



NORTH CAROLINA
STATE BOARD OF ELECTIONS

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VIA EMAIL ONLY

March 22, 2021

G. Norman Acker, III
Acting United States Attorney
Eastern District of North Carolina
Norman.Acker@usdoj.gov

Re: Your March 19, 2021 Letter and Investigative Report

Dear Mr. Acker:

Thank you for informing us of the results of the investigation by the U.S. Attorney's Office for the Eastern District of North Carolina regarding certain voters who were alleged to have voted or registered to vote while not U.S. citizens. My response serves to address several areas of concern raised by your correspondence, as well as to highlight a number of inaccurate claims made therein.

During the course of the nearly four years of investigation by the U.S. Attorney's Office, yesterday was the first time we received any update from your office about the status of these investigations, via the included report, "Results of Investigations, Prosecutions, and Outcomes of Non-Citizen 2016 General Election Fraud Related Activity Based on Information Provided by the North Carolina State Board of Elections" ("Report"). The Report, which is dated February 26, 2021, but which we received only two days ago, indicates that 7 individuals are still registered to vote despite having been convicted of voting as a non-citizen. Please provide the State Board with documentation of the identity of these individuals and their current felony status so they can be removed from the voter rolls. Additionally, to the extent your office has documentation that there are individuals who have not been convicted of a felony but who are confirmed non-citizens and are still on the voter rolls, the State Board and county boards rely on your office to inform us of that fact.

The Report indicates that 12 individuals checked "no" in response to the question on the voter registration application of whether they were a U.S. citizen, and 8 did not answer the question. These 20 voters who were erroneously registered represent a processing error of approximately 0.0000028% of the more than 7 million individuals who are currently registered to vote in North Carolina. Also, as a point of clarification, the State Board and county boards of elections are

legally distinct entities. *See City of Greensboro v. Guilford Cty. Bd. of Elections*, No. 1:15-CV-559, 2016 WL 6810965, at *1 (M.D.N.C. Mar. 23, 2016). Contrary to what your letter and report seem to suggest, the State Board does not register individuals to vote. Voter registration, including review of forms for eligibility, is performed by the county boards of elections. N.C.G.S. §§ 163-82.1, -82.6, -82.7. The State Board takes its responsibility to provide guidance to the county boards on voter registration seriously. Although your report shows only a few isolated instances of a county board failing to carefully review a voter registration form, we will send a reminder to county boards of elections to carefully check each voter registration form they receive to ensure that the individual is eligible to register to vote.

The Report indicates there was no voter registration form on file for 4 voters who registered to vote between March and May of 2016. We appreciate you informing us of this issue now, but it was resolved in 2016 after the State Board learned of a technological glitch that was preventing voter registration forms from transferring from the North Carolina Department of Motor Vehicles (DMV) to the State Board when a person registered at the DMV.

Your letter also raises the concern that the citizenship question was pre-populated on the voter registration form offered at DMV. Again, while we appreciate you informing us of this issue now, it was resolved approximately five years ago by the State Board and DMV.

Finally, there are several serious misstatements in the Report that might mislead the public were I not to correct them. Litigation counsel to the State Board already made you aware of the inaccuracy of these statements in a number of court filings, but I will briefly highlight them here.

The Report claims that the State Board promised to cooperate with the U.S. Attorney's Office's investigation but failed to respond to requests for information in connection with a federal investigation. You also blame the State Board for purportedly delaying production of documents, which allowed the statute of limitations to run on 9 cases involving non-citizens. Based on reports from our staff who directly participated in these interactions, as well as contemporaneous communications, these statements are categorically false.

Mere days after the May 5, 2017 subpoena was issued to the State Board, State Board counsel conferred with your office to ensure they had an accurate understanding regarding the scope of the grand jury subpoena. In a May 9, 2017 telephone call, an Assistant U.S. Attorney confirmed that the scope of the subpoena was limited to the voters who had been identified as potential non-citizens in the 2016 general election audit report. This represented 136 individuals. As your letter notes, your office had been made aware in February 2017 that there were approximately 564 additional individuals who had registered to vote and were potentially non-citizens. Yet, your office did not request these records.

On May 22, 2017, fewer than three weeks after receiving the subpoena, the State Board delivered to federal investigators all requested records. No federal investigator followed up with the State Board about this initial subpoena or about the records produced pursuant to the subpoena. Under no circumstance can this conduct be characterized as failing to respond to, or delaying production of, documents to your office.

With no warning, on August 31, 2018—just sixty days before the 2018 general election and over a year after the last communication about this matter—your office sent grand jury subpoenas by fax to the State Board and 44 county boards, seeking, among other things, the registration records for *every North Carolina voter* who had registered over the course of nine election cycles, and all voting authorization forms and *executed ballots for every voter* who had voted in six election cycles. The Report misleadingly notes that the August 31, 2018 subpoenas merely sought, “[a]mong other things,” “all documents related to suspected non-citizens who had registered to vote (but not necessarily voted) in North Carolina.” In fact, the items requested from the State Board alone amounted to over 15 million documents. The county board records would include over 5 million voted ballots. These included millions of records for millions of North Carolina voters who were under no suspicion of wrongdoing. To collect, review, and redact all of these records would have made it impossible for the boards to fulfill their statutory duties to administer elections. Further, to disclose how millions of North Carolinians voted would have been an invasion of voters’ right to a secret ballot.

Due to the overbroad reach of the subpoenas, the serious constitutional concerns these subpoenas raised, and to protect North Carolina’s citizens from undue invasion of privacy and/or harassment, the nine-member State Board unanimously voted, in a bipartisan fashion, to direct counsel to file a motion to quash the subpoenas. Only after the State Board mounted a legal opposition to the overbroad subpoenas did the U.S. Attorney’s Office agree to dramatically limit its demand for records, from those pertaining to millions of registrants to only approximately 564 registrants. Because of this agreement to limit the documents produced under the subpoena, the court denied the State’s motion to quash “at this time,” therefore declining to adjudicate the validity of the subpoena as issued. And at no time did the State Board turn over unredacted voted ballots that would disclose how any voter voted.

The State Board stands ready to work with your office and other federal partners, as we routinely do, to ensure that our elections are secure and that violations of the law are addressed. We depend on the good-faith efforts of our partners in this regard. We also expect our partners to understand that, as an agency of the State of North Carolina, the State Board has legal obligations to protect voters’ privacy and to avoid permitting outside law enforcement agencies to commandeer the State and county boards in a way that would make it impossible to do their jobs—which, first and foremost, is to administer elections, including list maintenance processes. We hope that, in the future, your office will work with us, in recognition of these

obligations, rather than force us to take legal action to protect innocent voters' privacy and to preserve the functioning of elections in North Carolina.

Sincerely,

A handwritten signature in blue ink that reads "Karen Brinson Bell". The signature is written in a cursive, flowing style.

Karen Brinson Bell
Executive Director