



DURHAM COUNTY

Board of Elections

DURHAM COUNTY BOARD OF ELECTIONS

Minutes of Board Meeting

Monday, November 30, 2020 5:00 P.M.

Members Present

Phil Lehman, Chairman
Michael Gray, Secretary
Pamela Oxendine, Member
Gregory Irby, Member
Dawn Baxton, Member

Staff Present

Derek Bowens, Elections Director
Brenda Baker, Deputy Director
Alan Resley, Absentee Coordinator

County Officials Present: Willie Darby, County Attorney

Audience Members Present: See attendance log.

Meeting opening

Chairman Lehman called the meeting to order at 5:14 p.m. and led the Pledge of Allegiance.

Approval of Agenda

Mr. Bowens presented the Board with the agenda for the meeting. Following review, Mrs. Oxendine moved to approve the agenda with the amendment of considering a motion to continue submitted by the Beasley campaign. The motion was approved by all, 5-0.

Public Comment and Questions

There were no public comments or questions.

New Business

a. Protest Hearings (GS 163-182.10(b))


- Nana Asante-Smith presented her argument on behalf of Chief Justice Cherie Beasley for granting a continuance of their scheduled hearing before the Board.
- Trevor Stanley presented his argument on behalf of Justice Paul Newby to oppose the motion for continuance.
- After discussion, Mrs. Oxendine moved to grant the motion for continuance. The motion was approved, 5-0. The Board also unanimously agreed, after concurrence with the Newby campaign, to conduct the protest hearing for the Newby campaign on the same day of the hearing scheduled for the Beasley campaign.
- The Board scheduled the protest hearings for Friday, December 4, 2020 at 4:00 p.m.
- Details of these arguments are available in the attached hearing transcripts recorded by the official court reporter.

General Discussion

There was no general discussion.

Adjournment

The Board adjourned at approximately 5:55 p.m. on a motion made by Ms. Baxton. The motion was approved by all, 5-0.



Michael H. Gray, Secretary

In the Matter Of:

Durham County Board Of Elections

HEARING

November 30, 2020

LEGAL | MEDIA | EXPERTS

1 STATE OF NORTH CAROLINA

2 DURHAM COUNTY

3

IN THE MATTER OF:)

4)

THE ELECTION FOR NC)

5 SUPREME COURT CHIEF)

JUSTICE)

6 _____)

7

8 The above-captioned case,

9 heard on November 30, 2020, beginning at

10 5:14 p.m., at the Durham County Board of

11 Elections Warehouse, 2445 South Alston

12 Avenue, Durham, North Carolina, the

13 following proceedings were had, to wit:

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APPEARANCES

**Derek Bowens, Board of Elections, Director
Willie Darby, County Attorney's Office**

Board Members

**Philip Lehman, Chair
Dawn Baxton, Member
Gregory Irby, Member
Pamela Oxendine, Member
Michael Hale Gray, Member**

Other Parties Present:

**Nana Asante-Smith
Walter Holten
Trevor Stanley
Roger Knight
Brenda Baker
Alan Resley
Henry Zaytoun
James Graves**

1 P R O C E E D I N G S

2 CHAIR: All right. I'm going
3 to call the meeting to order. This is
4 the November 30th special meeting of the
5 Durham County Board of Elections. The
6 meeting is now in order. Following the
7 agenda, we will recite the Pledge of
8 Allegiance. Again, board members are
9 kind of wired in, so we will remain --
10 remain seated. Otherwise, we will
11 recite it.

12 (PLEDGE OF ALLEGIANCE.)

13 CHAIR: Thank you. The next
14 item is approval of the agenda. Y'all
15 have the agenda before you. There's one
16 addition to the agenda where it says we
17 have protest hearings for Candidates
18 Newby and Beasley. Before we take up
19 those, we will take up a motion to
20 continue that was filed by the counsel
21 for Chief Justice Beasley.

22 And depending on the results
23 of that, we will either proceed to
24 hearings or continue it until a later
25 date.

1 Okay. The next item is we
2 need to -- is there a motion to approve
3 the agenda with that amendment?

4 MS. OXENDINE: I move to
5 approve. I move to accept the agenda
6 and --

7 CHAIR: Okay. So --

8 MS. OXENDINE:

9 (Unintelligible.)

10 THE COURT REPORTER: I'm
11 sorry. I'm having a hard time hearing.
12 Could you please repeat that and speak
13 up?

14 MS. OXENDINE: I -- I move to
15 approve the agenda with the changes.

16 CHAIR: All right. There's a
17 move to approve the agenda as amended.
18 All in favor of the motion say aye.

19 (MULTIPLE PEOPLE SAY AYE.)

20 CHAIR: Any opposed?

21 (NO RESPONSE.)

22 CHAIR: Motion carries.

23 The next item is public
24 comments and questions. We allow those
25 who are viewing and hearing by -- by

1 Zoom to ask questions or to comment. I
2 don't see any yet. Do you,
3 Mr. Director?

4 MR. BOWENS: There's no
5 comments in the public comment portal
6 and nothing in chat as of yet.

7 CHAIR: Okay. We're -- We're
8 ready to proceed. So we have to
9 consider a motion to continue. Before I
10 -- Before I do that, I'd like counsel
11 for both parties to identify themselves
12 for Chief Justice Beasley.

13 MS. ASANTE-SMITH: Yes, sir.
14 Good evening. My name is Nana
15 Asante-Smith, counsel for Chief Justice
16 Cheri Beasley.

17 CHAIR: Thank you.

18 MR. HOLTEN: Walter Holten
19 assisting Nana Asante-Smith for Chief
20 Justice Beasley.

21 CHAIR: Okay. Thank you,
22 Mr. Holten.

23 MR. STANLEY: Trevor Stanley
24 here on behalf of Justice Newby.

25 CHAIR: Okay.

1 MR. KNIGHT: Roger Knight also
2 here on behalf of Justice Newby.

3 CHAIR: All right. Thank you.

4 We'll hear from the proponent
5 of the motion. Ms. Asante-Smith, if you
6 will proceed --

7 MS. ASANTE-SMITH: Yes, sir --

8 CHAIR: -- and at the lectern,
9 please, and just give us your argument
10 in support of your motion to dismiss.
11 Thank you.

12 MS. ASANTE-SMITH: Yes, sir.
13 Thank you, Mr. Chair. And good evening,
14 members of the board.

15 As you all are aware, we filed
16 a motion today to continue this
17 evidentiary hearing. The premise of
18 that motion was predicated upon the fact
19 that we on behalf of Chief Justice
20 Beasley had submitted records requests
21 to Durham County Board of Election
22 Director Derek Bowens, and we submitted
23 those requests on October 2nd, 2020, and
24 again on November 21st, 2020.

25 We are very much aware and

1 sensitive to the hard work and diligence
2 of the board and staff and understood
3 when we received a response from
4 Mr. Bowens on November 28th at
5 approximately 2:27 a.m. I think it goes
6 without being said that that was this
7 past Saturday over a holiday weekend,
8 and, again, we understand the length of
9 time that it took given all the
10 considerations to be made for us to
11 receive the information.

12 Now, to kind of contextualize
13 I guess the gravity and magnitude of the
14 information we received, when we were
15 provided with that information, we're
16 talking about over 300 pages of
17 documents comprising of absentee ballots
18 and provisional ballots relevant to our
19 protest and the matters for which we're
20 before you today.

21 Therefore, based on those
22 circumstances and based on when we
23 received those -- that information in
24 relation to when the hearing is today as
25 we stand before you, we thought it best

1 and in the best interest of efficiency
2 and out of respect for the board and
3 staff, Mr. Bowens and his staff, as
4 well, to put forth this motion to allow
5 us with -- more time to properly elevate
6 the information we received in the
7 context of the protests that we are
8 before you for today.

9 We want to ensure that every
10 protest, every voter we bring before you
11 as part of our protest is based on
12 up-to-date and accurate information, and
13 that truly requires us to diligently and
14 thoroughly review the public records
15 requested that we received in order to
16 do that.

17 This is not an attempt to
18 circumvent the process, and it is
19 certainly not an attempt to waste
20 anyone's time. We're committed to
21 making sure this process is as
22 efficient, thorough, and accurate as
23 possible, and that's the basis upon
24 which we filed our motion to continue
25 this evidentiary -- evidentiary hearing

1 -- excuse me -- today, even if it's for
2 a short period of time, to allow us to
3 engage in that due diligence. Thank
4 you.

5 CHAIR: Thank you. Excuse me.
6 I'm --

7 MS. ASANTE-SMITH: Oh.

8 CHAIR: -- going to --

9 MS. ASANTE-SMITH: Yes, sir?

10 CHAIR: -- allow the board the
11 opportunity for -- for questions, and I
12 have one.

13 The idea of efficiency is very
14 appealing to us, and my concern with the
15 original protest was that it was -- it
16 was voluminous, there were lots of --
17 lots of names, lots of questioned
18 ballots on it. I think by providing
19 y'all with a updated kind of action list
20 of those ballots, at least in my
21 opinion, ought to eliminate probably a
22 majority of the -- of the contested
23 ballots from -- from consideration
24 because people did vote, voted -- and I
25 realize that wasn't in the information

1 that was available at the time the
2 protest was filed, but people could vote
3 on election date and could have cured
4 their absentee ballot. They could have
5 cured their defective provisional
6 ballot.

7 So -- And I -- what I'd like
8 to suggest is that before the -- if --
9 if the hearing is continued, that your
10 side present what it is -- who -- who is
11 being -- what votes are being
12 questioned, what -- what rejected votes
13 are being questioned and -- and why.
14 And, I mean, I think this can be done by
15 affidavit and -- and -- and by argument.
16 I see this kind of as like a summary
17 judgment hearing. I mean, the ballots
18 are the ballots. They're there. Those
19 are the -- You know, those are the
20 facts. The question is what -- what
21 legal construction do we give them. If
22 somebody's missing a signature, is that
23 determinative? That -- That kind of
24 thing.

25 So what I'm asking you is for

1 a commitment to do that, to make it --
2 make it clear to us what is -- what is,
3 in fact, at -- at issue, and hopefully
4 provide us in advance with -- with that
5 -- with that kind of statement, then we
6 can -- then we can take it up and we can
7 be -- we can be prepared as well as --
8 as well as yourselves.

9 MS. ASANTE-SMITH: Yes, sir,
10 Mr. Chair. And I certainly appreciate
11 that. And I can say, as you kind of
12 momentarily briefly touched on, that we
13 -- at the time of filing, we relied on
14 the information and data we had at that
15 time, and we made a good effort to
16 ensure -- to begin to ensure that our
17 data was accurate and up to date, hence
18 the request.

19 And I can tell you personally,
20 not just as a signatory on the motion,
21 but I have personally started going
22 through the over 300 pages to ensure
23 that what we are contending is, in fact,
24 supported by the data. And that is
25 paramount to all of our protests,

1 especially the protests we have lodged
2 here in Durham County, and I can assure
3 you that not only have I started working
4 on that over the holiday weekend but
5 other members of Chief Justice Cheri
6 Beasley's team have, as well, and we
7 will continue to thoroughly do so.

8 I will also represent to the
9 board that in the course of this
10 diligence already, we have removed
11 multiple names from our protest
12 petition, and it is our intention to
13 continue to thoroughly do that and do
14 that in a way that respects your time,
15 respects the time of Mr. Bowens', the
16 staff, and the citizens of Durham
17 County.

18 CHAIR: Thank you. Yeah,
19 again, it's -- it's our desire to
20 streamline this hearing as much as
21 possible, and what you --

22 MS. ASANTE-SMITH: Yes, sir.

23 CHAIR: -- can do to -- to
24 assist in that endeavor would be --
25 would be greatly appreciated.

1 MS. ASANTE-SMITH: Absolutely.

2 Yes, sir.

3 CHAIR: Do other members of
4 the board have any questions?

5 MS. OXENDINE: I do.

6 CHAIR: Ms. Oxendine.

7 MS. OXENDINE: I just wanted
8 to know if you continue, what time frame
9 are we talking about? What's the time
10 frame we'll be looking at?

11 CHAIR: I think if we continue
12 it, I -- I think we're going to have to
13 have a discussion afterwards --

14 MS. ASANTE-SMITH: Yes,
15 Ms. Oxendine. I was going to kind of
16 reiterate that. We understand that
17 we're at the mercy of the board, and
18 whatever time that you all are gracious
19 enough to grant us for the sake of this
20 process, we will continue to work
21 diligently to be effective within those
22 confines.

23 And, again, we're not
24 requesting a prolonged delay, a lengthy
25 delay, just a reasonable amount of time

1 to allow us to, again, continue to
2 execute our duties and do so diligently.

3 MS. OXENDINE: Thank you.

4 CHAIR: Mr. Gray.

5 MR. GRAY: In -- In that -- In
6 that same vein, I was wondering how many
7 days do you think you may need? Would
8 it be two or three? You say reasonable,
9 and reasonable to the board may be two
10 or three days, and reasonable to you may
11 be another week. So -- So do you have
12 any kind of ballpark figure as how many
13 days you need to go through the rest of
14 the names here?

15 MS. ASANTE-SMITH: Yes,
16 Mr. Gray. I think it's safe to estimate
17 that we could use a few days, being
18 about three days. We would take up to a
19 week, if that's what was offered, but I
20 believe that we can do what we need to
21 do, do it accurately, and do it
22 thoroughly within a period of about
23 three to seven days, and that includes a
24 weekend.

25 CHAIR: Thank you. If I

1 remember the statute correctly, we have
2 ten days to set the hearing --

3 MS. ASANTE-SMITH: Correct.

4 CHAIR: -- from the date of
5 preliminary consideration, ten business
6 days, which would take us through next
7 Tuesday, will be the final day of those
8 ten. So we're operating under a
9 constricted --

10 MS. ASANTE-SMITH: Yes, and
11 I --

12 CHAIR: -- time frame, anyway.

13 MS. ASANTE-SMITH: Correct. I
14 just wanted to be transparent about, you
15 know, what time we would actually need
16 and what time we would be grateful for,
17 essentially.

18 CHAIR: Okay. Any other
19 questions? Any board members?

20 MR. IRBY: So I -- I would
21 like to know if we say no to the
22 continuance, what -- what are you
23 prepared to present today?

24 MS. ASANTE-SMITH: Yes, sir.
25 Thank you for that question, Mr. Irby.

1 We --

2 MS. BAXTON: Before -- Before
3 you answer that, should we be going into
4 that if we're considering motions to
5 continue in terms of what they would be
6 presenting because that's kind of
7 delving into evidence.

8 MR. DARBY: As long as -- I'm
9 sorry.

10 MS. BAXTON: I didn't mean to
11 cut you off, counsel, but I didn't want
12 to damage --

13 MS. ASANTE-SMITH: No --

14 MS. BAXTON: -- anyone's case.

15 MS. ASANTE-SMITH: -- problem,
16 Ms. Baxton. Thank you.

17 CHAIR: Thank you.

18 MS. ASANTE-SMITH: I
19 appreciate it.

20 MR. DARBY: As long as you're
21 not presenting any evidence or delving
22 into the evidence, I think you -- that's
23 a fair question.

24 MS. BAXTON: Okay.

25 MS. ASANTE-SMITH: Yes. Thank

1 you for that, Mr. Darby. It's not -- It
2 wasn't my intention to provide any
3 evidentiary information, so I appreciate
4 that confirmation in that question,
5 Ms. Baxton.

6 What we are prepared to put
7 before the board today would comprise of
8 more data than we would if we had the
9 opportunity to go through that
10 information.

11 MR. IRBY: Got it.

12 MS. ASANTE-SMITH: More data
13 being more voters and more ballots. So
14 I can say with certainty that the number
15 of voters and ballots we would be
16 dealing with today and presenting today
17 and making inquiries for today would be
18 greater than the number that we would be
19 dealing with if we were granted a
20 motion.

21 MR. IRBY: So the extra time
22 will help you to narrow it down, not
23 expand it?

24 MS. ASANTE-SMITH: Oh, no.
25 Most certainly. I can assure you,

1 again, based on my personal review of
2 the information and the review of other
3 members of Chief Justice Beasley's team,
4 that what we have done -- the work we
5 have done so far has eliminated voters
6 and ballots.

7 Again, as we said from the
8 beginning, we are committed to making
9 sure that the information we present is
10 accurate and up-to-date.

11 MR. IRBY: Sure.

12 MS. ASANTE-SMITH: And as a
13 result, we have eliminated names after
14 going through that process, and we need
15 to continue going through that process,
16 again for the sake of efficiency and
17 accuracy.

18 MR. IRBY: Okay.

19 CHAIR: All right. Thank you.

20 MS. ASANTE-SMITH: Now --

21 CHAIR: I think it's --

22 MS. ASANTE-SMITH: -- if --

23 CHAIR: Go ahead.

24 MS. ASANTE-SMITH: If I may
25 briefly, I -- I want to make sure that

1 I'm also clear that while that is our --
2 our priority, I cannot stand here with a
3 hundred percent certainty and say, as we
4 conduct that due diligence names will
5 not be added. So that -- while that is
6 not our priority, I want to make sure
7 that I'm transparent and clear that that
8 certainly is a possibility.

9 I think if anything that this
10 process has shown is that there are a
11 lot of unpredictable terms. But, again,
12 this -- our focus is on the due
13 diligence and providing accurate
14 information.

15 MR. IRBY: Thank you.

16 CHAIR: Thank you.

17 MS. ASANTE-SMITH: Thank you,
18 Your Alderman.

19 CHAIR: We will hear from
20 counsel for Justice Newby. I take it,
21 Mr. Stanley, you -- you oppose the
22 request for a continuance?

23 MR. STANLEY: We do oppose the
24 request for continuance. So I think I
25 want to start by saying, first of all,

1 thank you. I want to say thank you to
2 the board. I want to say thank you to
3 the staff. I want to say thank you to
4 Mr. Bowens. This was a well-run
5 election. It was an efficient recount.
6 I think North Carolinians should be
7 proud of the process that we've gone
8 through.

9 As a matter of course, it's
10 been 27 days since Chief Justice Beasley
11 filed her protests from November 17th.
12 You know, this board had its staff
13 staying up until 2:30 a.m. on the Friday
14 after Thanksgiving. Our team looked at
15 the documents until 3:30 a.m. last night
16 to get ready.

17 In that short period of time,
18 we were able to determine that at least
19 257 of the 365 ballots protested were
20 either duplicates or already counted.
21 That is stuff that would have been
22 easily determined from the website. It
23 was not needed from Mr. Bowens. Mr.
24 Bowens provided a lot of information
25 simply on absentee ballots. There are a

1 lot of provisional ballots that are also
2 still at issue.

3 I want to point out one other
4 thing that I think I'm very concerned
5 about. It was raised in the support of
6 the motion, is that there's a potential
7 to add additional ballots to this
8 protest. It is past the time to add
9 additional names, additional ballots to
10 the list. This is about taking names
11 off the list.

12 And we were able to analyze
13 this -- this data, analyze these
14 documents and determine that solely from
15 looking at the website. There didn't --
16 We didn't need additional information.
17 We just needed the website, and we spent
18 time and we looked at it. We spent
19 hours doing it and determined that
20 nearly all the -- you know, of 257 of
21 365, 146 of 154 in category E-1 had
22 already voted.

23 So I think the idea that this
24 board didn't do its job in counting
25 these votes, presenting this

1 information, not following through with
2 their irregularities is simply false,
3 and to delay this any longer to allow
4 them to add additional names is entirely
5 inappropriate.

6 Now, I will say that the
7 amount of time that was put in over the
8 holiday weekend, this could -- this has
9 been known for days, they didn't have
10 this information. It's been known since
11 well before Thanksgiving. To wait until
12 a few hours before this hearing to
13 request for a continuance again I think
14 is inappropriate under these
15 circumstances.

16 One of the most important
17 things that we have before us today is
18 that all the information is here. It's
19 all here right now. We don't need Chief
20 Justice Beasley's team to go back and
21 look at the documents to make their own
22 analysis. We have that information in
23 front of us right now.

24 The most efficient process
25 right now, if this board is considering

1 granting the continuance, is to have the
2 staff or Mr. Bowens, whoever is
3 appropriate, get up right now and
4 explain to this board, put on the record
5 which of these voters voted. Let's get
6 them off the list. We can do that right
7 now right in front of everybody. Which
8 of these voters are duplicates? We can
9 do it right now. Have that information
10 and have those protests withdrawn,
11 narrow this list down on the spot.

12 Again, we think this hearing
13 should go forward right now. We think
14 -- We're happy to do it, and we think
15 that the most efficient process --
16 everyone's here. I know traffic is
17 tough. It's hard getting here. It's
18 hard getting around the city. So to be
19 able -- to be able to get around and
20 come here again when we already have a
21 scheduled meeting, we have the board
22 members here, we have the lawyers here,
23 we have the information here, now is the
24 time to hear the protest, and that's all
25 I have to say.

1 So if anybody has any
2 questions, I am happy to take them.

3 CHAIR: Thank you,
4 Mr. Stanley. Just for the record, if in
5 the event the board does grant the
6 continuance, what is your preference as
7 to proceeding with the -- Justice
8 Newby's protest? Because I want -- if
9 we do that extend you the same courtesy.

10 MR. STANLEY: Yes, sir. Thank
11 you, Mr. Chairman. I -- I think we are
12 happy to extend our protest, as well,
13 continue it too so that everything can
14 be heard at the same time.

15 CHAIR: Okay.

16 MR. STANLEY: I think that
17 would be -- if the board does choose to
18 continue the protest for Chief Justice
19 Beasley, we would appreciate having that
20 done at the same time. We think that's
21 probably the most efficient way of doing
22 it.

23 CHAIR: All right. Thank you.
24 Any questions from board
25 members?

1 (NO RESPONSE.)

2 CHAIR: All right.

3 MR. STANLEY: All right.

4 Thank you for your time.

5 CHAIR: Thank you,
6 Mr. Stanley.

7 All right. Before us is the
8 motion to continue. We've heard
9 arguments from -- from counsel for both
10 sides. I'd like to open it up to
11 consideration -- or discussion among
12 board members, which we do in public --
13 in public session.

14 I'd just like to start by
15 saying the one thing that appeals to me
16 the most is getting -- streamlining,
17 getting efficiency in -- in the hearing
18 and reducing the burden on staff here on
19 -- on us to get ready for it. And if
20 that takes a few extra days, I'm willing
21 to make that tradeoff because I think
22 we'll get -- get some advantage out of
23 that.

24 I also, regardless of the
25 merits of it, from when I practiced law,

1 we often extended the courtesy to
2 opposing counsel at least one time for
3 extension of time or -- or -- or
4 continuance. And unless there's
5 compelling circumstances to the -- to
6 the contrary, I -- I support that --
7 that kind of consideration.

8 And I'm glad -- and I would
9 want all the parties and the public to
10 understand, the -- the staff has been
11 working -- and the board, as well --
12 very, very hard through this whole
13 election season. We completed our
14 canvas. We had to reopen the canvas,
15 and that was not the end of the process.
16 We were here many days 11 hours a day
17 doing the -- doing the recount. So we
18 are -- you know, we're pretty stressed
19 with the time obligations required here,
20 and we -- we are ready to move on. But
21 saying that, that is why I am pushing
22 for a streamlined, effective --
23 effective hearing that does not require
24 us to be digging around looking --
25 looking for nuggets. We want to know

1 what the -- what the contentions are
2 very quickly and straightforwardly, and
3 we want to be able to respond to them.
4 Thank you.

5 Other -- Other discussion?

6 MS. BAXTON: Well, my -- my
7 opinion, Mr. Chair, is that, one, I want
8 everyone to be able to present their
9 case in the way they deem fit in the
10 most accurate way. Of course, I want it
11 streamlined and precise and unnecessary
12 [sic] evidence presented, but I don't
13 want anyone to leave here thinking that
14 they are restricted in a certain way in
15 terms of how they choose to present
16 their case. That is their burden and
17 their decision as to how they do that.

18 I also want it to be a fair
19 process. I don't want anyone to feel
20 rushed. The request based on the
21 statement made by counselor for Justice
22 Beasley appears to be they've made a
23 request timely and were sensitive to the
24 fact that we were working hard in the
25 course of a very voluminous election

1 period, and they got it as soon as they
2 could with our diligent director, but I
3 know I in private practice -- not in
4 private practice but now even as a
5 lawyer, something this important, if I'm
6 getting it a few days before I'm going
7 to appear in court, I am going to want
8 to make sure I have enough time to
9 accurately present my case.

10 So for those reasons and some
11 time constraints that were not within
12 their control -- and each person and
13 party has the way to decide how they
14 prepare for their case -- I am in favor
15 of granting the continuance to both
16 sides to make sure that both sides can
17 present the most efficient and accurate
18 case to us before we make a decision.

19 MR. GRAY: Yeah, my --

20 CHAIR: Mr. Gray.

21 MR. GRAY: My big question is
22 if or when the Beasley team makes their
23 case, will they be going through every
24 single voter on the list that still
25 exists, and how much time for each voter

1 that the director or staff members will
2 say here's the result of -- of that
3 investigation. Will it be voter by
4 voter or -- or in mass or -- or how?

5 CHAIR: I don't think we know
6 that yet, and as Dawn was just saying,
7 that --

8 MS. BAXTON: Yeah, I --

9 CHAIR: -- it's kind of up to
10 them as to how they present their --

11 MS. BAXTON: Yeah, I --

12 CHAIR: -- case.

13 MS. BAXTON: -- think we need
14 to avoid questioning either side about
15 what they will present, how much they
16 will present, or how long it will take.
17 I am sensitive to limitations. As a
18 defense attorney, I'm sensitive to
19 limitation on presentation --
20 presentation of evidence.

21 MR. GRAY: Yeah.

22 MS. BAXTON: So I think we
23 need to stray away from asking either
24 side --

25 MR. GRAY: Well --

1 MS. BAXTON: -- what they're
2 going to present or how long they think
3 it will take.

4 MR. GRAY: For those of us
5 that are not lawyers, of course, and for
6 the people online who obviously are not
7 lawyers, or most of them aren't, I -- my
8 question was more of if we extend the
9 courtesy of the continuation, will that
10 reduce the amount of time -- in other
11 words, in -- in a situation like this --
12 I won't say this situation, but one like
13 this, will there be a person-by-person
14 examination and thus by giving the
15 continuation there are much less people
16 or voters to contend with and thus
17 streamline it that way, whereas if we do
18 it today, it may last several hours as
19 we go voter by -- by voter.

20 MR. IRBY: So --

21 MR. GRAY: If it's going to be
22 much streamlined, I'll go with the
23 continuation. If it's not going to be
24 that much streamlined, I'll say go ahead
25 and do it tonight, but I don't want to

1 be here until midnight tonight.

2 MR. IRBY: So what I -- what I
3 think I heard is it is expected that if
4 there's a continuance it will be a more
5 efficient presentation of evidence.

6 That's what I think I heard from
7 Ms. Asante-Smith.

8 MS. BAXTON: Mr. Darby.

9 MR. DARBY: We have already
10 provided them with the procedure for the
11 hearing, and based on that, there are
12 time limits already, and we're asking
13 them now -- we're asking them now to
14 make sure that they stay within the
15 guidelines of the procedure. I think
16 the hearing is no longer than an hour
17 and 45 minutes, and I think, based on
18 what I've seen, that you can present the
19 case within that time period.

20 MS. OXENDINE: Okay. My --

21 MR. IRBY: That's good to
22 know.

23 MS. OXENDINE: I have a
24 question, Chair.

25 CHAIR: Yes, go ahead,

1 Ms. Oxendine.

2 MS. OXENDINE: I -- I'm in
3 favor of the continuance, but I'm not in
4 favor of a -- a week. So can we give
5 some kind of time frame, because you --
6 we have a limited amount of time that we
7 need to -- to close out everything, I
8 understand.

9 CHAIR: Yeah. What I was
10 going to suggest in the event that the
11 motion is -- is granted is that we
12 confer on -- on that and take that up as
13 the next thing. I was going to ask
14 counsel to confer with Mr. Darby after
15 the --

16 MS. OXENDINE: Okay.

17 CHAIR: -- hearing if that
18 happened. But I agree it should be
19 sooner rather than later --

20 MS. OXENDINE: Yes.

21 CHAIR: -- and I -- I would --

22 MS. OXENDINE: Thank you.

23 CHAIR: -- was thinking along
24 the lines of maybe the end of this week.

25 MR. IRBY: Mr. Chair?

1 CHAIR: Mr. Irby?

2 MR. IRBY: My thoughts, I'm
3 personally not in favor of the
4 continuance, but I think the protests --
5 we -- we approved this hearing under the
6 assumption that the evidence was already
7 gathered. So we said there's evidence
8 here, and we wanted to give the
9 opportunity to present that evidence
10 today.

11 And so we approved this
12 meeting for that purpose. So the fact
13 that we've -- we're now being asked for
14 a continuance means that there wasn't
15 evidence to present previously and we
16 need more time to continue gathering
17 that evidence. So that evidence was
18 contingent upon records requests, which
19 means that the original request wasn't
20 substantiated.

21 So, I -- I mean, I personally
22 was able to look at voter history
23 myself. I -- Go ahead.

24 MR. DARBY: You should be
25 pointing to the evidence.

1 MR. IRBY: Okay. Sorry.

2 MS. BAXTON: So are we now
3 getting -- a possible refusal because --

4 MR. DARBY: Just don't go into
5 the evidence.

6 MR. IRBY: Yes, sir.

7 MR. DARBY: Just stop it at
8 that.

9 MR. IRBY: Yes. So I -- I
10 think the point is there is information
11 publicly available that could have been
12 used prior to this. So it's my opinion
13 that the hearing today should be used to
14 present the evidence that was used to
15 file the petition for a hearing. So I
16 don't feel like we should continue
17 personally.

18 And I very much respect
19 everybody's opinion on this, but I -- I
20 don't feel like that would be a good use
21 of our time.

22 CHAIR: All right. Thank you.

23 MS. OXENDINE: Well, we're --
24 we're supposed to hear the evidence and
25 hear the information, not go digging for

1 it. We want to just -- just make a
2 decision based on being fair to both
3 parties. That's what we want to do. We
4 want to be fair, and we also want to
5 consider the Durham County Board of
6 Elections, as well, and the staff, the
7 work that they did. So --

8 MS. BAXTON: And --

9 MS. OXENDINE: -- we want to
10 make sure that we consider both parties
11 and give them a chance to deal with
12 this, so -- to present their case.

13 MR. IRBY: I -- I -- I agree.
14 So when I think about the staff hours
15 that went into gathering this
16 information -- I don't know how many
17 hours y'all put in. If you're sending
18 the email at 2:25 in the morning on a
19 Friday after Thanksgiving, I would
20 imagine significant man hours went into
21 it. I don't think that you were here by
22 yourself.

23 So I don't know how many hours
24 went into reviewing that information
25 once it was received. I can't know

1 that, but I don't feel like we should
2 continue allowing more time to review
3 the evidence that the staff worked so
4 hard to gather. They put in so much
5 extra time to gather it. I don't feel
6 like we should continue allowing more
7 review to gather more information.

8 The evidence should have
9 already been there when they submitted
10 the petition for a hearing.

11 MS. BAXTON: Okay. Now, what
12 I heard, Mr. Irby, was that they
13 gathered data that was available to them
14 at the time when they filed their
15 protest, and at the same time they had
16 these public records requests pending
17 that were not satisfied until -- what --
18 what was the date, again?

19 MS. ASANTE-SMITH: The --

20 MR. IRBY: The 28th.

21 MS. ASANTE-SMITH: -- 28th,
22 Saturday.

23 MS. BAXTON: Saturday.

24 MR. IRBY: Uh-huh.

25 MS. BAXTON: So I don't think

1 it's fair or accurate to say that the
2 evidence that they relied on in filing
3 the protest was not substantiated
4 because that's not where we were at that
5 point.

6 MR. IRBY: Uh-huh.

7 MS. BAXTON: When we granted
8 this hearing, it was based on the face
9 of the document, whether or not it was
10 presented in proper form for both
11 protests --

12 MR. IRBY: Uh-huh.

13 MS. BAXTON: -- and whether or
14 not what was in the four corners of that
15 document was sufficient enough to
16 proceed to an evidentiary hearing. It
17 is --

18 MR. IRBY: Uh-huh.

19 MS. BAXTON: -- here where
20 they have the opportunity to present
21 their evidence, and what we're hearing
22 is a part of the evidence wasn't
23 available to them until Saturday. And I
24 understand the hours that our staff put
25 in, but, frankly, that's the result of a

1 public records request and getting to it
2 when we can --

3 MR. IRBY: Uh-huh.

4 MS. BAXTON: -- based on when
5 we're in the midst of an election.

6 MR. IRBY: Sure. No, and I --
7 I hear that definitely. I think my main
8 point though is the petition for a
9 hearing --

10 MS. BAXTON: Uh-huh.

11 MR. IRBY: -- the reason I
12 voted yes for a hearing was because we
13 were told we are not allowed to hear any
14 evidence today, we have to wait until
15 the hearing, and my --

16 MS. BAXTON: Uh-huh.

17 MR. IRBY: -- vote yes for the
18 hearing was under the assumption that
19 there was evidence to be presented. And
20 the fact that we're not ready to present
21 that a couple of weeks after that
22 request or that approval happened, I've
23 -- I don't feel like we -- I mean, we
24 really should have approved that, and
25 especially now I don't feel like we need

1 to extend it.

2 MS. BAXTON: I think they're
3 two different things here --

4 THE COURT REPORTER: You think
5 it's two different things what?

6 MS. BAXTON: I think they're
7 two different things. I think it was
8 erroneous to say you granted it assuming
9 that they already had the evidence.

10 MR. IRBY: Oh, I'm sorry.

11 MS. BAXTON: We granted it
12 based on --

13 MR. IRBY: I --

14 MS. BAXTON: -- whether or not
15 their petition was in proper form and
16 what was alleged in the petition merited
17 an evidentiary hearing.

18 MR. IRBY: Right. I voted for
19 that purpose, so I can speak --

20 MS. BAXTON: Okay.

21 MR. IRBY: -- personally. So
22 that's the only reason I changed from a
23 no to a yes on that, was because I was
24 under the assumption that there was
25 already evidence to be presented and we

1 would hear about it today. And the only
2 way we could hear about it was to move
3 from the consideration to the hearing.
4 That's why I approved that.

5 MS. BAXTON: Okay.

6 MR. IRBY: So that's my
7 opinion --

8 MS. BAXTON: Right.

9 MR. IRBY: -- you know.

10 MS. BAXTON: But I think it
11 would be erroneous to in essence punish
12 them for, quite frankly, what was --

13 MR. IRBY: A staff delay.

14 MS. BAXTON: -- an unknown
15 assumption and a staff delay.

16 MR. IRBY: Sure. Okay.

17 CHAIR: All right. Thank you
18 for that input.

19 Any other questions, points of
20 discussion among members of the board?

21 MR. GRAY: I'm -- I'm -- I'm
22 torn both ways on this one. On -- On
23 the one hand, I agree strongly with
24 Mr. Irby that, you know, the evidence
25 was out there and -- and was available.

1 On the other hand, I agree
2 strongly with the two lawyers on this
3 board who have much experience at
4 continuations, and my brother-in-law is
5 a lawyer and, you know, I know that
6 continuations are very common, if not
7 popular.

8 But I'd like to hear a little
9 more from the -- the two lawyers and
10 also Pam to -- to determine which way I
11 -- I should vote because I'm -- I'm
12 swinging both ways here.

13 MS. BAXTON: You've got 15
14 lawyers in -- in the room.

15 MR. GRAY: I'm --

16 THE COURT REPORTER: Got 15
17 lawyers --

18 MR. GRAY: -- I'm outnumbered.

19 THE COURT REPORTER: --
20 lawyers what? I didn't get all your
21 comment.

22 MS. BAXTON: I'm sorry. Yeah,
23 he has 15 lawyers in the room, so which
24 two lawyers is he --

25 MR. GRAY: Okay.

1 MS. BAXTON: -- referring to
2 he would like to --

3 MR. GRAY: The --

4 MS. BAXTON: -- hear from?

5 MR. GRAY: The two most
6 important ones right now, the ones on
7 the board.

8 MS. BAXTON: Oh, okay.

9 MR. GRAY: Yeah, okay. Sorry.

10 CHAIR: I will say in the
11 practice of law, continuances are very,
12 very common and often done.

13 MS. BAXTON: Well, they are --

14 CHAIR: I'm sure Ms. Baxton
15 would agree with that.

16 MS. BAXTON: They are common
17 and often done, especially when in this
18 case if we consider this in a criminal
19 arena, this is discovery evidence that
20 was provided in a timely fashion, and
21 that would really be not too much of a
22 hindrance on a reasonable and fair judge
23 to grant a continuance based on the time
24 that the information was received.

25 CHAIR: Okay.

1 MR. IRBY: So could -- could I
2 ask you honestly?

3 MS. BAXTON: Uh-huh.

4 MR. IRBY: So when we talked
5 about this before --

6 MS. BAXTON: Uh-huh.

7 MR. IRBY: -- I know the point
8 that resonated to me a lot was we are
9 not the defendant in this, and so --

10 MS. BAXTON: Correct.

11 MR. IRBY: -- the fact that we
12 are -- it's almost as if we are
13 presenting ourselves as trying to defend
14 the staff, you know, decisions on each
15 ballot. And I -- I feel like our -- the
16 conversations that we had had previously
17 were the parties need to bring to us --

18 MS. BAXTON: Evidence.

19 MR. IRBY: -- evidence --

20 MS. BAXTON: Uh-huh.

21 MR. IRBY: -- of specific
22 issues and specific deficiencies. And
23 if that's the case, if those are there,
24 then certainly we'll hear those. But
25 it's not that they should come to us

1 saying, okay, here's a -- a list of
2 names, prove that you did this right.
3 It should be proved --

4 MS. BAXTON: I don't think
5 that's what they're doing. I think they
6 are --

7 MR. IRBY: Okay.

8 MS. BAXTON: -- in a position
9 where they're trying to present evidence
10 but they didn't have what they requested
11 in a timely manner.

12 MR. IRBY: Okay. Okay.

13 MS. BAXTON: I think that's
14 where we are.

15 MR. IRBY: Okay.

16 CHAIR: And it is their burden
17 to come --

18 MS. BAXTON: It is --

19 CHAIR: -- forward --

20 MS. BAXTON: -- their --

21 CHAIR: -- it's not our
22 burden --

23 MS. BAXTON: -- burden to come
24 forward, not ours.

25 CHAIR: -- for them to show by

1 substantial evidence --

2 MR. IRBY: Sure.

3 CHAIR: -- there's been a
4 violation of election law or misconduct
5 or irregularity. It's not -- It's not
6 our burden to prove that we did
7 everything right.

8 MR. IRBY: Okay.

9 MS. OXENDINE: Well, we just
10 -- we want to hear -- we want to be able
11 to hear both sides and we want to -- I
12 -- I'm in favor of doing the
13 continuance --

14 MR. IRBY: Sure.

15 THE COURT REPORTER: You're
16 in --

17 MR. IRBY: Of giving a
18 continuance.

19 MS. OXENDINE: -- but not --
20 not looking at a week.

21 CHAIR: All right. What I'd
22 like to do is to take up a motion and
23 following the motion discuss the -- the
24 details. And as I said, I -- what I
25 would prefer is to have the parties

1 consult with our -- Attorney Darby about
2 when to schedule -- after -- after
3 discussing with -- with the board,
4 unless the board has any -- any -- any
5 -- any -- I have a preference, but --
6 but I think we need to --

7 MS. BAXTON: Okay.

8 CHAIR: -- go ahead --

9 MS. BAXTON: Let's go -- So I
10 move that we grant continuance.

11 CHAIR: All right. We just --

12 MS. BAXTON: Do you want my --
13 my -- my special day that I would
14 recommend or just the motion to grant
15 the continuance?

16 CHAIR: I think motion to
17 grant the continuance is in order and --

18 MR. IRBY: Yes.

19 CHAIR: -- subject to drawing
20 up an -- an order --

21 MS. BAXTON: Okay.

22 CHAIR: -- with more
23 specificity in it.

24 MS. BAXTON: Okay.

25 CHAIR: Okay. So move by

1 Ms. Baxton to approve the motion for
2 continuance. All in favor raise your
3 hands.

4 All opposed?

5 Motion carries 4 to 1. Thank
6 you.

7 That, I believe, concludes all
8 the items on the agenda. What I would
9 suggest is that we consult about the
10 appropriate time for the -- for the --
11 for the hearing and get it set, and
12 Mr. Darby will draw up an order of --
13 granting the continuance and setting a
14 time for the rescheduled -- rescheduled
15 hearing.

16 MR. STANLEY: Mr. Chair, may I
17 make one additional comment?

18 CHAIR: Yes.

19 MR. STANLEY: Okay. One
20 thought that I had to help streamline
21 the process -- it might be a
22 consideration for the county attorney
23 and for the chair and for the board
24 itself -- is if the staff and Mr. Bowens
25 would present the information on the

1 absentee ballots and the provisional
2 ballots first and then hear legal
3 argument after the fact, then we'll be
4 able to sort of narrow the issues in
5 addition to how they've narrowed it and
6 how this board has narrowed it, as well.

7 MR. IRBY: I don't --

8 CHAIR: Respectfully, I think
9 it's the -- the burden on the protestor
10 to come forward with evidence, and we
11 will -- we will respond to that. But,
12 no, it's not -- not for us to make a
13 presentation first.

14 MR. STANLEY: In my experience
15 on any other other boards I've dealt
16 with, they've streamlined it. That's a
17 -- That's fine. That's --

18 MS. BAXTON: You're done.

19 MR. STANLEY: Yes, sir.

20 CHAIR: All right.

21 MS. BAXTON: Okay.

22 CHAIR: All right. Thank you.

23 Is there any other business before the
24 board? Any other comments? I think --
25 Mr. Darby?

1 MR. DARBY: I -- I know you
2 said you weren't -- I know you said you
3 wanted him to consult with me with
4 regards to a time, but I -- I think it's
5 better for us to just go ahead and do it
6 now --

7 CHAIR: All right.

8 MR. DARBY: -- so we can agree
9 and everybody will be right here and
10 they can say yes or no, I like that day,
11 don't like that day.

12 CHAIR: All right. Members of
13 the board, first --

14 MR. IRBY: Yes.

15 CHAIR: -- I would suggest
16 this Friday.

17 MS. BAXTON: That would be my
18 suggestion.

19 CHAIR: All right. Anybody
20 else okay with Friday?

21 MR. GRAY: At 5 p.m. again?

22 CHAIR: Yeah.

23 MS. BAXTON: Okay. So if
24 y'all want me here --

25 CHAIR: 5:30.

1 MS. BAXTON: Yes.

2 CHAIR: All right.

3 MS. BAXTON: Because you will
4 be sitting here looking at each other
5 until I get here at 5:15.

6 CHAIR: All right. Are the
7 board members okay with 5:30 Friday?

8 MR. IRBY: I can do Friday at
9 5:30.

10 CHAIR: Okay.

11 MR. IRBY: Yes.

12 CHAIR: Counsel?

13 MS. ASANTE-SMITH: Yes.

14 CHAIR: 5:30 --

15 MS. ASANTE-SMITH: Thank you
16 very much, 5:30.

17 CHAIR: Counsel?

18 MR. STANLEY: I had planned to
19 go home to get a Christmas tree with my
20 children, but I can -- if 5 o'clock is
21 the only time that works -- I would
22 prefer earlier in the day, but if that's
23 not possible, I can -- I can --

24 MR. GRAY: Could -- Could we
25 do Thursday?

1 CHAIR: I -- I -- I appreciate
2 that and -- but rest assured a lot of
3 people here have been working through
4 holidays and -- and overtime, as well,
5 so --

6 MS. BAXTON: Yes, sir. Yes,
7 sir.

8 CHAIR: -- I apologize --

9 MS. BAXTON: On Thursday, I
10 have another obligation.

11 MR. GRAY: Okay.

12 MS. BAXTON: Yeah. Otherwise,
13 I would be open --

14 MR. GRAY: No, that's --

15 CHAIR: All right.

16 MR. GRAY: -- that's okay.

17 CHAIR: Is that all right with
18 the staff, Mr. Director? Friday, 5:30
19 p.m.?

20 MR. BOWENS: Sir, at the
21 pleasure of the board.

22 CHAIR: Thank you. Appreciate
23 the consideration. All right. So --

24 MR. GRAY: Let -- Let me ask
25 -- before we just settle, I -- are we

1 able to do earlier in the day on Friday?

2 CHAIR: I'll defer to --

3 MR. GRAY: I -- I'm -- Ms.

4 Baxton --

5 CHAIR: Ms. Baxton and Ms.

6 Oxendine --

7 MR. GRAY: -- I know your
8 schedule -- Yeah, and Ms. Oxendine, of
9 course. Yeah. My meeting schedule
10 happens to be lighter on this Friday,
11 which is very rare. So my schedule's
12 not the problem, but I -- I'm just
13 asking. If it's not good for you,
14 totally understand for all of us.

15 MS. OXENDINE: I'm flexible.

16 CHAIR: On Friday? Friday's
17 flexible. Okay. I -- I'm flexible.

18 MS. OXENDINE: Ms. Baxton?

19 MS. BAXTON: I'm thinking.

20 Going through my Rolodex though.

21 MR. GRAY: Could it possibly
22 in the -- be in the morning?

23 MS. BAXTON: Absolutely not,
24 no, sir.

25 MR. GRAY: Okay. That

1 answered that.

2 MS. BAXTON: The earliest I
3 could be here is probably 3:30. That's
4 the earliest.

5 CHAIR: Could we make it 4
6 just to be safe?

7 MS. BAXTON: We could.

8 MR. IRBY: How does that work
9 for you all?

10 MS. ASANTE-SMITH: The later,
11 the better would be ideal. I have a --
12 I know I have a standing -- I have a
13 standing appointment, but an appointment
14 made much earlier this year that I
15 cannot move that is earlier in the day.

16 MR. IRBY: Yeah. I -- I
17 would be respectful of y'all's time,
18 too.

19 MS. ASANTE-SMITH: Yes, sir.

20 MS. BAXTON: What time is your
21 appointment?

22 CHAIR: Is 4 p.m. too earlier
23 for you?

24 MS. ASANTE-SMITH: No. 4 p.m.
25 would be fine.

1 CHAIR: Oh, okay.

2 MS. ASANTE-SMITH: Yes, ma'am.

3 CHAIR: Okay.

4 MS. BAXTON: Will 4 work for
5 you?

6 CHAIR: Okay.

7 MR. KNIGHT: That was a yes,
8 for the record.

9 CHAIR: Get you back home by
10 midnight maybe.

11 MR. KNIGHT: Maybe.

12 CHAIR: 4. 4 or 4:30 -- you
13 call it.

14 MS. BAXTON: Okay. So I will
15 make myself available at 4.

16 CHAIR: 4 p.m. Friday. All
17 right. Thank you. Mr. Darby, you have
18 sufficient information to --

19 MR. DARBY: I do.

20 CHAIR: -- draw up the order?

21 Okay. All right. Thank you.

22 There being no further business --

23 unless anybody has any comments,

24 questions? Director or board members?

25 MS. BAXTON: Huh-uh.

1 CHAIR: All right. Is there a
2 motion to adjourn?

3 MS. BAXTON: Move adjournment.

4 CHAIR: This moves the meeting
5 -- board adjourned. All in favor of the
6 motion say aye.

7 (MULTIPLE AYES.)

8 CHAIR: Any opposed? Meeting
9 is adjourned. Thank you everybody.

10 (THE PROCEEDINGS CONCLUDED AT 5:55 P.M.)

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CERTIFICATE

State of North Carolina
County of Harnett

I, Mary Lynn Fuller, a notary public in and for the State of North Carolina, do hereby certify that I was the court reporter at the aforementioned proceedings and that the foregoing is a true, correct, and full transcript of the proceedings herein.

I further certify that I am not counsel for, nor in the employment of any of the parties to this action; that I am not related by blood or marriage to any of the parties, nor am I interested, either directly or indirectly, in the results of this action.

In witness whereon, I have hereto set my hand, this the 4th day of December, 2020.

Mary Lynn Fuller, CVR
Notary Public

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