

Kim Westbrook Strach, Executive Director
North Carolina State Board of Elections & Ethics Enforcement
PO Box 27255
Raleigh, NC 27611-7255

April 23, 2018

RE: Response to 2018 Legislative Request

Dear Ms. Strach:

We write today on behalf of Democracy North Carolina to offer feedback on the State Board of Elections & Ethics Enforcement's (State Board) February 27, 2018 legislative request, including proposed statutory recommendations in response to election security challenges.

First, thank you for your vocal advocacy on election security. We share the State Board's concerns about external threats to our voting system, and appreciate your work to ensure that North Carolina's election infrastructure is strong and protected from any attempts to compromise it. However, we also believe that a focus on security alone will not sufficiently fortify our democracy against threats to its integrity, and are eager to ensure that security and voter access do not become competing priorities.

In that spirit, this letter 1) reviews our areas of agreement with the proposals set forth in the State Board's February 27 letter; 2) states concerns about certain proposals from that letter; and 3) offers additional or alternative recommendations.

Areas of Agreement

Without reservation, we support the State Board's suggested revisions as to:

- Statutorily requiring that voting machines not connect to any network during operation, as is recommended by election security experts as a best practice;
- Strengthening and clarifying the State Board's oversight over electronic poll books used in the state, including the authority to decertify or otherwise halt the use of electronic poll books; and
- Ensuring that all existing audit procedures are appropriately implemented to verify secure balloting, particularly with direct record electronic voting machines.

We also support the State Board's request for the addition of a Chief Information Security Officer and allocation of state funding for counties to replace aging voting equipment.

Areas of Concern

We are concerned about the impact of two of the State Board's suggested revisions: 1) making duplication of a voter registration form by someone who is not an election official a misdemeanor offense, and 2) requiring background checks for election workers, contractors, and volunteers.

First, as written, the proposed misdemeanor would undermine the work of nonpartisan, third-party voter registration groups, who collectively assist thousands of North Carolinians with registering to vote every election cycle. Many of these groups duplicate completed voter registration forms as a way of capturing the voter's contact information for follow-up contacts via phone, mail, and in-person canvass, in order to provide valuable nonpartisan educational information to voters (e.g., dates and hours for One-Stop sites, the latest on voting rules) and encourage voter participation – not to capture sensitive or confidential information, such as date of birth or Social Security and driver's license numbers. These groups perform a critical service for the state as a whole and especially among low-income, highly mobile, student, and infrequent voter populations.

Second, while we acknowledge the sensitivity of systems accessed by election workers, we are concerned that background checks are an overly broad response to the potential misuse of election data—and could lead to a false sense of security among election officials.¹ We believe that a more tailored solution would be a better safeguard and also avoid the reflexive reliance on background checks, which often prohibit individuals with unrelated criminal records from finding the gainful employment required for rehabilitation. One way to do this would be to, as needed, limit the ability of temporary and/or administrative workers to modify election data in the State Elections Information Management System (SEIMS). This could be incorporated into the planned overhaul of SEIMS mentioned in the February 27 letter.

Additionally, we are concerned that, as written, the proposed revision might be misinterpreted as applying to poll workers (e.g., election assistants, judges, and chief judges), rather than only those working in County Boards of Elections offices. Given the broad list of offenses listed in the proposed N.C.G.S. § 163A-7(a)(2), the application of background checks to prospective poll workers would almost certainly reduce the number of North Carolina residents interested in serving in this vital role, at a time when the state should do more to promote recruitment.

We therefore recommend adding the following clarifying clause to the proposed Sections 143B-968(a)(1) and 163A-7(a)(1) (proposed change in italics):

(e) Shall not mean a precinct official as defined in G.S. 163A-815(b).

We also recommend amending the proposed Section 143B-969(a)(1) as follows (proposed change in italics):

(1) "Current or prospective employee" means a current or prospective employee permanent or temporary employee of a county board of elections, *not including a precinct official as defined in G.S. 163A-815(b).*

¹ Public records indicate that the Durham County election worker indicted as a result of 2016 conduct had no previous criminal record; the Granville County election worker had one prior conviction related to a vehicle registration tag – an unrelated offense. It is not clear that the background check suggested in the February 27 letter would have flagged either as potentially problematic, particularly given that the identification of any previous criminal conviction via background check "shall not automatically prohibit employment."

And we further recommend amending the proposed Section 163A-778(a)(1)(a) as follows (proposed change in italics):

- (a) A current or prospective permanent or temporary employee of a county board of elections, *not including a precinct official as defined in G.S. 163A-815(b).*

Recommended Additions

The State Board's legislative requests are an important starting point in the public dialogue about policy changes that can strengthen our democracy, but we believe both officials and lawmakers can do more to improve voter access, a critical component of free and secure elections. One tangible aspect of this is ensuring that voters have a clear, informative, and courteous experience when they cast ballots.

Our recent report, *From the Voter's View: Lessons from the 2016 Election*, details the ways in which some voters encountered confusion, misapplied rules, and even outright hostility from poll workers when they went to vote in 2016. That report offers four recommendations, most of which would not require legislation to implement:

Poll Worker Code of Conduct

In 2016, the State Board developed a code of conduct for polling place observers and outside monitors. A similar code of conduct for poll workers should be adopted that stresses the importance of (1) courtesy, respect, and sensitivity toward all voters regardless of age, race, language, gender, and ability; (2) clear communication; (3) efficiency and convenience; (4) basic knowledge of election law and administrative guidance; and (5) commitment to ensuring that all eligible voters are able to cast ballots. Repeated failure to abide by this code should be cause for dismissal.

Minimum Standard for Poll Worker Training

The State Board should establish a minimum standard for all poll worker training – ideally, requiring all non-judge poll workers to receive the same training as judges. Using a uniform method developed by the State Board, County Boards of Elections should also incorporate a test into poll worker training to confirm that poll workers have basic knowledge of election laws and rules, especially those that pertain to problem areas identified in our January 2018 report.

Expand Poll Worker Recruitment

The State Board should increase and expand state and county efforts to recruit younger, more diverse, culturally competent, and tech-savvy poll workers. In doing so, state and county BOEs should partner with community groups, like Democracy North Carolina, who are deeply invested in the intricacies of the voting process. First steps could include an assessment of current barriers to poll worker service and a meeting with interested stakeholders to begin brainstorming shared solutions.

Clearer Pathways for Unaffiliated Voters to Become Poll Workers

State and county election officials should work together to provide a clearer pathway to becoming a poll worker for unaffiliated voters. Currently, each county handles requests to become a poll worker differently; some refer volunteers to their local political party, others have an online sign-up process. Streamlining and clarifying the process for unaffiliated voters in particular will improve the ability of counties to attract new, younger poll workers and of interested outside groups to promote poll worker service as a critical form of civic engagement.

In addition to the above actions, the State Board and lawmakers should revise state law and allocate additional funding in the following ways to address concerns about security and resources:

Appropriate Matching Funds for Election Security

This spring, Congress appropriated \$400 million for election security and systems upgrades. More than \$10 million of this funding will go to North Carolina, but the state must allocate approximately \$500,000 of its own funding in order to receive the federal grant. The necessary state funding required is small compared to the benefit: resources that can go toward improved voting infrastructure for voters and officials alike.

Direct Investigative Resources Away From Unintentional Election Law Violations

In its *Post-Election Audit Report: General Election 2016*, the State Board identified 441 suspected cases of voting while serving a felony sentence, out of 4.7 million total ballots cast in the 2016 general election. Under state law, voting while serving a felony sentence is a strict liability crime, which means that an individual can be convicted of the offense even if they cast a ballot unintentionally, and even if they received inaccurate information from an election official or a probation or parole officer. But research shows that, nationally, both voters and election officials express confusion over how exactly felony disenfranchisement laws work.² Here in North Carolina, the State Board posted a notice intending to clarify felony disenfranchisement laws in 2017.³

As currently written, the law requires the State Board to expend investigative resources that could be better used identifying intentional acts of illegal voting, attempts to malign individual voters for political gain by misusing the election protest process (as the McCrory campaign did in 2016), or violations of campaign finance disclosure requirements.⁴

Adding an intent element to the current statute would bring the law into conformity with other statutes addressing ineligible and illegal voting, a number of which require an intent or knowledge element,⁵ and reduce the use of State Board investigative and local law enforcement resources on these relatively rare incidents that typically stem from ignorance of the law, while increasing peace of mind for eligible voters who have fully served their sentence. We suggest the following language (addition in italics):

[§ 163A-1389]

Any person who shall, in connection with any primary, general or special election held in this state, do any of the acts or things declared in this section to be unlawful, shall be guilty of a Class I felony. It shall be unlawful:

...

² Erika Wood & Rachel Bloom, Brennan Center for Justice, *De Facto Disenfranchisement* (2008), <http://www.brennancenter.org/sites/default/files/legacy/publications/09.08.DeFacto.Disenfranchisement.pdf> (documenting, based on interviews in 23 states, “persistent confusion among election officials about their state’s felony disenfranchisement”).

³ “A reminder about voting by those convicted of felonies,” North Carolina State Board of Elections & Ethics Enforcement: NCSBE News (Oct. 27, 2017), <https://www.ncsbe.gov/Elections/Blog-Agency/ArticleID/33/A-reminder-about-felons-and-voting>.

⁴ Bob Hall & Isela Gutierrez, Democracy North Carolina, *The Deceit of Voter Fraud* (2017), <https://democracync.org/wp-content/uploads/2017/05/FraudReport.pdf>.

⁵ See N.C.G.S. § 163A-1389(4) (“For any person *knowingly* to swear falsely with respect to any matter pertaining to any primary or election”); (6) (“For any person to take *corruptly* the oath prescribed to voters”); (7) (“For any person *with intent to commit a fraud* to register to vote at more than one precinct or more than one time, or to induce another to do so, in the same primary or election, or to vote illegally at any primary or election”) (emphasis added).

- (5) For any person convicted of a crime which excludes the person from the right of the suffrage, to vote *with intent to commit a fraud* at any primary or election without having been restored to the right of citizenship in due course and by the method provided by law.

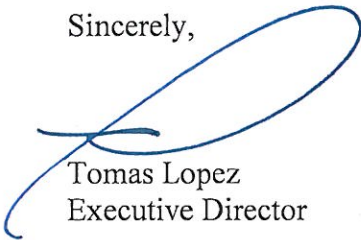
Election Security and Voter Access Complement Each Other

Election administration is challenging, often invisible, and thankless work, and we acknowledge the responsive efforts of both the State and County Boards of Elections in these rapidly-shifting circumstances. The concern about external threats to the integrity of our elections is one deeply disturbing piece of the overall context; the documented challenges faced by voters in 2016 and the attempts to reduce the electoral power of historically-disenfranchised populations via suppressive elections laws and racial gerrymandering are another. Ensuring fair access, particularly among infrequent voters who may already have reasons to mistrust the intent behind changes to election laws, is vital to maintaining faith in our democracy.

We believe that our above recommendations will build trust in our elections system while also serving *both* security and access.

We look forward to working with you, State Board members, lawmakers, and others on discussing these and other proposals moving forward.

Sincerely,



Tomas Lopez
Executive Director



Isela Gutiérrez
Research and Policy Director

cc: Members, North Carolina State Board of Elections & Ethics Enforcement