

## **EXHIBIT 3**

### **Declaration of Kim Strach (October 28, 2016)**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
NO. 1:15-CV-00399

SANDRA LITTLE COVINGTON, *et* )  
*al.*, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
THE STATE OF NORTH CAROLINA, )  
*et al.*, )  
 )  
Defendants. )  
\_\_\_\_\_ )

**DECLARATION OF**  
**KIM WESTBROOK STRACH**  
**(October 28, 2016)**

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  
FOR THE GENERAL ASSEMBLY**

4. An election cycle requires the commitment of significant administrative resources by state and county-level elections officials, who must coordinate both primary (when required) and general election contests.

5. Candidate filing for the 2016 Elections Cycle began at noon on December 1, 2015, and ended at noon on December 21, 2015. This filing period included those seeking election to the North Carolina's 120 State House districts and 50 State Senate districts, among other offices. In all, 277 candidates filed for either State House or State Senate.

6. If a primary was required in a particular contest, an election was held on March 15, 2016 (the "March Primary"), pursuant to N.C. Session Law 2015-258, which moved the statewide primaries from May to March for the 2016 election cycle. All second primaries were canceled in order to accommodate a separate congressional primary on June 7 (the "June Primary"). See N.C. Session Law 2016-2.

7. Absentee voting for the March Primary began on January 25, 2016. The Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), and the Military and Overseas Voter Empowerment Act (MOVE), which amended UOCAVA, requires that ballots be available no later than 45 days before an election involving a federal office.<sup>1</sup> N.C. GEN. STAT. § 163-227.3 requires that absentee ballots be available 60 days in advance of a general election in even-numbered years and 50 days in advance of any other statewide election.

8. More than 2.3 million voters participated in the March Primary, surpassing all previous primaries in this state. The June Primary included election for candidates in sixteen partisan primaries for nominations in eleven of North Carolina’s thirteen congressional districts. Just over 509,000 ballots were cast in that election.

9. More than 55,000 voters requested absentee ballots during the March Primary, more than 3,700 of which were requested by military and overseas voters. During the June Primary, more than 15,000 voters requested absentee ballots, including more than 600 by military and overseas voters.

10. A statewide general election for both state and federal offices, including the office of President of the United States, will be held November 8 (the “November General Election”).

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<sup>1</sup> Absentee ballots had already been shipped when congressional elections were enjoined pending the implementation of new district boundaries. While the federal contest was no longer active, the absentee voting period in the March Primary was run under the UOCAVA deadlines.

11. Absentee voting for the November General Election began September 9. One-stop early voting began on October 20 and will end on November 5 in accord with county plans that include more than 42,000 early voting hours across 444 one-stop sites. Early voting plans during the November General Election exceeded early voting during the 2012 General Election in total hours (16% increase) and total sites (21% increase). In the 2014 General Election, a non-presidential year, counties offered approximately 25,700 cumulative early voting hours statewide.

12. Overall participation increased roughly 4.3% between the 2008 and 2012 general elections. If a similar increase occurs in 2016, participation could surpass 4.7 million voters, a record in North Carolina.

## **II. LOGISTICAL CONSIDERATIONS REGARDING A SPECIAL ELECTION FOR THE GENERAL ASSEMBLY IN 2017**

13. Logistical considerations affecting a special election in 2017 for seats in the State House and State Senate ("Special Election") involve a number of complex administrative processes, statutory deadlines, and significant planning. All estimates are limited by uncertainty as to the scope of any redistricting effort, enabling legislation, and the actions of this Court, though the below estimates are based on a broad redistricting effort involving numerous jurisdictions.

### ***2017 Election Cycle***

14. There are no state or federal contests scheduled for an election in 2017, though various municipalities will hold local elections in September, October and/or

November, depending on the municipality. Municipal election dates and deadlines are not uniform across the state.

15. Furthermore, as described herein, the county elections administrators will also face the additional tasks associated with changing jurisdictional lines, and additional costs of holding an election.

16. UOCAVA and MOVE would not trigger absentee requirements for a Special Election in 2017. State law, however, would establish a 50-day absentee voting period, including one-stop early voting over a 17-day period.

***Geocoding Changes: 21 Days***

17. Redistricting requires both state and county elections administrators to assign individual voters to their proper jurisdiction, a largely manual process that involves changes to each voter's "geocode" in the Statewide Elections Information Management System ("SEIMS"). The complexity of reassignment procedures varies, depending on the number of jurisdictions that divide a particular county and the number of voters affected. If a county is not wholly nested within a jurisdiction, elections administrators must assign voters to new jurisdictions on a street-by-street basis within SEIMS, often requiring the use of physical maps along with the time and attention of a county board's most senior staff.

18. Until elections officials complete jurisdictional changes in SEIMS, ballot preparation and voting equipment coding cannot begin in those jurisdictions; neither can potential candidates positively identify which voters reside within the revised district. Accordingly, candidate filing activity usually occurs only after changes have been entered by county elections officials. SEIMS jurisdictional data serves as the backbone to voting

processes throughout the counties, and finalizing jurisdictional changes within SEIMS is a prerequisite to vital features of elections administration in our state.

19. While the scope of any possible approved redistricting is currently unknown, staff estimates based on recent experience indicate that geocoding could take approximately three (3) weeks, after our agency receives new jurisdiction files. Changes following the recent congressional redistricting plan affecting North Carolina's 13 congressional districts took more than two (2) weeks. This task was completed within a short timeframe because 87 counties were wholly nested within single districts. Of the remaining counties that involved more than one congressional district, no county straddled more than two districts. State-level legislative districts, by contrast, encompass 120 State House districts and 50 State Senate districts. Additional subdivisions require additional time. Without additional time, the risk of mistakes becomes higher in geocoding at the county level that could negatively affect voting in a Special Election.

20. The candidate filing for State House and State Senate is ordinarily conducted over three weeks. *See* N.C. GEN. STAT. § 163-106(c). During a special filing period designated for congressional candidates ahead of the June Primary, the General Assembly directed that filing begin at noon on March 16 and closed at noon on March 25. While it is administratively preferable for all geocoding activity to be complete prior to candidate filing—and candidates may prefer to know with certainty which voters are in their district—it may be possible to check candidate eligibility on a one-off basis while geocoding is occurring. Accordingly, the most compressed schedule would have geocoding and candidate filing occurring concurrently.

### ***Ballot Preparation and Proofing: 3 Weeks***

21. Both candidate filing and geocoding processes must be final *before* ballot preparation and election coding can begin. Because county board of elections must issue unique ballots that display the appropriate combination of contests for a particular voter, information compiled by SEIMS—including jurisdictional data and candidate information—is central to the creation of specific “ballot styles” that must be prepared, printed, and coded for proper scanning in the tabulation machines. Ballot styles ensure that each voter obtains a single ballot containing only contests in which that voter is eligible to participate. In a primary, ballot styles are used to ensure affiliated voters cannot participate in a different party’s primary. 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 election.

22. The process of generating and proofing ballot styles is highly complex and involves multiple technical systems and quality control checkpoints that reach well beyond printing.

23. Each ballot style is assigned a number in order to allow a poll worker 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 a 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, though it is uncertain whether enabling legislation or judicial



mandate would require early voting opportunities during any Special Election. Data from SEIMS is used to code voting equipment so each machine tabulator accurately reads results from the distinct ballot styles within a particular county.

24. Changes made to jurisdictions after ballots have been coded run 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.

25. Once jurisdictions are properly assigned, the time required for ballot preparation and election coding depends on the type of election. Staff informs me that ballot preparation and coding could be completed in as little as three (3) weeks, leaving no margins for error. This represents the bare minimum of time necessary, depending on the number of counties affected by redistricting. Ballot preparation and election coding during the March Primary, however, occurred over five (5) weeks, including several weekends.

***Burning Media: 2 weeks***

26. Once ballots are prepared and voting systems are coded, county boards of elections must load data onto physical media cards that are placed in tabulation machines, a process called “burning media.” The media cards ensure that the tabulators anticipate the layout of ballots and properly attribute votes based on the ballot markings.

27. Counties that use touch-screen voting machines—including the populous Mecklenburg County—must prepare digital ballots that will display properly and interact with the machine’s software.

28. Staff informs me that burning media and preparing touch-screen ballots ordinarily takes a minimum of two (2) weeks for a Special Election.

***L&A Testing: 2 days***

29. After burning media, but before the first ballot is tabulated on the first day of one-stop early voting, counties must conduct logic and accuracy testing ("L&A testing") to ensure tabulation machines accurately read ballots. This process involves running a test deck of ballots through tabulation machines within the county and auditing results. L&A testing allows counties to assess whether tabulators recognize and properly record results for the ballot styles in that county.

30. Staff informs me that conducting L&A testing can be completed over the course of roughly two (2) days.

31. On an administrative level, it is preferable to conduct L&A testing before the absentee by mail period begins in order to avoid an improper reading due to changes in the tabulation logic as a result of L&A testing.

***Absentee Voting and Final Preparations: 50 Days***

32. Applicable state law would require that counties begin responding to absentee ballot requests 50 days before Election Day.

33. The 50-day absentee voting period will also include a 17-day one-stop early voting period, beginning 20 days before Election Day.

34. Approximately two (2) weeks before one-stop early voting begins, the State Board hosts a mock election during which all counties upload results into SEIMS, mimicking Election Night. These mock elections test county systems and ensure SEIMS

is accurately processing and aggregating results. The State Board also relies on mock elections to test the accuracy of its web-based elections results page.

***Canvass Processes: 3 weeks  
(without protests)***

35. The finalization process for a primary would include a canvass by the county boards of election—a certification process occurring 10 days after the primary—and a final canvass by the State Board to aggregate totals in multicounty jurisdictions and to certify the accuracy of the election as a whole. State law does not designate a deadline for the State Board's canvass of a primary election. Post-election proceedings may affect the State Board's ability to canvass, including recounts, the filing and adjudication of elections protests, and a sample audit of election returns.

36. The deadlines to initiate certain post-election proceedings fall after the date of county canvass. Accordingly, the time needed to canvass by the county or by the State Board would not necessarily be the same as the time needed to code ballots for the next election. Assuming every effort is made to audit results and compact the timeframe of post-elections proceedings, the most conservative estimate for canvass would likely be the three (3) weeks set out by statute for a general election. It is also not certain that any recount or protest would occur, though it is difficult to overstate the effect of any lingering post-election proceeding on the effort to begin ballot preparation and election coding ahead of a general election.

37. The deadline for filing an election protest is no later than 5 p.m. on the second business day after county canvass. Under ordinary circumstances, county boards of

election hold a preliminary consideration meeting, followed by a properly noticed and transcribed hearing that results in a written order, which may be appealed to the State Board with subsequent recourse in Superior Court. Taking into consideration notice to parties, the production of transcripts, and windows of appeal, this process can take many weeks. A truncated, three-week canvass period would materially affect the recourse ordinarily available to aggrieved candidates and members of the public.

### *Special Elections Scenarios*

38. Because the three-week period necessary to perform geocoding changes following redistricting (Paragraphs 18-21, *supra*) is equal to the estimated three-week period required to canvass an election, it is helpful for planning purposes to consider that any Special Election would require roughly 13 weeks between each Election Day. Accordingly, a Special Election requiring one primary and a general election would require that the primary be no earlier than 13 weeks after the State Board receives approved shapefiles, and the general election may be held no earlier than 26 weeks after the State board receives approved shapefiles. The same would be true for a Special Election requiring a second primary, though the general election would be pushed back at least 13 additional weeks, for an Election Day no earlier than 39 weeks after the State Board receives approved shapefiles.

39. Because it is administratively preferable to burn media and finalize L&A testing before absentee ballots are mailed, a 15-week buffer between each Election Day would be preferable in order to ensure that absentee ballots do not require a hand-eye count. Accordingly, it is preferable to plan for the first primary to take place no earlier than 15

weeks after the State Board receives approved shapefiles, with a general election planned no earlier than 30 weeks (for one primary) or 45 weeks (for two primaries) from that date.

### *Costs*

40. Nearly all fixed costs associated with holding elections in North Carolina are born by the county boards of elections (CBEs), which are funded by their respective boards of commissioners. For municipal elections, however, state law allows CBEs to demand reimbursement from the municipality for which an election is held. In April 2015, my office communicated with a number of counties regarding cost sharing arrangements in the event a county was required to hold both a municipal election and a state-level election concurrently. A number of counties communicated concern that their municipalities would resist bearing costs if the municipal election was added to an election otherwise required. If a Special Election is ordered to occur on the same dates as a municipal election, it may be that those costs are born exclusively by the county boards of elections.

41. 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)

42. 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.

43. Because the cost of opening all precinct locations on Election Day are relatively constant between a primary and a general election, county-level costs arising from one-stop early voting form the principle variables in estimating the combined cost of a Special Election. Non-one-stop expenses were roughly \$6.8M of the \$9.5M total, a figure that would likely remain constant for any statewide primary or statewide general election. 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 of temporary precinct officials for Election Day, among other line-items.

44. A statewide primary for a Special Election would likely cost counties \$6.5M *plus the costs of one-stop early voting* at an average rate of \$103.56/hour. It is likely that a statewide general election would carry comparable costs to that in the 2014 general election: \$9.5M.

45. 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 (366 sites)
2016:	March Primary (358 sites)	General (444 sites)

46. North Carolina elections require that counties secure voting locations in 2,704 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.

47. 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.

#### *Unification of the Elections Calendar and Voter Expectations*

48. A Special Election in 2017 would almost certainly require special legislative action to consolidate municipal elections schedules so as to unify the election calendar across the state. Such an action may disrupt municipal processes, likely requiring that certain officials hold over until replacements are seated. State law, however, requires that voter registration be closed 25 days in advance of an election (except for same-day registrations at one-stop sites). SEIMS does not possess the capability to hold open registration for participation in certain contests while keeping the rolls closed as to all

others. Accordingly, an elections calendar that is not unified could result in as many as six 25-day periods in which the registration books are closed (150 days), the great bulk of which would be loaded into the summer and fall of 2017.

49. The public must have notice of upcoming elections. State law requires that county boards of elections prepare public notice of elections at least 45 days in advance of the election. 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. 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.

50. Historical experience suggests that special elections result in lower voter participation. 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. 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. Turnout for the delayed primary was only 16%. The June Primary held this year drew turnout under 8%, compared to 35% during the March Primary.

51. Second primaries were not part of the 2016 cycle pursuant to a special enactment of the General Assembly as part of legislation implementing new congressional

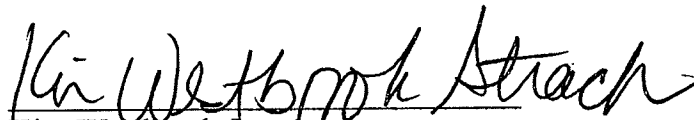


districts. State Board records indicate that there was no second primary held in 2002 for legislative districts, nor was a second primary held in 1998 for congressional districts.

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 unpredictable 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 27th day of October, 2016.

A handwritten signature in black ink, reading "Kim Westbrook Strach". The signature is written in a cursive, flowing style with a horizontal line underneath the name.

Kim Westbrook Strach  
Executive Director  
North Carolina State Board of Elections