 local level is to sift through what I'll call--if there's  
3 any baloney that's put up on the table.

4 So they sifted through it at a point in their  
5 hearing, and are you--did they make some incorrect  
6 determination or are you just saying because they  
7 dismissed a bunch of stuff, that that's somehow germane  
8 to what we're trying to accomplish?

9 MR. DIAL: No, sir, that's not what  
10 I'm saying. What I'm saying, the original protest by Mr.  
11 Hunt and Mr. Wright--and I'll give you an example. They  
12 protest Margie Ann Haggins, Lot 32 Cornith Road.

13 MR. MALCOLM: Yes, I read it in depth.

14 MR. DIAL: Margie Ann Haggins, voter  
15 registration is not Lot 32 Cornith Road.

16 MR. MALCOLM: Okay.

17 MR. DIAL: It's 103 Cornith. It  
18 doesn't designate a lot. They added words into their  
19 protest and stuff that could change the outcome of a  
20 decision is my contention.

21 MR. MALCOLM: So in that case, the county  
22 board determined--

23 MR. DIAL: The County board didn't  
24 hear it. Well, they did hear it because they had it as  
25 Lot 32.

1                   MR. MALCOLM:           Page 155. We have a  
2 different page number than you all. Page 155, Board, 155  
3 and 208. The county board did hear your assertions or  
4 the matter of Margie Ann Haggins, living at Harris  
5 Trailer Park, Lot 32, and they determined that she was  
6 not eligible to vote.

7                   Are you standing here today now and making an  
8 assertion that the county board made a mistake in that  
9 determination?

10                  MR. DIAL:                She doesn't live--she  
11 didn't vote. Her registration form doesn't say Lot 32.

12                  MR. MALCOLM:           That's not my question.  
13 Did she vote?

14                  MR. DIAL:                She did vote, but she lived  
15 at Lot 20.

16                  MR. MALCOLM:           Let me finish.

17                  MR. DIAL:                Okay. Yes, sir.

18                  MR. MALCOLM:           The county board ruled that  
19 she was not an eligible voter. Are you aware of that?

20                  MR. DIAL:                Yes.

21                  MR. MALCOLM:           Do you--

22                  MR. DIAL:                She's one of the 11.

23                  MR. MALCOLM:           Do you agree or disagree?

24                  MR. DIAL:                I disagree. They based  
25 their decision on testimony from Mr. Willie Harris which



1 owns that mobile home park.

2 MR. MALCOLM: Oh, I know, and there's  
3 only 30 lots there. That's part of the reason they kept  
4 talking about Lot 32, because there's only 30 lots.

5 MR. DIAL: Well, she didn't register  
6 it at Lot 32. That was their protest that said 32.

7 MR. MALCOLM: Yes, sir.

8 MR. DIAL: But her registration form  
9 says 103 Cornith Road.

10 MR. MALCOLM: 103 Cornith Road, for which  
11 we heard testimony that there wasn't.

12 Can you get mail--will the U.S. Postal Service  
13 deliver mail to 103 Cornith Road? Yes or no.

14 MR. DIAL: They just got the mailboxes  
15 and stuff for that--

16 MR. MALCOLM: At this time.

17 MR. DIAL: Yes, sir. Yes, sir.

18 MR. MALCOLM: At the time of this  
19 hearing--

20 MR. DIAL: 103 Cornith Road, Lot 20.

21 MR. MALCOLM: At the time of this  
22 hearing--

23 MR. DIAL: At the time of the voting,  
24 103 Lot 20, you could get mail there.

25 MR. MALCOLM: The testi--

1                   MR. DIAL:                   Mr. Harris had told these  
2 people to use 200 Cornith Road in this testimony.

3                   MR. MALCOLM:                 Let me finish, Mr. Dial,  
4 please.

5                   MR. DIAL:                   Yes, sir.

6                   MR. MALCOLM:                 I respect you, Mr. Dial.  
7 Your wife was one of my son's teachers, and she did a  
8 great job. Please let me finish my question before you  
9 interrupt me. Can we agree?

10                  MR. DIAL:                   Go ahead.

11                  MR. MALCOLM:                 In the transcript there was  
12 testimony from Mr. Harris which to my knowledge you did  
13 not dispute where Mr. Harris said--and as a matter of  
14 fact, you made a comment about or, quote, postal delivery  
15 people. But the testimony from Mr. Harris was that he  
16 told folks to go to the United States Post Office to set  
17 up a post office box if they wanted to ensure delivery  
18 of their mail. Let me finish. Do you recall that?

19                  MR. DIAL:                   I do.

20                  MR. MALCOLM:                 Are you--and in the  
21 testimony Mr. Harris said there was no way to get mail;  
22 there were no boxes that the kids knocked down with the  
23 baseball bats at Harris Trailer Park. Do you recall  
24 that?

25                  MR. DIAL:                   I do.

1 MR. MALCOLM: So why are you saying now  
2 that they could get mail?

3 MR. DIAL: Well, what I'm trying to  
4 say, Mr. Malcolm, you don't have to have--your mailing  
5 address doesn't have to be your residence.

6 MR. MALCOLM: I agree with that.

7 MR. DIAL: You had me crossed up there  
8 just for a minute as far as getting mail at that address.  
9 You know, if you look at these 11 people, they got mail  
10 all over the county. Mr. Hunt and them went back and  
11 pulled their--where they got a traffic ticket five years  
12 ago at that address--

13 MR. MALCOLM: Yes, sir.

14 MR. DIAL: --which had nothing to do  
15 with where they were living 30 days prior to the election  
16 2015.

17 MR. MALCOLM: Tell me how it's germane  
18 to this five member board. Get to the point related to  
19 Margie Haggins.

20 MR. DIAL: Margie Haggins. Margie  
21 Haggins lived with her sister at Lot 20, not Lot 32.  
22 It's my presumption that with Mr. Harris's testimony,  
23 "Oh, we don't have a Lot 32." Well, they've alleged she  
24 lives at 32. Well, since she weren't there to testify  
25 where she lives although her sister was there and

1 testified that she lived with her, they threw that out.  
2 Said it was a irregularity.

3 MR. MALCOLM: Yeah, but they threw her  
4 vote out because they had subpoenaed her to appear, did  
5 they not?

6 MR. DIAL: They did, and--

7 MR. MALCOLM: This is the lady--

8 MR. DIAL: One second.

9 MR. MALCOLM: Okay. Go ahead.

10 MR. DIAL: The subpoena was served at  
11 Lot 20.

12 MR. MALCOLM: On her.

13 MR. DIAL: On her.

14 MR. MALCOLM: Did she appear?

15 MR. DIAL: She did not.

16 MR. MALCOLM: Did she appear to represent  
17 her own interests?

18 MR. DIAL: No. She signed an  
19 affidavit where that I could represent her interests at  
20 the Board of Elections. Her sister appeared and  
21 testified that she lived with her at Lot 20. And there  
22 was another one.

23 MR. MALCOLM: There was another lady.

24 MR. DIAL: There was another lady.

25 Let me think of her name.

1 MR. MALCOLM: I've got her name.  
2 Michelle Harding.

3 MR. DIAL: Michelle Harding. She also  
4 lived at that address, and if you look, she voted at Lot  
5 20, which is where it is.

6 MR. MALCOLM: So--

7 MR. DIAL: Let me finish please. And  
8 if you'll let me supply some supplemental information.

9 MR. MALCOLM: No, but I don't want to re-  
10 argue the case.

11 MR. DIAL: That's the reason I want  
12 some supplemental information.

13 MR. MALCOLM: I don't want you to re-  
14 argue the case.

15 MR. DIAL: To show that during Mr.  
16 Harris's testimony I was--he was saying that he knew  
17 everybody that lived in all of his trailers, and I asked  
18 him, if you recall in his testimony, I said, "Do you know  
19 a Jesse Locklear that lives there that's on house  
20 arrest?" "Oh, no, he don't live there."

21 Well, I have the information from the judicial  
22 system and the date of September the 22nd, 2015, that  
23 Jesse Locklear was living in the home at Lot 20 under  
24 house arrest, and if he had to leave, it would go off.

25 MR. MALCOLM: Ankle bracelet.

1           MR. DIAL:           Ankle bracelet, and I have  
2 it and I would love to submit it to you.

3           MR. MALCOLM:        Before you submit that,  
4 you're not understanding my fundamental question.

5           MR. DIAL:           All right.

6           MR. MALCOLM:        My fundamental question,  
7 as it relates to Haggins and as it relates to Harding,  
8 is it not true that both of those individuals were served  
9 with subpoenas?

10          MR. DIAL:           That is true.

11          MR. MALCOLM:        Is it not true that neither  
12 of them showed up?

13          MR. DIAL:           Neither showed up.

14          MR. MALCOLM:        Is it true that you've  
15 tendered an affidavit purportedly signed by them which  
16 I'm not questioning but an affidavit whereby they signed  
17 something saying you could, quote, represent their  
18 interests before the county board?

19          MR. DIAL:           Yes, sir, because--go  
20 ahead.

21          MR. MALCOLM:        So the county board  
22 received that affidavit, correct?

23          MR. DIAL:           They did.

24          MR. MALCOLM:        They didn't dismiss that  
25 affidavit.

1           MR. DIAL:           Well, what the county board  
2 did is to--Willie Harris signed an affidavit and he  
3 testified and they didn't give any credible weight to my  
4 affidavit that I had from Ms. Harding or the other lady.

5           MR. MALCOLM:        Ms. Haggins.

6           MR. DIAL:           And the testimony of her  
7 sister that rented the trailer.

8           MR. MALCOLM:        And you've said--you just  
9 took the words right out of my mouth because Mr. Stone,  
10 Mr. Locklear, and Ms. Tiffany, to my understand, and I  
11 know specifically there's numerous references in the  
12 transcript where Ms. Tiffany Powers talks about  
13 credibility, giving weight to witnesses or evidence. And  
14 that's exactly what the statutory framework sets forth.

15          MR. DIAL:           It says you can give  
16 credibility--you can give credibility with an  
17 affidavit--

18          MR. MALCOLM:        Hold on. Let me finish  
19 speaking. So the three member board took your affidavit  
20 and they weighed it, and they weighed it against the test  
21 of the affidavit and the testimony of Mr. Harris, and  
22 they made a determination. They made a determination  
23 that they, quote, found both of them ineligible.

24          MR. DIAL:           That's correct.

25          MR. MALCOLM:        So I don't--I think

1 you're--unless some--I mean that's a determination--

2 MR. DIAL: I'm not trying to dispute  
3 that. The only thing that I was trying to bring out was  
4 the credibility to show this board the credibility of  
5 Willie Harris testifying that he knew everybody that  
6 lived in that trailer park.

7 MR. MALCOLM: So you're not questioning  
8 Haggins and Harding, the determination that was made.

9 MR. DIAL: Well, you know, I'm not--  
10 Mr. Wright said--you asked him. He objected to all of  
11 them that didn't go in his favor, you know.

12 MR. MALCOLM: All right. Were Haggins  
13 and Harding one stop?

14 MR. DIAL: Haggins and Harding were  
15 one-stop voters.

16 MS. AMOROSO: Mr. Dial.

17 MR. DIAL: Yes, ma'am.

18 MS. AMOROSO: Out of these 11 that were  
19 declared ineligible, is it your contention that all of  
20 them are eligible?

21 MR. DIAL: No, ma'am.

22 MS. AMOROSO: How many out of your 11?

23 MR. DIAL: There was three--there was  
24 two people that voted the day of the election that I  
25 would say that was ineligible. That was Kim McCartney



1 and Connie Johnson Oxendine.

2 MS. AMOROSO: All right, so--

3 MR. DIAL: They voted the day of the  
4 election.

5 MS. AMOROSO: So you're claiming then  
6 nine out of the 11 that are alleged by--

7 MR. DIAL: Nine out of the 11 that  
8 voted lived in the city limits of the town of Pembroke  
9 at the time of the vote or eight out of the 11 if this  
10 Crystal Cummings didn't vote. Eight out of the 11.

11 MR. MALCOLM: And if she did, nine.

12 MR. DIAL: If she did not. And  
13 she--I never could find Crystal Cummings. I looked. I  
14 went to people that Mr. Hunt and Mr. Wright had  
15 subpoenaed and had other people look for me.

16 Matter of fact, I was talking to Mr. Pridgen  
17 on the phone about something and one of them was standing  
18 right there, and I said--I asked her, I said, "You been  
19 subpoenaed?" "No, nobody subpoenaed me."

20 On the subpoenas, if you'll notice, most of  
21 these subpoenas weren't served. I don't know what  
22 percentage it is. But what was happening, the subpoenas  
23 that were served were being served at the residence of  
24 the people where they voted from, and it was during the  
25 week of Thanksgiving, and I brought this out in the

1 transcript where--

2 CHAIRMAN WHITNEY: Can I get some--

3 MR. DIAL: Yes, sir.

4 CHAIRMAN WHITNEY: Just to make sure I  
5 understood the last line of questioning. There are 11  
6 people that the county board ruled ineligible.

7 MR. DIAL: Yes, sir.

8 CHAIRMAN WHITNEY: Are you--did I just hear  
9 you say that Kim McCartney and Connie Johnson Oxendine  
10 and maybe Crystal Cummings, you actually agree are  
11 ineligible but not the other eight? Is that--am I--I  
12 just want to understand.

13 MR. DIAL: Yes, sir.

14 CHAIRMAN WHITNEY: So you're saying that eight  
15 or possibly nine of the 11 that are ruled ineligible  
16 should actually have been eligible?

17 MR. DIAL: Yes, sir. And they're  
18 eligible as far as if they're regis--just like--and I  
19 tried to bring it out and wasn't allowed to. This--

20 CHAIRMAN WHITNEY: Where? At the county  
21 hearing?

22 MR. DIAL: At the county hearing. Ms.  
23 Amy Hayman (phonetic), Ms. Carla (phonetic) Rebecca  
24 Britt, Mr. Pinnix (phonetic) McMillan, and all these are  
25 one-stop except for Carla Rebecca Britt. Carla Rebecca

1 Britt voted election day and voted curbside.

2           Kim McCartney voted election day. The rest of  
3 them were one-stop voters, and I'm looking at the list  
4 of 11, and maybe I'm jumping around, but these are  
5 people--there's another one, Jack Beaver. He voted one-  
6 stop. The house had burned, and he moved out of the  
7 house. He was living there in a car in the backyard, but  
8 Pembroke police department come and moved him out of it.  
9 But I would say he would've been ineligible because he  
10 wasn't living in the town of Pembroke during the  
11 election. So that would be--

12           MS. AMOROSO:           So that's eight now with  
13 the--

14           CHAIRMAN WHITNEY:   Any word from the county  
15 board about--do we have--

16           MR. STONE:           It's my understand and my  
17 contention I believe that Crystal Cummings did not vote  
18 on 11/3/2015, but Crystal Cumming, without the S, did  
19 vote on 11/3/2015, according to what information is on  
20 the election resources.

21           MR. MALCOLM:         What address are you  
22 showing for Cumming?

23           MR. STONE:           728 Roberts Avenue.

24           MR. MALCOLM:         Which is where a subpoena  
25 was sent, correct, Mr.--

1 MR. STONE: It is. But Cummings is  
2 408 West Fifth Street and has no voter history.

3 MS. AMOROSO: Are you claiming these are  
4 two separate people?

5 MR. STONE: Yes.

6 MS. AMOROSO: Okay.

7 MR. STONE: Or maybe a person that  
8 registered twice and put the S on it at one time and  
9 didn't use that to vote but voted with the one without  
10 the S.

11 MR. MALCOLM: Tell me the middle--

12 MS. AMOROSO: Things like that can  
13 happen.

14 MR. MALCOLM: Tell me the middle name of  
15 the individual at the first 734.

16 MR. STONE: For 728?

17 MR. MALCOLM: Yeah.

18 MR. STONE: Just Crystal Cumming.  
19 Crystal Cummings, no last--no middle name. The one at  
20 408 West Fifth Street put the S on Crystal Lynn Cummings.

21 CHAIRMAN WHITNEY: All right, hold on.  
22 Crystal Cumming is where?

23 MR. STONE: 728 Roberts Avenue,  
24 Pembroke.

25 CHAIRMAN WHITNEY: And Crystal Cummings is

1 where?

2 MR. STONE: 408 West History  
3 (phonetic), Pembroke. No voter history.

4 CHAIRMAN WHITNEY: All right, so she voted--  
5 the Cumming, with no S, voted; Cummings, with an S, did  
6 not vote.

7 MR. STONE: It is my belief that Number  
8 13, Crystal Cummings and the decision made by the board,  
9 local board of elections was actually pertaining to  
10 Crystal Cumming. Somewhere the S got added to it.

11 CHAIRMAN WHITNEY: Okay. Ms. Strach.

12 MS. STRACH: We've had our office pull  
13 the Crystal Cumming record, and what appears to be the  
14 case--I put three copies if the board members wish to  
15 see--is that there is a Crystal Cummings, with an S,  
16 registered at the Canal Street address, Crystal May  
17 Cummings registered at 396 Canal Road, Pembroke. That  
18 was April 19th, 2012.

19 This same person appears to have voted one-stop  
20 on--for the November election, and at that time she came  
21 in, she changed her address to 728 Roberts Avenue. She  
22 signed the change of address with the last name Cummings,  
23 but it was entered in without the S.

24 CHAIRMAN WHITNEY: So it was a typo.

25 MS. STRACH: So it's the same person.

1 The person does appear to have voted.

2 MR. BAKER: So the citation that we  
3 have--

4 MR. STONE: --with no ID.

5 MR. BAKER: --Crystal Cummings at 396  
6 Canal Road was Crystal May Helena, or Helena, Cummings  
7 (sic).

8 CHAIRMAN WHITNEY: I think the Fifth Street  
9 is Crystal Lynn Cummings, if I'm seeing this voter card  
10 right.

11 MR. BAKER: The citations have a date  
12 of birth, as other records do. Will you compare a date  
13 of birth?

14 CHAIRMAN WHITNEY: Crystal Lynn Cummings is  
15 21 years old. What's the age of Crystal May Cumming?

16 MR. BAKER: Born in 1993, January of  
17 '93.

18 MS. AMOROSO: So that's the same age.

19 MR. BAKER: Well, actually that'd be  
20 23.

21 MR. MALCOLM: So you asserted, Mr. Dial,  
22 that she never voted. You've heard what Ms. Strach has  
23 said to us; that there appears to have been--the only  
24 individual--

25 MR. DIAL: According to the Robeson

1 County Board of Elections. I asked for the list, the  
2 people that had--were protested at the Board of  
3 Elections, and I have that list in front of me, and it  
4 tells whether they voted one-stop, whether they voted  
5 curb-stop, whether they voted the election day, and then  
6 I get down to Crystal Cummings, and it says, "No vote."

7 MR. MALCOLM: You've seen the document  
8 he has in his hand, Mr. Wright?

9 MR. WRIGHT: No, I don't have it, but  
10 it's apparent to us that this was--Mr. Dial, this was an  
11 error on the part of the Robeson County Board.

12 Mr. Pridgen came up here at the State Board  
13 hearing and asserted something which really wasn't true.  
14 It's a typo. I know the person didn't intentionally do  
15 it, but it's got everybody all confused, but it's clear  
16 she voted, she was one of the 11 ineligible.

17 And I'm a little disappointed that this wasn't  
18 brought up in the hearing, but that's water over the dam,  
19 but I've counted back; we have 11 ineligible voters.  
20 I'll give him that.

21 MS. AMOROSO: Mr. Dial, you can move  
22 forward a little. What is it now that you're asking?  
23 What is the relief you're asking for?

24 MR. DIAL: The relief that I'm asking  
25 for, and I asked for it at the hearing at the Board of

1 Elections, that since we know who is alleged here to be  
2 ineligible, it's one of the options that the county board  
3 could have done, and it's a option the state board can  
4 do.

5           The--as you realize, we're from a poor old  
6 community, and we don't have money to be wasting in the  
7 town of Pembroke. The simplest remedy for this protest  
8 is to go in, since the county board of election had ruled  
9 these 11 people ineligible--only three of them were  
10 one-stop--I meant election day voters. The other--or it  
11 was three or two election day. Nine of them was one-  
12 stop. Go in and retrieve these ballots and deduct them  
13 from the total canvas.

14           The ones that voted election day, it's my  
15 understanding that they are possibly not retrievable.  
16 Those two or three that voted election day is not enough  
17 to change the outcome of the election, and the only way  
18 to know that would be go in and retrieve the ones that  
19 you have and count your votes in, and then you could see  
20 if the ones voted then were enough to make a difference.

21           MS. AMOROSO:           Okay. Mr. Dial, none of  
22 the candidates asked for a recount.

23           MR. DIAL:           Oh, yes, they--the majority  
24 of the win was more--it was above the guidelines of a  
25 recount.



1 MS. AMOROSO: Oh, it was outside of the  
2 limit. Okay. All right.

3 MR. MALCOLM: So, Mr. Dial, would you--  
4 what's your belief as to what it could cost? And it's  
5 costing my neighbor.

6 MR. DIAL: Well, according to Mr.  
7 Stone, two years ago in Raleigh, he testified that it  
8 would cost between three and ten thousand dollars to have  
9 another election.

10 MR. MALCOLM: You're right. I recall  
11 that testimony.

12 MR. STONE: That's a special election,  
13 municipal election only.

14 MR. DIAL: Well, that's what this  
15 would be if it would be another one. It would be a  
16 special election.

17 MR. MALCOLM: It was \$5,000.

18 MR. DIAL: I was quoting his  
19 testimony.

20 MR. MALCOLM: Sure, but it was a stand  
21 alone election. As you know, we've got an election  
22 coming up on March 15th. Three that we ordered this past  
23 week to hold a new election, those are going to run--  
24 they're going to coincide with that.

25 MR. DIAL: Coincide with the other

1 elections? It would be terrible. It would be terrible.

2 MR. MALCOLM: Because the people would  
3 show up?

4 MR. DIAL: No, not because the people  
5 would show up. Because you'd have two different polling  
6 places.

7 MR. MALCOLM: Why do you say that?

8 MR. DIAL: Well, we have two  
9 precincts.

10 MR. MALCOLM: Yes, sir, north and south.

11 MR. DIAL: North and south. And your  
12 other election that you're talking about, I assume, is  
13 your school board election and stuff. There's two  
14 different polling places.

15 MR. MALCOLM: Yes, sir.

16 MR. DIAL: What you would have is  
17 somebody going to north Pembroke to vote in the town  
18 election when they couldn't vote there. They'd have to  
19 go to the library or whatever the other establishment is.  
20 And then they would say, "I'm not going to vote there;  
21 I'm going on home."

22 MR. MALCOLM: You do understand that the  
23 county board of election would come up with a particular  
24 ballot style, and that ballot style Dina Joe and Steve  
25 Stone, and the rest of you, correct me if I'm misstating

1 something, every voter is assigned a ballot style. Is  
2 that correct, Mr. Stone?

3 MR. STONE: That's correct.

4 MR. MALCOLM: And these folks in advance  
5 were assigned a ballot style. My mother who just turned  
6 81, by the way--so my mom when she showed up and said,  
7 "Vera Doris Locklear Malcolm," they would look in the  
8 computer and say, "Give Ms. Malcolm ballot style 22."  
9 You understand that that's how it works; it's all  
10 preselected?

11 MR. DIAL: I understand that we've  
12 always had a one-side polling place--

13 MR. MALCOLM: Yes, sir.

14 MR. DIAL: --for the municipal  
15 election.

16 MR. MALCOLM: Yes, sir.

17 MR. DIAL: So ballot style that you're  
18 referring to, the only difference on the ballot style,  
19 one would say "North Pembroke," which is maybe 23 or  
20 "South Pembroke" 22 or vice versa. That would be the  
21 only difference in the ballot style. Nothing with the  
22 names on it.

23 MR. MALCOLM: Do you agree that--we've  
24 heard testimony this morning and you've had an  
25 opportunity to read the transcript. Would you agree that

1 there's been numerous reports where perhaps there were  
2 administrative mistakes made by the county board of  
3 elections? Do you agree with that statement or do you  
4 think they did everything right?

5 MR. DIAL: Well, the mistake that  
6 you're referring to--

7 MR. MALCOLM: No, sir. I'm referring to  
8 in general because it was your testimony that the folks  
9 were not adequately trained. That was your testimony.

10 MR. DIAL: That's what I'm referring  
11 to. You just give me the opportunity to explain it to  
12 you.

13 MR. MALCOLM: Yes, sir.

14 MR. DIAL: I believe that this  
15 election is the most honest election being Pembroke in  
16 40 years. I specifically took it upon myself, what I  
17 know about the election law, when I went down to the  
18 polling site with a one-stop vote, if something was  
19 wrong, to try to find Mr. Pridgen and bring it out and  
20 make it right.

21 Some of them had to get some additional  
22 information because they were voting provisional ballots  
23 knowing that a large percentage of your provisional  
24 ballots doesn't count.

25 There was extra things done to make it right.

1 Mr. Pridgen come out and talked to Mr. Shepherd and his  
2 girlfriend out there. Mr. Pridgen told me, "I will make  
3 a note." I asked him, I said, "Now, what if these are  
4 protested?" He said, "I'll make a note." And--

5 MR. MALCOLM: Basically, "I'll follow  
6 through on it."

7 MR. DIAL: Sorry?

8 MR. MALCOLM: And he basically--in the  
9 transcript it sort of sounds like Mr. Pridgen said to  
10 you that "I'll follow through on it and make sure it's  
11 addressed."

12 MR. DIAL: He did. He did say that.

13 MR. MALCOLM: To your knowledge, was it  
14 done?

15 MR. DIAL: He testified to it.

16 MR. MALCOLM: Was Mr. Shepherd's address  
17 corrected through the process? Did they grab Shepherd  
18 by the arm and say, "Come in here, my friend; let's fix  
19 your address right now"? Do you have any knowledge that  
20 that occurred?

21 MR. DIAL: No, sir. Mr.--I went  
22 through the polling place to find Mr. Wright.

23 MR. MALCOLM: Hold on.

24 MR. DIAL: I'm going to tell you how  
25 it happened.

1                   MR. MALCOLM:            No, Mr. Dial.  Just tell  
2  me--

3                   MR. DIAL:                    I don't know whether he did  
4  or whether he didn't.

5                   MR. MALCOLM:            Well, then there's no  
6  testimony that says it was corrected, and that gets to  
7  my question to you.  Do you agree that it sounds--that  
8  it would be comprehensible by this Board to conclude that  
9  there were numerous administrative mistakes made by the  
10 county board of elections as it relates to voters, their  
11 addresses, and the processes that were followed to ensure  
12 that their address and their right to vote was protected  
13 in this election and future elections?

14                   You can just say yes or no.  You don't have to  
15 give me examples.  Yes, you do think they did everything  
16 right?  And if you say that, you're going to contradict  
17 what you said--

18                   MR. DIAL:                    Naturally everything wasn't  
19 done right, but as far as percentage-wise, some  
20 people--I don't know what percentage is done.

21                   MR. MALCOLM:            Yes, sir.

22                   MR. DIAL:                    But I'm sure that there's  
23 something in any election that you're going to have a  
24 minimum amount.

25                   MR. MALCOLM:            And that's--but that's the

1 judgment that this Board--that's the weight that's on our  
2 shoulders is that we hear these issues, whether it's  
3 actual voter or whether it's a process that was a mistake  
4 because we're all human, and we make a judgment call to  
5 make a determination whether the will of the people who  
6 came is reflected in the results of this election or  
7 whether there was an irregularity that make us scratch  
8 our heads and will make Vera Malcolm scratch her head and  
9 go, "Hm, I'm"--

10 MR. DIAL: Well, to--

11 MR. MALCOLM: That's what I'm trying to  
12 get to.

13 MR. DIAL: Well, to answer your  
14 question, like I say, I'm sure there was some. How many,  
15 I don't know.

16 CHAIRMAN WHITNEY: All right. I think we--

17 MR. DIAL: One more thing I'd like to  
18 say. But like I say, it would be an injustice to the  
19 town of Pembroke to have all of your senior citizens and  
20 people--558 people went out and voted, 558--to come in.  
21 Going back to a percentage, you're saying there's 11  
22 ineligible voters when you have a remedy that you can go  
23 in and retrieve these votes and count them and then apply  
24 them to the total.

25 You don't want to bring all these people

1 through this. They can. It was done two years ago.

2 MR. MALCOLM: Thank you.

3 MR. DIAL: And the only time it's been  
4 done is to Candidate Allen Dial.

5 CHAIRMAN WHITNEY: All right. Stay there.  
6 Do any other members of the Board have any questions of  
7 Mr. Dial before we let Mr. Wright begin the requested  
8 rebuttal? Any further questions from Board members?

9 (No response from the Board members.)

10 CHAIRMAN WHITNEY: Okay. Thank you, sir.

11 MR. WRIGHT: I'll be very brief.

12 CHAIRMAN WHITNEY: Be brief if you would  
13 please.

14 MR. WRIGHT: Be easier if I can talk  
15 from right here too. I think we've seen a shift here and  
16 it's a very selective shift. You notice Mr. Dial, to his  
17 credit, shifted from trying to deny there were 11  
18 ineligible voters to (unintelligible) because he knows  
19 there wasn't ineligible voters. In his heart, he knows  
20 it.

21 So we have a have 11 ineligible voters. Eight  
22 voted one-stop, and I apologize, Mr. Malcolm, for not  
23 having those facts there, but it's a long distance  
24 (unintelligible), and my co-counsel's been very good.  
25 So we had three we can't retrieve.



1           So we have to--excuse me. I would argue that  
2 you would have to have a new election. Very convenient.  
3 Minimum expense. Special ballot, which--and those 550-  
4 some people, knowing Pembroke, they're going to be out  
5 voting for the president, for the governor; they're going  
6 to be out voting anyhow.

7           So it's--I hate to say it. It's actually  
8 election--the most convenient new election--if you order  
9 a new election, it'll be the most convenient new  
10 election. You've already ordered three convenient ones.

11           So again, he has talked about remedy. I think  
12 that's what we should talk about, and the remedy is a new  
13 election.

14           CHAIRMAN WHITNEY: Does the Board have any  
15 further questions?

16           (No response from the Board members.)

17           CHAIRMAN WHITNEY: All right. You may take  
18 your seat. Why don't we take a ten, fifteen minute  
19 recess. Anybody have any problem with that?

20           (No response)

21           CHAIRMAN WHITNEY: Okay. We'll be back here  
22 at, what, 12:15?

23           (Whereupon, a brief recess was taken  
24 from 12:00 noon to 12:15 p.m.)

25           CHAIRMAN WHITNEY: Let's call this meeting

1 back to order. It's 12:15. We've got another hearing  
2 after this, so we need to kind of--okay. That's fine.

3 (Pause)

4 CHAIRMAN WHITNEY: One Board member that's  
5 going to be right here.

6 (Pause)

7 CHAIRMAN WHITNEY: I want to thank the parties  
8 and their counsel for their hard work on this. This is  
9 important to all of us, and obviously there are  
10 differences of opinion, but we live in a great system,  
11 and I'm glad we are able to meet like this, and hopefully  
12 come to a resolution.

13 I'm just going to throw a couple of things on  
14 the table and then ask the Board for discussion. The  
15 way I look at it is we have two options here. One of  
16 them we have to do really quick. One is to retrieve  
17 those eight ballots right now because we have timing  
18 issues, that we have to have things resolved by tomorrow  
19 if there's going to be a new election.

20 So in order to do that and before we go that  
21 step, if the Board has no problem with this, I think we  
22 ask the local board of elections to get somebody in that  
23 office to get those retrievable ballots.

24 DR. KRICKER: Actually I have a problem.

25 CHAIRMAN WHITNEY: Okay.

1 DR. KRICKER: I am concerned that what  
2 we have here is a situation where we have an election and  
3 the loser decides that he is going to now go through the  
4 list of voters and find voters to challenge.

5 We have specific laws about that. And that is  
6 that a--it's 163-85(a), Challenge procedure other than  
7 on a day of a primary or election. And this is something  
8 Ms. Amoroso brought up, and I think it's very important:  
9 That no challenge shall be made after the 25th day before  
10 each primary, general, or special election.

11 If we base our decisions primarily on these  
12 challenges, what we'll have here are 100 counties where  
13 in every race, the person's going to go back through and  
14 challenge voters which is contrary to the law, and I just  
15 cannot see that this board or the elections process can  
16 function under those conditions.

17 I think that if we find that there has been  
18 systemic error on the part of the Board of Elections or  
19 that there's some systemic illegality, then that becomes  
20 a different issue and we can rule on that, but the other  
21 issue is that, again, these look like challenges to me,  
22 and we don't even have the right to hear challenges or  
23 to rule on challenges.

24 163-90.2, "a decision by a county board of  
25 elections on any challenge," and again, I'm not sure that

1 county board of elections should have been ruling on  
2 these challenges considering the timing, but "a decision  
3 by a county board of elections on any challenge made  
4 under the provisions of this article shall be appealable  
5 to the superior court of the county."

6 So we can't even make a decision on any of  
7 those. So, you know, I'm wondering if our third option  
8 is simply to deny the protest or to deny the appeal.

9 MR. MALCOLM: And I have a--I think it  
10 would be premature for this Board to talk about a  
11 potential resolution until we hear from Mr. Steve Stone  
12 and let him describe in great detail, as candid as he can  
13 be, because Steve understands what's at stake here.

14 I served with Steve for a number of years while  
15 I was here. I know Steve's--at least when I served with  
16 him, it was always his desire to assure that people that  
17 have the right to vote got to vote.

18 Steve and I worked together to try to get it  
19 as right as we could. We didn't always agree about how  
20 to get to the end, but we were always trying to get to  
21 the end.

22 So I want to hear from Mr. Stone, and in  
23 particular I want to hear Mr. Stone, as candidly and as  
24 honestly as he will be, tell us about any and all  
25 administrative or other mistakes that may have been made

1 during the course of carrying out this election so this  
2 Board can make a reasonable, well-informed decision as  
3 to whether there have been irregularities or  
4 improprieties that occurred that taint the results of  
5 this election.

6 I think it would be a mistake if we don't hear  
7 that part and just rely on the two parties that obviously  
8 have their own interests at stake. We've got three guys  
9 or people down here that took a oath to do their best to  
10 administer the election laws of this county and I want  
11 to hear from him.

12 CHAIRMAN WHITNEY: I agree with my fellow  
13 member and just ask if the other members have any  
14 comments before we bring Mr. Stone.

15 (No response from the Board members.)

16 CHAIRMAN WHITNEY: Mr. Stone, will you come  
17 and be sworn please.

18 (Whereupon,

19 STEVE STONE,  
20 having first been duly sworn,  
21 testified as follows:)

22 CHAIRMAN WHITNEY: I'll let you ask whatever  
23 questions.

24 MR. MALCOLM: So, Mr. Stone, when you  
25 hear the tenor of my questions and I think you heard some

1 questions that I asked earlier and you've read the  
2 transcript yourself. You're living it. You and Mr.  
3 Locklear and Ms. Tiffany, you guys are living it, and I  
4 mean I just need--you're seeing all the administrative  
5 things behind the scene that we're not seeing.

6           You know where the bodies are, I guess is  
7 another way of saying it. If there's been mistakes made  
8 that we need to know about, I need you to tell us about  
9 them because we want to get this as right as we can.

10           MR. STONE:           Let me thank you for your  
11 kind words, and I agree that I did the best we could to  
12 make every vote count that was a legitimate vote. In  
13 this particular election, as several before, we had--

14           MS. AMOROSO:        Use the mike for the court  
15 reporter please.

16           MR. STONE:           This particular election,  
17 as many others, you know, people took advantage of one  
18 stop, as they're allowed to do, and you know, they came  
19 in in crowds, and I'm not going to deny that some of our  
20 one-stop workers who are part-time workers may have  
21 missed the mark on getting a clarification on an ID or  
22 something to that effect.

23           We were short handed throughout most of the  
24 year with one person and then another person right at  
25 the election was out for a period of time for medical

1 leave. We was getting a lot of people doing a lot of  
2 things. But when it came to after the election, the  
3 challenges, the protests--

4 CHAIRMAN WHITNEY: Excuse me. Could everybody  
5 put their phones on silent, please. Sorry. Continue.

6 MR. STONE: Myself and my board, we  
7 held the hearings. We had to hear the people's protests  
8 even if we feel like it should go nowhere. We tried to  
9 get as much into the record as we could. We tried to  
10 make determinations even though these were not  
11 challenges; they were protested based upon irregularity  
12 of voters. We looked at them. You read the transcript.

13 We put a lot of time into looking at the method  
14 of getting the vote out, and the procedure the voters  
15 were doing, and it was some of the same things we've seen  
16 over the years. People running to one stop and changing  
17 an address but no ID. People showing up at the polls  
18 with no ID and our poll workers not trying to verify, you  
19 know, addresses. They just go by what somebody says, and  
20 if they did change the address, maybe they did forget to  
21 put it down on the form.

22 But we made every effort to stay on our people  
23 and train our people before the election of the things  
24 to do when the voters walk through the door. I'm not  
25 saying we can't have better people doing that, and we

1 have--

2           CHAIRMAN WHITNEY:    Could you be more specific  
3 about this particular case rather than your general.  I  
4 think what my fellow board member is saying is look at  
5 this case.  Tell us if there's an irregularity that would  
6 give us cause to take some action here.  Not your  
7 general, "We did our best, but--but--the things that have  
8 been discussed, I want to hear if you think those are  
9 such that would adversely affect the election.

10           MR. STONE:            Yes, Mr. Chairman, and we  
11 went through these names that were challenged based on  
12 irregularities.  My board, we heard testimony from some  
13 voters.  We heard testimony from some housing authority  
14 people, and we didn't keep up with the numbers.  I mean  
15 that wasn't our jobs.  It wasn't our job description.

16           We made decisions independently, each and every  
17 challenge or irregularity that was brought before us, and  
18 we determined in the end that it was 11 people we felt  
19 like there was some concerns with.  They should not have  
20 voted from the place that they alleged to--that they  
21 voted from.

22           And some of them came clean before that.  We  
23 had to consider that along with the fact that even the  
24 winner in that case had some concerns until all of a  
25 sudden he was up and then it was like, no, I don't want



1 to open that can of worms, I guess. I don't know.

2           But we had to look at that, and we determined  
3 there were some irregularities. We didn't know exactly  
4 how many. We don't know if they were all contributed to  
5 some little mistake from a precinct official during a one  
6 stop or some conspiracy by people to get voters to come  
7 out and change addresses and claim to live here now when  
8 they lived there last year. We didn't know.

9           But there were some irregularities, and there  
10 were 11. Could affect the outcome of the election. I  
11 don't know. I didn't--I mean mathematically you can't  
12 figure out who gets three and who gets four or who gets  
13 all 11 when you're talking about whether it's a new  
14 election or let's recreate the election. I've advocated  
15 re-creating elections in the past when I could.

16           But I don't think my staff, this board can  
17 recreate this election by taking eight from one stop and  
18 trying to get a determination because we've still got  
19 three that weren't for the one stop that are not  
20 identifiable.

21           It might have been--I mean, you know, I think  
22 there's two options here, and that's to let the election  
23 stand or say there was enough irregularities to create  
24 some doubt and order a new election. And that's, you  
25 know, not within my power even if I would've wanted to

1 do it during the hearings.

2 My board, we unanimously agreed that there were  
3 irregularities and there were some issues, and we sent  
4 it to you folks who have a little better staff to do  
5 research. You have a lot more experience behind that  
6 table than we have to make a decision.

7 I mean anything the staff has told us, your  
8 staff, over the course of prior to the elections, during  
9 the election, and after the election, and I will tell  
10 them, they've been very helpful. I've called and asked  
11 for guidance many times, before, during, and after the  
12 election, and we did--when they seen something we could  
13 improve on or do better on, they've mentioned it to us.

14 And we do know we need to improve on some our  
15 of precinct official training, and we're looking at ways  
16 of doing that, you know, in smaller groups and stuff,  
17 bigger groups, and maybe getting some assistance from the  
18 State. That has been discussed. Thank you for offering  
19 us that. I don't know specifically where you want me to  
20 go.

21 MR. MALCOLM: Mr. Stone, I think maybe  
22 I wasn't clear in the way I asked the question. I don't  
23 want you to tell me about the irregularities that your  
24 board voted on related to the 11 voters.

25 I want you to tell me whether G.L. Pridgen,

1 Dina Joe, you, your board, made any administrative  
2 mistakes that you're aware of because when I hear--at  
3 least I can speak for myself. When I hear folks are not  
4 properly asked nor were addresses updated as has been  
5 asserted here, when I hear about the young man Shepherd  
6 and the fact that he went to y'all and said, "Hey, the  
7 address--they didn't handle me right in there," and that  
8 your board didn't go and immediately rectify that, that  
9 puts doubt into my mind and it puts doubt into my mind  
10 just not related to them.

11 What about all the other things I haven't heard  
12 about, because that's what I'm trying to get to. The  
13 irregularities related to the 11, if we could put that  
14 in a box and push that to the side.

15 MR. STONE: Okay. As far as the staff,  
16 the director, I think they've all done the best they  
17 could with the tools they've got to do it with. The  
18 things were brought to my attention were the things that  
19 you're aware of.

20 You know I'm involved. I'm there all the time  
21 during elections and hearings. I mean I don't miss  
22 anything, but a lot of times I do miss things because I'm  
23 not there during the day to day one-stop, and day to day  
24 when people are coming in wanting certain pieces of  
25 information, and they get it and look at it and, "No,

1 that's not what I want; you gave me the wrong thing."

2           They tell me about it and they do their best  
3 to get it right. I'll be the first to say that, you  
4 know, it's probably not 100 percent right, and you know,  
5 I want it to be 100 percent right.

6           MR. MALCOLM:           Sure.

7           MR. STONE:           It's what happens when you  
8 get in close elections, you know, whether a small  
9 miscalculation from the board, a misjudgment on one  
10 ballot, or whether a couple of errors by a part-time  
11 precinct official in the one-stop process during a big  
12 rush of voters that are hauled in by candidates are  
13 rushing, rushing, whether they have gone to read the  
14 script.

15           You know, I mean, you know, we've had the  
16 script posted on the table. This election it's going to  
17 be posted on the wall in front of them in a big thing.  
18 You know, those are things that we have to drill in these  
19 people's heads.

20           A lot of those people are--I do believe they  
21 haven't worked with us for a few elections. Mr. Pridgen,  
22 he's been with us just two elections. He hasn't even  
23 been here two years.

24           The staff, you know, they recognize things  
25 happen, and they tell people, and then they find out she

1 didn't do what we trained her to do during the one-stop  
2 training process.

3           And part of that--the solution to that is we're  
4 just going to have to have a full-time staff member right  
5 there with the one-stop process to make sure all these  
6 part-timers remember their training as well as give some  
7 assistance on training.

8           But I can't absolutely say that we didn't make  
9 some errors in judgment or administrative errors, but I  
10 don't think that took any votes away from anybody or gave  
11 anybody any votes that they weren't entitled to. It was  
12 registration issues.

13           DR. KRICKER:           I have a particular  
14 question. So would you say for this election that there  
15 were poll workers at one stop or otherwise who failed to  
16 follow procedure in the following way: Did they fail to  
17 have the person state their name and address?

18           MR. STONE:           I believe that to be true.  
19 On a consistent basis, I don't, but occasionally I think  
20 they did it when maybe they were in a conversation with  
21 a voter they knew or the one right in front of that voter  
22 they knew, and they just turned--I mean these are things  
23 I've heard, not actually observed.

24           No, I haven't observed anybody do that because  
25 I would be the first one to say, you know, "Get with the

1 program here." But while I was present at the various  
2 one-stop sites, I haven't never seen judges not do that.  
3 If I had, I have corrected them, and I'm sure the staff  
4 as well if they were there.

5 But, yes, it's true; they're not right there;  
6 there's not one of us right there with these precinct  
7 officials, you know, every minute of the voting process.  
8 You know, something that may be even lessened. Once a  
9 voter ID is now going to be the tool here, you know,  
10 they'll have that information to ask and respond back and  
11 correct the registration.

12 MR. MALCOLM: To the extent that they  
13 don't have a reasonable impediment.

14 MR. STONE: That is correct.

15 CHAIRMAN WHITNEY: Any further questions of  
16 Mr. Stone?

17 MR. STONE: If this election would have  
18 been 60 votes difference, we would not be here.  
19 Unfortunately I didn't make it this close. The staff  
20 didn't make it this close. The Board didn't make it this  
21 close. And we were not aware of any mistakes as they  
22 were happening.

23 They may have happened, and some of them came  
24 up and people brought them to our attention days later  
25 or after the election, you know, when the results weren't

1 of the desired content that they wanted.

2 MR. MALCOLM: What do you mean by that  
3 last comment?

4 MR. STONE: I mean a lot of--election  
5 day and the day before, I mean I heard people at the  
6 board of elections, the candidates, their supporters, and  
7 everything else standing in our new auditorium building  
8 bragging saying how was the best cleanest, most honest  
9 election; they had never seen one in a long time that had  
10 been ran good.

11 It was said on election night; we were  
12 announcing--before we announced the results, "no matter  
13 who wins," but by golly within the next coming weeks  
14 everybody's got new information. They got new issues.

15 And I always just kept assuring them. "We're  
16 doing the best we can." No matter how many times we have  
17 to count it or how many times we have to recreate it,  
18 we're going to try to get the final total correct count.

19 And sometimes we can do that at a local, and  
20 when we can't we do like the law says; we send it to you  
21 for your guidance and your wisdom and do what we can too.  
22 I mean we can't make a determ--we don't have the  
23 authority by law to make determinations as to what should  
24 happen here today on this case.

25 MS. AMOROSO: Do you have election

1 observers, a full complement? Would you have it in the  
2 November election, from the two parties?

3 MR. STONE: Did we have what?

4 MS. AMOROSO: Election observers.

5 MR. STONE: During the municipal  
6 election?

7 MS. AMOROSO: Yes, sir.

8 MR. STONE: No, we did not. That's  
9 only in the general election.

10 MS. AMOROSO: Correct. Yes.

11 MR. STONE: We would love to be able  
12 to do that, maybe, or maybe have our own techy people  
13 observe, but, you know, sometimes budget constraints  
14 causes problems, and we need a little more staff there  
15 that--you know, we've been talking with some county  
16 officials about getting it, but they're resisting that.  
17 That will help eliminate some of this burden on us.

18 MR. MALCOLM: You were just looking for  
19 Ricky Harris, weren't you?

20 MR. STONE: I was looking for the man  
21 that needs to hear what I'm saying. And if you can bend  
22 his ear a little bit, I'd sure appreciate it.

23 MR. MALCOLM: Ricky Harris is the county  
24 manager.

25 MR. STONE: There's also eight other



1 fellows that work alongside him.

2 CHAIRMAN WHITNEY: Thank you, Mr. Stone. All  
3 right, any more questions of Mr. Stone?

4 (No response)

5 CHAIRMAN WHITNEY: You can have your seat.  
6 Okay, looks like we have three possibilities and I want  
7 to hear discussion from the Board. One would be the  
8 retrievable ballots, two would be a new election, or  
9 three, to deny the appeal.

10 So I'm open for a discussion. I'm also open  
11 for motions as to any of these three options, and I would  
12 invite the Board to talk.

13 DR. KRICKER: I'll talk.

14 CHAIRMAN WHITNEY: Yeah. Please.

15 DR. KRICKER: I not only have concerns  
16 about the law and challenges after the fact. What we had  
17 here as far as I can see is a situation where we had, as  
18 a result of this, quite a number of voters being  
19 subpoenaed which meant that they were expected possibly  
20 to come during working hours. We had--or come when they  
21 were ill, also a situation where potentially they were  
22 afraid of jeopardizing someone's housing, and they  
23 weren't going to do that.

24 So these kinds of protests concern me deeply  
25 because I think we're scaring voters away from voting.

1 You know, I'll--I'm happy to hear any kind of discussion  
2 that explains a systemic problem with this election, but  
3 when it comes to basically having a process whereby, as  
4 I said, the loser is going to go the list and find voters  
5 and then they have to go through this kind of hearing.

6 This really scares me. It absolutely scares  
7 me. And I think under those circumstances I really feel  
8 we should deny the appeal.

9 CHAIRMAN WHITNEY: Is that a motion?

10 DR. KRICKER: I will make a motion that  
11 we deny the appeal.

12 MS. AMOROSO: Could we have further  
13 discussion before we proceed with that, Mr. Chairman?  
14 I would like to hear about the retrieval issue if that  
15 makes sense or it doesn't make sense. I am undecided on  
16 that.

17 CHAIRMAN WHITNEY: Certainly.

18 MS. AMOROSO: But I agree with Dr.  
19 Kricker. I agree with you, where you're coming from, and  
20 the way the statute--the law is written; if you have a  
21 challenge, you make the challenge by the deadline.

22 However, we do have systemic issues here as  
23 well. So I'd like to hear a little bit more on this.

24 CHAIRMAN WHITNEY: One thing I will note.

25 This sort of supports Dr. Kricker's argument there.

1 There was some testimony in the record that some voter  
2 came in and was cross-examined or whatever, and he said,  
3 "I'm through with the whole process; I'm not voting ever  
4 again."

5 DR. KRICKER: Yeah, he said that.

6 CHAIRMAN WHITNEY: I think that's in there  
7 somewhere. I think that says we're scaring voters away.  
8 For whatever reason, they don't want to be part of the  
9 process, and that should not be the message that is sent.

10 MR. BAKER: Mr. Chairman.

11 CHAIRMAN WHITNEY: Yes.

12 MR. BAKER: If I may for a moment, I  
13 really appreciate Dr. Kricker's argument about 163-85;  
14 that setting a time period for the right of voter  
15 challenges to be made.

16 At the same time I don't think we can say that  
17 the only remedy for problems with people voting in an  
18 election is for that voter to have been challenged before  
19 the 25th day of the election, and I'll tell you why.

20 If that's the only remedy--talk about opening  
21 a door--then we are going to require candidates to go  
22 through voting lists, and they're going to have to figure  
23 out every single person whose a registered voter and then  
24 challenge that person before the election. Imagine what  
25 that is going to do.

1           And I don't think statutorily that was intended  
2 to be the only remedy for ineligible voters, and I think  
3 that can be shown by another statute, and it's the one  
4 that does discuss new elections, 163-182.13, because the  
5 first possibility of finding the need for a new election  
6 is ineligible voters sufficient in number to change the  
7 outcome of the election were allowed to vote.

8           Now, if those were not challenged before the  
9 election, how could there be a finding then that there  
10 were ineligible voters sufficient in number to change the  
11 outcome. So I think there has to be an examination of  
12 the voting record before you can determine then whether  
13 there needs to be a remedy for people who are allowed to  
14 vote but shouldn't have.

15           What if no one challenged voters before the  
16 election because that's a really difficult thing to do,  
17 but then after the election it was obvious that people  
18 voted that shouldn't have been allowed to vote. I mean  
19 there has to be a remedy for that.

20           What if people that were known to be deceased  
21 voted or that were known to have moved away yet came back  
22 and voted or you have duplicate votes being cast? I mean  
23 there has to be a remedy for ineligible voters.

24           And that's why I don't think that 163-85 is the  
25 sole remedy for ineligible voters. I think if you want

1 to challenge someone from voting before an election, then  
2 you have to follow 163-85, but after an election if it  
3 seemed that there was a problem with people who voted,  
4 then there was not intended not to be a remedy for that.  
5 It was not intended that there be no remedy for people  
6 who saw voters who voted that shouldn't have voted.

7           So I think then it's not a challenge to the  
8 voter. Then it is in fact the type of election protest  
9 that is discussed other places in the statutes. It's not  
10 then the manner in which voters are counted or results  
11 tabulated, but it was in fact an irregularity other than  
12 the counting or tabulating of votes which is not, to my  
13 knowledge, defined well by statute, but does exist.

14           So there is concern about opening cans of  
15 worms, and I certainly would not create a situation where  
16 we by our rulings encourage people--every single person  
17 who loses a close election to go back and try to find  
18 voters that they could say shouldn't have been allowed  
19 to vote.

20           I know what a problem that would be, but by the  
21 same token, I don't want to create a situation where we  
22 send a message out that the only way someone can  
23 challenge someone's vote or have a determination that  
24 someone shouldn't have been allowed to vote is to assume  
25 that deceased people still on the rolls are somehow going

1 to have a vote cast or the people who are known to have  
2 moved or anything else that's a problem and force people  
3 to start filing all those protests 25 days before every  
4 single election. I think that is also likely to be a  
5 problem. So that is why I would not want to vote that  
6 we dismiss the appeal.

7 DR. KRICKER: I'd just like to point out  
8 that the other remedy is to challenge voters on election  
9 day. One, that takes care of absentee voters because you  
10 get lists well before election day. And so I think  
11 certainly that is a remedy, and certainly for election  
12 day voters, generally the proper way to protest is  
13 somebody observes that this person is voting or has voted  
14 and shouldn't have.

15 So in my opinion, that is the appropriate way  
16 to make challenges, but there is of course the issue of  
17 a systemic problem. If you see a large number of people  
18 who are dead voting, then that is actually a problem with  
19 the Board of Elections because those people should have  
20 been taken off or it's a problem with the State because  
21 they didn't get the information about who was dead to the  
22 Board of Elections. And that becomes a systemic problem  
23 which is another issue.

24 CHAIRMAN WHITNEY: I think, Rhonda, you were  
25 talking about the--wanting more information about the

1 retrieval of ballots.

2 MS. AMOROSO: The retrieval, yeah.

3 CHAIRMAN WHITNEY: Could you address that  
4 please.

5 MS. AMOROSO: Well, if we were to order  
6 that--order--we would ask the county Board of Elections  
7 to go back and retrieve those, I think it's eight, the  
8 eight ballots, and see--if you can retrieve them, you can  
9 see who they voted for, and I don't know if--how that  
10 would turn out. It could go either way actually.

11 I don't know who's--nobody knows how these  
12 folks voted. But then you still have those other three  
13 that are outstanding that you cannot retrieve.

14 CHAIRMAN WHITNEY: If I'm counting wrong--if  
15 he gets one vote, then it's over.

16 MS. AMOROSO: Then it's over.

17 CHAIRMAN WHITNEY: But they have to get all  
18 of them. Isn't that the arithmetic? So you could figure  
19 it out from one side--

20 MR. STONE: No. That 11 could go  
21 anywhere on the board.

22 MR. WRIGHT: Four candidates.

23 MS. AMOROSO: Oh, okay.

24 CHAIRMAN WHITNEY: Okay, all right. Okay.

25 Thank you.

1                   MR. MALCOLM:            I've done a little  
2 different perspective. George McCue is the person in our  
3 office, to my understanding, that talks with the folks  
4 from Madison, Pasquotank, Scotland, and every other  
5 county in the state more than anybody else in our office,  
6 perhaps, other than Josh Lawson.

7                   And, George, I don't mean to put you on the  
8 spot, but I am. I need you to tell me and us with no  
9 uncertain terms whether you are aware of any other issues  
10 related to how this election was carried out in Robeson  
11 County related to the voters we're talking about or  
12 related to any other administrative matters that may be  
13 informative of this Board as it makes its decision,  
14 whether there were other things going on.

15                   MR. McCUE:                Mr. Malcolm, I don't know  
16 if I actually can add anything substantive to the Board's  
17 consideration as far as knowing that--knowing about  
18 specific cases of voters.

19                   I can speak to the give and take to try to  
20 compile information for this record. We have a very  
21 large record for this election protest and the future  
22 one.

23                   We had--I'll be frank--difficulties in making  
24 sense out of what this record was and who the affected  
25 voters--which affected voters were being included, and



1 the Board did have discussions today trying to figure out  
2 Cumming versus Cummings, that sort of thing.

3 That's--I think that's been representative of  
4 difficulties that we've had throughout this entire  
5 process to try and determine who are the affected voters  
6 and as far as whether those voters were indeed eligible  
7 or not.

8 I don't know if I can offer an opinion on that  
9 but I can say that there have been difficulties in  
10 determining who is affected and are they given notice of  
11 the hearings; do they know to be here today?

12 MR. MALCOLM: Are you aware of a voter  
13 that was challenged by the County Board that is  
14 nonexistent?

15 MR. McCUE: For either Pembroke or  
16 Lumberton?

17 MR. MALCOLM: Yeah, just tell me about  
18 the administrative--administration of the election. Are  
19 you aware that the county board challenged a voter where  
20 in fact you later learned that the voter--

21 MR. McCUE: We were made aware--again,  
22 we had a lot of correspondence trying to determine which  
23 voters we need to notice of our hearing today, and there  
24 were a lot of difficulties in doing that.

25 We were originally given lists of voters. We

1 had to go back and ask, have we got names and addresses,  
2 and the lists of voters were supplemented several times.  
3 We were made aware of at least one voter, and this  
4 actually, I believe, is a different voter than has been  
5 talked about already today, but we have been made aware  
6 of at least one voter where the county board of elections  
7 apparently made a determination, and we don't have a  
8 voter registration record for that voter.

9 MR. MALCOLM: So how can a county board  
10 of elections challenge a voter, make a determination,  
11 when the voter is nonexistent? Is that what I'm hearing  
12 you say?

13 MR. McCUE: Well, and in fairness to  
14 the county board, it may be a matter of semantics that  
15 they may not have been--when they say that they have  
16 overruled the challenge, really what the county board is  
17 saying, they made a determination that they can't find  
18 that the person is not ineligible, but to consider--to  
19 say that a voter challenge was overruled when you don't  
20 have a voter record in the first place seems to not make  
21 sense.

22 CHAIRMAN WHITNEY: Josh, if there are  
23 irregularities at the county board, what are our options  
24 there?

25 MR. LAWSON: So what I've heard so far

1 is there might be two bases if the Board was to move  
2 forward with a new election. One would have to do with  
3 ineligible voters, and there the statute--and this is  
4 182.13(a)(1) would be your authority which is ineligible  
5 voters sufficient in number to change the outcome of the  
6 election were allowed to vote in the election, but  
7 there's a second prong to it. "And it is not possible  
8 from examination of the official ballot to determine how  
9 those ineligible voters voted and to correct the totals."

10 So if you were to go with that authorizing  
11 statute, I believe it would be incumbent upon the Board  
12 to determine whether there were in fact retrievable  
13 ballots cast and you would have to determine whether that  
14 would impact the outcome prior to a determination on a  
15 new election under that authority.

16 However, you've also been talking about  
17 systemic, I guess is how you characterized it, systemic  
18 errors and irregularities, and there you would have a  
19 different authorizing statute, and that is sub 4,  
20 "Irregularities or improprieties occurred to such an  
21 extent that they taint the results of the entire election  
22 and cast doubt on its fairness."

23 And there I believe you would want to limit  
24 your finding to this particular election unless you have  
25 evidence that it goes to multiple races that aren't

1 before you right now.

2 MR. MALCOLM: Yeah, and we know we've got  
3 one more coming up.

4 MR. LAWSON: Right.

5 MR. MALCOLM: On a personal, totally out  
6 of line, Mr. Chairman.

7 CHAIRMAN WHITNEY: Go ahead.

8 MR. MALCOLM: But I am absolutely  
9 embarrassed that we're sitting here talking about this  
10 kind of nonsense. This is a repeat of the nonsense that  
11 we had in 2013.

12 It's an embarrassment for our American Indian  
13 people which are the primary voters in the city of  
14 Pembroke. It's an embarrassment that at the beginning  
15 of this meeting we let those same people--now they're  
16 going to be able to use their tribal ID cards.

17 So on the personal side I sort of feel ashamed  
18 that all this stuff is occurring. But on the other hand  
19 Bob Shiles (phonetic), the person in this room that can  
20 spread the message: The folks in this county need to  
21 know that if they have reason to believe that  
22 improprieties have taken place, they need to quit sitting  
23 on their duffs and bring that information forward so we  
24 can get to the bottom of this kind of nonsense.

25 Whether it's ineligible voters or whether it's

1 vote buying or whether it's any impropriety; people need  
2 to come forward, and until they do, it's not going to  
3 change things for my son. It's not going to change  
4 things for Daniel's son, Levi, who's in my son's class  
5 at day care. That's who we should be--that's why we  
6 should be straightening out this stuff.

7           And us as adults in here should be embarrassed,  
8 in my opinion. I'm probably totally out of line, but  
9 we're teaching the young people, the impressionable  
10 people what's okay and what's not.

11           And I think I respect--because I've been in  
12 Steve Stone's shoes, I respect what he's trying to do.  
13 I watched Doc Locklear try to do exactly what you're  
14 trying to do, Mr. Pridgen, and it's a every-day, constant  
15 battle here, as it is in other counties.

16           But I believe, and the reason I've been  
17 appointed to this board is to tender my opinion as to  
18 what I think is right and what's wrong and what's  
19 statutorily based.

20           And I believe there were irregularities that  
21 occurred in the Pembroke election that affect the  
22 outcome, and I believe that the people should be able to  
23 go back to the polls on March 15th and cast their ballot  
24 for the person, whether it's Cummings, Dial, Locklear,  
25 or they want to write in Forest Malcolm; they can do

1 whatever they want to, but they need to be heard.

2 And that's my opinion and that's why it's my  
3 recommendation to this Board that we adopt, paren, 4 and  
4 that we order the Robeson County Board of Elections to  
5 conduct a new election for the mayoral race in my town,  
6 the town of Pembroke on March 15th.

7 CHAIRMAN WHITNEY: I take that as a  
8 substantive motion. We have a motion on the floor.

9 MR. MALCOLM: Unless you can--you're  
10 exactly right. If your motion remains on the floor, I  
11 guess, unless you're going to withdraw it, Ms. Kricker,  
12 we need to vote on it.

13 CHAIRMAN WHITNEY: Do we need to vote?  
14 Because I never had a second.

15 MR. LAWSON: We didn't have a second.  
16 We interrupted with a discussion.

17 CHAIRMAN WHITNEY: Right.

18 MR. LAWSON: That resulted in another  
19 motion.

20 CHAIRMAN WHITNEY: So what do I have to do?

21 MR. MALCOLM: Well, I haven't made a  
22 motion yet. I will.

23 CHAIRMAN WHITNEY: Oh, okay. I'm sorry.

24 MR. MALCOLM: I will

25 DR. KRICKER: So basically 1 before I

1 think we go forward with my motion, I would like to hear  
2 more from Mr. Malcolm about the irregularities and why  
3 he would suggest that there's something additional going  
4 on here other than straight challenges.

5 MR. MALCOLM: I don't--we can't speak  
6 with a split tongue. We can't say this is not a  
7 challenge matter, but now let's talk about challenges.  
8 I think the totality of what we've heard--and don't  
9 misunderstand what I'm saying.

10 I don't want anybody to misunderstand what I'm  
11 saying. I'm not saying that some of the assertions that  
12 Mr. Dial has made, as it relates to Harris Trailer Park,  
13 the fact that the 200 Cornith Road, if that's correct,  
14 if that's out of the jurisdiction, when it should be 103.  
15 That's a problem, and it needs to be fixed.

16 G.L. Pridgen and Steve Stone are here to hear  
17 that today. It needs to be fixed. That's 30 lots;  
18 that's 30 people in the city of Pembroke. Get in a  
19 vehicle, go over there, do whatever you have to to fix  
20 it, so those 30 people, if they want to vote, can cast  
21 a ballot so we're not having to rehash this two years  
22 from now.

23 Mr. Dial served it in his statements that these  
24 were--some of these were the same folks that we had to  
25 deal with in 2013. I don't know if they are or not

1 because I don't remember the names.

2           But I think when you took at the totality, Dr.  
3 Kricker, what occurred here related to--and I'm going to  
4 go beyond what Mr. Stone proffered to us; I think there's  
5 a problem with the administration of the election in the  
6 town of Pembroke.

7           I think what we've heard are some examples, but  
8 those are only what we've heard. And I don't think the  
9 will of the people have been heard, in my opinion, and  
10 that's what I'm here to do is represent my opinion.

11           If we order a new election, I want Cummings and  
12 Dial and Locklear and Manie Perez and all of them to get  
13 together, and I'd like for them to lock themselves in a  
14 room until they can agree that one of them will be the  
15 next mayor, and they all say, "Go vote for the other  
16 guy," because that's really what the people want. They  
17 want to get the solution, but that's why I think it, Dr.  
18 Kricker.

19           If you put it--I put it all together; the  
20 nonretrievable ballots--I agree you can reconstruct under  
21 sub, paren, 1. That's really what that's saying.  
22 Lawson, you correct me. Sub, paren, 1 is really about  
23 reconstruction, correct?

24           MS. AMOROSO:           It is.

25           MR. MALCOLM:           Yeah, but I think when you



1 combine the fact that there are nonretrievable with the  
2 things that I think that have happened inappropriately  
3 by the administration of the election, I think it puts  
4 a burden on us to order a new election.

5 CHAIRMAN WHITNEY: Does that answer your  
6 question?

7 MR. MALCOLM: That's the only answer  
8 you're getting, Dr. Kricker.

9 DR. KRICKER: Okay.

10 CHAIRMAN WHITNEY: I'm going to move this  
11 forward.

12 DR. KRICKER: I want to withdraw the  
13 motion.

14 CHAIRMAN WHITNEY: Okay. I was going to ask  
15 for a second or--okay. Now, Mr. Malcolm, would you like  
16 to make a motion.

17 MR. MALCOLM: I make a motion under North  
18 Carolina General Statute 163-182.13(a)(4), that the North  
19 Carolina State Board of Election order a new election for  
20 the mayoral race for the town of Pembroke based on the  
21 adoption of the nonretrievable ballots that have been  
22 represented today and the irregularities as to the  
23 administrative oversight by the Robeson County Board of  
24 Elections in conducting the election in the town of  
25 Pembroke, in particular the missteps and the mistakes

1 that have been acknowledged and are in the record related  
2 to the one-stop process.

3 CHAIRMAN WHITNEY: Thank you. We have a  
4 motion. Do we have a second?

5 DR. KRICKER: I'll second it.

6 MS. AMOROSO: We need four?

7 MR. LAWSON: Yes.

8 MS. AMOROSO: That's all, just four on  
9 this.

10 CHAIRMAN WHITNEY: All right, we have a  
11 motion. We have a second. I'll open it to the Board for  
12 any further discussion on the motion that's on the floor.

13 (No response from the Board members.)

14 CHAIRMAN WHITNEY: Hearing none, all in favor  
15 of the motion say aye.

16 (Majority vote in favor of the motion.)

17 CHAIRMAN WHITNEY: Opposed, no.

18 (No response)

19 CHAIRMAN WHITNEY: Motion carries unanimously.

20 MS. AMOROSO: I was going to say, though,  
21 I'm voting against it.

22 CHAIRMAN WHITNEY: Okay.

23 MS. AMOROSO: All right? So you still  
24 have your four.

25 CHAIRMAN WHITNEY: So four to one.

1 MS. AMOROSO: And I would've liked to  
2 have seen the retrieval process work and be used because  
3 it's in the statute.

4 CHAIRMAN WHITNEY: Thank you. Thank you to  
5 the parties and Board counsel. Wait a minute. Hold on.

6 MR. LAWSON: Just for the record so that  
7 we have a full transcript, I'm going to mark what appears  
8 to be a voting record for Crystal Lynn Cummings, with an  
9 S. This was referenced in Mr. Pridgen's testimony.

10 And to the one as Exhibit 2, I'm going to mark  
11 what appear to be the records for Crystal Cummings. Also  
12 referenced in Mr. Pridgen's testimony is marked as  
13 Exhibit 2.

14 As Exhibit 3 I'm going to mark a voting  
15 registration record as well as a registration change.  
16 That was referenced in Director Strach's testimony. We  
17 don't have copies for the parties, but we can get those  
18 to you.

19 (Whereupon, Exhibits Nos. 1, 2, and 3  
20 were marked for identification.)

21 And then I finally want a note for the recusal  
22 vote before; Mr. Malcolm abstained from that vote  
23 appropriately. It was an auditory vote, so it's  
24 something that wouldn't have been reflected.

25 CHAIRMAN WHITNEY: Okay. I am going to move

1 that we go into closed session pursuant to North Carolina  
2 General Statute 143-318.40.11, Page 7, for the limited  
3 purpose of hearing reports concerns investigations of  
4 alleged criminal misconduct. Do I have a second?

5 MR. MALCOLM: Second.

6 DR. KRICKER: Can we do that?

7 MR. MALCOLM: Yes, we can.

8 MR. LAWSON: Yes. That's the  
9 authorizing statute for purposes of criminal  
10 investigation, review, and a report out.

11 DR. KRICKER: Oh, okay.

12 CHAIRMAN WHITNEY: Any discussion?

13 (No response)

14 CHAIRMAN WHITNEY: All in favor of the motion  
15 say aye.

16 (Unanimous vote in favor of the motion.)

17 CHAIRMAN WHITNEY: Opposed, no.

18 (No response)

19 CHAIRMAN WHITNEY: We'll meet in session.

20 Thank you, everybody.

21 (Board goes into closed session

22 from 1:05 p.m. to 2:10 p.m.)

23 CHAIRMAN WHITNEY: We're going to reconvene  
24 this hearing and this meeting. The next case is in re:  
25 Election Protest of Laura Sampson, comma, Leon Maynor,

1 Lumberton City Council, District 7.

2 If you don't mind, I'd like for the parties and  
3 their counsel to stand up and identify themselves.

4 MR. MITCHELL: Good morning, Mr. Chairman.  
5 Adam Mitchell, from Tharrington Smith in Raleigh, here  
6 on behalf of Laura Sampson.

7 CHAIRMAN WHITNEY: Thank you. And--

8 MR. HUNT: Good afternoon, Mr.  
9 Chairman. Grady Hunt, here on behalf of Mr. Leon Maynor.

10 CHAIRMAN WHITNEY: Thank you. Mr. Mitchell,  
11 I'm going to let you start and present your case, subject  
12 to the Board's questions, please.

13 MR. BAKER: Mr. Chairman, just for a  
14 point of order here, I don't know if we need a motion or  
15 not, but I know we have separate protests. It would save  
16 time for us to consolidate the two protests into one  
17 hearing, and I think that's what we're doing, but I'd  
18 just like to put on the record that it be noted that we  
19 are consolidating the two into one hearing. If necessary  
20 I'll make a motion that we do that.

21 CHAIRMAN WHITNEY: Would you please.

22 MR. BAKER: Yes, sir. I'd move that  
23 we consolidate the two protests into one hearing in the  
24 interest of time.

25 CHAIRMAN WHITNEY: Do we have a second?

1 MS. AMOROSO: Second.

2 CHAIRMAN WHITNEY: We have a second. Any  
3 discussion?

4 (No response)

5 CHAIRMAN WHITNEY: Okay, all in favor say aye.

6 (Unanimous vote in favor of the motion.)

7 CHAIRMAN WHITNEY: Opposed, no.

8 (No response)

9 CHAIRMAN WHITNEY: Motion carried. Counsel  
10 and the parties understand we're collapsing this thing.  
11 Okay. Proceed.

12 MR. MITCHELL: Thank you. Good afternoon,  
13 Board members. Again, my name is Adam Mitchell, with  
14 Tharrington Smith in Raleigh. I'm here on behalf of  
15 Laura Sampson in these protests.

16 We appreciate you coming down to Lumberton to  
17 hear these issues. I'm going to start by going through  
18 some of the relevant factual and procedural background  
19 related to this election, and it's the Ward 7 election  
20 for the Lumberton city council.

21 I'm not going to make any promises about it,  
22 but I can say a couple of things. One, our record is a  
23 lot shorter than in the previous case, and at least as  
24 to the facts in the record, I think it's fair to way that  
25 the facts are simpler than the issues you dealt with this

1 morning, and at the conclusion I'm going to ask that this  
2 matter be decided here today without a new election.

3 I am going to talk about some concerns about  
4 the process. I think it's important that you hear those,  
5 but I do think that when you look at these two ballots  
6 that are in dispute and apply common sense and your  
7 wisdom to those ballots, I think that the result is  
8 clear, and that's that Laura Sampson won the election.

9 So to recount, the initial election night  
10 results were reported as follows: Leon Maynor with 282  
11 votes, Laura Sampson with 281 votes. Following the  
12 counting of provisional ballots, the results were  
13 reported as Leon Maynor with 284 votes, Laura Sampson  
14 with 283 votes.

15 Both candidates challenged certain voters, I  
16 think similar to some of the issues that you heard this  
17 morning. The county board held hearings on those  
18 challenges, and following the resolution of those  
19 challenges, results were reported as Laura Sampson with  
20 282 votes and Leon Maynor with 281 votes.

21 Following a recount requested by Mr. Maynor,  
22 the results changed again: Mr. Maynor 282 votes and Ms.  
23 Sampson with 281 votes. And following that, there was  
24 a hand-eye recount of all of the votes, and at the  
25 conclusion of that process, the results or the apparent

1 results, and that's where we are today essentially, is  
2 Mr. Maynor with 284 votes and Ms. Sampson with 283 votes.

3 So obviously a very close election, and the  
4 apparent results have changed back and forth on a number  
5 of occasions.

6 So on November 24th, after the first recount  
7 but before the hand-eye recount, our client filed an  
8 election protest that raised multiple issues related to  
9 the counting and the tabulation of ballots, and that's  
10 what the record that you've already reviewed is about  
11 and what I'm going to spend most of my time about--that  
12 I'm talking to you about today.

13 Ms. Sampson's protest also referred to and  
14 incorporated a written complaint that she had previously  
15 submitted to the county board related to other  
16 irregularities in the election, and they're important  
17 issues, and I understand that your board may very well  
18 need to look into those issues irrespective of what  
19 happens today.

20 But again, what I want to talk to you about is  
21 these two ballots and the fact that when you look at  
22 these two ballots and apply the law and common sense, Ms.  
23 Sampson is the winner of the election.

24 Now, the day that we filed the protest, my law  
25 partner Michael Crowell notified the director of the



1 Robeson County Board of Elections by e-mail that we were  
2 representing Ms. Sampson and asked that we be included  
3 on all correspondence related to the protest.

4 The county board met that same afternoon or  
5 evening, and at that meeting it appeared, based on what  
6 we've heard--we weren't there--that the Board was rather  
7 upset that Ms. Sampson was exercising her right to file  
8 a protest.

9 We have asked repeatedly for the tapes for that  
10 meeting. We haven't been able to receive them. We did  
11 receive the minutes. We were told--

12 CHAIRMAN WHITNEY: The Board of the three  
13 people or their staff?

14 MR. MITCHELL: The county board of  
15 elections.

16 CHAIRMAN WHITNEY: They were upset.

17 MR. MITCHELL: That was our impression  
18 based on what we heard from that meeting, and again, we  
19 haven't received the tapes. We've asked for them, and  
20 we were just told the other day that there's some  
21 difficulty in making copies of the tapes, which we were  
22 not told before the other day. We've asked for them  
23 repeatedly over a period of several weeks.

24 CHAIRMAN WHITNEY: Okay.

25 MR. MITCHELL: Late that evening our

1 client called us and told us that the county board  
2 decided at this November 24th meeting that they were  
3 going to meet the following morning at 8:00 a.m. to  
4 consider her protest.

5           Despite our raising objections to the meeting,  
6 including the fact that the meeting did not comply with  
7 the open meetings law, the Board went ahead and met the  
8 following morning at 8:00 a.m.

9           MR. MALCOLM:           All right, let me hold you  
10 right there. Do you agree that there is no notice  
11 requirement for a county board of election for a  
12 preliminary hearing?

13           MR. MITCHELL:        I think that the county  
14 board has a duty to notify the parties, and we asked,  
15 again via the e-mail through Mr. Crowell that we be  
16 informed of all proceedings and did not receive that  
17 notification.

18           MR. MALCOLM:        Are you basing that on law?  
19 If you are, tell me where that is.

20           MR. MITCHELL:        I can take a look, sir.

21           MR. MALCOLM:        Well, I mean it's very  
22 important because I think what the law says is that the  
23 county board is supposed to consider the matter as  
24 quickly as possible, and there is no notice requirements  
25 to the parties as for the preliminary hearing. Do you

1 agree with that?

2 MR. MITCHELL: The open--the county board  
3 is subject to the open--

4 MR. MALCOLM: I'm not referring to the  
5 open meetings law.

6 MR. MITCHELL: Okay.

7 MR. MALCOLM: I'm just referring as far  
8 as notice for a preliminary hearing. Do you agree there  
9 is no notice requirement like there is for the full  
10 protest hearing?

11 MR. MITCHELL: I do, and it's my  
12 contention that under the Open Meetings law, notice needs  
13 to be posted 48 hours in advance of a special meeting.

14 MR. MALCOLM: I agree with that.

15 MR. MITCHELL: Okay.

16 MR. MALCOLM: So at the preliminary  
17 hearing, when they took up the preliminary matter, are  
18 you alleging that the county board violated the opening  
19 meetings law for that meeting?

20 MR. MITCHELL: Yes.

21 MR. MALCOLM: And you're also alleging  
22 that they met the next day--

23 MR. MITCHELL: When they met on the 24th,  
24 I think that was a previously scheduled meeting, and at  
25 that meeting they decided to meet the following morning,

1 on the 25th, for the purpose of the preliminary hearing.

2 So I'm not alleging that there was any  
3 violation related to the meeting on the 24th because as  
4 I understand it, it was a regularly scheduled meeting.  
5 It was deciding without proper notice under the Open  
6 Meetings law to come back a few hours later to hear the  
7 preliminary hearing the next morning.

8 MR. MALCOLM: Do you have a reason to  
9 know whether they recessed the meeting on the 24th  
10 instead of adjourning it?

11 MR. MITCHELL: I'm not certain. I don't  
12 believe that they did, but I'm not certain.

13 MR. MALCOLM: And the reason you're not  
14 certain is because you never received--

15 MR. MITCHELL: The tapes.

16 MR. MALCOLM: Or the meeting minutes?

17 MR. MITCHELL: We did just receive the  
18 meeting minutes.

19 MR. MALCOLM: Do the meeting minutes say  
20 that they adjourned on the 24th?

21 MR. MITCHELL: I believe so.

22 MR. MALCOLM: All right. That's  
23 important to me because we just dealt with this Open  
24 Meetings law last week.

25 MR. MITCHELL: And I appreciate those

1 questions. The following morning the Board went ahead  
2 and met on the 25th and dismissed Ms. Sampson's protest.  
3 We didn't receive a written order until several weeks  
4 later.

5 MR. MALCOLM: What's your understanding  
6 of how quick an order is supposed to be delivered to the  
7 parties?

8 MR. MITCHELL: As quickly as possible.

9 MR. MALCOLM: Is that what the statute  
10 says?

11 MR. MITCHELL: I'm not sure what the  
12 statute says, sir, with regards to that.

13 MR. MALCOLM: Okay.

14 MR. MITCHELL: Now, one of the issues that  
15 was raised in Ms. Sampson's initial protest was related  
16 to a voter named Perry Lowry, and I'm raising this as an  
17 issue just to bring to the Board's attention some of the  
18 concerns that have transpired with regards to this  
19 election. I think everyone agrees that Perry Lowry does  
20 not impact the results of this election.

21 Mr. Lowry was a voter challenged by Ms. Sampson  
22 as not living in Ward 7. And when the county board heard  
23 that matter, it agreed with Ms. Sampson and sustained the  
24 challenge related to Mr. Lowry's ballot. And Mr. Lowry  
25 voted one-stop so the Board was able to retrieve his

1 ballot. The ballot that was retrieved by the Board was  
2 marked as spoiled.

3 Now, the Board then tried to find a replacement  
4 ballot voted by Mr. Lowry making the assumption that he  
5 tried to vote, voted a spoiled ballot, and then tried to  
6 vote again.

7 Now, at that time despite the fact--and this  
8 came out at the county board hearing--that the  
9 identifying numbers on the ballots didn't match, the  
10 Board pulled out a different ballot, assumed that it was  
11 Mr. Lowry's, and canceled that ballot which had been cast  
12 for Ms. Sampson, again, assuming that this ballot--it was  
13 close in number of identifying marks but not exact--  
14 canceled that ballot which had been cast for Ms. Sampson  
15 on the assumption that Ms. Sampson challenged Perry Lowry  
16 and we're going to find the ballot that he cast and  
17 cancel that ballot based on Ms. Sampson's protest.

18 Now, Mr. Lowry later provided an affidavit that  
19 indicated he did not vote a replacement ballot in Ward  
20 7. In fact he voted a replacement ballot in Ward 6. And  
21 when the Board received that affidavit, it did the right  
22 thing and it added back into the totals the ballot it  
23 incorrectly assumed was Perry Lowry's replacement ballot.

24 That was during the hand-eye recount. So again  
25 I raise that just as an issue of process.

1                   CHAIRMAN WHITNEY:   Adding it into whose  
2 column?

3                   MR. MITCHELL:            To Ms. Sampson's because  
4 that assumed ballot that was canceled initially by the  
5 Board was cast for Ms. Sampson, and when Mr. Lowry came  
6 forward and said, "That couldn't have been my ballot,  
7 because I did not in fact vote a replacement ballot," the  
8 Board said, "Okay, we made a mistake. We need to count  
9 this ballot for Ms. Sampson."

10                  CHAIRMAN WHITNEY:   So they counted both  
11 ballots.

12                  MR. MITCHELL:            I want to make sure I  
13 understand your question before responding.

14                  CHAIRMAN WHITNEY:   You counted the second  
15 ballot. I got that. But the first ballot was spoiled?

16                  MR. MITCHELL:            Right, and that did not  
17 count, correct.

18                  CHAIRMAN WHITNEY:   Didn't count for anybody.

19                  MR. MITCHELL:            Correct.

20                  MS. AMOROSO:            Let me ask you, I see in  
21 the record, it says there were three Perry Lowrys. Is  
22 that the right one? Because we have--there's a problem  
23 with getting the right person today. So I just raise  
24 that.

25                  MR. MITCHELL:            As far as I know, we do,

1 and again, Mr. Lowry came forward, provided an affidavit  
2 to the county board that said, "I tried to vote. I was  
3 given a Ward 7 ballot. I don't live in Ward 7. When I  
4 let someone know, I was given a Ward 6 ballot. I then  
5 voted in Ward 6, and I therefore did not ever cast a  
6 ballot in Ward 7."

7 MR. MALCOLM: So remind me who tracked  
8 down Perry Lowry to resolve all that.

9 MR. MITCHELL: Ms. Sampson did.

10 MR. BAKER: Mr. Mitchell, as I  
11 understand it, the Perry Lowry vote, though, is not an  
12 issue as deciding the election.

13 MR. MITCHELL: Yes, sir. That is correct.

14 MR. BAKER: And you bring it up merely  
15 to show procedures that were followed perhaps incorrectly  
16 by the Board of Elections as an example; is that right?

17 MR. MITCHELL: That is correct.

18 MR. BAKER: So we really don't need to  
19 discuss the Perry Lowry vote.

20 MR. MITCHELL: I'm ready to move on.

21 MR. BAKER: I think they voted on Page  
22 803 as saying it's a non-issue in deciding who won the  
23 election.

24 MR. MITCHELL: Right, and Mr. Stone  
25 responded by saying, "I agree." Yes.



1 CHAIRMAN WHITNEY: Let's move on, Counsel.

2 MR. BAKER: Yes, sir. Thank you.

3 MR. MITCHELL: While Ms. Sampson's protest  
4 was dismissed on the morning of November 25th, the county  
5 board did authorized a complete hand-eye recount of all  
6 the ballots.

7 That took place on December 3rd, 2015, and the  
8 county board brought in a team of judges to look at--  
9 election judges to look at each of the ballots.  
10 Following that recount, Ms. Sampson filed an amended and  
11 renewed protest based on an error made in counting the  
12 ballots during the hand-eye recount, and that's really  
13 what we're here to talk about today.

14 MR. MALCOLM: Was Ms. Sampson there for  
15 the recount?

16 MR. MITCHELL: Yes, she was.

17 MR. MALCOLM: Did Ms. Sampson--were you  
18 representing her then?

19 MR. MITCHELL: Yes.

20 MR. MALCOLM: Were you standing behind  
21 the folks that were counting the ballots?

22 MR. MITCHELL: Yes, sir, we were.

23 MR. MALCOLM: Who was?

24 MR. MITCHELL: Ms. Sampson was.

25 MR. MALCOLM: Okay. Did Ms. Sampson-

1 did they tally the votes? They looked at the ballots--  
2 all three board members looked at the ballots and said,  
3 "Sampson," or how did they do that?

4 MR. MITCHELL: My understanding is that  
5 they gave direction to this team of judges, election  
6 judges to look at the ballots and the instructions--and  
7 this came out at the county hearing--was to determine the  
8 voters' intent.

9 If all four of the judges agreed, then that's  
10 how the ballot was counted. If there was disagreement,  
11 then it would have gone to the three member county board  
12 of election.

13 MR. MALCOLM: As the four members were  
14 looking at each of the--the four members looked at each  
15 of individual ballot. Is that true?

16 MR. MITCHELL: Yes, sir. That's my  
17 understanding.

18 MR. MALCOLM: Were those ballots held in  
19 a way that Ms. Sampson and the other folks there could  
20 see the ballots?

21 MR. MITCHELL: Yes, sir.

22 MR. MALCOLM: Did they announce what  
23 they--how they were going to count it at that time? When  
24 they looked at the particular ballot that we're  
25 discussing, did Ms. Sampson raise her concern then?

1                   MR. MITCHELL:            I don't believe that she  
2 did.

3                   MR. MALCOLM:            Did she or did she not?

4                   MR. MITCHELL:            She was there. I was not.  
5 So she can certainly speak to that.

6                   MS. SAMPSON:            We tried to, but we were  
7 told that we were not allowed to say anything.

8                   MR. MALCOLM:            Okay. Thank you.

9                   MR. MITCHELL:            So again, following this  
10 process, we filed an amended and renewed protest that was  
11 focused on a ballot and that we'll look at closely in  
12 just a moment.

13                            The ballot had bubbles filled in next to both  
14 candidates' names, and then a cross-out mark next to the  
15 bubble next to Mr. Maynor's name.

16                            The ballot--and this was stipulated in the record  
17 in the county board hearing--was counted for Mr. Maynor  
18 when it clearly should have been counted for Ms. Sampson.

19                            I think we can all agree that in any election  
20 even a single vote is a precious thing. In an election  
21 as close as this one, each single vote becomes even more  
22 precious as it can swing the outcome of the election.

23                            And our guide star here is determining the  
24 voters' intent so that we can count each vote in the  
25 manner that the voter intended. If we can do that, the

1 vote must be counted. If we cannot do that, the vote  
2 cannot be counted.

3 I'd like to help you understand why this ballot  
4 can only be counted for Ms. Sampson and why she should  
5 thus be declared the winner of this election, and it  
6 would helpful at this time if you have the exhibit that  
7 was marked at the county board hearing as Board of  
8 Elections Number 1. It's at Page 67 in the record in  
9 front of you.

10 MR. BAKER: On the Board advantage,  
11 it's at 769.

12 MR. MITCHELL: Thank you. And just for  
13 the Board's information, both of the ballots that we're  
14 going to be looking at in these consolidated protests are  
15 non-retrievable ballots so that's not an issue where we  
16 can associate them with a voter or do something else to  
17 try to figure out how these voters intended to vote.

18 So you'll see here on Board of Elections 1 that  
19 this voter cast a clear vote and single vote for Bruce  
20 W. Davis for mayor, and then you'll see under "City  
21 Council Member" that the ovals are filled in next to both  
22 Ms. Sampson and Mr. Maynor's name and that an X is  
23 placed, or a cross-out mark, was placed over the bubble  
24 next to Mr. Maynor's name.

25 So obviously in an ideal world, this voter

1 would have notified an elections official and requested  
2 a replacement ballot, but that's not what happened here,  
3 and that doesn't mean that this vote shouldn't be  
4 counted, and again, as I said before, logic and common  
5 sense lead to the conclusion that this voter intended to  
6 vote for Ms. Sampson.

7 Now, why is that--

8 MR. MALCOLM: Hold on a second. Yeah,  
9 go ahead.

10 MR. MITCHELL: Yes, sir. Now, it's  
11 technically possible that the cross-out mark could have  
12 been placed on the ballot either before or after the  
13 ovals were added, but there are two reasons that we know  
14 that it was added after the fact.

15 First, if the cross-out with the X was marked  
16 first; in other words, if the voter intended to cast his  
17 or her vote by marking an X instead of darkening the  
18 oval, there would be no logical reason for the voter to  
19 then darken in the oval for either candidate after  
20 placing that X.

21 Second, we also know just by looking at the  
22 mayor's election, that this voter understood that he or  
23 she was supposed to fill in the oval. So we know, just  
24 applying logic, that this voter filled in the ovals first  
25 and then crossed one out.

1           And what I want to talk to you about is that  
2 when you put a cross-out or an X on top of something,  
3 there's a universal meaning, and that meaning is to  
4 reject or cancel what comes below the mark, and I'm going  
5 to give you some examples.

6           One that comes to mind: Imagine you're  
7 watching late night cable TV and an advertisement comes  
8 on, and the ad begins by showing a cat entering a liter  
9 box. The next thing that appears are those wavy lines  
10 that we would all understand to indicate a terrible odor  
11 coming from the liter box, and then what you see next is  
12 an X on top of those wavy lines.

13           We would all understand that the X applied to  
14 the top of those wavy lines would mean that this product  
15 will eliminate or cancel the odor, what comes underneath.

16           MR. MALCOLM:           You really expect us to  
17 adopt Hollywood?

18           MR. MITCHELL:          No, sir, I don't. I have  
19 some other examples.

20           CHAIRMAN WHITNEY:      Can we kind of not have too  
21 many because I think we have opinions about what--

22           MR. MITCHELL:          Sure. I'll just--

23           CHAIRMAN WHITNEY:      Just give us a couple of  
24 highlights.

25           MR. MITCHELL:          Traffic signs. You have

1 the black U-turn sign indicating, if it were there by  
2 itself, that you could make a U turn and then the circle  
3 and the strike-through mark indicating that you can't  
4 make a U turn. We would all agree with that.

5 CHAIRMAN WHITNEY: That's a line through and  
6 not an X.

7 MR. MITCHELL: Yes, sir.

8 CHAIRMAN WHITNEY: Thank you.

9 MR. MITCHELL: And if I may, I just came  
10 across this in preparing for this hearing, and if I may  
11 approach, I'd like to pass out copies, but I found  
12 something that I think the Board at least will be  
13 interested in as persuasive authority, not binding.

14 It's a guide from the Washington State  
15 Secretary of State's office that addresses just this  
16 scenario. And I'd like you at least to take a look at  
17 it again to see that other folks have considered this  
18 issue and have come to the conclusion that when you have  
19 two ovals filled in and an X over one, the X means to  
20 cancel out the one that the X is through.

21 CHAIRMAN WHITNEY: At what level was that  
22 decision rendered, what body in Washington?

23 MR. MITCHELL: It's a voter intent guide  
24 from the Secretary of State's office in Washington. It's  
25 not a case or a decision. And again, I submit it to you

1 just as persuasive authority as to another entity that  
2 has considered this issue.

3 CHAIRMAN WHITNEY: Is that binding in  
4 Washington, to your knowledge?

5 MR. MITCHELL: It is not. Again, I think  
6 it's an instruction to the folks who count the votes.  
7 It's not a case, so it's not binding law, but the  
8 Secretary of State who's responsible for counting the  
9 votes, overseeing the election has put this out as a  
10 guide for how votes should be counted.

11 CHAIRMAN WHITNEY: Could you just read like  
12 two or three lines or less--

13 MR. MITCHELL: Yes, sir.

14 CHAIRMAN WHITNEY: --that says that's what--

15 MR. MITCHELL: Yes, sir. So, and again,  
16 I can pass it out here, but if you look at--

17 CHAIRMAN WHITNEY: We'll take it as an exhibit  
18 here in a second.

19 MR. MITCHELL: Thank you.

20 CHAIRMAN WHITNEY: I want you to read--

21 MR. MITCHELL: Sure.

22 CHAIRMAN WHITNEY: --what it says--what  
23 Washington's Board of--

24 MR. MITCHELL: Secretary of State.

25 CHAIRMAN WHITNEY: --Secretary of State, and



1 I assume that's the electoral--

2 MR. MITCHELL: Correct.

3 CHAIRMAN WHITNEY: Okay. All right. Read it,  
4 please.

5 MR. MITCHELL: And it says, "Corrected  
6 Votes: Rule C. The vote for William Henry Harrison is  
7 a valid vote. In the following examples from different  
8 ballots, the voters marked two target areas and also  
9 placed an X over one of the marked areas. The choice  
10 without the X is the valid vote."

11 And then there are examples, and again, Example  
12 3A is literally identical to what you see on this ballot.

13 CHAIRMAN WHITNEY: Will you submit that to the  
14 Board and ask it to be marked as Exhibit what, one?

15 MR. LAWSON: Four.

16 CHAIRMAN WHITNEY: Four. Okay.

17 (Whereupon, Exhibit Number 4  
18 was marked for identification.)

19 CHAIRMAN WHITNEY: Is that two copies?  
20 Multiple copies.

21 MR. MITCHELL: I made copies for all the  
22 Board members. There should be extras.

23 CHAIRMAN WHITNEY: Okay. There's one more.  
24 And after I look at--what page, Counselor?

25 MR. MITCHELL: I just printed out--

1                   CHAIRMAN WHITNEY:    What page is the--okay, the  
2 last one?

3                   MR. MITCHELL:            The last one.  I just  
4 printed out the identified pages so you can see what it  
5 is.

6                   CHAIRMAN WHITNEY:    Well, Teddy Roosevelt and  
7 William Henry Harrison didn't even run in the same  
8 election.

9                   (Pause)

10                  CHAIRMAN WHITNEY:    All right.  Proceed.

11                  MR. MITCHELL:            If the X was just sitting  
12 there by itself, I think we could have an argument about  
13 what it meant and what the voter's intent was trying to  
14 express, but again, when you have two bubbles circled in  
15 and then an X over one, I think it's universally  
16 understood that the voter was intending to cancel or  
17 reject what was below that X or cross-out mark.

18                  And again, common sense makes clear this  
19 voter's intent, and we can't toss out any ballots if we  
20 know how the voter intended to vote.

21                  Now, in its order related to Ms. Sampson's  
22 renewed and amended protest, the county board concluded  
23 that there was substantial evidence of an irregularity,  
24 and the irregularity was just this, the counting of this  
25 ballot that occurred with this ballot, and that given the

1 margin, it was sufficiently serious to cast doubt on the  
2 apparent results.

3           We think the county board was correct and we  
4 ask that you today direct the county board to count this  
5 vote for Ms. Sampson as the voter intended.

6           Now, since the Board consolidated these  
7 matters, I'll just briefly address Mr. Maynor's protest  
8 which is the ballot marked as BOE Number 2. And I'm not  
9 going to belabor this point. On this ballot the voter  
10 filled in the bubble next to both names, it looks like  
11 also made a check mark in one of the ovals, and then  
12 circled Ms. Sampson's name in the bubble next to it.

13           Now, the judges that were appointed by the  
14 county board to look at these ballots counted this for  
15 Ms. Sampson. We think that was the correct result.  
16 Again, just relying on logic and common sense, I've never  
17 heard of a situation where someone circled something to  
18 indicate that they are trying to reject or cancel what  
19 comes beneath it.

20           Again, think back of the signs. The U turn  
21 symbol, on its own without that cross-through mark, we  
22 would all agree it means that you can make a U turn here.  
23 I think this ballot was clearly cast for Laura Sampson  
24 as well as--and it should be counted for her.

25           Now, Mr. Maynor's protest, in our opinion,

1 should have been dismissed by the county board and we're  
2 going to ask that you dismiss it today. The county  
3 board's order related to that protest notably doesn't  
4 find that there was an irregularity sufficient to cast  
5 doubt on the apparent results.

6 For reasons I don't fully understand, the  
7 county board on Mr. Maynor's protest decided that they  
8 couldn't decide what law to apply to the facts related  
9 to the particular protest.

10 The law in determining voters' intent is the  
11 exact same as it was in our protest. I think, to be  
12 perfectly honest, the county board just sort of got stuck  
13 and sent it to you all for further proceedings, but  
14 again--

15 CHAIRMAN WHITNEY: They punted and sent it up  
16 to us because they couldn't make a decision.

17 MR. MITCHELL: Correct. Again, I submit  
18 to you that the voter's intent here is crystal clear; it  
19 should be counted for Ms. Sampson as the judges in the  
20 hand-eye recount decided.

21 And we believe that given the apparent results,  
22 that Mr. Maynor having one vote lead following the hand-  
23 eye recount, that if the circled ballot, the one  
24 challenged by Mr. Maynor, is properly counted for Ms.  
25 Sampson, as it should be, and if the ballot that I showed

1 you, BOE Number 1, is also properly counted based on  
2 logic, common sense--again, I've given you persuasive  
3 authority from another jurisdiction as to how they would  
4 count it. If that vote is also properly counted for Ms.  
5 Sampson, then she has won the election.

6 And again, we ask that this matter be sent back  
7 to the county board so that they can hand up the results  
8 and certify Ms. Sampson as the winner. And again, I  
9 think that the board just couldn't decide how to count  
10 these ballots, and that's why they sent it to you, and  
11 that's really what we're here to decide today, how these  
12 two ballots are to be counted.

13 I'd like to preserve any time for rebuttal, but  
14 that concludes my primary presentation. I appreciate  
15 your attention.

16 CHAIRMAN WHITNEY: Thank you, Counselor. Mr.  
17 Hunt.

18 MR. HUNT: Good afternoon, Mr.  
19 Chairman. Board members, welcome to Robeson County.  
20 Welcome to Pembroke. I think Adam has covered a lot of  
21 the procedural stuff, and I'm not going to plow that  
22 ground, but I want you to indulge me just for a couple  
23 of minutes because Mr. Mitchell covered it first with the  
24 hearing in Raleigh, challenge.

25 And what happened Perry Lowry was challenged

1 by Ms. Sampson, and that challenge hearing was held  
2 November the 13th. Based on 163-90.2, once that board  
3 made the decision on that challenge, there was only thing  
4 that they could do. When that challenge was sustained,  
5 they could appeal that to superior court. That's what  
6 the statute says.

7           That's not what happened here. What happened  
8 was on November the 13th, at that challenge hearing,  
9 apparently--and I say "apparently," because I wasn't  
10 there, but apparently they pulled, as Mr. Mitchell has  
11 suggested, a ballot that I think everybody can now--would  
12 say was not Perry Lowry's. But they pulled that ballot  
13 which is on Page 106 at least of the consolidated record.

14           That ballot, from what I gather, was pulled at  
15 that time. But they came back--when I say "they," the  
16 local board came back on December 5th, allowed Perry  
17 Lowry a hearing, if you will, where he provided  
18 testimony. I submit to you that there's nothing in the  
19 statutes to allow that.

20           The statute's very clear on what the procedure  
21 is, and the procedure is superior court, not for them--  
22 and it's in superior court with a ten-day time limit.  
23 They've got ten days. So they would have had ten days  
24 from November the 13th to file an appeal with superior  
25 court.

1           That didn't happen, but they allowed them to  
2 come back on December the 5th. And again, it was a  
3 meeting that I was not at, but I have the minutes of that  
4 meeting. And it reflects that they allowed Perry Lowry  
5 to be heard, determined that he had a spoiled ballot, and  
6 only at that time did they add the ballot that's  
7 reflected on Page 106 back into the numbers.

8           And my point is if they would have never  
9 allowed Perry Lowry to have an improper hearing on  
10 December the 5th, that ballot would have never been added  
11 back into the mix. Whether that's right or wrong, they'd  
12 have never had that opportunity to go back and look at  
13 that ballot.

14           So procedurally, as far as I'm concerned, they  
15 got it all wrong with Perry Lowry as far as the  
16 challenge.

17           Now, going to the ballot, and again, you've got  
18 our record, my argument's going to be the same now as it  
19 was in the record. Four judges, based on--based on what  
20 was said in the record, four experienced judges looked  
21 at this same ballot, and their procedure was if there was  
22 any dissension among the four--

23           CHAIRMAN WHITNEY:    Are we talking about the  
24 Lowry ballot?

25           MR. HUNT:            No, no. I'm talking about

1 now--and I apologize, Mr. Chairman. I'm talking about  
2 now the ballot that was counted for--

3 CHAIRMAN WHITNEY: The one with the dots  
4 filled in and the X?

5 MR. HUNT: Yes, sir.

6 MR. MALCOLM: Exhibit 1?

7 MR. MITCHELL: Exhibit 1, Board of  
8 Elections Exhibit 1.

9 CHAIRMAN WHITNEY: All right.

10 MR. HUNT: Based on what's in the  
11 record, the four--the procedure was the four judges would  
12 look at it. If there was any dissension at all amongst  
13 them, then they would seek guidance from the local board  
14 of elections, the three board members.

15 They counted this ballot, counted it for Mr.  
16 Maynor. There was no dissension among them. And I would  
17 submit to you that the reason there was no dissension  
18 among--before there was optical scanning, the very common  
19 practice of identifying who you would choose and what  
20 candidate you were voting for was an X in the box.

21 I'd submit to you that that's what this person  
22 was doing. They were selecting their candidate, choosing  
23 Mr. Maynor, not X'ing him out. That's what--I'd submit  
24 to you that's what the Board members--the judges that  
25 looked at this ballot thought was going on, and I would



1 submit to you that that's what was going on.

2 CHAIRMAN WHITNEY: What are your thoughts  
3 about the fact that the two ovals were filled in?

4 MR. HUNT: Well, no question that the  
5 two ovals were filled in, but again, my position is that  
6 the two ovals were filled in and I would say prior to the  
7 X being put there, but again, my position, just like the  
8 four judges's position, was that X didn't mean that they  
9 were canceling it out, but they were supporting Leon  
10 Maynor. I just want to--

11 CHAIRMAN WHITNEY: Was anybody at that  
12 counting other than those four that saw a discussion?

13 MR. MALCOLM: Were you retained then?

14 MR. HUNT: I was not retained then,  
15 Mr. Chairman, but from what I understand--and the board  
16 members will have to speak to this--they were available  
17 for those judges to ask them questions, to inquire  
18 whatever when this process was going on because, if I'm  
19 not mistaken, Mr. Chairman, that would've occurred on  
20 that December the 5th date. And I stand to be corrected,  
21 but that's my understanding.

22 CHAIRMAN WHITNEY: Is that the hand-eye  
23 recount?

24 MR. HUNT: Yes, sir.

25 CHAIRMAN WHITNEY: That would be the fifth

1 time these votes were counted, if my notes are correct.

2 MR. HUNT: Yes, sir.

3 CHAIRMAN WHITNEY: Okay. All right. So to  
4 your knowledge, in addition to the four people--and I  
5 think, over here, you were present--was anybody else  
6 there?

7 MR. HUNT: Mr. Maynor was there.

8 CHAIRMAN WHITNEY: You were there. Okay, so  
9 there were six people there, two candidates and the four.

10 MS. SAMPSON: And my mom was also  
11 present.

12 CHAIRMAN WHITNEY: All right, people that are  
13 raising your hands--

14 MR. STONE: In addition to the board  
15 members and onlookers, supporters of both candidates, we  
16 were all there.

17 CHAIRMAN WHITNEY: So it wasn't just the four  
18 judges and--

19 MR. STONE: --not four people in a room  
20 counting--

21 CHAIRMAN WHITNEY: There were a handful of  
22 more people.

23 MR. STONE: There was a room full of  
24 people.

25 CHAIRMAN WHITNEY: Okay. I don't want to get

1 into who they were. I just wanted to see who was there.

2 MR. MALCOLM: But I want to--for the  
3 record to reflect clearly and maybe Maynor and Sampson  
4 need to answer this question. The four people--the four  
5 judges are sitting at a table. Were both of y'all behind  
6 the four judges, like behind me?

7 MS. SAMPSON: Yes.

8 MR. MALCOLM: Okay. Was anyone else  
9 standing behind y'all looking over their shoulders?

10 MS. SAMPSON: Yes.

11 MR. MALCOLM: Who?

12 MS. SAMPSON: My mother.

13 MR. MALCOLM: Okay. Do you recall anyone  
14 else? Were any of the county board members there?

15 MS. SAMPSON: No, not behind.

16 MR. MALCOLM: Yeah. No county board  
17 members was looking over their shoulders, looking over  
18 y'all's. Was Mr. G.L. Pridgen there?

19 MR. STONE: Yes, he was there.

20 MR. MALCOLM: Was he looking over--behind  
21 them?

22 (Mr. Stone shakes head.)

23 MR. MALCOLM: Was Mr. Pate there, the  
24 county attorney?

25 MS. SAMPSON: I don't think.

1                   MR. MALCOLM:           Any of the ladies that work  
2 in the office?

3                   (Ms. Sampson shakes head.)

4                   MR. MALCOLM:           Were they scribing up  
5 front? They ladies that work in the office, were they  
6 doing the tallying?

7                   MS. SAMPSON:           No. I don't think they  
8 were in the room.

9                   MR. MALCOLM:           I know, Mr. Locklear. I  
10 just want to hear their perception, and then I'll get the  
11 real answer from y'all. But were the--a different  
12 perspective on the answer: Is there any--were board  
13 members or anybody on the staff, other than those four  
14 people, were they actively involved in counting the  
15 ballots?

16                   MR. MITCHELL:           No.

17                   MR. MALCOLM:           That's all I need to know.

18                   CHAIRMAN WHITNEY:      And could the two  
19 candidates tell me, were you physically able to see what  
20 was on the ballots as they were being looked at?

21                   MS. SAMPSON:           Yes.

22                   CHAIRMAN WHITNEY:      Were they out on the table?  
23 Were they held up, held to the light? They were all of  
24 the above?

25                   MR. HUNT:              Yes, sir.

1           CHAIRMAN WHITNEY:    Okay.  So you could see,  
2 both of you could see what was on the ballots.

3           MS. SAMPSON:            Yes.

4           CHAIRMAN WHITNEY:    And nobody kept you from  
5 looking?  I mean that was--they were visible and openly  
6 visible.

7           MS. SAMPSON:            Yes.

8           CHAIRMAN WHITNEY:    Okay.

9           MR. MALCOLM:            Were you instructed prior  
10 to the beginning of the hand-eye count what role or what  
11 you--were you instructed whether you could state any  
12 objection or anything?  If I could get both of you to  
13 answer on the record.  Ms. Sampson?

14          MS. SAMPSON:            No.  We were told that we  
15 could watch.

16          MR. MALCOLM:            You said earlier you were  
17 told you could not speak.

18          MS. SAMPSON:            That's when I tried to  
19 speak.  I tried to speak, and then I was told that I  
20 could not speak.

21          MR. MALCOLM:            By whom?

22          MS. SAMPSON:            Mr. Pridgen.

23          MR. MALCOLM:            Mr. Maynor, did anyone give  
24 you any instructions as to what you could or could not  
25 do or say?

1 MR. MAYNOR: Same, that we could not  
2 speak.

3 MR. MALCOLM: So that--

4 CHAIRMAN WHITNEY: Stop. Could I ask both  
5 candidates to stand up and be sworn.

6 (Whereupon,

7 LAURA SAMPSON and LEON MAYNOR,

8 having first been duly sworn,

9 testified as follow:)

10 MR. MALCOLM: And all previous  
11 statements, y'all affirm or swear as being the truth?

12 MS. SAMPSON: Yes.

13 MR. MAYNOR: Yes.

14 CHAIRMAN WHITNEY: Thank you.

15 MR. MALCOLM: And y'all were told that  
16 at the same time; it's not just related to this ballot,  
17 that you cannot speak.

18 MS. SAMPSON: Yeah. I think we both were  
19 raising a question as these ballots were coming by. We  
20 both wanted to--

21 MR. MALCOLM: So you had questions as  
22 well.

23 MR. MAYNOR: Not in the first count.  
24 The second counting is when there was some conversation,  
25 and Mr. G.L. stepped in and said, "We can't have any

1 conversation at all."

2           During the first count I didn't hear anyone  
3 objecting to anything, during the first count. There was  
4 two counts.

5           MR. MALCOLM:           I'm sorry, Mr. Hunt.

6           CHAIRMAN WHITNEY:      Thank you. Please proceed.

7           MR. HUNT:             Mr. Chairman, if I just  
8 may.

9           CHAIRMAN WHITNEY:      Certainly.

10          MR. HUNT:             Looking at the consolidated  
11 record, on Page 2, and I bring this out because the  
12 conclusion of law there is that there is substantial  
13 evidence of an irregularity regarding this ballot, and  
14 if I--and if you'll indulge me, I'm going to just take  
15 you through some pages.

16          If you will go to Page 62 of the consolidated  
17 record, on Line 18, and Mr. Pate, the county attorney--

18          MR. BAKER:            That's Page 764 on the  
19 Board vantage.

20          MR. HUNT:            --there makes the  
21 statement, "Because we found no irregularity," and on one  
22 said that he was wrong, that that was not a correct  
23 statement, but clearly this is in the record talking  
24 about the hearing as it related to this ballot, and  
25 clearly there it specifically says that there was no

1 irregularity found.

2 MR. MALCOLM: Mr. Hunt, just refer us  
3 back, if you wouldn't mind, and I appreciate you  
4 referring us to page number and line. What is he  
5 referring to, if you wouldn't mind? Specifically what  
6 is--in your opinion, what's he referring to when he says?

7 MR. HUNT: Well, in my opinion, what  
8 he's referring to is that there was no irregularity  
9 concerning how the ballot was counted.

10 MR. MALCOLM: In particular you're  
11 referring to Exhibit 1.

12 MR. HUNT: In particular, Exhibit 1,  
13 because the hearings were not consolidated. The hearings  
14 were separate, and this is the hearing on the Exhibit 1  
15 ballot.

16 MR. MALCOLM: If you could just give me  
17 one second. I'm looking at page 763, Mr. Mitchell.

18 (Pause)

19 MR. MALCOLM: Okay. I'm sorry, Mr. Hunt.

20 MR. HUNT: But then on the next page  
21 on 765, Line 2, Mr. Stone himself says it's a three-way  
22 split.

23 MR. HUNT: And I was getting ready to  
24 get there.

25 MR. MALCOLM: Okay.



1           MR. HUNT:           I was going there.  If  
2 you'll--again, if you'll indulge me, on that same page,  
3 62, and Judge Baker, I apologize; I'm not sure what page  
4 it is on your record, but on mine it's Page 62, Lines 23  
5 through 25.

6           And this is Chairman Stone speaking now.  He  
7 says, "We're unable to come to the conclusion as to how  
8 we think that ballot should have been counted."  It goes  
9 on the next page, Page 63, on the second line, said,  
10 "It's a three-way split."

11           My interpretation of what he was saying when  
12 he said that was the three board members had three  
13 different ideas of how this vote should have been  
14 counted, and that's certainly what the expressions were  
15 during the hearing.  And again--

16           CHAIRMAN WHITNEY:  Now, we're talking about  
17 a vote that was counted for your client.

18           MR. HUNT:           A vote that was counted for  
19 my client.

20           CHAIRMAN WHITNEY:  And you're saying that Mr.  
21 Stone, Chairman Stone said, "We have a three-way split,"  
22 as to that ballot?

23           MR. HUNT:           Yes, sir.

24           CHAIRMAN WHITNEY:  "And therefore we're going  
25 to kick it upstairs to the State Board."

1 MR. HUNT: Yes, sir.

2 CHAIRMAN WHITNEY: Okay.

3 MR. HUNT: And the last--the last  
4 thing I'll refer you to is on Page 88. Now, this is  
5 actually--

6 MR. BAKER: 790.

7 MR. HUNT: This is actually in the--  
8 my client's hearing, but I just point--I point this out  
9 to you just to--as Chairman Stone making the comment; he  
10 says, "I'll renew my motion that says our findings of  
11 fact that these ballots were in dispute."

12 CHAIRMAN WHITNEY: What line, please?

13 MR. HUNT: I'm sorry.

14 CHAIRMAN WHITNEY: I just got there.

15 MR. HUNT: Line 20.

16 CHAIRMAN WHITNEY: Thank you.

17 MR. HUNT: Starting on Line 20, he  
18 says, "I'll renew my motion that says that our findings  
19 of fact, that these ballots were in dispute, that they  
20 were counted favorably for one candidate on one ballot,  
21 favorably for the other candidate on the other ballot by  
22 four of our judges in a matter which is in dispute by the  
23 candidates.

24 "And for one reason, the applicability of the  
25 law, we cannot determine what--to throw out both ballots

1 or to count one or to count the other, and that we'd send  
2 our findings of fact and the transcript and record of the  
3 hearing to the State Board of Elections for action by  
4 it."

5           And then on Page 89, going down to Line 16, Ms.  
6 Powers, board member, seconds that motion. And I point  
7 you to that just to say although the conclusions of law  
8 talks about an irregularity, the language and what they  
9 say certainly doesn't differentiate between the two, the  
10 way they looked at the two ballots.

11           MR. MALCOLM:           Are you saying the  
12 transcript does not match the order?

13           MR. HUNT:           That's what I'm saying.

14           MR. MALCOLM:           When did you get a copy of  
15 the order?

16           MR. HUNT:           I got a copy of the order  
17 at--I know I got it by e-mail Saturday morning. About  
18 9:24 is when I got it, Saturday, and I realized--when I  
19 looked at it was not at that time, but I remember that  
20 that's about the time Saturday morning that I got my e-  
21 mail, and I didn't get a copy--when I got a copy of  
22 everything, I got a copy of this consolidated record this  
23 past Saturday morning at about 9:24.

24           And I'll just be frank with you. I've been  
25 under the weather, and today's the best I've felt in

1 about a week, so I didn't look at anything--

2 MR. MALCOLM: Sure.

3 MR. HUNT: --until Sunday afternoon.

4 MR. MALCOLM: What--remind me just for  
5 the record, this hearing was held on when?

6 MR. HUNT: This hearing was held  
7 January the 4th.

8 MR. MALCOLM: And Saturday, so it  
9 certainly wasn't by the January 9th that you got the  
10 Board--

11 MR. HUNT: No, sir.

12 MR. MALCOLM: Mr. Lawson, can you tell  
13 me last week repeatedly in the transcripts we refer to  
14 the opposing parties were talking about receiving oral  
15 notice within 25 hours and a written decision within five  
16 days. That five-day requirement, is that statutorily  
17 based?

18 MR. LAWSON: It is. It is not often  
19 enforced. And general jurisprudence, you'll have a  
20 written order. There are sometimes deadlines where you  
21 could view the agreement by the Board as being an order  
22 absent something signed by, say, the chair, but it is.  
23 Does that answer your question, sir?

24 MR. MALCOLM: It does not. Is it in  
25 statute the order is supposed to be issued--the written

1 is supposed to be issued within five days of the Board's  
2 decision?

3 MR. LAWSON: If you'll give me a moment,  
4 I will find it.

5 MR. MALCOLM: While you're looking for  
6 that, Mr. Grady Hunt, the reason I ask you that question  
7 is because I sense that perhaps we, we being election  
8 administrators from Raleigh to Lumberton, did we have a  
9 problem delivering y'all all the information you needed  
10 to effectuate your clients' positions in this case?

11 CHAIRMAN WHITNEY: I would encourage the two  
12 counsels to be candid, please.

13 MR. MITCHELL: I'd be glad to answer after  
14 Mr. Hunt.

15 MR. HUNT: I can tell you that what  
16 I'd consider timely didn't always happen.

17 CHAIRMAN WHITNEY: Mr. Mitchell, just--

18 MR. MITCHELL: Yes.

19 CHAIRMAN WHITNEY: Just one question.

20 MR. MITCHELL: Yes. We received the  
21 signed order and the record on Saturday morning. There  
22 was difficulty getting tapes, minutes. There was  
23 meetings that were not properly noticed.

24 We were not informed of the proceedings at the  
25 early stages. It did--things did improve, and I

1 appreciate that, and I think that as--

2           CHAIRMAN WHITNEY: Well, at that point did  
3 they improve or why, in your belief, did they improve?

4           MR. MITCHELL: In my belief--I did get a  
5 letter from your staff telling the local board they  
6 needed to slow things down and get things right. I don't  
7 have any evidence of that, but I do think that as things  
8 went on, there was a sense of let's slow down the process  
9 and make sure we carefully look at things, but there were  
10 still a number of issues as far as notice and timeliness  
11 and--

12           CHAIRMAN WHITNEY: Thank you.

13           MR. MITCHELL: Yes, sir.

14           MR. HUNT: Mr. Chairman, my last  
15 point, and it's just like I say it in the transcript:  
16 I'm not going to be hypocritical. I'm not going to rely  
17 on four judges to say they all were together and no  
18 dissension to count a ballot that I'm asking you to count  
19 for my client and oppose it on the other side.

20           Whether that helps me or hurts me, I can live  
21 with that, but I'm not going to--I think they were doing  
22 the best that they could under very trying and difficult  
23 circumstances, and I'll live with whatever decision they  
24 make on that ballot.

25           CHAIRMAN WHITNEY: Thank you.

1                   MR. MITCHELL:           Mr. Chairman, can I very  
2 briefly in rebuttal?

3                   CHAIRMAN WHITNEY:    Yeah. If you could, keep  
4 it brief.

5                   MR. MITCHELL:           Yes, sir. I understand.  
6 I do just want to point out that at the county board  
7 level they were two separate hearings, that our arguing  
8 was heard first, the ballot with the X.

9                   Ms. Tiffany made the motion, and she was very  
10 clear that there was an irregularity and that the  
11 irregularity was with the counting of this ballot.

12                   Again, we were all clear that there wasn't  
13 anything illegal, that no one tried to get anything  
14 wrong, but Ms. Tiffany's motion was very clear that there  
15 was an irregularity sufficient to cast results (sic), and  
16 that's the order that was signed and that we received on  
17 Saturday morning.

18                   The county board then took up Mr. Maynor's  
19 protest separately, and there the Chair made a motion,  
20 a different motion than Ms. Tiffany's motion, that the  
21 board could not determine the law to apply and that the  
22 county board would therefore send its factual findings  
23 up to the State Board for determination.

24                   I still think this is about how to count these  
25 ballots, and I hope that you'll entertain our argument

1 and discussion about that, but I did just want to make  
2 that point procedurally.

3           There were two separate motions on two separate  
4 protests made by two separate people, and I do think that  
5 the written orders are reflective of what was voted on  
6 by the county board at those hearings. And I will  
7 conclude with that.

8           CHAIRMAN WHITNEY: Thank you. I'd like to  
9 hear from somebody from the County Board of Elections to  
10 sort of walk us through what happened. That can either  
11 be--Mr. Stone, thank you.

12           MR. STONE: I'll try to make it very  
13 brief, but I'll have to kind of sort of start from the  
14 beginning. This was a actual situation of a hand-eye  
15 recount as a result of multiple machine recounts that  
16 were causing issues due to optical scan and everybody was  
17 within their rights to ask for the recount, so we did it.

18           But our goal and our intent, to get the  
19 accurate count and determine the intent of every voter.  
20 On December the 12th, I think was our regular scheduled  
21 meeting.

22           Prior to that time I had had discussions with  
23 other candidates, a number of supporters, and other  
24 interested people, and I said yes, we are entitled--the  
25 petitioner is entitled to a hand-eye recount. But the



1 law really says a sample hand-eye recount, of a sampling  
2 of the precincts.

3           And I said, well, it's not a big race. Let's  
4 do a full hand-eye recount of every single ballot. My  
5 board liked it. The State Board said, "Great idea," and  
6 said, "We'll have four independent judges, don't have  
7 nothing to do with anything in that area." Three  
8 tallyers, same difference. Judges, experienced.

9           The board and our staff was there on site,  
10 sometimes talking by the table watching the ballots being  
11 counted, sometimes just sitting.

12           CHAIRMAN WHITNEY:     Were you there?

13           MR. STONE:             Yes, sir.

14           CHAIRMAN WHITNEY:     You were there.

15           MR. STONE:             And I did observe some of  
16 them being counted because my instructions from the very  
17 beginning to the judges, and they understood it clearly,  
18 "Your job here is to determine the intent of the voter  
19 to the best of your ability. If you cannot unanimously  
20 agree, put it to the side and the three board members  
21 will address that or those particular ballots."

22           MS. AMOROSO:           Steve, Mr. Stone, do your  
23 folks have any training on intent like we had for Mr.  
24 Mitchell?

25           MR. STONE:             We don't have anything from

1 the State of Washington.

2 MS. AMOROSO: Well, not Washington State,  
3 but do your folks get any training in this--on intent?  
4 I'm just asking.

5 MR. STONE: Maybe not intensive, but  
6 we are told--I mean judges--on election night at precinct  
7 had this issue when ballots are cast to the out stack for  
8 write-ins and that sort of thing. They are told, "Take  
9 the ballot out." And at the precinct level on election  
10 night, you only have three judges and only two--

11 CHAIRMAN WHITNEY: Can we stop? Do you swear  
12 to tell the truth?

13 MR. STONE: Yes, sir. I already have.

14 CHAIRMAN WHITNEY: So help you God?

15 MR. STONE: So help me God.

16 CHAIRMAN WHITNEY: Thank you. We had an  
17 earlier hearing, but I think just to get that on the  
18 record, and what you've said so far is covered by your  
19 oath?

20 MR. STONE: I think so as well.

21 CHAIRMAN WHITNEY: Thank you.

22 MR. STONE: And my credibility. But  
23 the judges knew from the beginning and everybody knew the  
24 process. We told the people in the audience--there was  
25 a number of people, as many as is here, that were

1 interested, and we had backup judges in case one of those  
2 fell ill or sick or just had to leave--determine the  
3 intent of the voters to the best of your ability.

4 Sightseers, onlookers, supporters, don't  
5 interfere. Don't be carrying on no conversations. We  
6 wanted the judges to be able to focus, and they did. And  
7 when they brought us the results, they had unanimously  
8 agreed on every ballot as they had determined was the  
9 voter's intent.

10 We tallied up the numbers, and the numbers  
11 became what they are. We were asked I guess at the  
12 protest hearing to reconsider the observation and count  
13 the two ballots.

14 I found it difficult to second-guess the four  
15 judges that had given that unbiased authority to count  
16 it the way they determined it should be counted. One of  
17 my board members said neither ballot should be counted;  
18 they were over-votes, which is how the machine counted  
19 it twice during optical scan, as over-votes. It just  
20 threw it somewhere.

21 The other board member said, "Well, I think it  
22 might mean this," and I said, "Well, it might mean that."  
23 So the three of us could not agree on neither one of  
24 those two ballots, even if we did want to second guess.

25 CHAIRMAN WHITNEY: I'm sorry. Did those four

1 judges ask for guidance on--

2 MR. STONE: No, not on no--not on any  
3 ballot. There was never even no dispute or no discussion  
4 on the two ballots until the final tally was done.

5 CHAIRMAN WHITNEY: I'm trying to even figure  
6 out if it would be appropriate for them to have asked for  
7 assistance from the staff. And that didn't happen.

8 MR. STONE: That was how they were  
9 instructed. If you have--if you cannot--

10 CHAIRMAN WHITNEY: I'm talking about while  
11 they're counting the votes. Did they say, "Chairman  
12 Stone or Mr. Pridgen, could you come over and look at  
13 this and tell us what you think"?

14 MR. STONE: Never. But a couple of  
15 times I seen a ballot go across the table and maybe it  
16 hit past the third person and go "Wait." She wanted to  
17 look at it again. You know what I mean?

18 CHAIRMAN WHITNEY: I'm fine with those four.  
19 I just wanted to make sure--

20 MR. STONE: But they never laid it  
21 aside and said, "I need guidance."

22 CHAIRMAN WHITNEY: There was no input nor did  
23 they ask for input of those four judges that were  
24 counting the ballots.

25 MR. STONE: Never, to my knowledge.

1           CHAIRMAN WHITNEY:    Okay.

2           MR. STONE:            And I was there the entire  
3 time.

4           CHAIRMAN WHITNEY:    Thank you.

5           MR. STONE:            And my board was there.  
6 We were physically right there behind them the entire  
7 time. We didn't want to make them nervous. We didn't  
8 want to look over their shoulders.

9                                 We wanted them to do the job as they was  
10 charged, to use their intelligence and their experience  
11 to determine the intent of the voter as they seen it, not  
12 as how they thought we would want them to see it. Any  
13 questions?

14           CHAIRMAN WHITNEY:    No. I would like for Mr.  
15 Pridgen to come and be sworn please.

16                                 (Whereupon,

17                                 G. L. PRIDGEN,

18                                 having first been duly sworn,

19                                 testified as follows:)

20           CHAIRMAN WHITNEY:    Could you tell us about  
21 your presence at this--the fifth recounting or the  
22 final--the hand to eye count? What did you do there and  
23 what did you see, please, sir?

24           MR. PRIDGEN:           I stayed in there the whole  
25 time because I'm the one that brought the boxes in,

1 ballot boxes in. I took them out, stacked them up, and  
2 I stood right there while they patted them down, and so  
3 I just observed. I did not and none of them ever asked  
4 me anything--excuse me. None of them ever asked me  
5 anything about any particular ballot.

6 CHAIRMAN WHITNEY: You did not offer any  
7 advice while counting them?

8 MR. PRIDGEN: No, sir, because they do  
9 it more than I do. They--every person we got was a  
10 judge. We didn't get just workers. We got judges to  
11 come in.

12 CHAIRMAN WHITNEY: All right. I'll entertain  
13 one question very quickly.

14 MR. MITCHELL: Yes, sir. I just wanted  
15 to point to something in the record. At the hearing--at  
16 the hearing in front of the county board, the board  
17 called one of those judges for the purpose of just  
18 getting in the record that the ballot marked with the X  
19 was counted for Mr. Maynor and the ballot marked with the  
20 circle was counted for Ms. Sampson, which the parties  
21 themselves weren't disputing. The judge testified, and  
22 it's on Page 24, and I just think this goes to the point  
23 on logic and common sense and voter intent.

24 CHAIRMAN WHITNEY: Make your point, please.

25 MR. MITCHELL: Ms. Cummings, in this one,

1 we would have counted because they've got both, but they  
2 marked through, like an X, and then circled her name, so  
3 that one would have counted for her.

4 CHAIRMAN WHITNEY: Thank you. Mr. Hunt, would  
5 you like to address that?

6 MR. HUNT: Well, I think it's a little  
7 confusing there when she says, "They circled her name,"  
8 because there was no name circled on the ballot. I just  
9 think that if you look at the totality of Ms. Cummings's  
10 testimony, she was just confused. And I think that's the  
11 way it ended up being. She was just confused, because  
12 if you look at that ballot that Mr.--

13 CHAIRMAN WHITNEY: Is it Exhibit 1, the one  
14 with the--

15 MR. HUNT: Exhibit 1.

16 CHAIRMAN WHITNEY: Cummings with an S.

17 MR. HUNT: That's what she says. Her  
18 name was circled. Her name's not circled. I just think  
19 Ms. Cummings was confused and that kind of placed--

20 CHAIRMAN WHITNEY: I forget who Ms. Cummings  
21 is.

22 MR. HUNT: Ms. Cummings is the judge,  
23 Your Honor, I mean Mr. Chairman, that was called.

24 CHAIRMAN WHITNEY: Okay, this was too much of  
25 a coincidence.

1 MR. BAKER: Her testimony is at Page  
2 725 to 734.

3 CHAIRMAN WHITNEY: Okay. We had a Cummings  
4 in the earlier meeting.

5 MR. BAKER: She was obviously confused.  
6 She even indicated that the ballot that was counted for  
7 one candidate was counted for the other candidate and  
8 that another ballot was not counted at all.

9 So she was obviously confused, and she said  
10 several times, "I don't remember. We did a lot of  
11 ballots," and that sort of thing.

12 CHAIRMAN WHITNEY: Yeah, I remember seeing  
13 that now. Okay. Does anybody have any other questions  
14 of Mr. Pridgen, Board members, please? Mr. Malcolm.

15 MR. MALCOLM: The North Carolina  
16 Administrative code, Title A, Chapter 2.01-10. Chapter  
17 A, North Carolina Administrative code--excuse me--Title  
18 A, Chapter 2.01-10, subparagraph D, subparagraph 2, "The  
19 county board shall notify the person protesting or any  
20 affected candidate, and that affected also of his  
21 decision in a protest hearing no later than 5:00 p.m. the  
22 next day after conclusion of the hearing."

23 So the Board shall file. Does not say "may."  
24 Does not say "can." "The Board shall file at the Board  
25 office a written decision within the mandates of



1 163.182.10(d) by 5:00 p.m., five business days after a  
2 Board decision is given," to the person filing the  
3 protest.

4           And then it goes on to talk about delivery.  
5 The reason I'm bringing up the--the reason I want to  
6 bring that up is because the oral decision, to me,  
7 happens when the Board votes on it.

8           Last week we had a board--I can't remember for  
9 which one--where they violated the open meetings law  
10 because we couldn't read the meeting minutes. They  
11 adjourned a meeting without voting. We had testimony  
12 where they voted after they went off the record, which  
13 is clearly a violation of the North Carolina Open  
14 Meetings law.

15           In this case it seems like there's a vote, but  
16 the reason I'm raising it is because the vote, according  
17 at least--to at least one of the party's perspective, is  
18 the vote and the facts and the things that made up that  
19 order doesn't match what was said orally to the written  
20 decision.

21           But do you agree, Mr. Pridgen, if what I read  
22 to you is found in law, that the county board was under  
23 obligation to issue its written decision five days later,  
24 and if that's true, that that occurred?

25           CHAIRMAN WHITNEY:    Would you like to see my

1 copy so you can read it?

2 MR. PRIDGEN: No. I mean I know that we  
3 just took the tally and the Board made a decision. I  
4 don't remember if the Board met right after, you know,  
5 as soon as we finished. I really don't remember. I'd  
6 have to go back and look at my notes.

7 But, yes, as we finished the tally, the board  
8 had the votes and had the tally sheets. If we made the  
9 order right then or what, I cannot--without looking  
10 notes, I could not tell you.

11 MR. MALCOLM: Would you agree that based  
12 on what we've been told and based on the date that the  
13 State Board received it--I think Josh Lawson and George  
14 McCue behind me, from what I understand, they received  
15 a order on Friday. Would you dispute that?

16 MR. PRIDGEN: I can't dispute that.

17 MR. MALCOLM: Can you tell me just very  
18 honestly and candidly, why was the order not prepared in  
19 a very quick manner and delivered to the parties and  
20 delivered to us so we can get on with this?

21 MR. PRIDGEN: I don't make the orders.

22 MR. PATE: Mr. Malcolm, if I may.

23 MR. MALCOLM: Mr. Pate. Mr. Pate, on the  
24 same, so everybody understands.

25 CHAIRMAN WHITNEY: Could you tell us who you

1 are, please.

2 MR. PAGE: Yes, sir. Mr. Chairman and  
3 Board members, thank you. My name is Patrick Pate. I'm  
4 the Robeson County attorney. I was the one that was  
5 responsible for the order.

6 In fact, the, I guess, overall confusion that  
7 I think is in the transcript is somewhat aware--when it  
8 came to the order, I had nerves of putting down on paper  
9 what I had recorded, and so my intent was to wait till  
10 we had the transcript back to make sure that what was on  
11 the record, especially the statutes that were being cited  
12 in both protests were going to be clearly marked on the  
13 record for your review.

14 Due to that note, (unintelligible) it to Ms.  
15 Freda Stephens who is our reporter at the time. As soon  
16 as I had it is when I pounded it out, and I was able to  
17 shoot it over to Mr. McCue and Mr. Lawson who then of  
18 course put it in the record and put it in front of your  
19 hands, so as far as the order goes and the time periods  
20 there, that's my sword to fall on top of.

21 MR. MALCOLM: But you would agree--

22 MR. PATE: Yes, sir.

23 MR. MALCOLM: --we have an obligation.

24 Okay. Were you there for the recounts, Mr. Pate?

25 MR. PATE: On the 24th I was not. The

1 25th is when I was notified that we were having another  
2 one, and we needed to come down. And so then I was there  
3 for that proceeding.

4 And the--again, to Mr. Mitchell, with the audio  
5 recordings, there were some confusion on behalf--on  
6 getting those over and whether or not they could be  
7 copied.

8 We spoke to our county tech department. They  
9 said that was not something that could be done or if it  
10 was going to be done could be easily done in an  
11 efficient, rapid manner.

12 We did let Mr. Mitchell know that as well as  
13 the minutes come, but it was as he correctly stated here  
14 recently, unfortunately and regretfully.

15 MR. MALCOLM: Do you issue--I think I  
16 know the answer unless something's changed. Do you  
17 prepare the meeting notices for the Board during--did you  
18 prepare the meeting notices, the public meetings notices  
19 for the Board of any of these hearings or meetings that  
20 were held?

21 MR. PATE: I did not. I do not.

22 CHAIRMAN WHITNEY: Who does?

23 MR. PATE: To my understanding, that  
24 would be Mr. Pridgen or Mr.--Mr. Pridgen more than  
25 likely, but I'm not sure.

1 MR. \_\_\_\_: Mr. Stone.

2 MR. PATE: Mr. Stone.

3 MR. PRIDGEN: We are supposed to have--  
4 We do let the people know.

5 MR. MALCOLM: Is today the first day, Mr.  
6 Pate, that you've heard a concern by Mr. Mitchell or  
7 anyone else that there was a potential or actual  
8 violation of the North Carolina meetings law?

9 MR. PATE: No, sir. To my  
10 recollection, it was a matter of which one of these  
11 ballots were going to count and what was the intent of  
12 the voter. Those were the crux, the issues, and what the  
13 parties stipulated to.

14 The Board went into a hearing. We met to make  
15 sure that we were on the same page on what was going to  
16 be stipulated, and it was a matter of trying to just  
17 clarify the process for the reason that the judge was  
18 brought in to say, "This is what we did." We didn't have  
19 any argument.

20 As the judge said, it was clear in the record  
21 that she was a little confused, and we finally all got  
22 to the point that we agreed that this is what the  
23 question is: Intent, as to whether or not Board Exhibit  
24 1 was to count to this candidate or not, or if Exhibit  
25 2 was to count for this or not.

1           MR. MALCOLM:           I understand that, but I'm  
2 referring to the alleged violation that Mr. Mitchell has  
3 brought up regarding a violation of the North Carolina  
4 Open Meetings law, the minimum public notice of 48 hours  
5 prior. Is today the first day that you've heard that  
6 assertion?

7           MR. PATE:            On the--I do remember there  
8 being a dispute and an e-mail that came across, I think  
9 between the 24th and the 25th, as far as a notice, and  
10 there may have been a request for a extension of time in  
11 order for that.

12                   That was, I believe, handled the 25th by Ms.  
13 Sampson alone, saying that she was going to just rest on  
14 the letters and notes, and Mr. Mitchell may need to  
15 correct me on this if my memory has faded. That that was  
16 what she was putting forth as far as that original  
17 preliminary on the 25th.

18                   So there was some issue as far as the e-mail  
19 between the 24th and 25th, if memory serves me correct,  
20 and that then was decided. I think there were some also  
21 issues with the holiday and trying to figure out when it  
22 was going to take place.

23                   So, yes, to your question; I do believe there  
24 was some issue between the 24th and 25th.

25           MR. MALCOLM:           Did you transmit the order

1 on Thursday or Friday?

2 MR. PATE: I believe it was Thursday.

3 MR. MALCOLM: Did you transmit it?

4 MR. PATE: Yes, sir. I sent an e-mail  
5 to everyone, and then we sent it over to our Board of  
6 Elections for Mr. Stone's signature.

7 CHAIRMAN WHITNEY: And again, you waited for  
8 the transcript?

9 MR. PATE: The official transcript,  
10 yes, sir.

11 CHAIRMAN WHITNEY: And when did you get that?

12 MR. PATE: It was--

13 CHAIRMAN WHITNEY: In relation to when  
14 you--

15 MR. PATE: Last week.

16 CHAIRMAN WHITNEY: Could you be more specific?  
17 Like when did you send the order out?

18 MR. PATE: I believe, if I'm not  
19 mistaken, it was Thursday afternoon.

20 CHAIRMAN WHITNEY: Thursday. What day of the  
21 month?

22 MR. PATE: This past--if you'll--

23 CHAIRMAN WHITNEY: Was that January 14th? All  
24 right, when did you receive the transcript, Counselor?

25 MR. PATE: Mr. Chairman, if you'd bear

1 with me.

2 CHAIRMAN WHITNEY: Or rather when was the  
3 transcript provided to you? Well, either way.

4 MR. PATE: I'll check, but meanwhile  
5 Mr. Pridgen is indicating that he thought it was Tuesday  
6 morning, and that sound accurate.

7 CHAIRMAN WHITNEY: Tuesday, January the 12th;  
8 is that correct?

9 MR. PATE: I believe so, sir. Bear  
10 with me. Yes, sir. January 12th, I believe is the date  
11 it was provided to me.

12 CHAIRMAN WHITNEY: When did we--didn't we  
13 receive the stuff on like Saturday, the 16th, or  
14 something? I mean maybe even late after the meeting the  
15 other day, either that evening--

16 MR. LAWSON: Late in the afternoon.

17 CHAIRMAN WHITNEY: I was thinking, "Josh,  
18 ain't leaving me alone." And so it was late. It was  
19 after, because I looked at it on the way-- driving back  
20 to Charlotte. or my wife was, in that horrible rain  
21 storm. It was 4:00, but toward the end of the day.

22 MR. LAWSON: That's right.

23 CHAIRMAN WHITNEY: So that's when we received  
24 it for the first time.

25 MR. LAWSON: That's right. Then it went



1 out to the parties the next morning. It was also Fed  
2 Ex'd. I'm not aware whether the parties ever received  
3 it directly from the county board. So I don't know if  
4 they got it on Friday as well or if they just had it from  
5 us.

6 CHAIRMAN WHITNEY: Who did you send the order  
7 to, Counselor, on Thursday, January the 14th?

8 MR. PATE: Counsel for the State Board  
9 as well as to both parties.

10 CHAIRMAN WHITNEY: Mr. Lawson.

11 MR. PATE: Yes, sir. I believe Mr.  
12 McCue was included in on it.

13 CHAIRMAN WHITNEY: Lawson and McCue. Okay,  
14 who else?

15 MR. MITCHELL: I agree with that. It was  
16 unsigned at that time. We didn't receive the signed  
17 order until it was included in this record. We received  
18 the unsigned via e-mail from Mr. Pate. We received an  
19 unsigned draft order.

20 MR. PATE: That's correct.

21 MR. MITCHELL: I was (unintelligible)  
22 until it was signed on Thursday.

23 CHAIRMAN WHITNEY: Thursday, generally, the  
24 order was still unsigned?

25 MR. MITCHELL: Correct.

1           CHAIRMAN WHITNEY:    When did somebody get a  
2 signed one?  When did you get the order signed and when  
3 did you send the signed order out?

4           MR. PATE:                I believe that was on  
5 Friday.  Is that correct, Mr. Pridgen?

6           MR. LAWSON:             Friday afternoon.

7           MR. STONE:             I signed it Friday morning  
8 at approximately 11 o'clock.

9           CHAIRMAN WHITNEY:    Okay.  So that was Friday  
10 morning, the 15th of January.  All right.  Thank you.

11           Does anybody have any further questions of Mr.  
12 Pate or do you have anything further to say, Mr. Pate?

13           MR. PATE:                No, sir.

14           CHAIRMAN WHITNEY:    All right.  Thank you.  
15 Does anybody have any questions of Mr. Pridgen?

16           (No response)

17           CHAIRMAN WHITNEY:    Okay, sir, I think you can  
18 be seated.  Does any member of the Board want to call any  
19 witnesses or is there anybody else who has a material  
20 interest in this case that needs to speak or would like  
21 to speak?

22           (No response)

23           CHAIRMAN WHITNEY:    Thank you.  All right,  
24 well, I think we can talk about what we're going to do  
25 here.

1           MR. MALCOLM:           When you were up speaking  
2 earlier--would you step back up, Mr. Mitchell?

3           MR. MITCHELL:           Oh, absolutely.

4           MR. MALCOLM:           You said that some  
5 information had been transmitted to the Board that you  
6 said you had to take into consideration.

7           MR. MITCHELL:           I said that Ms. Sampson's  
8 initial protest referred to an incorporated--a written  
9 complaint that she had filed with the County Board before  
10 we represented her, and I said I know that that's been  
11 under investigation by the state board staff, and I said  
12 that your board may need to deal with that, may likely  
13 need to deal with it irrespective of the outcome of  
14 today's hearing, again which has been focused on these  
15 two particular ballots.

16           CHAIRMAN WHITNEY:    Okay. I'd love to hear  
17 from members of the Board about this testimony and your  
18 thoughts. Anybody, jump right in.

19                                   (No response from the Board members.)

20           CHAIRMAN WHITNEY:    Well, I'll say something.  
21 I think we need to be careful about what the State of  
22 Washington tells its voters because not everything--with  
23 all due respect to Counsel Mitchell, I don't find it  
24 entirely logical necessarily that the X is a vote when  
25 this person has already filled in two. The X could be

1 interpreted as not voting for that person, and other  
2 people might argue that that's logical.

3 I did see--was it the other vote that somebody  
4 had actually circled the name? That to me is a better  
5 evidence of a voter's intent. If you've got all these  
6 Xs and circles and dots, but they circled the name, I'm  
7 thinking, gosh, they're probably voting for the person  
8 whose name was circled.

9 So I think we just need to be very careful  
10 about drawing conclusions, and I don't feel like  
11 Washington's manual on how to count votes is in any way  
12 binding in the state of North Carolina or on this Board.

13 DR. KRICKER: I'm reading from 163-182.1,  
14 "Principles and Rules for counting official ballots:  
15 General Principles," and subsection 4, "If an official  
16 ballot is marked in the ballot item with more choices  
17 than there are offices to be filled or propositions that  
18 may prevail, the official ballot shall not be counted for  
19 that ballot item."

20 My feeling about that particular ballot by  
21 itself is that I would not want to try in that instance  
22 to determine voter intent because on the one hand there's  
23 a history of marking ballots in such a way that there's  
24 an X--X means you're voting for the person, and on the  
25 other hand, there is the general thought that when you're

1 putting an X through, that's not the person you want.

2 I think in this case that intent cannot be  
3 determined.

4 MR. BAKER: With both ballots? Because  
5 both were marked.

6 DR. KRICKER: Both were marked but a  
7 circle to me is a selection.

8 CHAIRMAN WHITNEY: The circle of the  
9 candidate's name.

10 DR. KRICKER: Yeah.

11 CHAIRMAN WHITNEY: That's what I just said.  
12 I agree with you.

13 DR. KRICKER: So that's what I would  
14 think. My other--second concern is the complaint  
15 indicating that there may have been irregularities in the  
16 election.

17 MR. MALCOLM: Can I ask, Mr. Daniel  
18 Locklear, would you come up? Would you mind, sir?

19 (Whereupon,

20 DANIEL LOCKLEAR,  
21 having first been duly sworn,  
22 testified as follows:)

23 MR. MALCOLM: Mr. Daniel--I mean Mr.  
24 Locklear, the reason I asked you to come up, is it true  
25 from the record that you were the one that talked about

1 the very matter that Dr. Kricker is raising?

2 MR. LOCKLEAR: Yes.

3 MR. MALCOLM: Will you tell this Board  
4 your opinion, how you interpreted things?

5 MR. LOCKLEAR: Well, both ballots were  
6 overvotes. Number 4, 163-182.1(a)(4), I think it  
7 specifically delineates overvotes and it tells you  
8 exactly how to deal with that situation. That it  
9 supercedes looking at going into voter intent because,  
10 you know, once you've overvoted, you know, it no longer  
11 should be counted for that ballot item.

12 The ballot item before that can be counted  
13 because this was a mayor's race and there weren't but  
14 one vote's lead, so that (unintelligible) still good to  
15 go. You're not throwing out the whole ballot, just the  
16 ballot item.

17 The reason my argument was there is because--  
18 and it was--he brought it up. Mr. Mitchell brought up  
19 this fact sheet, and I had to go back and tell him, he  
20 was down under Number 2 and, you know, looking at  
21 technical markings. Well, this isn't an issue of  
22 technical markings. Technical markings is clearly  
23 covered by Number 2. If you can tell voter's intent,  
24 then sure, let's do that.

25 The other board members--

1           CHAIRMAN WHITNEY:   That's the one with the  
2 circle around the name?

3           MR. LOCKLEAR:        Both of them--I mean both  
4 of them were technical markings, but one's an X, one's  
5 a circle, but both bubbles are filled in, so I think it  
6 was--all that's markings on the ballot. You know,  
7 there's several different ways you can mark up a ballot  
8 and cause the machine not to count it.

9           CHAIRMAN WHITNEY:   Okay. All right. Go  
10 ahead.

11          MR. LOCKLEAR:        But Number 4, it just  
12 specifically in this instance clearly identified what  
13 needed to be done, in my opinion: Once they were both  
14 marked, they were no longer able to be counted.

15                 And it tells you right in the statute for that  
16 ballot item. If there's another ballot item that's not  
17 an overvote and the voter's intent can be ascertained,  
18 then count it, but this one here before you, we getting  
19 to, you know, trying to figure out intent, it already  
20 excludes itself from being counted because--

21          CHAIRMAN WHITNEY:   Can you hold one second?  
22 Mr. General Counsel, is there a case that takes these two  
23 statutes that are somewhat different on their faces and  
24 says one governs the other that you're aware of?

25          MR. LAWSON:         I can point you to the

1 statute itself. Obviously Mr. Locklear referenced 163-  
2 180.1(a)(4). But there's a filter on that which is sub  
3 2. "No official ballot shall be rejected because of a  
4 technical error in marking it unless it is impossible to  
5 clearly determine the voter's choice." So our trainings  
6 with the county is you will always attempt to--

7 CHAIRMAN WHITNEY: --count the vote if you  
8 can.

9 MR. LAWSON: --an intent analysis.  
10 Right, because an overvote/undervote, that's the  
11 difference between a machine count that will throw it out  
12 automatically versus a hand-eye.

13 CHAIRMAN WHITNEY: So he--I think what I'm  
14 hearing you say is you need to toss both ballots, but  
15 you're saying there's a back door where you can save one  
16 or both.

17 MR. LAWSON: I'm saying that we've  
18 interpreted the statute always to direct the county to  
19 conduct an intent analysis because the standard is can  
20 you clearly determine the intent of the voter even if  
21 multiple ones are marked. You don't throw that out  
22 unless you can't clearly determine--

23 CHAIRMAN WHITNEY: We're trying to count as  
24 many votes as can legally be counted.

25 MR. LAWSON: Right.



1           CHAIRMAN WHITNEY:    Thank you.  Proceed.

2           MR. LOCKLEAR:           This ballot was put into  
3 the machine, an M100.  At that point it tells you  
4 (unintelligible) putting it in, you can force it to  
5 accept it.  They could've retrieved that ballot, marked  
6 it spoiled, and re-voted correctly, but they decided to  
7 go ahead and put it on in the machine and let it be  
8 accepted the way it was.

9           CHAIRMAN WHITNEY:    Who is "they"?

10          MR. LOCKLEAR:           Whoever the voter was.

11          CHAIRMAN WHITNEY:    The voter?

12          MR. LOCKLEAR:           Yeah.  I mean that's using  
13 acquiescence to know that that they can vote, it's not  
14 going to count, but that option's available.

15          CHAIRMAN WHITNEY:    I would say that the  
16 average voter or most voters are not going to have any  
17 knowledge about--they're throwing something in the  
18 machine.  They've been in there; they've got to get back  
19 to work, whatever, and they did the best they can.

20                 They probably don't to take time to start the  
21 whole process over, and so they're going to stick it in  
22 the machine or the box or the slot or whatever and walk  
23 away and assume that somebody is going to figure out, you  
24 know--I don't think it's in their minds they thought it  
25 couldn't be resolved.

1           If they're really cared about their vote, I  
2 think they would've asked for a new ballot in both cases.  
3 But I do see a distinction between how these two are  
4 circled despite the fact you say both of the ovals were  
5 filled in particularly under subsection b or whatever.  
6 So, go ahead.

7           MR. MALCOLM:           But you do agree that it's  
8 not the voter that presses those buttons. It would be  
9 an election official.

10          MS. AMOROSO:           Whose putting the ballots  
11 in is the election official, not the voter.

12          MR. LOCKLEAR:          The voter puts his own  
13 ballot in the machine.

14          CHAIRMAN WHITNEY:      This is a paper ballot.

15          MR. LOCKLEAR:          Yes, and it beeps. And  
16 when it beeps, it reads across, you know, "Are you  
17 willing to set"--

18          CHAIRMAN WHITNEY:      Oh, so the voter gets to  
19 see--

20          MR. LOCKLEAR:          The voter has that option.

21          CHAIRMAN WHITNEY:      Is there a machine with a  
22 screen; the voter actually sees how they voted?

23          MR. LOCKLEAR:          You don't see you how you  
24 voted. It just says that there's an overvote or an error  
25 on the sheet.

1                   CHAIRMAN WHITNEY:    So presumably these two  
2 voters just ignored that and--

3                   MR. LOCKLEAR:            You're right; they'll just  
4 stick it in and walk away. So they don't see whether it  
5 popped up or not.

6                   CHAIRMAN WHITNEY:    Okay, so they stick it in.  
7 They don't read what pops up on the screen.

8                   MR. LOCKLEAR:            Yeah. Immediately--

9                   CHAIRMAN WHITNEY:    Okay. All right.

10                  MR. MALCOLM:            It goes across the whole  
11 stack?

12                  MR. LOCKLEAR:            It does kick it to the out  
13 stack at that point.

14                  CHAIRMAN WHITNEY:    It does, but the voter  
15 wouldn't know about it unless they kind of waited around.

16                  MR. LOCKLEAR:            But it beeps when you put  
17 it in.

18                  MS. \_\_\_\_\_:            And then our workers try  
19 to hunt them down.

20                  MR. LOCKLEAR:            You know, they have so much  
21 (unintelligible).

22                  CHAIRMAN WHITNEY:    Oh, it beeps if it's a  
23 problem ballot.

24                  MR. LOCKLEAR:            Yeah.

25                  CHAIRMAN WHITNEY:    But it doesn't beep if

1 it's--

2 MR. LOCKLEAR: It just goes--just goes on  
3 it. Yeah, go ahead.

4 MR. McCUE: Just to clarify for the  
5 record, the M100 machines do make noises to confirm a  
6 ballot's gone into the machine either way. They make a  
7 different noise that--if the ballot is reject--is being  
8 rejected for some reason or being alerted such as an  
9 overvote. Our training is to have election officials at  
10 the voting machine to help alert the voter to that fact  
11 if you hear that different noise.

12 And so that was what the staff was referring  
13 to, that they--election officials make every--make  
14 efforts to alert the voter to that. It is a challenge,  
15 that voters are in a hurry; they're on their way out but  
16 that is part of our training, that voters should be  
17 alerted to the fact if you hear that other type of beep.

18 DR. KRICKER: But often it may involve  
19 chasing down the voter because it does take a few  
20 seconds. I know this. And the voter, often before it's  
21 actually accepted, is out that door.

22 And so, yeah, it can be an official who hits  
23 the "accept" button because they--there's no real choice  
24 there. Or, you know, they may track down the voter. You  
25 can't tell with any particular vote what happens, I

1 think, in that respect.

2 MR. LOCKLEAR: The subparts of the statute  
3 that you referenced, was that actually in the 163-  
4 182.1(a) or is that back in--

5 MR. LAWSON: 182.1(a), and then you have  
6 to go up to sub 2. You were down at sub 4.

7 MR. LOCKLEAR: Yeah. Okay, but doesn't  
8 sub 2 also reference marking?

9 MR. LAWSON:L Sub 3--no, sub 2 does. Mr.  
10 Chairman, do you want me to answer that?

11 CHAIRMAN WHITNEY: Yeah. Go ahead.

12 MR. LAWSON: "No official ballot shall  
13 be rejected because of technical markings, errors in  
14 marking," and then it says, "unless it is impossible to  
15 clearly determine the voter's choice."

16 And then it says, "If it is impossible to  
17 clearly determine the voter's choice," at sub 3 now, "in  
18 a ballot item, the official ballot shall not be counted  
19 for that data."

20 So to reiterate, the standard is can you  
21 clearly determine the voter's choice. And so our  
22 training is always to attempt to clearly determine the  
23 voter's choice.

24 MR. LOCKLEAR: And which one was it to--  
25 you know, it made note to reference markings or it's an

1    overvote not dealing with markings.  And generally it is  
2    markings, and yes, still voter's intent is to be  
3    determined.  The Board doesn't reference markings.  I  
4    don't see anywhere where 2 would supercede 4.  I think  
5    they're kind of the same across the board, each one  
6    (unintelligible) circumstances.

7                    The Board deals with the circumstances we have  
8    right here.  We've got overvotes, not technical markings.  
9    That's what (unintelligible) the issue.  That's why I  
10   went with it, the way I--you know.  That's really the  
11   crux of what I'm learning.

12                   MR. LAWSON:            Our other counsel, George  
13   brought up as well, that when you train on the Board,  
14   that it exists in the statutes to ensure that an entire  
15   ballot is not thrown out simply because there may have  
16   been an overvote in one particular race, because it  
17   specifies that you should count for all of them that you  
18   can count.

19                   (Crosstalking)

20                   MR. LOCKLEAR:         The city council race  
21   would've--and that was--

22                   CHAIRMAN WHITNEY:    We're just dealing with  
23   this one particular race.

24                   MR. LOCKLEAR:         Yeah.  Thank you.

25                   CHAIRMAN WHITNEY:    Okay.

1 MS. AMOROSO: Mr. Locklear, do you folks  
2 have (unintelligible) here in Robeson?

3 MR. LOCKLEAR: No, we have 100s.

4 MS. AMOROSO: Just the M100.

5 MR. LOCKLEAR: Yeah, just the M100.

6 MS. AMOROSO: Okay. I haven't voted on  
7 a paper ballot in a while, so, you know, I don't remember  
8 about the noise and all that.

9 MR. STONE: You'll have to do it  
10 somewhere else. They won't let you do it here.

11 MS. AMOROSO: Oh. They should use the  
12 money to get new machines.

13 CHAIRMAN WHITNEY: All right, does anybody on  
14 the Board want to call anybody else or is there anybody  
15 else who wants to present testimony that has a material  
16 interest in this case?

17 (No response)

18 CHAIRMAN WHITNEY: Okay.

19 MS. AMOROSO: I'll start talking to get  
20 the ball rolling. We have a situation here which last  
21 night or the night before I went to bed after reading the  
22 800 pages, and I said, you know, I had trouble with the  
23 intent, with the X, and went to sleep on it, and I'm here  
24 now, and I think Mr. Mitchell made a persuasive argument,  
25 frankly, but I also understand about the overvote. I

1 think that does make sense as well.

2           So it's not for me to sit here and say what the  
3 intent of the voter was on both of these actually. The  
4 argument can be made either way, in my opinion or my  
5 judgment here.

6           However, I--in the testimony where we had Ms.  
7 Barbara Cummings, who was a judge for many years, in her,  
8 quote, in her words, and she was very vague in her  
9 testimony, and this was at the hand-to-eye recount, so  
10 I'm a little troubled by that as well where I don't know  
11 what was going on in Ms. Cummings' mind, but just it's  
12 a little suspect.

13           So, as I sit here and look at all this, and if  
14 you actually read the 182.1(a)(4) and (a)(3) and (2), we  
15 have some conflicted statutory guidelines to go on. So  
16 what are the--what our options here are either to count  
17 the two, to throw everything out, to count one for one,  
18 one for you, and the thing stays the same. You end up  
19 as the winner, I guess. Or we send it back.

20           We've done the recount, and I'm glad that the  
21 county on this one did the recounts. Or we order a new  
22 election. So we're faced with the two different  
23 scenarios.

24           So at this point I have a sense that in light  
25 of some other issues there are systemic issues. There



1 may be a call to go back and reorder a new election on  
2 this one. I hate to see that happen because of one vote  
3 or two votes as it were here.

4           And I think training is required again. I see  
5 a lack of training systemically here. It may not just  
6 be Robeson County, but--and I know how difficult it is  
7 to do training. I've attended many training sessions in  
8 my own county. And you get a lot of new people coming  
9 in as judges; people come and go, assistants.

10           I understand all that, but I still think  
11 there's room for work--room for improvement, and as I try  
12 to encourage Steve Stone and the staff and the board  
13 members is y'all can come up with some real solutions.  
14 I really think you can, to try so this kind of stuff  
15 doesn't occur again. Let me leave it there for the  
16 moment and hear some of my other Board members.

17           MR. BAKER:            Mr. Chairman, I'll speak  
18 next if that's--

19           CHAIRMAN WHITNEY:    Please, Judge.

20           MR. BAKER:            The matter is before us,  
21 so based on the orders dealing with just the issues  
22 concerning the ballots of the--what I'll call the X  
23 ballot and the circle ballot, it seemed to me though  
24 we've actually heard some concerns about some other  
25 matters so that the Perry Lowry matter may be more of an

1 issue than we had thought, and there's even other  
2 matters.

3           Just looking at the ballots, I'll talk about  
4 the X ballot first. I'll state my personal opinion to  
5 begin with because what I'm going to argue is not my  
6 personal opinion.

7           My personal opinion is if you make an X over  
8 something, that means you want to get rid of it and it  
9 shouldn't count, but I can certainly see an argument that  
10 if someone put an X there, what they were really trying  
11 to do is highlight it.

12           I mean if we are required to determine whether  
13 the voter's intent can clearly be determined, what have  
14 we got to go on? We had four people who looked at this  
15 who were trained judges and decided that the X meant  
16 actually that's the vote that should be counted; that  
17 that's the person that should be counted.

18           And then we've got the others that have said,  
19 no, no, obviously if you X something out, that's not what  
20 you want to count; you want to get rid of it. So you  
21 can't tell what the voter's determination was. If we let  
22 that decide an election, why, people will be arguing  
23 about that from now on.

24           And that's why there is 163-182.1, subsection  
25 (a) (4), is when you've got a ballot that has more choices

1 than you can make filled in, you get rid of it then,  
2 because then you're going to argue from then on about the  
3 voter's intent.

4 I think (a) (2) and (3) are not so much  
5 contradictory but really have different circumstances in  
6 mind. Like when someone's supposed to fill in an oval  
7 and they make an X, just an X, or a check, just a check,  
8 and the machine doesn't want to count that because the  
9 oval wasn't filled in enough for the machine to determine  
10 what the vote was.

11 But when someone looks at it, you can say, "Oh,  
12 well, they didn't fill it all in, but they filled part  
13 of it in," or "They didn't fill it in, but they put a  
14 check mark," one little line, or something, and so the  
15 machine wouldn't count it, but you could tell what the  
16 voter meant.

17 When they fill in both names--little ovals  
18 beside both names then, you really don't know what they  
19 meant, and if they did put some additional mark on it,  
20 unless it might read, "I established or distinguished  
21 voter that I am, hereby indicate that that was an error  
22 and I intended to vote for this one," and then write the  
23 name, unless they're that clear, you're going to argue  
24 about what they meant from now on, and that's why you  
25 have, I think, (a) (4).

1           Mr. Mitchell is to really be commended by  
2 going, what, 3,000 miles and finding guidance from  
3 another state and what they do there, and that is  
4 something that we should look at, but we have our  
5 statute, 163-182.1 that really tells us when both of the  
6 names are filled in when they should vote for one person,  
7 you shouldn't count it. And that's what should have been  
8 done here. You obviously can't tell what those voters  
9 intend.

10           Now, the other one is a lot more difficult, but  
11 in the other one, there's even more than just both the  
12 ovals filled in. It looks like the voter filled in both  
13 ovals by both names or maybe started out checking both  
14 names for some reason, and then filled in the ovals with  
15 both names, and that's really what it looks like if there  
16 are check marks and--for both names and the ovals filled  
17 in for both names and then a circle drawn.

18           And again, my own opinion is that, well,  
19 obviously they meant to do Laura Sampson, but I don't  
20 really know that, and it's really impossible for me to  
21 say for sure that that's what the person meant because  
22 they filled in both, they checked both, and they've drawn  
23 a circle around one.

24           I think 163-182.1, subsection (a)(4) is  
25 appropriate again; it's marked with more choices than

1 there are offices to be filled, and therefore it should  
2 be not counted. I would've thrown both of them out, and  
3 I'll stop there.

4 CHAIRMAN WHITNEY: Just a question I've got.  
5 When I was going through SAT testing or LSAT, whatever  
6 test I took, we would be taught we had to bring a Number  
7 2 pencil with us and fully fill in the little block.

8 Now, what kind--and something--Mr. Pridgen,  
9 what kind of writing instrument are these people--are  
10 they furnished a Number 2 pencil with an eraser where  
11 they could erase? Are they given a pen?

12 I'm just sort of curious, if you said, "Oh god,  
13 I meant to vote for him, but I accidentally voted for  
14 her, but I want to"--Is there a mechanism to erase or is  
15 it permanent? What kind of writing instrument?

16 MR. PRIDGEN: No, sir, they can't erase  
17 it. It's a black pen.

18 CHAIRMAN WHITNEY: A black pen.

19 MR. PRIDGEN: Yes, sir.

20 CHAIRMAN WHITNEY: Okay. Well, that--

21 MR. MALCOLM: And what they're supposed  
22 other do is come up and say, "I want another ballot."

23 MR. PRIDGEN: There's actually three  
24 times, you know, when they get their ballot, they're  
25 told, "If you spoil this ballot, come back and get

1 another one."

2 It's written on the ballot itself, I believe.

3 Yeah, it is. Seen on the ballot itself, says, "If you  
4 tear, deface, erroneously mark this ballot, return it to  
5 request a replacement."

6 And we also have that on the voting things; we  
7 have a little sign there saying, you know, if you mess  
8 your ballot up, go back.

9 CHAIRMAN WHITNEY: The point I was making is  
10 there's not a way to really change it other than getting  
11 a new one or trying to make another mark or a circle or  
12 an X, and all that does is lead to confusion because it's  
13 probably clear in the voter's mind--I'm sure it's clear  
14 in their mind, but it's not so clear, as we've proven  
15 here today, what's in the people who are counting these  
16 votes minds. Further comments? Dr. Kricker?

17 DR. KRICKER: I--yeah, I'm not sure that  
18 we can consider marking through a selection a technical  
19 error, so I'm wondering if (a)(2) really does supercede  
20 (a)(4).

21 CHAIRMAN WHITNEY: It does.

22 DR. KRICKER: So basically, yeah, I mean  
23 this would indicate that potentially that you would throw  
24 out both ballots.

25 CHAIRMAN WHITNEY: Okay. Thank you.

1 DR. KRICKER: But I'm not clear now in  
2 terms of the vote count where we are.

3 MR. MALCOLM: It really doesn't matter  
4 where we are with the vote count because we're making a  
5 determination on the ballots. We make our determination,  
6 and wherever the chips fall, they fall.

7 But with that being said, I need to hear from  
8 our investigator, Mr. Matt--help me pronounce your last  
9 name, sir.

10 MR. MARTUCCI: Martucci.

11 MR. MALCOLM: --Martucci if the Chair  
12 would be so inclined.

13 CHAIRMAN WHITNEY: Mr. Martucci, come forward  
14 and be sworn please.

15 (Whereupon,

16 MATTHEW MARTUCCI,  
17 having first been duly sworn,  
18 testified as follows:)

19 MR. MALCOLM: Mr. Martucci, can you  
20 explain what your position is at the State Board of  
21 Elections and what responsibilities you have.

22 MR. MARTUCCI: My name is Matthew  
23 Martucci. That's M-a-t-t-h-e-w, and it's M-a-r-t-u-c-c-  
24 i. I'm an investigator with the North Carolina State of  
25 Elections, and I was hired to investigate corruption and

1 election fraud, campaign finance violations within the  
2 North Carolina state election process.

3 MR. MALCOLM: And since October or  
4 November of last year, who have you had the opportunity  
5 to work with in our office relating to your  
6 responsibility?

7 MR. MARTUCCI: I worked with a gentleman  
8 by the name of Chuck Stuber. He was the chief  
9 investigator. And I also work with the members here of  
10 the State Board, with Kim Strach and Josh and George  
11 McCue, and other investigators within the unit.

12 MR. MALCOLM: And at some point during  
13 the fall of 2015 were you asked by one of our staff  
14 members at the State Board's office to look into  
15 allegations of improprieties or irregularities related  
16 to the Lumberton 7 Municipal election?

17 MR. MARTUCCI: Yes, I was.

18 MR. MALCOLM: In a general sense, can you  
19 tell me, after you received those assertions, what  
20 general steps you took?

21 MR. MARTUCCI: After receiving an  
22 allegation of vote buying, myself and Chief Investigator  
23 Chuck Stuber responded to Robeson County, and we  
24 conducted interviews.

25 We interviewed several individuals including



1 Laura Sampson, who is here to my right, and Leon Maynor,  
2 the candidates, and we interviewed of course the Board  
3 of Elections, Steve Stone, G. L Pridgen.

4 We also interviewed three other witnesses that  
5 were provided to us by Ms. Sampson, and we went out to  
6 locate them, and we interviewed them regarding a vote  
7 buying allegation in this election.

8 MR. MALCOLM: So from a general sense,  
9 and if you can just respond directly to the questions  
10 that I'm going to ask you with a short response.

11 During the course of you speaking with folks  
12 in our community regarding the election in Lumberton 7,  
13 did you--

14 CHAIRMAN WHITNEY: Can I stop you for just one  
15 second to get this on the record? I issued a subpoena  
16 on Friday, the 15th, to Eula May Brown, to Sandra Nicole  
17 Brown, and Clintel (phonetic) Thompson to attend this  
18 meeting. Are those--are any of those people here? If  
19 so, could you stand?

20 (No response from the audience.)

21 CHAIRMAN WHITNEY: Can the record reveal that  
22 nobody identified themselves and nobody stood up, and as  
23 far as I'm concerned, they're not here, not withstanding  
24 my subpoena. Proceed.

25 MR. MALCOLM: During the course of your,

1 you and Mr. Stuber's inquiry of the folks in the  
2 community, were there assertions made against one or more  
3 candidates as to the exchange or barter for exchange with  
4 cash or any other gratuity related to a vote?

5 MR. MARTUCCI: Yes, sir.

6 MR. MALCOLM: And those assertions were  
7 made against both candidates?

8 MR. MARTUCCI: Yes, sir.

9 MR. MALCOLM: Do you have evidence in  
10 your possession that would substantiate one or more of  
11 those assertions either in the form of written  
12 statements, videos, canceled checks, or any other  
13 evidence?

14 MR. MARTUCCI: Yes, we do, sir.

15 MR. MALCOLM: Do you--during the course  
16 of your interviewing these individuals, did you speak  
17 directly with one or more of them?

18 MR. MARTUCCI: Yes, we did.

19 MR. MALCOLM: Do you have any reason to  
20 believe, to the best of your ability, that the  
21 information that they provided to you was completely  
22 false?

23 MR. MARTUCCI: No, sir.

24 MR. MALCOLM: Since you've been doing  
25 this on behalf of the Board of Elections, the evidence

1 that you've received and reviewed in the form of written  
2 documents, video testimony, canceled checks, or any  
3 other, have you seen that in any other county?

4 MR. MARTUCCI: Not at this time, no, sir.  
5 I've only been assigned to the Board of Elections now  
6 for the past seven months. My basis of law enforcement  
7 goes back over 30 years.

8 I was a member of the New York City Police  
9 Department. I was a New York City police detective and  
10 did detective investigations for over 30 years in the  
11 city of New York.

12 But my own experience here in the last seven  
13 months that I've been working here has been for the  
14 Board--

15 CHAIRMAN WHITNEY: Could you address the  
16 Board, please.

17 MR. MARTUCCI: Okay. This is the first  
18 time that I've encountered this type of investigation.

19 MR. MALCOLM: The folks that you spoke  
20 with that asserted that barter for exchange, do you have  
21 reason to believe that they actually voted in the Lumber  
22 Seven election?

23 MR. MARTUCCI: Yes, they did vote.

24 MR. MALCOLM: How do you know they voted?

25 MR. MARTUCCI: They registered to vote.

1 I pulled their voter history, and the actual documents  
2 indicate that they did vote.

3 MR. MALCOLM: Do you have two, three, or  
4 more people that are making these assertions?

5 MR. MARTUCCI: We identified three, and  
6 that has been followed up with the written statements of  
7 course and personal interviews conducted by the North  
8 Carolina State Board of Elections investigator--  
9 investigators. That's including myself and Chuck Stuber.

10 MR. MALCOLM: I don't have any more  
11 questions.

12 CHAIRMAN WHITNEY: Thank you. Does anybody  
13 have any questions of Mr. Martucci? And I would allow  
14 counsel to ask any question to Mr. Martucci. We'll start  
15 with Mr. Mitchell. Do you have any questions?

16 MR. MITCHELL: Mr. Martucci, I think you  
17 testified that you received some information from Ms.  
18 Sampson that you looked into as part of your  
19 investigation, is that accurate, related to these issues  
20 that you just testified about?

21 MR. MARTUCCI: Yes, sir.

22 MR. MITCHELL: Did you receive any other  
23 information from anyone else?

24 MR. MARTUCCI: Well, during any  
25 investigation, you interview people and you ascertain

1 information and you memorialize it on the reports, and  
2 of course that information is confidential still. You  
3 know, it's still an ongoing investigation. I just want  
4 you to be aware of that.

5 MR. MITCHELL: And your testimony in  
6 response to the question you were asked is that you  
7 obtained information that there were allegations made  
8 against both candidates?

9 MR. MARTUCCI; Correct. And as they say  
10 and in your own words counselor, you said "allegations."  
11 And that's what they are, sir.

12 CHAIRMAN WHITNEY: Thank you. Mr. Hunt.

13 MR. HUNT: Mr. Martucci, are you  
14 continuing to investigate allegations in this election?

15 MR. MARTUCCI: Yes.

16 MR. HUNT: Thank you.

17 CHAIRMAN WHITNEY: Okay. Does anybody on the  
18 Board have any further questions of Mr. Martucci?

19 (No response)

20 CHAIRMAN WHITNEY: Thank you, sir. If you can  
21 take your seat.

22 MR. MARTUCCI: Thank you.

23 CHAIRMAN WHITNEY: Any further comment from  
24 the Board?

25 (No response)

1           CHAIRMAN WHITNEY:    Let me just--Josh, give me  
2 my options here. Give me our options.

3           MR. LAWSON:            You have two members who  
4 have voiced that they move that the ballots--both should  
5 not be counted.

6           CHAIRMAN WHITNEY:    Well, I'm just talking  
7 about a new election or what are our options here as a  
8 Board?

9           MR. LAWSON:            For the new election you  
10 we need to find that there was some kind of an  
11 irregularity or violation of law that would cast doubt  
12 on the outcome of the election.

13                                 It would not be based on the disqualification  
14 of voters or voters weren't qualified or some other  
15 breach of (unintelligible), so it would be based on an  
16 irregularity.

17                                 So you could have a new election if you found  
18 that that was the case.

19           CHAIRMAN WHITNEY:    All right.

20           MR. LAWSON:            Or you could make a  
21 determination on these particular ballots and order the  
22 Board to canvas the elections affirming the conclusion  
23 that you have drawn about those ballots here.

24                                 Co-Counsel George, I don't think I'm missing  
25 anything here. Do you see any--

1           CHAIRMAN WHITNEY:    Okay, could you give me a  
2 little more--a little less legalese on that second  
3 option?

4           MR. LAWSON:            If you made a determination  
5 on these two ballots, you would then order that the  
6 County Board of Elections canvas, so count--make the  
7 official count for this election, in accordance with  
8 however you decide.

9           CHAIRMAN WHITNEY:    So we can look at both  
10 ballots and rule on one or both or--

11          MR. LAWSON:            Or on how appearing not  
12 fair (unintelligible).

13          CHAIRMAN WHITNEY:    Okay. And right now Mr.  
14 Hunt's client has a one-vote lead.

15          MR. LAWSON:            That's my recollection for  
16 the hand-eye.

17          CHAIRMAN WHITNEY:    Okay. All right, folks.  
18 Those are our options.

19          MR. McCUE:            I--just for completeness,  
20 I think the Board certainly would have the option of--  
21 we've got multiple protests here, but you certainly could  
22 choose to dismiss one both of those protests and choose  
23 to leave the counts as it is currently.

24          CHAIRMAN WHITNEY:    Right. Okay.

25          MR. McCUE:            This is a third option

1 looking at all the possibilities.

2 CHAIRMAN WHITNEY: All right. Well, three  
3 options as stated by counsel: Vote for a new election  
4 if there's an irregularity, canvas the elections after  
5 we decided on one or both of these ballots, or dismiss  
6 one or both protests.

7 All right, I think I'm going to open it for a  
8 motion of a member of the Board as to one of these three  
9 items.

10 MR. MALCOLM: Pursuant to North Carolina  
11 General Statute 163-182.13(a)(4), I move that this Board  
12 find that there are irregularities or improprieties that  
13 occurred to such an extent that they taint the results  
14 of this entire election and cast doubt on its fairness,  
15 and therefore, we order the Robeson County Board of  
16 Elections to hold a new election on March 15th, 2016, as  
17 it relates to Lumber Precinct 7.

18 MR. BAKER: I would second that motion,  
19 sir.

20 CHAIRMAN WHITNEY: Thank you. We have a  
21 motion. We have a second. Do we have any discussion by  
22 the Board?

23 (No response from the Board members.)

24 CHAIRMAN WHITNEY: Okay. All in favor of Mr.  
25 Malcolm's motion say aye.



1 (Unanimous vote in favor of the motion.)

2 CHAIRMAN WHITNEY: Opposed? Anybody?

3 (No response)

4 CHAIRMAN WHITNEY: Motion passes unanimously  
5 for a new election on March 15th.

6 MR. MALCOLM: Mr. Chairman.

7 CHAIRMAN WHITNEY: Yes. Go ahead.

8 MR. MALCOLM: Based on the assertions and  
9 the information that's been received by the North  
10 Carolina State Board of Elections, I recommend that this  
11 Board forward any and all information related to the  
12 assertions of improprieties in accordance with North  
13 Carolina General Statute 163-22(b) and that we forward  
14 any and all of our investigative materials regarding to  
15 the Lumberton Precinct election to the North Carolina  
16 State Bureau of Investigation and/or the United States  
17 Attorney for the Eastern District of North Carolina for  
18 investigation and appropriate disposition.

19 CHAIRMAN WHITNEY: Do we have a second?

20 DR. KRICKER: Second.

21 CHAIRMAN WHITNEY: Do we have any discussion?

22 (No response)

23 CHAIRMAN WHITNEY: No discussion. All in  
24 favor say aye.

25 (Unanimous vote in favor of the motion.)

1 CHAIRMAN WHITNEY: Opposed, no.

2 (No response)

3 CHAIRMAN WHITNEY: Can you do that, Josh?

4 MR. LAWSON: Yes. SBI and U.S.

5 Attorney's Office for the Eastern District.

6 CHAIRMAN WHITNEY: Yes, everybody he said.

7 Any further comments?

8 MS. AMOROSO: I'd like to make a motion

9 to go into closed session about an employee matter,

10 something like that.

11 MR. LAWSON: Is that motion made

12 pursuant to NCGS 143-318.11(a)(1)?

13 MS. AMOROSO: Yes, it is.

14 MR. LAWSON: In this case, (a)(1).

15 CHAIRMAN WHITNEY: Okay. Do we have a second?

16 DR. KRICKER: Second.

17 CHAIRMAN WHITNEY: Do we have any discussion?

18 (No response)

19 CHAIRMAN WHITNEY: All in favor say aye.

20 (Unanimous vote in favor of the motion.)

21 CHAIRMAN WHITNEY: Opposed, no.

22 (No response)

23 CHAIRMAN WHITNEY: Is there any further

24 business before this Board?

25 MR. LOCKLEAR: Mr. Chairman.

1           CHAIRMAN WHITNEY:    Yes.

2           MR. LOCKLEAR:         I'm Gary Locklear, attorney  
3 for the town of Pembroke. Prior to lunch you went into  
4 closed session for the purpose of considering potential  
5 criminal matters. Did you--was there an announcement  
6 made after you returned from closed session as to what,  
7 if any, action you took?

8           MR. LAWSON:         We didn't take any--I came  
9 out and announced that we had completed the closed  
10 session and no action was taken during that.

11          MR. LOCKLEAR:         Thank you very much.

12          CHAIRMAN WHITNEY:    Any further business before  
13 this Board?

14          MR. BAKER:           Mr. Chairman.

15          CHAIRMAN WHITNEY:    Yes, sir.

16          MR. BAKER:           Is it the Chair's plan to  
17 return to open session for the purpose of adjourning or  
18 can we perhaps--would you entertain a motion to adjourn  
19 at the completion of our closed session?

20          MS. AMOROSO:         Well, we could call a five  
21 minute recess now before we go into closed session.  
22 Can't we do that?

23          MR. LAWSON:         He's asking if we can  
24 adjourn now, then go into closed session.

25          MR. BAKER:           If we can let the

1 completion of our closed session be an adjournment of our  
2 public meeting without returning.

3 CHAIRMAN WHITNEY: We have to come back in.

4 MR. LAWSON: Yeah. I'm sorry.

5 MR. BAKER: That's fine.

6 CHAIRMAN WHITNEY: So we don't adjourn now.

7 We're just taking a recess.

8 MS. AMOROSO: Four or five minute recess.

9 MR. LAWSON: Sure, we can vacate like  
10 we did before.

11 CHAIRMAN WHITNEY: Okay. Anybody is welcome  
12 to stick around. We're going to have to come back in  
13 here and (unintelligible) can be here. We can't do that  
14 until we finished our closed session, so y'all are  
15 welcome to stay.

16 If you're not here, I want to thank counsel,  
17 I want to thank the parties, and thank all you good  
18 citizens of Robeson County for your interest. We  
19 appreciate the lovely city and lovely county and thank  
20 you for making us all welcome.

21 MR. HUNT: Thank you, Chairman. Thank  
22 you, Board.

23 (Whereupon, a brief recess was taken  
24 from 4:08 p.m. to 4:55 p.m.)

25 CHAIRMAN WHITNEY: I'm going to reconvene--is

1 that the right word--reconvene from our recess and  
2 our--

3 MS. AMOROSO: Closed session.

4 CHAIRMAN WHITNEY: --closed session. And I  
5 think we've concluded our business here. Do I have a  
6 motion to adjourn?

7 MR. AMOROSO: So moved.

8 DR. KRICKER: Second.

9 CHAIRMAN WHITNEY: Somebody's going to offer  
10 discussion--no. All in favor say aye.

11 (Unanimous vote in favor of the motion.)

12 CHAIRMAN WHITNEY: Meeting adjourned.

13 Everybody be safe on your way back to your home bases.

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17 (Whereupon, the proceedings

18 were adjourned at 4:56 p.m.)

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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 proceedings held before the North Carolina State Board  
9 of Elections in Raleigh, North Carolina, on January 19,  
10 2016; that said proceeding was reported by me and  
11 transcribed by me personally; and that the foregoing one  
12 hundred and twenty-seven pages constitute a true and  
13 accurate transcription of the proceedings.

14 I do further certify that I am not of counsel  
15 for or in the employment of either of the parties to this  
16 action, nor am I interested in the results of this  
17 action.

18 In witness whereof, I have hereunto subscribed  
19 my name this 2nd day of February, 2016.

20

21

22 \_\_\_\_\_  
23 G. LYNN BODENHEIMER  
24 Certified Verbatim Reporter/  
25 Notary Public No. 19942140002

24

25 My Commission Expires:  
August 3, 2019