



# DURHAM COUNTY Board of Elections

## DURHAM COUNTY BOARD OF ELECTIONS

### Minutes of Board Meeting

Friday, December 4, 2020 4:00 P.M.

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#### **Members Present**

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

#### **Staff Present**

Derek Bowens, Elections Director  
Alan Resley, Absentee Coordinator  
James Graves, Elections Systems Specialist

**County Officials Present:** Willie Darby, County Attorney

**Audience Members Present:** See attendance log.

#### **Meeting opening**

Chairman Lehman called the meeting to order at 5:03 p.m. and led the Pledge of Allegiance.

#### **Approval of Agenda**

Mr. Bowens presented the Board with the agenda for the meeting. Following review, Mr. Irby moved to approve the agenda. 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))


- After consulting with the NC State Board of Elections, counsel Trevor Stanley representing Justice Paul Newby found there was no evidence that the Durham County Board of Elections failed to follow guidelines for the removal of deceased voters.
- Ms. Baxton moved to dismiss the Newby protest for lack of evidence subject to the right to appeal to the State Board of Elections. The motion was approved by all, 5-0.
- Counsel Nana Asante-Smith representing Chief Justice Cheri Beasley, stated that there was substantial evidence of wrongful rejection of absentee and provisional ballots in Durham County. Newby's counsel called Director Bowens as a witness to enter staff findings into the record. Director Bowens identified three voters whose ballots were wrongfully rejected. Ms. Baxton moved to dismiss the Beasley protest with the exception of the three enumerated voters and sustained only as to those three voters. The motion was approved by all, 5-0.
- Details of these arguments are available in the attached transcripts recorded by the official court reporter.

## **General Discussion**

There was no general discussion.

## **Adjournment**

The Board adjourned at approximately 7:11 p.m. on a motion made by Mr. Irby. The motion was approved by all, 5-0.



Michael H. Gray, Secretary

**In the Matter Of:**

Durham County Board Of elections

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**HEARING**

*December 04, 2020*

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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 December 4, 2020, beginning at

10 4:10 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 this meeting to order. This is  
4 the December 4th, 2020, special meeting  
5 of the Durham County Board of Elections.  
6 We will begin with the Pledge of  
7 Allegiance.

8 As usual, board members can  
9 remain seated because of the wires.

10 (PLEDGE OF ALLEGIANCE.)

11 CHAIR: Okay. We have the  
12 agenda before us. I think only one  
13 note, is that -- I'd ask the director  
14 for a brief report on the -- the new  
15 recount, the hand-to-eye recount.  
16 There's no director's report on here.  
17 We'll have that next.

18 Is there a motion to approve  
19 the agenda with that addition?

20 MR. BOWENS: I move to approve  
21 the agenda with the addition of the  
22 director's report.

23 CHAIR: All right. All in

1 favor of the motion, say aye.

2 (MULTIPLE AYES.)

3 CHAIR: And those opposed?

4 (NO RESPONSE.)

5 CHAIR: Agenda is approved.

6 So before we begin with public  
7 comments or the protest hearings,  
8 Mr. Director, if we can get a brief  
9 update on the recount request.

10 MR. BOWENS: Yes. So the  
11 campaign for Cheri Beasley did submit a  
12 request for a sample hand-to-eye recount  
13 of precincts, 163-182.7A, that  
14 essentially allows her to have a sample  
15 group of the precincts across the state.

16 The random sampling occurred  
17 today. Durham County, three precincts  
18 were selected. 2.1 is our 3 percent,  
19 but you round that up to the next whole  
20 number, which got us to 3. That's  
21 precincts 1935.3 and one that is evading  
22 me at the moment.

23 MR. RESLEY: 5511.

1                   MR. BOWENS: 5511. Thank you,  
2 Alan.

3                   So those are the three  
4 precincts. We can talk about time now.  
5 I think that'll be a one-day event.  
6 We'll have three teams here to conduct  
7 that.

8                   If you recall, the hand-to-eye  
9 recount that we're required to do after  
10 each election took us about an hour for  
11 the two precincts that were subject to  
12 that review. So I don't expect it to be  
13 a significant amount of time to audit  
14 those three precincts and reconcile  
15 against the recount data.

16                  CHAIR: And as I recall, at  
17 least two board members, one from each  
18 party, have to attend; is that correct?

19                  MR. BOWENS: Yeah. So the  
20 rules -- of course three board members  
21 to -- to get it open.

22                  CHAIR: All right.

23                  MR. BOWENS: If there's any



1 conversation that needs to be had on  
2 voter intent or making those types of  
3 determinations, of course I think it's  
4 preferable to have a quorum of board  
5 members present, but the general rule is  
6 that one board member of each party  
7 needs to be present once the process  
8 begins.

9 CHAIR: All right.

10 MR. IRBY: When is that  
11 scheduled for?

12 MR. BOWENS: We haven't  
13 scheduled it yet. My recommendation  
14 will be Wednesday or Thursday of next  
15 week, but we serve at the pleasure of  
16 the board, of course.

17 MR. IRBY: Okay.

18 CHAIR: Any preference among  
19 members of the board as to what day to  
20 do the recount on, Wednesday or  
21 Thursday?

22 MR. IRBY: I'm checking my  
23 calendar.

1 MS. OXENDINE: Thursday for  
2 me.

3 CHAIR: Thursday's better?

4 MS. OXENDINE: Uh-huh.

5 CHAIR: What about you?

6 MR. IRBY: I'm fine with  
7 either days.

8 CHAIR: Do we know how many  
9 ballots --

10 MS. BAXTON: Thursday will  
11 work.

12 CHAIR: Thursday good.  
13 Thursday would be good.

14 MR. BOWENS: As far as the  
15 ballot count, I would have to get that  
16 number specifically. 5511 is -- is  
17 definitely a smaller precinct. 35.3 is  
18 typically one of our larger precincts.  
19 So I -- And precinct 19 is kind of mid  
20 sized. I wouldn't expect it to be  
21 certainly over 1,500 ballots.

22 MR. IRBY: Okay. Thanks.

23 And this is just election day?

1                   MR. BOWENS: Yes. The  
2 precincts selected for us were  
3 election-day precincts.

4                   MR. IRBY: Thanks.

5                   MR. BOWENS: Uh-huh.

6                   CHAIR: Okay. Before we move  
7 on with the protests, we have an  
8 opportunity for questions from members  
9 of the public.

10                   Do we have any online --

11                   MR. BOWENS: We do not have  
12 any --

13                   CHAIR: All right.

14                   MR. BOWENS: -- online.

15                   CHAIR: Any members of the  
16 public who are present?

17                                   (NO RESPONSE.)

18                   CHAIR: Okay. Thank you for  
19 that.

20                   We will proceed. We have two  
21 protest hearings scheduled this evening,  
22 the first by -- on behalf of Justice  
23 Newby and the second one on behalf of

1 Chief Justice Beasley.

2 We will start with the Newby  
3 hearing. So counsel can come forward to  
4 the lectern and identify yourself.

5 MR. STANLEY: Sure.

6 CHAIR: We'll be ready to  
7 proceed.

8 MR. STANLEY: All right.

9 CHAIR: Let me ask you a  
10 housekeeping question before you  
11 start --

12 MR. STANLEY: Sure. Yes, sir.

13 CHAIR: Do you have any live  
14 witnesses or --

15 MR. STANLEY: We do not. So I  
16 actually think we're going to be  
17 relatively quick.

18 CHAIR: Okay.

19 MR. STANLEY: So we're not  
20 going to do live witnesses. And my name  
21 is Trevor Stanley, T-r-e-v-o-r  
22 S-t-a-n-l-e-y.

23 So -- So I think I want to

1 start with the idea that this was an  
2 incredibly successful election. Five  
3 and a half million North Carolinians had  
4 their voices heard, including many of my  
5 family and family members and friends.  
6 Over 3.6 million ballots were cast at  
7 one-stop voting. A million voted  
8 absentee by mail. 900,000 people voted  
9 on election day, and turnout was  
10 approximately 75 percent. 557,000 poll  
11 workers came out to the polls and  
12 worked. In all of this process, there  
13 were zero clusters of COVID cases.

14 So to the board, to Director  
15 Bowens, to the staff, thank you very  
16 much for having an incredible election.  
17 I want to start -- You know, this  
18 protest regarding Justice Newby, I think  
19 we want to be clear. At the time each  
20 of these voters cast their ballot, that  
21 person was eligible to cast their vote.  
22 Nobody -- There was no wrongdoing here  
23 by the voter. There was no allegation

1 of fraud in this protest. And there was  
2 no -- I mean, again, there was no fraud  
3 or wrongdoing on the part of the staff  
4 or on the part of the voters who cast  
5 the vote period, 100 percent.

6 Under North Carolina law,  
7 however, if a voter dies after casting  
8 their ballot but before election day,  
9 that vote -- voter is deemed to be  
10 ineligible.

11 So our protest, based on  
12 concerns that were brought to us and our  
13 attention from other counties that sort  
14 of went through and looked and found  
15 voters and had information brought to  
16 them, some counties were able to remove  
17 voters from their rolls. Durham, I  
18 think, was able to remove one voter from  
19 their roll.

20 But I will say that yesterday  
21 we received an open records request  
22 response from the State Board of  
23 Elections from Katelyn Love. We

1 appreciate her response. And I think  
2 that request to us made clear that our  
3 concerns are not with Durham County.  
4 Our concerns are with the State Board  
5 and the Department of Health and Human  
6 Services.

7 So at this time we do not  
8 withdraw our protest because we want to  
9 bring this issue up before the State  
10 Board when we get there, but I want to  
11 be clear that there's no evidence that  
12 we've seen in the record of any  
13 irregularity, wrongdoing, or other  
14 problem or mistake made by the Durham  
15 County Board. And that's all I have to  
16 say. So thank you very much. I  
17 appreciate the time. That's all we have  
18 to say on our protest.

19 CHAIR: I just have one  
20 question, Mr. Stanley. How -- How many  
21 counties do you have these -- this or  
22 similar protests --

23 MR. STANLEY: We have eight --

1 eight -- eight --

2 MR. KNIGHT: Five.

3 MR. STANLEY: Five. I'm sorry  
4 -- five other counties, and I believe  
5 those have all been dismissed.

6 MR. KNIGHT: Yes.

7 MR. STANLEY: Yes. All -- All  
8 of the others have been dismissed.  
9 That's correct. So they're all -- gone  
10 appealed to the State Board.

11 CHAIR: So this is the last  
12 one left that you --

13 MR. STANLEY: Yes, sir.

14 CHAIR: Okay.

15 MR. STANLEY: That's correct,  
16 yes, Mr. Chair.

17 CHAIR: Are you aware the --  
18 the -- the protocol for -- for removing  
19 dead people from the registration rolls?

20 MR. STANLEY: We -- We are now  
21 aware and we understand the -- the steps  
22 in that process. That was our open  
23 records request to the State Board and



1 to Katelyn Love, to understand how that  
2 process worked and how timely it was and  
3 when the information was given.

4 So we have learned that now,  
5 and that just -- information came to us  
6 last night. So we have now -- after  
7 having reviewed that information, we  
8 understand and believe -- again, based  
9 on our understanding of what was given  
10 to us from Ms. Love -- is that there was  
11 nothing that we've seen that Durham  
12 County did improperly at this point,  
13 so --

14 CHAIR: All right.

15 MR. STANLEY: And I'm also  
16 happy to take any of their questions, if  
17 anybody has --

18 CHAIR: Any there any other  
19 questions from members of the board?

20 MS. OXENDINE: My only  
21 question is: What is our normal process  
22 for removal from the rolls? And I  
23 wanted to ask --

1 MR. STANLEY: Oh.

2 MS. OXENDINE: -- our director  
3 to speak to that.

4 CHAIR: All right. Let's --  
5 Anybody have any questions for  
6 Mr. Stanley? Any further questions?

7 MR. IRBY: I think mine is a  
8 very elementary question.

9 MR. STANLEY: Sure.

10 MR. IRBY: Sorry. What are  
11 you asking us to -- to review if you're  
12 not -- because you're not withdrawing  
13 it, but you're also not asking us to do  
14 anything. So what --

15 MR. STANLEY: I -- I -- I -- I  
16 would propose that you should -- based  
17 on my statements and what I've said,  
18 that you should vote however you deem  
19 appropriate based on the evidence I have  
20 submitted.

21 MR. IRBY: Okay. Thanks.

22 MR. STANLEY: So --

23 CHAIR: Very good. We -- We

1 need to swear Derek in as a witness if  
2 you want to ask him --

3 MS. OXENDINE: Oh, okay. I  
4 just wanted to -- also while the  
5 attorney is here, what -- what was your  
6 process to find out --

7 MR. STANLEY: So -- So what we  
8 did, so we went through and we looked at  
9 all the different -- we went through  
10 obituaries and we found some information  
11 in the newspapers. We went and sort of  
12 examined whether or not those people  
13 were properly registered on the voter  
14 rolls. So then we determined whether or  
15 not that vote seemed to have counted.  
16 So what we did is we went through, we  
17 found obituaries -- so what we deemed to  
18 be important documents reflected a voter  
19 had passed away from the -- between the  
20 time they cast their vote and the time  
21 of election day, we went through and  
22 determined that, tried to align the  
23 voters up based on that information,

1 address to confirm that we had the  
2 correct voter --

3 MS. OXENDINE: Uh-huh.

4 MR. STANLEY: -- and then we  
5 lined the obituary, submitted with our  
6 protest the obituaries, the information  
7 for all 16 voters. We confirmed that  
8 all 16 voters' votes had been cast.

9 With respect to the state  
10 process, the way it works is that the --  
11 the -- the county funeral homes transfer  
12 the information to the Department of  
13 Health and Human Services. That  
14 information then is processed and then  
15 given to the State Board. The State  
16 Board then takes that, passes it down,  
17 along with the counties. There are a  
18 number of steps that we have learned  
19 that are now in this process and the  
20 practicality that were given to us in  
21 response to our open records request,  
22 that there are a number of steps where  
23 delays occurred. And our understanding

1 now is that the county boards received  
2 this information on a two- to  
3 three-month delay.

4 MS. OXENDINE: Okay.

5 MR. STANLEY: So there's a  
6 situation now where my understanding is,  
7 is that even if you had received the  
8 information in time, in time for the  
9 election -- which I now understand also  
10 is -- the information wasn't received  
11 until November 15th, which I believe is  
12 after the canvas date.

13 So even in that regard, there  
14 was an inability sort of -- for this  
15 board to sort of make a determination  
16 because the information came in later.

17 So, again, this is why I think  
18 as -- as -- after reading Ms. Love's  
19 response to us, seeing the information  
20 that was provided to us, there's, again  
21 -- I think Durham County and Mr. Bowens,  
22 I think, did everything they were  
23 supposed to do with the information that

1 they had in hand. And we want to be  
2 very clear about that.

3 And, again, that's why we want  
4 to be clear, too, that there's not a  
5 single thing that any of these voters  
6 did wrong.

7 MS. OXENDINE: Uh-huh.

8 MR. STANLEY: This is a voter  
9 who was 100 percent eligible to vote at  
10 the time they cast their vote. By  
11 function of North Carolina law, they  
12 became ineligible. And so the question  
13 is: How does that get reflected in the  
14 records? And under the current system,  
15 that is very hard for the county boards  
16 to do in a timely basis.

17 MS. OXENDINE: Okay.

18 MR. STANLEY: That is -- And  
19 -- And, again, I -- And, again, I think  
20 this is information we got maybe 8:30  
21 last night or -- I'm not sure what time  
22 we got the email, but around that time.  
23 So it was very late last night. And

1 once we had a chance to process it, I  
2 sent an email to Mr. Bowens and some of  
3 the board members and said, you know,  
4 we're going to limit our presentation on  
5 this topic to a very -- much shorter  
6 time frame than the half an hour --

7 MR. OXENDINE: Okay.

8 MR. STANLEY: -- that he was  
9 allotted. So --

10 MS. OXENDINE: All right.  
11 Thank you.

12 CHAIR: Okay. All right.  
13 Mr. Irby?

14 MR. IRBY: I don't who this  
15 question is directed to. It may be to  
16 you.

17 CHAIR: Sure.

18 MR. IRBY: Election law, what  
19 does -- what does the law say about  
20 removing deceased voters?

21 CHAIR: I can respond to that.  
22 There's -- There's a protocol for  
23 removing deceased voters from the --

1 from the voter rolls. Basically it  
2 starts with the -- the State Department,  
3 the DHHS, and they send on a monthly  
4 basis the names of deceased persons who  
5 died in North Carolina.

6 Then the State Board takes  
7 that list, segregates it by county, and  
8 then notifies each county of the -- of  
9 the deceased voters.

10 And then at that point we are  
11 supposed to respond and remove them from  
12 the rolls. That's -- That's -- That's  
13 the statute.

14 MR. IRBY: Okay.

15 CHAIR: There's some further  
16 guidance from -- informal guidance from  
17 a memo from the board that says before  
18 deleting an absentee application, the  
19 board shall receive official notice of  
20 deceased voter. Sources include the  
21 DHHS list; death certificate from  
22 register of deeds; or a written, signed  
23 notification from the relative.



1 So those are the grounds with which a  
2 deceased voter can be removed.

3 MR. STANLEY: That's correct.

4 And we've also determined that  
5 in some circumstances the local funeral  
6 homes are sending the information  
7 directly to the county boards, which is  
8 not really within the process that's  
9 sort of laid out in the statute. So  
10 we're sort of, again, trying to raise  
11 this issue, make people understand that  
12 there's something that needs to be fixed  
13 here. And so I think -- But I think,  
14 again, it's a State Board, DHHS,  
15 potentially an issue for the legislature  
16 to -- to -- to determine. I think,  
17 again, based on the late-arriving  
18 information that we have, that as best  
19 we can tell -- again from the  
20 information -- is that the process was  
21 followed and the information just wasn't  
22 here.

23 CHAIR: All right. Well,

1 thank you. I appreciate your candor --

2 MR. STANLEY: Yep.

3 CHAIR: -- Mr. Stanley.

4 Are there any questions from

5 -- do you have any questions for Mr. --

6 MS. ASANTE-SMITH: No

7 questions from -- just ready to proceed

8 when --

9 CHAIR: Okay.

10 MS. ASANTE-SMITH: -- you are.

11 CHAIR: All right. Then that

12 -- that concludes the presentation in --

13 in the Newby hearing.

14 I will open it up for members

15 of the -- members of the board. Anybody

16 have any further -- any discussion?

17 Based on what I heard, there's no

18 objection to the manner in which the

19 Durham County Board of Elections removed

20 the deceased voters from -- from

21 approved sources, and, therefore, I

22 don't see any error in -- in what the

23 board did.

1                   Is there any further  
2 discussion or motion -- I would suggest  
3 that the protest be denied.

4                   MS. BAXTON: I move we dismiss  
5 the protest for lack of evidence.

6                   CHAIR: All right. It's been  
7 moved that we dismiss the protest for  
8 lack of evidence. All in favor of the  
9 motion, raise your hand. Any opposed?  
10 Motion carries unanimously. The protest  
11 is dismissed subject to your rights to  
12 appeal to the State Board.

13                   MR. STANLEY: Thank you, sir.  
14 Thank you very much for your time.

15                   CHAIR: All right. We will  
16 next hear from counsel for Chief Justice  
17 Beasley, Ms. Asante-Smith.

18                   MS. ASANTE-SMITH: Yes, sir.

19                   CHAIR: Yeah, please come  
20 forward. State your name for the  
21 record.

22                   MS. ASANTE-SMITH: Yes. First  
23 name is Nana, N-a-n-a. Last name is

1 A-s-a-n-t-e, hyphen Smith, S-m-i-t-h.

2 Mr. Chair, with your  
3 direction, I will begin.

4 CHAIR: All right. Please  
5 proceed.

6 MS. ASANTE-SMITH: Thank you.  
7 Mr. Chair, board members, Attorney  
8 Darby, Mr. Owens, and Board of Elections  
9 staff, good evening. My name is Nana  
10 Asante-Smith, and I stand before you on  
11 behalf of Chief Justice Cheri Beasley of  
12 the North Carolina Supreme Court.

13 We ask for your consideration  
14 of our protest today. Specifically, we  
15 ask that you find that there's  
16 substantial evidence of irregularities  
17 and those irregularities caused the  
18 Durham County Board of Elections to  
19 wrongfully reject a number of ballots  
20 for various reasons I will identify and  
21 explain in detail. Thank you, sir.

22 Members of the board, it's  
23 important for me to note that on behalf

1 of Chief Justice Beasley, we fully  
2 understand and appreciate the reality  
3 that the staff of the Durham County  
4 Board of Elections is crucial to  
5 ensuring the sanctity of our democracy,  
6 particularly the right to vote.

7 In an unprecedented election  
8 during such uncertain times, there is no  
9 doubt that the people of Durham and  
10 beyond are sincerely grateful for the  
11 work of Mr. Bowens and his staff.

12 We also recognize that Mr.  
13 Bowens and his staff are humans, we all  
14 are, and humans make mistakes.

15 In this circumstance, we offer that  
16 those mistakes amount to irregularities.  
17 We did not lodge this protest to call  
18 into question the diligence or integrity  
19 of you, the board; Mr. Bowens; or his  
20 staff.

21 We launched this protest in an  
22 attempt to ensure, as part of Chief  
23 Justice Beasley's commitment to the --

1 ensuring the integrity of the democratic  
2 process, where out of 5.5 million votes  
3 cast, about 400 votes separate Chief  
4 Justice Beasley from her opponent. That  
5 has and always been -- has always been  
6 our sincere goal.

7           It is both ironic and  
8 befuddling that Justice Newby and his  
9 counsel misunderstand Chief Justice  
10 Beasley's commitment and characterize it  
11 as cherry picking. No one should  
12 understand the definition of cherry  
13 picking better than Chief Justice Newby  
14 and his counsel, whose commitment is to  
15 disenfranchising voters both in Durham  
16 County and beyond, particularly and as  
17 we can -- as we have seen, black voters.

18           In stark contrast, we want to  
19 ensure that every single eligible vote  
20 is counted. Nothing more and nothing  
21 less. Anything less is in direct  
22 contravention of the constitutions of  
23 the North Carolina and United States of

1 American constitutions.

2 So we ask that with that  
3 background you give consideration to the  
4 protest we have lodged today. We are  
5 very much aware and understand that we  
6 have provided a wealth of information in  
7 support of our protest. We also  
8 understand that we have provided you all  
9 with an amended protest, particularly  
10 concerning Section 6 of our response.  
11 In that section, you will see that the  
12 -- the ballots that we are launching  
13 protests for have been divided into  
14 categories. We wish to approach our  
15 protest in this manner by identifying  
16 and reviewing line by line, voter by  
17 voter, ballot by ballot why we contend  
18 that each of those ballots should be  
19 counted.

20 First, I will draw your  
21 attention to Exhibit A. Exhibit A is  
22 comprised of two voters, Aaziza Mahamed  
23 Ahmed and Edgar Jackson. Mr. Ahmed's

1 ballot was denied based on the fact that  
2 the witness provided incomplete  
3 information. The witness did not  
4 provide the -- his or her address in its  
5 entirety.

6 Specifically, I want to point  
7 out that the absentee ballot identified  
8 in Exhibit A, again as it concerns  
9 Mr. Ahmed, omitted the city, state, and  
10 ZIP code associated with the address of  
11 the witness. However, I want to point  
12 you in the direction of state law and  
13 State Board guidance, which is clear  
14 that if an absentee envelope is missing  
15 the witness' city, state, or ZIP code,  
16 the county board cannot invalidate the  
17 envelope and should instead determine  
18 the correct address. Even if both the  
19 city and ZIP code are missing, a county  
20 board must determine whether the -- and  
21 I quote -- correct address can be  
22 identified before rejecting the ballot.  
23 Specifically, the county board must use



1 a tool, such as SEIMS or a county GIS  
2 website or office or a comparable tool  
3 to look up the witness' or assistant's  
4 name and partial address and find a  
5 match.

6 Ladies and gentlemen of the  
7 board, we would offer that through the  
8 use of GIS and corroborative evidence as  
9 provided through the North Carolina  
10 Department of Transportation, we were  
11 able to identify the partial address  
12 provided -- I'm sorry, thank you -- the  
13 partial address provided by the witness  
14 for Mr. Ahmed.

15 And if the board would allow  
16 me to, if I may approach, Mr. Chair,  
17 with the GIS information.

18 CHAIR: Yes, you may approach.

19 MS. ASANTE-SMITH: Thank you,  
20 sir.

21 What I have provided to  
22 Mr. Chair outlines the address in its  
23 entirety, which you can see includes

1 1315 Morreene Road and also identifies  
2 in the corner that Morreene Road is  
3 indeed located in Durham.

4 If I also may, I would like to  
5 provide a database lookup report from  
6 the Department -- North Carolina  
7 Department of -- excuse me -- of  
8 Transportation, which also further  
9 verifies the road, Morreene Road, is  
10 indeed located in Durham.

11 If I may approach?

12 CHAIR: Yes.

13 MS. ASANTE-SMITH: For that  
14 reason, we would offer and ask that  
15 Mr. Ahmed's vote be duly counted.

16 For the second voter  
17 identified in Exhibit A, all witness  
18 information is missing. However, as you  
19 can see, all the appropriate fields have  
20 been completed for the voter assistance  
21 certification process of that absentee  
22 ballot.

23 Under North Carolina State

1 law, the North Carolina General Assembly  
2 specifically provides that for an  
3 election held in 2020, one who lawfully  
4 assists a voter with the completion of  
5 their absentee ballot can also serve as  
6 a witness for the casting of that  
7 ballot.

8           You will be able to see that  
9 the information was thoroughly and fully  
10 identified for the assistant who  
11 provided, again, assistance to  
12 Mr. Jackson to fill out his absentee  
13 ballot.

14           Under North Carolina State  
15 law, because that information is, in  
16 fact, thorough and satisfies the  
17 requirements, he can also serve as a  
18 witness for the ballot, and it is not  
19 required that that portion also be  
20 filled out.

21           We would ask also -- We would  
22 also ask that Mr. Jackson's ballot be  
23 counted.

1                   Next, as you will see in  
2   Exhibit B, we have a consortium of  
3   voters who are listed as having -- who  
4   are listed as being wrongfully rejected  
5   as offered by Chief Justice Beasley on  
6   her behalf of absentee ballots which  
7   were allegedly received after the  
8   deadline.

9                   We would offer that all of  
10   these ballots which were received either  
11   on November 4th or November 5th, 2020,  
12   were indeed duly postmarked in  
13   accordance with state law and State  
14   Board election guidance. We would offer  
15   that in a city and county the size of  
16   Durham County and Durham City, it is  
17   implausible that a ballot would not have  
18   been postmarked by November 3rd in order  
19   to be received by the State Board of  
20   Elections by November 4th or November  
21   5th.

22                   We will also be transparent in  
23   saying we requested BallotTrax

1 information from the State Board of  
2 Elections. However, the information  
3 provided through BallotTrax was  
4 inconclusive, and we were unable to see  
5 through our diligent research when  
6 exactly those ballots were postmarked  
7 and were unable to determine if they  
8 were indeed postmarked at all.

9 Through our diligent research,  
10 we also identified that the ballots for  
11 Katie Cochran and Derek Schmidt appeared  
12 to be have -- appeared to have been  
13 accepted. However, on the publicly  
14 available State Board of Elections  
15 website, it indicates that both still  
16 have invalid returns. We are unable to  
17 reconcile this information, despite our  
18 most diligent efforts.

19 If we are to be provided  
20 information, while we understand the  
21 burden is ours, we are, again, committed  
22 and only committed to ensuring that  
23 eligible votes are casted -- are cast --

1     excuse me -- are counted.  Therefore, if  
2     we -- if we do, in fact, have  
3     information of this postmark to  
4     determine that they were or were not  
5     postmarked duly by November 3rd, we are  
6     willing and prepared to withdraw our  
7     protest.

8                     However, as it stands, we  
9     would contend that, again, all of these  
10    ballots were received either on November  
11    4th or November 5th and it is  
12    implausible that they could have been  
13    postmarked later than the required date  
14    of November 3rd.

15                    Next I draw your attention to  
16    Section C, Exhibit C to be specific,  
17    where we contend that the ballot of  
18    Claire Hudzinski was wrongfully  
19    rejected.  Ms. Hudzinski is a voter who  
20    informed, a democratic party volunteer,  
21    that she had submitted a cure  
22    certification.  Based on the review of  
23    data, this voter's ballot was not

1     accepted.  A cure certification,  
2     however, and through my communications  
3     with Mr. Bowens, will be presented to  
4     you, the board, for this voter.  
5     Therefore, we ask that her vote be  
6     counted.

7                   Exhibit D identifies voters  
8     that we contend had their voter status  
9     changed from accepted or accepted cured  
10    to rejected status.  Those voters are as  
11    follows:  Aaziza Ahmed, Richard  
12    Alexander, Katie Cochran, Caroline  
13    Dyer-Gunn, Kisha Mayo, Derek Schmidt,  
14    and Malcolm South.

15                   We contend -- excuse me.  We  
16    contend that, for example, Richard  
17    Alexander, where -- Richard Alexander  
18    provided a ballot where there was no  
19    cure needed because, while he had his  
20    witness information incomplete, he did,  
21    indeed, have an assistant complete the  
22    certification process.

23                   For those same reasons as

1 explained for Exhibit A, because the --  
2 the certificate -- the assistant  
3 certification process was duly  
4 completed, that also satisfies the  
5 witness requirement.

6 That is one example of why we  
7 contend that the voters listed in this  
8 section must have their ballots counted.  
9 However, the -- the larger and  
10 overarching theme as the basis of this  
11 protest is particularly -- and I quote  
12 -- that the decision of the board on the  
13 validity of an application for an  
14 absentee ballot shall be final, citing  
15 North Carolina General Statute  
16 163-230.1(f). The only time that such a  
17 decision may be reviewed is in the event  
18 of an election contest.

19 We would offer that at one  
20 point these ballots were initially  
21 accepted by the board. At another  
22 point, that status was changed from  
23 accepted or accepted cured to rejected



1 status. A county board's decision to  
2 rescind acceptances of absentee ballot  
3 envelopes after they have already  
4 accepted them definitely runs afoul of  
5 the State Board directives and threatens  
6 to disenfranchise voters.

7 We would offer that numbered  
8 memo 2020-25 makes clear voters must be  
9 contacted within one business day of  
10 when staff identified the deficiency.

11 As an example of that, members  
12 of the board, if a person's ballot was  
13 accepted and uploaded to reflect as  
14 such, they would have no further reason  
15 to question the validity of the ballot  
16 that they submitted. Therefore, the  
17 subsequent changing of that status  
18 denies them the opportunity to duly cure  
19 whatever issues may have been later  
20 determined.

21 However, the -- the focus is  
22 still on the state county -- on the --  
23 I'm sorry, on the State Board of

1 Elections' direction that if the board  
2 determines that the container return  
3 envelope has been properly executed, it  
4 shall approve the application and  
5 deposit the container return envelopes  
6 for the envelope to be opened and the  
7 ballots to be counted at the same time  
8 as all other container return and  
9 absentee ballots.

10 The law provides no mechanism  
11 for the county board to rescind an  
12 absentee envelope acceptance, and the  
13 decision to accept the absentee envelope  
14 is thus final.

15 We will offer that in this --  
16 in this circumstance, we are unclear  
17 about when cure certifications were  
18 provided to voters. We are also unclear  
19 about who initially accepted the ballot  
20 before it was rejected. However, we are  
21 also clear that if the board accepted  
22 those ballots as identified in this  
23 exhibit, the board unfortunately had no

1 mechanism lawfully and duly to go back  
2 and change that status. Therefore, we  
3 ask that those ballots as outlined in  
4 this Exhibit D be counted.

5 Exhibit E, specifically  
6 Exhibit E-1, represents provisional  
7 voters who reside in and are registered  
8 to vote in Durham County according to  
9 information reflected in the provisional  
10 ballot application. I will run through  
11 those names line by line, name by name.  
12 First you have Karen Daniels, who has  
13 been registered since July 12th, 2010.  
14 Next you have Lisa Heusner, who has been  
15 registered since September 21st, 2020,  
16 in advance of the October deadline and  
17 presented to vote on election day. Next  
18 you have Pedro Maya who has been  
19 registered since March 21st, 2020, also  
20 in advance of the October registration  
21 deadline for those who wished to vote on  
22 election day. He also presented to vote  
23 on election day.

1                   Next you have Jordyn McKinnon,  
2    who has been registered since May 2nd,  
3    2018, and presented to vote during early  
4    voting. Lastly you have David Wright,  
5    who has been registered to vote since  
6    November 3rd, 2016, and presented to  
7    vote on election day.

8                   Numbered memo 2018-05  
9    dictates, in determining whether to  
10   count a provisional ballot in full, in  
11   part, or not at all, county board should  
12   be guided by the following: The  
13   applicant must be a registered voter in  
14   the county. A review of the publicly  
15   available State Board website revealed  
16   these registration votes for all the --  
17   all the voters listed in Exhibit E-1.  
18   Guidance also provides that if a voter  
19   submits a provisional voting application  
20   simply because he or she presented in a  
21   precinct other than his or her proper  
22   precinct, the county board should  
23   approve the application and count all

1 votes cast in contest for which the  
2 voter is eligible. In this statewide  
3 race, we would ask that all of the  
4 voters listed in Exhibit E-1 duly have  
5 their votes counted.

6           Lastly, if it can be  
7 determined after election day and before  
8 the canvas that the applicant had  
9 properly registered before the voter  
10 registration deadline, the county board  
11 shall approve the application and count  
12 all votes cast in contest for which the  
13 voter is eligible.

14           Per the dates I provided and  
15 as verified by the State Board's own  
16 website, all of the voters listed in  
17 Exhibit E-1 were duly registered in  
18 advance of the registration deadline and  
19 signed affirmations through the  
20 provisional ballot reflecting the same.  
21 Their votes should be counted.

22           Next you have voters outlined  
23 in Exhibit E-2 who are voters who have

1 maintained continuous residence in  
2 Durham County since registering to vote,  
3 even though they were removed from voter  
4 rolls. In accordance with the  
5 requirements of completing a provisional  
6 ballot, each and every one of these  
7 voters attested to maintaining  
8 continuous residence in Durham County  
9 under the threat of perjury.

10 Guidance provides that --  
11 specifically numbered memo 2018-05,  
12 section 1.3, and I quote, if the voter  
13 has maintained continuous residence in  
14 the county, the voter remains eligible  
15 to vote. The voter's written or verbal  
16 affirmation regarding their continuous  
17 residency is sufficient to conform -- to  
18 confirm -- excuse me -- ongoing  
19 eligibility absent evidence to the  
20 contrary and the county board must  
21 approve the provisional application.

22 I will now review these voters  
23 and their ballots one by one.

1 Mr. Joshua Byker was registered and  
2 provided what was indicated to have  
3 registered on November 3rd. However, he  
4 signed as a part of his affirmation on  
5 his provisional ballot that he was duly  
6 registered and maintained continuous  
7 residency in Durham.

8           Again, I would point you to  
9 numbered memo 2018-05 that states -- and  
10 I will reiterate -- the voter's written  
11 or verbal affirmation regarding their  
12 continuous residency is sufficient to  
13 confirm ongoing eligibility absent  
14 evidence to the contrary.

15           We would offer that for  
16 Mr. Byker and the remainder of the  
17 voters outlined in Exhibit E-2, there is  
18 no evidence to the contrary.

19           Next you have Kenneth  
20 Williams. Mr. Williams voted via  
21 provisional ballot with an affirmation  
22 again of continued residence. His  
23 registration date was October 30th,

1 2020, and he attempted to vote the same  
2 day, which is permitted per state law  
3 and state elections guidelines. He had  
4 had his registration previously  
5 canceled. However, again, he completed  
6 that affirmation on his provisional  
7 ballot, duly appeared to register during  
8 early voting, and indeed cast his ballot  
9 during early voting. His vote should  
10 also be counted.

11 Next we have Amanda Wilkerson.  
12 Ms. Wilkerson completed a provisional  
13 ballot and also completed the  
14 affirmation of continued residence.  
15 Excuse me. She attempted -- She voted  
16 via provisional ballot on October 17th  
17 during the period of early voting. She  
18 was previously removed but again signed  
19 that portion that is relevant and as  
20 directed as relevant by numbered memo  
21 2018-05.

22 Next you have Mr. Pettiford.  
23 On the State Board of Elections' own



1 website, he was registered to vote on  
2 October 8th, 2010. He also signed the  
3 affirmation on his provisional ballot  
4 affirming his continuous residency in  
5 Durham County.

6           Next we have Brian Wilkerson.  
7 Mr. Wilkerson appeared on election day  
8 and signed the affirmation of continuous  
9 residence as part of his provisional  
10 ballot. He was previously canceled. It  
11 is important to note, however, that  
12 Mr. Wilkerson had duly voted in the past  
13 nine elections and as recently as  
14 November 2018. His vote should also be  
15 counted.

16           Next we have Mr. Hasan Wilson.  
17 Mr. Wilson showed up to vote on election  
18 day. He affirmed his eligibility of  
19 right to vote via his provisional ballot  
20 as well and also actually signed an  
21 attestation further confirming his  
22 eligibility to vote, which, with your  
23 permission, I will approach Mr. Chair

1 with a copy of that attestation.

2 CHAIR: You may approach.

3 MR. STANLEY: Is there a  
4 chance that counsel could also see a  
5 copy of that attestation? Thank you.

6 MS. ASANTE-SMITH: I will also  
7 note that Mr. Wilson was previously  
8 registered per the State/County Board of  
9 Elections website on September 30th,  
10 2004.

11 For the purposes of this  
12 exhibit, we will note that we are  
13 withdrawing our protest as it pertains  
14 to Ms. Safiyyah Muhammad, who is the  
15 last voter listed in Exhibit E-2.

16 Exhibit E-3 represents  
17 provisional voters who self-reported  
18 timely registering to vote or attempting  
19 to register with the Durham County Board  
20 of Elections or another government  
21 agency.

22 Numbered memo 2018-05, section  
23 1.1 provides that if the provisional

1 applicant made an attempt to register to  
2 vote at the DMV or another agency on or  
3 before the voter registration deadline,  
4 the provisional application must be  
5 approved. This required approval of the  
6 applicants given their timely attempted  
7 -- attempt to register before the voter  
8 registration deadline.

9 We would offer that based on  
10 our research and the self-reporting of  
11 every voted -- voter -- excuse me --  
12 listed in Exhibit E-3, that all of the  
13 votes should be counted.

14 I want to particularly  
15 highlight certain particular -- certain  
16 voters, excuse me.

17 Demario Scoggins, per the  
18 County Board of Election's own website  
19 registered on December 31st, 2012, and  
20 is also listed as a DMV customer. Eric  
21 Winkler was registered to vote as of  
22 October 27th, 2020, in advance of  
23 election day and attempted to vote that

1 same day.

2 King Awuku was registered on  
3 October 16th, 2020, is a DMV customer --  
4 excuse me -- previously had his voter  
5 registration canceled but registered to  
6 vote -- registered and voted the same  
7 day during early voting.

8 David Pettiford information  
9 online indicates that he was registered  
10 to vote on December 3rd, 2020. We're  
11 unable to account for that sort of  
12 discrepancy in timeline but had  
13 self-identified as attempting to or  
14 registering to vote in advance of the  
15 voter registration deadline.

16 We would ask that all the  
17 voters identified in Exhibit E-3 have  
18 their ballots counted.

19 Lastly, we have voters listed  
20 in Exhibit E-4. These voters represent  
21 those who were required to cast  
22 provisional ballots during one-stop  
23 early voting or the absentee ballot --

1 absentee ballot voting period for  
2 reasons other than ID required or voter  
3 already voted.

4           These voters should have been  
5 provided an opportunity to register or  
6 re-register during this early voting  
7 period. The failure to do so was an  
8 error of the election official, not the  
9 voter, as they presented during the  
10 early voting period and attempted to  
11 both register and vote. An election  
12 official error is not a basis to reject  
13 an otherwise valid vote.

14           I want to outline each and  
15 every one of these voters listed in this  
16 exhibit. First you have Marisol  
17 Aguilar, who registered to vote duly on  
18 October 5th, 2020, is a DMV customer --  
19 and is a DMV customer, as well. Given  
20 that Ms. Aguilar presented to vote and  
21 register during the early voting period,  
22 her vote should be duly counted.

23           Next we have Mr. Awuku King

1 who was previously identified and  
2 detailed with regard to his ballot in  
3 the previous exhibit. We have Jordyn  
4 Gross, who attempted to vote -- who  
5 voted -- excuse me -- and registered on  
6 October 17th, 2020, again within the  
7 period of early voting. She should have  
8 been allowed to both register and vote  
9 per North Carolina State law.

10 Next we have Nsumu Nzanga who  
11 is identified on that list and who we  
12 wish to withdraw, given the further  
13 information that we ascertained  
14 immediately before this hearing.

15 Next on your list is Ray Odom.  
16 Mr. Odom registered to vote and  
17 attempted to vote with his license and a  
18 signed attestation on October 29th,  
19 2020, within the early voting period.  
20 He should have been allowed to both  
21 register and vote on that day.

22 Next you have Mr. Derrick  
23 Perry. Mr. Perry presented to register

1 and vote on the last day of early  
2 voting, October 31st, 2020 -- October  
3 31st, 2020, and attempted to vote with a  
4 license, signed the affirmation listed  
5 on the ballot, and again tried to  
6 register and vote within the early  
7 voting period. His vote should be  
8 counted.

9 Next we have Mr. Eric Winkler,  
10 whose information was previously  
11 provided in prior exhibits. We also ask  
12 that his ballot be counted.

13 Lastly we have Mr. Shawn Zadeh  
14 who attempted to vote and register on  
15 October 29th, 2020, within the early  
16 voting period. He specifically  
17 attempted, and duly attempted to do so,  
18 register with a utility bill, signed the  
19 affirmation on his provisional ballot  
20 concerning his eligibility to vote, as  
21 the -- as did the other voters, and  
22 actually specified that he, quote,  
23 resided in the Durham area but not at

1 this specific address but in Durham,  
2 nonetheless. His vote should also be  
3 counted.

4 Ladies and gentlemen of the  
5 board, for the reasons cited, the state  
6 laws referenced, and the memos  
7 referenced for Exhibits A through  
8 Exhibit E-4, all of the votes and  
9 ballots presented before you in our  
10 exhibit section should be counted.

11 I want to also note that in  
12 your possession you have an affidavit  
13 attesting to the research and processes  
14 of examining data published by the State  
15 Board of Elections from which the  
16 affiant on behalf of the North Carolina  
17 Democratic Party concluded that such  
18 errors and irregularities deprived  
19 voters of the ability to have their  
20 votes -- votes cast and counted and thus  
21 casts doubt upon the apparent results of  
22 the election.

23 The protestor does not contend



1 that there are errors in counting or  
2 result tabulation of the votes as  
3 described in numbered memo 2020-25. We  
4 contend that there is an issue that --  
5 and mistakes that amounted to  
6 irregularities concerning the methods  
7 with which these absentee and  
8 provisional ballots were evaluated.

9 I want to reiterate that we  
10 are not here to question the integrity  
11 or diligence of you all, the board,  
12 Mr. Bowens, or his staff. We are here  
13 to identify and ask to rectify the  
14 mistakes that were made that we -- we  
15 propose amount to irregularities casting  
16 doubt on the apparent results of the  
17 election.

18 For the reasons provided and  
19 presented before you concerning the  
20 eligibility of each and every one of  
21 those voters and with the evidence  
22 accompanying that information, we ask  
23 that all of those eligible voters and

1 their ballots be counted in this  
2 election. Thank you.

3 CHAIR: Thank you. I have a  
4 question with reference to a -- to an  
5 affidavit filed by -- by  
6 (unintelligible). I received an  
7 affidavit with -- with the materials  
8 that -- with the exhibits you sent  
9 today. Is this a new affidavit, or is  
10 it one that was filed with the original  
11 protest?

12 MS. ASANTE-SMITH: Thank you  
13 for your question. It was the one filed  
14 with the original protest, so Oliver Ho.

15 CHAIR: Okay.

16 MS. ASANTE-SMITH: And that  
17 remains the same, and we did not make  
18 any modifications to that affidavit.

19 CHAIR: Okay. Thank you.

20 Any questions from members of  
21 the board?

22 MR. IRBY: Yes. If you don't  
23 mind, number one, I want to say thank

1 you for the comprehensiveness that you  
2 came prepared with, so --

3 MS. ASANTE-SMITH: Yes, sir.

4 MR. IRBY: -- I need to catch  
5 up a little bit, if you don't care.

6 MS. ASANTE-SMITH: Yes, sir.

7 MR. IRBY: Because I just want  
8 to -- I don't want to contextualize all  
9 of it.

10 MS. ASANTE-SMITH: Absolutely.

11 MR. IRBY: You had a lot of  
12 good information.

13 Exhibit A, the two voters  
14 here, Aaziza Ahmed, Edgar Jackson --

15 MS. ASANTE-SMITH: Yes, sir.

16 MR. IRBY: -- what was the  
17 problem with these two?

18 MS. ASANTE-SMITH: Yes, sir.

19 For Aaziza Ahmed, Mr. Ahmed's witness  
20 did not provide the --

21 MR. IRBY: Okay.

22 MS. ASANTE-SMITH: -- city,  
23 state --

1 MR. IRBY: Got it.

2 MS. ASANTE-SMITH: -- and ZIP  
3 code. Yes, sir.

4 MR. IRBY: Okay. Thanks.

5 And then there was one other  
6 section that I was a little confused  
7 on --

8 MS. ASANTE-SMITH: Yes, sir.

9 MR. IRBY: -- Exhibit D.

10 MS. ASANTE-SMITH: If you'll  
11 give me one moment to just --

12 MR. IRBY: Yeah, of course.

13 MS. ASANTE-SMITH: -- orient  
14 myself.

15 CHAIR: Which one?

16 MR. IRBY: Exhibit D. The  
17 problem that was with -- were you saying  
18 that there was an assistant and a  
19 witness?

20 MS. ASANTE-SMITH: No, sir.

21 The -- The --

22 MR. IRBY: Okay.

23 MS. ASANTE-SMITH: -- issue

1 concerning an -- the assistance and  
2 witness pertained to Mr. Edgar Jackson  
3 who is listed in Exhibit A.

4 For Exhibit D, Exhibit D only  
5 pertains to voters whose status changed  
6 from accepted to accepted -- or accepted  
7 cured to rejected status.

8 MR. IRBY: I understand. So  
9 these are the ones that when reviewed  
10 happened after the -- the initial  
11 acceptance?

12 MS. ASANTE-SMITH: Yes, sir.

13 MR. IRBY: Thanks.

14 MS. ASANTE-SMITH: Correct.

15 MR. IRBY: Okay. Thank you.

16 MS. ASANTE-SMITH: Thank you.

17 CHAIR: Any other questions?

18 Thank you for your presentation.

19 MS. ASANTE-SMITH: Thank you.

20 Thank you members of the board. Thank  
21 you, Mr. Bowens.

22 CHAIR: All right.

23 MS. ASANTE-SMITH: Yeah,

1 and --

2 CHAIR: I'm sorry.

3 MS. ASANTE-SMITH: I -- I'm so  
4 sorry, Mr. Chair, but I just want to  
5 ensure procedurally that -- to move the  
6 exhibits into evidence formally.

7 CHAIR: All right. Hearing no  
8 objection --

9 MR. STANLEY: We object to the  
10 admittance of the Ho affidavit as --

11 CHAIR: I'm sorry?

12 MR. STANLEY: We object to the  
13 admission of the Ho affidavit as  
14 evidence. This simply is a collection  
15 of outside information. It is all  
16 hearsay.

17 In addition, it's not expert  
18 testimony. It's information in evidence  
19 that's within the purview and the  
20 understanding of this board. The  
21 affidavit simply should not be accepted  
22 as evidence because it's not evidence.

23 CHAIR: All right.

1 MS. ASANTE-SMITH: Yes.

2 CHAIR: Do you have a reply?

3 MS. ASANTE-SMITH: Thank you.

4 Yes. As you all will be able to note,  
5 Justice Newby and his counsel presented  
6 an exhibit -- excuse me -- themselves in  
7 the form of an affidavit, a person who  
8 lives in Virginia.

9 I want to point out that the  
10 purpose of Mr. Ho's exhibit is simply to  
11 identify and outline the mechanism that  
12 was used to attest to the research and  
13 process of examining the data. He  
14 simply explains, as he is allowed to  
15 under the lens of the law, explains how  
16 we examine the data published by the  
17 Board of Elections, which is public, and  
18 the manner in which he acted on behalf  
19 of the North Carolina Democratic Party  
20 to review that data and help us come to  
21 those conclusions.

22 It is notarized. It is an  
23 affidavit. We all know, as I'm sure

1 counselor knows in his practice of the  
2 law, that affidavits that are duly  
3 notarized are acceptable forms as -- in  
4 terms of documentation and as evidence.

5 Therefore, we move that that  
6 exhibit be accepted into evidence.

7 CHAIR: Along with the other  
8 documents you --

9 MS. ASANTE-SMITH: Yes, sir.

10 CHAIR: -- sent to the board?

11 MS. ASANTE-SMITH: Yes,

12 Mr. Chair.

13 CHAIR: Any discussion from  
14 the members of the board on that issue?

15 MR. STANLEY: Yeah. I have  
16 another comment, if that's okay.

17 CHAIR: Excuse me?

18 MR. STANLEY: I have another  
19 comment, if that's okay.

20 CHAIR: Sure.

21 MR. STANLEY: So, again, I  
22 think the -- the affidavit is being --  
23 being admitted for the truth of the



1 matter asserted. I think on top of  
2 that, what has been done in this  
3 proceeding is frankly a bait and switch.  
4 The evidence was presented to the board  
5 to be able to come here and get to the  
6 preliminary hearing stage and get  
7 through that. They have walked back  
8 from that affidavit 100 percent. There  
9 were 365 names that were presented in  
10 that affidavit. It is now 265 worth of  
11 those are duplicates. There is simply  
12 no reliability, no ability to actually  
13 go look at that affidavit, reproduce the  
14 information in it. It is simply a list  
15 of names that have been given to this  
16 board, given to Mr. Bowens to say, here,  
17 it's a list of names. You figure out  
18 whether these votes count.

19 That evidence should have been  
20 done at the beginning. It wasn't done,  
21 and this is something that should not be  
22 submitted as evidence because it is not  
23 evidence.

1 MS. ASANTE-SMITH: If I may be  
2 heard.

3 CHAIR: Thank you. Yeah, one  
4 more -- one more time.

5 MS. OXENDINE: He needs to  
6 come up to the mic because --

7 MR. STANLEY: Oh, I'm sorry.  
8 Is that -- sorry.

9 MS. OXENDINE: They can't hear  
10 it --

11 CHAIR: All right. Well, I  
12 will just recite that counsel for  
13 Justice Newby objected to the affidavit  
14 submitted by counsel for Chief Justice  
15 Beasley, which is the basis of all their  
16 -- all their exhibits. The board has  
17 not -- not ruled on that objection yet.

18 Did you want to respond again?

19 MS. ASANTE-SMITH: Yes.

20 CHAIR: Your last response --

21 MS. ASANTE-SMITH: Yes,  
22 Mr. Chair, if I may. I want to  
23 emphasize again that the affidavit

1 attests to the research and the process  
2 of examining. The exhibits we offer are  
3 -- are supported by that affidavit, and,  
4 again, explain to make clear for the  
5 board how we came to the conclusions  
6 that we did.

7           It is also befuddling that  
8 counselor proposes that this is a bait  
9 and switch. Indeed it is not. If  
10 counselor recalls -- and if he doesn't  
11 I'm happy to recall -- recount it for  
12 the board and counselor -- when we were  
13 before the board on Monday, the motion  
14 to continue was granted on the basis  
15 that we would engage in a diligent  
16 search and research of the ballots we  
17 initially presented to the board and  
18 Mr. Bowens. We explained that we wanted  
19 to engage in that due diligence because  
20 we had just received over 300 pages of  
21 information comprised of absentee ballot  
22 containers and provisional ballots that  
23 would lead us to have to modify the list

1 that we had initially provided to you  
2 all for consideration. In fact,  
3 Mr. Counselor himself specifically said,  
4 while this is the time to reduce the  
5 number of ballots. And, in fact, that's  
6 what we did, and we did so drastically  
7 in earnest and as a reflection of the  
8 information that we were provided, and  
9 we did so in a timely manner.

10 Therefore, in no way, shape,  
11 or form is what we are lawfully doing  
12 and conducting before the board a bait  
13 and switch of any sort. And, frankly,  
14 it's insulting to suggest as much.

15 CHAIR: All right. Thank you.  
16 Do you want any discussion on the -- on  
17 the -- on the objection?

18 In my view, most of the  
19 information contained in the affidavit  
20 exhibit is a summary of public  
21 information, to wit absentee ballot  
22 applications or provisional ballot  
23 applications, and I think it mainly goes

1 to the manner in which that information  
2 is put together.

3 Having said that, I think  
4 there's -- there -- there are items in  
5 the -- the -- among the exhibits that  
6 may be questionable on -- on hearsay  
7 grounds, but I think we'll take that up  
8 when we discuss the -- the outcome of  
9 the --

10 MS. ASANTE-SMITH: Exactly.

11 CHAIR: -- the hearing.

12 Any -- Any other comments  
13 before the chair rules?

14 MR. IRBY: Submitting the  
15 affidavit into evidence, what does that  
16 do? What does that --

17 CHAIR: It just means it's  
18 before us and that we can consider it.

19 MR. IRBY: Okay.

20 CHAIR: It doesn't mean we  
21 accept it as truth. We just accept it  
22 as --

23 MR. IRBY: Okay. So --

1 CHAIR: -- as a tender of  
2 their evidence.

3 MR. IRBY: Right. And I -- I  
4 think I understand what both parties are  
5 saying.

6 So the original affidavit has  
7 to do with this number of ballots, the  
8 amended protest is only related to this  
9 number of ballots, so it invalidates  
10 certain pieces of the affidavit  
11 originally. And I think that's the  
12 point. But I understand what you're  
13 saying. Not -- I wouldn't say a bait  
14 and switch. It's not -- I don't think  
15 it's that, but I understand why it's  
16 partially inaccurate.

17 CHAIR: Yes. I understand,  
18 too. All right.

19 Hearing nothing further from  
20 the board, the chair rules that the  
21 motion is denied subject to further  
22 review when the board deliberates.  
23 Thank you.

1 MS. ASANTE-SMITH: Thank you.

2 CHAIR: I believe the next  
3 thing is the -- for the counsel to --  
4 and other than your motion, do you care  
5 to respond to the --

6 MR. STANLEY: We do. We --  
7 You know, Mr. Chair and the board, I  
8 think we have a proposal. I will renew  
9 this proposal because I think this would  
10 be a very efficient way of proceeding.  
11 You know, this is not an adversarial  
12 proceeding. You know, the idea here is  
13 to look at the votes and the law -- and  
14 the votes that are legal under the law  
15 and should count, the votes that are not  
16 in compliance with the law shouldn't  
17 count.

18 You know, I think there's been  
19 a lot of work that's been done by the  
20 staff. I think what's been done there  
21 has been a process that's been applied  
22 -- applied across every single ballot.  
23 That same process has been applied

1 across every ballot. The voters have  
2 all been treated fairly, and I think  
3 there's an effort here to sort of turn  
4 the regular -- the regular review of  
5 irregular ballots into an irregular  
6 review of regular ballots.

7 So I think there's a question  
8 here that I think would make more -- it  
9 would make this proceeding efficient if  
10 we were to withhold our statement or any  
11 response until after Mr. Bowens puts on  
12 his testimony, because, again, we're not  
13 adversaries with -- with -- with the  
14 Beasley campaign. The -- The --  
15 Frankly, though, the complaint is  
16 against the board and the way the votes  
17 were counted. It sort of -- It alleges  
18 widespread problems across the entire  
19 state, widespread problems with the way  
20 that this board and staff counted  
21 ballots.

22 So we would propose having  
23 Mr. Bowens present his information



1 first; and then once we've narrowed the  
2 list of ballots, then I think we would  
3 then present our information. But that  
4 is -- if that's acceptable to the board,  
5 we'd just renew that option.

6 CHAIR: Well, open for  
7 discussion with the board, but, I mean,  
8 we have our procedure --

9 MR. STANLEY: Understood.

10 CHAIR: -- understand, and  
11 you'll have an opportunity --

12 MR. STANLEY: Yep.

13 CHAIR: -- at the conclusion  
14 of the evidence to have a -- have a  
15 statement.

16 Anybody on the board --

17 MS. BAXTON: So, yes.

18 CHAIR: -- wish to change the  
19 procedure?

20 MS. BAXTON: For that  
21 procedure. We are in -- No, it's not an  
22 adversarial process, but it's also where  
23 both sides have to present evidence,

1 correct, on what they want the board to  
2 consider.

3 So if either party regarding  
4 these particular ballots wishes to call  
5 Mr. Bowens as a witness to testify, then  
6 I think that is the proper way to do it  
7 as opposed to Mr. Bowens making a  
8 presentation as though he was a party of  
9 the proceeding rather than a witness  
10 being asked questions at a proceeding  
11 and then considering it that way.

12 CHAIR: Well, fair enough. Is  
13 it our intention to have Mr. Bowens  
14 speak as a witness, as a staff witness,  
15 that he will -- that the procedure's  
16 guidelines set forth he would be next to  
17 -- to speak, and he can be examined by  
18 both -- both parties at the -- at the  
19 conclusion of his testimony.

20 All right. So our proposal is  
21 to have Mr. Bowens just go through those  
22 -- those exhibits and explain the -- the  
23 position that the board took on those.

1                   MR. STANLEY:  So I -- I think  
2   our proposal, then, if -- if that's not  
3   acceptable, I think we would actually  
4   prefer for them to call Mr. Bowens --  
5   again, presenting our evidence again as  
6   -- since we're not a party that's been  
7   served discovery, we -- the evidence we  
8   have is the evidence in Mr. Bowens'  
9   possession.

10                   We're -- We're happy to go  
11   through a list and offer a proffer from  
12   the attorney perspective, but I just  
13   don't know that that's a really great  
14   use of the board's time.  But we can --  
15   we're happy to do that if that's the  
16   preferred method, but we -- we would  
17   prefer to call Mr. Bowens as a witness  
18   right now and allow that evidence to be  
19   presented into the record so that we can  
20   then move forward and then summarize  
21   that evidence at the end of our  
22   presentation.

23                   CHAIR:  Well, the alternative

1 is to have the board tender questions to  
2 Mr. Bowens, have Mr. Bowens make a  
3 statement, but you have every right to  
4 -- to -- to question him if you choose  
5 to do so. It's a little awkward because  
6 Chief Justice Beasley's presentation was  
7 in the form of -- more in the form of  
8 argument rather than presentation of --  
9 of evidence and --

10 THE COURT REPORTER: Can you  
11 please speak up?

12 CHAIR: Excuse me?

13 THE COURT REPORTER: Can you  
14 speak up a little bit more?

15 CHAIR: Okay. But if -- I  
16 think you have a -- you have a right to  
17 -- to rebut, and if you would like to  
18 call Mr. Bowens as a -- as a witness and  
19 have him --

20 MR. STANLEY: Sure.

21 CHAIR: -- sworn in, you can  
22 proceed to do so. If you do not, then I  
23 will ask Mr. Bowens some questions.

1                   MR. STANLEY: Yeah. I -- I  
2 think we'd like to call Mr. Bowens as a  
3 witness.

4                   CHAIR: Okay.

5                   MR. STANLEY: And then we'll  
6 rebut the remaining information that was  
7 presented by counsel after that within  
8 our time frame.

9                   MS. OXENDINE: What -- What --  
10 What information is Mr. Bowens  
11 presenting?

12                   MR. STANLEY: So what -- what  
13 we can do -- So what we've done, and we  
14 in -- in a similar manner to Justice  
15 Beasley, we prepared a chart, and we  
16 have information that summarizes the --  
17 Mr. Bowens has gone through and reviewed  
18 the individual ballots, and he has  
19 reasons why this board and he proposed  
20 rejecting the ballots and why this board  
21 voted to do so.

22                   So, again, one of the issues  
23 that's at issue here is that there's no

1 -- in this protest, there's no deference  
2 to the actions of this board and to this  
3 staff, and under the law of North  
4 Carolina, there should be deference to  
5 what you all have done. And so having  
6 that information put on and what  
7 Mr. Bowens has done and why he believes  
8 the votes were either properly accepted  
9 or properly rejected -- because, again,  
10 we looked at this list, I know they've  
11 narrowed it, but if you go through,  
12 there are still at least four instances  
13 where they're trying to get multiple  
14 votes to count twice.

15           So there are duplicates on  
16 here. There are 78 names, but there are  
17 multiple instances of duplicates. This  
18 is sort of the same thing we went  
19 through last time where there were 257  
20 folks on the list that already voted.  
21 Some of them are still on here, but that  
22 kind of thing can be worked out in a  
23 real efficient manner, but we're happy

1 to sort of go through and explain what  
2 our reasons are.

3 MS. OXENDINE: Yeah.

4 MR. STANLEY: But, again that  
5 -- it's an attorney proffer, and I'm  
6 happy to do that, present testimony and  
7 -- or information that we have.

8 But, again, in an effort to  
9 sort of streamline -- again -- again, we  
10 view this as not adversarial. Our --  
11 Our answer here is to try and get to the  
12 truth as quickly as possible.

13 MS. OXENDINE: I just wanted  
14 to hear what -- what -- what you have.  
15 I want to get your information --

16 CHAIR: Yeah, but I think they  
17 -- their proposal is to produce their  
18 information by questioning Director  
19 Bowens.

20 MS. OXENDINE: Okay.

21 MR. STANLEY: I think that's  
22 right. I think -- Yeah, I think that's  
23 correct.

1 CHAIR: All right.

2 MR. STANLEY: Is that  
3 acceptable to the board?

4 CHAIR: Yes.

5 MR. STANLEY: Okay.

6 Mr. Knight is actually going to handle  
7 the examination of Mr. --

8 CHAIR: Okay. So the court  
9 reporter will swear in Mr. Bowens.

10 DEREK BOWENS,

11 having been duly sworn,

12 testified as follows:

13 MR. KNIGHT: Members of the  
14 board, my name is Roger Knight. I'm an  
15 attorney in Raleigh. I haven't been  
16 formally introduced to you before.

17 (DISCUSSION OFF THE RECORD.)

18 EXAMINATION

19 BY MR. KNIGHT:

20 Q. Mr. Bowens, for the record, could you  
21 give your full name.

22 A. Derek Lamar Bowens.

23 Q. And what's your current position as a --



1           How are you employed? Let me put it  
2           that way?

3           A. Director of the Durham County Board of  
4           Elections employed by the Durham County  
5           Board of Elections.

6           Q. How long have you been the Director of  
7           the Durham County Board of Elections?

8           A. Since June the 5th of 2017.

9           Q. And before that, where were you  
10          employed?

11          A. I was Director of elections and other  
12          various positions with the New Hanover  
13          County Board of Elections.

14          Q. How long have you worked in elections?

15          A. Since February of 2012.

16          Q. So you've been through at least three  
17          statewide elections when president and  
18          governor and all that were being  
19          elected; correct?

20          A. That's -- That's correct.

21          Q. All right. Plus numerous other local  
22          and state elections?

23          A. That's correct.

1 Q. Okay. How have you been trained to --  
2 to be an election director?

3 A. So there's various things that, you  
4 know, election officials are mandated to  
5 do by law, such as attend state election  
6 conferences for official training.

7 There's also various online --  
8 online modules that have to be taken to  
9 -- to get sufficient in election  
10 administration and law in North  
11 Carolina. National through the election  
12 center certification, so election  
13 certification there, and then, of  
14 course, a number of memos, various  
15 directives from the State Board of  
16 Elections and -- and on-the-job  
17 training.

18 Q. All right. Well, thank you, sir. I  
19 don't think anybody could complain that  
20 you are not cut out or fit for what  
21 you're doing right now.

22 Now, the attorneys for miss --  
23 for Chief Justice Beasley have provided

1           this list. Do you have the -- the copy  
2           of the list that -- that they went  
3           through with --

4    A. Yes --

5    Q. -- all the Exhibits A and B and et  
6           cetera through E-4, I believe it is?

7    A. I do.

8    Q. Okay. And so basically, if I  
9           understand, they allege that you made  
10           well over 70 mistakes in this election  
11           -- or you or your staff or the board  
12           that amounted to error or misconduct or  
13           something under the statute.

14                        So we're going to -- I'm going  
15           to ask you now to -- to go through those  
16           and tell me what you did and why and  
17           explain to the board, and I -- I think  
18           that will be helpful because -- well, I  
19           think that would be the most -- because  
20           you know better than anybody what was  
21           done and why.

22                        So if you want, we can just  
23           start with Exhibit A and go down, if

1           that's what the board wants. I think  
2           that would be helpful. We'll start with  
3           Aaziza Ahmed, please. That's in Exhibit  
4           A.

5        A. Yes. So in the case of Aaziza Ahmed, as  
6           has been discussed with the board in  
7           numbered memo 2020-19 released by the  
8           State Board of Elections, gives us  
9           guidance as it relates to curing  
10          deficiencies on absentee ballots and  
11          also those things that are not curable  
12          which would require reissue of ballots  
13          consistent with the time frame  
14          established by the State Board of  
15          Elections to the extent possible.

16                        Mr. Ahmed, the issue was --  
17           was not his address. That is not the  
18           reason his ballot was rejected. The  
19           reason that his ballot was rejected by  
20           the board and placed in a pending cure  
21           status was due to missing his voter  
22           assistant's name.

23                        Numbered memo 2020-19 clearly

1 states, in my opinion, that if you are  
2 to send a cure certification, if the  
3 voter's witness or assistant's printed  
4 name is missing, that is what the  
5 reading of the memorandum says.  
6 Therefore, that's the guidance we  
7 followed. Therefore, that's what we  
8 presented to the board. So, Mr. Ahmed,  
9 that is the reason that he was in a  
10 pending cure status.

11 Mr. Ahmed also I believe in  
12 this case requested a new ballot. We  
13 reissued him a new ballot and he  
14 submitted another one with the same  
15 deficiency. Witness or assistant  
16 printed name missing. The statute  
17 governs what's required of an assistant  
18 and a witness, and those are the items  
19 that are required, the name, the  
20 address, and the certification.

21 Q. So as far as you can tell, Mr. Ahmed, is  
22 he on this list twice, then, if -- one  
23 for each ballot?

1 A. It's my understanding that he's on the  
2 list for this specific reason. I  
3 believe he is in another category. I --  
4 I would have to look to see. We kept  
5 him in Exhibit A.

6 Q. Okay. I think we'll find him in Exhibit  
7 D, but we'll get there eventually.

8 Edgar Jackson?

9 A. Yes. Mr. Jackson -- again, I go back to  
10 numbered memo 2020-19. In the initial  
11 ballot returned by Mr. Jackson, he had  
12 no witness information. Numbered memo  
13 2020-19 which governs the court order  
14 related to the curing process indicates  
15 that this is not a ballot that would be  
16 subject to a cure certification because  
17 the witness' signature is missing.  
18 There was a time through various  
19 iterations of 2020-19 where it would  
20 have been acceptable to cure, but as the  
21 board is aware, in October that changed  
22 due to a court decision. So in this  
23 case, again, the witness information was

1     totally incomplete, no aspect  
2     whatsoever. There was assistant  
3     information, but of course the numbered  
4     memo 2020-19 does not contemplate  
5     directly that an assistant can act as a  
6     witness if the witness information is  
7     not there.

8                 So we followed the process of  
9     reissuing a ballot. Mr. Jackson  
10    returned that ballot, and he returned it  
11    with the witness address missing on the  
12    second ballot.

13                Again, the witness does appear  
14    to be the assistant, but my contention  
15    is that the numbered memo 2020-19 does  
16    not contemplate an exception to what is  
17    specifically written. This would have  
18    been eligible for a cure because it was  
19    just the witness address missing. The  
20    guidance does not say that we can  
21    consider the assistant information to  
22    cure the deficiency with the witness  
23    information.

1                                    So that was what was presented  
2                    to the board as a recommendation  
3                    consistent with that memo.

4    Q. And that's all for Mr. Jackson?

5    A. Yes.

6    Q. Okay. Let's go to Exhibit B, Edward  
7                    Brown.

8    A. So Edward Brown, again, we looked at all  
9                    ballots that were received after 11/3  
10                   consistent with numbered memo 2020-28, I  
11                   believe it is, which governs absentee by  
12                   mail ballot returns and of course  
13                   statute that allows a time frame after  
14                   the election for ballots to be received  
15                   if they're postmarked on or before  
16                   election day.

17                                    Of course, court order  
18                    numbered memo 2020-28 allowed an  
19                    extension of receipt of those until  
20                    November 12th so long as they are  
21                    received on or before election day,  
22                    11/3.

23    Q. Do you mean postmarked?



1 A. Postmarked, yes. Sorry, postmarked.

2 Mr. Brown, we received his  
3 ballot -- and I'm -- I'm happy to share  
4 this with the board -- has a postmark  
5 from Asheville for November 4th, 2020.  
6 His ballot came in a USPS envelope, so  
7 consistent with numbered memo 2020-28,  
8 we looked at the tracking number in the  
9 USPS system, and the inbound date with  
10 the USPS was November 4th, 2020, at 2:49  
11 p.m. That is after November 3rd.  
12 The statute is -- is very clear that it  
13 has to be postmarked on or before  
14 election day. Therefore, that's what we  
15 presented to the board, and -- and that  
16 was the guidance that we -- we concurred  
17 with.

18 Q. Thank you, sir. Ms. Katie Cochran I  
19 think is the next one?

20 A. Yes.

21 CHAIR: Counsel, if I could  
22 interrupt -- and correct me if I'm --  
23 I'm wrong, but I think all these ballots

1           were in the same category, received on  
2           the 4th and 5th and did not have --

3                           MR. KNIGHT:   Yeah.

4                           CHAIR:   -- postmarks.  I mean,  
5           will we be able to treat these as one  
6           group --

7                           MR. KNIGHT:  Sure.  Fine.

8                           CHAIR:   -- if that's okay,  
9           sir.

10                          MR. KNIGHT:  Sure.

11           BY MR. KNIGHT:

12           Q.  Mr. Bowens, is there -- can you --

13           A.  I would just note not -- not all of them  
14           had a postmark.  It was a staff stamp  
15           that was controlling.  So --

16                          MS. BAXTON:  Mr. Chair, not to  
17           burden anyone, but I think for record  
18           purposes, since we're dealing with such  
19           technical issues, it's probably best if  
20           as counsel was doing it, he was going  
21           through since we do have a court  
22           reporter to make sure the items are  
23           being recorded and the reason why each

1 one was or was not approved.

2 CHAIR: We -- We can do that.

3 My point was I thought that the  
4 contention was for all of these ballots,  
5 if they arrived on the 4th or the 5th,  
6 it was implausible that they were not  
7 mailed by the 3rd, whether or not there  
8 was any postmark at all, but let's -- I  
9 mean, if it's true class-wide, but let's  
10 keep going; and if that's the case for  
11 all of them --

12 MS. BAXTON: Right. Because I  
13 think -- he just said -- I think he just  
14 said that they weren't all of them.

15 MR. BOWENS: So -- So all of  
16 them are on the 4th or the 5th. I think  
17 the point I was making is that some of  
18 them are not -- it's not a postmark  
19 that's saying that, it's a staff stamp  
20 date.

21 MS. BAXTON: That's saying  
22 when it came in?

23 MR. BOWENS: Yes, but all of

1           them are the 4th or the 5th.  It's just  
2           a different -- It's just a delineation  
3           between the means by which we came to  
4           that --

5           BY MR. KNIGHT:

6           Q.  Now, for the record --

7                           MR. BOWENS:  -- determination.

8                           MR. KNIGHT:  I'm sorry.

9           BY MR. KNIGHT:

10          Q.  For the record, can you tell me, when  
11          you say all of them are the 4th or the  
12          5th, what do you mean by that?

13          A.  That's the date that we received them.  
14          And then some of them have a postmark  
15          indicating that that was the date it was  
16          in the possession of the Postal Service.

17                           If we -- In all of these --  
18          Every single one of them, are analyzed  
19          through BallotTrax per numbered memo  
20          2020-28, and if there was a USPS for  
21          third-party delivery service envelope  
22          and a tracking number was available,  
23          then we analyzed that to see if there

1 was inbound with that agency or delivery  
2 service on or before November 4th.

3 Q. Is there --

4 A. Or November 3rd. I'm -- I apologize.

5 Q. Can you clarify, is it your testimony  
6 then that every name in Exhibit B was  
7 postmarked or otherwise marked after  
8 November 3rd?

9 A. I -- I won't -- I won't say postmarked  
10 because some of them were not  
11 postmarked. Either the staff receive  
12 date was controlling in the decision  
13 because we did not have information in  
14 BallotTrax or a third-party delivery  
15 service or there was a postmark that  
16 clearly indicated that it came or it was  
17 in the possession of the Postal Service  
18 on or after November 4th.

19 MR. IRBY: Do you mind if I  
20 make a comment? I think the question --  
21 like the confusion that we're having  
22 here is maybe reason enough that we  
23 should maybe go individually through

1           them like you were.

2                           MR. KNIGHT:    Okay.

3                           MR. IRBY:    I would agree with  
4           that.

5                           MR. KNIGHT:   I'll be happy to  
6           do that.

7                           CHAIR:   All right.   That's  
8           fine.

9           BY MR. KNIGHT:

10    Q. All right. Well, then, let's go back to  
11       Ms. Cochran, please.

12    A. Ms. Cochran, I'm again, going to share  
13       this with the board. We have a postmark  
14       of November 4th, 2020, and a received  
15       date by our office by mail of November  
16       5th.

17    Q. Toya Ebron?

18    A. Toya Ebron, we did not have a postmark,  
19       but we received it by mail on November  
20       5th and we did not have any information  
21       in BallotTrax to confirm that was  
22       inbound with USPS on or before the 3rd.

23    Q. Hai Salfity?

1     A. We received Mr. Salfity's ballot by mail  
2           on November 4th. There was not a  
3           postmark and no data in BallotTrax per  
4           our analysis suggesting that it was in  
5           the possession of the USPS on or before  
6           November 3rd.

7     Q. Could you explain what BallotTrax is,  
8           perhaps?

9     A. So BallotTrax is a system that was put  
10           in place by the State Board of Elections  
11           this year to allow voters the ability to  
12           track their ballot through the mail  
13           stream. So essentially at the point --  
14           and this is through barcoding --  
15           essentially at the point of us mailing  
16           out the ballot, the voter essentially  
17           would get a notification once it's  
18           outbound through IND, which I won't go  
19           into all the details of that. It's a  
20           system that's scanned through USPS that  
21           tracks the ballot and it's integrated  
22           into BallotTrax which allows the voter  
23           to watch their ballot through the

1 stream.

2 That data in some cases and as  
3 the board approved several precanvas was  
4 used to determine that a ballot was  
5 inbound with the USPS. In these cases  
6 we did not see -- BallotTrax did not  
7 have inbound data, and there were  
8 several where BallotTrax did not have  
9 inbound data as to when UPS -- or USPS,  
10 rather, received the -- the ballot in  
11 their possession for delivery.

12 Q. Thank you, sir. Derek Schmidt?

13 A. Derek Schmidt, we have a postmark of  
14 November 4th and a received date by the  
15 Board of Elections of November 5th.

16 Q. Amanda Searls?

17 A. This does not have a postmark. It was  
18 received in our office by mail on  
19 November 4th and there was no subsequent  
20 data in BallotTrax.

21 Q. Summer Solheim?

22 A. This ballot was -- has a postmark of  
23 November 4th and was received in our



1 office on November 5th.

2 Q. Patricia Tolle?

3 A. This ballot has a postmark of November  
4 4th, was received in our office on  
5 November 5th.

6 Q. Michelle Zhang?

7 A. This ballot has no postmark, was  
8 received by us on November 5th, and it  
9 did not have any subsequent data or data  
10 in BallotTrax to determine inbound date  
11 that it was in the possession of the  
12 United States Postal Service.

13 Q. How does it happen to not have any data?  
14 I mean, what happens? How do you know  
15 it doesn't have any data?

16 A. So the state provided us a process to  
17 search BallotTrax to look up the voter,  
18 see if there is any inbound data listed.  
19 If there's inbound data listed, we would  
20 look at that to see the date that it was  
21 inbound with USPS. If that wasn't  
22 available, there was another spreadsheet  
23 that the state sent that allowed us to

1 analyze mail barcodes and if we received  
2 a match in that data set, that was  
3 determinative that the -- the ballot was  
4 timely in the possession of the USPS for  
5 delivery to the County Board of  
6 Elections.

7 And as stated earlier, the  
8 board did approve some based on that  
9 data that -- that were deemed timely  
10 because of the tool the State Board of  
11 Elections provided us.

12 Q. Okay. All right. So I think that's all  
13 with Exhibit B.

14 And Exhibit C. Exhibit C is  
15 Claire Hudzinski?

16 A. Yeah. So this is a ballot that we  
17 actually did receive a timely cure for.  
18 This cure was received by our office and  
19 -- and board members, we have the email  
20 attached to confirm this. We received  
21 it I believe on November 8th.

22 This was archived. The cure  
23 was archived in error by staff. We went

1 back -- and, of course, there's been a  
2 lot of paper. So -- So this is  
3 certainly possible. But this is one  
4 that was found, and certainly my -- my  
5 recommendation to the board at this time  
6 would be to include this in the order to  
7 the State Board as one that should have  
8 been counted for them to decide whether  
9 the totals across the state would be  
10 outcome determinative to make the  
11 appropriate adjustment.

12 CHAIR: All right. Just to  
13 clarify, are you saying the cure was  
14 received on time and the ballot is in  
15 other respects qualified?

16 MR. BOWENS: Yes.

17 CHAIR: Okay.

18 BY MR. KNIGHT:

19 Q. All right. Then let's move on to  
20 Exhibit -- That was the only name on  
21 Exhibit C; right?

22 A. Yes, sir.

23 Q. Okay. Exhibit D, we come to Mr. Aaziza

1 Ahmed, again?

2 A. I need to refresh myself on -- on the  
3 contents of -- or the reasoning for  
4 Exhibit D, if I could have a moment  
5 to --

6 Q. Sure.

7 MR. LEHMAN: I hate to  
8 interrupt again, and say that Exhibit D  
9 is -- my recollection, these were all  
10 ballots -- absentee applications, the  
11 board initially approved them as  
12 timely --

13 MR. KNIGHT: Good point.

14 MR. LEHMAN: -- and the board  
15 subsequently --

16 MR. KNIGHT: And that reminds  
17 me. I have a couple of other questions  
18 about that, and then maybe we can  
19 dispense with these.

20 MR. LEHMAN: There may be  
21 some individual characteristics, too,  
22 but that was -- that was the argument  
23 that --

1                   MR. BOWENS:  If I may, I would  
2           like to note that all of these were not  
3           subject to the -- what we call the  
4           reissue audit where this board in its  
5           authority to pass upon the legality of  
6           a ballot, we went back and did a reissue  
7           audit independent of any pressure from  
8           any third party.

9                   Mr. Richard Alexander and  
10          Aaziza Ahmed were subject to the reissue  
11          audit.  The others were not.

12                   So I'm happy to answer any  
13          questions.  I just wanted to make that  
14          point.

15          BY MR. KNIGHT:

16          Q.  Okay.  Let's talk for a minute about the  
17          statute in -- in the complaint here or  
18          the -- the basis of the protest here is  
19          that when the ballot comes in, it's  
20          accepted, but if my understanding is  
21          correct, the statute refers to ballots  
22          that are approved.

23                   Is that your understanding,

1           that there's a difference between  
2           accepted and approved?

3       A. And I'd just -- I just would like to  
4           make one more statement based on what I  
5           just said. Kisha Mayo was also subject  
6           to that -- to that audit, so there were  
7           three.

8                                If I could take a moment just  
9           to kind of explain the process by which  
10          staff receives a ballot.

11       Q. Please do.

12       A. So -- So first -- and this is an issue  
13          with BallotTrax, it's an issue with  
14          SEIMS, which is Statewide Elections  
15          Information Management System, in my  
16          opinion, when staff receives a ballot,  
17          we -- we place on that ballot a  
18          preliminary disposition, a staff  
19          recommendation.

20                               When we do that, BallotTrax,  
21          for those that opt into BallotTrax,  
22          receive a notification that their ballot  
23          has been accepted. That is not final.

1 The Board of Elections is the only  
2 authority that can make a final  
3 determination as to the status of a  
4 ballot. We made that clear to several  
5 voters.

6 In several of these instances  
7 -- and I could point out a couple  
8 specifically, and there was a couple in  
9 the last batch that we dealt with where  
10 they were initially accepted but after  
11 further analysis consistent with our  
12 preaudit, we noticed that, for instance,  
13 there was a late postmark. So we  
14 changed the status before the meeting.  
15 So there's levels of audit.

16 When we first get the ballot  
17 inbound, staff does a preliminary review  
18 -- or temporary employees with guidance  
19 that we provide and -- and we received  
20 from the State Board of Elections, and  
21 they make preliminary determinations.

22 Before we present those to the  
23 Board of Elections, we do an additional

1     audit where we may catch out of the  
2     47,000 -- 47,920 that we received an  
3     error.

4                     If we find that error because  
5     it has not been presented to you and --  
6     and there would be no need to issue  
7     challenges or anything of that nature at  
8     that point, we would change the status  
9     in the ballot -- in SEIMS, the Statewide  
10    Elections Information Management System.  
11    And I believe the voter could -- would  
12    also receive, if my understanding of  
13    BallotTrax is correct, a notification at  
14    that point.

15                    Of course our due diligence  
16    once a status is changed is to comply  
17    with numbered memo 2020-19 and reissue a  
18    cure for a ballot. In all instances  
19    where we reissued a cure for a ballot  
20    pursuant to the reissue audit, those  
21    were overnighted consistent with the  
22    board's directive.

23                    So that is the process by



1       which we deal with logging ballots. It  
2       is not abnormal before BallotTrax and  
3       after for a status to change based on  
4       our recommendation because of the level  
5       of volume and -- and some of the -- you  
6       know, the -- the workflow of audits.

7                        So it -- it is not abnormal  
8       for a status to change. It doesn't mean  
9       anything nefarious is going on or we're,  
10      you know, adjusting status. It just  
11      means that we're humans, as was noted.  
12      And so if we see an error, we fix the  
13      error and we -- and we attempt to  
14      rectify it.

15    Q. Mr. Bowens, is there anything magical  
16      about the word accepted or legally --  
17      magical -- legally binding about the  
18      word accepted in your -- in your  
19      expertise in this matter?

20    A. A ballot by statute 163-230.1 which --  
21      which governs board review, no ballot is  
22      accepted until the Board of Elections  
23      reviews that ballot and makes a

1           determination on that ballot.

2       Q. Is that approved, do you mean, or  
3       accepted?

4       A. Accepted means -- If you're asking my  
5       definition, accepted means it's in  
6       receipt, in our possession.

7       Q. Uh-huh.

8       A. Approved, the statute makes clear that  
9       the board at it's next meeting will  
10      approve or disapprove an absentee by  
11      mail ballot. So disposition in  
12      BallotTrax does not change from the  
13      point of receipt with us to the point  
14      that the board approves it, which is  
15      another issue.

16                    But, yes, the -- the formal  
17      term by statute for the board would be  
18      to approve or to disapprove, except, in  
19      my opinion, is when it's in our  
20      possession.

21      Q. Okay. Now, the names on Exhibit D, were  
22      these all instances that -- that were --  
23      of voters whose ballots were accepted

1 but then their status was not approved,  
2 they later were not approved for one  
3 reason or another?

4 A. Yes.

5 Q. If the board doesn't mind -- and we'll  
6 deal with this as -- in mass, unless you  
7 prefer me to go through them one by one?

8 CHAIR: I think the question  
9 is: Is there anything different about  
10 all the voters in here? If so, we  
11 should go one by one. But if -- if --  
12 if they're all the -- you said they're  
13 not all the reissue of --

14 MR. BOWENS: Yes, there are  
15 some that are different, and I'm  
16 happy --

17 CHAIR: All right. So --

18 MR. BOWENS: -- to --

19 CHAIR: -- it's probably best  
20 to go through them.

21 MR. KNIGHT: Okay.

22 BY MR. KNIGHT:

23 Q. Well, let's go through them. Then back

1 to Mr. Aaziza Ahmed?

2 A. I believe the reason that he's in this  
3 is because he was subject to the reissue  
4 audit again and the board's authority  
5 to, you know, (unintelligible) ballots  
6 and -- and also 163-230.1F, which says  
7 the County Board of Elections constitute  
8 the proper official body to pass upon  
9 the validity of all applications for  
10 absentee ballots received in the county.  
11 That's immediately under the statute  
12 that talks about the finality of the  
13 board's decision.

14 In the case of Mr. Ahmed, he  
15 was subject to the reissue audit, and we  
16 again overnighted him the proper  
17 materials to cure his ballot.

18 Q. Now, is that the -- do you have actually  
19 two ballots for Mr. Ahmed there?

20 A. I do. Uh-huh.

21 Q. Okay. So he's -- So he's on here twice  
22 for two separate ballots?

23 A. I believe he's on there -- he -- he's --

1 he's -- it -- it's one ballot but two  
2 different scenarios where he -- could  
3 have applied to two different exhibits.

4 Q. Okay. Richard Alexander?

5 A. Mr. Alexander was also subject to the  
6 reissue audit, and this was for  
7 assistant signature missing. In this  
8 case, we reissued Mr. Alexander a ballot  
9 which we did not receive back.

10 Q. And I believe the next one is also a  
11 duplicate, Katie Cochran?

12 A. I'd have to go back and look at -- I  
13 believe she was --

14 MR. IRBY: What exhibit is she  
15 in?

16 MR. BOWENS: She was in  
17 Exhibit B.

18 A. So, yeah, hers was late, I believe, if  
19 it was in Exhibit B.

20 BY MR. KNIGHT:

21 Q. Caroline Dyer-Gunn?

22 A. Caroline Dyer-Gunn, this was not subject  
23 to the reissue audit. This particular

1 ballot was initially approved -- or,  
2 excuse me, accepted as -- or approved --  
3 preliminary approved based on staff  
4 recommendation, but after further  
5 analysis and our additional audit, we  
6 noticed that the witness indicated that  
7 they worked at The Addison in Durham,  
8 which is an assisted living facility.  
9 Of course the board was made privy to  
10 this. Assisted living facility, those  
11 people working in the facilities are not  
12 allowed to act as witnesses.

13 We confirmed this with the  
14 facility, that this occurred, and  
15 because of that, we did reissue  
16 Ms. Dyer-Gunn a new ballot and we did  
17 not receive that back.

18 Q. Okay. Kisha Mayo?

19 A. Kisha Mayo was subject to the reissue  
20 audit under a pending cure. We did send  
21 her a cure certification, but we did not  
22 receive that back.

23 Q. And another duplicate, Derek Schmidt?

1 A. I believe he was in Exhibit B, so he  
2 would have been on time.

3 Q. Malcolm South?

4 A. Mister -- Mr. South's ballot, his --  
5 what appears to be -- I would assume his  
6 wife, Yvonne South, signed where the  
7 voter is supposed to sign. So he was  
8 issued a cure certification.

9 THE COURT REPORTER: Can you  
10 repeat what you just said?

11 MR. BOWENS: Yvonne South  
12 signed where Mr. Smith was supposed to  
13 sign, and so because of that we sent a  
14 cure certification for him to cure the  
15 ballot consistent with numbered memo  
16 2020-19.

17 BY MR. KNIGHT:

18 Q. And I take it you didn't receive the  
19 cure certification --

20 A. I didn't -- We did not receive a cure  
21 certification from Mr. South.

22 MR. KNIGHT: And that's all  
23 for -- board members for Exhibit D. I'm

1 going to move on to Exhibit E-1, unless  
2 there's any other questions.

3 MR. BOWENS: I'll just refresh  
4 myself, if I may, on -- on --

5 MR. KNIGHT: Sure.

6 MR. BOWENS: -- Exhibit --

7 BY MR. KNIGHT:

8 Q. The first name on the list is Karen  
9 Daniels, when you're ready.

10 A. Okay. So, Ms. Daniels -- and we  
11 confirmed this with our county GIS  
12 officer, and it's confirmed in the notes  
13 that comes with the provisional envelope  
14 from the election official -- the  
15 address point provided is in Chatham  
16 County. So the voter was registered in  
17 Durham, but after further investigation  
18 and geocode adjustments, that address is  
19 in Chatham County, and it's -- it's  
20 quite a bit out -- outside of Durham.

21 So of course there are address  
22 points that do have Durham listed that  
23 are in other counties, Orange, Wake,



1 Chatham. We have -- We have quite a  
2 few.

3 So in this case, we did not  
4 recommend approval to the board because  
5 the address was not in our geocode and  
6 we confirmed with our internal GIS tool  
7 that that address point was indeed in  
8 Chatham County.

9 Q. Lisa Heusner?

10 A. For Ms. Heusner, the reason why her  
11 ballot was not approved is she was  
12 required to show HABA (phonetic) ID  
13 163166.12, which requires individuals  
14 that register to vote by mail and are  
15 presenting to vote for the first time do  
16 not provide either the last four of  
17 their social, their driver's license  
18 number, identification number, or what  
19 we call a HABA document, which is a bank  
20 statement, utility bill, government  
21 check, paycheck, or other government  
22 document with her name and residence  
23 address.

1                   In the case of Ms. Heusner, we  
2           did not get that upon her presentation.  
3           And it's even noted on her provisional  
4           application that she did not provide the  
5           ID required of HABA.

6                   Because of that, we did not  
7           recommend approval to the board for  
8           Ms. Heusner.

9           Q. When you say recommend to the board, I  
10          take it the board has already reviewed  
11          these once?

12          A. They have based on, yes, staff  
13          recommendation in their review.

14          Q. The next one is Pedro Maya?

15          A. We actually agree that Mr. Maya should  
16          be approved. This was -- Mr. Maya was  
17          registered. I believe there was some  
18          confusion with some of the -- the -- the  
19          name, compound name, but we do agree  
20          that Mr. Maya's ballot should have been  
21          approved, and we would recommend to the  
22          board that that be included in the order  
23          to the State Board of Elections,

1 consistent with guidance from counsel to  
2 potentially be reviewed if they  
3 determine there's enough for an outcome  
4 determinative adjustment.

5 Q. Jordyn McKinnon?

6 A. The same thing for Mr. McKinnon. We did  
7 not have HABA ID for Mr. McKinnon,  
8 which, again, is required by statute,  
9 and his provisional application notes  
10 that no ID was provided subject to that  
11 requirement.

12 Q. Okay.

13 A. So we did not recommend approval for  
14 that ballot.

15 Q. David Wright?

16 A. So Mr. Wright noted to officials on his  
17 provisional application -- although he  
18 did note that his residence was in  
19 Chapel Hill, he noted to election  
20 officials that he moved to Carrboro,  
21 which is in Orange County, on October  
22 1st.

23 So based on that, we did not

1 recommend approval to the Board of  
2 Elections based on his -- his admission  
3 that he wanted to vote there because  
4 that was his old precinct. But he had  
5 -- the cutoff, I believe, was October  
6 4th for residency changes, the 30-day  
7 cutoff for jurisdictional changes by  
8 law. 10/1 would have been before that,  
9 and -- and because of that, we did not  
10 recommend approval for Mr. Wright.

11 Q. Thank you. Next is Exhibit E-2.

12 A. If I can just refresh myself.

13 Q. Sure.

14 A. So if I can take a moment to kind of  
15 preface something with this particular  
16 exhibit, if -- if that's okay.

17 Q. By all means, please.

18 A. I kind of want to talk about list  
19 maintenance as it relates to the --  
20 maintaining continuous residency in the  
21 -- in the county.

22 Numbered memo 2018-05, I  
23 believe section 2.1, which specifically

1 speaks to list maintenance, talks about  
2 if -- if someone attests that they've  
3 maintained continuous residency based on  
4 a list maintenance procedure, which  
5 typically that applies to 163-182.14D,  
6 which is related to an MBRA (phonetic)  
7 protocol where if someone essentially  
8 is in inactive status for two federal  
9 election cycles, then they go into a  
10 remove status for the reason of remove  
11 due to two federal election cycles in  
12 inactive status or previously it was  
13 called under the old purge law.

14 We do a specific audit on  
15 people that have that status; and if we  
16 see no evidence -- which is again  
17 consistent numbered memo 2018-05 -- if  
18 we see no evidence of an attempt at  
19 registration or -- and this is -- and  
20 this is important, a subsequent removal  
21 for a reason not attributable to a list  
22 maintenance protocol, then we would  
23 recommend approval to the board if we

1 see no evidence, again consistent with  
2 numbered memo 2018-05 and guidance and  
3 confirmed with the State Board of  
4 Elections.

5 So I did want to make that  
6 clear. Just because someone signs an  
7 affidavit that they've maintained  
8 continuous residence, if we have  
9 evidence that suggests otherwise,  
10 consistent with that memo, then we are  
11 not going to recommend approval to you  
12 on a ballot if we have evidence  
13 sufficient to suggest that they did not  
14 maintain continuous residency in the  
15 county.

16 Q. Thank you, sir. To go through these  
17 individually, could you start, please,  
18 with Joshua -- are you ready to go, by  
19 the way?

20 A. I am, yes.

21 Q. Joshua Byker?

22 A. Mr. Byker -- and this was a State Board  
23 of Elections removal -- was removed due

1 to a move to Johnston County on  
2 4/24/2017, and we did not see a  
3 subsequent attempt at registration in  
4 Durham County before the October 9th  
5 deadline. If SEIMS does, to my  
6 understanding with -- In conversations  
7 with the voter registration specialist  
8 and counsel with the State Board, if  
9 SEIMS conducts the removal due to a move  
10 within the state or a move out of  
11 county, it's because the voter has taken  
12 an action attempting registration in the  
13 other county for that removal to occur.

14 So in this case we have a  
15 record of Mr. Byker moving to Johnston  
16 County. He was removed for that reason  
17 on 4/24/2017.

18 Q. For the assistance of the court reporter  
19 and for anybody who's not familiar with  
20 it, we will use the term SEIMS a lot.  
21 Can you tell us exactly what SEIMS is  
22 and what that is an acronym for?

23 A. Yes. I'm sorry. It's the Statewide

1 Elections Information Management System.

2 THE COURT REPORTER: How are  
3 you spelling that?

4 MR. BOWENS: S-E-I-M-S.

5 BY MR. KNIGHT:

6 Q. Okay. Kenneth Williams?

7 A. In this case, the voter did not have the  
8 appropriate ID for same-day  
9 registration. They attempted same-day  
10 registration on 10/27. Same-day  
11 registration consistent with statute  
12 requires that the voter provide proof of  
13 residency.

14 There's a number of documents  
15 that are permissible for proof of  
16 residency in this case. There was not  
17 ID that had the current name and  
18 residence address on it.

19 And it's also noted on the  
20 provisional application that no ID was  
21 provided, which suggests that proof of  
22 residency was indeed not provided.

23 So in this case, the -- I did



1 not -- we did not recommend approval to  
2 the board on this provisional because  
3 proof of residency was not required --  
4 was not provided. And I would note that  
5 in those cases, voters are provided with  
6 -- or are given detail on what's called  
7 the notice to same-day registrants which  
8 explains the ability to come to the  
9 Board of Elections or to send it to us  
10 electronically. We've got several for  
11 the board actually to approve as an  
12 addendum to a provisional application --  
13 application that was submitted during  
14 early voting letting them know that they  
15 could submit that proof of residency  
16 document on the day before the county  
17 canvass by 5 o'clock.

18 In this case, we did not  
19 receive that and, therefore, we did not  
20 recommend approval to the board for the  
21 provisional ballot.

22 Q. The next name on the list is Amanda  
23 Wilkerson. I note that she is another

1 duplicate. She is also on the list in  
2 E-3, so -- but Amanda Wilkerson on  
3 Exhibit E-2.

4 A. So Ms. Wilkerson was removed by SEIMS  
5 due to a move within the state. She  
6 moved, according to SEIMS, to Person  
7 County on 1/14/2020. She also did not  
8 have the ID required for same-day  
9 registration, as noted on her  
10 provisional application by the election  
11 official of no ID provided. Therefore,  
12 we do not recommend approval to the  
13 board for that.

14 Q. David Pettiford?

15 A. So Mr. Pettiford was removed due to a  
16 felony conviction -- previous felony  
17 conviction, and we saw no attempt at  
18 registration prior to the 10/9 voter  
19 registrar on or before the 10/9 voter  
20 registration deadline, and, therefore,  
21 we recommend for the ballot not to be  
22 approved.

23 So, again, I believe an

1 affidavit was submitted maybe for  
2 Mr. Pettiford, but this goes -- just to  
3 kind of -- this goes to what was  
4 discussed earlier. If someone, you  
5 know, signs an attestation that they  
6 maintain continuous residency in the  
7 county and their removal reason has  
8 nothing to do with that -- for instance  
9 they were removed for a felony  
10 conviction -- you are required by law to  
11 register again.

12 And my understanding is that  
13 an attestation of continuous residency  
14 would not reactivate a removal based on  
15 felony conviction. So, therefore, we  
16 did not recommend approval for this  
17 particular provisional ballot with the  
18 board.

19 Q. Next is Brian Wilkerson?

20 A. Mr. Wilkerson, according to SEIMS, was  
21 removed due to a move to Orange County  
22 on 12/12/2018 per the State Board of  
23 Elections.

1                   Again, we did not see any  
2           evidence at an attempt at registration  
3           in Durham County on or before the  
4           10/9/2020 voter registration deadline.

5                   And numbered memo 2018-05  
6           outlays -- or lays out, rather, exactly  
7           the protocol we're supposed to follow to  
8           determine whether they had made an  
9           attempt. Our voter scan -- We -- We do  
10          various review through SEIMS to make  
11          that determination. In this case, we  
12          did not see any attempt, and, therefore,  
13          we did not recommend this ballot for  
14          approval to the board.

15   Q. Hasan Wilson?

16   A. Mr. Wilson was previously removed -- so  
17          a couple things. Mr. Wilson did have a  
18          -- a removal record, and I would have to  
19          look specifically to get the date. I  
20          believe it was in 2004. So -- where he  
21          was removed due to list maintenance  
22          protocol. I know that's a big  
23          difference but -- did have a removal

1 record due to two federal election  
2 cycles in inactive status.  
3 Typically if we have no evidence that  
4 the voter registered somewhere else,  
5 that would constitute reinstatement  
6 under the law. But in 2015, Mr. Wilson  
7 was convicted of a felony. Again, that  
8 would -- that constituted a removal of  
9 his registration record, and, you know,  
10 because of this, we could not reinstate  
11 him because he had a subsequent removal  
12 for something that was not related to  
13 list maintenance protocol as it pertains  
14 to residency.

15 Q. Safiyyah Muhammad?

16 A. I think that was withdrawn.

17 CHAIR: Counsel, just a  
18 suggestion, and then I'll check with  
19 members of the board, but this is a real  
20 long list, the next -- the next exhibit.  
21 We've been here two hours. Does anybody  
22 on the board want a break, a short  
23 recess?

1 MS. OXENDINE: Yes.

2 CHAIR: Ten minutes. Okay.

3 Good with everybody?

4 MR. IRBY: Uh-huh.

5 CHAIR: Okay. Let's --

6 MR. KNIGHT: Could we get to

7 Safiyyah Muhammad?

8 MR. BOWENS: She was --

9 Withdrew.

10 CHAIR: She --

11 MR. KNIGHT: Oh, so --

12 CHAIR: She withdrew --

13 MR. BOWENS: She was

14 withdrawn --

15 MR. KNIGHT: I'm sorry.

16 Pardon me.

17 CHAIR: All right. Hearing no

18 objections, we will stand at recess for

19 ten minutes.

20 THE COURT REPORTER: Off the

21 record at 5:56.

22 (RECESS.)

23 CHAIR: Okay. If everybody's

1 ready to go, we're back on the -- excuse  
2 me, the questions.

3 MS. ASANTE-SMITH: Yes.

4 Mr. Chair, for the sake of efficiency on  
5 this -- and I -- I think this might have  
6 been my fault for not making it clear.

7 But for E-3, just -- I should have  
8 mentioned that aside from the list of  
9 names that I specifically called out --  
10 and I'm happy to repeat them -- were  
11 withdrawn for -- as to the -- the others

12 on E-3. So it would just be -- So  
13 during -- during the course of my  
14 presentation, I named, for example,  
15 Demario Scoggins, Eric Winkler, et  
16 cetera, and our protest is -- should  
17 just be for those. So I just want to  
18 save time in terms of Mr. Bowens maybe

19 having to go through all of the ones  
20 listed on E-3. And I'm happy to  
21 reiterate the names that I actually  
22 called out, if that's Mr. Chair's  
23 preference, but I can --

1 CHAIR: Yeah, that'd be very  
2 helpful if you could --

3 MS. ASANTE-SMITH: Yes.

4 CHAIR: -- call -- call out  
5 the names. Are --

6 MS. ASANTE-SMITH: Yes.

7 CHAIR: Are these the only  
8 ones you're pursuing right now?

9 MS. ASANTE-SMITH: In E-3,  
10 correct.

11 CHAIR: E-3, okay.

12 MS. ASANTE-SMITH: I -- Again  
13 for that section. So it would be  
14 Demario Scoggins.

15 CHAIR: Okay.

16 MS. ASANTE-SMITH: Eric  
17 Winkler, King Awuku, and David  
18 Pettiford.

19 MR. IRBY: Okay. I'm missing  
20 one. Mr. Scoggins?

21 MS. ASANTE-SMITH: Yes.

22 Mr. Irby: -- Mr. Awuku,  
23 Mr. Pettiford.



1 MS. ASANTE-SMITH: It's  
2 Scoggins, Winkler, Awuku, and Pettiford.

3 MR. IRBY: Thank you.

4 CHAIR: Okay. Appreciate  
5 that.

6 MS. ASANTE-SMITH: Yes, sir.

7 CHAIR: Anything for  
8 efficiency.

9 MS. ASANTE-SMITH: Yes, sir.

10 CHAIR: So you've got those  
11 names?

12 MR. KNIGHT: Yes, sir.

13 MR. IRBY: Folks listening  
14 online -- I don't know if they can hear  
15 the attorney -- but she just clarified  
16 that the only names that are in Exhibit  
17 E-3 are those names rather than the  
18 whole list of names.

19 MR. BOWENS: If I could have a  
20 moment just to pull those.

21 MR. KNIGHT: Certainly, sir.

22 MR. IRBY: (Unintelligible)

23 THE COURT REPORTER: Repeat

1           what you just said.

2                           MR. IRBY: I said that

3           Mr. Pettiford, he was also in Exhibit

4           E-2, just so he's not looking through

5           the wrong stacks.

6           BY MR. KNIGHT:

7           Q. All right. Thank you, Mr. Bowens. If  
8           you're ready, then we'll start then with  
9           Demario Scoggins, please, on Exhibit  
10          E-3.

11          A. So Mr. Scoggins was removed due to a  
12          felony conviction. I believe this  
13          particular exhibit is based on voters  
14          reporting an attempt at registration.  
15          In the case of Mr. Scoggins, we did not  
16          receive an attempt at registrations --  
17          or registration per our analysis on or  
18          before the 10/9 deadline. Therefore, we  
19          did not recommend approval for  
20          Mr. Scoggins to the board.

21          Q. Eric Winkler?

22          A. We did not see an attempt at  
23          registration for Mr. Winkler. He did

1           vote provisionally at the Duke One-Stop  
2           Site, but it appears he did not have ID  
3           for proof of residency. It is noted  
4           that he provided a utility bill, but  
5           that utility bill apparently did not  
6           have the current name and residence  
7           address. So if you provide a utility  
8           bill and it does not have the required  
9           address on it, then that would not  
10          satisfy the residency requirement for  
11          same-day registration.

12        Q. King Awuku, and I -- and I note that he  
13          is also on Exhibit E-4, if there's a  
14          King Awuku?

15        A. Mr. Awuku was also -- did not have proof  
16          of residency for same-day registration.  
17          ID noted on the provisional was blank.  
18          He did attempt registration at South  
19          Regional Library and appears he was also  
20          previously removed due to failed mail  
21          verification.

22        Q. And we've dealt previously with  
23          Mr. Pettiford, but if you could repeat

1 Mr. Pettiford?

2 A. I believe he was a part of E-2?

3 Q. Yes.

4 A. Mr. Pettiford was removed due to a  
5 felony conviction, consistent with the  
6 -- the protocol for removal for that  
7 reason under statute. We did not see a  
8 subsequent attempt at registration based  
9 on our analysis. The registration  
10 attempt via the provisional would not  
11 have been sufficient to cure a  
12 deficiency under 1632.6, I believe,  
13 which allows for the correcting of voter  
14 registration forms. We did not have one  
15 in our possession that was received on  
16 or before 10/9 and, therefore, we did  
17 not recommend that for approval.

18 Q. I believe that's all the names on E-3.  
19 So then we can proceed to E-4.

20 A. And if I may, Mr. Knight, there is one  
21 that I would be remiss if I didn't  
22 mention because it was a part of the  
23 initial -- and, board, you may find this

1 to not be appropriate, but we did find  
2 -- for Kimberly Freeman-Downey, we did  
3 find an attempt at registration on or  
4 before the voter registration deadline  
5 in our archive cue after further  
6 analysis, and we would recommend that  
7 that be included in the recommendation  
8 if the state determines that adjustments  
9 would be outcome determinant requiring  
10 adjustment to our canvass results.

11 Q. Okay. Thank you. So we can move to  
12 E-4. The first name on that list is  
13 Marisol Aguilar?

14 A. So the address provided by Ms. Aguilar  
15 of 214 Terry Fuqua Parkway is actually  
16 in Orange County based on our internal  
17 analysis and our -- our geocode tool.  
18 Because the address is in Orange County  
19 after the geocode review, we did not  
20 recommend this ballot be approved based  
21 on that reason.

22 Q. All right. Thank you. Is there  
23 anything with respect to Exhibit 4 and

1 the address that you want to share with  
2 us about King Awuku since we dealt with  
3 him as far as his registration earlier?

4 A. Yes, I believe that the response was  
5 sufficient -- was sufficient to provide  
6 (unintelligible).

7 Q. All right. I note that when we were  
8 going over this list from -- the  
9 protestor's counsel was going over this  
10 list originally, they skipped over  
11 Hunter Boehme. But just for the record,  
12 could you tell us about Hunter Boehme?

13 A. Sure. Mr. Boehme provided an address in  
14 Winston-Salem on his provisional  
15 application indicating that likely he is  
16 a registrant or a resident of Forsythe  
17 County.

18 He indicated, per notes from  
19 the provisional application, that he did  
20 not have permanent residence in Durham.  
21 So we did not recommend approval based  
22 on the confirmed address being in  
23 Winston-Salem.

1 Q. The next one is Jordyn Gross?

2 A. Jordyn Gross did not have the required  
3 proof of residency for same-day  
4 registration. It is noted that she  
5 provided other photo ID, but of course  
6 that could be HABA ID because that is  
7 for proof of person. Same-day  
8 registration is proof of residency, and  
9 there is documents that are permissible  
10 for proof of residency as a part of the  
11 same-day registration process as -- as  
12 noted on the same-day registration  
13 notice provided to same-day registrants.

14 Per the note provided by an  
15 election official, she had just moved  
16 two weeks ago and wanted to vote. She  
17 did not have the document needed to  
18 prove her residency for SDR. It should  
19 also be noted that she was registered in  
20 Mecklenburg County at the time of  
21 presentation at NCCU for same-day  
22 registration.

23 Q. I believe Mr. Nzamga has been withdrawn.

1 Ray Odom?

2 A. So Mr. Odom also did not have the  
3 appropriate -- based on notes provided  
4 from the election official at the site  
5 did not provide proof of residency, and  
6 it's -- it was indicated that he was in  
7 a transitional situation. So there was  
8 not -- even though a driver's license  
9 was provided, again, that can be  
10 provided but not have the current  
11 residence address that is being stated  
12 that a voter is supposed to have resided  
13 at at least 30 days preceding the  
14 election, which would get us to the 10/4  
15 cutoff for that residency change.

16 So in this case there was no  
17 ID for the residency requirement as --  
18 as -- as required by statute for  
19 same-day registration, and, therefore,  
20 we did not recommend approval for the  
21 provisional ballot of Ray Odom, and we  
22 also did not receive subsequent proof of  
23 residency by the November 12th deadline



1 as established by statute.

2 Q. Derrick Perry?

3 A. Derrick Perry, same situation.

4 Mr. Perry did not have proof of  
5 residency per election official notes.  
6 Again, it notes that he provided an NC  
7 driver's license number or -- excuse me,  
8 an NC driver's license, but that is not  
9 indicative of a proof of residency for  
10 the -- for the residency that is being  
11 listed on the provisional application.

12 It's noted by the election  
13 official on the provisional envelope  
14 that no current proof of address was  
15 provided. Therefore, we did not  
16 recommend approval on the provisional  
17 for lack of proof of residency. We also  
18 did not receive that by the November  
19 12th deadline as required by statute, so  
20 we did not recommend approval.

21 Q. I believe we have -- and I may be wrong  
22 because we've -- we've gone through a  
23 lot of names, and you can correct me,

1 but we may have already dealt with  
2 Kenneth Williams. But if you could  
3 repeat or -- or at least refresh our  
4 memory with respect to Mr. Williams  
5 briefly, please?

6 A. Mr. Williams also didn't have, it  
7 appears, residency -- a residency  
8 document for same-day registration. I  
9 believe this -- he -- he also attempted  
10 to register on 10/27 through the DMV. I  
11 would have to confirm that. That, of  
12 course, is 18 days after the voter  
13 registration deadline.

14 Q. All right. Another duplicate is one we  
15 just dealt with, Eric Winkler. Is there  
16 anything else we need to know about  
17 Mr. Winkler?

18 A. No, if the initial response was  
19 sufficient.

20 Q. And lastly Shawn Zadeh?

21 A. So Mr. Zadeh at Hope Valley Baptist  
22 Church indicated that he had not lived  
23 at the address provided for at least 30

1 days. Of course that is a requirement  
2 that you have residency at least 30 days  
3 preceding the election event.

4 He indicated he moved on 10/26  
5 to the Durham County residence. Because  
6 of that, we did not recommend that --  
7 for approval to the board because that  
8 would be inconsistent with the  
9 requirements of registration in North  
10 Carolina or a different jurisdiction in  
11 North Carolina.

12 Q. All right. Thank you. That comes to  
13 the end of the list. Just to repeat and  
14 to make sure that we know, there were, I  
15 believe, three names that you suggested  
16 should be submitted to the State Board  
17 for -- you said it better than I ever  
18 could, but if you'd repeat what you  
19 think these names -- should happen with  
20 these names.

21 A. So for the provisional application for  
22 Pedro Maya, provisional application for  
23 Kimberly Freeman-Downey, and also the

1 absentee application for Claire  
2 Hudzinski, consistent with -- which  
3 board members have in the guidance from  
4 Katelyn Love, General Counsel at State  
5 Board of Elections.

6 If we see some ballots that  
7 should have been approved or is  
8 recommended for approval that in the  
9 order drawn up pursuant to tonight's  
10 hearing that we note specifically which  
11 ones we thought should have been  
12 approved and also specifically which  
13 ones should not be approved, then the  
14 state would make the determination as to  
15 whether those should be counted if it  
16 deems that there's enough that would  
17 make an outcome determinant difference.

18 MR. KNIGHT: All right. I  
19 have no more questions for Mr. Bowens.

20 CHAIR: All right. Thank you.  
21 Does counsel for Chief Justice Beasley  
22 have any questions?

23 MS. ASANTE-SMITH: Yes, sir.

1 EXAMINATION

2 BY MS. ASANTE-SMITH:

3 Q. Mr. Bowens, I will be quick. First, you  
4 indicated that you were familiar with  
5 numbered memo 2020-19; correct?

6 A. Uh-huh.

7 Q. And are -- are you also familiar with  
8 footnote 2 concerning the ability to  
9 read the signature, if -- if there's an  
10 ability to read the signature, the  
11 printed name, an inability to see the  
12 printed name or lack of a printed name  
13 shouldn't be the reason for rejection?

14 A. In my looking at footnote 2, it says --

15 Q. Uh-huh.

16 A. -- if the name is readable and on the  
17 correct line, even if it is written --  
18 written in cursive script, for example,  
19 it does not invalidate the container  
20 return envelope.

21 Q. Correct.

22 A. Is that what you're referring to?

23 Q. Yes. And that is numbered memo

1           2020-19 --

2       A. That's --

3       Q. -- correct?

4       A. -- correct.

5       Q. Okay. And then moving on to -- in

6           reference to Exhibit B, it was your

7           testimony that the staff receipt date

8           was controlling where you didn't have

9           applicable BallotTrax information;

10          correct?

11       A. Correct.

12       Q. Okay. And you also noted that there

13          were four ballots on Exhibit B that did

14          not have postmark information; correct?

15       A. I would have to go back to -- to --

16       Q. Oh.

17       A. -- affirm that --

18       Q. Sorry.

19       A. -- but I believe that's the case.

20       Q. Okay. Yes, sir.

21                           And in at least two out of

22           four of those ballots, specifically Hal

23           Salfity and Amanda Searls, you indicated

1           that the Board of Elections received  
2           those ballots on 11/4; is that correct?  
3        A. I just want to make sure I'm giving  
4           you --  
5        Q. Yes, sir.  
6        A. -- accurate --  
7        Q. I appreciate --  
8        A. -- information.  
9        Q. -- that.  
10       A. And this is Exhibit B?  
11       Q. B, yes. B, as in boy.  
12       A. And can -- can you repeat those names  
13           for me?  
14       Q. Yes, yes. I'm sorry. I want to make  
15           sure I have those dates correct, too.  
16           So it'd be Hal -- Hal Salfity and Amanda  
17           Searls.  
18       A. Amanda Searls, yes, was November 4th.  
19       Q. Okay.  
20       A. And Mr. Salfity was a stamp date of  
21           November 4th, and neither of those had  
22           postmarks.  
23       Q. Okay. And Mr. Bowens, in your extensive

1           experience with kind of Board of  
2           Elections work, specifically in Durham,  
3           is it likely that a -- a piece of mail  
4           that's postmarked on one day can be  
5           delivered on the same day?

6           A. I -- I don't recall an instance of  
7           seeing that. I -- I can't really speak  
8           to that, but I would say I have not seen  
9           in my experience a postmarked ballot  
10          being received the same day to our  
11          office, no.

12          Q. Yes, sir. And I want to ask about --  
13          referring to Exhibit D, excuse me,  
14          Caroline Dyer-Gunn. Isn't it correct  
15          that -- oh, I'm sorry. Let me give you  
16          a moment.

17          A. Okay.

18          Q. Isn't it correct that on Ms. Dyer-Gunn's  
19          information -- registration, excuse me,  
20          on the public Board of Elections website  
21          her address is a Bahama address?

22          A. That's correct. Uh-huh.

23          Q. And isn't it also accurate that the



1 witness' signature did not -- witness  
2 name and signature did not specifically  
3 indicate that Ms. Cook works at the  
4 nursing home but simply put The Addison  
5 in parentheses?

6 A. That is correct, but -- but I can  
7 certainly supplement my response to our  
8 follow-up to that, if appropriate.

9 Q. Okay. And let me ask one more question.  
10 If -- Given that Ms. Dyer-Gunn's  
11 registration address is not the address  
12 of The Addison, is it possible that she  
13 does not reside there?

14 A. Again, if -- if -- if you want me to  
15 base the answer on the conversation that  
16 staff -- which I was part of -- with  
17 this individual, I -- I can give you  
18 that story line. Miss -- Ms. Dyer-Gunn,  
19 according to the conversation we had,  
20 does live at The Addison --

21 Q. Okay.

22 A. -- but her permanent residential address  
23 is in Bahama.

1 Q. That's helpful to know. Thank you.

2 And moving on to Exhibit E-1,  
3 please, Ms. Karen Daniels. You -- I'm  
4 sorry.

5 A. Sorry.

6 Q. No, that's totally fine. Thank you.

7 For Ms. Karen Daniels, you  
8 testified that she was registered in  
9 Durham; correct?

10 A. That's correct. Uh-huh.

11 Q. And I want to make sure I understood  
12 that correctly. She was registered in  
13 Durham, but her address was discovered  
14 to be in Chatham County; is that  
15 correct?

16 A. Yes. So if I can just --

17 Q. Please.

18 A. -- respond to that. So there are  
19 instances -- We're constantly cleaning  
20 up our geocode, and -- and that occurs  
21 via aerial street analysis through our  
22 GIS tools.

23 In this case, we have had

1 voters that have been geocoded  
2 incorrectly, you know, for instance,  
3 Wake-Durham line, sometimes there's  
4 homes where the line literally splits  
5 through the middle of the residence and  
6 you have to determine where their  
7 primary resting place is or their --  
8 their -- where they formally lay their  
9 head in the determination of which  
10 county that person should be applied to.

11 In this case, it appears that  
12 it was just a -- a geocode error in our  
13 system and we found this. It had been  
14 corrected. We found this, and,  
15 therefore, we're making the proper  
16 adjustment now in terms of that voter  
17 being a registrant in -- in Chatham  
18 County according to our records.

19 Q. Yes, sir. Thank you.

20 And still on Exhibit E-1,  
21 David Wright, the last name on that  
22 list.

23 A. Okay.

1 Q. You testified that per the notes of an  
2 election official that he had indicated  
3 he'd moved to Carrboro two weeks before;  
4 isn't that correct?

5 A. Yes, he -- on 10/1.

6 Q. Okay.

7 A. So it was quite -- quite some time. It  
8 was before the 30-day residency change.

9 Q. Okay. And moving on to Exhibit E-2,  
10 sir, concerning David Pettiford, was it  
11 your testimony earlier that the deadline  
12 for the registration was 10/9?

13 A. That's correct.

14 Q. And was it also your testimony that he  
15 attempted to register on 10/8 or --

16 A. I don't recall noting his attempt. He  
17 attempted to register on election day at  
18 precinct 44 and he was removed due to a  
19 felony conviction. So we did not --

20 Q. Okay.

21 A. -- recommend approval to the board  
22 because we did not see an attempt at  
23 registration on or before 10/9.

1 Q. Okay. Thank you for that.

2 And moving to the final  
3 exhibit, Exhibit E-4, was it your  
4 testimony that Ms. Marisol Aguilar was  
5 registered in Durham?

6 A. One second. Sorry.

7 Q. Yes, sir. No problem.

8 A. I don't believe I indicated she was  
9 registered, but I can certainly check  
10 that information now, if you'd like.

11 Q. Yes, please, sir. I think we're...

12 A. Okay. No, I have no record of  
13 registration for Marisol Aguilar.

14 Q. Thank you. And my last question  
15 concerning these exhibits, Mr. Bowens,  
16 the last voter listed, Shawn Zadeh, on  
17 his provisional, isn't it accurate that  
18 it reads -- or he wrote that he, quote,  
19 resided in the Durham area but not at  
20 this address?

21 A. The notes on -- oh, let's see. Yes, he  
22 did note he resided in the Durham area  
23 but not at this address. I can't make

1 out that word. 10/29/2020.

2 Q. Okay.

3 A. Yes. But this is -- this is the only  
4 address he provided.

5 Q. Okay. And I want to ask a final  
6 question, Mr. Bowens. Is it fair to say  
7 much of the useful -- very useful  
8 information you've provided, for  
9 example, concerning no -- no -- no notes  
10 of attempts for kind of reregistering or  
11 the notes election officials made on the  
12 ballot -- on the ballots or containers,  
13 isn't it fair to say that that's not  
14 public information?

15 A. I -- I wouldn't say that that -- it is  
16 not. I -- I would not say that it would  
17 not be responsive to a public records  
18 request if that information was  
19 specifically asked for.

20 Q. Okay.

21 A. Assuming it's redacted for appropriate  
22 confidential information.

23 Q. Okay. So is it also fair to say, unlike

1           being able to look up a voter on the  
2           Board of Elections website, a person  
3           could normally discover whether or not  
4           someone was removed from the voter roll  
5           for being convicted of a felony;  
6           correct?

7           A. Typically. There are scenarios where  
8           there may be -- so -- and I can give you  
9           an example of something that you -- you  
10          may have seen in your research.

11         Q. Yes, sir.

12         A. When we're conducting provisional  
13         research, we typically -- if -- if  
14         someone is recommended for approval, we  
15         typically will link to their active  
16         registration record that eventually  
17         gives them voter history. In some  
18         instances, we may link to a record, for  
19         instance, where the voter was removed  
20         due to two federal election cycles  
21         inactive status to reinstate that  
22         record --

23         Q. Uh-huh.

1 A. -- if they've maintained continuous  
2 residency.

3 There are also instances where  
4 inadvertently you may link to a felony  
5 record and when that goes to the next  
6 queue for processing, staff may not  
7 unlink it from that felony record.

8 Q. Uh-huh.

9 A. So when it goes through the queue, it  
10 reactivates the felony record instead  
11 of --

12 Q. Right.

13 A. -- creating a new record and maintaining  
14 a permanent record of a felony removal.

15 So you may have seen instances  
16 where you didn't see a removal record --

17 Q. Right.

18 A. -- but it could be due to that.

19 Q. Okay.

20 A. But that's something that we could  
21 backtrack and provide based on voter  
22 changes and the official --

23 MS. ASANTE-SMITH: Yes, sir.



1 Thank you. No further questions for  
2 Mr. Bowens.

3 CHAIR: Okay. Thank you. Any  
4 board members --

5 MR. KNIGHT: Mr. Chairman --

6 CHAIR: -- have any --

7 MR. KNIGHT: -- could I just  
8 clarify one thing real quick with  
9 Mr. Bowens?

10 CHAIR: If it's just for  
11 clarification, go ahead.

12 EXAMINATION

13 BY MR. KNIGHT:

14 Q. Mr. Bowens, regarding David Pettiford,  
15 did you -- the one that you just  
16 mentioned, David Pettiford --

17 A. Uh-huh.

18 Q. -- does it indicate whether he is a  
19 senior or a junior?

20 A. I need to know that -- that exhibit.

21 Q. It's Exhibit E-2, sir.

22 A. Okay. This just notes -- his  
23 provisional application notes a David K.

1           Pettiford, but we were able to match on  
2           date of birth with a removal record for  
3           a David K. Pettiford, Sr.

4    Q. Thank you, sir.

5                         And I believe we discussed  
6           earlier, in your expertise in examining  
7           all this list, there are three names  
8           that should be submitted; correct?

9    A. That -- That would be my recommendation  
10           to the Board of Elections.

11                        MR. KNIGHT: Okay. Thank you,  
12           sir. No more questions.

13                        CHAIR: Does any board members  
14           have questions for Mr. Bowens?

15                        Hearing none, I think we're  
16           ready to proceed to hearing our final  
17           arguments from the parties beginning  
18           with the contesteer.

19                        MS. ASANTE-SMITH: Board  
20           members, Mr. Bowens, and Attorney Darby,  
21           thank you very much for your time this  
22           evening during what has been, I know, a  
23           -- a lengthy process. However, we

1 sincerely appreciate your commitment to  
2 ensuring the integrity of a democratic  
3 process.

4 I said this in the beginning,  
5 and I want to make sure that I reiterate  
6 it again. From the beginning of this  
7 process, Chief Justice Beasley has been  
8 committed to ensuring that every  
9 eligible vote has been counted, and in  
10 line with that commitment, we have  
11 committed as part of her team to  
12 conducting in good faith and thoroughly  
13 the research necessary to develop a  
14 basis for the protest that we put before  
15 you.

16 We are well aware that the  
17 initial protest we put before the board  
18 was lengthy and included many voters.  
19 But as you can also recall on Monday  
20 when I stood before you, I gave you my  
21 promise and my word that we were working  
22 diligently given the voluminous  
23 information that we'd recently gotten to

1 narrow the names that were the basis of  
2 our protest and in good faith conduct  
3 research necessary to ensure that when  
4 we returned before you today, we would  
5 present names that based on our  
6 research, based on our efforts, and  
7 based on our -- on our due diligence, we  
8 believed in good faith were eligible  
9 voters and had the right to have their  
10 votes counted.

11                   It's important for me to  
12 reiterate that because during the course  
13 of this hearing -- and especially thanks  
14 to the information provided by  
15 Mr. Bowens -- we've discovered a lot of  
16 information, and I think it's fair to  
17 say -- and I think Mr. Bowens alluded to  
18 this a little bit -- a lot, if not  
19 almost all of this information, is not  
20 necessarily information you would find  
21 available on the public State Board  
22 site. It's not necessarily information  
23 that unless you specifically ask for it

1 in a public records request that would  
2 be revealed.

3 So I say that because it's  
4 important for me and on behalf of Chief  
5 Justice Beasley to assure you that our  
6 efforts are based on good faith and  
7 based on integrity and based on the  
8 respect for you, Mr. Bowens, his staff,  
9 and the process.

10 Opposing counsel mentioned  
11 that our actions reflected no deference  
12 to the board or the actions of the  
13 staff. I think our actions have  
14 unequivocally proven otherwise, and it's  
15 important for us to put that forth  
16 today.

17 In light of the information  
18 that you've heard, we would contend that  
19 in addition to the three votes that  
20 Mr. Bowens has recommended that the  
21 board consider counting that you also  
22 count the votes of Ahmed -- Aaziza  
23 Ahmed. We would offer that his vote

1 should be counted by focusing on  
2 numbered memo 2020-19, footnote number  
3 2.

4 We would contend that given  
5 that the signature is legible, and in  
6 accordance with the aforementioned memo,  
7 because the signature is legible and  
8 allows someone to reveal or interpret  
9 the name, that satisfies the requirement  
10 per the regulations and governance  
11 surrounding signature and witness  
12 information.

13 If you can read the signature,  
14 a lack of a printed name should not be  
15 the reason for a rejection, and we would  
16 put forth that numbered memo 2020-19  
17 supports this contention.

18 We would reaffirm our argument  
19 for Edgar Darnell Jackson in contending  
20 that with the voter assistant  
21 certification information filled  
22 thoroughly and being directly reflective  
23 of the information required for a

1 witness certification, that that ballot  
2 also be counted in that Board of  
3 Elections guidelines allow for that  
4 voter to also serve as the witness.

5 In line with that, I -- I want  
6 to make sure that I mention, in essence  
7 and when you think about the purpose of  
8 that governance, it's that someone who  
9 assists a voter with voting is  
10 essentially also serving the role as a  
11 witness, and that is affirmed and  
12 confirmed really by the numbered memo  
13 that I provided you with earlier, as  
14 well. So we would ask that both of the  
15 ballots in Exhibit A be counted.

16 Moving on to Exhibit B, we  
17 would ask that the ballots of Toya  
18 Ebron, Hal Salfity, Amanda Searls, and  
19 Michelle Zhang also be counted.

20 First you heard testimony from  
21 Mr. Bowens that Hal Salfity and Amanda  
22 Searls both had envelopes with no  
23 postmarks on them and were received on

1 11/4.

2           You also heard him testify  
3 that while he can't say it with  
4 certainly, in his experience, it's  
5 unlikely that a ballot postmarked one  
6 day is going to be received on the same  
7 day. So we would offer that, given that  
8 Mr. Salfity and Ms. Searls' ballots were  
9 received on 11/4, it is truly  
10 implausible that they did not postmark  
11 their ballots in time by the 11/3  
12 deadline.

13           We would also still offer that  
14 it's implausible that Toya Ebron and  
15 Michelle Zhang also did not postmark --  
16 did not -- I'm sorry, drop their ballots  
17 in the mail by the 11/3 deadline.

18           Mr. Bowens testified that the  
19 Board of Elections received their  
20 ballots on 11/5. We would offer that in  
21 a county the size of Durham, it is also  
22 implausible that those ballots were  
23 dropped any later than November 3rd.



1                   Members of the board, I would  
2   direct your attention next to Karen  
3   Daniels in Exhibit E-1. You heard  
4   testimony from Mr. Bowens that she was  
5   duly registered in Durham, and for that  
6   reason, because she was duly registered  
7   and attempted to duly vote, as well, we  
8   would ask that her vote be counted, as  
9   well.

10                   Next, and finally, I would  
11   draw your attention to Shawn Zadeh in  
12   Exhibit E-4. On cross-examination,  
13   Mr. Bowens confirmed that the notes did,  
14   in fact, reflect that -- and I quote --  
15   he resided in the Durham area but not at  
16   this address. With the guidance and  
17   statutory provisions that I provided  
18   concerning attestation and affirmation  
19   of continuing residence in the county,  
20   based on that statute, we would ask  
21   that, despite not living specifically at  
22   that address, that comment coupled with  
23   his -- that note, excuse me, coupled

1 with his affirmation qualify as  
2 legitimate and valid attestation that he  
3 maintained continuous residence in  
4 Durham County.

5 Again, we sincerely appreciate  
6 the time, diligence, and the efforts of  
7 the board, Mr. Bowens, his staff. We  
8 want you to know that we are committed  
9 to the integrity of this process and  
10 believe in the integrity of this process  
11 and put forth these ballots before you  
12 in good faith.

13 I want to also note that  
14 opposing counsel made a note -- or said  
15 several times, oh, well, this is a  
16 duplicate, it seems like they're trying  
17 to get votes to count twice.

18 MR. KNIGHT: I didn't say  
19 that.

20 MS. ASANTE-SMITH: I am not  
21 sure what the basis of such a contention  
22 would be given that the exhibit clearly  
23 outlines the specific matters for which

1 we are simply asking the board to  
2 consider the votes.

3 So it's important for me to  
4 put that on the record, again, with the  
5 consistent theme here being a matter of  
6 integrity. In no way, shape, or form  
7 did we attempt to, nor would we attempt  
8 to ask the board to consider cast --  
9 counting a ballot twice. So it's  
10 important for me to note that, as well.

11 Lastly, I want to mention and  
12 ask you to take judicial notice of the  
13 publicly available information that we  
14 presented before you today. It was  
15 important for us to not be providing  
16 cumulative papers and just throwing, you  
17 know, redundant printouts for you to  
18 consider. But as I mentioned in the  
19 beginning of our presentation, all the  
20 information we provided was publicly  
21 available information, and we'd ask that  
22 you take judicial notice of that without  
23 being inundated with all of those

1 papers.

2 We thank you for your time, we  
3 thank you for your efforts, and we thank  
4 you for considering our protest and ask  
5 that you count the ballots as presented  
6 to you.

7 CHAIR: Thank you, Ms.  
8 Asante-Smith.

9 MS. ASANTE-SMITH: Thank you,  
10 sir.

11 CHAIR: Next we will hear from  
12 counsel for Justice Newby.

13 MR. STANLEY: I want to start  
14 by saying thank you to this board for  
15 adjusting the schedule. Again, as we  
16 started our comments, I think the point  
17 here was that this was not an adversary  
18 proceeding. This was an effort and the  
19 goal to get the evidence out and the  
20 information out so we can make a  
21 determination of whether votes that  
22 should be counted under the law should  
23 count and whether votes that shouldn't

1 be counted under the law shouldn't  
2 count.

3 Mr. Bowens gave excellent  
4 testimony, substantial evidence that  
5 showed that there was no error, there  
6 were no problems with the -- with the --  
7 with the election that went on. There  
8 are no significant errors.

9 What the other side has done,  
10 they've come out and they've presented  
11 an affidavit. They presented  
12 information, and that entire case is --  
13 basically amounts to Monday morning  
14 quarterbacking. It's based on an  
15 affidavit that's been mostly abandoned  
16 and it's based on information that was  
17 proffered by the attorneys.

18 Under the code, there is a  
19 requirement that there is substantial  
20 evidence that an irregularity occurred.  
21 Do you know that out of this whole  
22 protest, 90 percent of the names have  
23 been withdrawn? Out of 357 names, there

1 are only 3 that Mr. Bowens said should  
2 count.

3 Out of the votes that were  
4 cast in Durham during this election, the  
5 odds of getting struck by lightning --  
6 lightning are very similar to the odds  
7 of Mr. Bowens, this board, and its staff  
8 making a mistake. Those odds are  
9 incredible, and the ability of this --  
10 of this board, this team, this elections  
11 official really has -- has given the  
12 people of this state, many of my family  
13 members, a lot of my friends, confidence  
14 in this election, confidence in the  
15 results.

16 So one of the things that my  
17 opposing counsel started her remarks,  
18 she said that the errors made by this  
19 board cast doubt on the results of this  
20 election. That is untrue. The  
21 substantial evidence put on by our team  
22 and by Mr. Bowens shows that the people  
23 of this state 100 percent should have

1 faith in this outcome and have faith  
2 that their votes were counted.

3 Mr. Bowens did his job  
4 diligently, thoroughly, honestly. The  
5 evidence presented, it's sloppy, it's  
6 unreliable, it's just an opinion. And,  
7 frankly, that's not our opinion. That's  
8 Justice Beasley's opinion -- Chief  
9 Justice Beasley's opinion because,  
10 again, she's withdrawn 90 percent of the  
11 names that she originally put forward in  
12 this protest. There's only 10 percent  
13 left that even she says could even  
14 possibly matter.

15 It shows that the whole  
16 affidavit had no evidence to support it,  
17 had no information to support it. We  
18 weren't able to repeat it, figure out  
19 what it meant, what it said.

20 Essentially, as I said in the beginning,  
21 it was a list of names given to  
22 Mr. Bowens so that he would have to stay  
23 up until 2:30 in the morning the Friday

1 after Thanksgiving to try and defend his  
2 work. There should be a deference to  
3 this board, deference to Mr. Bowens,  
4 deference to the staff. They've worked  
5 hard, and the people of North Carolina  
6 should have faith in the results of  
7 Durham County 100 percent.

8           You know, I think the only  
9 comment I'm going to make at the end of  
10 this -- and I'm not going to get deeply  
11 into it, but I think I have to because I  
12 think Justice Newby is a -- an  
13 incredible jurist, a good man, and  
14 someone we know well, and I think his  
15 integrity was questioned at the start of  
16 this proceeding. I think that's unfair.  
17 I think that's not right, and I think  
18 that's a violation of the ethical  
19 obligations of counsel and the people  
20 that are on the other side in this case.

21           So, again, I think it's  
22 important to say that Mr. Bowens says 3  
23 votes out of 357 out of the hundreds of



1 thousands of votes that are cast in this  
2 county, possibly those should count.  
3 Now, if they do, I'll say, you know,  
4 under the statute, that if you find  
5 substantial -- you have to first find  
6 substantial evidence, but that you also  
7 have to say that they're going to change  
8 the outcome of the election. So under  
9 the code -- again, I think that's code  
10 section -- sorry, skipped my page --  
11 163-182.10, part D, there are only  
12 certain things you can find, but they  
13 all start with a finding of substantial  
14 evidence. So even if those three votes  
15 should count, which again we -- we have  
16 our objections, we think there are some  
17 issues with how these votes -- that  
18 there was a small subset of the votes in  
19 the county that have been reviewed,  
20 there's a small subset based on party  
21 affiliation, but, again, our issue is if  
22 those three votes should count and this  
23 board believes they should count, they

1 should be referred up to the State Board  
2 and allow the State Board to determine  
3 whether or not those three votes, if  
4 they are counted, would have an impact  
5 on the outcome of the -- of the  
6 election.

7 Mr. Bowens stated in his  
8 testimony that is the correct legal  
9 stand -- but I'm not going to interfere  
10 with the county attorney's role. I  
11 would just point that out to the board,  
12 and I appreciate your time. I thank you  
13 for your efforts in this.

14 Mr. Bowens, I know you've done  
15 incredible work, so thank you for your  
16 testimony and thank you to the staff.  
17 But appreciate it, and, again, we ask in  
18 whole that the protest be dismissed and  
19 thank you again.

20 CHAIR: Thank you, counsel.  
21 Thank you both for very good  
22 presentations, and I think the board is  
23 ready to consider what -- what action to

1 take on the protest petition of Chief  
2 Justice Newby.

3 First, I want to recite that  
4 what the standard is for us to consider  
5 by -- protest shall be dismissed if  
6 there's not substantial evidence of a  
7 violation of the election law or other  
8 irregularity or misconduct.

9 On the other side, if there's  
10 substantial evidence to believe that a  
11 violation of the election law or other  
12 irregularity or misconduct did -- did  
13 occur, the board is unable to finally  
14 determine the effect because the  
15 election was a multicounty election, the  
16 protest should be -- and the board's  
17 decision should be to submit it to the  
18 State Board.

19 So -- I'll get the county  
20 attorney to clarify this, but since this  
21 is a statewide election, this board  
22 cannot make a finding regarding whether  
23 any ballots that we approve or disprove,

1 have outcome determinative effects on  
2 the election, we have to submit that  
3 part of the -- the ruling to the State  
4 Board.

5 MR. DARBY: That would be a  
6 part of your finding in the order, if  
7 you agree with Mr. Bowens that -- agree  
8 that he said should have been counted is  
9 not determinative as far as the  
10 statewide election is concerned, but it  
11 is a finding on our part that there were  
12 three more votes that should have  
13 counted. And I think that -- that will  
14 need to be sent to the state and they  
15 can determine where that fits in the  
16 whole process statewide.

17 CHAIR: All right. Thank you.  
18 I'm going to ask the board members to  
19 chime in. We have gotten the  
20 contentions of the parties, the number  
21 of voters or ballots that are at issue  
22 and have been narrowed down  
23 significantly. As we go through the --

1 the categories, we can approve the  
2 protest as to certain votes that we find  
3 proper. We can dismiss the vote -- the  
4 protest as a whole.

5 So any questions or discussion  
6 from members of the board?

7 MR. IRBY: I just want to  
8 clarify --

9 CHAIR: Mr. Irby.

10 MR. IRBY: -- that when we  
11 vote today, it's not all or nothing, we  
12 can vote to allow certain -- certain  
13 votes to be sent over to the State Board  
14 or we could vote to dismiss the whole;  
15 right?

16 CHAIR: Right. I think we can  
17 sustain the protest as to certain  
18 identified votes and dismiss the -- the  
19 remainder of it and --

20 MR. IRBY: Okay.

21 CHAIR: -- submit it to the  
22 State Board for determination regarding  
23 the outcome determinative effect of

1 those votes.

2 MR. IRBY: Okay. The only  
3 other comment that I would make is  
4 around the -- there were eight votes  
5 total outside of the three that you had  
6 recommended or the director had  
7 recommended, eight votes total that we  
8 were asked for consideration.

9 So specifically four of them  
10 were around no postmarked ballots and  
11 they were either received on the 4th or  
12 5th. I remember having a conversation  
13 as a board around that, and we -- we  
14 struggled with it because we were  
15 saying, common sense, logic, but they  
16 didn't have a postmark. And so I think  
17 -- I just -- I knew that we had that  
18 conversation, and I think, in my  
19 opinion, we should stick with that logic  
20 that because there is not a postmark,  
21 regardless of how mail works in Durham,  
22 that we should not count those.

23 CHAIR: I -- I remember that

1 discussion, also, and I -- I mean, I  
2 agree with Chief Justice Beasley's  
3 counsel, that it -- if you receive  
4 something on the 4th, it must have been  
5 mailed by the 3rd, but we are  
6 constrained by the -- how we read the  
7 law and the rule, which is that it had  
8 -- there has to be a postmark or some  
9 other evidence that it was mailed by the  
10 3rd beyond just the time of receipt.

11 And I think the same as with  
12 respect to the questions about witness  
13 -- witness names being -- being printed.

14 MR. IRBY: Yeah, we discussed  
15 that, too.

16 CHAIR: We discussed that  
17 also, and determined that, you know, we  
18 didn't have much choice, that it had to  
19 be filled in and the witness name had to  
20 be -- had to be there.

21 MR. IRBY: Right.

22 CHAIR: And it -- it wasn't,  
23 but I agree that it makes common sense

1 that the witness name and the signature  
2 can be interchangeable, the signature is  
3 not legible, but that's not what we  
4 thought we could apply.

5 Any other comments? Mr. Gray?

6 MS. OXENDINE: We also did  
7 look at the fact that if there was no  
8 postmark, we looked at BallotTrax, as  
9 well.

10 MR. IRBY: That's right.

11 MS. OXENDINE: And those  
12 particular ones didn't have anything in  
13 BallotTrax, also.

14 CHAIR: Yes.

15 MS. OXENDINE: That was the  
16 other thing that we looked at, as well,  
17 the postmark and the BallotTrax. So we  
18 had more than one way of looking to see  
19 when we made that determination.

20 CHAIR: Yeah. It's  
21 unfortunate, but I think we made every  
22 effort to try to get those --

23 MS. OXENDINE: And -- And for



1 the --

2 CHAIR: -- those --

3 MS. OXENDINE: -- signature --

4 CHAIR: -- qualified.

5 MS. OXENDINE: For the

6 signature one, we followed the memo.

7 CHAIR: Yes.

8 MS. OXENDINE: We took it to

9 the letter, we followed what the memo

10 stated, if there was no printed --

11 CHAIR: But we did struggle

12 with this, and -- and discussed it.

13 Do you have something --

14 MR. GRAY: Just a couple of

15 quick things there to both counsel.

16 Yes, the -- the board struggled mightily

17 with the postmark one, the difference

18 between, you know, the expectations and

19 the actual dates.

20 Full disclosure, my

21 grandfather was a postal clerk for 31

22 years, so I have a little bit of skin in

23 the game here about the actions of the

1 post office, and that there are times in  
2 which the postmark just doesn't show up  
3 and, thus, the staff has to gauge, you  
4 know, when -- when it comes through.

5 My big thing is that this is  
6 something that at the very least the  
7 State Board should put out a numbered  
8 memo that says, if it comes in on the  
9 day after election, we can assume that  
10 it was mailed on election day or, better  
11 yet, the General Assembly should be  
12 putting out something, you know, an  
13 actual law that says, you know, put it  
14 in Section 163 in terms of, you know,  
15 what -- what is allowed and not allowed  
16 in terms of -- of the postmarks. But  
17 it's a -- it's a really fine thing and  
18 the law says it's got to be the 3rd or  
19 else, so all of us, democrats and  
20 republicans, said, you know, it -- it's  
21 got to be the 3rd, and if it's the 4th  
22 or 5th, it's close, but, you know, no --  
23 you -- you didn't win the horse race.

1 Sorry.

2 CHAIR: All right. Thanks. I  
3 mean, I think -- you'll find that Mr.  
4 Bowens and his staff followed the law  
5 and procedures in interpreting these  
6 votes, and there are mistakes that can  
7 be made. I'm not sure a handful of  
8 mistakes rises to the level of a full  
9 protest, but I think the board has  
10 always erred on the side of approving  
11 votes if we -- if they appear to be  
12 proper, and we certainly have evidence  
13 that we have three votes that should be  
14 considered as completed -- completed  
15 ballots.

16 Are there any others that  
17 members of the board think should be  
18 included?

19 MS. BAXTON: Well, no, I -- I  
20 would just like to add to what some of  
21 the other members said, that -- as was  
22 testified by Mr. Bowens in those matters  
23 -- or those votes or ballots -- I was

1 saying that I would like to add to what  
2 has already been said by the other  
3 members that -- and Mr. Bowens testified  
4 to the fact that when we found errors  
5 with the ballots, that we took the extra  
6 step of reissuing ballots overnight,  
7 that was our directive to him, to the  
8 voters to give them an opportunity to  
9 comply within the cure time period set  
10 by the State Board of Elections, and  
11 that was not an inexpensive process that  
12 Durham County went through to try to  
13 ensure that every voter who chose to  
14 vote absentee by mail had the  
15 opportunity to do so to have their vote  
16 counted.

17 We always, in my history on  
18 the Board of Election, have issues with  
19 the postmark requirement. We can't  
20 control the post office, but it is  
21 always a confinement that we have to  
22 operate within on this board. And our  
23 staff luckily has started indicating

1 when ballots are received in our office,  
2 but that cannot necessarily be  
3 interpreted as a point of when it could  
4 have been placed in the mail.

5 Just look at the illegal  
6 activity that we had happen in District  
7 9 where someone (unintelligible) drop  
8 off something, and our staff just doing  
9 their job could stamp it, and that's not  
10 saying that's what happened here, but we  
11 did look for additional information in  
12 BallotTrax and there was none for any of  
13 the ballots that were stamped on the 4th  
14 that also went in our office on the 4th.

15 So we were looking for  
16 independent information with BallotTrax,  
17 and there was none for those ballots  
18 that were not postmarked and arrived on  
19 the 4th or after the 4th.

20 So based on what I heard  
21 today, I don't think there is sufficient  
22 evidence for this protest to stand with  
23 the exception of those three votes that

1 Mr. Bowens indicated that should be  
2 referred to the State Board for them to  
3 determine whether or not that in and of  
4 itself has an impact on the statewide  
5 election.

6 So it would be my motion to  
7 dismiss the protest with the exception  
8 of those three voters.

9 CHAIR: I don't have that --  
10 Do you have them?

11 MS. BAXTON: With the  
12 exception of Claire -- mess up her name  
13 because I hate it when people mess my  
14 name up -- Hudzinski, Pedro Maya, and  
15 Kimberly Freeman-Downey.

16 CHAIR: All right. Thank you  
17 for the motion. Let me see if I can  
18 restate it.

19 MS. BAXTON: The --

20 CHAIR: The protest should be  
21 dismissed with the exception of the two  
22 -- of the three --

23 MS. BAXTON: Yes, sir.

1                   CHAIR:  -- voters that the  
2 protest has sustained as -- only as to  
3 those three voters?

4                   MS. BAXTON:  Yes, sir.

5                   CHAIR:  Is that right?  Okay.

6                   Any further discussion about  
7 the motion?

8                   MR. IRBY:  The only -- I want  
9 to just say one thing.  One of these  
10 voters -- I think it's just important to  
11 know -- had already been withdrawn from  
12 the protest, but because we do due  
13 diligence and -- I mean, I appreciate  
14 that -- and the director and the staff  
15 saying we want to make sure that every  
16 legal vote counts.

17                   So I think that's great.  I --  
18 I agree with the motion.

19                   CHAIR:  All right.  Let me  
20 restate the motion.  The motion is to  
21 dismiss the protest of Chief Justice  
22 Beasley with the exception as to the  
23 three enumerated voters:  Claire

1 Hudzinski, Pedro Maya, and Kimberly  
2 Freeman-Downey. As to those three  
3 voters, the protest is -- is sustained  
4 and the matter, I assume, will go to the  
5 State -- to -- to the State Board.

6 All in favor of the motion,  
7 raise your hand. All opposed? Motion  
8 carries 5 to 0. Thank you very much. I  
9 want to -- particularly again as  
10 everybody else has done, I want to thank  
11 Derek and his staff for the incredible  
12 amount of work and detail you put into  
13 this. It's something that is obviously  
14 demanding but it's what the law requires  
15 that we do it willingly and as a public  
16 service. So we thank counsel for  
17 presenting their cases well and -- and  
18 tailoring them down so that we could  
19 deal with them in a standard one  
20 evening. Thank you very much. You did  
21 a -- did a very good job.

22 MS. ASANTE-SMITH: Thank you.

23 MR. STANLEY: Thank you.



1 CHAIR: Thank you.

2 Any other business before the  
3 board? Now I'll ask, questions? Is  
4 there a motion to adjourn?

5 MR. IRBY: I move to adjourn.

6 CHAIR: Move to adjourn. All  
7 in favor of the motion say aye.

8 (MULTIPLE AYES.)

9 CHAIR: Any opposed? Motion  
10 to adjourn carries. The meeting is  
11 adjourned.

12 (THE PROCEEDINGS CONCLUDED AT 7:11 P.M.)

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**CERTIFICATE**

State of North Carolina  
County of Wake

I, Erin Girouard, 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 9th day of December, 2020.

Erin Girouard  
Notary Public

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