

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 14476

NORTH CAROLINA STATE
CONFERENCE OF NAACP, et al.,

Plaintiffs,

v.

PHILLIP E. BERGER, et al.,

Defendants.

**AFFIDAVIT OF
KAREN BRINSON BELL**

I, Karen Brinson Bell, swear under penalty of perjury, that the following information is true to the best of my knowledge and state as follows:

1. I am over 18 years old, I am competent to give this affidavit, and have personal knowledge of the facts set forth in this affidavit. I have consulted with senior staff at the State Board in the preparation of this affidavit.

2. I currently serve as the Executive Director of the North Carolina State Board of Elections (the "State Board"). I became Executive Director of the State Board effective June 1, 2019. My statutory duties as Executive Director include staffing, administration, and execution of the State Board's decisions and orders. I am also the Chief State Elections Official for the State of North Carolina under the National Voter Registration Act of 1993 and N.C.G.S. § 163-27. As Executive Director, 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, I provide guidance to the directors of the county boards.

3. On March 8, 2022, North Carolina is scheduled to hold its 2022 statewide primary election. Contests on the ballot include the U.S. Senate and House of Representatives, the N.C.

General Assembly, state judicial contests at all levels, district attorneys, and county offices. Additionally, voters in roughly a third of North Carolina's counties will have municipal contests on their ballot, due to special legislation delaying certain municipal contests due to delays in receiving U.S. Census data. *See* N.C. Sess. Law 2021-56. For the non-municipal contests, if no candidate reaches the vote share necessary to become the party nominee after the first primary (at least 30% of the vote plus one), a second primary may be held on April 26, or May 17 if a federal office is involved. *See* N.C.G.S. § 163-111. For municipal contests that use the primary-and-election or election-and-runoff methods of voting, the second municipal election will be held on April 26, unless a second primary is being held in a federal contest, in which case the municipal second election will also be held on May 17.¹

4. In our state, the county boards of elections administer elections in each county, including, among other things, providing for the distribution of voting systems, ballots, and pollbooks, training elections officials, conducting absentee and in-person voting, and tabulation and canvassing of results. The State Board is responsible for development and enhancement of our Statewide Elections Information Management System ("SEIMS"), which includes managing functions that assign voters to their relevant voting districts, a process known as "geocoding." The State Board also supports the county boards and their vendors in the preparation and proofing of ballots.

5. For North Carolina electoral districts, the geocoding process starts when the State Board receives district shapefiles from the legislature, which include geographic data setting the boundaries for legislative districts. The State Board's staff then works with county board staff to

¹ North Carolina municipalities conduct elections using one of four election methods: nonpartisan plurality, nonpartisan election and runoff, nonpartisan primary and election, and partisan primary and election. *See* N.C.G.S. §§ 163-291, -292, -293, -294.

use the shapefiles to update the voting jurisdictions that are assigned to particular addresses in SEIMS. This process then allows the State Board to work with county board staff and ballot-preparation vendors to prepare ballots. The State Board must perform an audit of the geocoding to ensure its accuracy before ballot preparation.

6. The amount of time required for geocoding generally corresponds with the number of district boundaries that are redrawn within the counties. In this case, most counties will experience changes to their districts following decennial redistricting—including state legislative, congressional, and local jurisdiction districts—and a significant number of those counties are likely to have newly drawn district boundaries within the counties' borders. Staff estimates that, given what we currently know, geocoding would likely take at least 21 days (including holidays and weekends) for the 2022 primary.

7. Ballot preparation and proofing can begin after geocoding is complete and candidate filing closes. For the 2022 primary elections, candidate filing occurs between noon on December 6, 2021, and noon on December 17, 2021. *See* N.C.G.S. § 163-106.2(a). The process of generating and proofing ballots is complex and involves multiple technical systems and quality-control checkpoints that precede ballot printing and the coding of voting machines. This includes proofing each ballot style for content and accuracy, ballot printing, and delivery of all ballot materials to county boards. Staff estimates that, given what we currently know, ballot preparation and proofing would likely take between 17 and 21 days (including holidays and weekends) for the 2022 primary, depending on the number of ballot styles to prepare, which largely depends on the degree of change to intracounty district lines, and the number of contested nominations.

8. Geocoding and candidate filing may occur concurrently, although that is not ideal

because the completion of geocoding permits candidates and county boards to verify if a candidate desiring to file for election lives in a particular district. It is possible, however, to check candidate eligibility while geocoding is still taking place.

9. In contrast, geocoding and ballot preparation must occur consecutively. Ballots cannot be prepared until the proper geographical boundaries for voting districts are set in SEIMS and the candidates are known after the candidate-filing period closes. Additionally, the end-of-year holidays could pose difficulties for available staff time for the State Board, county boards, and vendors. Therefore, the total time required for geocoding and ballot preparation is likely between 38 and 42 days (including holidays and weekends).

10. Under N.C.G.S. § 163-227.10(a), the State Board must begin mailing absentee ballots 50 days prior to the primary election day, unless the State Board authorizes a reduction to 45 days or there is “an appeal before the State Board or the courts not concluded, in which case the board shall provide the ballots as quickly as possible upon the conclusion of such an appeal.” The federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) requires that absentee ballots that include elections for federal office be made available by 45 days before a primary election, *see* 52 U.S.C. § 20302(a)(8)(A), unless I request a waiver of this requirement based on a legal contest delaying the preparation of ballots (or another enumerated hardship), and that waiver is granted by the federal official designated to administer UOCAVA, *see id.* § 20302(g). The state requesting a waiver must present a comprehensive plan that provides absentee UOCAVA voters sufficient time to receive and submit absentee ballots they have requested in time to be counted in the federal election.² Based on the current primary date of March 8, 2022, 50 days before the primary election falls on January 17, 2022; but because that

² https://www.fvap.gov/uploads/FVAP/EO/2012_waiver_guidance.pdf.

day is a holiday, the county boards must be prepared to begin distributing absentee ballots on the prior business day, which is January 14, 2022. The 45-day federal deadline falls on January 22, 2022 for the primary election; but because that day is a Saturday, in practice, the federal ballot distribution deadline is Friday, January 21, 2022.

11. In sum, the State Board would need to receive the shapefiles for geocoding and ballot preparation between now and 38 to 42 days before the deadline for distributing absentee ballots. Currently, that deadline is January 14, 2022, which means any new shapefiles must arrive between now and December 3–7, 2021. If that deadline were moved to January 21, 2022, new shapefiles would need to arrive between now and December 10–14, 2021.

12. If the deadlines for distributing absentee ballots were extended beyond what is required by UOCAVA, the State Board would also have to factor in additional administrative steps that must be prepared before in-person voting occurs. Currently, in-person early voting is set to begin on February 17, 2022 for the 2022 primary.

13. Before in-person voting occurs, the State Board must work with county boards to load data onto physical media cards that are placed in voting 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. The county boards must also conduct logic and accuracy testing to ensure that tabulation machines accurately read ballots and to correct any errors in coding. Staff estimates that burning media, preparing ballot marking devices and tabulators, and logic and accuracy testing would likely take the counties 14 days. After that process, the State Board works with the county boards to conduct a mock election, which takes one day, and generally affords two weeks thereafter to remedy any technical problems identified during the mock election. That two-week period could be reduced, but the

State Board generally believes that the two-week period fully insures against risks associated with technical problems that may be identified in the mock election.

14. Accordingly, regardless of when the absentee ballot distribution deadline falls, allowing 29 days after ballots have been prepared to prepare for in-person election voting is preferable. Under the current deadlines for distributing absentee ballots, which falls roughly a month before early voting begins, these processes can be accommodated. The time requirements for these processes would only become relevant if the absentee distribution deadline is shortened to less than what is currently required by statute.

15. If the Court were to order a separate primary for the challenged contests, a different set of administrative requirements would be triggered that could ultimately lead to disruption of the general election in the fall.

16. First, it is not technically possible to perform geocoding while in-person voting is occurring, and it is difficult to perform geocoding during the canvass period after the election. This is because making changes in SEIMS related to geocoding inhibits the actual voting process. County canvass takes place 10 days following an election. Generally, at that point, geocoding may begin, assuming no recount has been ordered. Accordingly, we recommend that geocoding for any delayed primary not begin any earlier than March 19, 2022. Relying on the aforementioned estimates, it would take between 38 and 42 days to geocode and prepare ballots for a separate primary. Candidate filing could occur before or simultaneous with geocoding.

17. However, if this Court chose to delay only the contests challenged by this action and allowed the other races to proceed on March 8, 2022 (judicial, prosecutorial, county, and municipal races), in order to accommodate a second primary or second municipal election for those races (see paragraph three above) on April 26 or May 17, the geocoding time period would

be interrupted as there will be a second blackout period for geocoding from April 7 to May 6 (if the election is April 26), or April 28 to May 27 (if the election is May 17). This represents an interruption in geocoding of 30 days, resulting in the work of geocoding and ballot preparation not being completed until approximately May 26-30, 2022, at the earliest. At that point, absentee ballots could be distributed pursuant to N.C.G.S. § 163-227.10(a).

18. Second, state law regarding the deadline for distributing absentee ballots would again require 50 days' time prior to the primary election day, unless the State Board reduced that time to 45 days or there is "an appeal before the State Board or the courts not concluded, in which case the board shall provide the ballots as quickly as possible upon the conclusion of such an appeal." N.C.G.S. § 163-227.10(a). The federal UOCAVA deadline would not apply if the primary did not involve federal offices. Therefore, accounting for absentee ballot distribution deadlines, the earliest that a separate primary could occur is 45 days later, which would result in a primary election day of Tuesday, July 12, 2022.

19. Third, one-stop early voting would have to begin 20 days before the primary election day under N.C.G.S. § 163-227.2(b). Accordingly, all of the administrative processes that must occur before in-person voting begins (geocoding, ballot preparation, burning media, preparing touch-screen ballots, logic and accuracy testing, mock election, and technical fix period, among other things), which are estimated to take between 67 and 71 days total, would need to occur between March 19, 2022, and 20 days before the date of the separate primary, with an additional 30 day delay caused by the blackout period around the second primary as described in paragraph 17 above. Therefore, even putting aside absentee ballot distribution deadlines and then accounting for in-person voting timelines, the earliest that separate primary could occur is, again, Tuesday, July 12, 2022.

20. Such a late date for a primary would make any second primary, if triggered and requested under N.C.G.S. § 163-111, infeasible. A second primary under this scenario would occur on either August 30, 2022 or September 20, 2022 (*i.e.*, 7 or 10 weeks after the initial primary, depending on whether there was a federal contest involved). This would interfere with the August 19 to August 23 deadline to begin preparing ballots for the general election. Absentee ballots must be mailed out for the general election on September 9, 2022 pursuant to N.C.G.S. § 163-227.10(a), and staff require 17-21 days to prepare those ballots ahead of that date as described in paragraph 7 above.

21. Fourth, there are additional administrative challenges that counties would face if a separate primary were held. Among these challenges would be recruiting poll workers and securing voting locations, along with the associated costs. Increasingly, county elections officials have found it necessary to spend more time recruiting early voting and election day poll workers, especially because of statutorily mandated early voting hours and technological advances in many counties that require elections workers to be familiar with computers. Additionally, a large portion of precinct voting locations in the state are housed in places of worship or in schools, with still others located in privately owned facilities. Identifying and securing appropriate precinct voting locations and one-stop early voting sites requires advance work by county board staff and coordination with the State Board.

22. In sum, enjoining and delaying only the challenged primary contests would result in significantly greater administrative burden on the boards of elections, could result in significant voter confusion, and could potentially lead to an administratively infeasible timeline in late summer. In contrast, if all currently scheduled contests set for March 8, 2022 were moved to a later date, this would still raise significant administrative burdens, but it would be possible to

implement as geocoding of any new shapefiles can begin immediately upon receipt by the State Board, without blackout interruptions, and voters would not need to keep track of multiple primary dates for the 2022 elections.

23. Under those circumstances, and backtracking from the earliest relevant deadline for the general election—the ballot preparation deadline of August 19 to August 23³—the second primary can occur no later than Tuesday, July 26, 2022,⁴ and the first primary can occur no later than Tuesday, May 17, 2022,⁵ which in turn requires that the State Board be provided with any new shapefiles no later than February 14 to 18, 2022.⁶

³ Absentee ballots must be mailed out for the general election on September 9, 2022 pursuant to N.C.G.S. § 163-227.10(a), and staff require 17-21 days to prepare those ballots ahead of that date as described in paragraph 7 above.

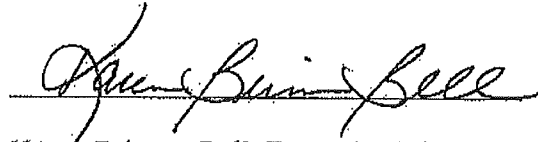
⁴ 21 days are required by the State Board to complete statewide canvass and certify the election results, which must be completed prior to preparing ballots. This results in a date range of Friday, July 29 to Sunday, August 2, with Tuesday, July 26 being the nearest feasible day to hold the election.

⁵ The allowance of 10 weeks is required between the first and second primaries, pursuant to N.C.G.S. § 163-111(e).

⁶ 38 to 42 days to geocode and prepare ballots plus the 50 days before the election when absentee ballots must be mailed.

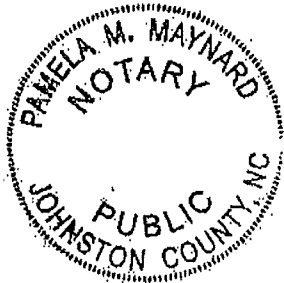
This concludes my affidavit.

This the 23rd day of November, 2021.



Karen Brinson Bell, Executive Director
N.C. State Board of Elections

Sworn to and subscribed before me this 23rd day of November, 2021.



(Notary Public)

My commission expires: 11-2-23