

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

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

- Exhibit 5

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. SUMMARY OF 2016 ELECTION CYCLE**

### ***March Primary***

4. Candidate filing for the 2016 elections cycle began at noon on December 1, 2015 and ended at noon on December 21, 2015.

5. If a primary was required in a particular contest, that election was added to a statewide primary election held on March 15, 2016 (the “March Primary”).

6. Absentee voting for the March Primary began on January 25, 2016. The Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) requires that ballots be available no later than 45 days before an election involving a federal office, while state law requires ballots be available no later than 50 days prior to a primary election in an even-numbered year.<sup>1</sup> Ultimately 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.

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<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 an even-numbered year.

7. On February 5, 2016, the State Board suspended ongoing primary elections for the United States House of Representatives pursuant to an order issued in *Harris et al. v. McCrory et al.*, No. 13-cv-949 (MDNC Feb. 5, 2016).

8. Because absentee voting had already begun, logistical constraints surrounding the printing of ballots and coding of the election within the Statewide Elections Information Management System (“SEIMS”) prevented county boards of elections from removing congressional races from March Primary ballots. Accordingly, congressional primary candidates appeared on ballots, though votes cast in those contests were not made public by the State Board.

9. More than 2.33 million voters participated in the March Primary, surpassing all previous primaries in this State.

### ***June Primary***

10. On February 23, 2016, Governor McCrory signed Session Laws 2016-1 and 2016-2, establishing a new districting plan for the United States House of Representatives and directing the State Board to open filing for a congressional primary election to be held June 7, 2016 (the “June Primary”).

11. On March 4, 2016, the Superior Court of Wake County overturned Session Law 2015-66, eliminating a retention election option formerly available to sitting justices on the Supreme Court of North Carolina. The State Board opened a special candidate filing period for the affected office, and a nonpartisan primary is now underway as part of the June Primary. Because justices are elected statewide, the additional contest required no jurisdictional changes within SEIMS—all voters in the State are eligible to participate.

12. Seventy-six (76) candidates filed for the U.S. House of Representatives during a special filing period that opened on March 16 and ended March 25. By comparison, 46 candidates filed in December 2015.

13. Absentee voting for the June Primary began on April 18. SEIMS records indicate that county boards of election have already mailed more than 55,300 ballots to voters in 108 states and U.S. territories, and an array of international locations. This total includes military voters serving overseas.

14. Early voting for the June Primary will run from May 26 to June 4.

#### ***November General Election***

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

16. The State Board has required that county boards of election submit their early voting plans for approval on or before July 29. Early voting plans include detailed plans and operating hours for one-stop voting locations scouted and secured by county elections officials throughout the state.

17. Absentee voting for the November General Election begins September 9, three months after the June Primary.

18. Early voting will occur between October 27 and November 5, and may involve more than 36,000 voting hours at one-stop locations. *See* Paragraph 53, *infra*. In 2008—the most recent general election involving an open presidential contest— more than 55% of all votes were cast at early voting locations.

19. 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 SEPARATE PRIMARY FOR GENERAL ASSEMBLY**

20. Logistical considerations affecting a special primary held for seats in the General Assembly (a “Third Primary”) involve a number of complex administrative processes, statutory deadlines, and significant backwards-planning from the November General Election. All estimates are limited by uncertainty as to the scope of any redistricting that might be required by an order of the Court. A Third Primary would likely require cutting short the absentee voting period for both the Third Primary and for the November General Election, a critical opportunity relied upon by military and overseas voters.

### ***Geocoding Changes***

21. 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 SEIMS. The complexity of reassignment procedures vary, 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 the new jurisdiction 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.

22. Until elections officials complete jurisdictional changes in SEIMS, ballot preparation and voting equipment coding cannot begin in those jurisdictions; neither can candidates positively identify which voters reside within the revised district. 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.

23. While the scope of any possible redistricting required—should the Court strike down any aspect of the current districting plans—is currently unknown, staff estimates based on recent experience that geocoding would 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. In the case of the remaining counties involving more than one congressional district, no county straddled more than two districts. Legislative districts, by comparison, encompass 120 State House districts and 50 State Senate districts, many of which will likely subdivide counties in any plan. Additional subdivisions require additional time. Without additional time, the risk becomes higher of mistakes in geocoding at the county level that could negatively affect voting in any Third Primary.

#### ***Ballot Preparation and Election Coding***

24. Information compiled by SEIMS is used to generate ballots and to code voting systems in a manner necessary to ensure the integrity of elections processes.

Jurisdictional data, for instance, is used to pair every voter with a specific “ballot style” that displays all races for 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. Elections officials proof ballot styles prior to printing and 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.

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 the below estimates represent the bare minimum amount of time necessary:

- a. Ballot preparation and coding for the November General Election could be completed in as little as three (3) weeks, leaving no margins for error. Staff, however, informs me that ballot preparation and election coding during the March Primary occurred over five (5) weeks, including several weekends.
- b. A Special Election is estimated to require at least two (2) weeks.

***Burning Media and Preparing Touch-Screen Ballots***

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 tabulator anticipates the layout of ballots, properly reads ballot markings, and records votes cast.

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 inform me that burning media and preparing touch-screen ballots ordinarily takes the same amount of time as ballot coding: two (2) weeks for a Third Primary.

29. These processes are often completed after the start of mail-in absentee voting.

### ***L&A Testing, and Mock Election***

30. Before live ballots are tabulated, county boards of election must conduct logic and accuracy (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.

31. The State Board hosts mock elections during which all 100 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.

32. If L&A testing has not occurred by the beginning of absentee voting, past protocol requires that those mail-in absentee ballots are marked and counted by hand in order to avoid an improper reading if changes are made to the machine logic as a result of L&A testing.



33. Staff informs me that the time required to complete these tasks varies across counties, but that neither L&A testing nor mock elections should be held less than two (2) weeks from the start of one-stop early voting. In the past, that two (2) week period has provided a needed opportunity to correct errors.

***Effect of November General Election on Third Primary Date***

34. Identifying the last possible date for a Third Primary requires that the State Board plan backwards from critical dates governing the November General Election, especially deadlines associated with absentee voting.

35. The beginning of the absentee voting period for the November General Election under state law (60 days) requires that ballots be available beginning September 9. The federal minimum under UOCAVA (45 days) requires that ballots be available beginning September 23.

36. Absentee ballot preparation and election coding for any one jurisdiction can begin only after results from any Third Primary are final.

37. The finalization process for a Third Primary would include a canvass by the county boards of election—a certification process occurring one (1) week after Election Day—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.

38. To date, nearly two months after the March Primary, election protest proceedings arising from that election remain ongoing. No active proceeding involves a contest for the General Assembly. The State Board has not canvassed and staff continues to ensure that counties uniformly and properly count provisional ballots.

39. The deadlines to initiate certain post-election proceedings fall after the date of county canvass. Accordingly, canvass by the county or by the State Board would not stand-in for finalization required to code ballots. Assuming every effort is made to audit results and compact the timeframe of post-elections proceedings below the three (3) weeks set out by statute for a general election—where an incumbent's holding over in office does not pose the same problem as uncertainty as to the nomination—it may be possible to conduct county and state canvass within two (2) weeks after Election Day. It is 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 the November General Election.

40. 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, two-week canvass period would materially affect the recourse ordinarily available to aggrieved candidates and members of the public.

41. Working backward from the state absentee deadline for the November General Election (September 9), the latest Tuesday on which a Third Primary could occur is August 2, as reflected below:

Third Primary (August 2)	Canvass/Finalize (2 weeks)	Ballot Preparation & Election Coding (3 weeks)	November Absentee (September 9)
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42. Critical dates for a Third Primary on August 2 include the following:

- a. June 13: Absentee by mail begins (state absentee deadline)
- b. July 21: Early voting begins
- c. August 2: Election Day
- d. August 9: County canvass
- e. August 16: State canvass

43. Working backward from the federal UOCAVA deadline for absentee ballots during the November General Election (September 23), the latest Tuesday on which a Third Primary could occur is August 16, as reflected below:

Third Primary (August 16)	Canvass/Finalize (2 weeks)	Ballot Preparation & Election Coding (3 weeks)	November Absentee (September 24)
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44. Critical dates for a Third Primary on August 16 include the following:

- a. June 27: Absentee by mail begins (state absentee deadline)
- b. August 4: Early voting begins
- c. August 16: Election Day

- d. August 23: County canvass
- e. August 30: State canvass

***Preparations for the Third Primary Date***

45. Although the state or federal absentee deadlines for the November General Election may establish the latest possible date for a Third Primary, it is necessary to identify concomitant statutory and logistical deadlines to ensure adequate time for needed preparations.

46. After receiving shapefiles that contain jurisdictional data containing new district boundaries, county officials will have to manually process those changes through their county's geocoding database. There are several days within an election cycle where processing such changes would be highly inadvisable, including any time voting is occurring: one-stop and Election Day.

47. Early voting for the June Primary runs from May 26 to June 4. During that period, county administrators use a SEIMS tool called the Statewide One-stop System Administrator ("SOSA"), which functions as a digital poll book at all early voting locations. SOSA derives its data from SEIMS; if, however, the application determined that jurisdictional information has changed within SEIMS, security protocols within the system will lock and prevent voting from occurring. If a county intentionally or unintentionally allows SOSA to communicate with SEIMS while geocoding is in progress, voters would be prevented from participating. The same type of problem arises on Election Day.

48. Beyond the risk of halting voting activity, my experience suggests that county boards of elections are not sufficiently staffed to carry out duties associated with an ongoing election while making geocode changes accurately. The same constraints would recommend against any timetable that would require that counties conduct geocode changes during the day prior to Election Day, and during the county's canvassing period. Candidate filing, ballot preparation and election coding could, however, occur during early voting and the canvassing period, since most of these activities occur at the State Board of Elections or through vendors—not the county. It should be noted that geocode changes must precede ballot coding, since ballot coding relies on accurate jurisdictional information to create the different ballot styles.

49. Assuming the (1) state absentee deadline remains for the November General Election, and (2) state absentee deadline (June 13, *see* Paragraph 42, *supra*) remains for a Third Primary held August 2, the State Board would have needed new jurisdiction files by May 4, as reflected below:

Month	Sun	Mon	Tue	Wed	Thu	Fri	Sat
May 2016	1	2	3	4 Deadline to receive shapefiles	5 Geocode changes begin	6	7
	8	9	10	11	12	13	14
	15	16	17	18	19	20	21
	22	23	24	25	26 One-Stop Begins	27	28
	29	30 Ballot Preparation and Election Coding Begins	31	1	2	3	4 One-Stop Ends

Month	Sun	Mon	Tue	Wed	Thu	Fri	Sat
Jun 2016	5	6	7 Congressional Primary Election	8	9	10	11
	12	13 State Absentee Deadline	14 County Canvass	15	16	17	18

- ☐ Geocode changes (15 Business Days; 3 weeks)  
☒ Geocode changes should not occur during this time period

50. Assuming (1) absentee deadlines are reduced to the federal minimum for the November General Election, and (2) state absentee deadlines (June 27, *see* Paragraph 44, *supra*) remain for a Third Primary held August 16, the State Board would have needed new jurisdiction files by May 4, as reflected below:

Month	Sun	Mon	Tue	Wed	Thu	Fri	Sat
May 2016	1	2	3	4 Deadline to receive shapefiles	5 Geocode changes begin	6	7
	8	9	10	11	12	13	14
	15	16	17	18	19	20	21
	22	23	24	25	26 One-Stop Begins	27	28
	29	30	31	1	2	3	4 One-Stop Ends
Jun 2016	5	6	7 Congressional Primary Election	8	9	10	11
	12	13 Ballot Preparation and Election Coding Begins	14 County Canvass	15	16	17	18
	19	20	21	22	23	24	25

Month	Sun	Mon	Tue	Wed	Thu	Fri	Sat
	26	27 State Absentee Deadline	28	29	30		

- ☐ Geocode changes (15 Business Days; 3 weeks)
- ☒ Geocode changes should not occur during this time period

51. Based on my experience and the estimates provided by staff, it is my view that a Third Primary cannot be held on either August 2 or August 16 without reducing the absentee voting period for the Third Primary.

52. The need for jurisdiction files on May 4 is not altered by picking between absentee requirements for the November General Election, because there are windows in which it is inadvisable for county boards to perform geocoding processes, including during the early voting period.

***Third Primary preparations omitting an Absentee Deadline***

53. In the absence of an absentee deadline for a Third Primary, it is helpful to plan backwards from the start of one-stop early voting.

54. A Third Primary held August 2 would have required that the State Board receive new jurisdiction files on or before May 4. According to the timelines referenced above, *see* Paragraph 24, *supra*, ballot preparation and election coding can begin no later than June 9.

Ballot Preparation can begin (June 9)	Ballot Preparation & Election Coding (2 weeks)	Burning Media and Touch Screen Ballots (2 weeks)	L&A and Mock Election buffer (2 weeks)	Early Voting (Jul 21)
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As illustrated in the calendar below, geocode changes must therefore begin by May 5 in order to avoid days where no geocode changes can occur. See Paragraph 46 through 48, *supra*.

Month	Sun	Mon	Tue	Wed	Thu	Fri	Sat
May 2016	1	2	3	4 Deadline to receive shapefiles	5 Geocode changes begin	6	7
	8	9	10	11	12	13	14
	15	16	17	18	19	20	21
	22	23	24	25	26 One-Stop Begins	27	28
	29	30	31	1	2	3	4 One-Stop Ends
Jun 2016	5	6	7 Congressional Primary Election	8	9 Ballot Preparation and Election Coding Begins	10	11
	12	13	14 County Canvass	15	16	17	18

- ☐ Geocode changes (15 Business Days; 3 weeks)  
☒ Geocode changes should not occur during this time period

55. A Third Primary held August 16 would have required that the State Board receive new jurisdiction files on or before May 12. According to the timelines referenced above, *see* Paragraph 24, *supra*, ballot preparation and election coding can begin no later than June 23.

Ballot Preparation can begin (June 23)	Ballot Preparation & Election Coding (2 weeks)	Burning Media and Touch Screen Ballots (2 weeks)	L&A and Mock Election buffer (2 weeks)	Early Voting (Aug 4)
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As illustrated in the calendar below, geocode changes must therefore begin by May 13 in order to avoid days where no geocode changes can occur. See paragraphs 46 through 48.

Month	Sun	Mon	Tue	Wed	Thu	Fri	Sat
	8	9	10	11	12 Deadline to receive shapefiles	13 Geocode changes begin	14
	15	16	17	18	19	20	21
	22	23	24	25	26 One-Stop Begins	27	28
	29	30	31	1	2	3	4 One-Stop Ends
Jun 2016	5	6	7 Congressional Primary Election	8	9	10	11
	12	13	14 County Canvass	15 Geocode changes resume	16	17	18
	19	20	21	22	23 Ballot Preparation and Election Coding Begins	24	25

- ☐ Geocode changes (15 Business Days; 3 weeks)  
☒ Geocode changes should not occur during this time period

56. The need for jurisdiction files early in the process is not significantly affected by the presence or absence of absentee voting because the beginning of one-stop early voting requires the completion of all tasks relating to tabulation and systems testing—administrative tasks that would have been occurring concurrently with the absentee voting period.

### *Unanticipated Costs to Counties*

57. Early voting during an unanticipated election poses significant difficulties for the county boards of elections, which are funded by their county commissioners.

In 2013, the General Assembly enacted the Voter Information Verification Act, 2013 Session Laws 381, which introduced new requirements for 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 formula, unless hours reductions are approved unanimously by the county board of elections and by the State Board: One-stop early voting hours for a primary without a presidential contest must meet or exceed cumulative early voting hours for the 2010 primary (19,901 hours statewide).

58. While the scope of redistricting is not known, statewide budget data collected by the State Board following the 2014 general election suggests that the county-level costs associated with matching hours one-stop hours could exceed \$2 million, with total costs to the counties perhaps exceeding \$9 million. The State Board temporarily suspended the hours-matching requirement for the June Primary pursuant to special authorization contained in S.L. 2016-2. Given the unanticipated and unbudgeted nature of a Third Primary, it is likely that the hours-matching requirement would prove highly burdensome for county elections officials, who must scout locations, hire poll workers, and secure funding from their county commissioners.

59. The 2016 Election Cycle has been characterized by a number of changes affecting the voters' experience in our state. Designating a Third Primary to be held between the June Primary and the November General Election may contribute to voter confusion and result in depressed turnout.

60. A stand-alone congressional primary in September 1998 drew roughly 3.6% of registered voters. Comparable turnout in a Special Primary would reduce participation to roughly 1/10th of that in the March Primary.

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

Executed this 6th day of May, 2016.

A handwritten signature in cursive script, reading "Kim Westbrook Strach". The signature is written in dark ink and is positioned above a horizontal line.

Kim Westbrook Strach  
Executive Director  
North Carolina State Board of Elections

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