

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF
JUSTICE
SUPERIOR COURT DIVISION
18 CVS 15292

JABARI HOLMES, FRED CULP,
DANIEL E. SMITH, BRENDON
JADEN PEAY, and PAUL KEARNEY,
SR.,

Plaintiffs,

v.

TIMOTHY K. MOORE, *in his official
capacity as Speaker of the North
Carolina House of Representatives;*
PHILLIP E. BERGER, *in his official
capacity as President Pro Tempore of
the North Carolina Senate;* DAVID R.
LEWIS, *in his official capacity as
Chairman of the House Select
Committee on Elections for the 2018
Third Extra Session;* RALPH E. HISE,
*in his official capacity as Chairman of
the Senate Select Committee on Election
for the 2018 Third Extra Session;* THE
STATE OF NORTH CAROLINA; and
THE NORTH CAROLINA STATE
BOARD OF ELECTIONS,

Defendants.

**PLAINTIFFS' MOTION IN LIMINE
TO EXCLUDE TESTIMONY OF
KIMBERLY STRACH AT TRIAL**

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Plaintiffs respectfully request that this Court exclude the purported expert opinions contained in the Affidavit of Kimberly Strach dated December 14, 2020 (“Strach Report”), and the Affidavit of Kimberly Strach dated January 20, 2021 (“Strach Rebuttal”), and preclude any testimony offered on these subjects by Strach at trial.

INTRODUCTION

Kim Strach is a fact witness, not an expert qualified to provide opinion testimony admissible under N.C. Rule of Evidence 702. Strach was the Executive Director of the North Carolina State Board of Elections from May 2013 to May 2019, including the years during which the State Board implemented HB 589’s voter ID requirement. Riggs Aff., Ex. I ¶ 4.¹ To the extent she has personal knowledge of facts pertaining to her time in that role, she is free to testify about what she knows. But the two Strach affidavits disclosed by Legislative Defendants in this matter contain not only lay testimony describing Strach’s experience with the implementation of HB 589, *see generally* Riggs Aff., Ex. I ¶¶ 9–44, 49–67,² but also purported expert opinions on a host of election-related issues—including Strach’s prognostications about the future implementation of SB 824, and her opinions about election security, voter fraud, and election integrity issues, *id.* ¶¶ 45–48, 68–83—that Strach is unqualified to offer and that are not based on reliable methods or sufficient data. Indeed, Strach

¹ Citations to “Riggs Aff., Ex. __” are exhibits to the Affidavit of Allison J. Riggs, appended to the Notice of Filing accompanying Plaintiffs’ Motions in Limine.

² Plaintiffs do not consider this portion of Strach’s declaration, which describes her factual account of HB 589’s implementation in the March 2016 primary, to be proffered as expert opinion. Plaintiffs therefore reserve the right to object on hearsay (or other evidentiary) grounds to statements in Strach’s report should she be disqualified as an expert.

has never provided trial testimony as an expert witness, Riggs Aff., Ex. K at 17:1–5, and to Plaintiffs’ knowledge and Strach’s own knowledge and testimony, no court has qualified her as an expert in statutory interpretation, photo ID implementation, election security, voter fraud, or election integrity.³ Finally, Strach was the Executive Director of the North Carolina State Board of Elections, a defendant in this case, both during the implementation of HB 589 and for the first six months after the complaint was filed in this matter, and should be excluded as an expert based on this conflict of interest and the bias this presents to her testimony.

This motion seeks to limit Strach’s testimony to its proper scope. For the reasons that follow, this Court should preclude Strach from testifying as an expert in any capacity and should limit her testimony to that of a lay witness subject to applicable evidentiary requirements.⁴

BACKGROUND

A. The Strach Report and Strach Rebuttal Contain a Mix of Lay Testimony and Improper Opinion

Much of the Strach Report simply recounts Strach’s day-to-day experience with the implementation of HB 589 during her time as Executive Director of the State Board. See, e.g., Riggs Aff., Ex. I ¶¶ 8–43 (describing previous mailings

³ Strach claims she has served as an expert in two cases: *D.C.C.C. v. Ziriox* and *League of Women Voters of Virginia v. Virginia State Board of Elections*. But, while it references Strach’s experience in North Carolina, the Court’s opinion in *Ziriox* does not refer to Strach as an expert or otherwise find her qualified to provide expert opinion on any specific subject. See *D.C.C.C. v. Ziriox*, No. 20-CV-211-JED-JFJ, 2020 U.S. Dist. LEXIS 170427, at *36–39 (N.D. Okla. Sep. 17, 2020). Nor did the Court in *League of Women Voters* when discussing her work in North Carolina. See No. 6:20-CV-00024, 2020 U.S. Dist. LEXIS 152120, at *30–31, 39 (W.D. Va. Aug. 21, 2020).

⁴ Plaintiffs reserve the right to object on hearsay (or other evidentiary) grounds to statements in Strach’s report should she be disqualified as an expert.

and trainings, and other prior education and outreach efforts), ¶¶ 49–67 (recounting Strach’s experiences during the March 2016 primary). Elsewhere, however, Strach offers broad and unsubstantiated opinions on a variety of topics. Strach opines:

- “It is my opinion that an extended rollout with the new legislation [SB 824] is not necessary,” because of work the State Board did to implement HB 589. *Id.* ¶ 48. Strach provides no basis for her opinion that education on SB 824 and implementation of its requirements can be accomplished more quickly than it was for HB 589, even assuming (as Strach does) that education and implementation for HB 589 was successful.
- She is “sure” the State Board will continue certain outreach messaging in future elections, *id.* ¶ 69, despite the fact she is no longer affiliated with the Board or able to direct its activities.
- “Even if every eligible voter votes, no foreign or internal interference occurs, there are no counting errors with voting equipment, and no evidence of fraud or irregularity emerges, if the public doesn’t believe it, there is no confidence in the election.” *Id.* ¶ 71. No study or data is cited to support this sweeping assertion, and Strach could point to no such support for these inflammatory and unsubstantiated opinions in her deposition.
- The “public decides what evidence or safeguards election officials must show to maintain confidence in election results,” and that in “the 2018 general election, the majority of voters said that showing photo identification when

voting is one of those safeguards.” *Id.* ¶ 73. No survey of voters, poll, or other data supports this conclusory assertion.

- A voter ID requirement “is also most certainly a deterrent to a voter to even try to impersonate another voter.” *Id.* ¶ 74. Once again, Strach offers no facts or data to support this opinion.
- It is more difficult to combat allegations of voter fraud in states that do not require voter ID. *Id.* ¶ 76. Strach offers no studies in voter confidence from such states that could possibly support this assertion and disclaimed any knowledge of the numerous academic studies that suggest the contrary. Riggs Aff., Ex. K at 126:20–127:3.
- Absentee ballot harvesting would be “difficult if not impossible” with voter ID requirements in place. Riggs Aff., Ex. I ¶ 79. No citation to any source supports this opinion.
- “Even if we don’t have close elections or evidence of irregularities or fraud, there will be people that believe wide-spread fraud occurred. In order to truly have election integrity there must be public confidence in our election processes. I view safeguards, such as requiring photo identification to vote, as essential for combatting potential fraud, but also just as importantly such safeguards provide confidence and evidence to voters that election officials are carrying out their duties to safeguard the election.” *Id.* ¶ 81. Strach provides no evidence for her claim that voter ID “provides confidence” to voters,

especially where there is little to no “evidence of irregularities or fraud” in an election.

These sweeping opinions and assertions have no basis in any studies, evidence, data, or reliable source disclosed anywhere in the Strach Report.

The Strach Rebuttal follows a similar pattern. Like the Strach Report, the Rebuttal includes lay testimony about Strach’s experiences during the 2016 primary, *see* Riggs Aff., Ex. J ¶¶ 9–14, before veering into unsubstantiated guesswork about how the current State Board would implement SB 824, if required to do so. For example, Strach acknowledges that she is “not aware of Executive Director Brinson-Bell’s plans for training county boards and poll workers on the new voter photo identification requirements,” but nevertheless opines that Bell will “further improve on the training resources and efforts that were utilized in 2016” *See id.* ¶ 15. Elsewhere, Strach purports to speak on behalf of all “[e]lection officials and former election officials,” opining that they “want every eligible voter to have their ballot counted at every election,” without reference to any underlying data, survey, study, or analysis. *Id.* ¶ 32.

B. Strach’s Background and Qualifications Do Not Provide a Basis for Her Purported Expert Opinion

As noted, the opinions expressed above are not supported by citation to any study, survey, or other data source. To the contrary, Strach admits that her opinions are based on “her education, professional training and experience.” Riggs Aff., Ex. I ¶ 7. While Strach’s experience may provide a basis for testimony as a lay witness about facts of which she has personal knowledge, it does not provide a

sufficient foundation or qualification for purported expert opinion on voter fraud, voter confidence, or election integrity.

Strach notes, for example, that before becoming Executive Director, she worked for the State Board of Elections for approximately one year as an election investigator followed by approximately 12 years as the Deputy Director of Campaign Finance. *Id.* ¶ 5. But during her time as an investigator and as Deputy Director, Strach could not recall investigating any specific matters related to alleged voter impersonation or in-person voter fraud. *See generally* Riggs Aff., Ex. K at 26, 29–31.

Strach left the State Board of Elections nearly two years ago, in May 2019, and is currently the Managing Partner of SRS Consulting Services. Riggs Aff., Ex. I ¶ 4, 6. Although she attests in her declaration that SRS Consulting Services provides consultation to clients in the field of “election integrity” among others, *id.* ¶ 6, Strach admitted in her deposition that SRS had not provided any services related to election integrity to date. Riggs Aff., Ex. K 33:21–22. And, while she has submitted declarations in other election-related matters, *see* Riggs Aff., Ex. I ¶ 3, she has never testified at trial as an expert witness, Riggs Aff., Ex. K at 17:1–5, and, as discussed above, no court of which Plaintiffs are aware has qualified her as an expert on election integrity, election security, voter fraud, or voter confidence. Indeed, Strach has never published any academic work on the subject of election administration, or otherwise. *Id.* at 14:14–15. She has not reviewed and studied any such literature or studies and disclaimed any knowledge of the state of that field of academic study.

LEGAL STANDARD

Expert opinions must satisfy the standard set forth in Rule 702(a) of the North Carolina Rules of Evidence, which provides in relevant part:

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion, or otherwise, if all of the following apply:

- (1) The testimony is based upon sufficient facts or data.
- (2) The testimony is the product of reliable principles and methods.
- (3) The witness has applied the principles and methods reliably to the facts of the case.

N.C. Gen. Stat. § 8C-1, Rule 702(a).

The North Carolina Supreme Court has held that Rule 702(a) requires expert testimony to satisfy three elements: “First, the area of proposed testimony must be based on ‘scientific, technical or other specialized knowledge’ that ‘will assist the trier of fact to understand the evidence or to determine a fact in issue.’” *State v. McGrady*, 368 N.C. 880, 889 (2016). “Second, the witness must be ‘qualified as an expert by knowledge, skill, experience, training, or education.’” *Id.* And “[t]hird, the testimony must meet the three-pronged reliability test that is new to the amended rule” as set forth in Rule 702(a)(1)–(3), *i.e.*, be based upon sufficient facts or data, be the product of reliable principles and methods, and be the result of the witness reliably applying these principles and methods. *Id.* at 890. Although the “primary focus of the inquiry is on the reliability of the witness’s principles and methodology, not on the conclusions that they generate, . . . the court is not required to admit

opinion evidence that is connected to existing data only by the ipse dixit of the expert.”
Id. (internal quotations omitted).

The North Carolina General Assembly amended Rule 702(a) in 2011 to mirror the text of Rule 702 of the Federal Rules of Evidence, and thus “North Carolina’s Rule 702(a) now incorporates the standard from the *Daubert* line of cases.” *McGrady*, 368 N.C. at 888 (citing *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993)). However, the North Carolina Supreme Court in *McGrady* noted that this admissibility standard “is not new to North Carolina law[,]” 368 N.C. at 892, and that it did not overrule existing caselaw “as long as those precedents do not conflict with the rule’s . . . text or with *Daubert*, *Joiner*, or *Kumho*.” 368 N.C. at 888, 787. The principal change in the standard post-*McGrady* regarding reliability, is a heightened “level of rigor that our courts must use to scrutinize expert testimony before admitting it.” 368 N.C. at 892. In sum, “[t]o allow [a witness] to testify as an expert, the Court must have some objective methodology to examine for reliability. Otherwise, the parties would be free to elicit subjective views of the case from witnesses cloaked as experts.” *Red Fox Future, LLC v. Holbrooks*, 2014 NCBC 8, 75–79, 2014 NCBC LEXIS 8, *41–42 (N.C. Super. Ct., Polk Cty. Mar. 24, 2014) (granting motion to exclude testimony).

ARGUMENT

A. Strach Is Not Qualified by Her Education, Training, Knowledge, Skill, or Experience.

Strach has no academic education or training relevant to election law, statutory interpretation and implementation, election security or fraud, or election

integrity, nor has she any background in scholarly research on these subjects. *See* Riggs Aff., Ex. K at 14:1–20; 18:12–14; 21:23–22:14; 23:17–19. Her Bachelor of Science degree in criminal justice did not include any coursework specific to election security or voter fraud. *Id.* at 14:1–13. While Strach testified in her deposition that she had “benefited from” attending conferences for the National Association of State Election Directors during her six-year membership, *id.* at 18:18–20, she could not recall any specific training relevant to photo ID issues beyond an unspecified number of small group discussions in which other topics were also discussed. *Id.* at 19:11–20:11. Accordingly, Strach has no basis for claiming expert qualifications stemming from her education, training, or knowledge, and she has not otherwise shown any specific “skills” that would otherwise qualify her.

Instead, Strach’s only potential avenue for expert qualification would be her experience with the North Carolina State Board of Elections. However, a closer look at Strach’s work with the State Board of Elections reveals a paucity of experience with the issues on which she opines.

For example, Strach offers opinions about the relationship between voter ID requirements, voter fraud, and election integrity throughout her initial declaration. *See, e.g.*, Riggs Aff., Ex. I ¶ 76 (“But requiring voters to present photo identification safeguards against the fraud occurring . . .”). But when asked in her deposition, she could not identify any case of in-person voter impersonation she had investigated. As an investigator, Strach could only recall working on a single case related to absentee voter fraud, but this matter did not involve any alleged voter

impersonation. Riggs Aff., Ex. K at 26:16–20. Strach also never investigated any matter related to voter impersonation while she was Deputy Director of Campaign Finance, *id.* at 29:20–22, and she could only recall one investigation during this time related to voter fraud, which she did not remember involving in-person voter impersonation. *Id.* at 30:22–31:3. None of her political corruption investigations involved in-person voter impersonation, either. *Id.* at 31:22–32:2. So while Strach claims to have thirteen years of relevant experience underpinning her opinions related to voter fraud and election integrity, her deposition testimony indicates this experience is wholly irrelevant to the opinions she offers in this case.

As for her six-year role as Executive Director, Strach describes in her report the State Board of Elections’ evidentiary hearing in early 2019 regarding the absentee mail ballot scheme led by McCrae Dowless. Riggs Aff., Ex. I ¶¶ 77–79. However, she fails to describe her own role in this investigation or how an investigation into absentee by-mail fraud that was conducted while she was Executive Director would qualify her as an expert on voter fraud generally or on in-person voter impersonation specifically. *Id.*

Finally, when asked about her basis for opining about the statutory interpretation and future implementation of SB 824, Strach testified she relied only on her experience implementing HB 589. Riggs Aff., Ex. K at 22:24–23:4. While she may be qualified to discuss the implementation of HB 589 as a lay witness, her limited experience implementing HB 589 does not qualify her to make sweeping predictions and opinions about SB 824, which includes some different, albeit similarly

burdensome, requirements for the execution of a voter ID regime in North Carolina. *Cf. League of Women Voters of Va.*, No. 6:20-CV-00024, 2020 U.S. Dist. LEXIS 152120, at *41 (discounting Strach’s opinion because “[t]he Court finds more persuasive [the VA Board of Elections’] assessment of the value of this requirement as compared to testimony from [Strach] a former election official of a different state, who has experience enforcing a different absentee ballot scheme with a different witness signature requirement.”).

As Strach lacks any education, training, or demonstrated skill, and has insufficient and largely irrelevant experience on the topics where she offers her opinion, she is unqualified as an expert under Rule 702. The Court should exclude her from testifying as an expert in any capacity and should limit her testimony to that of a lay witness subject to applicable evidentiary requirements.⁵

B. Strach’s Opinions Are Not Based Upon Sufficient Facts or Data and Are Not The Product of Reliable Principles and Methods.

Even if the Court were to find that Strach is qualified to serve as an expert under Rule 702, the opinions she seeks to offer are nevertheless inadmissible because they are not reliable. Under Rule 702(a), Strach’s testimony must be based upon sufficient facts or data, be the product of reliable principles and methods, and she must show she has applied those principles and methods reliably to the facts of the case. N.C. Gen. Stat. § 8C-1, Rule 702(a). To be admissible, her opinions cannot be based upon “feelings and personal opinions, unsupported by objective criteria,”

⁵ Plaintiffs reserve the right to object on hearsay (or other evidentiary) grounds to statements in Strach’s report should she be disqualified as an expert.

that amount to “hunches and speculation.” *N.C. DOT v. Haywood Cty.*, 360 N.C. 349, 352, 626 S.E.2d 645, 647 (2006) (reversing decision of the Court of Appeals by finding trial court’s grant of plaintiff’s motion for a directed verdict and exclusion of expert testimony was not an abuse of discretion). And where Strach’s opinions are based solely upon her limited six-year experience, she must still explain how that experience leads to the conclusion reached, why that experience is a sufficient basis for the opinion, and how that experience is reliably applied to the facts. *See* Fed. R. Evid. 702 advisory committee’s note to 2000 amendment (citing *Daubert v. Merrell Dow Pharm., Inc.*, 43 F.3d 1311, 1319 (9th Cir. 1995)). Strach fails to do so in her declarations, and further failed to do so when given the opportunity in her deposition.

1. *Strach’s Opinions about Voter Fraud and Election Integrity Lack Sufficient Foundation and Are Not the Result of Reliable Principles or Methods.*

Strach repeatedly opines that a photo ID requirement would deter voter fraud and help instill voter confidence in elections, *see generally* Riggs Aff., Ex. I ¶¶ 74–81, but she is unable to provide a basis for these beliefs. When asked about her basis for opining that a photo ID requirement is “most certainly a deterrent to a voter to even try to impersonate another voter,” Riggs Aff., Ex. I ¶ 74, she admitted she is not aware of any studies supporting this assertion and that her opinion was based on “common sense.” Riggs Aff., Ex. K at 145:15–146:2; 154:21–155:14. It is not an expert’s role to provide opinions based on “common sense.” *See Lasorsa v. Mardi Gras Casino*, No. 17-4321, 2009 U.S. Dist. LEXIS 81948, at *10 (D.N.J. Sep. 9, 2009) (“Because Mr. Leif’s report lacks any objective methodology and falls into the realm

of everyday commonsense, for the reasons below, the Court will preclude his testimony under Rule 702.”).

Similarly, when asked for the basis of her views on the relationship between photo ID laws and election integrity and voter confidence, Strach was unable to describe or quantify what measure of voters doubting an election result would create a lack of voter confidence in a given election. Riggs Aff., Ex. K at 124:22–127:3. Specifically, she did not “undertake any empirical or systematic way of measuring voter confidence in North Carolina.” *Id.* at 127:11–16. Thus, these unsubstantiated opinions cannot be tested or deemed reliable by the Court. Strach was also unable to reference any studies measuring voters’ confidence in elections, and she admitted to never having conducted any studies herself measuring North Carolina voters’ confidence in elections. *Id.* at 124:22–127:3; *see also id.* 132:21–134:18; 181:7–9. Her failure to identify any factual basis for these assertions and her “inability to identify an applicable standard renders her opinion unreliable.” *Trevino v. Bos. Sci. Corp.*, No. 2:13-cv-01617, 2016 U.S. Dist. LEXIS 65967, at *119–20 (S.D. W. Va. May 19, 2016).

Instead, Strach claimed her opinions regarding voter fraud and election integrity were based upon her experience interacting with certain voters. Riggs Aff., Ex. K at 127:3–10; *see also id.* at 184:2–15. But she admitted that she did not capture or study this feedback in any consistent or methodological manner. *Id.* at 127:23–128:5. As a result, there is no way to interrogate whether Strach’s interactions with an unspecified number of voters would provide a sufficient basis for her opinions here,

or whether she is reliably applying the information learned from those voters to the facts in this matter. Instead, her opinions are best characterized as “feelings and personal opinions, unsupported by objective criteria,” that amount to “hunches and speculation.” *Haywood Cty.*, 360 N.C. at 352, 626 S.E.2d at 647.

Such baseless assumptions cloaked as expert opinion are unhelpful and risk introducing faulty information into the record. Such is the case here, where, contrary to Strach’s impressions, empirical studies have shown that there is no evidence voter ID laws increase voter confidence. *See* Stephen Ansolabehere & Nathaniel Persily, *Vote Fraud in the Eye of the Beholder: The Role of Public Opinion in the Challenge to Voter Identification Requirements*, 121 HARV. L. REV. 1737 (2007); Charles Stewart III, Stephen Ansolabehere & Nathaniel Persily, 68 STAN. L. REV. 1455 (2016). Thus, even if she were qualified as an expert in the areas of voter fraud and election integrity, Strach’s proffered subjective opinions on voter confidence should be excluded at trial.

2. *Strach Cannot Provide Expert Opinion on Future Voter ID Implementation Based on Her Experience with HB 589 Alone.*

Strach offers several predictions on future implementation of SB 824, including predictions about the State Board of Elections’ infrastructure that will be in place for implementation. *See, e.g.*, Riggs Aff., Ex. I ¶¶ 45–48; 83; Riggs Aff., Ex. J ¶ 31. These opinions also lack a sufficient basis to be admitted as expert testimony. Strach admitted in her deposition that she is not aware of any academic studies about voter ID implementation, Riggs Aff., Ex. K at 21:6–9, is not offering herself as an expert on implicit bias in election administration, *id.* at 23:20–24:1, and that her sole

expertise in statutory interpretation and implementation of SB 824 would be based upon her role implementing HB 589. *Id.* at 22:21–23:9. This alone is insufficient to provide a basis for her opinions on how the State Board of Elections would implement SB 824 for three reasons.

First, Strach’s knowledge of the State Board of Elections’ ability to implement SB 824 is outdated. Strach left the State Board of Elections nearly two years ago, in May 2019, and she admits in the Strach Rebuttal that she is “not aware” of the current Executive Director’s plans for training county boards and poll workers on enforcing a photo ID requirement. Riggs Aff., Ex. J ¶ 15.

Second, Strach’s experience implementing a different photo ID requirement during two primary elections (only one of which she discusses in her declarations), is anecdotal and insufficient to form an expert opinion on implementing a different law at a different time, particularly during general elections that have much larger scale of voter turnout. *Cf. League of Women Voters of Va.*, No. 6:20-CV-00024, 2020 U.S. Dist. LEXIS 152120, at *41 (discounting Strach’s opinion because it reflects the opinion of “a former election official of a different state, who has experience enforcing a different absentee ballot scheme with a different witness signature requirement”). For example, Strach repeatedly opines on what impact it would make were county boards of elections to offer “free” IDs to individuals, Riggs Aff., Ex. I ¶¶ 47, 82; Riggs Aff., Ex. J ¶ 28, despite the fact that HB 589 had no such provision and thus she has no experience overseeing the implementation of such a program during an election.

Third, even if her prior experience were a sufficient basis, Strach does not provide any evidence that her implementation of HB 589 was successful—much less did not disenfranchise voters—such that she has a basis to opine on whether implementation of SB 824 would likewise be successful. Strach admits that, as Executive Director, she did not conduct any surveys or other systematic measurements of whether photo ID requirements were properly implemented in the March 2016 election, Riggs Aff., Ex. K at 101:1–7; 103:18–104:22, or how many voters may have left polling locations without voting or stayed home because they misunderstood the photo ID requirement. *Id.* at 99:24–100:24. In fact, when previously deposed in this case as a witness for the Defendant State Board of Elections, Ms. Strach admitted that she presented to the legislature information about voters disenfranchised in the one primary election in which the previous voter ID law was implemented, and was neither asked to nor undertook on her own initiative any analysis of the racial demographics of the substantial number of ballots discounted in that primary election because of the ID requirement. *See generally* Riggs Aff., Ex. L at 86–90. Accordingly, Strach’s experience with HB 589 does not qualify her to make sweeping assertions about how SB 824 will be enforced and implemented.

3. *Strach’s Other Purported Expert Opinions Are Unfounded Speculation and Should Likewise Be Excluded at Trial.*

The remaining opinions offered by Strach in her declarations regarding the motivations of North Carolina voters and legislatures are plainly speculative, and should likewise be excluded by the Court. Specifically, Strach opines that the

“majority of voters [in the 2018 general election] said that showing photo identification when voting” is an election “safeguard[],” that “North Carolina voter[s] see presenting photo identification as a safeguard” and that the “legislature has enacted legislation to provide that safeguard.” Riggs Aff., Ex. I ¶¶ 73, 82. But Strach provided no citation to any underlying facts or data for these statements. And when asked in her deposition, she admitted she is not qualified as an expert in voter behavior, did not base her opinion upon any studies or polling about why voters voted for the voter ID amendment, and did not speak to any legislators about their motivation for enacting SB 824. Riggs Aff., Ex. K at 23:17–19; 185:4–10; 186:15–25; 187:12–15. These speculative opinions should likewise be excluded at trial.

4. *Strach’s Opinions Are Otherwise Unreliable Because of Her Conflict of Interest.*

Finally, Strach was the Executive Director of the North Carolina State Board of Elections, a defendant in this case, both during the implementation of HB 589 and for the first six months after the complaint was filed in this matter. This is a conflict of interest and source of bias that further renders her opinions unreliable. *See Keystone Transp. Sols., LLC v. Nw. Hardwoods, Inc.*, No. 5:18-cv-00039, 2019 U.S. Dist. LEXIS 67103, at *8 (W.D. Va. Apr. 19, 2019) (noting exclusion of a proffered expert with conflict of interest in litigation could be accomplished under Rule 702 as “inherently unreliable” and excluding expert for bias).

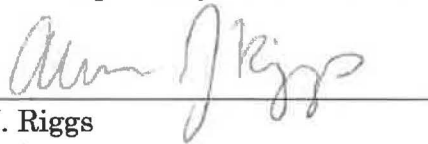
CONCLUSION

Strach is not qualified to provide expert testimony in this matter, and has failed to show a reliable basis or objective methodology for reaching her opinions

regarding statutory interpretation and implementation, election security and voter fraud, and election integrity. Accordingly, the Court should limit her testimony at trial to only lay witness testimony based on Strach's personal knowledge in implementing HB 589, and subject to the relevance and evidentiary parameters relevant to lay witnesses.

Respectfully submitted this the 2nd day of March, 2021.

By: /s/



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