

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
NO. 1:13-CV-00949**

DAVID HARRIS; CHRISTINE
BOWSER; and SAMUEL LOVE,

Plaintiffs,

v.

PATRICK MCCRORY, in his capacity
as Governor of North Carolina;
NORTH CAROLINA STATE BOARD
OF ELECTIONS; and JOSHUA
HOWARD, in his capacity as Chairman
of the North Carolina State Board of
Elections,

Defendants.

**DECLARATION OF
KIM WESTBROOK STRACH**

NOW COMES Kim Westbrook Strach, who under penalty of perjury states as follows:

1. I am over 18 years of age, legally competent to give this declaration and have personal knowledge of the facts set forth in it.

2. I am the Executive Director of the North Carolina State Board of Elections (“State Board”), a position I have held since May 2013. My statutory duties as Executive Director of the State Board include staffing, administration, and execution of the State Board’s decisions and orders. I am also the Chief Elections Officer for the State of North Carolina under the National Voter Registration Act of 1993 (“NVRA”). As Executive Director of the State Board, I am responsible for the administration of elections in the State of North Carolina. The State Board has supervisory responsibilities for the 100 county

boards of elections, and as Executive Director of the State Board, I provide guidance to the directors of the county boards.

3. As the Executive Director of the State Board and Chief Elections Officer for the State of North Carolina, I am familiar with the procedures for registration and voting in this State. I am also responsible for implementing the laws passed by the North Carolina General Assembly, supervising the conduct of orderly, fair, and open elections, and ensuring that elections in North Carolina are administered in such a way as to preserve the integrity of and protect the public confidence in the democratic process.

I. OVERVIEW OF 2016 ELECTION CYCLE

4. The 2016 Elections Cycle requires the commitment of significant administrative resources by state- and county-level elections officials, who must coordinate primary (if required) and general election contests for the following:

Federal: (15 races)	President and Vice-President of the United States United States Senate (1 seat) United States Congress (13 seats)
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Statewide: (184 races)	Governor of North Carolina Council of State (9 seats) State Senate (50 seats) State House of Representatives (120 seats) Supreme Court (1 seat) Court of Appeals (3 seats)
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County/Local: (~770 races)	Superior Court (13 seats) District Court of North Carolina (152 seats) District Attorney (5 Seats) County/local officials (approx. 600 seats)
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5. The 2016 Election Cycle involves 1,942 candidates, including 46 congressional candidates, distributed as follows:

Congressional District	Candidates
1	C. L. Cooke; G. K. Butterfield
2	Adam Coker; Frank Roche; Jim Duncan; Kay Daly; Renee Ellmers; Tim D'Annunzio
3	David Hurst; Phil Law; Taylor Griffin; Walter B. Jones
4	David Price; Sue Googe; Teiji Kimball
5	Josh Brannon; Pattie Curran; Virginia Foxx
6	B. Mark Walker; Bruce Davis; Chris Hardin; Jim Roberts; Pete Glidewell
7	David Rouzer; J. Wesley Casteen; Mark D. Otto;
8	Richard Hudson; Thomas Mills
9	Christian Cano; George Rouco; Robert Pittenger
10	Albert L. Wiley, Jr.; Andy Millard; Jeffrey D. Gregory; Patrick McHenry
11	Mark Meadows; Rick Bryson; Tom Hill
12	Alma Adams; Gardenia Henley; Juan Antonio Marin, Jr.; Leon Threatt; Ryan Duffie
13	George Holding; John P. McNeil; and Ron Sanyal.

6. On September 30, 2015, the North Carolina General Assembly designated March 15, 2016 as the date for the 2016 primary election, including the presidential preference primary (herein, collectively, the "March Primary"). *See* S.L. 2015-258.

7. On October 1, 2015, my office issued Numbered Memo 2015-05 outlining recent legislative changes and providing guidance for counties regarding necessary preparations in advance of the March Primary and providing a link to the Master Election Calendar. True and accurate copies of Numbered Memo 2015-05 and an updated Master Election Calendar are attached as Exhibit A and Exhibit B, respectively.

8. Numbered Memo 2015-05 also included technical instructions regarding the Statewide Elections Information Management System (herein "SEIMS"); the candidate

filing period and procedures; ballot coding, proofing, and printing; education and training of election officials; and deadlines for one-stop early voting implementation plans.

9. On December 6, 2015, county elections administrators were required to publish notice of the March Primary pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”). That notice included information indicating that congressional primaries would be held on March 15, 2016.

10. Candidate filing for the 2016 Elections Cycle ran from noon on December 1, 2015, to noon on December 21, 2015.

11. At the close of the filing period on December 21, 2015, the State Board Office established the order by which candidates’ names will appear on the ballot during the March Primary.

12. State officials, county-level elections administrators, and certified voting system vendors began work in earnest on December 21, 2015 to load all candidates and contests into SEIMS, produce and proof ballots, and code ballot tabulation and touch-screen voting machines for use throughout the state’s 100 counties.

13. North Carolina allows voters to cast their ballots in-person at early voting locations beginning March 3, 2016. During the 2012 May Primary—the most recent comparable election cycle—more than 492,000 voters made use of this early voting opportunity. Utilization may be higher in March due to the open presidential race and a perceived opportunity to influence the presidential nomination process earlier in the cycle.

II. BALLOTS PRINTED, ISSUED, AND VOTED

14. On January 25, 2016, county elections officials began issuing mail-in absentee ballots to civilian voters and those qualifying under UOCAVA, which requires transmittal of ballots no later than 45 days before an election for a federal office. North Carolina law requires mail-in absentee ballots to be transmitted no later than 50 days prior to a primary election.

15. SEIMS data indicates that county elections officials have mailed 8,621 ballots to voters, 903 of whom are located outside the United States. Of those absentee ballots mailed, 7,845 include a congressional contest on the voter's ballot. County boards of elections have already received back 431 voted ballots. Figures are current as of February 7, 2016.

16. Upon information and belief, more than 3.7 million ballots have already been printed for the March Primary.

17. Every county board of elections must issue unique ballots printed to display the appropriate combination of statewide and district contests for each political party and electoral districts within the county. These "ballot styles" ensure every voter obtains a single ballot that includes all contests in which that voter is eligible to participate. Because North Carolina recognizes three political parties (Democrat, Libertarian, and Republican), there are potentially three primary contests for each partisan office on the ballot, resulting in vastly more ballot styles in an even-year primary than in a general elections. There are more than 4,500 unique ballot styles slated for use during the March Primary. The process

of generating and proofing ballot styles is highly complex and involves multiple technical systems and quality control checkpoints that go far beyond mere printing.

18. Ballot specifications must be exact in order to ensure accurate reading by vote tabulating machines, which contain digital media cards that must be individually coded to detect the placement of each contest on every ballot style within the county. Results are written onto those cards and fed into our agency's SEIMS network. Because ballot coding for the March Primary has been finalized, results in congressional primary races will appear in the SEIMS system and are a matter of public record. Additionally, The State Board's system for displaying election results to the public is built around SEIMS and would include results in congressional primary races. Reprogramming the public reporting tool at this late juncture would not allow for the testing time we believe is important to ensure the tool fully and accurately reports results.

19. Based on my experience at this agency for more than 15 years, I believe there is no scenario under which ballots for the March Primary can be reprinted to remove the names of congressional candidates without compromising safeguards needed to ensure the administrative integrity of the election. Accordingly, congressional candidates will remain on ballots issued to voters via mail-in absentee, at early voting locations, and on Election Day on March 15, 2016.

III. COUNTY-LEVEL CHALLENGES

Implementing New Congressional Districts

20. In order for county boards of elections to implement newly drawn congressional districts, each board's staff must reassign jurisdictional boundaries in

SEIMS. This is predominately a manual process that requires county elections officials to review physical maps and determine how particular address ranges are affected by changed jurisdictional boundaries. The State Board has implemented jurisdictional audit protocols, but these audits can be performed only *after* counties have completed jurisdictional reassignments and updated voter records within SEIMS.

21. Numbered Memo 2015-05, issued on October 1, 2015, provided a directive to county boards of elections regarding jurisdictional changes. It stated that all jurisdictions should be confirmed and no changes should be made to jurisdictions after December 18, 2015. The purpose of the deadline was to ensure ballots were accurately assigned to voters. Coding for ballots and voting equipment is based on information contained in SEIMS, and changes made to jurisdictions after ballots have been coded runs a risk that voters receive an incorrect ballot style containing contests in which the voter is ineligible to participate. As a safeguard against such errors, ballot styles must regenerate every time a jurisdictional change is entered. With ballot styles now set, we do not have the option to regenerate based on new lines.

22. Every ballot style is assigned a number in order for poll workers to pull and issue the correct ballot to a voter. These ballot style numbers are not generated in SEIMS but in separate voting tabulation software, which are then manually entered into SEIMS and made available to the poll worker in an electronic poll book. This is a particularly significant tool during early voting, when there could be more than 300 unique ballot styles in a single voting location. It is critical that poll workers are able to correctly identify the

ballot style to provide the voter. Regenerating ballot styles at this point could compromise the processes our state has put in place to ensure voters receive the correct ballot.

23. Bifurcating the primary for the purpose of implementing new congressional districts will likely require changes to jurisdictions for many voters. The timing of these changes is significant for several reasons. If the General Assembly has created newly drawn congressional districts by February 19, it would not only be unadvisable to make those changes during a current election due to the potential for voters to receive incorrect ballots, but it would otherwise be nearly impossible for county boards of elections to have the time to make these changes at a time they are preparing for the March primary. February 19 is the voter registration deadline. Historically, county boards of elections receive an influx of voter registration applications on or around that deadline. All timely received applications must be processed in order for newly registered voters to appear on the March Primary poll books, beginning with early voting (March 3-12). Staffing levels at county boards of elections vary widely across the state, but even amply staffed offices are stretched during the months and weeks leading up to the election.

24. State Board technical staff have provided me with the following time estimates for critical aspects of a new congressional election process, depending on the number of counties affected by redistricting: Jurisdictional updates (2 weeks); audit election modules in voter registration database (3 to 5 days); ballot coding and proofing (1 to 3 weeks); ballot tabulation logic and accuracy testing (1 to 2 weeks); mock election and results publication audit (held at least 2 weeks before early voting begins to resolve any

failures identified). Presumably, the legislature would provide also for a new candidate filing period, which must be completed before ballot coding and proofing may begin.

25. Putting aside election notice requirements, the UOCAVA requires the transmittal of absentee ballots no later than 45 days before an election to facilitate participation by U.S. service members, their families, and other U.S. citizens residing abroad. If a second primary in the congressional races is required, it is possible those contests would not appear on the general election ballot for November, which must be mailed no later than September 9.

26. Election professionals are accustomed to working on nonnegotiable deadlines. However, it is my belief that important safeguards meant to ensure the integrity of elections process require time that we would not have if asked to reassign many voters to new congressional jurisdictions and hold a first primary for congressional candidates on May 24, the statutory date for a *second primary* involving federal contests.

27. If the legislature designates a date after May 24—a necessity in my view—affected counties would be required to fund an unanticipated, stand-alone first primary for congress, with the possibility of a second primary in certain contests, resulting in a possible total of five separate elections within nine months.

Early Voting Locations & Hours-matching

28. In April 2015, State Board staff surveyed counties to ascertain the amount of variable costs borne by the counties in the 2014 General Election. The State Board provided counties with the following examples of variable costs: printing and counting ballots, securing one-stop sites, mail-in absentee, Election Day operations, and canvassing.

With 99 counties reporting, the variable costs borne by the counties in the 2014 General Election were as follows:

Total Variable Costs:	\$9,511,716.13
One-stop Early Voting:	\$2,651,455.54 (state average of \$103.56 per early-voting-hour with a wide range \$13.41—\$551.75 per early-voting-hour between counties)

The above figures represent the most current estimates of local variable costs associated with a North Carolina election, and do not include state-level costs.

29. Elections administration within a county are funded pursuant to budgets passed by county boards of commissioners earlier this year. It is my understanding that the statutory deadline for county governing boards to adopt budget ordinances was July 1, 2015.

30. In 2013, the General Assembly enacted the Voter Information Verification Act, 2013 Session Laws 381 (“VIVA”), which introduced new requirements for one-stop early voting. S.L. 2013-381, § 25.2. At a minimum, counties are now required to offer one-stop early voting consistent with the following, unless hours reductions are approved unanimously by the county board of elections and by the State Board: One-stop early voting hours for the Presidential Preference Primary and all March Primaries must meet or exceed cumulative early voting hours for the 2012 Presidential Preference Primary (24,591.5 hours statewide).

During the 2012 May Primary, counties offered 24,591.5 hours of one-stop early voting. Applying reported cost estimates from the 2014 General Election, State Board staff

estimates that one-stop early voting in the March Primary will cost counties approximately \$2,546,695.74 (\$103.56 x 24,591.5 hours). *See* Paragraph 28, *supra*.

31. Bifurcating the 2016 primary would trigger a statutory requirement that counties offer additional one-stop early voting opportunities according to the following formula, unless hours reductions are approved unanimously by the county board of elections and by the State Board: One-stop early voting hours must meet or exceed cumulative early voting hours for the 2010 primary election (19,901 hours statewide).

Accordingly, county-level costs arising from one-stop early voting for an additional, congressional primary are estimated to reach \$2,060,947.56 (\$103.56 x 19,901 hours), based on available estimates. *See* Paragraph 28, *supra*. The number of one-stop sites across the state has steadily risen over past elections cycles, as seen below:

2010:	Primary (215 sites)	General (297 sites)
2012:	Primary (275 sites)	General (365 sites)
2014:	Primary (289 sites)	General (367 sites)

32. Costs beyond one-stop early voting include expenses associated with critical aspects of elections administration and may range from securing precinct voting locations, printing ballots, coding electronic tabulators and voting systems, mail-in absentee operations, and the hiring and training temporary precinct officials for Election Day, among other line-items. The staff-estimate for county-level costs involving an unanticipated primary is roughly \$9.5 million, though actual costs may rise depending on the amount of notice counties are given to secure sites for an election on a date certain.

33. North Carolina elections require that counties secure voting locations in nearly 2,800 precincts. State Board records indicate that on Election Day in the

2014 General Election, nearly half of all precinct voting locations were housed in places of worship or in schools, with still more located in privately-owned facilities. Identifying and securing appropriate precinct voting locations and one-stop early voting sites can require significant advance work by county board of elections staff and coordination with the State Board.

34. Bifurcating the March Primary so as to provide for a separate congressional primary would impose significant and unanticipated challenges and costs for county elections administrators and for the State Board as they develop and approve new one-stop implementation plans, secure necessary voting sites, hire adequate staff, and hold public meetings to take necessary action associated with the foregoing.

Training

35. Training of election officials is most effective when conducted in close proximity to the election the election official is administering. The vast majority of Election Day poll workers only serve on Election Day and, therefore, knowledge of election processes and protocol may not play a major role in their daily lives. North Carolina voters will have the opportunity to vote in-person at early voting locations on March 3, 2016. With this date only weeks away, the 100 county boards of elections and their staff are aggressively training poll workers.

36. The 2016 primary elections will be the first elections in North Carolina to include a photo ID requirement. For the better part of the last three years, the State Board of Elections has been preparing for the rollout of photo ID during the 2016 primary elections. In order to train poll workers effectively and to ensure uniform implementation

of photo ID requirements across the state, the State Board has produced and mandated the use of standardized training tools in every voting site in North Carolina.

37. Timing has played a major role in the agency's preparations for the rollout of photo ID requirements. Our agency's training approach is rooted in the understanding that training should occur far enough in advance to provide the best opportunity for thoroughness and appropriate repetition, but not so far removed from the election itself that memories fade. North Carolina conducted municipal primaries in September, October and November of 2015—all elections without photo ID requirements. Our agency began training in January 2016 as part of a concerted effort to avoid confusion for poll workers ahead of the March Primary. More than 1,400 election officials in January attended regional training sessions and webinars hosted by State Board staff regarding proper poll worker training.

38. State law requires our agency to hold a statewide training conference in advance of every primary or general election. Attendance by all counties is mandatory. The most recent mandatory training conference was recently held on February 1-2, 2016, and was attended by more than 500 supervisory election officials. The principal focus was on procedures for the March Primary. The next mandatory statewide conference is scheduled for August 8-9, 2016. If primary elections were to be held at a time later than March 15, 2016, it would not likely be feasible for the State or county boards of elections to hold an additional statewide conference prior to that time.

39. The State Board of Elections has dedicated staff to engage in meaningful voter outreach. This includes assisting voters with obtaining acceptable photo

identification, educating voters on current election laws and ensuring voters know when they can cast a ballot and make their voices heard in North Carolina. The voter outreach team has conducted voter education presentations statewide that provide voters information on the election schedule for the March Primary.

Poll Worker Recruitment

40. For the past several election cycles, poll worker recruitment has posed a significant challenge for county-level elections administrators. State statutes impose requirements regarding the partisan make-up for judges of elections in each precinct. Often county political parties find it difficult to find individuals that are willing to serve as precinct officials on Election Day. County elections officials have found it necessary to spend more and more time recruiting early voting and Election Day poll workers, especially because technological advances in many counties now require that elections workers be familiar with computers.

III. AFFECT ON VOTER EXPECTATIONS & PARTICIPATION

41. Redistricting would require that county and state elections administrators reassign voters to new jurisdictions, a process that involves changes to each voter's geocode in SEIMS. Information contained within SEIMS is used to generate ballots. Additionally, candidates and other civic organizations rely on SEIMS-generated data to identify and outreach to voters. Voters must then be sent mailings notifying them of their new districts.

42. The public must have notice of upcoming elections. State law requires that county boards of elections prepare public notice of elections involving federal contests for

local publication and for distribution to United States military personnel in conjunction with the federal write-in absentee ballot. Such notice must be issued 100 days before regularly-scheduled elections and must contain a list of all ballot measures known as of that date. On December 4, 2016, county elections officials published the above-described notice for all then-existing 2016 primary contests, including congressional races.

43. Beyond formal notice, voters rely on media outlets, social networks, and habit both to become aware of upcoming elections and to review the qualifications of participating candidates. Bifurcating the March Primary may reduce public awareness of a subsequent, stand-alone primary. Decreased awareness of an election can suppress the number of individuals who would have otherwise participated and may narrow the demographic of those who do ultimately vote. Each could affect electoral outcomes.

44. Historical experience suggests that delayed primaries result in lower voter participation and that when primaries are bifurcated, the delayed primary will have a lower turnout rate than the primary held on the regular date. For example, a court-ordered, stand-alone 1998 September Primary for congressional races resulted in turnout of roughly 8%, compared to a turnout of 18% for the regular primary held on the regularly-scheduled May date that year. The 2002 primary was also postponed until September; that delayed primary had a turnout of only 21%. In 2004, the primary was rescheduled to July 20 because preclearance of legislative plans adopted in late 2003 had not been obtained from the United States Department of Justice in time to open filing on schedule. Both the Democratic and Republican Parties chose to forego the presidential primary that year. *See* Exhibit D. Turnout for the delayed primary was only 16%.

45. By contrast, turnout during the last comparable primary involving a presidential race with no incumbent running, held in 2008, was roughly 37%. The 2016 Presidential Preference Primary falls earlier in the presidential nomination cycle, which could result in even greater turnout because of the increased chance of influencing party nominations.

46. Bifurcating the March Primary could affect participation patterns and electoral outcomes by permitting unaffiliated voters to choose one political party's congressional primary and a different political party's primary for all other contests. State law prohibits voters from participating in one party's primary contests and a different party's second, or "runoff," primary because the latter is considered a continuation of the first primary. No such restriction would apply to limit participation in a stand-alone congressional primary.

47. The regular registration deadline for the March Primary is February 19, 2016. The Second Primary is set by statute: May 3, 2016, if no runoff involves a federal contest, or May 24, 2016 if any runoff does involve a federal contest. State law directs that "there shall be no registration of voters between the dates of the first and second primaries." G.S. § 163-111(e), *see also* S.L. 2015-258, § 2(d). Bifurcating the regular and congressional primary dates—with second primaries possible—could create voter confusion over whether registration is open or closed.

IV. VOTER INFORMATION & EXPECTATIONS

48. The State Board has printed more than 4.3 million copies of the *2016 Primary Election Voter Guide*, which is sent by mail to every residential address across the state.

Upon information and belief, the guides have already been delivered in certain areas. The *Guide* identifies key election dates to ensure voters are properly informed of deadlines. I believe the risk of voter confusion over alternative voting procedures or a stand-alone congressional primary is significant, especially given our agency's efforts to inform voters of then-accurate deadlines.

49. The now-occurring congressional contest is the third held under present district boundaries. Widespread redistricting ahead of a stand-alone primary election presents a significant public education challenge, as voters have grown accustomed to current district boundaries, incumbents and candidates, and the relative importance or unimportance of a primary within their existing district.

50. Notice regarding electoral boundaries and constituent makeup typically inform an individual's decision to pursue office. It is common for legislative primary candidates to organize their voter outreach strategies and even to plan advertising well in advance of the primary election date. Often, those interested in pursuing congressional office will proactively work to raise their profile within a particular electoral district long before declaring candidacy. This exposure can, in turn, allow voters and the press early opportunities to interact with the individual and assess his or her fitness for a position of public trust. Last-minute changes to congressional districts can result in the pool of participating candidates changing from those who have cautiously worked to build credibility or name-recognition within their district communities.

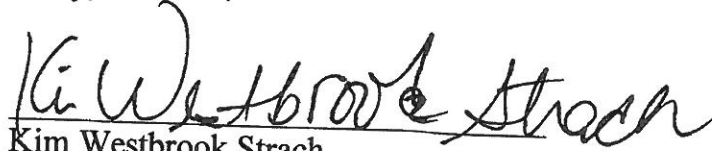
51. In order to campaign effectively, a candidate must know the parameters of the district he or she is seeking to represent. Knowing the constituency is essential to

evaluating the prospects of a candidacy, and factors such as political and grassroots support, fund-raising potential, and ability to communicate with the voters. Without adequate time to prepare, raise money and campaign, potential candidates may forego seeking election.

52. Jurisdictional boundaries and election dates drive our work at the State Board. Even slight changes can trigger complex and interwoven statutory requirements and involve nonobvious logistical burdens and costs borne by North Carolina's 100 counties. Our agency takes seriously its obligation to enforce fully both legislative and judicial mandates, and to work diligently to ensure decision-makers are apprised of collateral effects that may attend those decisions.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 8th day of February, 2016.

A handwritten signature in black ink that reads "Kim Westbrook Strach". The signature is written in a cursive style with a large initial "K" and "S".

Kim Westbrook Strach

Executive Director

North Carolina State Board of Elections