

August 5, 2016

North Carolina State Board of Elections

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Members of the State Board of Elections and Ms. Strach:

The private parties litigating *NAACP, et al., v. McCrory, et al.*, write to address concerns we have regarding the pending amended one-stop early voting plans being developed by the county boards of elections, especially as to Guilford County to date.

As a primary matter, we understand that on August 4, 2016, you “*strongly encourage[d]* county boards of elections to be mindful of expected turnout and historical use of one-stop early voting in their respective counties.” Numbered Memo 2016-11. Because, as your numbered memo acknowledged, “[s]tatewide historical data indicates that roughly 56% of all voters this election will use one-stop early voting,” counties acting in the best interests of the voters they serve must not reduce early voting opportunities as compared to 2012. Specifically, we believe that the one-stop plans utilized in the 2012 election should provide the *minimum* level of early voting opportunity for the development of the 2016 one-stop plans, in part because North Carolina has grown substantially in population in the last four years¹ and because early voting continues to grow in popularity. We expect that counties will have to serve more early voters in November than ever before.

Unfortunately, it has come to our attention that your advice and warnings may be ignored by some counties. It is our understanding that the Guilford County Board of Elections met on August 4 to begin preliminarily addressing its compliance with the Fourth Circuit’s July 29 ruling. We understand that the board looked at the county’s 2012 one-stop voting sites and times as the most recent and relevant 17-day model. In that election, Guilford County featured 22 early voting sites, all but one of which offered Sunday afternoon voting from noon until 4

¹ Recent population estimates from 2015 indicate that from 2010 to 2015, North Carolina grew by over 500,000 people. See 2015 Population Estimates, available at <http://www.census.gov/quickfacts/table/PST045215/37>. Furthermore, according to State OMB data, Guilford County grew by nearly 24,000 people from 2010 to 2014. See, 2014 Certified County Population Estimates, available at: https://ncosbm.s3.amazonaws.com/s3fs-public/demog/countygrowth_cert_2014.html. In that same time period, the African American population in the county increased from 32.5% to 34.2%. See Guilford County NC Quick Facts, available at <http://www.census.gov/quickfacts/table/PST045215/37081.37>.

P.M. Nonetheless, we understand that the majority of the Guilford board proposed to reduce the number of one-stop voting sites to 12 and to eliminate Sunday voting. We understand that the board also proposed eliminating early voting sites on the campuses of North Carolina A&T University and UNC-Greensboro as well as at Barber Park. All three sites have historically served a significant number of young voters and minority voters.

Significantly, we believe the action being considered by the Guilford County Board of Elections, and potentially others, violates the law. For example, the Fourth Circuit ruled that the reduction of early voting opportunities—disproportionately used by African-American voters—and an elimination of Sunday voting—again disproportionately used by African-American voters—was strong evidence that House Bill 589 was motivated by racial discrimination and was unconstitutional. Moreover, the Fourth Circuit ruled that the appropriate remedy for this intentional discrimination was an invalidation of the reduction in early voting, and the District Court’s July 29, 2016 injunction specifically ordered a restoration of voting practices as they existed prior to House Bill 589. *See* ECF No. 455, M.D.N.C. Case No. 13-cv-658.

The Guilford Board’s drastic reduction in early voting opportunities can only be interpreted as intentional action taken to suppress voting this November, particularly among young voters and voters of color. Having already budgeted to provide much more expansive early voting sites and hours in a 10-day period, there can be no cost justification for such a significant reduction. This action, if approved, not only opens up the counties, but also this Board (if it approves such plans), to liability under the Voting Rights Act and the U.S. Constitution.

As you know, in 2014, two sets of plaintiffs challenged early voting plans developed by the Lincoln County and the Watauga County Boards of Elections, both of which this Board approved. Plaintiffs filed lawsuits in Wake County Superior Court, which resulted in counties having to change their one-stop plans in order to avoid liability. *See Anderson, et al., v. N.C. State Bd. of Elections*, No. 14-CVS0012648 (Wake Cty. Sup. Ct. 2014); *Morton, et al., v. State of North Carolina, et al.*, No. 14-CVS-013293 (Wake Cty. Sup. Ct. 2014).

In *Anderson*, the trial court ruled that the Watauga early voting plan was adopted with an intent to discriminate against young voters in violation of the 26th Amendment, and the State Board and County Board were required—on the eve of the election—to restore an early voting site that had been eliminated from the campus of Appalachian State University. And the parties in the *Morton* case settled before a decision, with the Lincoln County Board of Elections agreeing to restore voting opportunities in Lincolnton, where a substantial African-American population resided. Future litigation along these lines will be unavoidable unless this Board acts, in accordance with its statutory authority, to reject early voting plans that do not consider the best interests of the voters in the county.

The State Board of Elections has the responsibility of adopting an early voting plan for a county if the county board is unable to reach unanimity in favor of a plan. In adopting a plan, the State Board is required to consider the geographic, demographic, and partisan interests of the county and is required to make certain findings in connection with the plan. N.C. Gen. Stat. § 163-227.2(g). The discretionary authority of an agency does not include the authority to

disregard the law or to violate the constitutional rights of those affected by its decisions. *See State Highway Comm'n v. Batts*, 265 N.C. 346, 356, 144 S.E. 2d 126, 133 (1965) (Commission's broad discretionary powers over highways do not include condemning private property for private, as opposed to public, use). Because you are afforded this statutory authority, we hope that you will remind the county boards of election, at the state elections conference on August 8-9, 2016, the importance of respecting the spirit of last week's ruling, of acting in the best interest of voters in this state, and that the State Board has the authority to impose fair one-stop plans if the counties do not have unanimous plans.

We expect that the State Board will act in a manner consistent with your sworn responsibility to ensure that North Carolina elections are conducted in a constitutional, fair, and efficient manner. We intend to monitor developments in this matter and will act swiftly and appropriately to ensure that North Carolina voters are afforded the relief that they are entitled to following the Fourth Circuit's ruling. If you have any questions, please do not hesitate to contact us.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Allison J. Riggs', is written over a horizontal line.

Allison J. Riggs

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