



NORTH CAROLINA

State Board of Elections & Ethics Enforcement

Mailing Address:
P.O. Box 27255
Raleigh, NC 27611

(919) 814-0755
Fax: (919) 715-0135

December 10, 2018

VIA ELECTRONIC MAIL

The Honorable Jesse B. Caldwell, III
The Honorable L. Todd Burke
The Honorable Jeffery B. Foster
c/o Kellie Z. Myers
Trial Court Administrator
10th Judicial District

Re: Request for update regarding status of 2018 general election in reference to Cooper v. Berger et al., 18 CVS 3348 (a/k/a Cooper IV).

Your Honors:

The letter is submitted response to the request of Judge Jeffery B. Foster transmitted this afternoon by Trial Court Administrator Kellie Z. Myers. I appreciate this opportunity to submit the following update regarding the State Board's substantial and ongoing efforts to finalize the 2018 general election. My colleagues and I are mindful our agency is not party to this action, and nothing herein is intended to convey a position on the merits in this case.

On November 16, county boards of elections across the State canvassed results pursuant to G.S. § 163A-1172(b). County canvass triggers certain deadlines for the filing of election protests and demands for recounts. A number of protests were filed in various counties, with recounts demanded in others. At least one protest remains active, and we anticipate an appeal to the State Board once the county's written order has been issued.

On November 27, the State Board met to canvass the results for all elections not then subject to active post-election proceedings. During its meeting, and following an extensive briefing from investigators and counsel, the State Board unanimously adopted the below motion:

That the State Board canvass the results of the November 2018 general election excluding contests affected by the proceedings that delay certification under North Carolina General Statute 163A-1172 and excluding results in the contest for election to the U.S. House representing Congressional District 9 pursuant to this Board's authority under North Carolina General Statute 163A-1180.

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The State Board recessed until November 30, when it received additional briefings from its investigators and counsel, and ultimately voted 7-2 in support of the below motion:

In light of claims of numerous irregularities and concerted fraudulent activities related to absentee by-mail ballots and potentially other matters in Congressional District 9, the State Board hold, as then constituted, an evidentiary hearing on or before December 21 pursuant to its authority under G.S. §§ 163A-1180 and 163A-1181 to assure that the election is determined without taint of fraud or corruption and without irregularities that may have changed the result of an election; and that the Bladen County Board of Elections is hereby directed to withhold issuance of certificates of election in the following contests: Bladen County Commissioner District 3 and Bladen Soil and Water Conservation District Supervisor.

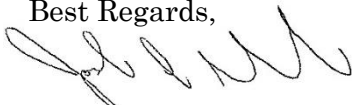
Because the apparent margin of victory in the contest for Seat 2 on the District Court in District 16B represents fewer votes than the number of absentee ballots under scrutiny in Robeson County, the State Board has also delayed certification of that contest.

The agency's efforts to finalize its investigation into allegations of fraudulent activity affecting absentee ballots has involved numerous interviews and subpoenas issued to various organizations. Counsel for subpoenaed parties have begun submitting responsive records, but they have uniformly indicated additional time is needed for review and production of additional materials. It may be that their delays in production will lengthen the timeframe initially contemplated by the State Board.

Agency staff are working diligently to compile a thorough investigative record on which the State Board will ultimately ensure "that an election is determined without taint of fraud or corruption and without irregularities that may have changed the result of an election," G.S. § 163A-1180. We are aware that a complete record will be necessary for any subsequent review by the courts or by the U.S. House of Representatives.

Should the Panel wish to provide continuity during the remainder of this process, be assured we will endeavor to resolve outstanding matters as quickly as we can responsibly do so.

Best Regards,



Joshua D. Malcolm
Chairman