

**In the Supreme Court of the United States**

---

STATE OF NORTH CAROLINA, *et al.*,  
Petitioners,

v.

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, *et al.*,  
Respondents.

---

*On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Fourth Circuit*

---

**OBJECTION BY PETITIONER STATE OF NORTH CAROLINA  
TO THE NORTH CAROLINA ATTORNEY GENERAL'S MOTION TO DISMISS  
UNDER RULE 46.2 AND TO THE PRIVATE RESPONDENTS' REQUEST FOR  
AN ORDER OF DISMISSAL UNDER RULE 46.1**

---

THOMAS A. FARR  
PHILIP J. STRACH  
MICHAEL D. MCKNIGHT  
OGLETREE DEAKINS NASH  
SMOAK & STEWART, PC  
4208 Six Forks Road, Suite 1100  
Raleigh, NC 27609

S. KYLE DUNCAN  
*Counsel of Record*  
GENE C. SCHAERR  
STEPHEN S. SCHWARTZ  
SCHAERR | DUNCAN LLP  
1717 K Street NW, Suite 900  
Washington, DC 20006  
(202) 714-9492  
Kduncan@Schaerr-Duncan.com

*Counsel for Petitioner State of North Carolina*

---

## TABLE OF CONTENTS

APPENDICES .....	iii
TABLE OF AUTHORITIES .....	iv
INTRODUCTION .....	1
BACKGROUND .....	3
REASONS FOR DENYING THE RULE 46.2 MOTION AND THE RULE 46.1 REQUEST .....	8
CONCLUSION .....	15

## APPENDICES

- A..... Feb. 21, 2017 Ogletree Letter to Governor / Attorney General (w/ Attachments)
- B..... Pleadings showing Ogletree as counsel for State and State Board of Elections
- C..... Oct. 21, 2016 Redacted Retainer Agreement with Schaerr | Duncan LLP
- D ..... Feb. 21, 2017 Governor / Attorney General Letter
- E..... Feb. 21, 2017 Governor / Attorney General Press Release
- F..... Transcript of Feb. 22, 2017 State Board of Elections Meeting
- G ..... July 21, 2015 Testimony of Sen. Josh Stein in *NCNAACP v. McCrory*

## TABLE OF AUTHORITIES

### Cases

<i>National Federation of Independent Business v. Sebelius</i> , 132 S. Ct. 1133 (2012) .....	10
<i>North Carolina Conference of the NAACP v. McCrory</i> , 831 F.3d 204 (4th Cir. 2016) .....	3
<i>North Carolina State Conference of the NAACP v. McCrory</i> , 182 F. Supp. 3d 320 (M.D.N.C. 2016).....	3, 13, 14
<i>North Carolina v. North Carolina State Conference of the NAACP</i> , 137 S. Ct. 27 (Aug. 31, 2016) .....	3

### Statutes

52 U.S.C. § 10301.....	3
N.C. 2013 Session Law 381 .....	3
N.C. Gen. Stat. § 114-2.3 .....	4
N.C. Gen. Stat. § 120-32.6 .....	10
N.C. Gen. Stat. § 120-32.6(a).....	3, 10
N.C. Gen. Stat. § 120-32.6(b).....	3, 4, 11
N.C. Gen. Stat. § 120-32.6(c) .....	4, 9
N.C. Gen. Stat. § 147-17 .....	4, 10
N.C. Gen. Stat. § 1-72.2 .....	9

### Rules

N.C. Rule of Prof. Responsibility 1.11.....	14
N.C. Rule of Prof. Responsibility 1.2.....	12, 13, 15
N.C. Rule of Prof. Responsibility 1.4.....	15
N.C. Rule of Prof. Responsibility 1.7.....	14
N.C. Rule of Prof. Responsibility 3.7.....	14
S. Ct. R. 12.6 .....	7, 12, 13
S. Ct. R. 46.1 .....	1, 2, 8, 15
S. Ct. R. 46.2 .....	1, 8, 11, 15

### Treatises

STEPHEN M. SHAPIRO, KENNETH S. GELLER, ET AL., SUPREME COURT PRACTICE (10th ed. 2013) .....	10
--	----

**Secondary Materials**

Craig Jarvis & Anne Blythe, “NC Will Defend Voter ID Without Attorney General,”  
*Raleigh News & Observer* (Aug. 2, 2016)..... 5

## INTRODUCTION

Petitioner State of North Carolina files this objection to the North Carolina Attorney General's motion to dismiss under Supreme Court Rule 46.2(a), and also to the private respondents' request that the Clerk enter an order of dismissal under Supreme Court Rule 46.1.

The Attorney General's motion is nothing less than a politically-motivated attempt to hijack a certiorari petition in a major Voting Rights Act case, in violation of the plain terms of North Carolina law and the canons of professional ethics. When North Carolina's election reforms were challenged in 2013, the General Assembly acted pursuant to express statutory authority to retain counsel to direct the defense. Furthermore, not only did then-Attorney General Roy Cooper acquiesce in that arrangement for years, but last year he withdrew from defense of the challenged laws after the Fourth Circuit invalidated them. That left the defense of those laws to the General Assembly's designated lead counsel, Schaerr|Duncan LLP, who filed the certiorari petition pending before this Court.

Now the political winds have shifted. On January 1, 2017—five days after the petition was filed—former Attorney General Cooper took office as North Carolina Governor. He was replaced as Attorney General by Josh Stein, who filed the present motion to dismiss. General Stein's attempt to take over representation of the State is barred by North Carolina law authorizing the General Assembly, on behalf of the State itself, to hire counsel to defend challenged State laws—which it has done from the beginning of this litigation up to the present. Indeed, that same North Carolina

law makes the General Assembly the Attorney General's *client* as a matter of law, and General Stein has not even consulted with—much less obtained the consent of—the General Assembly, but has instead unilaterally filed motions and notices with this Court asserting authority he manifestly lacks.

If that were not enough, when General Stein was a State Senator he testified at the trial *in this case*, for the *Plaintiffs*, and *against* the validity of the very laws the State's certiorari petition seeks to vindicate. That thicket of conflicts of interest ought to prevent General Stein from participating as an attorney in this case at all. Much less should he be allowed to override the authority of his own client and deprive this Court of the opportunity to review the Fourth Circuit's decision invalidating North Carolina's sensible election reform laws.

Finally, the private respondents have asked the Clerk to enter an order of dismissal under Rule 46.1. That request is contrary to Rule 46.1, which requires a written agreement to dismiss filed by "*all parties.*" S. Ct. R. 46.1 (emphasis added). The United States has been a party throughout these proceedings, including in this Court, but the private respondents' request does not include the United States. Consequently, the Clerk cannot grant private respondents' request under Rule 46.1. At a minimum, the Clerk should request the position of the United States through the Solicitor General's office, particularly since the United States' brief in opposition to the pending certiorari petition was filed *one day* before the current administration took office on January 20, 2017.

## BACKGROUND

1. The pending certiorari petition involves election reforms introduced by a 2013 North Carolina law (“S.L. 2013-381”), including a photo ID requirement.<sup>1</sup> On April 25, 2016, a federal district court upheld S.L. 2013-381 against challenges under the federal Constitution and section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301 (“VRA”). *North Carolina State Conf. of the NAACP v. McCrory*, 182 F. Supp. 3d 320 (M.D.N.C. 2016) (“*NCNAACP*”). On July 29, 2016, the Fourth Circuit reversed and enjoined all challenged provisions of S.L. 2013-381 as violating both the Equal Protection Clause and the VRA. *North Carolina Conf. of the NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016). On August 15, 2016, North Carolina asked this Court to recall and stay the Fourth Circuit’s mandate, a request denied by an equally divided vote on August 31, 2016. *North Carolina v. North Carolina State Conf. of the NAACP*, 137 S. Ct. 27 (Aug. 31, 2016) (Mem.). After receiving two extensions of time, North Carolina timely filed a certiorari petition on December 27, 2016, which has been distributed for the Court’s conference on March 3, 2017.

2. North Carolina law authorizes the North Carolina General Assembly to act on the State’s behalf and hire outside counsel where “the validity or constitutionality of an act of the General Assembly” is challenged. N.C. Gen. Stat. § 120-32.6(b). The law exempts the General Assembly from provisions limiting the authority of other government entities to hire outside counsel. *Id.* § 120-32.6(a) (providing that N.C. Gen. Stat. §§ 114-2.3 and 147-17(a)–(c), regarding “Use of

---

<sup>1</sup> As relevant here, S.L. 2013-381 also reduced the early-voting period from 17 to 10 days, and eliminated same-day registration, out-of-precinct voting, and pre-registration for 16-year-olds.

Private Counsel,” “shall not apply to the General Assembly”). When acting pursuant to this authority, the General Assembly is “deemed to be a client of the Attorney General for purposes of that action as a matter of law.” *Id.* § 120-32.6(b). Furthermore, the General Assembly’s leaders “may jointly designate” retained counsel as “lead counsel,” who “shall possess final decision-making authority” with respect to the representation; any other counsel for the General Assembly—including the Attorney General—“shall, consistent with the Rules of Professional Conduct, cooperate with such designated lead counsel.” *Id.* § 120-32.6(c).

Pursuant to that authority, in 2013 the General Assembly retained counsel from Ogletree, Deakins, Nash, Smoak & Stewart (“Ogletree”) to defend S.L. 2013-381. See App. A (letter and attached retainer). The Ogletree firm represented all Defendants in proceedings in the district court, in the Fourth Circuit, and in this Court, see App. B, with the one exception of then-North Carolina Governor Patrick McCrory, who was represented by separate counsel. The North Carolina Attorney General’s office—under then-Attorney General Roy Cooper—appeared in the lower court proceedings and co-signed pleadings with the Ogletree firm. See App. B. Indeed, when North Carolina previously sought a stay in this Court following the Fourth Circuit’s 2014 decision in this case, Thomas Farr of the Ogletree firm appeared as counsel of record for the State of North Carolina and the North Carolina State Board of Elections (“Board”), even though General Cooper was at that time still on the pleadings. App. B.

3. Following the Fourth Circuit’s decision invalidating S.L. 2013-381, General Cooper expressly withdrew from the case, leaving any further representation of the State on appeal to the General Assembly’s counsel alone. See App. A (letter and attached e-mails) (confirming that the Attorney General’s Office “will not be participating in further proceedings in the federal Voter ID cases in the Fourth Circuit on in the Supreme Court” and that private counsel “should probably move forward as [counsel] think[s] best without [the Attorney General’s Office] weighing in”). At the time, General Cooper publicly confirmed that “North Carolina’s attorney general won’t represent the state in appealing [the Fourth Circuit’s ruling]” and that “[o]utside counsel for the governor and legislative leaders who are already involved in the case can handle any appeals.” Craig Jarvis & Anne Blythe, “NC Will Defend Voter ID Without Attorney General,” *Raleigh News & Observer* (Aug. 2, 2016), <http://www.newsobserver.com/news/politics-government/state-politics/article93228772.html>.

4. Subsequently, the General Assembly retained Bancroft PLLC to seek a stay from this Court, and then retained Schaerr|Duncan LLP for a certiorari petition, which was filed on December 27, 2016. On both the stay application and the certiorari petition, private counsel retained by the General Assembly (namely, Bancroft PLLC and Schaerr|Duncan LLP) appeared as counsel of record for all Petitioners—except then-Governor McCrory, who continued to be represented by separate counsel. Furthermore, Schaerr|Duncan’s retainer with the General Assembly specifically designates S. Kyle Duncan as lead counsel for all North

Carolina Defendants, including the State of North Carolina and the Board. App. C. The North Carolina Attorney General did not appear on either the stay application or the certiorari petition.

5. On January 1, 2017, five days after North Carolina’s certiorari petition was filed, former Attorney General Cooper took office as the new Governor (replacing former Governor McCrory) and former State Senator Josh Stein took office as the new Attorney General (replacing former Attorney General Cooper).

On February 21, 2017, undersigned counsel received via e-mail a letter from Governor Cooper’s general counsel and General Stein’s chief deputy stating that “effective immediately, the Petitioners in this matter shall be represented exclusively by the [North Carolina] Department of Justice.” App. D. That same afternoon, the Ogletree firm sent a letter in response to Governor Cooper and General Stein rejecting those officials’ authority under North Carolina law to take over representation of the State in this matter. App. A.

Also on February 21, 2017, General Stein filed the present motion in this Court. While confusingly captioned as a motion by “Petitioners the State of North Carolina and Governor Roy Cooper to *Dismiss the Case*,” Mot. at 1 (emphasis added), in reality the motion does not ask for anything of the sort. Rather, it asks only that the “North Carolina Petitioners”—specified as the “State of North Carolina and Governor of North Carolina Roy Cooper”—“be dismissed *as parties* to this case.” *Id.* (emphasis added). The motion expressly concedes that it “do[es] not include petitioners the North Carolina State Board of Elections” (“Board”) or any of

its members. *Id.* at 2. Nonetheless, Governor Cooper and General Stein issued a press release that same day claiming they have “formally withdr[awn]” the certiorari petition in this case. App. E.

Before sending the February 21 letter and filing the putative motion to dismiss, neither Governor Cooper nor General Stein consulted with or notified the leaders of the General Assembly or their counsel. See App. A (letter). Indeed, the General Assembly’s counsel were not even served with the motion. See Mot. at 4 (reflecting service only on respondents’ counsel). Instead, a copy was e-mailed to the General Assembly’s counsel late that afternoon.

6. On February 23, 2017, the Attorney General filed a notice in this Court purporting to appear as “substitute counsel” for the Board and its members. Later that same day, the Attorney General filed a notice under Rule 12.6 claiming the Board has “no interest in the outcome of the petition,” that “there remains no petitioner ... with an interest in seeking this Court’s review,” and thus asking the Court to “dismiss the petition.” General Stein’s notice failed to mention that the Board, during open session at its February 22, 2017 meeting, considered a motion to direct General Stein to “withdraw” the Board and its members as parties to the pending certiorari petition in this case. App. F at 1. As the transcript of that meeting shows, a majority of the Board rejected that motion by a vote of 3-to-2. *Id.*

7. On February 24, 2017, the Attorney General filed an *additional* pleading, captioned as a “supplemental motion to dismiss the case,” which merely reiterates the points already made in the previous filings of February 21 and 23, but adds that

General Stein, “as counsel for all Petitioners, hereby moves ... to dismiss the pending petition.” Suppl. Mot. at 2. This motion again fails to mention that, two days before, a majority of the Board rejected a motion to direct General Stein to withdraw the Board as a party to the certiorari petition. App. F at 1.

8. Finally, also on February 24, 2017, counsel for the private respondents—but not counsel for the United States—filed a “notice of non-opposition” to General Stein’s motion to dismiss, requesting that the “Clerk enter an order of dismissal pursuant to Rule 46.1.” Private Respondents’ Notice at 1. Rule 46.1, however, requires “*all* parties” to agree in writing to dismiss the case. S. Ct. R. 46.1 (emphasis added). Counsel for the United States has not yet filed anything agreeing to General Stein’s or to the private respondents’ request for dismissal.

**REASONS FOR DENYING THE RULE 46.2 MOTION AND  
THE RULE 46.1 REQUEST**

Supreme Court Rule 46.2 allows an “adverse party” to file an objection showing that “the moving party does not represent all petitioners.” S. Ct. R. 46.2(a). That is the case here: General Stein is barred both by North Carolina law and by the canons of professional ethics from representing the State and the Board in this matter, and his motion to dismiss should therefore be denied. Additionally, Rule 46.1 provides that the Clerk will enter an order of dismissal when “all parties” file a written agreement that a case be dismissed. S. Ct. R. 46.1. “All” parties have not done so, however: the United States, a party throughout these proceedings, has not filed anything respecting General Stein’s motion and is not included in the private respondents’ request. The Clerk therefore cannot enter an order of dismissal under

Rule 46.1 without first receiving the agreement of the United States through the Solicitor General's Office.

1. First, General Stein has no authority under North Carolina law to dismiss the State of North Carolina as a party to the certiorari petition. As explained above, North Carolina law expressly authorizes the General Assembly to act on behalf of the State in retaining private counsel to defend challenged laws and to designate that counsel as lead counsel with “final decision-making authority.” N.C. Gen. Stat. § 120-32.6(c). The General Assembly did so with respect to the certiorari petition in this matter by retaining Schaerr | Duncan LLP (along with the Ogletree firm) and designating S. Kyle Duncan as lead counsel to represent the State of North Carolina—together with all other Petitioners except the North Carolina Governor. App. C. Indeed, following the Fourth Circuit's decision, *only* the General Assembly's private counsel remained as counsel for the State. See App. A (attached e-mails) (confirming that North Carolina Attorney General's Office “will not be participating in further proceedings in the federal Voter ID cases in the Fourth Circuit or in the Supreme Court”). Consequently—while General Stein is free to withdraw the *Governor* as a party if Governor Cooper so wishes, and has apparently done so through his various filings—General Stein lacks authority under North Carolina law to withdraw the State of North Carolina, a decision reserved by operation of law to the General Assembly and its designated counsel.<sup>2</sup>

---

<sup>2</sup> The General Assembly's authority to hire private counsel to defend challenged State laws explains why the General Assembly had no need to *intervene* as a party in this case, although the General Assembly does have the authority to intervene in litigation. See N.C. Gen. Stat. § 1-72.2. However, in the event the Court concludes that the Attorney General has the authority to withdraw

General Stein’s February 21, 2017 letter to the General Assembly’s counsel offers nothing to remedy that lack of authority. App. D. The letter purports to replace the General Assembly’s private counsel as to all Petitioners, including the State, relying solely on section 147.17 of the North Carolina General Statutes, which allows private representation of State entities only when representation by the Attorney General is “impracticable.” See App. D at 2 (claiming “no finding of impracticability by the Attorney General pursuant to N.C.G.S. § 147-17”). But that statute provides no basis for General Stein’s action: his letter neglects to note that the statute authorizing the General Assembly to retain private counsel specifically *exempts* the General Assembly from the limitations in section 147-17. See N.C. Gen. Stat. § 120-32.6(a) (providing that “N.C. Gen. Stat. [§] 147-17(a)-(c) ... *shall not apply to the General Assembly*”) (emphasis added). Thus, the Attorney General’s February 21 letter only underscores that he lacks authority under North Carolina law to supplant the General Assembly and its designated lead counsel as counsel for the State on the pending certiorari petition.

2. Second, and more fundamentally, General Stein has no authority under North Carolina law to dismiss this case against the wishes of the General Assembly. As already explained, North Carolina law deems the General Assembly the Attorney General’s client “as a matter of law” when the General Assembly hires

---

the pending certiorari petition as to the State (which it should not), the General Assembly is simultaneously filing a conditional motion to be added as an additional petitioner with the right to defend the challenged laws on certiorari. See, *e.g.*, STEPHEN M. SHAPIRO, KENNETH S. GELLER, ET AL., SUPREME COURT PRACTICE at 867 (10th ed. 2013) (discussing motion “to add additional petitioners or respondents”) (citing *Nat. Fed’n of Indep. Bus. v. Sebelius*, 132 S. Ct. 1133 (2012)).

private counsel to direct the defense of challenged State laws. N.C. Gen. Stat. § 120-32.6(b). That is precisely what the General Assembly has done throughout this case—and, with particular relevance here, when it retained the Schaerr|Duncan firm and designated it as lead counsel for the State of North Carolina and the Board on the pending certiorari petition. App. C. Insofar as he participates in the case at all, General Stein would therefore be obligated by statute and the Rules of Professional Responsibility to “cooperate with such designated lead counsel.” N.C. Gen. Stat. § 120-32.6(b) . Indeed, following the Fourth Circuit’s decision, *only* the General Assembly’s private counsel was left representing North Carolina in this Court because then-Attorney General Cooper expressly *withdrew* from representation and *acquiesced* in further appellate representation by the General Assembly’s private counsel. See App. A (letter and attached e-mails). Now, however, the new Attorney General purports to supplant the General Assembly’s designated lead counsel and dismiss the case against the General Assembly’s wishes, all without even consulting the General Assembly—*which is his own client in this matter by operation of law*. That stunning attempt is foreclosed by the plain terms of North Carolina law.

3. Third, it is unclear whether General Stein’s motion even seeks relief authorized by Rule 46. While ostensibly filed under Rule 46.2(a)—which authorizes a motion “to dismiss the case”—in reality the motion does not ask the Court to dismiss the case at all. Instead, as already explained, the motion asks the Court only to “dismiss[] *as parties* to the case” two petitioners (the State of North

Carolina and Governor Cooper), and it expressly *excludes* petitioner North Carolina State Board of Elections and its members. Mot. at 1, 2 (emphasis added). Consequently, the motion is not a motion to “dismiss” within the meaning of Rule 46 and could be denied on that ground alone.

General Stein has attempted to remedy this defect retroactively through his February 23, 2017 “notice of non-interest,” which claims that the Board and its members “have no interest in the outcome of the petition.” Notice at 2. But that attempt is insufficient to bring the motion within Rule 46. General Stein’s assertion of “non-interest” is based on one sentence in a February 22, 2017 letter stating that the Board “has not taken, and does not take, a position” in this matter. Notice, App. A. Whatever that cryptic statement means, it fails to demonstrate that the Board has no “interest in the outcome of the petition” within the meaning of Rule 12.6.

To be sure, if the Board wishes to *withdraw* as a party from the certiorari petition it has *already* joined, General Stein should inform the Court clearly to that effect. He has not done so, and for good reason: in open session on February 22, 2017, a majority of the Board *rejected* by a vote of 3-to-2 a proposal to withdraw from the pending certiorari petition. App. F. None of General Stein’s motions, notices, or supplemental motions acknowledge this inconvenient fact. That alone casts serious doubt on the veracity of General Stein’s stated “belief” that the Board no longer has any “interest in the outcome of the petition.” S. Ct. R. 12.6. It also raises grave questions about whether General Stein is acting in accordance with the wishes of the Board (which he claims to represent) by seeking to have the petition

dismissed. See, *e.g.*, N.C. Rule of Prof. Responsibility 1.2(a) (“[A] lawyer shall abide by a client’s decisions concerning the objectives of representation,” including “a client’s decision whether to settle a matter.”).

General Stein’s “supplemental” motion to dismiss merely reiterates the same allegations in his previous filings. To be sure, the supplemental motion—unlike the original motion—actually *asks* the Court to dismiss the petition. Suppl. Mot. at 2. But the supplemental motion again represents that the Board has “no interest in the outcome of this case” under Rule 12.6, while again failing to mention that the Board, which General Stein purports to represent, specifically *rejected* a motion that General Stein withdraw the Board from the petition only two days before. App. F.<sup>3</sup>

4. Fourth, even assuming the Attorney General has any theoretical authority to override the General Assembly and its private counsel (which he does not), General Stein has a conflict of interest that should disqualify him from representing the State or the Board in this case. During the trial, General Stein—then a North Carolina State Senator—testified *on behalf of the Plaintiffs* and *against* the validity of the challenged laws. See, *e.g.*, *NCNAACP*, 182 F. Supp. 3d at

---

<sup>3</sup> Disagreement has arisen recently about whether General Stein or private counsel represent the Board at present. See Notice, App. A. But there is no question that the Ogletree firm was retained by the General Assembly in 2013 to represent the Board and its members (as well as the State), App. A; that the Ogletree firm has done so alongside the Attorney General’s Office throughout this litigation, App. B; and that the Board is a party to the certiorari petition on which S. Kyle Duncan on Schaerr|Duncan LLP is counsel of record (and on which the Attorney General does not appear). Pet. at iii. The present Board members, however, apparently disagree that the Board is represented by private counsel. Notice, App. A. But that is of no significance here. Whether or not private counsel continues to represent the Board, there is no question that private counsel represents the *State* by virtue of its retention by the General Assembly, and that Schaerr|Duncan LLP has been designated as lead counsel on the certiorari petition by the leaders of the General Assembly acting on behalf of the State. App. C.

447 (describing testimony of “Plaintiffs’ own witness, Senator Stein”); App. G (Stein testimony). Thus it is unsurprising that, as the newly elected Attorney General, he now wishes to deprive this Court of an opportunity to review the Fourth Circuit’s decision invalidating the law he himself testified against as “Plaintiffs’ own witness.” *NCNAACP*, 182 F. Supp. 3d at 447.

The rules of professional responsibility prevent him from doing so, however. Most obviously, the fact that General Stein testified as a witness against the very laws addressed by the certiorari petition creates an obvious conflict of interest with the General Assembly—his own client—which enacted those laws and seeks to vindicate them before this Court. See N.C. Rule of Prof. Responsibility 1.7(a) (providing concurrent conflict of interest exists where representation of client “may be materially limited ... by a personal interest of the lawyer”); *id.* Rule 1.11(d) (providing Rule 1.7 applies to “a lawyer currently serving as a public officer or employee”); see also, *e.g.*, *id.* Rule 1.11(a) (prohibiting lawyer from “represent[ing] a client in connection with a matter in which the lawyer participated personally and substantially as a public officer”); *id.* Rule 3.7 (providing “[a] lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness”); *id.* Rule 3.7 cmt. 1 (observing that “[c]ombining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client”). Given these palpable conflicts of interest, the current Attorney General should have no role in this case. Much less should he be able to override the wishes of the General Assembly—his own client—which is

authorized to act on behalf of the State is seeking to vindicate in this Court election reform measures Stein himself testified against at trial.<sup>4</sup>

5. Finally, the private respondents' request for an entry of dismissal under Rule 46.1 is contrary to this Court's rules and should therefore be denied. Rule 46.1 requires a written agreement to dismiss to be filed by "*all* parties." S. Ct. R. 46.1 (emphasis added). The private respondents' notice manifestly fails to include the United States, who was a party throughout these proceedings. Before the Clerk could proceed with private respondents' request, it would at a minimum need to receive the position of the United States through the Solicitor General. That would be particularly salient in this case, given that the United States' opposition to the pending certiorari petition was filed on January 19, 2017—*one day* before the present administration took office.

### CONCLUSION

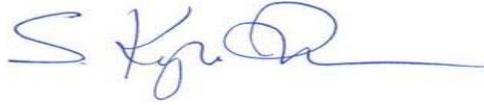
For the foregoing reasons, the Court should deny the Attorney General's motion under Rule 46.2. Additionally, the Clerk should deny the private respondents' request for an order of dismissal under Rule 46.1 or, in the alternative, request the position of the United States through the Solicitor General's Office.

---

<sup>4</sup> See also, *e.g.*, N.C. Rule of Prof. Responsibility 1.2(a) ("[A] lawyer shall abide by a client's decisions concerning the objectives of representation," including "a client's decision whether to settle a matter."); *id.* Rule 1.4(a) ("A lawyer shall ... promptly inform the client of any decision or circumstance with respect to which the client's informed consent ... is required by these Rules [and] reasonably consult with the client about the means by which the client's objectives are to be accomplished[.]").

Respectfully submitted,

Thomas A. Farr  
Philip J. Strach  
Michael D. McKnight  
OGLETREE DEAKINS NASH  
SMOAK & STEWART, PC  
4208 Six Forks Road, Suite 1100  
Raleigh, NC 27609



---

S. Kyle Duncan  
*Counsel of Record*  
Gene C. Schaerr  
Stephen S. Schwartz  
SCHAERR | DUNCAN LLP  
1717 K Street NW, Suite 900  
Washington, DC 20006  
(202) 714-9492  
Kduncan@Schaerr-Duncan.com

*Counsel for Petitioner State of North Carolina*

February 27, 2017

No. 16-833

**In the Supreme Court of the United States**

---

STATE OF NORTH CAROLINA, *et al.*,

Petitioners,

v.

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, *et al.*,

Respondents.

---

**CERTIFICATE OF SERVICE**

---

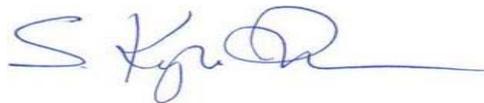
I, S. Kyle Duncan, a member of the Supreme Court Bar, hereby certify that:

- (1) this opposition was filed by delivering an original and 10 copies on February 27, 2017 to a third-party commercial carrier for next-day delivery to the Clerk; and
- (2) one copy of the same opposition was served by delivering it on February 27, 2017 to a third-party commercial carrier for next-day delivery on the following:

Daniel T. Donovan  
Kirkland & Ellis, LLP  
655 15th Street, NW, Suite 1200  
Washington, DC 20004  
(202) 879-5000  
ddonovan@kirkland.com

Noel J. Francisco  
Acting Solicitor General  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530  
Noel.Francisco@usdoj.gov

Grayson Kelly  
Chief Deputy Attorney General  
North Carolina Department of Justice  
P.O. Box 629 Raleigh, NC 27602-0629  
(919) 716-6400  
gkelley@ncdoj.gov



---

S. Kyle Duncan  
*Counsel of Record for Petitioner State of  
North Carolina*

## **APPENDIX**

# **APPENDIX A**

# Ogletree Deakins

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

*Barristers & Solicitors*

4208 Six Forks Road, Suite 1100

Raleigh, NC 27609

Telephone: 919.787.9700

Facsimile: 919.783.9412

www.ogletree.com

Thomas A. Farr  
919.789.3174  
thomas.farr@ogletree.com

February 21, 2017

## **By Email**

William C. McKinney  
General Counsel  
Office of the Governor  
20301 Mail Service Center  
Raleigh, NC 27699-0301

Grayson Kelley  
Chief Deputy Attorney General  
North Carolina Department of Justice  
9001 Mail Service Center  
Raleigh, NC 27699-9001

RE: Your letter of February 21 re *United States v. State of North Carolina, League of Women Voters at al. v. State of North Carolina at al.*, and *NC NAACP et al. v. McCrory et al.*

Dear Mr. McKinney and Mr. Kelley:

We are in receipt of your letter of February 21, 2017, of which we had no prior notice or discussion.

We are perplexed by the contents of your letter for several reasons. And we are stunned by the receipt of a news release from the Governor and Attorney General Stein indicating that you have apparently asked the Supreme Court to withdraw the pending *certiorari* petition, a step that was made without notice to or consent of the General Assembly. As of this letter, neither we nor the General Assembly has received a copy of any submission made by you to the Supreme Court. Please provide us immediately with a copy of anything you have submitted or submit in the future regarding these matters.

We first point out that neither our firm, nor Schaerr Duncan LLP, were ever engaged to represent Governor McCrory in this case. Neither firm has received any payment of fees in this case from the Governor's office. Governor McCrory was instead represented by Butch Bowers and Bob Stephens. We do not dispute your authority to discharge these lawyers from further representation of the Governor's office.

We have enclosed an engagement letter dated October 22, 2013, issued by Ogletree to our clients in this case, the State of North Carolina (the "State") as represented by the leadership of the General Assembly. The Attorney General's office was copied on the engagement letter.

We understand that both Governor Cooper (acting at the time as Attorney General) and Mr. Kelley agreed with the legislative leadership that the true clients and decision makers in cases of this nature are the legislative leadership in the General Assembly.

For over three years, we worked intensely with Alec Peters defending the State and the North Carolina State Board of Elections ("SBE") in this litigation. Consistent with our understanding of prior representations by then-Attorney General Cooper, Mr. Kelley, and others in the Attorney General's office, at no time did the Attorney General object to the right of the legislative leaders to employ outside counsel to represent the State. We are sure that, in many instances, filings made in this case signed by our firm were reviewed and approved by Mr. Kelley and others in senior positions in the Attorney General's office. All filings were signed by Alec Peters until shortly after the Fourth Circuit ruling. We expect that then-Attorney General Cooper also reviewed these filings or was briefed on them.

On August 1, 2016, when Mr. Peters first notified us that the Attorney General's office would no longer participate in these cases, no issue was raised about our ability to continue representing the State in the Fourth Circuit or Supreme Court. After being notified that the Attorney General's office no longer intended to participate in these cases, we specifically asked Mr. Peters whether he intended to file a motion to withdraw from the case and he responded that withdrawal of the Attorney General was not needed because the Fourth Circuit case was "closed" and the appeal to the Supreme Court was considered a "new case" in which his office would not appear. A copy of this email correspondence is attached to this letter. In addition to the fact that the Attorney General's office did not object to our continued representation of the State in that email exchange or at any other time before the letter you sent this morning, we are perplexed as to how the Attorney General's office can now purport to represent the State before the Supreme Court in a matter in which it previously declined to appear.

For the Governor (who served as Attorney General during the course of this litigation) or the Attorney General's office to now take the position that they can override the legislature's authority to hire outside counsel to represent the State, or move to dismiss the pending *certiorari* petition without notice to the General Assembly or its counsel, is completely inconsistent with the position taken by Governor Cooper as Attorney General and the Department of Justice in cases involving the Democratic leadership of the General Assembly and the actual conduct and representation of then-Attorney General Cooper, Mr. Kelley, and Mr. Peters in this case.

It is clear that neither the Governor nor the Attorney General has the authority to move to dismiss the *certiorari* petition without the consent of the General Assembly or to discharge either our firm or Schaerr Duncan LLP from representing the State in these cases. The statutes you cite in your letter do not apply to the General Assembly pursuant to N.C. Gen. Stat. § 120-32.6. Further, § 120-32.6 clarifies past practice that, in cases of this nature, the General Assembly is the client of the Attorney General's office and, as the client, retains all decision-making authority

over litigation. *See* NC RPC 1.2 and 1.4. N.C. Gen. Stat. § 120-32.6 also clarifies past practice that, in cases of this nature, as previously confirmed by Mr. Kelley and as known to the Governor (then Attorney General Cooper), the General Assembly can hire outside counsel on its own volition and designate outside counsel as lead counsel—as it has done here.

Consistent with past practices and § 120-32.6, all litigation decisions in this case were made (and will continue to be made) by the General Assembly leadership. Prior to the decision of the Attorney General's office to not participate as counsel for the State or other defendants before the Supreme Court, the Attorney General's office consented to all litigation decisions made by the General Assembly's leadership.

After then-Attorney General Cooper directed the Department of Justice to refrain from participating in proceedings before the Supreme Court, the State remained represented by our firm and also by Schaerr Duncan LLP who was retained by the General Assembly for Supreme Court proceedings in this matter. Prior to your letter this morning, neither our firm nor Schaerr Duncan received any protest from the Attorney General's office that the General Assembly and its outside counsel lacked the authority to represent the State.

Finally, we believe that Governor Cooper, Attorney General Stein, and Mr. Kelley have serious conflicts of interest that bar them from playing any role related to this case. *See* NC RPC 1.7 and 1.10. As a candidate, Governor Cooper, despite his position as Attorney General in this litigation, made many public statements indicating that the election reform law at issue was unconstitutional. During the trial, Attorney General Stein, then a member of the State Senate, testified on behalf of the plaintiffs and, as a member of the State Senate, voted against the challenged statute and publicly spoke out against it. Attorney General Stein's father served as co-counsel for the plaintiffs.

In addition to these conflicts, Attorney General Stein has apparently engaged in settlement negotiations with plaintiffs without the knowledge or consent of his client, the leadership of the North Carolina General Assembly. Attorney General Stein has engaged in this conduct despite Mr. Kelley's repeated representations that the General Assembly leadership retained ultimate decision-making authority over litigation decisions and consented to this authority for over three years. The legislative leadership relied upon these representations for over three years. Further, we think very serious ethical issues have been raised by the unilateral decision of the Governor and the Attorney General to move to withdraw the *certiorari* petition without notice to or consent of the General Assembly, which by statute is entitled to speak for the State in this litigation.

Thus, after over three years of acquiescing to the ultimate decision making authority of the General Assembly in litigation matters related to these consolidated cases, two political opponents of the statute now seek to usurp the authority of the General Assembly as established by past practice, clarified by N.C. Gen. Stat. § 120-32.6, and as agreed upon by then-Attorney General Cooper and his staff.

February 21, 2017

Page 4

Ogletree  
Deakins

Our clients take no position on any decision by Governor Cooper to discharge Mr. Bowers and Mr. Stephens. Our clients also take no position on whether Governor Cooper should or can move the Supreme Court to be substituted for Governor McCrory or whether Governor Cooper could then ask that he be dismissed as a petitioner.

Neither Governor Cooper nor the Attorney General has authority to discharge us as counsel for the State and other defendants in this case. Nor does Governor Cooper or the Attorney General have the authority to ask the Supreme Court to withdraw the petition on behalf of all petitioners. Nor does Governor Cooper or the Attorney General have the authority to move to dismiss the *certiorari* petition without notifying the General Assembly and obtaining the consent of its leadership.

We intend to continue representing our clients. We should have been notified of your intentions to attempt to withdraw the *certiorari* petition. Please immediately advise the Supreme Court that the defendants in this case, other than Governor Cooper, oppose the request to withdraw the *certiorari* petition and that we will be filing a response in opposition, as well as pursuing other relief.

Sincerely,

A handwritten signature in blue ink, appearing to read 'TAF', with a long horizontal flourish extending to the right.

Thomas A. Farr

TAF:kmy

Cc: Senator Phil Berger, President Pro Tem of the Senate  
Representative Timothy Moore, Speaker of the House  
Mr. Kyle Duncan

28803116.1



OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

*Attorneys at Law*

4208 Six Forks Road, Suite 1100

Raleigh, NC 27609

Telephone: 919.787.9700

Facsimile: 919.783.9412

[www.ogletreedekins.com](http://www.ogletreedekins.com)

Thomas A. Farr  
(919) 789-3174  
[Tom.Farr@ogletreedekins.com](mailto:Tom.Farr@ogletreedekins.com)

October 22, 2013

The Honorable Phil Berger  
The Honorable Thom Tillis  
North Carolina General Assembly  
Legislative Building  
16 West Jones Street, Rooms 2304 and 2007  
Raleigh, North Carolina 27601

Re: *Holder v. North Carolina* (M.D.N.C.)  
*North Carolina State Conference of the NAACP, et al., v. McCrory*  
(M.D.N.C.)  
*League of Women Voters v. State of North Carolina* (M.D.N.C.)  
*Currie v. State of North Carolina* (Orange County Superior Court)

Gentlemen:

Thank you for asking our firm to assist in representing the defendants, in the above-referenced cases. This letter will confirm our prior discussions regarding our engagement.

Our clients for this engagement will be Thom Tillis, Speaker of the North Carolina House and Phil Berger, President Pro Tempore of the Senate ("legislative leaders"), and their counsel, designees (including but not limited to other members), or agents acting in their official capacities. We will appear in all of these cases as co-counsel for the defendants other than Governor McCrory, for the purpose of providing legal advice and assistance to lead Counsel, the North Carolina Department of Justice. We understand that Governor McCrory will engage separate counsel.

While we have no present expectation of an actual or potential conflict of interest, we reserve the right to withdraw as co-counsel for the non-legislative leader defendants in the event of any conflict of interest that may arise between the non-legislative leader defendants and the legislative leaders. Were that situation to arise, we would continue to represent the legislative leaders consistent with the terms of this agreement.

We would be honored to accept this engagement.

It is our policy to send each new client an engagement letter so that you are aware of the firm's billing practices. For more information about our firm, you may want to visit our website at [www.ogletreedekins.com](http://www.ogletreedekins.com). In addition, feel free to call me directly at any time.

Our billing practices are explained below:

- Our billing cycle runs from the first to the last day of each month. All fees and expenses on any matter for you will be summarized on a monthly bill that will be mailed to you as soon as possible after the first of each month. Our bills are due within 30 days of receipt.
- Our current fee schedule for the Raleigh Office ranges from \$250.00 to \$450.00 an hour, depending on the attorney assigned to the matter. My current rate is \$405.00 per hour, Phil Strach's hourly rate is \$350.00, and Michael McKnight's hourly rate is \$305.00. Paralegal time will be charged at \$175.00. As a result of negotiation, our firm has agreed to a 10% discount of our total legal fees as they are billed each month. This discount will be reflected on each bill.
- We will submit all bills to Mr. Wesley Taylor, Controller, Room 201, Legislative Office Building, 300 N. Salisbury Street, Raleigh, NC 27603-5925. We will also send copies of the bills to general counsel in the office of President Pro Tempore, 16 W. Jones Street, Room 2007, Raleigh, 27601-1096 and general counsel in the office of Speaker, 16 W. Jones Street, Room 2304, Raleigh, 27601-1096.
- We note that our hourly rates are in line with prior hourly rates charged to the General Assembly by other private law firms, as adjusted for inflation and normal annual increases.

Like other businesses, our firm is affected by rising costs for employee salaries and benefits as well as the cost of outside professional services and products necessary to enable us to provide the most comprehensive legal representation possible for our clients. However, as part of an ongoing commitment to our clients, we strive to keep costs as low as possible without sacrificing quality.

- Our bills typically show our professional fees calculated by applying a billing rate to hours or fractions of an hour. In most instances, the hourly figures shown on our bills reflect the actual time devoted to a client matter within the limits of our record keeping capabilities, overlooking minor interruptions in otherwise continuous periods of effort.
- All work done for you will be billed in tenth-of-an-hour increments. This method of billing results in cost savings because the actual time devoted to your matter can be accurately captured.
- We will task bill each entry and will not use block billing.

The Honorable Phil Berger  
The Honorable Thom Tillis  
October 22, 2013  
Page 3

**Ogletree  
Deakins**

- We will push work down to staff attorneys of the General Assembly whenever it is feasible. We will also use Ogletree junior partners and associates when work can be done at that level.
- Where pertinent to any matter for which we are representing you, you will be charged for travel expenses, court costs, court reporter fees, the cost of expert witnesses, etc. Our standard charges also include computerized research, postage, express mail services, long-distance and cellular telephone expenses, and in-house and outside copying services. We will advance most of these charges and bill them monthly. We will not bill for travel time.

If you have any specific billing requirements, please forward the necessary information to our centralized billing department in Columbia, South Carolina, to the attention of Account Services Department (864) 271-1300:

Account Services Department  
Ogletree, Deakins, Nash,  
Smoak & Stewart, P.C.  
P. O. Box 89  
Columbia, SC 29202

It is the firm's policy to retain client matter files for a period of ten years from the date the file is closed. You have the option of requesting the file at any time within this ten-year period. You will be notified by letter prior to the end of the file-retention period and given a final opportunity to request the file. If you choose not to have the file sent at that time, the file will be destroyed.

We understand that the role of our firm will be to advise you, your counsel, or your designees or agents regarding the legal requirements regarding the above-referenced cases. All communications between any attorney in our firm and our clients and their counsel, designees, or agents shall be considered to be privileged attorney client communications. These communications shall not be disclosed without the permission of the client.

The firm's engagement will be limited to the issues stated above and will not limit the firm in the representation of other clients who may have an interest in other unrelated legislation. Nor will this engagement limit the members of the firm in advocating personal opinions concerning other unrelated pending legislation.

The goal of the Ogletree Deakins firm since its founding has been to serve clients fairly in the most professional, courteous, and timely fashion possible. We are committed to providing the highest quality legal service to our clients.

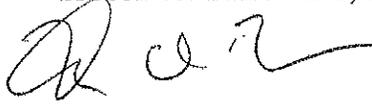
The Honorable Phil Berger  
The Honorable Thom Tillis  
October 22, 2013  
Page 4

**Ogletree  
Deakins**

We trust that this letter is responsive to your request regarding our firm's ability to serve you. If you have any further questions, please give me a call. We look forward to working with you in the future.

Very truly yours,

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.



Thomas A. Farr

TAF/kmy

Approved:

  
\_\_\_\_\_  
Thom Tillis, Speaker

Date: 10/28/13

  
\_\_\_\_\_  
Phil Berger, President Pro Tem

Date: 10-29-13

cc: Alec Peters

15700126.1

## McKnight, Michael D.

---

**From:** Peters, Alec <apeters@ncdoj.gov>  
**Sent:** Wednesday, August 03, 2016 9:15 AM  
**To:** McKnight, Michael D.  
**Subject:** RE: Notification to Plaintiff's Counsel of Intent to File Motion to Recall and Stay Mandate in Voter ID Case

Michael, I'm told that a motion to withdraw probably isn't necessary at this point in the 4th Circuit, since they consider the case closed and the only thing to file is the motion to recall/stay, which I just won't sign on to. If the case ends up back at the 4th Circuit for further proceedings, I may need to at that point.

As for the Supreme Court, I'm told they'll consider this a new case, so I simply won't make an appearance to start with.

Thanks.

— Alec

On Mon, Aug 1, 2016 at 4:54 PM, McKnight, Michael D. <[Michael.McKnight@ogletreedeakins.com](mailto:Michael.McKnight@ogletreedeakins.com)> wrote:  
Thanks, Alec. We'll proceed accordingly in the case. Are you planning to file a motion to withdraw in these cases? Just trying to think about how this may impact our filings going forward.

**Michael D. McKnight | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**  
4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3159 | Fax: 919-783-9412  
[michael.mcknight@ogletreedeakins.com](mailto:michael.mcknight@ogletreedeakins.com) | [www.ogletreedeakins.com](http://www.ogletreedeakins.com) | [Bio](#)

---

**From:** Peters, Alec [<mailto:apeters@ncdoj.gov>]  
**Sent:** Monday, August 01, 2016 2:58 PM  
**To:** McKnight, Michael D.; Farr, Thomas A.; Strach, Phillip J.; [butch@butchbowers.com](mailto:butch@butchbowers.com)  
**Subject:** RE: Notification to Plaintiff's Counsel of Intent to File Motion to Recall and Stay Mandate in Voter ID Case

Thanks Michael. FYI, I've been instructed that this office will not be participating in further proceedings in the federal Voter ID cases in the Fourth Circuit or in the Supreme Court. Given that, you should probably move forward as y'all think best without me weighing in.

— Alec

---

**From:** McKnight, Michael D. [<mailto:Michael.McKnight@ogletreedeakins.com>]  
**Sent:** Monday, August 01, 2016 1:11 PM  
**To:** Farr, Thomas A.; Strach, Phillip J.; Peters, Alec; [butch@butchbowers.com](mailto:butch@butchbowers.com)  
**Subject:** Notification to Plaintiff's Counsel of Intent to File Motion to Recall and Stay Mandate in Voter ID Case

Under Local Rule 27(a), we are required to represent in our motion that we informed opposing counsel of our motion and whether they consent to the granting of the motion or intend to file a response in opposition.

Below is what I propose for an email to opposing counsel. Please let me know if you have any edits or objections to the following:

Counsel:

Pursuant to Fourth Circuit Local Rule 27(a), please be advised that defendants-appellees in the above matters intend to file a motion to recall and stay the mandate issued by the Court on Friday pending the filing and disposition of a motion for writ of certiorari with the U.S. Supreme Court.

We assume your position is that all plaintiffs-appellants oppose this motion and that you intend to file a response in opposition to it. We would appreciate hearing back from you regarding your position on this motion by 4 p.m. today and the name(s) of the plaintiffs you represent.

Thank you,

**Michael D. McKnight | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**

4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3159 | Fax: 919-783-9412

[michael.mcknight@ogletreedeakins.com](mailto:michael.mcknight@ogletreedeakins.com) | [www.ogletreedeakins.com](http://www.ogletreedeakins.com) | [Bio](#)

*This transmission is intended only for the proper recipient(s). It is confidential and may contain attorney-client privileged information. If you are not the proper recipient, please notify the sender immediately and delete this message. Any unauthorized review, copying, or use of this message is prohibited.*

*This transmission is intended only for the proper recipient(s). It is confidential and may contain attorney-client privileged information. If you are not the proper recipient, please notify the sender immediately and delete this message. Any unauthorized review, copying, or use of this message is prohibited.*

## **APPENDIX B**

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

NORTH CAROLINA STATE )  
CONFERENCE OF THE NAACP, *et al.*, )

Plaintiffs, )

v. )

1:13CV658

PATRICK LLOYD MCCRORY, in his )  
official capacity as Governor of North )  
Carolina, *et al.*, )

Defendants. )

LEAGUE OF WOMEN VOTERS OF )  
NORTH CAROLINA, *et al.*, )

Plaintiffs, )

*and* )

LOUIS M. DUKE, *et al.*, )

Plaintiffs-Intervenors, )

v. )

1:13CV660

THE STATE OF NORTH CAROLINA, *et al.*, )

Defendants. )

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

1:13CV861

THE STATE OF NORTH CAROLINA, *et al.*, )

Defendants. )

**DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS**  
**PURSUANT TO FED. R. CIV. P. 12(c)**

Defendants, by and through their undersigned counsel, hereby respectfully move this Honorable Court to Dismiss all of Plaintiffs' Complaints, including the claims of the Intervening Plaintiffs, under Rule 12(c) of the Federal Rules of Civil Procedure for the reasons stated in Defendants' contemporaneously filed Memorandum in Support of Their Motion for Judgment on the Pleadings.<sup>1</sup>

WHEREFORE, Defendants respectfully request that the Court enter an order granting their Motion for Judgment on the Pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, dismissing each and every claim stated in the Complaints in the above-captioned actions with prejudice, and granting Defendants such further relief as may be just and appropriate.

---

<sup>1</sup> Plaintiffs previously filed a motion asking the Court to extend the page limit for memorandums in support of this motion and their motion for a preliminary injunction. The parties disagreed on the number of pages that should be permitted. At a hearing on May 9, 2014, undersigned counsel recall that the Court indicated that because of the importance of this case, it would not unreasonably limit the length of memoranda in support of these motions. Accordingly, Defendants have submitted a memorandum, the length of which is consistent with their earlier position in connection with Plaintiffs' motion.

This the 19th day of May, 2014.

ROY COOPER  
ATTORNEY GENERAL OF NORTH  
CAROLINA

By: /s/ Alexander McC. Peters

Alexander McC. Peters

Senior Deputy Attorney General

N.C. State Bar No. 13654

apeters@ncdoj.gov

N.C. Department of Justice

P.O. Box 629

Raleigh, NC 27602

Telephone: (919) 716-6900

Facsimile: (919) 716-6763

*Counsel for Defendants North Carolina and  
State Board of Election Defendants.*

**OGLETREE, DEAKINS, NASH**

**SMOAK & STEWART, P.C.**

/s/ Thomas A. Farr

Thomas A. Farr

N.C. State Bar No. 10871

Phillip J. Strach

N.C. State Bar No. 29456

thomas.farr@ogletreedeakins.com

phil.strach@ogletreedeakins.com

4208 Six Forks Road, Suite 1100

Raleigh, North Carolina 27609

Telephone: (919) 787-9700

Facsimile: (919) 783-9412

*Co-counsel for Defendants North Carolina  
and State Board of Election Defendants.*

BOWERS LAW OFFICE LLC

By: /s/ Karl S. Bowers, Jr.

Karl S. Bowers, Jr.\*

Federal Bar #7716

P.O. Box 50549

Columbia, SC 29250

Telephone: (803) 260-4124

E-mail: butch@butchbowers.com

\*appearing pursuant to Local Rule 83.1(d)

*Counsel for Governor Patrick L. McCrory*

By: /s/ Robert C. Stephens

Robert C. Stephens (State Bar #4150)

General Counsel

Office of the Governor of North Carolina

20301 Mail Service Center

Raleigh, North Carolina 27699

Telephone: (919) 814-2027

Facsimile: (919) 733-2120

E-mail: bob.stephens@nc.gov

*Counsel for Governor Patrick L. McCrory*

**CERTIFICATE OF SERVICE**

I, **Thomas A. Farr**, hereby certify that I have this day electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

***Counsel for United States of America:***

T. Christian Herren, Jr.  
John A. Russ IV  
Catherine Meza  
David G. Cooper  
Spencer R. Fisher  
Elizabeth M. Ryan  
Jenigh Garrett  
Attorneys, Voting Section  
Civil Rights Division  
U.S. Department of Justice  
Room 7254-NWB  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

Gill P. Beck  
Special Assistant United States Attorney  
Office of the United States Attorney  
United States Courthouse  
100 Otis Street  
Asheville, NC 28801

***Counsel for NCAAP Plaintiffs:***

Penda D. Hair  
Edward A. Hailes, Jr.  
Denise D. Liberman  
Donita Judge  
Caitlin Swain  
ADVANCEMENT PROJECT  
Suite 850  
1220 L Street, N.W.  
Washington, DC 20005

Irving Joyner  
P.O. Box 374  
Cary, NC 27512

Adam Stein  
TIN FULTON WALKER & OWEN  
312 West Franklin Street  
Chapel Hill, NC 27516

Thomas D. Yannucci  
Daniel T. Donovan  
Susan M. Davies  
K. Winn Allen  
Uzoma Nkwonta  
Kim Knudson  
Anne Dechter  
Bridget O'Connor  
Jodi Wu  
Kim Rancour  
KIRKLAND & ELLIS LLP  
655 Fifteenth St., N.W.  
Washington, DC 20005

***Counsel for League of Women Voter  
Plaintiffs:***

Anita S. Earls  
Allison J. Riggs  
Clare R. Barnett  
Southern Coalition for Social Justice  
1415 Hwy. 54, Suite 101  
Durham, NC 27707

Laughlin McDonald  
ACLU Voting Rights Project  
2700 International Tower  
229 Peachtree Street, NE  
Atlanta, GA 30303

Dale Ho  
Julie A. Ebenstein  
ACLU Voting Rights Project  
125 Broad Street  
New York, NY 10004

Christopher Brook  
ACLU of North Carolina Legal Foundation  
PO Box 28004  
Raleigh, NC 27611-8004

***Counsel for the Intervening Plaintiffs:***

John M. Davaney  
Marc E. Elias  
Kevin J. Hamilton  
Elisabeth Frost  
PERKINS COIE, LLP  
700 Thirteenth Street, N.W., Suite 600  
Washington, D.C. 20005-3960

Edwin M. Speas, Jr.  
John W. O'Hale  
Caroline P. Mackie  
POYNER SPRUILL, LLP  
301 Fayetteville St., Suite 1900  
Raleigh, NC 27601

This the 19th day of May, 2014.

**OGLETREE, DEAKINS, NASH  
SMOAK & STEWART, P.C.**

**/s/ Thomas A. Farr**  
\_\_\_\_\_  
**Thomas A. Farr**

17929666.1

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
APPEARANCE OF COUNSEL FORM

BAR ADMISSION & ECF REGISTRATION: If you have not been admitted to practice before the Fourth Circuit, you must complete and return an Application for Admission before filing this form. If you were admitted to practice under a different name than you are now using, you must include your former name when completing this form so that we can locate you on the attorney roll. Electronic filing by counsel is required in all Fourth Circuit cases. If you have not registered as a Fourth Circuit ECF Filer, please complete the required steps at Register for eFiling.

THE CLERK WILL ENTER MY APPEARANCE IN APPEAL NO. \_\_\_\_\_ as

[ ] Retained [ ] Court-appointed(CJA) [ ] Court-assigned(non-CJA) [ ] Federal Defender [ ] Pro Bono [ ] Government

COUNSEL FOR: \_\_\_\_\_

\_\_\_\_\_ as the

(party name)

appellant(s) appellee(s) petitioner(s) respondent(s) amicus curiae intervenor(s) movant(s)

\_\_\_\_\_

(signature)

\_\_\_\_\_

Name (printed or typed)

\_\_\_\_\_

Voice Phone

\_\_\_\_\_

Firm Name (if applicable)

\_\_\_\_\_

Fax Number

\_\_\_\_\_

\_\_\_\_\_

Address

\_\_\_\_\_

E-mail address (print or type)

CERTIFICATE OF SERVICE

I certify that on \_\_\_\_\_ the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

**RECORD NO. 16-1468(L)**

---

*In The*  
**United States Court of Appeals**  
*For The Fourth Circuit*

---

**NORTH CAROLINA STATE CONFERENCE OF THE NAACP; ROSANELL EATON;  
EMMANUEL BAPTIST CHURCH; BETHEL A. BAPTIST CHURCH; COVENANT  
PRESBYTERIAN CHURCH; BARBEE'S CHAPEL MISSIONARY BAPTIST CHURCH, INC.;  
ARMENTA EATON; CAROLYN COLEMAN; JOCELYN FERGUSON-KELLY; FAITH  
JACKSON; MARY PERRY; MARIA TERESA UNGER PALMER,**

*Plaintiffs – Appellants,*

**and**

**JOHN DOE 1; JANE DOE 1; JOHN DOE 2; JANE DOE 2; JOHN DOE 3; JANE DOE 3; NEW  
OXLEY HILL BAPTIST CHURCH; CLINTON TABERNACLE AME ZION CHURCH;  
BAHEEYAH MADANY,**

*Plaintiffs,*

**v.**

**PATRICK L. MCCRORY, in his official capacity as Governor of the state of North Carolina; KIM  
WESTBROOK STRACH, in her official capacity as a member of the State Board of Elections;  
JOSHUA B. HOWARD, in his official capacity as a member of the State Board of Elections;  
RHONDA K. AMOROSO, in her official capacity as a member of the State Board of Elections;  
JOSHUA D. MALCOLM, in his official capacity as a member of the State Board of Elections;  
PAUL J. FOLEY, in his official capacity as a member of the State Board of Elections; MAJA  
KRICKER, in her official capacity as a member of the State Board of Elections; JAMES BAKER,  
in his official capacity as a member of the North Carolina State Board of Elections,**

*Defendants – Appellees.*

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
AT GREENSBORO**

---

**BRIEF OF APPELLEES**

---

**RECORD NO. 16-1468(L)**

---

---

**No. 16-1469**

---

---

**LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA; NORTH CAROLINA A. PHILIP RANDOLPH INSTITUTE; UNIFOUR ONESTOP COLLABORATIVE; COMMON CAUSE NORTH CAROLINA; GOLDIE WELLS; KAY BRANDON; OCTAVIA RAINEY; SARA STOHLER; HUGH STOHLER,**

*Plaintiffs,*

**CHARLES M. GRAY; ASGOD BARRANTES; MARY-WREN RITCHIE,**

*Intervenors/Plaintiffs,*

**and**

**LOUIS M. DUKE; JOSUE E. BERDUO; NANCY J. LUND; BRIAN M. MILLER; BECKY HURLEY MOCK; LYNNE M. WALTER; EBONY N. WEST,**

*Intervenors/Plaintiffs – Appellants,*

**v.**

**STATE OF NORTH CAROLINA; JOSHUA B. HOWARD, in his official capacity as a member of the State Board of Elections; RHONDA K. AMOROSO, in her official capacity as a member of the State Board of Elections; JOSHUA D. MALCOLM, in his official capacity as a member of the State Board of Elections; PAUL J. FOLEY, in his official capacity as a member of the State Board of Elections; MAJA KRICKER, in her official capacity as a member of the State Board of Elections; PATRICK L. MCCRORY, in his official capacity as Governor of the state of North Carolina,**

*Defendants – Appellees.*

**RECORD NO. 16-1468(L)**

---

---

**No. 16-1474**

---

---

**LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA; NORTH CAROLINA A. PHILIP RANDOLPH INSTITUTE; UNIFOUR ONESTOP COLLABORATIVE; COMMON CAUSE NORTH CAROLINA; GOLDIE WELLS; KAY BRANDON; OCTAVIA RAINEY; SARA STOHLER; HUGH STOHLER.**

*Plaintiffs,*

**CHARLES M. GRAY; ASGOD BARRANTES; MARY-WREN RITCHIE,**

*Intervenors/Plaintiffs,*

**and**

**LOUIS M. DUKE; JOSUE E. BERDUO; NANCY J. LUND; BRIAN M. MILLER; BECKY HURLEY MOCK; LYNNE M. WALTER; EBONY N. WEST,**

*Intervenors/Plaintiffs – Appellants,*

**v.**

**STATE OF NORTH CAROLINA; JOSHUA B. HOWARD, in his official capacity as a member of the State Board of Elections; RHONDA K. AMOROSO, in her official capacity as a member of the State Board of Elections; JOSHUA D. MALCOLM, in his official capacity as a member of the State Board of Elections; PAUL J. FOLEY, in his official capacity as a member of the State Board of Elections; MAJA KRICKER, in her official capacity as a member of the State Board of Elections; PATRICK L. MCCRORY, in his official capacity as Governor of the state of North Carolina,**

*Defendants – Appellees.*

**RECORD NO. 16-1468(L)**

---

**No. 16-1529**

---

**UNITED STATES OF AMERICA,**

*Plaintiff – Appellant,*

**v.**

**STATE OF NORTH CAROLINA; NORTH CAROLINA STATE BOARD OF ELECTIONS;  
KIM WESTBROOK STRACH,**

*Defendants – Appellees.*

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
AT GREENSBORO**

---

**BRIEF OF APPELLEES**

---

**Alexander McC. Peters**  
NORTH CAROLINA  
DEPARTMENT OF JUSTICE  
Post Office Box 629  
Raleigh, North Carolina 27602  
(919) 716-6900

*Counsel for Appellees  
North Carolina and  
State Board of Election*

**Karl S. Bowers, Jr.**  
BOWERS LAW OFFICE LLC  
Post Office Box 50549  
Columbia, South Carolina 29250  
(803) 260-4124

*Counsel for Governor Patrick L. McCrory*

**L. Gray Geddie, Jr.**  
**Thomas A. Farr**  
**Phillip J. Strach**  
**Michael D. McKnight**  
**OGLETREE DEAKINS NASH**  
**SMOAK & STEWART, PC**  
**4208 Six Forks Road, Suite 1100**  
**Raleigh, North Carolina 27609**  
**(919) 787-9700**

*Co-Counsel for Appellees  
North Carolina and  
State Board of Election*

**Robert C. Stephens**  
OFFICE OF THE GOVERNOR  
OF NORTH CAROLINA  
20301 Mail Service Center  
Raleigh, North Carolina 27699  
(919) 814-2027

*Counsel for Governor Patrick L. McCrory*



4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Thomas A. Farr

Date: May 10, 2016

Counsel for: N.C. Board of Elections appellees

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on May 10, 2016 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Thomas A. Farr  
(signature)

5/10/2016  
(date)



4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Karl S. Bowers, Jr.

Date: May 10, 2016

Counsel for: Patrick L. McCrory

**CERTIFICATE OF SERVICE**

\*\*\*\*\*

I certify that on May 10, 2016 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Karl S. Bowers, Jr.  
(signature)

5/10/2016  
(date)

This the 9th day of June, 2016.

NORTH CAROLINA DEPARTMENT  
OF JUSTICE

/s/ Alexander McC. Peters

Alexander McC. Peters  
Senior Deputy Attorney General  
N.C. State Bar No. 13654  
apeters@ncdoj.gov

N.C. Department of Justice  
P.O. Box 629  
Raleigh, NC 27602  
Telephone: (919) 716-6900  
Facsimile: (919) 716-6763  
*Counsel for Appellees North Carolina and  
State Board of Election Appellees.*

**OGLETREE, DEAKINS, NASH  
SMOAK & STEWART, P.C.**

/s/ Thomas A. Farr

L. Gray Geddie, Jr.  
S.C. State Bar No. 2397  
Thomas A. Farr  
N.C. State Bar No. 10871  
Phillip J. Strach  
N.C. State Bar No. 29456  
Michael D. McKnight  
N.C. State Bar No. 36932  
thomas.farr@ogletreedeakins.com  
phil.strach@ogletreedeakins.com  
michael.mcknight@ogletreedeakins.com  
4208 Six Forks Road, Suite 1100  
Raleigh, North Carolina 27609  
Telephone: (919) 787-9700  
Facsimile: (919) 783-9412  
*Co-counsel for Appellees North Carolina  
and State Board of Election Appellees.*

## BOWERS LAW OFFICE LLC

By: /s/ Karl S. Bowers, Jr.

Karl S. Bowers, Jr.\*

Federal Bar #7716

P.O. Box 50549

Columbia, SC 29250

Telephone: (803) 260-4124

E-mail: butch@butchbowers.com

\*appearing pursuant to Local Rule 83.1(d)

*Counsel for Governor Patrick L. McCrory*By: /s/ Robert C. Stephens

Robert C. Stephens (State Bar #4150)

General Counsel

Office of the Governor of North Carolina

20301 Mail Service Center

Raleigh, North Carolina 27699

Telephone: (919) 814-2027

Facsimile: (919) 733-2120

E-mail: bob.stephens@nc.gov

*Counsel for Governor Patrick L. McCrory*

**CERTIFICATE OF COMPLIANCE**

1. This brief complies with the type-volume limitation of Fed. R. App. P. 28.1(e)(2) or 32(a)(7)(B) because:

[ X ] this brief contains [13,836] words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), *or*

[ ] this brief uses a monospaced typeface and contains [*state the number of*] lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

[ X ] this brief has been prepared in a proportionally spaced typeface using [*Microsoft Word 2007*] in [*14pt Times New Roman*]; *or*

[ ] this brief has been prepared in a monospaced typeface using [*state name and version of word processing program*] with [*state number of characters per inch and name of type style*].

Dated: June 9, 2016 \_\_\_\_\_

/s/ Thomas A. Farr

Counsel for Appellees

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on this 9th day of June, 2016, I caused this Brief of Appellees to be filed electronically with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

I further certify that on this 9th day of June, 2016, I caused the required copies of the Brief of Appellees to be hand filed with the Clerk of the Court.

/s/ Thomas A. Farr

*Counsel for Appellees*

NO. \_\_\_\_\_

---

---

In The  
Supreme Court of the United States

STATE OF NORTH CAROLINA, *ET AL.*,

*Applicants,*

v.

LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, *ET AL.*;

*Respondents,*

and

LOUIS M. DUKE, *ET AL.*,

*Intervenors/Respondents.*

ON APPLICATION FOR STAY FROM  
THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

EMERGENCY APPLICATION FOR RECALL AND STAY OF MANDATE

Roy Cooper  
*Attorney General*  
Alexander McC. Peters  
Katherine A. Murphy  
N.C. DEPARTMENT OF JUSTICE  
Post Office Box 629  
Raleigh, NC 27602  
apeters@ncdoj.gov  
kmurphy@ncdoj.gov  
(919) 716-6900

\*Thomas A. Farr  
*Counsel of Record*  
Phillip J. Strach  
Michael D. McKnight  
OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.  
4208 Six Forks Rd, Suite 1100  
Raleigh, NC 27609  
(919) 787-9700  
thomas.farr@ogletreedeakins.com  
phil.strach@ogletreedeakins.com  
michael.mcknight@ogletreedeakins.com

Karl S. Bowers, Jr.  
BOWERS LAW OFFICE LLC  
Post Office Box 50549  
Columbia, SC 29250  
(803) 260-4124  
butch@butchbowers.com

Robert C. Stephens  
OFFICE OF THE GOVERNOR OF NORTH CAROLINA  
20301 Mail Service Center  
Raleigh, North Carolina 27699  
(919) 814-2027  
bob.stephens@nc.gov

*Counsel for Applicants*

## CONCLUSION

The Court should recall the mandate and stay execution of the judgment below pending the timely filing and disposition of a petition for certiorari. Additionally, given the directive to the district court to act “as swiftly as possible,” the need for certainty among North Carolina’s elections officials and the representations of Plaintiffs that they intend to file a response to this Emergency Application, the Court should enter an interim stay pending receipt of a response.

Respectfully Submitted,



**\*Thomas A. Farr**

*Counsel of Record*

**Phillip J. Strach**

**Michael D. McKnight**

**OGLETREE, DEAKINS, NASH**

**SMOAK & STEWART, P.C.**

**4208 Six Forks Road, Suite 1100**

**Raleigh, North Carolina 27609**

**(919) 787-9700**

**thomas.farr@ogletreedeakins.com**

**phil.strach@ogletreedeakins.com**

**michael.mcknight@ogletreedeakins.com**

***Counsel for Defendants North Carolina and State Board of Election Defendants.***

Roy Cooper

*Attorney General*

Alexander McC. Peters

Katherine A. Murphy

N. C. DEPARTMENT OF JUSTICE

P.O. Box 629

Raleigh, NC 27602

(919) 716-6900

apeters@ncdoj.gov

kmurphy@ncdoj.gov

*Counsel for Defendants North Carolina and State Board of Election Defendants.*

## **APPENDIX C**

# SCHAERR DUNCAN LLP

Andrew Tripp  
General Counsel  
Office of President Pro Tempore Phil Berger  
North Carolina Senate  
16 West Jones Street, Room 2007  
Raleigh, NC 27601  
(919) 559-6987  
andrew.tripp@ncleg.net

Bart Goodson  
General Counsel  
Office of Speaker Tim Moore  
North Carolina House of Representatives  
16 West Jones Street, Room 2304  
Raleigh, NC 27601  
(919) 733-3451  
bart.goodson@ncleg.net

October 21, 2016

Dear Andrew and Bart,

1. This letter ("agreement") confirms that **Tim Moore**, Speaker of the North Carolina House and **Phil Berger**, President Pro Tempore of the Senate (collectively, the "Clients"), wish to retain the firm of **Schaerr|Duncan LLP**, to represent them in the United States Supreme Court by defending the validity of North Carolina's omnibus election reform law, North Carolina Session Laws 2013-381 and 2015-103 ("North Carolina election reform law").

2. Scope of Representation: Schaerr|Duncan LLP will represent Clients, and their counsel, designees (including but not limited other members), or agents acting in their official capacities, in litigation in the U.S. Supreme Court by defending the validity of North Carolina election reform law under the Voting Rights Act and the federal Constitution. **Kyle Duncan shall appear and act as lead counsel. He shall act on behalf of the North Carolina Defendants in the litigation with the exception of Governor McCrory.** We understand that Karl S. "Butch" Bowers may continue to appear on behalf of the Governor by separate agreement. The representation includes preparing and filing a petition for writ of certiorari seeking review of the U.S. Fourth Circuit's decision in *North Carolina State Conference of the NAACP v. McCrory*, Nos. 16-1468 et al. (4th Cir. July 29, 2016), as well as a reply in support of the petition. If review is granted, the representation includes preparing and filing merits briefing, as well as preparing and presenting argument.

3. Compensation: For this representation, Schaerr|Duncan LLP has agreed to a flat fee in lieu of its usual compensation rates of [REDACTED] and [REDACTED]. For purposes of this representation, the Clients agree to direct the Legislative Services Office to compensate Schaerr|Duncan LLP on the following terms:

[REDACTED]

KYLE DUNCAN

KDuncan@Schaerr-Duncan.com  
(202) 787-1060 (office)  
(202) 714-9492 (mobile)

SCHAERR | DUNCAN LLP  
1717 K Street NW, Suite 900  
Washington, DC 20003

www.Schaerr-Duncan.com

# SCHAERR DUNCAN LLP

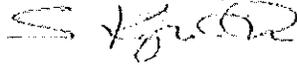
4. Expenses: The Clients also agree to direct the Legislative Services Office to pay any reasonable travel expenses, court costs, or filing fees incurred by Schaerr|Duncan LLP in the course of the litigation, in accordance with any applicable State guidelines.

5. Invoicing: Schaerr|Duncan LLP will invoice the Clients for all legal work, including expenses incurred, on the following schedule. The Clients agree to direct the Legislative Services Office to pay those invoices within 30 days of their date. Invoices will conform to any applicable State guidelines.

6. Work outside scope of this agreement: In the event that additional work is required outside the scope of this agreement, the parties will enter into a separate agreement with respect to compensation for that additional work.

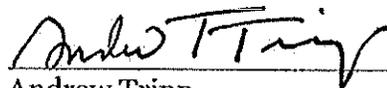
7. Termination: The Clients may terminate Schaerr|Duncan LLP's representation at any time. Schaerr|Duncan LLP may terminate its representation of the Clients by giving the Clients reasonable notice in accordance with applicable rules of professional responsibility.

FOR SCHAERR|DUNCAN LLP:

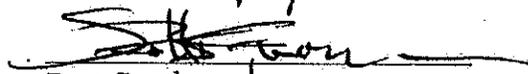


S. Kyle Duncan  
Washington, D.C.  
Dated: October 21, 2016

FOR CLIENTS:



Andrew Tripp  
Raleigh, North Carolina  
Dated: 10/21/16



Bart Goodson  
Raleigh, North Carolina  
Dated: 10/21/16

## **APPENDIX D**



## State of North Carolina

ROY COOPER  
GOVERNOR

JOSH STEIN  
ATTORNEY GENERAL

February 21, 2017

Mr. Kyle Duncan, Esq.  
Schaerr Duncan, LLP  
1717 K Street NW, Ste. 900  
Washington, D.C. 20006

Mr. Tom Farr, Esq  
Ogletree, Deakins, Nash,  
Smoak & Stewart, P.C.  
4208 Six Forks Road, Ste. 1100  
Raleigh, NC 27609

Re: *NC NAACP, et al v. McCrory, et al* (No. 16-468) (4th  
Cir., 2016)

Dear Messrs. Duncan and Farr,

As you all are aware, the above-referenced case is currently before the United States Supreme Court on a petition for a Writ of Certiorari. The Petition was filed on 27 December 2016 on behalf of the State of North Carolina, the Office of the Governor, the North Carolina State Board of Elections ("NCSBE"), the NCSBE executive director, and individuals NCSBE members in their official capacity.

Under North Carolina law, representation of the State and its institutions is generally the responsibility of the Attorney General, and decisions regarding employment of outside counsel are the responsibility of the Governor, in consultation with the Attorney General.

After reviewing the available files regarding this case, it appears that the Office of the Governor has been represented to date by counsel other than your respective firms, that your firms were not authorized by the Governor to represent the State

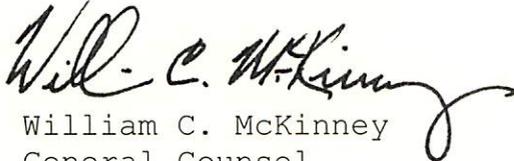
Messrs. Duncan and Farr  
February 21, 2017  
Page 2

or the Governor's Office, and that there has been no finding of impracticability by the Attorney General pursuant to N.C.G.S. § 147-17.

Accordingly, please be advised that the Governor has directed that, effective immediately, the Petitioners in this matter shall be represented exclusively by the Department of Justice, and your respective firms do not represent the State of North Carolina or the Office of the Governor. Further, we are unaware of the findings required by N.C.G.S. § 147-17 having been made in regards to securing the representation of the NCSBE, its executive director and the individual members of the NCBSE sued in their official capacity.

We thank you for your service to the State, and appreciate your working with counsel at the Department of Justice to ensure a smooth and expeditious transition of the representation.

Sincerely,



William C. McKinney  
General Counsel  
Office of the Governor



Grayson Kelley  
Chief Deputy Attorney General  
North Carolina Department of  
Justice

Cc: Kim Westbrook Strach  
A. Grant Whitney, Jr.  
Joshua Malcolm  
James Baker  
Maja Kricker  
Rhonda Amoroso

## **APPENDIX E**

## Governor Cooper, AG Stein Take Steps to Withdraw from Voting Restrictions Case

Raleigh

Feb 21, 2017

Today, Governor Roy Cooper and Attorney General Josh Stein have taken steps to withdraw the state's petition for a Writ of Certiorari to the U.S. Supreme Court of *State of North Carolina V. North Carolina State Conference of the NAACP*, the voting restrictions law overturned by the Fourth Circuit Court of Appeals last year.

Last year, judges on the Fourth Circuit overturned North Carolina's 2013 voting restrictions law after finding that it sought to "target African Americans with almost surgical precision" in order to limit access to the ballot box. The previous administration joined in petitioning the U.S. Supreme Court to hear the case on December 27<sup>th</sup>.

This morning, the Governor's General Counsel and Chief Deputy Attorney General jointly sent a letter discharging outside counsel in the case on behalf of the State. Also today, the Governor's Office and the NC Department of Justice formally withdrew the State and Governor's request for the U.S. Supreme Court to review the Fourth Circuit's decision.

After the Governor's Office and N.C. Department of Justice withdraw, the State Board of Elections, its individual members, and its Executive Director will remain in the case for the time being.

“We need to make it easier for people to exercise their right to vote, not harder, and I will not continue to waste time and money appealing this unconstitutional law,” Governor Cooper said. “It’s time for North Carolina to stop fighting for this unfair, unconstitutional law and work instead to improve equal access for voters.”



# **APPENDIX F**

PARTIAL TRANSCRIPTION OF THE STATE BOARD OF ELECTIONS MEETING HELD  
TELEPHONICALLY ON FEBRUARY 22, 2017.

[TRANSCRIPTION BEGINNING AT APPROXIMATELY 4:50PM]

**JOSHUA MALCOLM:** Mr. Chairman I move that this Board as it relates to the writ of cert that's um being is up for consideration in the United States Supreme Court in the matter of the *State of North Carolina v. the NAACP* [sic]. Whereas the State Board of Elections is listed as a party in that matter, that this Board take action to direct Josh Lawson and Katelyn Love to take any and all actions necessary to instruct the Attorney General's Office to withdraw the North Carolina State Board of Elections as a whole, in our individual capacities as official individual capacities as Board members, and the Executive Director from that pending writ before the United States Supreme Court

**CHAIRMAN GRANT WHITNEY:** Thank you. Do I have a second?

**DR. MAJA KRICKER:** I will second.

**CHAIRMAN GRANT WHITNEY:** Okay, um, any discussion? All in favor of the motion say aye.

**JOSHUA MALCOLM:** Aye.

**DR. MAJA KRICKER:** Aye.

**CHAIRMAN GRANT WHITNEY:** Opposed, no.

**SECRETARY RHONDA AMOROSO:** No.

**CHAIRMAN GRANT WHITNEY:** No.

**JUDGE JAMES BAKER:** No.

**CHAIRMAN GRANT WHITNEY:** Motion fails. I'll let, um, anybody like to make a motion [inaudible].

**DR. MAJA KRICKER:** I would like to make a motion. This is Dr. Maja Kricker.

**CHAIRMAN GRANT WHITNEY:** Thank you, Dr. Kricker.

**DR. MAJA KRICKER:** And I would like to make a motion that we, um, send a letter to the Attorney General's Office stating that we are not represented by Ogletree Deacons. And that we have not been represented by Ogletree Deacons, and that um, we have not taken a position at any time on this legislation.

**CHAIRMAN GRANT WHITNEY:** Do I have a second?

JUDGE JAMES BAKER: Second.

CHAIRMAN GRANT WHITNEY: Thank you. Um. Any discussion?

JOSHUA MALCOLM: Does that letter include copying Ogletree Deacons [inaudible]?

DR. MAJA KRICKER: Yes, it should. I consider that a friendly amendment to the motion.

CHAIRMAN GRANT WHITNEY: Judge Baker will you amend your second?

JUDGE JAMES BAKER: Yes.

CHAIRMAN GRANT WHITNEY: Okay, so we have a modified motion that's been seconded. Any discussion? All in favor say aye.

CHAIRMAN GRANT WHITNEY: Aye.

JUDGE JAMES BAKER: Aye.

DR. MAJA KRICKER: Aye.

SECRETARY RHONDA AMOROSO: Aye.

JOSHUA MALCOLM: Aye.

CHAIRMAN GRANT WHITNEY: Any no's? Motion carries unanimously.

[TRANSCRIPTION ENDING AT APPROXIMATELY 5:12PM]

PREPARED BY JOSHUA LAWSON, GENERAL COUNSEL, STATE BOARD OF ELECTIONS  
ON FEBRUARY 24, 2017



# **APPENDIX G**

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

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

---

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

---

16 UNITED STATES OF AMERICA, ) CASE NO. 1:13CV861  
17 Plaintiff, )  
18 V. )  
19 STATE OF NORTH CAROLINA, et al., ) Winston-Salem, North Carolina  
20 Defendants. ) July 21, 2015  
9:09 a.m.

---

21  
22 TRANSCRIPT OF THE **TRIAL/DAY SEVEN**  
23 BEFORE THE HONORABLE THOMAS D. SCHROEDER  
24 UNITED STATES DISTRICT JUDGE

25 Proceedings recorded by mechanical stenotype reporter.  
Transcript produced by computer-aided transcription.

1 APPEARANCES:

2 For the Plaintiff:  
3 (NAACP)

PENDA D. HAIR, ESQ.  
DONITA JUDGE, ESQ.  
DENISE D. LIEBERMAN, ESQ.  
ADVANCEMENT PROJECT  
1220 L Street, NW, Suite 850  
Washington, DC 20005

6 DANIEL T. DONOVAN, ESQ.  
7 BRIDGET K, O'CONNOR, ESQ.  
8 MICHAEL A. GLICK, ESQ.  
9 CHRISTOPHER J. MANER, ESQ.  
10 JODI WU, ESQ.  
11 KIRKLAND & ELLIS, LLP.  
12 655 15th Street, NW, Suite 1200  
13 Washington, DC 20005

14 IRVING JOYNER, ESQ.  
15 N. C. CENTRAL UNIVERSITY SCHOOL OF LAW  
16 P. O. Box 374  
17 Cary, North Carolina 27512

18 (LWV)  
19 ALLISON JEAN RIGGS, ESQ.  
20 ANITA S. EARLS, ESQ.  
21 GEORGE E. EPPSTEINER, ESQ.  
22 SOUTHERN COALITION FOR SOCIAL JUSTICE  
23 1415 W. Highway 54, Suite 101  
24 Durham, North Carolina 27707

JULIE A. EBENSTEIN, ESQ.  
DALE E. HO, ESQ.  
AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
125 Broad Street, 18th Floor  
New York, NY 10004-2400

CHRISTOPHER A. BROOK, ESQ.  
AMERICAN CIVIL LIBERTIES UNION OF NC  
P. O. Box 28004  
Raleigh, North Carolina 27611-8004

23  
24  
25

1 APPEARANCES (Continued):

2 (USA)

CATHERINE MEZA, ESQ.  
JOHN A. RUSS, IV, ESQ.  
3 DAVID G. COOPER, ESQ.  
AVNER M. SHAPIRO, ESQ.  
4 SPENCER R. FISHER, ESQ.  
ELIZABETH M. RYAN, ESQ.  
5 JENIGH J. GARRETT, ESQ.  
U. S. DEPARTMENT OF JUSTICE  
6 Civil Rights Division  
950 Pennsylvania Avenue, NW  
7 Washington, DC 20530

8 GILL P. BECK, ESQ.  
U. S. ATTORNEY'S OFFICE  
9 100 Otis Street  
Asheville, North Carolina 28801

10

11 (Intervenor  
Plaintiff):

JOSHUA L. KAUL, ESQ.  
12 PERKINS COIE, LLP  
1 E. Main Street, Suite 201  
13 Madison, Wisconsin 53703

14 BRUCE V. SPIVA, ESQ.  
AMANDA R. CALLAIS, ESQ.  
15 PERKINS COIE, LLP.  
700 13th Street, NW, Suite 600  
16 Washington, DC 20005

17

18 JOHN W. O'HALE, ESQ.  
POYNER SPRUILL, LLP  
P. O Box 1801  
19 Raleigh, North Carolina 27602-1801

20

21 For the Defendants:

22 (State of NC)

ALEXANDER M. PETERS, ESQ.  
KATHERINE A. MURPHY, ESQ.  
23 N.C. DEPARTMENT OF JUSTICE  
P.O. Box 629  
24 Raleigh, North Carolina 27602

25

1 APPEARANCES (Continued):

2 (State of NC) THOMAS A. FARR, ESQ.  
 3 PHILLIP J. STRACH, ESQ.  
 4 MICHAEL D. MCKNIGHT, ESQ.  
 5 OGLETREE DEAKINS NASH SMOAK & STEWART  
 6 P. O. Box 31608  
 7 Raleigh, North Carolina 27622

8 (Governor) BUTCH BOWERS, ESQ.  
 9 BOWERS LAW OFFICE, LLC  
 10 1419 Pendleton Street  
 11 Columbia, South Carolina 29201

12 Court Reporter: BRIANA NESBIT, RPR  
 13 Official Court Reporter  
 14 P.O. Box 20991  
 15 Winston-Salem, North Carolina 27120

16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## INDEX

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**PLAINTIFFS' WITNESSES:****PAGE:**

THEODORE ALLEN, PH.D.

Direct Examination by Mr. Ho	28
Cross-Examination by Mr. Bowers	50
Cross-Examination by Mr. Farr	74
Redirect Examination by Mr. Ho	93
Recross-Examination by Mr. Bowers	105
Recross-Examination by Mr. Farr	106
Redirect Examination by Mr. Ho	110
Recross-Examination by Mr. Farr	111

EBONY N. WEST

Direct Examination by Ms. Callais	113
Cross-Examination by Mr. McKnight	130
Redirect Examination by Ms. Callais	135

ALLAN LICHTMAN, PH.D. (Continued)

Cross-Examination by Mr. Farr	137
-------------------------------	-----

**SENATOR JOSHUA H. STEIN**

Direct Examination by Mr. Fisher	164
Cross-Examination by Mr. Strach	192
Redirect Examination by Mr. Fisher	212



1 Carolina Senate?

2 A I was elected in 2008 and was sworn in in January of 2009.

3 Q And what district do you represent?

4 A I represent Senate District 16, which is about a third of  
5 Raleigh, half of Cary, and all of Mooresville and western Wake  
6 County.

7 Q When were you last re-elected?

8 A I was elected in 2014.

9 Q Do you recall the percentage of the vote that you gained  
10 in that election?

11 A Just over two-thirds of the vote.

12 Q Do you serve on any committees in the Senate?

13 A I serve on a number of committees. I serve on the  
14 Appropriation Subcommittee on General Government and  
15 Information Technology. I serve on the Commerce Committee, the  
16 Education Committee, the Finance Committee, the Judiciary I  
17 Committee, the Committee on Rules and Operations of the Senate,  
18 and I serve on a couple of other oversight committees.

19 Q And, Senator Stein, can you explain your educational  
20 background?

21 A I graduated from Chapel Hill High School in 1984. I  
22 attended and graduated from Dartmouth College in 1988. Then I  
23 have a joint law and public policy degree from Harvard granted  
24 in 1995.

25 Q And, Senator Stein, what is your professional background?

1 A I am a lawyer.

2 Q You submitted a declaration in this case prior to the  
3 Court's PI hearing last summer; is that correct?

4 A I did.

5 **MR. FISHER:** I would like to hand up PX18A, and this  
6 has been previously admitted. I am not handing it up for  
7 admission of evidence, but only for the Court's reliance during  
8 his testimony.

9 **BY MR. FISHER**

10 Q Is this a copy of the declaration that you submitted in  
11 this matter, Senator Stein?

12 A It is.

13 Q And I don't want to cover all the same ground that's in  
14 the declaration or all the same information the Court has  
15 already heard from other legislators, but I do have a few  
16 questions for you about the election law changes passed in 2013  
17 by the General Assembly. Do you recall H.B. 589?

18 A I recall it very well.

19 Q Where did H.B. 589 originate?

20 A It originated in the House. That's why it's H.B. instead  
21 of S.B.

22 Q What do you remember as H.B. 589 as it existed in the  
23 House?

24 A In the House, it was exclusively a voter identification  
25 requirement bill, about 16 -- 15, 16 pages.

1 Q And did the bill pass the House?

2 A It did.

3 Q And what happened after the bill passed the House?

4 A Well, in the House, it was subject to a number of  
5 committee hearings and extensive debate. Then it came to the  
6 Senate, where it sat for a few months.

7 Q What is your understanding of why it sat for a few months  
8 in the Senate?

9 A It is my understanding that it sat because the Senate was  
10 waiting to find out what the United States Supreme Court  
11 determined --

12 **MR. BOWERS:** Objection, Your Honor.

13 **THE COURT:** Hold on just a minute, please. I am  
14 going to sustain without further foundation.

15 **BY MR. FISHER**

16 Q And you are aware that the bill sat in the Senate; is that  
17 correct?

18 A I am aware that it sat.

19 Q And do you have any understanding of why the bill sat in  
20 the Senate?

21 A The Senate Rules Committee chairman said that --

22 **MR. STRACH:** Your Honor, hearsay. And we don't  
23 believe that Senator Stein can testify or waive another  
24 legislator's legislative immunity by testifying about  
25 statements he or she may have made in Court.

1           **MR. FISHER:** Your Honor, we are talking about Senator  
2 Stein's. We've laid the foundation. He was there. We are  
3 talking about his personal experience in the Senate, and he's  
4 explaining what happened in the Senate while he was there while  
5 this bill was being considered or while -- in this case, while  
6 it was sitting waiting to be considered.

7           **THE COURT:** It is still hearsay. Sustained.

8 **BY MR. FISHER**

9 Q       You mentioned the *Shelby County* case; is that correct?

10 A       Yes, sir.

11 Q       And what is your understanding of the significance of  
12 *Shelby* with regard to H.B. 589?

13 A       Well, the Supreme Court in *Shelby* determined that the  
14 criteria by which covered jurisdictions were identified under  
15 Section 4 were invalid, and, therefore, North Carolina, which  
16 previously for 40 counties was subject to the Section 5  
17 preclearance requirements, were no longer subject to Section 5;  
18 and, therefore, any election law changes would become law as  
19 opposed to being submitted to the Department of Justice for  
20 review.

21 Q       I want to turn to the procedure for consideration of  
22 H.B. 589 in the Senate. You were there for this; correct?

23 A       I was.

24 Q       Okay. And what committee was assigned to review H.B. 589  
25 in the Senate?

1 A The Senate Rules and Operations Committee.

2 Q You mentioned earlier that you serve on this committee; is  
3 that correct?

4 A I do.

5 Q Does the Rules Committee have technical expertise about  
6 election law matters?

7 A Very abnormal for the Rules Committee to take an election  
8 law bill. In the prior session, '11 and '12, the big bill that  
9 was election law related was the voter identification law that  
10 had been considered -- bill that had been considered that  
11 session. It went through the Judiciary I Committee. In 2009,  
12 there was a major elections bill that dealt with the  
13 preregistration of high school students, among other issues.  
14 That went through Judiciary Committee. The typical place for a  
15 bill of this sort would be Judiciary I, not Rules and  
16 Operations.

17 Q And do you recall a previous attempt by the General  
18 Assembly to pass a photo voter ID bill in 2011?

19 A Yes, the one that I just referenced.

20 Q And do you recall to which committee that was assigned?

21 A The Judiciary I Committee in the Senate.

22 Q As a member of the Rules Committee, when was the first  
23 time that you were able to review the Senate's version of  
24 H.B. 589?

25 A It was on Monday night, I believe July 22nd, sometime

1 after 9:00 p.m., between 9:00 and 10:00 p.m.

2 Q Was this typical procedure in the Rules Committee?

3 A The typical procedure, both in Rules Committee and all  
4 other committees, is that when -- a bill is noticed the day  
5 before for a committee consideration. If there are changes to  
6 that bill, there is a process in the North Carolina legislature  
7 called a Proposed Committee Substitute, and that is where  
8 whatever changes are made gets sent out a day before the  
9 committee considers it so there is an opportunity to review.

10 So the fact that we got the PCSs there then, the day  
11 before, is per the rules. However, such a dramatic rewrite of  
12 a bill where a bill turns from a single issue, 16-page bill to  
13 a multi-faceted 57-page bill is quite irregular.

14 Q You mentioned a dramatic rewrite. What did the bill that  
15 you were presented with look like?

16 A It looked very much akin to the final law. There were  
17 some changes along the way, but essentially it shrunk early  
18 voting by a week and eliminated same-day registration. It  
19 eliminated preregistration of high students. It eliminated  
20 straight-ticket voting. It made a number of changes to  
21 campaign finance laws. So it was essentially -- it was the  
22 most dramatic rewrite of North Carolina election laws, I think,  
23 in a generation.

24 Q And for a bill of this size, the bill that you just  
25 described, is this typical procedure in the Rules Committee?

1 A No, not in Rules Committees nor any other committee.

2 Q What was the result of this procedure for you?

3 A Great frustration and alarm. I regularly check my email  
4 late at night just to see what bills have been changed. We  
5 don't know, when a bill is noticed in committee, whether it is  
6 going to come out the way that it came to that committee,  
7 whether it came from the House or from another Senate  
8 committee, or whether there is going to be a Proposed Committee  
9 Substitute. So as a rule, I try to, the night before, check my  
10 computer before I go to bed to make sure that nothing has  
11 happened.

12 When I opened up the email and realized that this was now  
13 a 50-page bill that dramatically rewrites and restricted  
14 people's opportunity to vote, I was alarmed. I studied it as  
15 best I could. I actually did a post on Facebook to let the  
16 world know because, otherwise, there is no way that any citizen  
17 could have possibly have known what was in store in committee  
18 the next day.

19 Q I think you just mentioned 9:00 p.m., is that correct,  
20 when you saw the bill?

21 A After 9:00, yes.

22 Q Okay. Your other fellow senators on the Rules Committee,  
23 are you aware that they are up on their computers at 9:00 p.m.  
24 typically?

25 A My fellow senators are older and less computer facile than

1 I am as a mean, as a general rule.

2 Q And that's a tactful way of putting it. I understand why  
3 you are a senator.

4 Now, what could you have done differently if you had had  
5 more time?

6 A If I had more time, I could have -- one, more people, more  
7 citizens could have known, and so there could have been greater  
8 opportunity for public engagement, which when doing a law of  
9 this import, size and scope, it is imperative that the people  
10 have an opportunity to be heard since it was going to  
11 dramatically affect their most fundamental political right,  
12 their right to vote.

13 But I personally would have taken the time to do a better  
14 job engaging the State Board of Elections, the Wake County  
15 Board of Elections to get more data, to get more input. For  
16 instance, the bill eliminated both straight-ticket voting and  
17 shrunk early voting, the effect of which was to both compress  
18 the voting period and to extend the amount of time each person  
19 had to spend in the voting booth in order to cast their ballot.  
20 And I wanted to know what analysis had been done by those  
21 entities on voter -- electoral administration and was not --  
22 unfortunately, didn't have the opportunity to engage those  
23 parties or, for that matter, really to engage not only citizens  
24 but advocacy groups that had developed expertise in this area  
25 over the course of time.

1 Q And in terms of the time that you needed to review the  
2 bill, does it matter that H.B. 589 was, for the most part,  
3 changing existing law or eliminating existing law versus  
4 creating new provisions?

5 A I mean, it matters only in that if a provision were being  
6 eliminated, we're eliminating same-day registration, in the  
7 bill that may only take up a paragraph of language because it  
8 doesn't take much to get rid of a part of the law, but in terms  
9 of what its impact is throughout the general statutes, it can  
10 have far reaching and, frankly, complex effects; and at first  
11 blush, I didn't have that ability to understand it, and I don't  
12 believe the legislature had adequate time to consider all those  
13 ramifications.

14 Q And you mentioned the proceedings in the House prior to  
15 the bill coming over to the Senate. Did what happened in the  
16 North Carolina House prior to the bill moving over to the  
17 Senate -- did that help inform your judgment about the Senate  
18 version of the bill that you saw?

19 A It did. I think it brought into stark contrast the poor  
20 process that occurred in the Senate. The House had a number of  
21 committee hearings and a full deliberation in which, frankly,  
22 the majority and minority party were able to work together to  
23 amend the bill in a number of ways. And, frankly, although I  
24 thought the bill as it came out of the House still went too far  
25 in terms of having the impact of affecting the ability of

1 African-Americans and other minorities, young people and  
2 seniors from voting, that it at least was not the most  
3 stringent form of voter identification that any state had  
4 considered, unlike the Senate version that ultimately became  
5 law.

6 Q Prior to H.B. 589, the Senate version that you saw, do you  
7 recall any debate in the North Carolina Senate concerning  
8 restricting the early voting period?

9 A No.

10 Q Do you recall any debate in the North Carolina Senate  
11 concerning eliminating same-day registration?

12 A No.

13 Q Do you recall any debate in the North Carolina Senate  
14 concerning eliminating out-of-precinct provisional ballot?

15 A No.

16 Q Let's talk about your participation in the Rules Committee  
17 hearing. So what happened in the Rules Committee hearing when  
18 the bill was presented?

19 A What happened was that the bill sponsor, who was  
20 Senator Rucho, or the bill manager, presented generally what he  
21 understood the bill to do. And then as is typical in a long  
22 technical detailed bill like this with many, many parts, staff  
23 then presented what the import was briefly, what the import was  
24 of each of those parts; and then the committee was opened up to  
25 questions by members.

1 Q And did you bring anything with you that day?

2 A I did.

3 Q Okay. What did you bring?

4 A I had had some data on the -- on early voting and on  
5 same-day registration, and I brought that with me.

6 Q And is that reflected on Exhibit A of Plaintiffs'  
7 Exhibit 18, that declaration that you have in front of you?

8 A It is.

9 Q Is Exhibit A this chart that you brought with you to the  
10 Rules Committee hearing?

11 A It is.

12 Q Where did you get that chart?

13 A The chart is derived from data by -- from -- of data by  
14 the State Board of Elections, and so it is an Excel  
15 spreadsheet, and it is branded the Southern Coalition for  
16 Southern Justice. And what I don't remember, frankly, was  
17 whether I got it from the Southern Coalition or I got it from  
18 Democracy North Carolina, but those were two groups that I had  
19 tried to reach out to the morning of the Rules Committee  
20 meeting.

21 Q Okay. So you requested this the morning of the Rules  
22 Committee hearing; is that right?

23 A Yes, the best of my recollection.

24 Q Do you often get information from the Southern Coalition  
25 or from Democracy now?

1 A I do. More commonly from Democracy North Carolina. They  
2 are just there more, and they deal with campaign finance issues  
3 as well as voting rights issues, but certainly I meet with both  
4 groups.

5 Q And have you found information from both of those groups  
6 to be reliable?

7 A Very reliable, because it is all derived from public data  
8 from the State Board of Elections or from the Department of  
9 Motor Vehicles.

10 Q And can you just talk generally about what Exhibit A  
11 shows?

12 A It shows a number of things. Most importantly, it shows  
13 the extent of early voting and the occurrence of early voting  
14 over the 17-day period and the demographic breakdown of voting  
15 by day over that time. It also shows the utilization of  
16 same-day registration over the period during which same-day  
17 registration was authorized, again broken down by day and  
18 demographically.

19 Q Okay. So if we bring up page 2 of Exhibit A -- and I am  
20 going to hand up Plaintiffs' Exhibit 717, which is just page 2  
21 of Exhibit A in color.

22 A Uh-huh.

23 Q Senator Stein, does this represent -- Plaintiffs'  
24 Exhibit 171, does that represent page 2 of Exhibit A of your  
25 declaration?

1 A It does.

2 Q What does that show?

3 A It shows over the 17 days of early voting, the total  
4 amount of votes cast each day and, again, broken down by race.  
5 And then it's demonstrated graphically the use by white North  
6 Carolinians of early voting and by African-American North  
7 Carolinians of early voting.

8 Q And, Senator Stein, this chart represents the early voting  
9 period as it existed in 2012; is that right?

10 A Yes. It is of 2012 general election data, so correct.

11 Q Okay. I am going to bring one more thing up to you. It  
12 is not a calculator. It's a Sharpie.

13 So, Senator Stein, could you take a look at Plaintiffs'  
14 Exhibit 717. And I am going to ask you to make a line on that  
15 chart and, while you are doing it, describe where you are  
16 making that line, hold it up for us after you're done.

17 Can you make a line on that chart showing me the days of  
18 early voting that H.B. 589 would have eliminated from the 2012  
19 election early voting period?

20 A My handwriting is less than ideal, but it is between the  
21 Wednesday and Thursday, the 24th and 25th. The first week is  
22 no more.

23 Q Okay. Can you take a look at the monitor and see if that  
24 represents the same line that you just drew on your version?

25 A It does.

1 Q Okay. So what do we see on the chart before the line that  
2 you drew? And that would be representing the portion of early  
3 voting eliminated by H.B. 589; correct?

4 A Correct. What we see -- well, we see two things. One is  
5 the red-dotted horizontal line shows the average over the  
6 period of African-American utilization of early voting, and it  
7 is about -- it is 34 -- no, 29 percent, excuse me, 29 percent.  
8 And what the first 7 days show, because the red line is above  
9 that dotted line, that even though African-Americans vote  
10 early, disproportionately did in November 2012, they voted at  
11 an even greater rate than they did over the average period of  
12 time of early voting in that first 7 days.

13 Q Okay. And the portion after the red line, which is the  
14 portion of early voting retained by H.B. 589, what does that  
15 portion of the graph show?

16 A It shows that over that period of time, that the  
17 performance by whites exceeded what their overall performance  
18 was in early vote and African-Americans voted at a lower rate  
19 than they did over the overall course of early voting.

20 Q And is this information that you communicated to your  
21 fellow senators?

22 A I did.

23 Q Okay. And what was the response of your fellow senators  
24 to this information?

25 A There was not --

1           **MR. STRACH:** Your Honor, we are going to object to  
2 this testimony just to the extent that it attempts to describe  
3 anything outside of what's already been transcribed in the  
4 legislative record.

5           **THE COURT:** Sustained. You can limit your comments  
6 to what occurred on the floor of the Senate.

7           **THE WITNESS:** I can do that.

8 **BY MR. FISHER**

9 Q       I can ask it again. What was the response on the record,  
10 on the legislative record, of your fellow senators to this  
11 information?

12 A       There was really no -- there was no substantive response  
13 other than that administratively it was -- 17 days was too long  
14 and that there was inconsistency among counties in early  
15 voting.

16 Q       Any response to the disproportionate impact on  
17 African-Americans?

18 A       None.

19 Q       Did you discuss in-person voting fraud during the Rules  
20 Committee hearing?

21 A       I did.

22 Q       And what do you know, if anything, about the prevalence of  
23 voter fraud in North Carolina?

24 A       I had -- during the 2011 debate on voter identification  
25 requirements, I had asked the State Board of Elections for

1 their data of in-person voter fraud, and they provided that  
2 for -- from 2000 to 2010. And then in 2013, I asked them to  
3 amend it giving the data from 2012, and what it showed was that  
4 of 40 million votes cast in primary and general elections, in  
5 just the even years, not the municipal elections, that there  
6 were two instances of reported in-person voter fraud.

7 Q Now, over the last week, we've heard about a study by the  
8 SBOE concerning voter ID possession rates. Were you aware of  
9 that study?

10 A I was.

11 Q And what did that study show?

12 A It showed that African-Americans disproportionately who  
13 were registered voters did not have a driver's license or a  
14 state identification card. I believe the percentage was  
15 34 percent; whereas, their voting percentage is 22, 23 percent.

16 Q Were your fellow senators aware of this study?

17 A Yes.

18 Q Did any members of the public testify at the Rules  
19 Committee hearing?

20 A There were. There were about ten.

21 Q What did they say?

22 A They said a variety of things. I mean, they were  
23 unanimously and vigorously opposed to the bill. No one spoke  
24 in favor of the bill. Two of them spoke to the  
25 disproportionate racial impact of --

1           **MR. STRACH:** Objection, Your Honor, hearsay.

2           **THE COURT:** If it's part of the public record.

3           **MR. STRACH:** We don't object if it's in the  
4 legislative record. I am not recalling this offhand, but we  
5 want to object to the extent it is not in the public  
6 legislative record.

7           **THE COURT:** If you can limit your response to what  
8 your recall in the legislative record. Ultimately, the record  
9 is already before me. I know I've read it because I read it  
10 several times a year ago. So, ultimately, I will be guided by  
11 what's in the public record.

12 **BY MR. FISHER**

13 Q       What did the Rules Committee ultimately do, Senator Stein?

14 A       The Rules Committee ultimately reported favorably the  
15 Proposed Committee Substitute as amended. That's the technical  
16 term. What it meant is it voted it out to be referred to the  
17 floor.

18 Q       And what happens after a bill is voted out of the  
19 committee?

20 A       If it has a serial referral, it will go to the other  
21 committee. This bill had no serial referral, so it went  
22 straight to the floor.

23 Q       Let's move to the proceedings on the Senate floor. Could  
24 you describe your role in the Senate floor debates on H.B. 589?

25 A       I was an active participant during the debates.

1 Q Did you propose any amendments?

2 A I proposed an amendment, yes.

3 Q And why did you propose this amendment?

4 A I was very concerned about the impact on North Carolinians  
5 about this reduction in early voting, and Senator Rucho had  
6 made a comment or two about counties being able to extend their  
7 hours, but there was no requirement that they do so.

8 And so my amendment had the effect of requiring that  
9 however many hours a county had in aggregate in 2010, they had  
10 to have at least that many in aggregate -- over 17 days, they  
11 had to have that many over 10 days in off-year elections; and  
12 however many there were in 2012 in the Presidential years, they  
13 had to have that number in a future Presidential year.

14 Q What ultimately happened with that amendment?

15 A It ultimately passed.

16 Q Okay. Were there any other amendments passed that had an  
17 effect on that amendment?

18 A Yes. There was an amendment offered by Senator Rucho that  
19 fixed some problems with the language as drafted, but it also  
20 served to allow counties an out; whereas, my amendment didn't  
21 have that. So in one way it improved the language; in another  
22 way it weakened it.

23 Q Were any amendments offered that would have mitigated  
24 H.B. 589's effect on minority voters for that purpose?

25 A They were a number of amendments offered that -- amendment

1 offered by Senator McKissick to require a 17-day early voting  
2 period in a Presidential general year, so just that one  
3 November period. That was defeated. An amendment offered by  
4 Senator Kinnaird to have a -- put the sunset on this so that we  
5 could see what the effect was and then it would go away after  
6 time and then -- unless the legislature reconsidered it and  
7 deemed it worthwhile.

8       There was an amendment by Senator Robinson to make  
9 parallel the identification requirements of voting absentee,  
10 which -- in which fraud occurs at a thousand times the rate as  
11 it does in in-person, but have the in-person requirements match  
12 those, which are less, and, frankly, is very similar to what  
13 the legislature just passed a few weeks ago on voter  
14 identification.

15       There was an amendment by Senator Bryant to retain  
16 straight-ticket voting, and there was an amendment by  
17 Senator Graham to preserve preregistration of high school  
18 voters and to allow college identifications in voter ID.

19       And in each of those amendments, there was extended debate  
20 on each, but Senator Robinson talked about the disparate racial  
21 impact of voter ID. Senator Bryant talked about how  
22 African-Americans utilized straight-ticket voting at a higher  
23 rate than white voters.

24       And throughout, I addressed the racial impact of the voter  
25 ID requirement, the same-day registration, the early voting,

1 and straight-ticket voting and the disparate impact on young  
2 people for the same-day registration, the preregistration, and  
3 the fact that the Senate, unlike the House, no longer permitted  
4 college identifications as a suitable form of ID.

5 Q What else might happen to all those amendments that you've  
6 described?

7 A All those amendments were defeated.

8 Q Did you inform the full Senate on the floor, as you did  
9 the Rules Committee, of the impact that H.B. 589 would have on  
10 voters?

11 A I did. I both did it in my statements and I also  
12 submitted for the record -- the legislature, a couple years  
13 ago, Your Honor, went from paper to electronic, and we have a  
14 screen, a common screen which is only available to members  
15 called the Dashboard. And on the Dashboard is the bill or if  
16 there's an amendment that's being considered, whatever the  
17 current item is, and you can also submit for the Dashboard any  
18 documents to which you refer. So there's no longer paper  
19 that's being circulated on the floor.

20 And I submitted four pages of my declaration, the pages  
21 that showed the disproportionate racial impact of eliminating  
22 early voting and the disproportionate racial impact of same-day  
23 registration.

24 Q Okay. And you are referring to the pages from  
25 Exhibit A --

1 A That's correct.

2 Q -- being put on Dashboard for the other senators to look  
3 at; is that right?

4 A Correct. It's available to them for review. It's pulled  
5 up when I am discussing it, but it's also there as a permanent  
6 record for them to review.

7 Q Let's take a look at some of your statements on the first  
8 day of the floor debates, July 24th, if we could.

9 A Okay.

10 Q Do you see the highlights portion there? And this is  
11 page 18. Could you go ahead and read that portion for me?

12 A Yes. "The next page of that chart actually shows who  
13 votes, and what you will see is that in the first seven days of  
14 North Carolina, the experience has been that African-Americans  
15 disproportionately vote on the first seven days of early  
16 voting, which coincidentally are the days that you all are  
17 stripping out of the early vote process."

18 Q Okay. Moving on to the next section.

19 **THE COURT:** Is this in the full Senate?

20 **THE WITNESS:** This is to the full Senate, sir.

21 "You all would be shocked to know that it's  
22 African-Americans, Hispanic, younger, and first-time voters who  
23 are disproportionately affected by reduction in early voting.  
24 I am sure you all are shocked of that reality."

25 **BY MR. FISHER**

1 Q And these are your statements in addition to what you  
2 presented on the Dashboard; is that correct?

3 A Correct. If you -- when you read the record, there are  
4 multiple instances where my fellow senators who supported the  
5 bill and opposed me would argue that what I said were just  
6 facts, Stein facts. And I figured that if I gave them the  
7 actual data, they didn't have to look at my words; they could  
8 actually look at the data from which I made my assertions.

9 Q Did any of your fellow senators on the record deny that  
10 African-Americans used the first week of early voting more  
11 heavily on average than white voters?

12 A No.

13 Q Let's take a look at your statements from the next day of  
14 floor debates, and that's July 25th. We'll start on page 30.  
15 Go ahead and read that portion for me.

16 A "The bill ends same-day registration. In the last  
17 election, 100,000 people did this. That is fantastic. Do you  
18 know why we instituted registration before election? It was  
19 done by Democrats in the late 1900s" -- I think I said 1800s.  
20 I meant to if I didn't -- "to minimize the participation of  
21 African-Americans in the election. By eliminating same-day  
22 registration, you all are going back to the sorry old history  
23 that we should not embrace."

24 Q And the next section.

25 A "It will disproportionately affect minorities. Minorities

1 take advantage of early vote and, in particular, the first week  
2 of early vote more than the general population. They take  
3 advantage of same-day registration, like college students do,  
4 more than the general population. They disproportionately  
5 don't have driver's licenses, and the biggest instance where  
6 they do these things disproportionately, as Senator Bryant  
7 talked about yesterday, was straight-party vote. You wrap all  
8 these election changes into one."

9 Q Did any of your fellow senators on the record challenge  
10 your assertion that African-Americans used same-day  
11 registration more heavily on average than white voters?

12 A No.

13 Q You also mentioned college students and preregistration;  
14 is that correct?

15 A I did.

16 Q Did you also discuss photo identification on the Senate  
17 floor that day?

18 A I did.

19 Q Did you again note, as you did in the Rules Committee  
20 hearing, that a disproportionate number of African-Americans  
21 lacked a qualifying photo ID?

22 A I did. That was the quote I just gave.

23 Q Did any of your fellow senators on the record challenge  
24 your assertion that African-Americans disproportionately lacked  
25 photo identification in North Carolina?

1 A No, none.

2 Q So despite the evidence and facts that you've described,  
3 did the Senate ultimately pass H.B. 589 and refer the bill over  
4 to the House?

5 A It did.

6 Q And in doing so, did the North Carolina General Assembly  
7 depart from its customary procedure in passing H.B. 589?

8 A Yes, in that when one considers this bill, the scope of  
9 it, the seriousness of the rights affected, people's ability to  
10 participate in their democracy, and that it went from a  
11 committee to being enrolled, meaning that it passed both the  
12 Senate and the House in a two-day period, I can think of no  
13 other instances in my seven years of service where something  
14 affecting such a fundamental right was rushed through with such  
15 little deliberation.

16 At the end of the day, there were ten people -- ten North  
17 Carolinians who got to speak for a total of 20 minutes in one  
18 committee meeting before there was this dramatic rewrite of  
19 North Carolina election laws that had been layered in over the  
20 past 20 years with the sole purpose of redressing our  
21 historical legacy of African-Americans not participating in  
22 their democracy -- in our democracy to the extent the  
23 population would merit. And as a result of those reforms,  
24 we've had a dramatic improvement in performance -- these  
25 reforms not only helped African-Americans, they helped all

1 North Carolinians.

2       So when North Carolina in 1988 was ranked 48th in the  
3 nation in terms of the percentage of its people who voted in a  
4 Presidential election at 45 percent to 24 years later being  
5 ranked 11th with 65 percent of the state voting in that  
6 Presidential election, white participation increased but  
7 African-Americans participation increased even more, which  
8 served the purpose of mitigating the legacy of Jim Crow. And  
9 to see these reforms that had benefited our entire state  
10 eviscerated in a two-day process in the General Assembly I  
11 thought was outrageous.

12 Q       I would like to ask you just a few questions about your  
13 understanding of the reasoning behind the provisions of  
14 H.B. 589. While you were participating in the debate on the  
15 bill, did you become aware of stated reasons in support?

16 A       The primary stated reason --

17               **THE COURT:** These are the reasons on the floor?

18               **THE WITNESS:** On the floor on the record, yes, sir.

19               **THE COURT:** All right.

20               **THE WITNESS:** -- were to promote the integrity of the  
21 elections process, and that was the go-to explanation. And,  
22 for instance, one of my colleagues, Senator Tillman, made an  
23 argument about integrity, and I asked him, I said -- on the  
24 floor, he yielded for my question. I said, Senator Tillman,  
25 how does ending preregistration of high school students or

1 ending straight-ticket voting meet a practice that two and a  
2 half million North Carolinians utilized -- how do either of  
3 those eliminations enhance integrity? And he didn't have a  
4 response to that.

5 Q Did any legislators on the record provide a rationale for  
6 eliminating out-of-precinct provisional ballots?

7 A No. And that is a perfect example of how the rushed  
8 process I think was abusive in that the only mention I recall  
9 of out-of-precinct voting by anyone in the two days was by one  
10 of the citizens, who spoke in the 20 minutes that the Rules  
11 Committee chairman allowed, talked about the disproportionate  
12 racial impact that the out-of-precinct voting elimination would  
13 have on African-American voters. And after that, I don't even  
14 remember it in the two days of floor debate. And I frankly  
15 believe that if there were more time and more deliberation,  
16 that issue would have been brought to the floor, and we, as  
17 elected representatives, would have been able to give it  
18 adequate consideration, and as it were, we did not.

19 Q Do you believe that protecting the integrity of elections  
20 was the real reason for the bill?

21 A I don't.

22 Q Based on your participation in the legislative debate on  
23 H.B. 589, were bill supporters in the Senate aware of your  
24 concerns about the bill and similar concerns of other bill  
25 opponents about the effect of H.B. 589 on African-American

1 voters?

2 **MR. STRACH:** Objection to speculation.

3 **THE COURT:** Sustained without any further foundation.

4 **BY MR. FISHER**

5 Q You presented evidence concerning the effect of H.B. 589  
6 on African-American voters; is that correct?

7 A I did. I both presented evidence -- documentary evidence  
8 as well as my advocacy, and it was for full consideration by  
9 the Senate.

10 Q And other senators on the record mentioned  
11 disproportionate impacts on African-Americans; is that correct?

12 A Senator Bryant talked about it as it related to  
13 straight-ticket voting, Senator Robinson as it related to voter  
14 identification, Senator Graham as it related to preregistration  
15 and same-day registration, and Senator Parmon spoke  
16 passionately on the bill as a whole and its racial impact, as  
17 did Senator Nesbitt.

18 Q And the supporters of H.B. 589 were in the chamber and  
19 heard those statements; is that right?

20 A Yes. They may not have all been in the chamber at all  
21 moments; but, yes, the supporters could not have not -- they  
22 could not have not heard us, if that is English.

23 **MR. FISHER:** Thank you, Senator Stein.

24 **THE COURT:** Do you know how long your cross is? I am  
25 contemplating taking our afternoon break.



1 constitute the pieces actually being challenged in this  
2 lawsuit?

3 A I have not.

4 Q Would it surprise you to know that it is only about 16 or  
5 17 pages?

6 A It would not, because, as I mentioned, when you are  
7 eliminating things like same-day registration, straight-ticket  
8 voting, preregistration, to eliminate something, you just say  
9 section so and so is abolished or is no more; and so to  
10 eliminate things really doesn't take up many pages.

11 Q All right. Now, you agree with me, don't you, that in the  
12 passage of House Bill 589, there were no formal rules that the  
13 legislature violated; is that correct?

14 A I cannot think of any.

15 Q All right. And you yourself didn't raise any points of  
16 order during the legislative process on House Bill 589, did  
17 you?

18 A I do not believe that I did.

19 Q All right. The point of order is the -- would be the way  
20 that you would bring to the attention of the majority a  
21 possible violation of the rules; correct?

22 A It would be to bring it to any presiding officer, who  
23 would then rule on that point of order, yes.

24 Q You mentioned in your direct testimony that you received  
25 the PCS around 9:00 in the evening because you checked your

1 email; is that correct?

2 A That's correct.

3 Q And you said it was common for you to check your email to  
4 make sure you hadn't gotten any important legislative matters  
5 at that time of the night; correct?

6 A I try to, yes.

7 Q Isn't it true that you had gotten other important PCS  
8 versions of other bills at that time of the night?

9 A I'm sure that I had.

10 Q And you said that the Rules Committee meeting would be the  
11 next day; correct?

12 A That's correct.

13 Q You stated that that didn't give you much time to marshal  
14 help from outside groups and individuals; is that correct?

15 A Certainly not adequate or sufficient time, no.

16 Q Now, you agree with me that there are bills already  
17 pending in the legislature to eliminate SDR; correct?

18 A I have no idea. The fact of the matter is is in any given  
19 session there's probably 3,000 bills introduced. Only a small  
20 fraction of those ever get heard in a committee, and of those  
21 that get heard in the committee, a host of them get completely  
22 rewritten at the time of the committee in form of a PCS; and so  
23 it is not a productive use of time to read every idea that  
24 every legislator has in the form of a bill. And so there may  
25 have been a bill, but it was never discussed and I didn't know

1 of it.

2 Q Do you think that if there was a bill pending to eliminate  
3 SDR that election advocacy groups would have read it and  
4 started preparing for it?

5 A They may have.

6 Q All right. Isn't that why -- isn't it true that the  
7 Exhibit A to your declaration -- would you agree with me that  
8 was a fairly significant or substantial analysis of the bill by  
9 likely Southern Coalition for Social Justice?

10 A It was certainly a helpful analysis, yes.

11 Q And you were able to obtain this between the time you got  
12 the PCS and the Rules Committee meeting the next day; correct?

13 A Correct.

14 Q Now, regarding the information in Exhibit A -- would you  
15 all mind pulling that back up on the screen, PX717.

16 Senator Stein, we've pulled PX717 back up on the computer  
17 screen. I believe this was one page of the SCSJ information  
18 that you brought with you to the Rules Committee meeting; is  
19 that correct?

20 A It is.

21 Q And then you also brought this information with you to the  
22 full Senate floor debate on H.B. 589; is that correct?

23 A It is correct.

24 Q And regarding this particular information from SCSJ, you  
25 said that it was loaded on something called the Dashboard.

1 That was basically on a computer screen for each senator at  
2 their desk?

3 A It is exactly what we have here for the witness. Each  
4 member gets to choose their form of technology, whether it is a  
5 computer or a tablet; but on that piece of hardware, there is  
6 access to software which is called the Dashboard. It will show  
7 the current item being discussed or the amendment or the bill,  
8 or you can toggle and look at the calendar as a whole.

9 Q How many pages of information did you ask to be loaded  
10 onto the Dashboard?

11 A For the graphs, it was four pages. It was the page  
12 showing the utilization of same-day registration and the  
13 demographic impact, and then same thing with early voting, the  
14 utilization of early voting and the demographic.

15 I also submitted a law review article on the impact of  
16 early voting on Florida, the reduction of early voting in  
17 Florida and its disproportionate impact on African-Americans.  
18 I don't remember how long that journal article was.

19 Q Would all that have been loaded into the Dashboard at the  
20 same time?

21 A It would have been, and available to any member at any  
22 time.

23 Q For a member to actually review that, would they have to  
24 scroll through it page by page?

25 A For the law review article, yes. The graph came up, and

1 it was on their screen.

2 Q And was that just one graph per issue that came up on the  
3 screen?

4 A It was.

5 Q So they would have to scroll through each graph to review  
6 each graph; correct?

7 A That's correct.

8 Q And you have no idea whether each senator, in fact,  
9 reviewed each one of those graphs during that debate, do you?

10 A I don't know whether each senator reviewed each graph.

11 Q All right. And during the actual debate on the Senate  
12 floor, you did not read the information from these graphs to  
13 your colleagues on the Senate floor, did you?

14 A I believe what I said was African-Americans vote at a  
15 higher rate than the general population in the first week of  
16 early voting, and that African-Americans would be  
17 disproportionately affected by the elimination of same-day  
18 registration and that African-Americans would be  
19 disproportionately affected by the percentage who do not have  
20 driver's licenses.

21 I know that Senator Robinson said that 34 percent of  
22 African-American -- registered voters without licenses were  
23 African-American, and I know that Senator Bryant said that  
24 80 percent of African-Americans utilized straight-ticket voting  
25 as compared to 45 percent of whites. And so the statistics

1 were out there and the general import was out there.

2 Q Okay. With respect to SDR and early voting, you  
3 characterized the numbers as having a disproportionate impact  
4 in your remarks to the Senate; but it is true, right, that you  
5 did not give the senators the actual numbers?

6 A I did not give the actual numbers, I don't believe. I  
7 talked about its general import and I put the graphs up there  
8 so that the fact checkers among them could ascertain whether  
9 what I was saying was true.

10 Q And you have no idea if they did that or not?

11 A I don't know. I mean, I know some did because it was on  
12 the screen. Whether all of them, I can't speak.

13 Q All right. And, in fact, if they were, if they had  
14 happened to look down at the screen and scroll through and come  
15 across this particular document, for instance, PX717, the first  
16 thing that would come out at them on this page would be the  
17 graph in the middle, don't you think?

18 A I would think so.

19 Q All right. And isn't it true that one thing -- one item  
20 of information that this graph demonstrates is that whites use  
21 early voting in raw numbers much more than black voters?

22 A It's true. I actually made that point as it related -- I  
23 actually made it on a partisan basis as it related to early  
24 voting and same-day registration -- I mean and straight-ticket  
25 voting, that these were utilized by whites and by Republicans,

1 just not at the same rate.

2 Q So you were making the point that Republicans would be  
3 hurt by this bill as well?

4 A I was making the point that North Carolinians would be  
5 hurt and that African-Americans would be hurt  
6 disproportionately.

7 Q And you were making the point to the majority Republican  
8 Senate caucus that Republicans would get hurt, too; is that  
9 correct?

10 A I was trying to find a way that might dissuade them from  
11 what I thought was their course.

12 Q My question was, was the answer -- was that -- was I  
13 correct?

14 A Restate your question, if you don't mind.

15 Q You were trying to persuade the Republican Senate majority  
16 that this H.B. 589 would also hurt Republicans; isn't that  
17 correct?

18 A I did.

19 Q Now, Senator Stein, are you aware of the participation  
20 rates for early voting by race in the 2014 election?

21 A I have not studied those numbers.

22 Q All right. Have you -- did you know that black voters  
23 used early voting in the 2014 elections at a higher rate than  
24 white voters?

25 A I did not know that, but nor am I surprised because they

1 had already shown a propensity to do early voting at a higher  
2 rate, and so the fact that the number of days had shrunk  
3 wouldn't necessarily result in African-Americans using it less.  
4 It's just fewer African-Americans would have been afforded the  
5 opportunity to take advantage of that.

6 Q So as it turned out, African-Americans as a group were not  
7 negatively impacted by the loss of seven days of early voting;  
8 is that correct?

9 A I have no idea.

10 Q With respect -- let's stay on early voting for a second.  
11 You mentioned Senator Rucho's amendment that was suggested by  
12 you to require what I will call the matching-hours requirement.

13 A Uh-huh.

14 Q Do you recall your testimony on that?

15 A I do.

16 Q And you also mentioned that there was a subsequent  
17 amendment allowing a waiver process; is that correct?

18 A Not entirely accurate. On the first day of Senate voting,  
19 I offered an amendment that was accepted that had the  
20 matching-hours requirement. On the second day -- but there was  
21 some technical drafting problems with that amendment. So we  
22 needed to clean it up.

23 And in the course of doing that, on the second day of  
24 Senate debate, that was offered by Senator Rucho, and it had a  
25 couple of other provisions in it that I described in my direct

1 testimony.

2 Q And that's what I've just characterized as the waiver  
3 process?

4 A Correct.

5 Q And isn't it true, Senator Stein, that you voted for  
6 Senator Rucho's amendment that created the waiver process?

7 A I did.

8 Q Now, are you aware of a term that I understand is used in  
9 the building called "gut and amend"?

10 A I am aware.

11 Q Can you describe what that process is?

12 A Gut and amend is when a bill that is being considered in a  
13 committee, the substance of which is taken out, stripped out,  
14 and other substance put in in its place in the form of a PCS,  
15 and then it's considered by that committee.

16 Q All right. And oftentimes it's replaced with material and  
17 language completely unrelated to what was there originally;  
18 correct?

19 A It can be.

20 Q And isn't that a process that happens quite a bit in the  
21 legislature?

22 A When it usually occurs is when it's toward the end of a  
23 session and a chamber has already passed a substantive  
24 provision on that bill, but, for whatever reason, the other  
25 chamber isn't acting on it. And so if a Senate bill goes to

1 the House, it has to go through one or two House committees and  
2 then come to the floor. It may be changed; in which case, it  
3 comes back to the Senate, and the Senate has to vote to concur  
4 or not concur. If they don't concur, it goes to conference.

5 So that whole process can change dramatically, and it  
6 gives the other chamber a lot of power over the outcome of that  
7 bill. So if -- a chamber which has already dealt with an issue  
8 and has a strong view on that issue, what they will do to  
9 hamstring the other chamber sometimes is they will take a House  
10 bill, strip it out, put in substantive language that's already  
11 been fully debated by that Senate, and then the Senate will  
12 send it over. At that point, the House can either vote to  
13 concur or to not concur. They don't have an opportunity to  
14 amend it. It can go to conference where it can be negotiated.  
15 So it's a way -- but it is generally done when a bill has  
16 already been fully vetted by the chamber before it's done.

17 Q But it is not unusual through the gut-and-amend process  
18 for a bill that originates in one chamber to be changed  
19 substantially, if not completely, in the other chamber?

20 A I would say that it occurs not frequently, but it occurs.

21 Q All right. Does it occur too frequently for your taste?

22 A Yes, I can safely say that.

23 Q Are you familiar with a bill from the last legislative  
24 session that was known as the Sharia Law bill?

25 A I am very familiar with the Sharia Law bill.

1 Q And was that a bill that was subjected to this  
2 gut-and-amend process?

3 A It was.

4 Q Can you describe it to me?

5 A Yeah. It was a House bill having to do with the  
6 application of Sharia Law in North Carolina courts, and I  
7 believe that it went through the Rules Committee in a similarly  
8 politicized fashion and came out keeping the Sharia Law  
9 provision. So it wasn't stripped, but it was amended to  
10 include a host of antiabortion restrictions.

11 Q So -- I'm sorry --

12 A I was just going to talk through the process. I didn't  
13 mean to interrupt.

14 Q So the Sharia Law piece of it stayed in the bill, but it  
15 added some, what some might argue, unrelated pieces of  
16 legislation and put it all in as one big passage?

17 A It did. It did exactly that, and the Senate passed it and  
18 it was ran through quickly. Fundamental difference between  
19 that bill and this bill, even though they both affected  
20 constitutional rights, is that that bill then went to the  
21 House, where it was sent to a committee and deliberated, and,  
22 in fact, after some time, what they did, the House, was they  
23 gutted and amended a Senate bill and sent over a version back  
24 to the Senate for consideration after there had been public  
25 hearings on it. And that whole process took about a month from

1 the time it was first heard in Rules Committee until it was  
2 enrolled; whereas, this bill, which affects the most  
3 fundamental of rights, took two days.

4 Q Now, isn't it correct at the end of this process, though,  
5 eventually it came back to the House on a concurrence vote?

6 A It did.

7 Q All right. And then didn't it pass on a motion to concur  
8 at the very end of the session?

9 A No.

10 Q That's not your recollection?

11 A That's not what happened. What happened was the House  
12 refused to take the House bill that we sent over, the Sharia  
13 Law bill, and instead they took the substance of the  
14 abortion -- antiabortion provisions and inserted it into a  
15 motorcycle bill that was a Senate bill, and then the House sent  
16 over to the Senate a motorcycle bill. So it became -- it was  
17 sort of what they were calling the motorcycle abortion bill.  
18 So what started as the Senate Sharia abortion bill became the  
19 motorcycle abortion bill, and that's what became law.

20 Q All right. But in any event, the legislative history of  
21 the bill is on the General Assembly's website and would speak  
22 for itself?

23 A Absolutely, it is, yes; and if I'm wrong, I am happy to be  
24 corrected.

25 Q In speaking of concurrence, when a bill originates, say,

1 in the House, goes to the Senate, gets changed, comes back to  
2 the House, and in that example, the proper procedure is it has  
3 to be voted on concurrence, either for or against, before  
4 anything else can happen with the bill; is that correct?

5 A No, that's not correct. What can happen, and typically  
6 happens, will be that the House -- if it's a substantive bill  
7 affecting substantive rights that involves matters which have  
8 not been properly deliberated, the House will typically refer  
9 it to a committee for review and recommendation to the floor  
10 for concurrence.

11 Q Can you give me an example of any bill this session where  
12 that's been done?

13 **MR. FISHER:** Objection, relevance. We are talking  
14 about H.B. 589 passed in 2013. I think that was the subject of  
15 Senator Stein's direct testimony.

16 **THE COURT:** Overruled.

17 **THE WITNESS:** There is a bill that's happening today.  
18 There was a House bill on regulatory reform that pertained to  
19 one issue, and it came to the Senate and, coincidentally  
20 enough, I think it was a 57-page bill the Senate came up with  
21 and sent it back to the House, and the House did not vote to  
22 concur. I don't know if they voted to concur. I don't think  
23 they did. They sent it to a committee for review, and there is  
24 a public hearing on that today.

25

1 **BY MR. STRACH**

2 Q So in addition to sending it to a committee, another  
3 option is for the House, or whichever chamber receives the bill  
4 back, to vote on a motion to concur or a motion not to concur;  
5 isn't that correct?

6 A That is an option.

7 Q And if they vote -- it can't be sent to a conference  
8 committee until it's been voted on concurrence; correct?

9 A That's correct.

10 Q And if a bill goes to a conference committee, a conference  
11 committee is appointed by the House and the Senate; is that  
12 right?

13 A Correct.

14 Q And then the conference committee typically meets; is that  
15 right?

16 A No. Typically, a member or two of the conference  
17 committee meets and negotiates something.

18 Q And they don't usually do that in public, do they?

19 A Often not, no.

20 Q So, basically, the bill is then negotiated in the  
21 conference committee in secret, and a final version is brought  
22 back to both chambers; is that correct?

23 A That's correct.

24 Q And when it comes back to the chamber out of conference  
25 committee, the only option that each chamber has is to vote it

1 up or down; is that correct?

2 A That's correct.

3 Q There is no opportunity for amendments and that sort of  
4 thing; is that right?

5 A You are right.

6 Q Just in the same way when House Bill 589 came back to the  
7 House on a concurrence vote, there was also no opportunity for  
8 amendment; is that correct?

9 A That's correct. House Bill 589 could not be amended, but  
10 the House had in its opportunity to send it for a committee for  
11 discussion or to do what they did on the abortion bill, which  
12 is to take the pieces they like, put it in a Senate bill, and  
13 send it back. But as I said -- maybe I didn't say, but the  
14 House took the 589 voter restriction law up the very same day  
15 Senate passed third reading. So that's why it only took two  
16 days for it to become enrolled from the first committee  
17 meeting.

18 Q Were you in the -- you were not in the legislature in  
19 2005; is that correct?

20 A I was not.

21 Q Are you familiar with the bill passed in the legislature  
22 in 2005 reconfirming out-of-precinct voting?

23 A I was not -- I am not familiar. I am sorry.

24 Q Do you know any background about that at all?

25 A I don't.

1 Q You were not in the legislature in 2003 either; correct?

2 A Correct.

3 Q Do you have any background or information on the 2003  
4 redistricting plan that was passed in the special session that  
5 year?

6 A Just what I read in the newspapers.

7 Q We don't want to hear about what you read in the  
8 newspapers.

9 In speaking of out-of-precinct voting, during the Senate  
10 debate on 589 that's on the floor of the Senate, as I  
11 recollect -- and you may have testified to this already --  
12 there was no debate on the out-of-precinct provision at all; is  
13 that correct?

14 A I don't recall any debate.

15 Q And so the -- none of the -- your colleagues in the  
16 Democratic Caucus on the floor raised any complaints, at least  
17 on the floor, about out-of-precinct voting; is that correct?

18 A I am embarrassed to admit, but it slipped by us.

19 Q Are you familiar with the process that the State Board of  
20 Elections uses to verify registrations through the mail?

21 A Generally. Not expert, but, yes, I am generally aware.

22 Q What is your understanding of the mail verification  
23 process?

24 A That if you register to vote, they will send a letter to  
25 you confirming your registration. If you don't -- if it comes

1 back to them, they will send a second letter, and then after  
2 that, my understanding is they will take you off the rolls.

3 Q All right. Are you familiar with any reports that the  
4 State Board of Elections did on mail verification?

5 A No.

6 Q Are you familiar with a bill from the 2013 session, Senate  
7 Bill 666?

8 A I am not.

9 Q Does that ring a bell?

10 A If you give me the title or its import, maybe I will  
11 remember.

12 Q It had to do with tax exemption for parents of college  
13 students who voted in their college town. Do you recall that?

14 A I do recall that. I think it was Senator Cook.

15 Q Yes.

16 A Yes, I recall that.

17 Q Do you recall what committee that bill was referred to?

18 A I assume Rules, because Rules is primarily where bills go  
19 to die. My understanding was that that was not a popular bill,  
20 and the leadership realized early on that that was not one they  
21 wanted to move.

22 Q It was an elections bill that went to Rules; correct?

23 A To die.

24 Q And it was a bill that you did not expect to be passed?

25 A I did not expect it to be passed.

1 Q When a bill is heard in a committee, Senator Stein, is the  
2 chairman of that committee required to let members of public  
3 speak?

4 A It is typical. What will happen in a committee is that  
5 the -- this is the typical form. The bill sponsor will speak  
6 briefly. Staff will give whatever additional comments they  
7 have. The committee will debate and ask questions, and then  
8 the committee chairman will ask for public comment. I don't  
9 know that there is a rule that requires that, although it is  
10 certainly the course -- standard course of business.

11 Q Isn't it in the chair's discretion whether to allow anyone  
12 but a General Assembly member to speak?

13 A The chair has a great deal of discretion.

14 Q And in the case of House Bill 589, the chairman of the  
15 Rules Committee exercised his discretion to allow members of  
16 the public to speak, didn't he?

17 A He did. Ten people, two minutes each.

18 Q Now, to the extent that you were concerned about the  
19 cutback to early voting, do you recall remarking during the  
20 legislative debate on the Senate floor that you thought your  
21 amendment would mitigate that concern?

22 A I did. And by "mitigate," I meant to partially  
23 ameliorate. I believed that the amendment would at least  
24 create a floor under which counties could not go. I believed,  
25 however, that it remained negatively impactful on

1 African-Americans when you consider, one, there is just the  
2 fact that there are fewer days; therefore, there are fewer  
3 opportunities for people to cast their ballot. And, two, it  
4 eliminated one of the two Sundays and one of the three  
5 Saturdays, and, in fact, that first Sunday is the date at which  
6 the highest percentage of African-Americans vote. Well over  
7 40 percent of all voters that Sunday are African-Americans.

8 Q But you haven't checked the numbers from the 2014  
9 elections to see whether your prediction came true on that?

10 A I did not check the numbers.

11 Q Do you recall, Senator Stein, that in order for a waiver  
12 to be accepted, it has to get the unanimous support of the  
13 county board of elections?

14 A Yes, I negotiated that piece.

15 Q Regarding the early voting piece, Senator Stein, first of  
16 all, are you aware of whether or not the number of early voting  
17 sites increased as a result of the matching-hours requirement  
18 that you proposed?

19 A I am unaware.

20 Q Okay. And are you aware that under the prior law a  
21 majority of the State Board of Elections could overrule the  
22 site selection for early voting sites of the county boards?

23 A Before 589 or after 589?

24 Q Before 589.

25 A I don't recall that.

1 Q All right. Senator Stein, is it -- you are a candidate  
2 for Attorney General of North Carolina?

3 A I am not currently a candidate for Attorney General.

4 Q Have you indicated to the media that you are going to run  
5 for that position?

6 A I have indicated to the media that I am strongly  
7 considering running for that position.

8 Q All right. And just for the record, you are registered as  
9 a Democrat; is that correct?

10 A I am a Democrat.

11 **MR. STRACH:** Thank you, Your Honor. I have no  
12 further questions.

13 **THE COURT:** Any other from the Defendants? Any  
14 redirect?

15 **MR. FISHER:** Very quickly, Your Honor.

16 REDIRECT EXAMINATION

17 **BY MR. FISHER**

18 Q Senator Stein, you were asked about the data that you  
19 provided on Dashboard. That data included data on same-day  
20 registration even if you didn't read out the numbers?

21 A That's correct.

22 Q In your experience during legislative sessions, do your  
23 colleagues look at the materials that are provided on the  
24 Dashboard?

25 A Yes.

1           **MR. STRACH:** Objection, speculation.

2           **MR. FISHER:** He opened the door, Your Honor.

3           **THE COURT:** Overruled.

4           **THE WITNESS:** Yes, it's common. When someone puts up  
5 a document, it is different enough that people will review it,  
6 yes.

7           **MR. FISHER:** Thank you, Senator Stein.

8           I would like to move into evidence Exhibit 717, the  
9 exhibit that Senator Stein marked during his testimony.

10          **MR. STRACH:** No objection.

11          **THE COURT:** It's admitted.

12          Anything further on redirect?

13          **MR. FISHER:** That's it, Your Honor.

14          **THE COURT:** Did you have any further questions?

15          **MR. STRACH:** No, Your Honor.

16          **THE COURT:** Senator, you may step down.

17          **THE WITNESS:** I appreciate it, Your Honor.

18          **MR. DONOVAN:** Your Honor, next we were going to play  
19 a video of a witness, name is Tawanda Pitt. For the record, it  
20 is 4 minutes designated by Plaintiffs, and 3 minutes designated  
21 by Defendants.

22          **THE COURT:** All right. Is this offered by all  
23 Plaintiffs?

24          **MR. DONOVAN:** Yes. If we can have one moment, we'll  
25 hand up the transcript, Your Honor.