

**Testimony of Tomas Lopez  
Executive Director, Democracy North Carolina**

**Before the Committee on House Administration, Subcommittee on Elections,  
U.S. House of Representatives**

**Field Hearing on Voting Rights and Election Administration in North Carolina  
April 18, 2019**

Chair Fudge, Ranking Member Davis, and Members:

Thank you for the opportunity to submit this testimony for your field hearing on voting rights and election administration in North Carolina, and to share the experiences of this state's voters, who in recent years have been subjected to consistent attacks on voting access and deliberate, extreme racial and partisan gerrymanders. These measures have undermined both the ability for voters to participate in elections and the effectiveness of participation itself—by design. North Carolina's experience underscores the necessity of congressional action to both restore the full protections of the Voting Rights Act and establish new standards to facilitate meaningful access to the political process.

My name is Tomas Lopez, and I am the executive director of Democracy North Carolina. We are a nonpartisan, nonprofit organization that works to, among other goals, protect the right to vote in our state. As part of this work, we seek to bring North Carolinians – especially historically underrepresented people of color – into the political process and encourage their participation and leadership through voting, monitoring the election process, and issue advocacy. We also author original research on election administration, help coordinate a statewide nonpartisan poll monitoring and voter assistance network, and advocate for policies and practices that we believe will increase voter access and participation. Prior to this position, I was a voting rights attorney at the Brennan Center for Justice at NYU School of Law, where I litigated voting rights cases in the federal courts, contributed to research on election law and administration, and supported election reform efforts in several states.

This submission addresses several issues:

- Repeated efforts to restrict voting access through several means, including strict photo identification requirements and reductions to early voting;
- The voting experience in North Carolina, especially as to voters subjected to dysfunction and intimidation;
- The perpetuation of false narratives regarding voter fraud; and
- Extreme racial and partisan gerrymandering.

Many of these issues are the results of a concerted, years-long effort to limit voter participation and impact for the sake of short-term, perceived political advantage. All damage the vitality of our state and its democracy by harming the public's ability to meaningfully take part in the political process.

## Repeated Efforts to Restrict Voting Access

Over most of the past decade, North Carolina has been subject to comprehensive, consistent, and repeated efforts to restrict voting access, especially after the loss of federal oversight following the *Shelby County v. Holder* decision. By design and in effect, these restrictions target voters of color, young people, and low-income citizens.

### *2013 Omnibus Law*

On the very same day as the *Shelby County* decision in 2013, Senator Tom Apodaca, then the Rules Chair of the North Carolina State Senate, announced that the General Assembly leadership no longer had to worry about the “legal headache” of preclearance and could “go with the full bill” remaking the state’s elections system.<sup>1</sup> That full bill, H589, installed one of the nation’s strictest photo ID requirements and eliminated Same Day Registration during the early voting period; pre- registration of 16- and 17-year-olds; and the first week of early voting (including a Sunday traditionally used by Black churches for “Souls to the Polls” activities). These reforms had moved North Carolina from consistently ranking in the bottom twelve states for eligible voter turnout to 10<sup>th</sup> in the nation in 2012.<sup>2</sup>

H589’s passage led to years of costly litigation. In 2016, the U.S. Court of Appeals for the Fourth Circuit found that the ID requirement and the elimination of the above reforms were enacted with racially discriminatory intent and “target[ed] African-Americans with almost surgical precision.”<sup>3</sup>

The preclearance regime invalidated in *Shelby County* was created to deter laws like H589 from being passed, review potentially harmful laws before they went into effect, and avoid time-intensive and financially expensive lawsuits. Without it, North Carolina voters were subjected to a restrictive and intentionally discriminatory bill that became law and required several years and substantial resources to defeat in court, confusing voters and wasting the limited resources of state and county boards of elections.

### *2018 Voter ID Constitutional Amendment and Implementing Legislation*

In the nearly three years since the Fourth Circuit’s invalidation of H589, North Carolina’s legislature has attempted to revive elements of that law by piecemeal.

As to a strict photo identification requirement, the North Carolina General Assembly introduced and passed a ballot measure that amended the North Carolina Constitution to require photo identification from voters casting ballots in person, with exceptions. While voters approved broadly worded constitutional language, the General Assembly passed implementing legislation during a lame-duck period after which the majority party lost its ability to override gubernatorial vetoes.<sup>4</sup> As expected, this implementing legislation closely mirrors the voter ID statute invalidated in 2016.

One difference in the new statute is language that allows for the use of student and employee IDs for voting. But while that would appear to be an improvement on its face, this has so far proven to not be

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<sup>1</sup> Laura Leslie, “NC voter ID bill moving ahead with Supreme Court ruling,” WRAL, June 25, 2013, <http://www.wral.com/nc-senator-voter-id-bill-moving-ahead-with-ruling/12591669/>

<sup>2</sup> Democracy North Carolina. Voter Turnout in North Carolina, 1980 to 2012, <https://democracync.org/wp-content/uploads/2018/01/PresidentTurnoutNC1980-2012.pdf>.

<sup>3</sup> *North Carolina State Conference of the NAACP, et al. v. McCrory*, 831 F.3d 204 (4th Cir. 2016).

<sup>4</sup> S.L. 2018-144.

the case. As written, the law requires universities, colleges, and community colleges to attest under penalty of perjury as to citizenship verification procedures outside of the scope of their work and within the scope of existing procedures under state and federal law, and imposes other administrative challenges that discouraged North Carolina campuses from complying, such as requiring that school staff take ID photographs themselves and modify their ID documentation.<sup>5</sup> From the passage of the legislation, institutions were given less than three months to determine their ability to comply with these requirements and submit their attestation letters to state officials. As of this submission, 37 community colleges, colleges, and universities out of over 100 eligible institutions submitted documentation to the State Board of Elections in order to have their student ID cards approved for voting use in 2020. Of those, 11 campuses were denied – 10 constituent universities of the University of North Carolina system, including the flagship in Chapel Hill, and one HBCU. The General Assembly is currently considering legislation that would modify these requirements, including by removing the attestation requirement for institutions; that measure passed the North Carolina House, but faces uncertain prospects in the Senate.<sup>6</sup>

We are concerned that, in practice, the ID law will work in much the same way as its predecessor— by imposing both a formal barrier for eligible voters, and an informal one that deters them from casting ballots due to confusion, misinformation, misapplication of the law, or intimidation. Indeed, the introduction of student IDs as another potentially-eligible ID for voting, but one that requires the institution to receive pre-approval by the State Board of Elections, increases the likely impact of both of these barriers on young voters in 2020.

### *Reductions to Early Voting*

Restrictions to early voting have been another hallmark voter suppression tactic since 2013, when H589 cut a week off of North Carolina’s early voting period. North Carolina county boards of elections (BOEs) hold significant power over voting access in this state through their ability to set polling locations, determine early voting schedules, and train poll workers on current law. During the 2014 and 2016 election cycles, these county bodies implemented changes to local election procedures that resulted in reduced access for voters of color:

- In 2014, the Lincoln County Board of Elections passed an early voting plan that reduced voting hours from 2010, a move that was overridden by the State Board of Elections. As a result, hours had to be added to the early voting site in Lincolnton, the county seat – something the BOE chair strongly objected to because “it would have been favorable to the Democratic Party.” Although only 13% of the county population lives in Lincolnton, it is the home of 31% of the county’s African American voters.<sup>7</sup>
- In 2014, over the objections of community members, the Forsyth County Board of Elections adopted an early voting plan that moved early voting sites outside of the urban center of Winston-Salem, where the majority of Black voters live, to whiter, more conservative suburbs. The plan removed an early voting site from Winston Salem State University, a HBCU that had been an early voting location in 2012, 2010, and 2008, and did not replace it with any other sites

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<sup>5</sup> N.C.G.S. § 163A-1145.2.

<sup>6</sup> House Bill 646 (2019).

<sup>7</sup> Sharon McCloskey, “Lincoln County voters fight for hours at early voting sites,” The Progressive Pulse (NC Policy Watch), Oct. 31, 2014, <http://pulse.ncpolicywatch.org/2014/10/31/lincoln-county-voters-fight-for-hours-at-early-voting-sites/>.

in eastern Winston-Salem, although multiple alternatives were suggested. “Our African American community has been hurt,” testified a local Democratic party official before the BOE.<sup>8</sup>

- In 2014 and 2016, the Chavis Heights Community Center precinct in Southeast Raleigh in Wake County demonstrated the effect that having out-of-precinct voting available as an option and its correct implementation by precinct officials can have on access for voters of color. In 2014, when North Carolina did not have out-of-precinct voting in place, our poll monitors counted over 300 voters, mostly African-American, turned away from the poll and sent to other polling locations. In many cases, voters told monitors they would not be able to get to another polling place – one person had used their last money on bus fare to Chavis Heights.<sup>9</sup> In 2016, when out-of-precinct voting was permitted following the Fourth Circuit’s ruling, poll monitors reported that the chief judge at the polling place refused to offer provisional ballots to out-of-precinct voters. When voters demanded an out-of-precinct provisional, as was their right, precinct officials discouraged them from casting a ballot, saying, “it won’t count anyway.”<sup>10</sup>
- In 2016, in an attempt to blunt the impact of the Fourth Circuit’s decision to restore the first week of early voting, many of the Republican-led county BOEs adopted early voting plans with fewer hours and sites during the first restored week. There were dramatic reductions in early voting hours in Guilford (-660), Mecklenburg (-282), Brunswick (-165), Craven (-141), Johnston (-124), Robeson (-121), and Jackson (-113) counties. Of those, Guilford, Craven, and Robeson counties were previously covered under Section 5 of the Voting Rights Act, and Mecklenburg and Johnston have significant Black voting populations, 33% and 16% of all registered voters (as of October 22, 2016) respectively.

A second troubling development is a June 2018 law, S325, which mandates a 12-hour early voting schedule during the week and requires those same hours across all sites.<sup>11</sup> While uniformity may present theoretical benefits, the extended 12-hour day required by S325 has in practice increased the costs of early voting for counties and, in turn, reduced the total availability of early voting, particularly weekend hours.

North Carolina law requires counties to make early voting available at a minimum of one location and permits counties to establish additional early voting locations. In past cycles counties, especially in low-resourced areas, made early voting available at different times across a variety of locations during the early voting window— for instance, by having some sites open only on the weekends, or offering Sunday voting at only one or two locations. The 2018 law makes this impossible by requiring that counties keep any given early voting site open on the same days and same hours as all others. Additionally, the mandatory 12-hour weekday schedule forces counties to staff sites at hours when voters do not typically vote, thus reducing the total number of sites counties can afford to staff without increasing the number of usable voting hours.

This has produced several consequences in practice:<sup>12</sup>

- 43 counties reduced the number of early voting sites in 2018 compared to 2014.

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<sup>8</sup> Meghann Evans, “Forsyth elections board approves early voting plan” Winston-Salem Journal, July 22, 2014, [http://www.journalnow.com/news/local/forsyth-elections-board-approves-early-voting-plan/article\\_7cbf2a6a-11d3-11e4-b1fa-001a4bcf6878.html](http://www.journalnow.com/news/local/forsyth-elections-board-approves-early-voting-plan/article_7cbf2a6a-11d3-11e4-b1fa-001a4bcf6878.html).

<sup>9</sup> Isela Gutierrez and Bob Hall, Democracy North Carolina, *Alarm Bells from Silenced Voters* (June 2015), <https://democracync.org/wp-content/uploads/2017/06/SilencedVoters.pdf>.

<sup>10</sup> Isela Gutierrez, Democracy North Carolina, *From the Voter’s View: Lessons from the 2016 Election* (January 2018), [https://democracync.org/wp-content/uploads/2018/01/PostElectionReport\\_DemNC\\_web.pdf](https://democracync.org/wp-content/uploads/2018/01/PostElectionReport_DemNC_web.pdf).

<sup>11</sup> S.L. 2018-112. As originally written, the statute removed the final Saturday of early voting beginning in 2018; this was subsequently postponed.

<sup>12</sup> Democracy North Carolina has compiled these figures for use in this submission and in future reporting.

- 51 counties reduced the number of weekend days offered.
- 67 counties – over two-thirds of North Carolina’s 100 counties – reduced the number of weekend hours.
- Of the eight counties where a majority of voters are Black, four reduced sites, seven reduced weekend days, and all eight reduced the number of weekend hours during early voting. None saw increases in sites or weekend options.
- A ProPublica and WRAL analysis of Early Voting sites elimination found that about 1 in 5 rural voters saw the distance to an Early Voting site increase by more than a mile— and in some counties, like Halifax, the average distance between voters and Early Voting sites increased by as much as 6 miles.<sup>13</sup>

Despite these reductions, North Carolina voters turned out in impressive number in last year’s midterm election. But high overall turnout does not necessarily mean widespread or equitable access. Indeed, the three counties where turnout rates (the percentage of registered voters who cast ballots) decreased compared to 2014 are telling. Two were Jones and Pamlico, which received federal assistance after Hurricane Florence. The other was Halifax, the site of this field hearing, which had three Early Voting locations in 2012, 2014, and 2016, but only one in 2018. Halifax also saw the greatest increase in the average distance from voters to Early Voting Sites due to S325.

### *Elimination of the Last Saturday of Early Voting*

Starting in 2019, S325 also eliminates the popular final Saturday of early voting for all future elections. It was traditionally the only weekend voting day offered in all 100 counties, and the turnout numbers bore that out— that day has traditionally been one of the highest turnout days of the entire voting period, despite the fact that many counties keep sites open for shorter periods that day than during the work week. We anticipate that this will result in the majority of North Carolina counties having no weekend Early Voting options, which are crucial for voters who work Monday through Friday. Without the last Saturday in 2018, 63 counties would have had no weekend option for voters to cast their ballots. Or, if weekend hours are offered, they will be offered at a minimal number of sites, which would be especially harmful to rural voters in sprawling counties without public transportation.

And in addition to being hugely popular with voters overall, this last Saturday has been disproportionately used by Black voters in North Carolina at the statewide level and in a sizable majority of the state’s 100 counties in the last five election cycles. In 2018, Black voters made up 22% of registered voters, but 27% of those who cast ballots on the last Saturday of Early Voting.

### **The Voting Experience in North Carolina**

As in many states, election administration challenges affect voting access in North Carolina by making voting a more complicated and intimidating experience than it needs to be. We have observed this in action through our voter protection program; during every major election year, we work closely with partner organizations to recruit, train, and place hundreds of volunteer poll monitors at polling locations across the state. These poll monitors survey voters departing locations, and assist those who report problems by connecting them to a hotline locally staffed by volunteer attorneys. In 2018, the program’s 800 volunteers were present at 279 precincts in 55 counties on Election Day: a total that amounted to 1 in 10 polling places in the state. We use the information they collect to report on the voting experience and inform our policy recommendations.

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<sup>13</sup> Tyler Dukes, “Early voting changes hit NC rural voters hardest. But will it matter in 2018?” WRAL, Nov. 1, 2018, <https://www.wral.com/early-voting-changes-hit-nc-rural-voters-hardest-but-will-it-matter-in-2018-/17959224/>.

Through this work, we have observed a cluster of issues North Carolina voters face when they go to the polls, including long lines, machine malfunctions, disability access challenges, and poll worker conduct. Our organization’s report on voter experiences in the 2016 election, *From the Voter’s View: Lessons from the 2016 Election*, discusses these issues in greater detail and is attached to this submission as an appendix.<sup>14</sup> That report also offers recommendations for improved election administration practices relevant to both North Carolina and other jurisdictions. Among these, we wish to highlight our recommendations for more comprehensive poll worker training, increased recruitment of poll workers among young people and in communities of color, and the establishment of a poll worker code of conduct that establishes standards for poll worker behavior and knowledge.

And in addition to these challenges inside the polling place, in recent years, extreme weather has affected the voting experience in our state. Major hurricanes struck North Carolina in both the 2016 and 2018 election seasons. These storms inflicted substantial physical and economic damage while displacing many people, including eligible voters. In 2016, when Hurricane Matthew hit in October, the state extended registration deadlines in storm-affected counties. In 2018, when Hurricane Florence hit in September, the state modified rules regarding the deadlines for and location of the delivery of absentee ballots in storm-affected counties. While we appreciate officials’ attentiveness to the effects of natural disasters, we believe that voters would be served by more comprehensive solutions when the circumstances require it. These include extended registration windows (as in 2016) and absentee ballot measures (as in 2018), but also other steps, including the deployment of resources to make in-person voting more accessible for displaced voters. While we cannot precisely predict the timing of future natural disasters, we can anticipate that hurricanes are increasingly likely to affect our state’s elections and prepare for that inevitability.

## **The Perpetuation of False Narratives Regarding Voter Fraud**

Lawmakers justify voting restrictions by arguing that they are necessary to counter fraudulent activity—namely, incidents in which ineligible individuals cast ballots. But while empirical research and lived experience refute these assertions,<sup>15</sup> public officials in North Carolina have prosecuted isolated instances of mistaken voting, sought voter records on behalf of immigration enforcement authorities, and even leveled subsequently debunked claims of voter impersonation in an attempt to allow the North Carolina General Assembly to decide the 2016 gubernatorial election. These practices have respectively harmed individual voters and unjustifiably undermined public confidence in the legitimacy of the electoral process.

### *Prosecution of the “Alamance 12” and Non-Citizen Voters*

In April 2017, the North Carolina State Board of Elections released an audit of the 2016 election that found, among other things, that 441 people serving a felony sentence and 31 non-citizens voted in that year’s election.<sup>16</sup> In informal conversations, State Board of Elections staff acknowledged that the majority of the 441 justice-involved individuals who cast their 2016 ballots did so simply by mistake, not with the intent to commit fraud. These were instances in which individuals were not told of their

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<sup>14</sup> This report is also available at [https://democracync.org/wp-content/uploads/2018/01/PostElectionReport\\_DemNC\\_web.pdf](https://democracync.org/wp-content/uploads/2018/01/PostElectionReport_DemNC_web.pdf).

<sup>15</sup> See “Resources on Voter Fraud Claims,” Brennan Center for Justice, <https://www.brennancenter.org/analysis/resources-voter-fraud-claims> (compilation of studies and analyses on the prevalence of voter fraud).

<sup>16</sup> North Carolina State Board of Elections, 2016 General Election Post- Election Audit Report, Apr. 21, 2017, [https://s3.amazonaws.com/dl.ncsbe.gov/sboe/Post-Election%20Audit%20Report\\_2016%20General%20Election/Post-Election\\_Audit\\_Report.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/sboe/Post-Election%20Audit%20Report_2016%20General%20Election/Post-Election_Audit_Report.pdf).

ineligibility by the courts, community supervision, or even election officials. However, under North Carolina law, these 441 committed another felony offense simply by voting.<sup>17</sup>

In Alamance County, where the sheriff had been previously sued by the U.S. Department of Justice for racially profiling Latinos,<sup>18</sup> the district attorney prosecuted 12 of the individuals identified in the audit, who became known as the “Alamance 12.” Ultimately, charges were dismissed or pled down to misdemeanors for all twelve individuals, but the damage done to these individuals’ willingness to participate in the electoral process was lasting. Ivy Johnson, one of the Southern Coalition for Social Justice attorneys who defended Willie Vinson, Jr., noted that her client was “someone who has been an active participant in our democratic process, and has shared all of core democratic values and now, because of this case, may not ever participate again.”<sup>19</sup>

At the federal level, a similar pattern of zealous prosecution of non-citizens has emerged, also using the data from the North Carolina State Board of Elections 2017 audit. In August 2018, the U.S. Attorney’s Office for the Eastern District of North Carolina announced charges against 19 foreign nationals for unlawfully voting and one U.S. citizen for facilitating this activity. While these charges carry penalties that include prison terms and six-figure fines, courts have begun looking skeptically on these cases. In one instance, a judge chastised local election officials and fined the defendant a mere one hundred dollars after learning she had presented her green card when attempting to register to vote, and the election official permitted her to register.<sup>20</sup>

### *Fraudulent Claims of Voter Fraud in the 2016 Gubernatorial Race*

In 2016, North Carolina Governor Pat McCrory lost his seat by a very narrow margin: 5,000 votes, a figure that entitled him to request a recount. But instead of doing so, his campaign used other legal mechanisms to lift up dubious fraud allegations and challenge the legitimacy of the election itself. State law provides for an “elections protest,” a legal proceeding designed to identify and remedy serious irregularities that could impact an election outcome. Supported by the North Carolina Republican Party and the Virginia-based law firm of Holtzman Vogel Josefiak Torchinsky, the McCrory campaign protested over 400 absentee ballots in Bladen, Halifax, Greene, Franklin, and other counties with Black voter mobilization groups.<sup>21</sup> Additionally, the campaign used a deeply flawed data-matching process to file election protests accusing 119 individuals of committing fraud by either voting while serving a felony sentence or voting in two states. In total, these accusations of illegal voting affected about 600 ballots statewide, though endemic fraud was insinuated. Ultimately, the Republican-controlled county Boards of Elections dismissed dozens of protests, finding that more than 95% of the 600 ballots identified in protests were cast by legal voters.<sup>22</sup>

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<sup>17</sup> Jack Healy, “Arrested, Jailed, and Charged With a Felony. For Voting.” N.Y. Times, Aug. 2, 2018, <https://www.nytimes.com/2018/08/02/us/arrested-voting-north-carolina.html>.

<sup>18</sup> Jessica Jones, “N.C. Sheriff Terry Johnson On Trial For Racial Profiling,” Nat’l Public Radio, Aug. 15, 2014, <https://www.npr.org/2014/08/15/340562910/n-c-sheriff-terry-johnson-on-trial-for-racial-profiling>.

<sup>19</sup> Lynn Bonner, “Felony charges of illegal voting dismissed for five NC residents,” News & Observer (Raleigh), Aug. 13, 2018, <https://www.newsobserver.com/news/politics-government/article216584335.html>.

<sup>20</sup> Josh Shaffer, “A green-card holder voted illegally three times in NC. The judge scolds election officials.” News & Observer (Raleigh), Jan. 17, 2019, <https://www.newsobserver.com/news/state/north-carolina/article224701095.html>.

<sup>21</sup> The 2016 Bladen County election protest claiming absentee ballot fraud was filed by L. McCrae Dowless, who in 2018 was implicated in the operation of an illegal absentee ballot harvesting operation that led to a new election for U.S. House seat representing North Carolina’s Ninth Congressional District.

<sup>22</sup> Bob Hall & Isela Gutierrez, Democracy North Carolina, *The Deceit of Voter Fraud* (May 2017), <https://democracync.org/wp-content/uploads/2017/05/FraudReport.pdf>.

Democracy North Carolina believes that the McCrory campaign’s legal and publicity efforts sought to establish sufficient concern about the election’s fairness to formally contest the election using a state law that would allow it to be decided by the North Carolina General Assembly,<sup>23</sup> which was controlled at the time by a Republican supermajority. Our detailed research, findings of wrongdoing, and request for a criminal investigation of the actors involved are available in our 2017 report, *The Deceit of Voter Fraud*, which is attached as an appendix.

## **Extreme Racial and Partisan Gerrymandering**

North Carolina’s congressional and state legislative maps are some of the most distorted in the nation.<sup>24</sup> These maps have preserved legislative and congressional delegation majorities that outstrip statewide partisan voting totals. But as North Carolina House Rules Chair David Lewis famously explained in 2017, that was exactly the point. While gerrymandering is not new, and both major political parties have historically produced unlawful and unfair maps, North Carolina’s maps this decade have been especially extreme.

This has had two consequences. First, North Carolina’s maps have been the subject of continuous litigation since the 2011 redistricting period. As of this submission, numerous lawsuits have been filed in state and federal courts challenging congressional or legislative maps. The state’s congressional maps were held to be an unlawful racial gerrymander. The ensuing maps are now being challenged as an unlawful partisan gerrymandering; after a U.S. District Court agreed with that case’s challengers, the matter is now before the U.S. Supreme Court. The state’s legislative maps have also been held to be unlawful racial gerrymanders, and these too are now being challenged as partisan gerrymanders in the North Carolina Supreme Court. These issues remain unresolved eight years after the initial maps were drawn and less than two years before a whole new redistricting cycle begins. This is an especially distressing development because it suggests that the current remedies against gerrymandering are ineffective: if the courts take nearly an entire decade to address the problem, and legislatures are able to avoid penalties for their bad behavior, then the incentive to distort maps will only be reinforced.

Second, these maps attack the foundation of representative government by discouraging voter participation and disincentivizing legislators from responding to their constituents. As we explained in an amicus brief submitted to the U.S. Supreme Court in *Rucho v. Common Cause*, Democracy North Carolina staff have encountered citizens who specifically cite gerrymandering a reason to not vote or otherwise participate in civic activities.<sup>25</sup> And facts presented by the plaintiffs in this same case speak to elected officials opting out of voter forums and debates because of the security of their seats.<sup>26</sup>

## **Recommendation**

For the past decade, North Carolina lawmakers have worked to twist the rules governing the access to and administration of North Carolina’s elections. The result is that voting is more difficult, less accessible, and ultimately less meaningful. And in the absence of a credible policy justification for these measures, we are left to conclude that they are motivated by a desire to entrench power for its own sake.

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<sup>23</sup> N.C.G.S. § 163A-1182 (recodification of previous 163-182.13A).

<sup>24</sup> See, e.g., Laura Royden, Michael Li, & Yuriy Rudensky, Brennan Center for Justice, *Extreme Gerrymandering & The 2018 Midterm* 3 (Mar. 23, 2018), <https://www.brennancenter.org/publication/extreme-gerrymandering-2018-midterm> (“In North Carolina, even if Democrats win three [U.S. House] seats with 29.66 percent of the statewide vote, they are not projected to compete for a fourth seat until their statewide vote share reaches 52.78 percent, an increase of 23.12 percentage points.”).

<sup>25</sup> Brief of Amici Curiae Democracy North Carolina and the People’s Alliance Fund in Support of Appellees 12, *Rucho v. Common Cause* (No. 18-422), Mar. 8, 2019, <https://democracync.org/wp-content/uploads/2019/03/18-422-Amici-Brief.pdf>.

<sup>26</sup> *Id.* at 14-15.



As both a general rule and a matter of historical record in North Carolina, that desire is not exclusive to a particular ideology or political affiliation, but it has been adopted here and most recently by officials from the legislative majority.

As Congress considers options for action, we strongly urge two. First, to restore the full protections of Voting Rights Act through a coverage formula responsive to the ways in which voting access is hindered today. Second, Congress should establish high standards for voting access nationwide, as has been put forth in HR 1. The protection of voting rights rests long-term on our ability to address problems both as they emerge and before they take root, and also to actively facilitate the participation of every eligible voter in our political process.

Thank you again for the opportunity to submit this testimony.



*From the Voter's View:*  
**LESSONS FROM THE 2016 ELECTION**



# From the Voter's View: Lessons from the 2016 Election

By Isela Gutiérrez, *Research and Policy Director*  
January 2018

## Introduction

This report focuses on the lessons that can be learned from the experiences of North Carolina voters who faced problems at the polls in the 2016 general election. Because of the unseen and underappreciated work of hundreds of election administrators and thousands of poll workers, most voters show up, stand in line, cast their ballot, get a sticker, and go home – satisfied to have done their civic duty. When the system works well and election rules are designed to maximize access, voters have a generally pleasant experience, even if their candidate loses. But that easy voting experience is derailed when voting rules are inconsistently applied, lines are excessively long, equipment breaks down, or poll workers are untrained and unwelcoming. Many of the worst polling place problems happen when these issues occur in combination, compounding the negative effect on voters.

Much of the post-election reporting has focused on the “horse race” – who won and why. But very little is written about the nuts and bolts of how the election was actually administered, despite the fact that election administration

fundamentally shapes voters' experiences and may even determine their ability to vote. In North Carolina, elections officials faced a constantly shifting landscape of election law, forcing them to quickly retrain poll workers, change early voting schedules, adjust voting systems, and navigate intense disputes in a hyper-partisan atmosphere. We encourage more analysis and reporting about the pressures on elections officials, their resource constraints and needs, and their success in implementing safety-net provisions restored during 2016 by a federal court.

This report, however, looks at the elections system from the perspective of voters who encountered significant problems, because we believe their perspective is critical for evaluating the health of our democracy. We examine these problems and offer recommendations in the spirit of helping busy election administrators to identify gaps, areas of miscommunication, or system glitches that, if corrected, could lessen voter anxiety and frustration.

“ *...very little is written about the nuts and bolts of how the election was actually administered, despite the fact that election administration fundamentally shapes voters' experiences and may even determine their ability to vote.* ”

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## Methodology: First-Person Sources

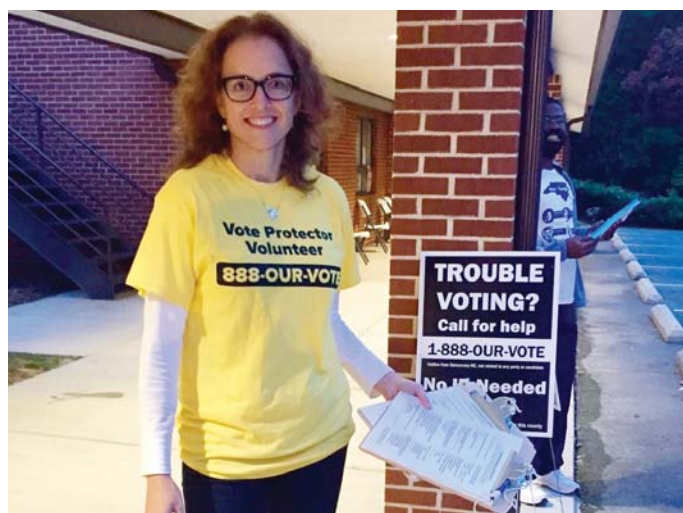
Democracy North Carolina is one of the lead partners in North Carolina’s Election Protection effort, which protects the rights of voters by providing information about the voting process and addressing voting problems with elections officials as they arise. Led nationally by the Lawyers’ Committee for Civil Rights Under Law, our state’s 2016 Election Protection coalition included the Southern Coalition for Social Justice, the North Carolina State Conference of Branches of the National Association for the Advancement of Colored People (NC NAACP), Forward Justice, Ignite NC, Common Cause, the North Carolina A. Philip Randolph Institute (NC APRI), the UNC School of Law’s Center for Civil Rights, and many other community partners, including civic and Greek organizations.<sup>1</sup>

For the 2016 general election, Democracy North Carolina ran its largest poll monitoring project to date – drawing on our own supporter base, as well as the membership of NC NAACP, NC APRI, Common Cause, “Divine Nine” alumni chapters, and many other community groups. On Election Day, Democracy North Carolina and partners fielded 1,100 lay poll monitors

stationed at 300 precincts in 64 of the state’s 100 counties, along with 250 legal field monitors circulating at 420 precincts in 33 counties. According to the Lawyers’ Committee, it was one of the largest non-partisan Election Protection field operations in the nation in 2016. During Early Voting, we fielded 235 lay poll monitors stationed at 63 Early Voting locations in 21 counties. Our findings are based on data collected from over 3,800 calls to the Election Protection hotline during Early Voting and on Election Day, and 415 incident reports, 600 polling place checklists, and 26,500 exit surveys collected from our poll monitors.

Our 2016 Election Protection program did not cover the majority of precincts or the experiences of all voters, but it is a significant, mostly qualitative, dataset providing first-person insight from the perspective of voters and others outside of partisan campaigns and the elections system. While the voter’s view is only one of many lenses on our elections system, it is undoubtedly one of the most critical perspectives for the health of our democracy.

“ On Election Day, Democracy North Carolina and partners fielded 1,100 lay poll monitors stationed at 300 precincts in 64 of the state’s 100 counties, along with 250 legal field monitors circulating at 420 precincts in 33 counties... one of the largest non-partisan Election Protection field operations in the nation in 2016. ”



# Snapshot of 2016 Election

In the 2016 election, over 4.7 million North Carolinians voted successfully – 69% of all registered voters. As a battleground state in a hotly-contested presidential race, and with our own tight and closely-watched gubernatorial race, North Carolina and its voters were inundated with ads, mailers, calls, and canvasses from campaigns, political parties, and non-partisan voter turnout efforts. With voters on all sides passionately advocating for their candidate of choice, partisan tensions were high, magnifying long-standing political feuds and historical racial divisions.

Since 2011, North Carolina has also been a battleground in the struggle for voting rights. In late July 2016, after years of litigation in *NC NAACP v. McCrory*, the United States Court of Appeals for the Fourth Circuit finally ruled on the legality of key provisions of H589, dubbed the “Monster Voter Suppression Law” by voting rights advocates. Finding that the law had been passed with an intent to discriminate against African-American voters, the Fourth

Nevertheless, the July ruling complicated the administration of the 2016 election. County Boards of Elections (BOEs) had just submitted their early voting plans to the State Board of Elections (SBOE), and they now had to be redone (see pp. 10-11 for additional detail). State and county BOEs had worked since 2013 to educate election officials, poll workers, and voters about the photo ID requirement scheduled to go into effect in 2016. (Indeed, the photo ID requirement was in place for both the March and June 2016 Primary elections.) Following the Fourth Circuit’s ruling, SBOE sent a letter to every community organization that had received its print materials about the photo ID requirement to inform them about the law’s repeal. However, unlike the major, multi-year public education effort around the photo ID requirement, which included print materials, billboards, television and radio ads, and a five-person outreach team to educate North Carolinians about the new law, there was no analogous attempt to publicize its invalidation by the Fourth Circuit in 2016.

“*The elimination of the strict photo ID requirement, while ultimately better for voters, left many unsure of what, if anything, they needed to bring to the polls.*”

Circuit overturned the law’s strict photo ID requirement, and restored the full 17 days of early voting, Same Day Registration (SDR) during the early voting period, out-of-precinct (OOP) voting on Election Day, as well as pre-registration for 16- and 17-year-olds.

Election rules have real consequences for voters. Laws that make it easier to register and vote, like SDR and OOP, increase opportunities for people to cast their ballots. SDR added over 100,000 votes to the election tally in 2016, and OOP voting on Election Day allowed approximately 7,100 ballots to be counted, in whole or in part. Before H589’s passage, North Carolina had some of the best voting rules in the country. Thanks to the Fourth Circuit’s ruling, these pre-H589 voting rules were in place for the 2016 general election, making voting much easier than it would have been without them.

The elimination of the strict photo ID requirement, while ultimately better for voters, left many unsure of what, if anything, they needed to bring to the polls. Some poll workers were also confused about which rules were in place for the 2016 general election, despite detailed training materials provided by SBOE. Indeed, confusion about whether the restrictive photo ID law was in place may have discouraged some occasional voters (who only turn out for Presidential elections) from voting; recent research has shown that fear of not having the correct ID depressed turnout in both Texas and Wisconsin, even among voters who did in fact have an acceptable ID.<sup>2</sup>

In addition to heated contests and changing rules, Hurricane Matthew, the strongest storm to hit North Carolina in the 17 years since

Hurricane Floyd, hit the eastern part of the state on October 8 and 9 – just a few days before the regular voter registration deadline of October 14.<sup>3</sup> Hurricane Matthew caused over a billion dollars of damage and led to devastating flooding across eastern and coastal North Carolina – an area of the state with large numbers of African-American and low-income voters.<sup>4</sup> By order of a Wake County Superior Court judge, the voter registration deadline was extended by five days to October 19 in the 36 counties that had sustained enough damage to qualify for federal emergency assistance.<sup>5</sup> The SBOE also sent a postcard to over 22,000 voters in the area who had requested mail-in absentee ballots, in hopes of rectifying cases where voters had not received their ballots or had lost them in the flooding, and coordinated with shelters and the postal service to pick up ballots from voters in time. While the extension and other outreach efforts by the SBOE were helpful, the severe disruption caused by Hurricane Matthew was difficult to mitigate. Many eastern North Carolina voters remained displaced well through Election Day, and a handful of early voting locations and polling places across the impacted region had to be changed as a result of flooding and hurricane damage.

Adding fuel to the fire, in the last month leading up to the election, Roger Stone, an ally of then-Republican presidential candidate Donald Trump, announced that his “Stop the Steal” organization would conduct exit polling at precincts with large numbers of voters of color in nine Democratic-leaning cities in swing

states, ostensibly to prevent voter fraud from skewing election results.<sup>6</sup> Two of the nine cities – Charlotte and Fayetteville – were in North Carolina. Fortunately, Democracy North Carolina, the Brennan Center for Justice, and Common Cause had already begun working with the SBOE on an administrative policy memo, outlining acceptable conduct outside of the polls. These rules distinguished between acceptable, First Amendment-protected conduct and actions intended to intimidate voters and disrupt the voting process.<sup>7</sup> Having this administrative guidance in place increased peace of mind for voting rights advocates, but did not alleviate any justifiable concerns about intimidation or violence by Stop the Steal activists toward voters of color in Charlotte and Fayetteville.

The high level of political and racial tension literally exploded on October 15, when a flaming bottle was thrown through the window of the Orange County Republican Party headquarters; the words “Nazi Republicans leave town or else” and a swastika were painted on a nearby building. Campaign materials, office equipment, and the building were all damaged by the fire, though the building was empty when the incident occurred and no one was hurt. Politicians and voters across the political spectrum condemned the attack, and called for greater unity in the midst of an increasingly contentious and divided campaign cycle. A year later, the perpetrators have not been caught, though federal and state agencies continue to investigate.<sup>8</sup>

“ *...when things go poorly, many voters do not simply write it off. Instead... they often see it as a direct affront to their civic identity, a devaluation of their voice as a citizen, and even discriminatory.* ”

## Problems at the Polls

While election officials, partisan activists, and policy wonks are thinking about elections processes year-round, ordinary voters typically think about them only once every four years. Voters often do not recall which voting rules were in place when they last voted, where and when exactly they went to vote, or the details

of their interactions with poll workers. Indeed, most North Carolinians have a positive or neutral voting experience. But when things go poorly, many voters do not simply write it off. Instead, first-person accounts from 2016 show that they often see it as a direct affront to their civic identity, a devaluation of their voice as a

citizen, and even discriminatory. The pivotal role of poll workers in these interactions is discussed in detail on pages 17-20, particularly their level of training and communication skills. Left wondering at the reasons behind their poor treatment at the polls, most voters assume it is related to their race or ethnicity, age, gender,

partisan affiliation or lack thereof, disability, or student status.

The sections below offer detailed explanations and examples of some of the most common election administration problems reported by voters and poll monitors in the 2016 general election.

## Out-of-Precinct Voting

### What is it?

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Out-of-precinct voting (OOP) allows voters who show up at a precinct in their home county, but not in their assigned precinct, to cast a provisional ballot. OOP voting is only in effect on Election Day, since a voter can cast their ballot at any One-Stop Early Voting center in their county during the 17-day early voting period. OOP voting is an important “safety net” for voters who are unsure where their home precinct is, whose home precinct may have changed since the last election they voted in, or who simply cannot get to their home precinct in time on Election Day.

OOP votes can be wholly or partially counted, since some races that would appear on the ballot in a voter’s home precinct may not appear on their out-of-precinct provisional ballot. For example, an OOP vote will count for statewide races like Governor, Senator, or NC Supreme Court, but may not count in a local or district race that is precinct-specific. In the 2016 election, 94% of the 7,500 OOP ballots cast were counted in part or in full. OOP voting is

especially common at Election Day precincts that are also early voting locations, as voters simply return to the last place they voted without remembering whether it was an early voting location or realizing that the rules are different on Election Day.

Ideally, the process should work as follows: A voter arrives at an incorrect precinct. A poll worker explains that the voter may choose to vote an OOP provisional (which may only count in part), or go to their correct precinct and cast a regular ballot. If the voter chooses the latter, the poll worker gives them the address of their correct precinct.

OOP voting is designed to maximize access, so that a correctly registered voter in their correct county is not disenfranchised by something as trivial as going to the wrong precinct. Proper implementation requires poll workers to follow the process outlined above, offering voters their legally mandated choice to vote an OOP provisional or go elsewhere.

### What happened in 2016?

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Our 2016 Election Protection eyewitness reports show that out-of-precinct voting was inconsistently offered by poll workers and too often required an informed voter to assert their right to a provisional ballot.<sup>9</sup> Democracy North Carolina received at least 58 complaints on Election Day from 23 counties and 45 precincts.<sup>10</sup> Reports included poll workers failing to offer OOP provisional ballots, sending voters to multiple, often incorrect precincts,

discouraging voters from voting OOP, and telling voters that their OOP provisional ballots would not count. The counties included Alamance, Bertie, Buncombe, Chatham, Cleveland, Cumberland, Durham, Edgecombe, Forsyth, Franklin, Guilford, Halifax, Henderson, Martin, Mecklenburg, Montgomery, Moore, Nash, New Hanover, Person, Robeson, Vance, and Wake.

Some of those reports from voters and poll monitors are detailed below.

***At the Chavis Community Center in Southeast Raleigh, voters were discouraged from voting OOP provisional ballots.*** The Chavis Community Center is a popular early voting location in a predominantly African-American area of Raleigh – it has been an early voting site for the last three presidential elections. On Election Day, it is a precinct polling location and tends to be a “hot spot” for OOP voters who have previously voted early there. In 2014, when OOP voting was not allowed, our poll monitors documented over 300 voters turned away. Unfortunately, in 2016, this was not a case of a bad law, untrained poll workers, or confusion – the decision not to offer OOP ballots and to discourage use of provisional ballots for OOP voters came directly from the polling place’s chief judge. Beginning at 8:24 a.m., the chief judge was hostile to Democracy North Carolina poll monitors who tried to find out why voters were being discouraged from voting OOP, even though the law allows it. Election Protection volunteers made multiple attempts throughout the morning and early afternoon to communicate with election officials about the problem, and ultimately a team of legal field monitors was sent to the polling place. Despite these efforts, the hotline and poll monitors continued to hear from upset voters who had waited in line up to two hours only to be told they were “wasting their time” or that their ballot would not count because they were out-of-precinct.

***In Edgecombe County, legal volunteers moving between polling places on Election Day received multiple reports about voters who arrived at the incorrect precinct and were redirected without being offered a provisional ballot.*** Even when these voters protested and explained that they would not have the time to make it to another voting location, poll workers refused to give them provisional ballots – in effect disenfranchising them.

***In Cumberland County, out-of-precinct voters at the Person Street Fire Department precinct were told that they could not vote at that location and were not given the option of a provisional ballot.*** It was only after speaking to Democracy North Carolina poll monitors that the voters learned that they had the choice to vote provisionally at that precinct. Armed with the correct information about their rights, they went back in, requested provisional ballots, and cast them successfully.

## Recommendations

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- ✓ **State and county BOEs should improve consistency in poll worker use of the existing protocol for OOP voting.** SBOE currently provides detailed training documents for poll workers that include the correct OOP protocol mentioned above.<sup>11</sup> However, the complaints we received from voters and poll monitors make clear that not every precinct official respects OOP as a safety net for voters, or understands that the choice to vote provisionally out-of-precinct lies with the voter, not poll workers.
- ✓ **Assess whether poll worker reticence to provide OOP provisionals reflects their personal concerns or even misgivings of county election officials about how OOP is used in their county.** Any administrative concerns underlying poll worker behavior should be surfaced, evaluated, and addressed by state elections officials, in the interest of promoting consistent implementation of the law.



# Curbside Voting

## What is it?

Curbside voting is required by state law as an option for voters with physical disabilities.<sup>12</sup> Polling places are required by federal law to be accessible for voters with disabilities, but many are still difficult to navigate for voters who have temporary or permanent mobility challenges.<sup>13</sup> Curbside voting provides an alternative voting method for those who have trouble walking to the polling place or standing in line.

Each polling place should have a designated, clearly marked location for curbside voters, a method for those voters to let polling place officials know that they are outside waiting, and a poll worker whose job it is to attend to curbside voters.<sup>14</sup> Before voting curbside, the voter is required to sign an affidavit affirming that they are unable to enter the polling place

due to age or a physical disability.<sup>15</sup> Once the voter has affirmed their disability, a poll worker will bring them an Authorization to Vote form to sign, followed by their ballot. The process is typically more time-consuming than voting in the polling place, in part because it requires a poll worker to go back and forth between the voter in their vehicle and the polling place.

Even though it has been in place for decades, curbside voting is not well known or understood by most voters. And reports show that too many of those who do know about the option arrive at their precinct or preferred early voting site and cannot locate the curbside voting location, or may spend an hour or more waiting to vote via curbside.

“*Curbside voting provides an alternative voting method for those who have trouble walking to the polling place or standing in line.*”

## What happened in 2016?

Democracy North Carolina received at least 42 complaints from 32 polling places in 15 counties about problems with curbside voting, which included long curbside lines and lack of adequate signage, as well as reports of poll workers pressuring voters with disabilities to vote inside the polling place instead of curbside and violating the privacy of curbside voters. Of the 42 complaints we received, 22 were about curbside voting wait times and six had to do with a lack of adequate signage. The counties

included Alamance, Caswell, Cumberland, Durham, Edgecombe, Forsyth, Guilford, Harnett, Haywood, Iredell, Mecklenburg, Onslow, Pasquotank, Rowan, and Wake.

These barriers undermine the practical availability of curbside for voters, making the statutory and administrative requirement to provide it meaningless. Below are some of the reports we received from voters and poll monitors:

*C.E., a white Mecklenburg County voter with a disability, went to vote early with her husband. She did not see any signage or location for curbside voting, and did not know it was an option. After waiting in line for some time, C.E. told a poll worker that she could not continue standing. The poll worker told C.E. that her only choice was to find someone else to stand in line in her stead. **C.E. was forced to endure her discomfort and, with her husband's help, stood in line for one and a half hours in order to cast her ballot.***

*J.M., an elderly African-American voter, went to vote early at the Washington Terrace Park site in Guilford County. She is disabled, uses an oxygen tank and can only be on her feet for short periods of time. J.M. was correctly guided to curbside*

voting by a poll worker directing traffic, but it took a long time for anyone to come help her. While J.M. was waiting, a poll worker repeatedly offered to help her go inside and vote, persisting even after she explained her disability and her strong preference to vote from her vehicle. **Ultimately, J.M. waited nearly two hours in her hot car to vote curbside.** She left the polling place very, very upset about the way she was treated. To its credit, the Guilford County BOE was startled and dismayed by the length of J.M.'s wait and the poll worker's request that she leave her car despite her disability, and agreed immediately to reach out to the polling place to clarify the "correct procedure."

On Nov. 1st, Tom P., a volunteer providing rides to the polls in Charlotte, gave elderly, African-American voter D.C. a ride to the Hickory Grove Library Early Voting site. D.C. was recovering from hip replacement surgery, so asked a poll worker if she could vote curbside. The poll worker responded by asking if she could "stand in front of a voting machine." When she answered yes, D.C. was told that curbside voting was only available for voters who could not walk or stand. (In fact, before casting a ballot from their car, curbside voters are required to attest "[t]hat because of age or physical disability I am unable to enter the voting place to vote in person without physical assistance.") **Supporting herself with her cane, D.C. stood in the approximately 40-minute line to vote, until another poll worker noticed her struggle and offered her a seat inside the library where she could wait her turn. While she was waiting, D.C. observed a woman in a wheelchair being denied curbside too.** When contacted by Election Protection hotline staff about the issue, the Mecklenburg County BOE was dismissive of the complaint and suggested trying a different Early Voting location. Fortunately, they were much more helpful to those on the ground in Charlotte. Tom P. received an apologetic call from the Mecklenburg County BOE, and was told to speak to the site coordinator when he returned with the next group of voters. The site coordinator explained that the poll worker who denied D.C. was misinterpreting the curbside affidavit language to mean that if a voter could stand well enough to cast their ballot, they were not eligible to vote curbside, and reassured Tom P. that she had corrected the poll workers' interpretation for the future.

## Recommendations

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- ✔ **SBOE should review its curbside voting training materials, including any sample scripts for poll workers, and work with county officials to improve signage, wait times, and training for poll workers on curbside voting.** Any training should make clear that, by signing the affidavit, the voter is attesting under penalty of law that they have a disability that prevents them from entering the polling place without physical assistance, and poll workers should not attempt to evaluate or question the physical ability of voters, or pressure them not to vote curbside. Poll workers who repeatedly violate these basic curbside voting guidelines should face consequences.
- ✔ **SBOE should strengthen North Carolina Administrative Code 10B.0108, "Curbside Voting,"** so that it requires clear and easily visible curbside signage, a method for the voter to announce their arrival to precinct officials, and timely acknowledgement of the voter and delivery of voting materials, as recommended by Democracy North Carolina in the most recent rulemaking process.<sup>16</sup>



## Excessively Long Lines

### What is it?

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For most North Carolina voters the wait at early voting locations and Election Day precincts is not onerous. But when excessively long lines do form at polling places, they are a major barrier to participation for working voters, who often do not have the flexibility to wait hours to cast their ballot or return multiple times during the day to see if the wait has decreased.

How long is too long for a voter to wait?

According to the 2014 Presidential Commission on Election Administration, a wait of more than 30 minutes is too long for any U.S. voter.<sup>17</sup>

Long voting lines are typically caused by a variety of factors, with no one universal cause or fix.<sup>18</sup> They may be caused by an inadequate number of voting locations (during early voting or on Election Day), the way the polling place is set up (see pp. 18-19 for an example of this), insufficient staffing, not enough voting machines, broken equipment, a large number of voters coming at once, a long or confusing ballot, or a combination of these issues.<sup>19</sup>

Research has shown that long lines are typically concentrated at only a handful of precincts, suggesting that the factors contributing to them are specific to those precincts and generally not at play jurisdiction-wide.<sup>20</sup>

Because ongoing analysis and proactive problem solving by election administrators are critical to preventing excessively long lines from discouraging voter participation, North Carolina election officials should use data to identify reasons that long lines formed at a particular precinct and work to resolve those issues for future election cycles. Some of those solutions may include deploying additional poll workers to a polling place, increasing voter check-in resources (equipment such as laptops and scanners, as well as staff), and adding voting booths or machines to polling places with a history of long lines. SBOE piloted this kind of data use in 2016, providing recommendations to counties on where additional resources could prevent long lines, based on an online tool developed by Massachusetts Institute of Technology faculty.<sup>21</sup>

“*...when excessively long lines do form at polling places, they are a major barrier to participation for working voters, who often do not have the flexibility to wait hours to cast their ballot or return multiple times during the day to see if the wait has decreased.*”

### What happened in 2016?

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In total, Democracy North Carolina and the Election Protection hotline received at least 61 reports (31 from Election Day) from 43 polling places in 13 counties about excessively

long lines. Many of the reports mentioned inadequate staffing, parking issues, and voters leaving without voting because of the wait time. The counties included Alamance, Bertie, Craven,

Cumberland, Duplin, Durham, Forsyth, Harnett, Johnston, Mecklenburg, Moore, Pasquotank, and Wake.

Particularly during the first and last few days of early voting, North Carolina voters encountered long lines and waits, ranging from one to five hours. While lines are not uncommon on those high turnout days in major election years, in 2016 they were exacerbated by politically-motivated decisions by county BOE members seeking to reduce access to early voting by limiting hours and sites.

The Fourth Circuit's decision in *NC NAACP v. McCrory* to restore the full 17 days of the early voting period came just as county BOEs had completed the often-contentious process of adopting 10-day early voting plans. Following the federal court's ruling, county BOEs had to quickly adjust their early voting plans to accommodate the restored week. Unfortunately, the NC GOP called on Republican BOE members – who held two of the three seats on each county BOE – to blunt the court decision's impact by limiting early voting hours, particularly on Sundays, and by not opening sites on college campuses.<sup>22</sup>

In over a quarter of North Carolina's counties, the Republican-majority BOEs adopted plans with fewer hours and sites during the first, restored week of early voting – for example, providing just one site during regular business hours for the first week, with additional sites (and more robust evening and weekend hours) available only for the last 10 days. Outraged by the clear intent to limit voting access, community members turned out in droves to county BOE meetings, particularly in Guilford, Mecklenburg, and Cumberland counties.<sup>23</sup>

From the perspective of North Carolina's political parties, election administrators, and

non-partisan voting rights advocates, the stakes around the early voting decisions were very high. SBOE dedicated hundreds of hours of staff time to data analysis so that State board members considering contested county early voting plans could make data-driven, as opposed to political, decisions.<sup>24</sup> The final SBOE meeting to address and finalize dozens of contested early voting plans, held on September 8, lasted for over 12 hours.<sup>25</sup> In order to increase their chances of winning more generous plans, Democratic county BOE members from several counties felt compelled to retain counsel to represent them in front of the Republican-majority SBOE. Altogether, including SBOE attorneys, over a dozen attorneys were involved in the early voting process for the 2016 general election.

Although Democratic BOE members from the state's two most populous counties – Wake and Mecklenburg – successfully advocated (with the help of counsel) before the SBOE to open more than the single site proposed in the county plans for the first week, Mecklenburg still ended up with a drastically reduced early voting schedule for that week, as compared to previous presidential election cycles. The most extreme hours reductions during the first week of early voting were in Guilford (-660), Mecklenburg (-282), Brunswick (-165), Craven (-141), Johnston (-124), Robeson (-121), and Jackson (-113) counties. To be clear, statewide more early voting hours were offered in total in 2016 than in 2012, but not in the first week and not in all counties.<sup>26</sup>

This cynical and partisan attempt to discourage early voting resulted in excessively long lines and dramatic reductions in early voting numbers during the normally high turnout first few days in those counties where early voting hours were slashed in the first week.<sup>27</sup>

*Throughout the morning of Oct. 20, the first day of early voting, **Craven County voters waited two and a half to three hours to cast their vote at the lone early voting location.** Lines waned a bit around 2:30 p.m., but waits were still about one to one and a half hours. Poll monitors observed dozens of voters leaving the line after deciding that they just could not wait any longer. After hearing how long the wait was, some voters left the polling place without even getting out of their cars. Craven County BOE staff worked hard to reduce the length of lines, but having only one site open simply was not enough to accommodate the rush of voters during the first couple days of early voting.*

Guilford County is the state's third most populous county, but had only one site open for the first week of the 17-day early voting period. **Voters reported waits of over two and a half hours on the first day of early voting. Unsurprisingly, many voters had to leave the line without casting ballots due to the excessive wait time.** The effect on early voting numbers in Guilford County was stark. In 2012, over 60,000 Guilford County voters cast their ballots during the first five days of Early Voting. But in 2016, with only one site open, fewer than 7,800 were able to vote during the first five days.

While early voting numbers ultimately crept back up, undoubtedly some would-be voters who attempted to vote during the first week did not return to cast their ballot.<sup>28</sup> As Democracy North Carolina learned in our 2014 post-election research, there is no reliable way to capture the numbers or names of voters who simply leave the line or polling station without voting because they cannot afford the wait time.<sup>29</sup>

The last two days of early voting are also traditionally high turnout days, as voters rush to cast their ballots early before it is too late.

The 2016 general election was no exception. Long lines with waits of one to three hours were reported in Mecklenburg, Cumberland, Forsyth, and Wake counties.

The waits were particularly dramatic at the North Carolina State University (NCSU) early voting site, which was a contested site to begin with – one Republican member of the Wake County BOE suggested eliminating the site altogether, and ultimately the Board selected a smaller, less convenient site than the one requested by students.

“ [During] the last two days of early voting... long lines with waits of one to three hours were reported in Mecklenburg, Cumberland, Forsyth, and Wake counties. ”



Voters at the NCSU early voting location faced some of the longest lines in the state. **On Friday, Nov. 4, less than 30 minutes after the site's scheduled 7 p.m. close, there were still 470 people standing in a line that doubled back on itself seven times.** At that point in the evening, voters in the front of the line reported that they had already been waiting for about three and a half hours. According to NC law, any voter in line at the time the polling place closes must be allowed to vote.

On Nov. 4, the last ballot at the NCSU site was cast around 10 p.m. – three hours after the site’s official closing time. **On Saturday, Nov. 5, 15 minutes after the site’s scheduled 1 p.m. closing time, there were approximately 400 voters waiting in line with reported wait times averaging five hours.**

Despite a generous early voting period, many voters still prefer to cast their ballots in-person on Election Day. Since a majority of NC voters opt to vote early, Election Day precincts tend to be less busy than early voting sites,

generally allowing voters to get in and out in well under 30 minutes. However, in some cases prohibitively long lines still form – particularly at precincts that are also early voting sites, as in the case of the precinct described below.

**At the Western Harnett High School precinct in Harnett County, there were long lines with waits of one and a half to two hours for most of the day.**

Around 9 a.m., white voter N.D. waited in line for two hours and was then sent to a provisional voting line with another long wait; she had to leave, and told a poll monitor that she didn’t know if she’d be able to make it back. Around 4:30 p.m., another voter, A.J., reported that she had visited the polling place three times to try to find a shorter line, including first thing in the morning. A.J., a white voter, works outside of the county, so the weekday early voting dates didn’t work for her. She also tried to vote the last weekend of early voting and stood in line for 40 minutes, but then had to go. Her husband did cast his ballot that day, but it took him over an hour to do so. **To its credit, the Harnett County BOE was very concerned about the reported wait times and confused about why they were occurring, since there were several check-in stations at the precinct, which should have allowed the line to move quickly.**

## Recommendations

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✓ Using the same data-driven methods piloted by SBOE in the final decision-making on 2016 early voting plans, **state and county BOEs should maximize voting opportunities during the early voting period by offering multiple sites with extended evening and weekend hours at voting locations large enough to accommodate rushes of voters**, paying special attention to which kinds of voters are most likely to use early voting and identifying sites and hours most convenient for those regular early voters.

✓ Despite being nominated by local political parties, county BOE members must remember that early voting is a way to improve election administration and voting access for all voters. **Early voting access should not be used as a pawn in a partisan game of one-upmanship. In selecting sites, BOE members should**

**listen to community members’ feedback about which sites are best.** If Wake County BOE members had heeded the recommendations of students, faculty, and other NCSU community members to use the Talley Student Union, the crushingly long lines seen on campus during the last two days of early voting might have been avoided.

✓ **SBOE should report on the efficacy of its 2016 attempts to predict and reduce long lines using data**, including feedback from county BOEs on the usefulness of the analysis and next steps it is taking to improve on those efforts for 2018. And, **the NC General Assembly should allocate additional funding to SBOE for expanding its data analysis capacity**, as needed and requested.

# Machine Breakdowns and Problems

## What is it?

Voting in the 21st century is a far cry from the hole-punch or pull-lever methods of the past. Casting a ballot involves multiple machines, including computers, specialized elections software, scanners, tabulators, and touch-screen voting machines. Most voting machines in the nation, including in North Carolina, were purchased with an infusion of federal money following the 2000 election and its focus on “hanging chads.” Now in 2017, those machines are approaching (or beyond) their expected lifespan of 10-15 years, and election administrators nationwide are struggling to find funding to purchase new equipment or find replacement parts and software patches to keep their voting machines up to date.<sup>30</sup>

Post-election reports of alleged Russian interference in the 2016 U.S. elections have ratcheted up concerns about the security of voting machines, particularly touch-screen machines.<sup>31</sup> In North Carolina, as a result of 2013 and 2015 law changes, touch-screen voting machines that do not provide paper ballots (like those currently used in some counties) are scheduled to be removed from use in all counties by 2019 at the latest – a good thing in light of their vulnerability to hacking.<sup>32</sup>

Touch-screen machines are also the culprits in cases when a machine “flips” or switches a voter’s selection. Typically this occurs when

the machines need to be recalibrated by poll workers, but may also be a sign of aging. Repeated malfunction after recalibration is an indicator that the machine needs to be removed from use.<sup>33</sup>

Most North Carolina counties use optical scan machines to read and tabulate voters’ choices marked on paper ballots, especially on Election Day.<sup>34</sup> These machines are not vulnerable to hacking in the same way as touch-screens; they also provide a paper ballot back-up that can be used for recounts and to inform any post-election investigation of alleged irregularities. But, like any machine, they are vulnerable to breakdowns and user error, and need worn-out parts replaced. The latter poses a particular challenge for aging optical scan tabulators, since replacement parts may not be readily available.<sup>35</sup>

Of course, for voters, who are typically unfamiliar with the details of voting machinery, any breakdown in the voting process – especially an interruption in the final, critical step of casting their ballot – is extremely distressing, even if the problem seems innocuous or easily understood to an election official familiar with the voting technology. Even worse, machine breakdowns cause voters to doubt that their ballot will be correctly counted, if at all.

“*...for voters, who are typically unfamiliar with the details of voting machinery, any breakdown in the voting process – especially an interruption in the final, critical step of casting their ballot – is extremely distressing...*”

## What happened in 2016?

In the 2016 general election, Democracy North Carolina heard from dozens of voters and poll monitors in 28 NC counties about problems with voting technology and machines. We received at least 89 complaints (67 from Election Day) from 68 polling places about equipment problems or failures that impacted

voters. The counties included Alamance, Anson, Beaufort, Bertie, Bladen, Carteret, Cleveland, Craven, Cumberland, Durham, Forsyth, Gates, Guilford, Halifax, Harnett, Henderson, Johnston, Mecklenburg, New Hanover, Pasquotank, Pender, Polk, Robeson, Vance, Wake, Warren, Wayne, and Wilson.

## “VOTE FLIPPING” ON TOUCH-SCREENS

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Democracy North Carolina began receiving reports as soon as the second day of early voting about touch-screen machines failing to record voters’ choices correctly. Reports that voters were having their selections switched or “flipped” came in from Alamance, Cumberland,

Guilford, Mecklenburg, New Hanover, Union and Warren counties. Most of the voters we heard from caught the error before finalizing and casting their ballot, but all were concerned about the ballots of others who might not have noticed the problem.

*At the University Library early voting location in Mecklenburg, African-American voter F.A. reported that it took three times before the machine finally correctly recorded his vote in the presidential contest. He attributed the problem to an overly sensitive screen.*

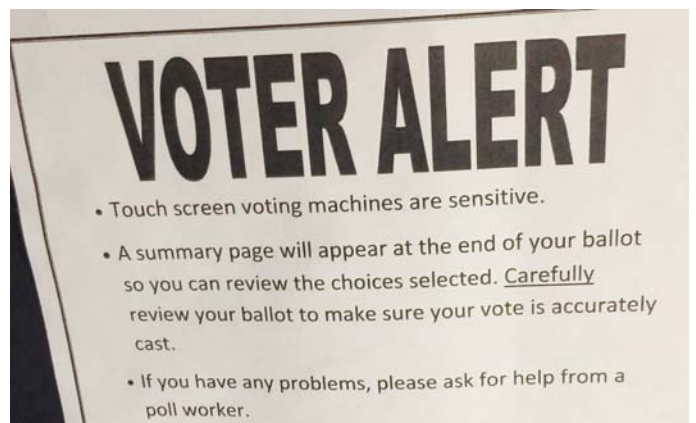
*A black voter at New Hanover County’s Government Center early voting location reported that she had to select her candidate multiple times before the machine correctly recorded her vote; she figured it was an isolated incident, but then began to hear reports on the local news of other New Hanover voters having the same problem.*

*A white Alamance County voter, R.W., had her vote changed three to four times at the Mebane Arts and Community Center early voting site. R.W. caught it each time and was able to correct, but was disappointed by the poll worker’s nonchalant response when the problem was reported.*

In a battleground state with ongoing litigation around voter suppression laws during a hotly-contested, high-profile election, North Carolina voters were already on edge. Word of electronic voting machines changing people’s votes spread like wildfire on social media and in local news reports, and many voters who had not experienced the problem first-hand called the Election Protection hotline just to make sure we were aware.

Ultimately, county and state election officials responded to the problem – purchasing styluses to compensate for extra-sensitive screens, placing signs (like the one at right) by touch-screen machines that urged voters to double check their choices before casting a ballot and to tell a poll worker immediately if there was a problem.<sup>36</sup> Nonetheless, it took several rounds of complaints from hotline volunteers and a letter and press statement from the NC NAACP to draw attention to this as a systemic problem

that was not merely the result of individual user error (poor eyesight, long fingernails, large fingers, etc.).<sup>37</sup> Despite the additional precautions, voters continued to report vote flipping on Election Day (in Alamance, Henderson, and Mecklenburg counties), but at that point poll workers and local election officials were experienced in addressing the problem quickly.



## OPTICAL-SCAN TABULATOR ISSUES

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Problems with voting equipment in 2016 were not limited to touch-screen machines. We received 34 reports of jammed or malfunctioning tabulators from 17 counties

across the state. Voters were most concerned when asked to place their paper ballots somewhere other than the tabulator.



*At 8:30 a.m. on Election Day, the tabulator at the Cross Creek 21 precinct in Cumberland County stopped working, requiring voters to deposit their ballots in the emergency box. According to poll monitors at the location, voters were uncomfortable placing their ballots in the emergency box, and many opted to leave without voting rather than leave their paper ballots in the hands of poll workers to be counted “later.”*

*Voters in Gates County reported two incidents of jammed tabulators on Election Day. The first happened around 7 a.m. at the Gatesville Social Services Building precinct, where voters were asked to place their ballots in a large tub. The second happened around 6 p.m. at the Eure Volunteer Fire Department. According to the voter who called, the poll worker did not know how to fix the machine, so voters were instructed to leave their ballots in the emergency lockbox at the bottom of the tabulator. In both cases, there was enough concern about the machine malfunctions for voters to call and report them to the Election Protection hotline.*

*Wake County voter M.L. asked Election Protection volunteers to “please follow up to see whether paper ballots were being counted” at the Hodge Road Elementary School Precinct. She cast her ballot early Election Day morning, but the tabulator was not working. M.L. and other voters were asked to slip their paper ballots into a slot at the bottom of the machine. M.L. was especially concerned because the box didn’t have a sign or anything on it – she felt it was “almost like putting it in a shredder box.” Unable to put her ballot into the tabulator and see the number increase, M.L. didn’t feel confident that her and others’ votes were recorded.*

To be clear, poll workers do not appear to have done anything wrong in these instances. The optical scan tabulators are designed with a built-in, emergency lockbox on the side or bottom of the machine in case of such a problem. Poll workers are instructed to place ballots in a secure location until the ballots can

be fed into a working tabulator. However, for voters, the experience of having their paper ballot placed in a mysterious box and being told it will be counted “later” was very disconcerting – particularly in an election cycle marked with claims of “rigging” and “fraud” from candidates at the top of the ticket.

## **E-POLL BOOKS IN DURHAM COUNTY**

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In addition to the issues listed above, Durham County experienced another kind of voting system failure on Election Day, when problems with its electronic poll book software (“e-poll books”) led to a county-wide shift to paper poll books. The Election Protection hotline first began receiving calls from Durham County voters, poll monitors, and campaigners around 8 a.m. on Election Day.

The shift to paper caused long lines and slowdowns at Durham precincts, but even more disruptive, many precincts ran out of the paper Authorization to Vote (ATV) forms that every North Carolina voter must sign prior to receiving their ballot. With e-poll books, poll workers are able to print out individualized

ATV statements with the voter’s name. But when using the paper poll books, they must peel off a label from the poll book and manually affix it to the paper ATV form. Unfortunately, most Durham County precincts had only a limited supply of paper ATV forms available for emergency use, which quickly ran out when the e-poll book system was taken down early in the morning on Election Day. In response, Durham County government employees were mobilized to deliver needed ATV forms and other supplies, while some polling places sent someone out to purchase tape or glue sticks to affix the labels to the paper forms.

The Glenn Elementary School, Bethesda Ruritan Club, Ivy Commons, North Regional Library, and

East Regional Library precincts were among those that ran out of the paper ATV forms, stopping voting altogether at these precincts. Voters were asked to “come back later” to cast their ballots. At the Bethesda Ruritan Club and Glenn Elementary precincts, poll monitors reported vote stoppages of up to an hour and a half.

Democracy North Carolina was so concerned about Durham County voters who had been disenfranchised by the vote stoppages and related delays that it asked the SBOE to extend the county’s voting hours. When SBOE staff argued that it did not have the statutory authority to do so, Democracy North Carolina, represented by the Southern Coalition for Social Justice, asked the Wake County Superior Court for a one-hour extension of voting and to allow the Durham County BOE office to function as a “super precinct,” where any voter in the county could cast their ballot.<sup>38</sup>

In a 6 p.m. meeting, the SBOE voted to keep eight Durham County polls open beyond the normal 7:30 p.m. closing time to accommodate those who may have been unable to vote.<sup>39</sup> Around the same time, and in light of the SBOE’s decision to extend voting in the eight most impacted Durham County precincts, Wake County Superior Court Judge Don Stephens ruled that a countywide extension was not necessary.

Over a year after the 2016 election, it is still unclear what caused Durham County’s e-poll book problems. A September 2017 article in The New York Times suggested that hacking of the vendor that provided Durham County’s Election Day e-poll book software might have been the cause, although the article included no evidence to back up the claim; the SBOE continues to investigate.<sup>40</sup>

## Recommendations

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- ✓ **SBOE should complete vendor certification as soon as possible – the first step in enabling county BOEs to purchase new equipment to replace aging machines.** Currently, the vendor certification process is being held hostage to the partisan wrangling over which political party controls the state elections agency. With litigation still pending over the changes to the agency structure made by the NC General Assembly in early 2017, there are no State board members in place, and therefore no one who can approve certification of vendors. SBOE staff should flag any other barriers to vendor certification, so that advocacy groups and policymakers eager to assist with updating North Carolina’s voting equipment understand the full picture.
- ✓ **SBOE should request from the General Assembly state funding to assist with voting equipment and other elections costs – currently borne exclusively by counties.** H655, one of the few bipartisan elections bills filed in the 2017-2018 session, is a good start. It would provide up to \$500,000 in matching grant money to NC counties for updated voting machines.
- ✓ **SBOE should continue its investigations into what went wrong with e-poll books in Durham County, reveal the results to the public, and develop proactive protocols for poll workers and county election officials in case of any future, dramatic system breakdowns.**
- ✓ **Bring new machines and voting technology on gradually and allow for testing in a low turnout election or a selected precinct, so that county election officials and poll workers have the time they need to become familiar with the equipment before a high-interest, high-turnout federal election.** Introducing new, untested voting technology in the 2018 general election is a recipe for disaster.

# Poll Worker Conduct

## What is it?

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Poll workers play a critical and under-appreciated role in our elections. They are the people who actually implement the voting rules and procedures created by elections officials and lawmakers.

In North Carolina, there are different types of poll workers with different responsibilities. Those with the most authority at the polling place are called judges. Each Election Day polling place has three judges – one chief judge and two assistant judges – who are prohibited by law from all being with the same political party. The county BOEs appoint judges for two-year terms from lists submitted by county Republican and Democratic parties. Judges are required to receive training, and are responsible for maintaining polling place order, ensuring that election rules are being followed, and assuring the integrity of ballots cast and counted at that polling place.

Other kinds of NC poll workers include election assistants and help desk workers (the people who provide provisional ballots and trouble shoot any voter problems). These individuals are typically identified and hired by the county BOE without involvement from the local political parties, and are not required to receive the same kind of training as judges.

Most poll workers serve only on Election Day, staffing North Carolina's 2,700-plus precincts.

In the 2016 general election, 26,250 poll workers received nominal pay to work what is, at minimum, a grueling fourteen-hour day. (Election Day polls are open for 13 hours – from 6:30 a.m. to 7:30 p.m. – and poll workers must also set up and break down the polling place before and after voting; half-day shifts are not allowed on Election Day.)

Because being a poll worker is so time-intensive, retired seniors most often fill the role; 58% of those who worked the polls in 2016 were age 60 or older. Only 6% of North Carolina's 2016 poll workers were in the prime digital-native age between 26 and 40, a fact that may affect poll workers' overall comfort level with using and troubleshooting basic voting technology.<sup>41</sup>

Many voters express gratitude for poll workers' service when calling the Election Protection hotline. On the flip side, a lot of the problems reported to the hotline stem from the failure of a poll worker to clearly communicate the reasons behind their action or decision to the voter – for example, why a new voter in the county needs to show an ID when the previous person in line did not, or why a person who has accompanied a voter to the polls is not eligible to provide assistance to the voter. When voters have negative experiences with poll workers, it can lead them to question the fairness and efficacy of the entire elections system.

“ *When voters have negative experiences with poll workers, it can lead them to question the fairness and efficacy of the entire elections system.* ”

## What happened in 2016?

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The Election Protection hotline and Democracy North Carolina poll monitors received at least 129 reports (97 from Election Day) from 92 polling places in 38 counties about negative or frustrating interactions with poll workers, mainly focused on rudeness and

misunderstanding of election rules.<sup>42</sup> Counties included Alamance, Brunswick, Buncombe, Cabarrus, Carteret, Catawba, Chatham, Cleveland, Craven, Cumberland, Davidson, Davie, Durham, Forsyth, Gaston, Guilford, Halifax, Harnett, Henderson, Iredell, Johnston,

Lee, Martin, Mecklenburg, Nash, New Hanover, Onslow, Orange, Pender, Pitt, Polk, Robeson, Rowan, Union, Vance, Wake, Wayne, and Wilson.

The impact of poll workers' critical role is reflected in voter stories throughout this report (see pp. 6 and 7-8). Additional examples are also detailed below.



## RUDENESS AND BIAS

Poll workers are the first, and often only, election staff who interact with the majority of voters. As such, they serve an important customer service function. When poll workers are rude or exhibit blatant bias, it can result

in voters leaving without casting their ballot, mistrusting “safety net” options like provisional ballots, and feeling confused and suspicious about the motivation behind the poor treatment they received.

**A.W., a white, Craven County voter, had to vote provisionally when she went to vote on Election Day, but was discouraged from doing so by the poll worker who told her, “It’ll just get thrown away.”** Fortunately, the poll worker was wrong. While A.W.’s provisional ballot did not count in the 2016 general election, it did get her registered for future elections.

S.S. voted on Oct. 21 at the Agricultural Center Early Voting site in Pitt County. While she was there, **a Latina who did not seem to speak English well asked the poll worker a question. The poll worker did not respond, instead talking to other workers, until the Latina voter ultimately left without voting.** On Oct. 24, another voter at the same location witnessed a similar dynamic (though it is not clear if it was the same poll worker or voter). **A Latina voter came in and asked if they had a Spanish interpreter. The poll worker said no and offered no further information or assistance. After the Latina voter left without voting, the poll worker said, “When I was in school we didn’t have any Spanish people around.”** The voter who called the hotline was outraged. She said she could not believe that the poll worker would “say that out loud in front of everyone” and was disappointed that the poll worker did not even attempt to communicate with the voter. When it received the latter complaint, the Pitt County BOE said it would call the site and noted that “it sounded like a little sensitivity needs to be there.”

On Election Day, a Democracy North Carolina poll monitor stationed at the Wildwood Forest Elementary School precinct in Wake County reported several complaints from voters about a poll worker named Sheila. **After setting up a**

**confusing zig-zag line that was slowing down the voting process, Sheila belittled voters who had trouble navigating the line, saying words to the effect of, “What are you, a first grader? It’s not that hard. Get in line.”** To its credit, the Wake County BOE immediately recognized this as inappropriate behavior and agreed to follow up with the polling place.

## MISUNDERSTANDING ELECTION RULES

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In addition to being the on-the-ground representatives of North Carolina’s elections system, poll workers are also often its gatekeepers; they have significant influence

over who gets to vote and who is turned away. When poll workers misunderstand or misapply election rules, they run the risk of disenfranchising eligible voters.

*When Davidson County voter J.L., a Latino, attempted to use Same Day Registration at the Thomasville Public Library, poll workers told him that he would have to provide a photo ID in order to verify his identity. J.L. had a paystub from his employer, a utility bill with his current address, and his vehicle registration – any of which should have been sufficient to register and vote on the same day. When J.L. asked to speak to the person in charge of the polling site, poll workers again told him he would need photo ID and that the documents he had provided were insufficient. The voter asked poll workers to call the Davidson County BOE, who corrected the misinformation. J.L. was ultimately able to register and vote, but only because he knew the rules and was confident enough to assert himself. One of the most concerning elements of this story is the timing. This incident occurred on Nov. 4 – 16 days into a 17-day early voting period – begging the question: **How many other Davidson County voters were wrongly turned away and disenfranchised by poll workers who did not correctly understand the law?***

*When multiracial, Guilford County voter A.S. went to vote early at the Jamestown Town Hall location, **a poll worker turned her away because her voter registration status was “Inactive.” “Inactive” is a designation that suggests a voter may have moved without updating their address or may not have voted in several years – but they are still a registered voter.** Fortunately, A.S. called the Election Protection hotline and learned that she was entitled to vote her regular ballot. She returned to the polling place and successfully voted.*

*In late September, the State Board of Elections changed its rules about cell phone use in the polling place to allow voters to use their phones to retrieve or review any list of their ballot choices, but not to text, call, or take a photo. Unfortunately, it appears that many poll workers did not get the memo. We received calls from voters in Forsyth, Brunswick, Cabarrus, Nash, Chatham, Wake, and Durham counties saying that poll workers told them that they could not use cell phones. **In Chatham County at the Andrews Store Road precinct, a voter was told that her ballot would be confiscated if she attempted to use her phone. In Durham County at the Eno River Unitarian precinct, one poll worker loudly chastised a voter for attempting to use his phone. In Wake County, a poll worker berated a first-time voter at the Lynn Road Elementary School for attempting to use her phone to access her list of choices.***

*R.S., a Latina, was at the First Baptist Church Ministry Center early voting site in Johnston County, helping people outside the polling place and explaining Same Day Registration – mainly to voters of color. Many of the voters, who were older with*

*physical disabilities or needed language assistance, asked R.S. to come in and help them. Under NC law, any voter with a disability or difficulty reading (including those who have difficulty reading English because it is not their first language) are able to ask for help from anyone except their employer or union agent. **R.S. helped multiple voters at their request, until a poll worker told her that she could not come in anymore because she'd "been inside too many times."** Chagrined, R.S. left as requested, but then a site manager called her back in after a voter asked for R.S.'s help. When contacted, the Johnston County BOE agreed to call the polling place and ask the site manager to make sure that all poll workers understand assistance rules.*

## Recommendations

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- ✓ **SBOE should establish a minimum standard for poll worker training** – ideally, requiring all non-judge poll workers to receive the same training as judges. Using a uniform method developed by SBOE, **county BOEs 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 this report.
- ✓ **SBOE should develop a “Code of Conduct” for North Carolina poll workers, similar to the one developed in the 2016 general election for polling place observers and outside monitors.** The code of conduct should stress 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 NC election law and administrative guidance; and (5) commitment to ensuring that all eligible voters are able to cast ballots. Failure to abide by this code should be cause for dismissal.
- ✓ **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 those who participated in 2016 Election Protection work, 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.
- ✓ **State and county election officials should work together to provide a clearer pathway to becoming a poll worker for unaffiliated voters.** Currently, each county BOE 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 poll workers and that of interested outside groups to promote poll worker service as a critical form of civic engagement.



# Conclusion

Over a year out from the 2016 general election, democracy in the U.S. and North Carolina is facing intense scrutiny from all sides. Unfortunately, much of the public attention focuses on the most dramatic extremes – fear of widespread, unproven, voter fraud and election hacking by foreign governments dominate the headlines. As Democracy North Carolina has documented, these inflammatory claims, especially regarding voter fraud, are often invoked to advance a political agenda, rather than improve our elections system for all voters.<sup>43</sup>

But, apart from these heavily publicized topics, our findings demonstrate that much more granular problems disrupt the rights of voters to participate in elections – problems that state and county elections agencies have the power and responsibility to address. Concerned policymakers should focus on solving the kinds of ground-level, “nitty-gritty” election administration challenges identified in this report, rather than chasing politically convenient claims.

Democracy North Carolina (along with many of our Election Protection partners) is known for educating and encouraging voters, as well as engaging vigorously in the current debate about what our election laws and structure should and could be. With this report, Democracy North Carolina hopes to make visible the laws and rules that encourage voting access, highlight the ways voters and our democracy are harmed when those rules are not followed, and provide recommendations aimed at making the voting process work more smoothly for our democracy’s most important participants – voters.

The coming 2018 midterm elections will offer all of those invested in the quality and integrity of North Carolina’s election system the opportunity to learn from and address challenges from previous cycles, always with the goal of improving our state’s elections and the practice of democracy.

A full list of the recommendations made in this report can be found in the appendix.

“Concerned policymakers should focus on solving the kinds of ground-level, “nitty-gritty” election administration challenges identified in this report, rather than chasing politically convenient claims.”



# Appendix

## Full List of Recommendations for Improving the North Carolina Voter Experience

### Out-of-Precinct Voting (OOP)

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- ✓ **State and county BOEs should improve consistency in poll worker use of the existing protocol for OOP voting.** SBOE currently provides detailed training documents for poll workers that include the correct OOP protocol mentioned above.<sup>11</sup> However, the complaints we received from voters and poll monitors make clear that not every precinct official respects OOP as a safety net for voters, or understands that the choice to vote provisionally out-of-precinct lies with the voter, not poll workers.
- ✓ **Assess whether poll worker reticence to provide OOP provisionals reflects their personal concerns or even misgivings of county election officials about how OOP is used in their county.** Any administrative concerns underlying poll worker behavior should be surfaced, evaluated, and addressed by state elections officials, in the interest of promoting consistent implementation of the law.

### Curbside Voting

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- ✓ **SBOE should review its curbside voting training materials, including any sample scripts for poll workers, and work with county officials to improve signage, wait times, and training for poll workers on curbside voting.** Any training should make clear that, by signing the affidavit, the voter is attesting under penalty of law that they have a disability that prevents them from entering the polling place without physical assistance, and poll workers should not attempt to evaluate or question the physical ability of voters, or pressure them not to vote curbside. Poll workers who repeatedly violate these basic curbside voting guidelines should face consequences.
- ✓ **SBOE should strengthen North Carolina Administrative Code 10B.0108, “Curbside Voting,”** so that it requires clear and easily visible curbside signage, a method for the voter to announce their arrival to precinct officials, and timely acknowledgement of the voter and delivery of voting materials, as recommended by Democracy North Carolina in the most recent rulemaking process.<sup>16</sup>



## Excessively Long Lines

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- ✓ Using the same data-driven methods piloted by SBOE in the final decision-making on 2016 early voting plans, **state and county BOEs should maximize voting opportunities during the early voting period by offering multiple sites with extended evening and weekend hours at voting locations large enough to accommodate rushes of voters**, paying special attention to which kinds of voters are most likely to use early voting and identifying sites and hours most convenient for those regular early voters.
- ✓ Despite being nominated by local political parties, county BOE members must remember that early voting is a way to improve election administration and voting access for all voters. **Early voting access should not be used as a pawn in a partisan game of one-upmanship. In selecting sites, BOE members should**
- listen to community members' feedback about which sites are best.** If Wake County BOE members had heeded the recommendations of students, faculty, and other NCSU community members to use the Talley Student Union, the crushingly long lines seen on campus during the last two days of early voting might have been avoided.
- ✓ **SBOE should report on the efficacy of its 2016 attempts to predict and reduce long lines using data**, including feedback from county BOEs on the usefulness of the analysis and next steps it is taking to improve on those efforts for 2018. And, **the NC General Assembly should allocate additional funding to SBOE for expanding its data analysis capacity**, as needed and requested.

## Machine Breakdowns and Problems

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- ✓ **SBOE should complete vendor certification as soon as possible – the first step in enabling county BOEs to purchase new equipment to replace aging machines.** Currently, the vendor certification process is being held hostage to the partisan wrangling over which political party controls the state elections agency. With litigation still pending over the changes to the agency structure made by the NC General Assembly in early 2017, there are no State board members in place, and therefore no one who can approve certification of vendors. SBOE staff should flag any other barriers to vendor certification, so that advocacy groups and policymakers eager to assist with updating North Carolina's voting equipment understand the full picture.
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- ✓ **Bring new machines and voting technology on gradually and allow for testing in a low turnout election or a selected precinct, so that county election officials and poll workers have the time they need to become familiar with the equipment before a high-interest, high-turnout federal election.** Introducing new, untested voting technology in the 2018 general election is a recipe for disaster.

## Poll Worker Conduct

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- ✓ **SBOE should establish a minimum standard for poll worker training** – ideally, requiring all non-judge poll workers to receive the same training as judges. Using a uniform method developed by SBOE, **county BOEs 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 this report.
- ✓ **SBOE should develop a “Code of Conduct” for North Carolina poll workers, similar to the one developed in the 2016 general election for polling place observers and outside monitors.** The code of conduct should stress 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 NC election law and administrative guidance; and (5) commitment to ensuring that all eligible voters are able to cast ballots. Failure to abide by this code should be cause for dismissal.
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# Endnotes

<sup>1</sup> Election Protection. (2017). About Us. Retrieved from <https://www.866ourvote.org/about>

<sup>2</sup> Researchers from Rice University and the University of Houston found that confusion and anxiety over Texas' voter ID law depressed turnout in 2014. Thirteen percent of registered voters in Congressional District 23 who did not vote cited the law as one reason why they did not vote, with 6 percent attesting that it was the primary reason they did not vote. Researchers noted that the law primarily depressed turnout because voters were confused about the law, and even voters who had the correct ID chose not to vote because of the law. After the 2016 election cycle, researchers from the University of Wisconsin-Madison estimated that Wisconsin's voter ID law discouraged 16,801 to 23,252 people in the state's largest counties, Milwaukee and Dane, from voting. Researchers noted that most of the people who did not vote because they believed they could not vote under the law actually did have a qualifying form of ID.

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Last, but certainly not least, thanks to North Carolina's elections professionals – from the staff at the State Board of Elections to those in the 100 county Boards of Elections – for their often unrecognized role in keeping this great democratic experiment going.

## **ABOUT DEMOCRACY NC**

Democracy North Carolina is a nonpartisan organization that uses research, organizing, and advocacy to increase voter participation, reduce the influence of big money in politics and achieve a government that is truly of the people, by the people and for the people. Learn more about our work at [democracync.org](http://democracync.org).





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# The Deceit of Voter Fraud

By Bob Hall and Isela Gutierrez\*

This report has four sections. The first section shares the reaction of voters harmed by the false charges of fraud generated by Gov. Pat McCrory's 2016 re-election campaign and the NC Republican Party; it ends with a call for a criminal investigation. The second section (pages 2-4) summarizes key events after the November 2016 election. The third section (pages 4-5) provides a summary of findings of wrongdoing, drawn from the county profiles in the fourth section (pages 5-16).

## I. VICTIMS AND CRIMINAL MISCONDUCT

"I was shocked and horrified and furious to learn our name was on a list with people who were alleged to have broken a federal law," said Anne Hughes of Moore County, North Carolina. She and her husband William were falsely accused of voting in two states by a local supporter of Gov. Pat McCrory's reelection.

In an apparent effort to overcome a narrow defeat, Gov. McCrory and his allies in the NC Republican Party (NCGOP) filed the legal paperwork and launched a media campaign to draw attention to the supposedly "invalid" ballots of Mr. and Mrs. Hughes and hundreds of other voters "known" to have committed a crime. By late November, the McCrory-NCGOP team had charged about 600 voters in 37 counties with committing fraud or casting suspect absentee ballots – but despite an avalanche of legal filings and the constant drumbeat of "serious voter fraud," nearly all the accusations proved to be false.

Aysha Nasir of Orange County thought she was targeted as an illegal voter because of her Muslim-sounding name. She felt harassed and vulnerable. "You obey the law, you do all the stuff you're supposed to, and then some person just randomly, without any burden of proof, can accuse you of breaking the law," she said.

Joseph Golden, a Brunswick County voter accused of double voting, felt upset and humiliated after seeing his name appear on the front pages of three area newspapers. As a newcomer to the county, he was especially disturbed that someone on social media called him out and wrote, "There's a cheater amongst us."

Another falsely accused voter, Robert Chadwick of Wake County, said, "It was a total shock. It really hurt me."

Hughes, Nasir, Golden, and Chadwick are the victims of irresponsible charges of voter fraud filed by agents of the Pat McCrory campaign and NC Republican Party. They are the innocent casualties of what happens when outrageous claims of voter fraud are used as a weapon for political gain. In truth, we are all harmed by this strategy because it undermines public faith in the election process and is often used to justify irrational barriers to voting.

The McCrory-NCGOP's use of voter fraud goes even further. Democracy North Carolina talked with dozens of voter-victims, county election officials, and the Republicans involved in filing charges of fraud in various counties. This report, based on those interviews and a review of public records, reveals that the McCrory campaign and NC Republican Party engaged in a coordinated legal and publicity crusade to disrupt, and potentially corrupt, the elections process with what amounted to fraudulent charges of voter fraud.

The crusade did not stop even after McCrory's attorneys were told by some elections officials that their claims were wrong, that they were confusing voters' names with other people, that they were using bad data. Instead of stopping, the attorneys caused more charges to be filed that maligned more innocent voters. And, in conjunction with the NC Republican Party, they continued a coordinated

attack on the legitimacy of certain ballots and the election outcome, despite the clear harm inflicted on individual voters and the election process.

Carol Turner, a Moore County voter falsely accused of committing fraud, asked us a crucial question: “Where are the laws that protect those of us who haven’t done anything wrong and allow those who want to make up these stories to be able to do that?”

Based on our interviews and research, Democracy North Carolina is calling on state and federal officials to undertake a criminal investigation into the activities of the attorneys and other agents of the Pat McCrory campaign and NC Republican Party that may have violated state and federal laws, particularly laws against harassing and intimidating innocent voters, corrupting the election process, and obstructing the election canvass. Relevant statutes include 18 U.S.C. § 594; 18 U.S.C. § 241; NCGS § 163-274(3); NCGS § 163-275(4); and NCGS § 163-275(17).

## II. THE CRUSADE

On election night 2016, Gov. Pat McCrory thought he won reelection – until late returns from Durham County put Roy Cooper ahead by about 5,000 votes out of 4.7 million cast. For the next month, the McCrory campaign and NC Republican Party waged a vigorous crusade to give McCrory the victory he felt he deserved. The chief weapon became the “election protest,” a legal proceeding designed to pinpoint and remedy serious mistakes, misconduct and other “irregularities” that could impact the outcome of an election. Within 24 hours of the polls closing, the McCrory-NCGOP team began deploying resources to research and prepare election protests in counties across the state.

What began as an understandable call for Durham County to review its procedures for handling 94,000 ballots soon devolved into bombastic allegations of widespread “voter fraud” in dozens of counties. The discovery that a small number of African-American members of the Bladen County Improvement Association signed as witnesses for hundreds of absentee ballots in Bladen County – which is not illegal – became the flimsy basis for the McCrory-NCGOP team to protest over 400 absentee ballots in Bladen, Halifax, Greene, Franklin, and other

### SOME RELEVANT STATUTES

#### Federal Law, U.S. Code

**18 U.S.C. § 594** Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, . . . shall be fined under this title or imprisoned not more than one year, or both.

**18 U.S.C. § 241** If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, . . . in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same . . . [t]hey shall be fined under this title or imprisoned not more than ten years, or both.

#### NC General Statutes: It shall be unlawful . . .

**NCGS § 163-274(3)** For any person to . . . interfere with the possession of any ballot box, election book, ballot, or return sheet by those entitled to possession of the same under the law, or to interfere in any manner with the performance of any duty imposed by law upon any election officer or member of any board of elections;

**NCGS § 163-275(4)** For any person knowingly to swear falsely with respect to any matter pertaining to any primary or election.

**NCGS § 163-275(17)** For any person, directly or indirectly, to misrepresent the law to the public through mass mailing or any other means of communication where the intent and the effect is to intimidate or discourage potential voters from exercising their lawful right to vote.

counties with African-American voter mobilization groups. In addition, the McCrory-NCGOP team used a deeply flawed data-matching process to file protests accusing 119 individuals, by name, of committing fraud by either (1) voting while serving a felony sentence or (2) voting in two states. Another set of protests sent to county boards of elections identified 23 ballots cast by “dead voters,” which turned out to mean the voter died before Election Day after casting a ballot early; i.e., there was no fraud.

Altogether, not counting the live/dead voters, allegations of illegal voting directly affected about

600 ballots across the state, while insinuations of greater fraud and malfeasance reached into six figures. Ultimately, officials at the Republican-controlled boards of elections upheld the Durham County vote count, dismissed dozens of protests in other counties, and determined that fewer than 30 of the 600 allegedly suspect ballots were illegally cast or counted – and, importantly, most of those were apparently cast by accident or out of ignorance of the voting rules for probationers, rather than an intent to cheat.

In short, more than 95 percent of the 600 ballots identified in protests were cast by legal voters.

Through open records requests and interviews, Democracy NC determined that a majority of the protests were prepared and sent by email to the county boards of elections by attorneys retained by the McCrory campaign from the Warrenton, VA-based law firm of Holtzman Vogel Josefiak Torchinsky (HVJT). The attorneys also prepared a smaller number of similar protests that local Republican officials hand-delivered to their county board of elections. Disclosure reports on the State Board of Elections' website indicate the Pat McCrory Committee and Pat McCrory Committee Legal Defense Fund paid the HVJT law firm \$98,000 in late November and December 2016.

A barrage of near-daily media releases and press conferences made it seem like the election outcome hung on the balance of ferreting out fraudulent ballots. “With each passing day, we discover more and more cases of voting fraud and irregularities,” said McCrory campaign manager Russell Peck. “We intend to make sure that every vote is properly counted and serious voter fraud concerns are addressed before the results of the election can be determined.” The McCrory campaign claimed protests were being filed [against voter fraud in 52 counties](#) and [against tainted absentee ballots in 12 counties](#) – but about a third of each type of protest never materialized.

As a candidate, Pat McCrory could have personally signed each of the protests. But, for whatever reason, the NC Republican Party and McCrory campaign coordinated a large effort to find a local registered voter to sign each county's protest. Generally, they chose an officer in the county Republican Party who was not a lawyer and who readily agreed to sign the protest without much

knowledge of evidence behind its accusations. In some cases, the officer simply authorized the attorney to sign for them by email or over the phone. Protests need not be notarized, and the protest signer need not supply evidence to back up a charge or specifically attest that the statements are truthful. (Thanks in part to the complaints of innocent voters, the troubling ease with which a person can file a claim of voter fraud is being addressed through the development of a new protest form by the State Board of Elections.)

Filing an election protest sets in motion a legal proceeding with a three-step process outlined in state law: (1) a determination that the protest makes a proper claim; (2) a preliminary hearing to decide if there is probable cause for a full hearing; and (3) a full hearing with the protestor and parties affected to resolve the issues identified. Different county boards of elections dismissed the McCrory protests at

***More than 95 percent of the  
600 ballots identified in protests  
were cast by legal voters.***

different stages, sometimes for as simple a reason as it named the wrong voter as a felon or it challenged the eligibility of a voter's registration rather than claim a violation significantly impacted the vote count in an election.

The McCrory attorneys submitted the largest wave of protests on November 17, the day before the 100 county boards were scheduled to conduct the official canvass to certify the 2016 election results. It quickly became apparent that many of the protests maligned innocent voters. For example, in a series of follow-up emails, all on November 17, the Stokes County board of elections director queried an attorney from the HVJT law firm and pointed out that the protest she sent named a voter as a felon who had a different middle name and lived in a different city from the felon identified by the attorney. The attorney thanked the director and wrote, “I will certainly look into it.” However, she did not withdraw the protest, which could have spared the voter from having his name appear in two newspapers as someone accused of voter fraud.

Rather than retreat, the McCrory-NCGOP publicists escalated their rhetoric about voter fraud,

and the team's attorneys continued to disrupt and delay certification of a winner with more protests and legal appeals. As more county boards of elections rejected the faulty protests, the McCrory-NCGOP team unsuccessfully filed new appeals and tried other legal maneuvers to convince the Republican majority on the State Board of Elections to rule that the election was riddled with fraud and irregularities. Some Republican leaders continued to inflate the magnitude of "serious voter fraud," but a majority of Republican election officials ultimately would not go along.

Finally, on December 5, Pat McCrory conceded defeat. By then, with provisional ballots and late absentee ballots tallied, he trailed Roy Cooper by more than 10,000 votes, which exceeded the margin to qualify for an automatic recount.

Why would the McCrory-NCGOP team mount such a giant legal and publicity campaign with so few cases of actual fraud? It's possible they hoped to establish enough confusion about the fairness of the election to trigger a state law (NCGS 163-182.13A) that would allow the Republican-controlled General Assembly to determine the winner. Whatever the plan, it failed – but not without inflicting substantial damage.

For weeks, media reports bombarded the public with allegations of voter fraud and dozens of innocent voters had their reputations impugned and lives disrupted. Fortunately, elections officials stopped the coordinated use of phony protests to corrupt the election results, but they cannot undo the corrosive impact of voter-fraud hysteria on people's faith in fair elections. The McCrory-NCGOP agents behind any proven acts of corruption or voter harassment should be held accountable to the fullest extent possible under federal and state laws.

### III. FINDINGS OF WRONGDOING

The county-by-county descriptions in the next section of this report help illuminate why four voters in Guilford County filed a [defamation lawsuit](#) in February 2017 against the man who wrongfully accused them of voter fraud. Other civil lawsuits may follow. But it will likely take a criminal investigation to go behind the local protest filer to uncover a larger pattern of illegal activities and, as appropriate, hold accountable the attorneys and other

architects of the McCrory-NCGOP crusade.

Many details vary in the next section's profiles of the protests filed in counties. The victims varied by age, race, gender, and party affiliation. Most of those accused of voting in two states were first-time voters in North Carolina. Most of those accused of voting while serving a felony sentence are Black. Most

***Some Republican leaders continued to inflate the magnitude of fraud, but ultimately the majority of Republican election officials would not go along.***

striking are the common features that reveal a coordinated plan to potentially corrupt the 2016 election with a multitude of unsubstantiated charges of election fraud and irregularities, without regard for the harassment and harm inflicted on innocent voters.

Important findings from the county-by-county profiles in Section IV include the following:

- Agents of the McCrory campaign prepared Election Protests charging individuals with voter fraud and then recruited local Republican leaders to file the protests without revealing to them the tenuous nature of the charges.
- Even after the protest filer requested additional information, agents of the McCrory campaign failed to provide the person with substantiating evidence of the allegations. Many of the local Republican protest filers said they were "left hanging," "got screwed," or felt "disappointed" or even "victimized."
- The protests were all, or nearly all, prepared by attorneys with the law firm of Holtzman Vogel Josefiak Torchinsky, based in Warrenton, VA. The protests were apparently hurriedly produced and often contained sloppy errors, incorrect references, and false or misleading information.
- A minimum level of research would have revealed that dozens of the individuals charged with voter fraud in the protests were completely innocent. (For example, with a little practice, it takes less than 10 minutes to compare a voter's name and age on North Carolina's voter registration and criminal offender databases.)

- Agents of the McCrory campaign continued to pursue legal proceedings against individual voters even after county elections officials informed them that an allegation of voter fraud was false. Rather than alert the protest filer, the agent allowed the proceeding to continue.
- In a rare case where a McCrory campaign official provided a sworn affidavit to support an allegation, the facts about the accused voter contradicted statements in the affidavit; i.e., the accused voter was decades older than the felon he supposedly matched, which would quickly be recognized if age was used to match a felon list with a voter list, as the sworn statement claimed.
- Attorneys with the HVJT law firm did not follow-up the protests they submitted by appearing at the preliminary hearings; they also told local protest filers they did not need to appear. County boards of elections often dismissed protests because they received no evidence to back up accusations. The lack of follow up raises questions about the real purpose of filing a blitz of protests: Was it was only a show to bolster the intense publicity about voter fraud tainting a fair election?
- In some cases, protest filers who did their own independent research continued to pursue legal proceedings against individual voters even after discovering that the voter fraud charges were false and individuals were completely innocent.
- Attorneys for the McCrory campaign and NC Republican Party continued to intervene and subvert the election with claims against voters that had been exposed as false, using new legal proceedings based on allegations that they knew or should have known were largely false.
- The proceedings subverted and delayed the regular canvasses, diverted staff and administrative resources, threatened to corrupt the results of a fair election, and burdened county and state boards of elections with complex legal, research and logistical problems at a time when they were already under great stress to finalize the election.
- The accusations harassed and harmed individual voters emotionally, damaged their reputations, exposed them to public ridicule, intimidated them with unfamiliar and warrantless legal proceedings to void their ballot, and maligned their character.

## IV. COUNTY PROFILES

### STOKES COUNTY

On November 17, 2016, Jason Perry, director of the Stokes County Board of Elections, received an email with an attached protest signed by Susan McBride, a Stokes County Republican activist. The email came from the Virginia law firm of Holtzman Vogel Josefiak Torchinsky, which represented the McCrory campaign. The protest said Larry G. Smith cast an “invalid” ballot because he was “adjudged guilty of a felony.” Director Perry sent Susan McBride an email asking for information showing that Smith was serving a felony sentence. Shortly thereafter, Erin

*Even after the McCrory attorneys learned that the protests named the wrong people, they continued to send protests naming innocent voters.*

Clark of HVJT sent Perry an email, saying McBride had forwarded the request to her, and she provided a hot link to the offender search tool on the NC Department of Public Safety’s website. Perry wrote back to Clark: “The website regarding state felons is what I was using. I’m not currently seeing this particular individual listed.” Clark sent back the link to a specific offender, with the note: “This is the guy.”

Perry wrote back two more times on November 17 and explained again that the voter being charged in the protest was Larry G. Smith and not Larry D. Smith, the felon referenced by Clark’s web link. Perry told Clark he checked with county sheriff’s office and they also “couldn’t find anything regarding Larry Gray Smith” with a felony conviction but did find Larry D. Smith, who was convicted and also removed from the registration rolls in Wilkes County. “That’s about 1.5 hours or so away from Stokes County,” added Perry. “I didn’t find anything for Larry G. Smith, whose voter registration in Stokes County dates back to 1992.”

In response, Erin Clark of the law firm wrote, “I will certainly look into it. Thank you for the open dialogue, I really appreciate it.” That’s the last that

Perry heard from her. Instead of withdrawing the protest or notifying Susan McBride to withdraw it, the process continued. Perry's board met and scheduled a preliminary hearing. He notified the law firm and Susan McBride but heard nothing back. On November 21, the board convened and Perry presented the email exchange, information about Larry D. Smith's voting and criminal records, and information about Larry G. Smith, including his handgun permit indicating his non-felony status. According to the minutes of the meeting, the board chair "noted that he knew Larry Gray Smith and had spoken to him earlier in the day" to let him know about the charge against him, and Smith "said he is in fact not a felon." The minutes record that Susan McBride, the accuser, attended the meeting but when asked, "She did not provide any additional information regarding the protest." The Republican-majority board dismissed the protest by a unanimous vote.

A couple days later, Larry G. Smith told a reporter with the [News & Observer](#) that he was glad "everything's straightened out." He added, "The sad part of it is I voted for McCrory." (Indeed, the innocent voters Democracy NC interviewed included several Republicans or voters who supported McCrory.)

## ALAMANCE COUNTY

Steven Carter, a local Republican activist, said he was asked to file the protests "by an attorney from the Pat McCrory campaign." He thought they would send him some documentation to back up the protest or at least have the material to present at the hearing. But they didn't.

Jennifer Hook came home from the night shift to find a notice about a hearing regarding Carter's charge that she had voted in two different states. It was her anniversary and she planned to get some sleep before a celebration dinner. Instead, "my whole day was ruined," she said. She became "very scared" and called her mother in Maryland. She was worried because she had never voted in person before and thought she may have done something wrong. She wondered if she needed a lawyer. The date of the hearing on the notice had passed, but when she called the Alamance County Board of Elections, she was told it had been rescheduled to that very day, beginning in less than an hour.

Hook rushed to the county elections office in Graham and didn't realize her accuser, Steven Carter, was there. "They asked me if I knew him and I told them I've never seen him before and he said he'd never seen me." After some additional questions, she and a county staff person left to contact election officials in Baltimore who verified that they had sent Hook an absentee ballot for the primary, which was not returned, and did not send her anything for the November election. Armed with that information, they returned to the hearing, and the protest was finally dismissed.

While they were out of the room, the board considered the protest regarding two voters alleged to have current felony convictions. The elections staff found that one voter was indeed serving a felony sentence that began in mid-September. The other voter, Ricky M. Long, had long ago finished his felony sentence and was currently on probation for a misdemeanor offense. After prolonged discussion, the board agreed that he was eligible to vote. Reached in March 2017, Long was not happy with being accused of voter fraud. "That's crazy," he told Democracy North Carolina. "I've voted in the past four elections. No problem. Now somebody's saying this about me!? That don't make any sense."

Steven Carter, who signed the protest, also wound up feeling frustrated by the experience. He expected to see the McCrory attorney at the hearing with solid evidence. A Republican attorney attended but had nothing to offer. "I was kind of left screwed," Carter told us. The whole thing "was a pain in the butt," he said. "I won't do it again."

## CUMBERLAND COUNTY

Jerry Reinoehl, a Republican activist who has challenged voters in the county in the past, told Democracy North Carolina that the "McCrory legal defense team" asked him to file two protests – one naming a voter "adjudged guilty of a felony," according to the protest, and the other naming seven voters who the protest said were "known to have voted in multiple states." The two protests with Reinoehl's signature were sent to the Cumberland County Board of Elections in an email on November 17 by attorney Erin Clark of the HVJT law firm.

Clark told Reinoehl he didn't need to attend the preliminary hearing for the protest, but he went

anyway – and nobody from the McCrory team showed up. “I was left to hang out to dry,” he said. “I suspected I would be disappointed.” He’s been “victimized” by the poor research of the Republican Party in the past, he said, so he did his own research before the meeting, using the commercial website BeenVerified and his frequent downloads of records from the State Board of Elections.

He easily confirmed the person identified with a felony had been convicted in early October, but he could only confirm that one of the seven people accused of voting in two states had done so. The others seemed to be cases of confusing a Jr. and Sr. or some other form of “mistaken identity,” he said. He was disappointed that the McCrory/NCGOP legal team “didn’t do their research to sort it out,” and he wrote them a memo criticizing their inferior work.

***“I was left to hang out to dry. . . . [The McCrory/NCGOP legal team] didn’t do their research.” - Jerry Reinoehl, local Republican who filed the protest***

At the preliminary hearing on November 21, Reinoehl presented some information, but only the board chair supported taking the matter to a full hearing; the [protests were dismissed](#) by a 2 to 1 vote. Reinoehl was unhappy the protests were lumped together into one motion, but when asked if he told the board that the focus should be on the two illegal votes he personally verified and that six of the accused were innocent, he said, “No, I didn’t let them know. I intended to withdraw those if it got past the initial hearing.” He still feels part of his protest is “going to be successful” because details about the two voters were sent to the State Board of Elections and referred to the local district attorney for further action.

One of the innocent voters doesn’t see the protest as “successful.” Betty B. Adams, accused of double voting, was outraged when she received the elections board’s notice about the charge against her. “I was literally shocked. I was upset for several days,” she said. “I was thinking about suing whoever was behind this.” She’s been involved in grassroots politics for years and is disturbed to see “things going backwards.” She called the protests part of a “voter suppression” effort.

## BUNCOMBE COUNTY

Attorney Steven Saxe of the Virginia law firm sent two protests to Buncombe County Board of Election on November 23 – nearly a week after his colleague Erin Clark learned about her faulty protest for Stokes County and several days after multiple counties dismissed protests for a lack of evidence or mistaken identity. The two protests were signed by Eldon S. (Buck) Newton III, the losing Republican candidate for Attorney General. One protest alleged a dead person cast a ballot, which turned out to mean the person died before Election Day, after casting a ballot early. The other protest from Newton said the board “must invalidate” the ballot of Earl Lordman of Asheville because he is a person “adjudged guilty of a felony.” But that accusation is completely false. Lordman is not serving a felony sentence, nor has he ever been “adjudged guilty of a felony.”

The protest against Lordman is unusual not only because it was filed after canvass day by a candidate for NC Attorney General; it was also accompanied by a sworn affidavit supporting the research behind the allegation. The affidavit from Ryan Terrill, who described himself as “the political director for the Pat McCrory Committee,” said the McCrory Committee used “publicly available data” to compare criminal conviction and voting records “to identify voters who had improperly voted due to not having active voting rights for the 2016 General Election.” And then he says, “To enhance the accuracy of these comparisons, the Pat McCrory Committee matched with multiple criteria, including both name and age information.”

The affidavit included an appendix with copies of the criminal record of “Earl Lordman Jr,” which included his age and date of birth. But the voter registration records show Earl Lordman Jr. lives at a different address in Buncombe County than the one given in the protest, which is the address for Earl Lordman Sr. Voter records confirm the ages of the two men are clearly different. Despite the sworn affidavit, the protest confused Earl Lordman Jr. and Sr. Furthermore, the criminal record provided with the affidavit shows that Earl Lordman Jr. is not even serving a felony sentence; it shows he is on probation for a misdemeanor conviction, and the sentence for his prior felony conviction was completed in May 2014. In a double mistake, the

protest confused Earl Lordman Sr. with his son, who it turns out is also eligible to vote.

Lordman Sr. was unhappy and frustrated by being falsely accused. “Why are they causing a problem where there is no problem,” he wondered. He thought “a higher threshold” of proof should be required before someone could misuse the system to put people’s names in the public record as committing voter fraud. “It’s sad,” he said. “It should be stopped.”

## WAYNE COUNTY

Albert Artis Sr. of Pikeville was accused of voting in North Carolina and Georgia by Brent Heath, chair of the Wayne County Republican Party. The protest was emailed to the Wayne County Board of Elections by Steve Roberts, an attorney for the Pat McCrory campaign with the HVJT law firm. It said that Artis’ cast an “invalid” ballot because he was “known to have voted in multiple states.” We reached Artis in February 2017 at his son’s home in Georgia. He explained that he and his wife spend several months each year in Georgia and often vote by absentee mail in North Carolina’s fall elections. Told about being accused of also voting in Georgia in 2016, he said, “That’s not right. It’s not me. They’ve got me confused with somebody else.”

Wayne County’s daily newspaper, [The Goldsboro News Argus](#), wrote about the Wayne County Board of Elections meeting where the protest against Artis was discussed, publishing his name and his hometown. “The people that filed the protest did not show up and did not present any evidence,” Wayne County Elections Director Dane Beavers told the paper. “We had no grounds to rule on so it was dismissed.”

But the accuser, Brent Heath, still thinks Albert Artis Sr. committed voted fraud. Reached at his home on March 5, 2017, Heath said that he filed the protest “in conjunction with the McCrory campaign.” He said, “They provided some information but I did the research.” He felt “confident it is accurate.” His research found that Artis voted in Georgia and was registered at the same Georgia address where his North Carolina absentee ballot was sent. When told that Artis was staying at the home of his son Albert Artis Jr. and perhaps he got the two men confused, Heath insisted

he was “absolutely” certain Artis Sr. voted in Georgia. He said “the date of birth and everything” matched up with Artis Sr. But Heath is wrong. A call to the Gwinnett County Voter Registration and Elections Office revealed that Artis Sr., age 73, is not registered, but Artis Jr. is. He’s the one who voted in the November 2016 election from the Lawrenceville, GA address, not Albert Artis Sr.

## HALIFAX COUNTY

On November 17, Steve Roberts, attorney for Pat McCrory’s campaign at the HVJT law firm, sent a protest to the Halifax County Board of Elections signed by R. J. Myrick, vice chair of the Halifax County Republican Party. In the protest, Myrick alleged that “a scheme to operate an absentee ballot mail” was funded by the state Democratic Party through a local African-American political action committee and “used to harvest ballots voting for the Democratic slate of candidates.” Myrick lists Jeff Hauser of Raleigh, then director of media affairs for the Pat McCrory campaign, as a witness of the “misconduct” which “appears to be similar to the pattern of witness signatures found in Bladen County, whereby one individual” witnesses many absentee ballots.

Myrick told Democracy NC that the protest was put together by the McCrory campaign or Republican headquarters in Raleigh. He said, “They couldn’t find anybody to sign it so I agreed. I’m retired and have the time.” He’s not sure why the county Republican Party chair didn’t sign, but they seemed in a rush to get the protest filed. “They were desperate to find someone.”

The protest named two individuals who witnessed “at least 18” and “at least 6” absentee ballots, respectively. There is no law against a person being a witness for multiple absentee voters. Nevertheless, Myrick’s protest asked the county elections board to “conduct a full investigation into these absentee ballots witnessed by multiple individuals, and review all witness signatures on these absentee ballot envelopes to look for evidence of obvious ballot harvesting.” It then declared, “The confirmation of these allegations would cast doubt on the outcome of any number of elections up and down the ballot, including the historically close race for Governor.”

At [the protest hearing](#), Halifax County Board of



Elections Chair Sandra Partin, a Republican, said she reviewed Myrick's allegations about multiple ballots witnessed by the same person. "He doesn't go on to say how this is illegal," Partin said. "It's not. The law does not put a limit on how many witnesses [there can be]. He offers no proof as to why it should be illegal." The board found no evidence of misconduct and unanimously dismissed Myrick's protest.

After the meeting, the McCrory campaign told the [News & Observer](#) that it would appeal the Halifax County ruling and that similar allegations were being filed in a total of 12 counties about illegal absentee mills funded by the Democratic Party. "The evidence of this voter fraud must be taken seriously if we are going to have any faith in our system," declared Ricky Diaz, spokesman for the McCrory campaign.

U.S. Rep. G.K. Butterfield attended the hearing in Halifax County and came away with a different conclusion. "It's obviously a coordinated effort by Pat McCrory as he is going down in defeat to find some kind of creative ways to reverse his defeat," he told the N&O. "There's a direct correlation between the counties that were selected for challenges and the active participation of black political action committees. This is targeting the African-American community and their participation in the election."

Katherine Turner, one of the two individuals named in the Halifax County protest for signing as a witness to absentee ballots, told Democracy NC that she was "really shocked how that could be voter fraud." She received a notice about the hearing but it didn't say she needed to attend, so she didn't. She didn't see how being a witness could be a crime and bristled at the insinuation that she signed or filled out ballots in place of the voter. "That never happened," she said. "When I got word that I might be charged with voter fraud, I thought 'let them bring it on' because I know I did nothing wrong." She said she found the whole experience confusing, unnerving and very unpleasant.

## BLADEN COUNTY

The McCrory-NCGOP claim about "a scheme to operate an absentee ballot mail" arose from an unusually large number of votes for a write-in candidate on the absentee ballots in Bladen County. The county board of elections began studying those

ballots and alerted the State Board of Elections of possible wrongdoing. The handwriting of one of the witness signatures often matched the handwriting on the write-in line of the ballot; if the witness helped the voter by filling in the candidate's name on the ballot, a box indicating the assistance should have been checked on the ballot envelope. There was a much bigger concern: Did the witness forge the voter's signature and illegally cast a ballot for another person?

On election night, the rumors of illegal voting caught up with L. McCrae Dowless, the incumbent candidate for Soil and Water Conservation District Supervisor. He watched the returns at the county board of elections office and saw the large number of votes for his opponent, Franklin Graham, the write-in candidate. The next day, he began asking more questions, and soon the chair of the Bladen County Republican Party called to see if he would talk with an attorney from the McCrory campaign. A handwriting expert had already been retained from the Charlotte area, and the McCrory-NCGOP team was ready to blow up her findings with a media splash and legal protest.

Dowless told Democracy NC he authorized an attorney from the HVJT law firm to sign his name to the protest and submit it to the Bladen County Board of Elections on November 15. He didn't see it or know the full extent of its allegations. The protest didn't hold back. It claimed "literally hundreds of fraudulent ballots were cast" as the result of "a massive scheme to run an absentee ballot mill involving hundreds of ballots, perpetrated by and through the Bladen County Improvement Association PAC," a political committee funded with donations from its local members, the NC Democrat Party, and Democratic candidates.

The McCrory campaign's press release said the evaluation of ballot envelopes by a handwriting expert provided "shocking evidence resulting from a blatant scheme to try to impact the voting results of an entire county and perhaps even sway statewide and federal elections," including the gubernatorial race. "With hundreds of fraudulent votes found in just one North Carolina county for a straight Democratic ticket, close examination of this election is required to make sure the true winner of the election is properly determined," said HVJT attorney Jason Torchinsky, described [in the release](#) as legal counsel for the Pat McCrory Committee Legal

Defense Fund. “The staggering evidence of voter fraud in Bladen County and the number of similar PACs that the North Carolina Democratic Party donated to shortly before the start of early vote requires close examination throughout the state.”

The State Board of Elections already had investigators interviewing voters and members of the Bladen County Improvement Association PAC (BCIAC). After countless hours of research, local meetings and protest hearings, lots of statewide media attention, and an appeals hearing in Raleigh, the truth finally came out: neither the McCrory campaign nor the state’s investigators could find a single case where a BCIAC member or volunteer forged a voter’s signature or marked the ballot against the voter’s wishes. At the end of the appeals hearing in Raleigh, the State Board members voted to dismiss the protest. (Ironically, the only evidence of a forged ballot presented at the appeals hearing pointed to a volunteer associated with Dowless’ campaign who may have voted a stolen absentee ballot.)

### **NORTHAMPTON COUNTY**

Raymond Dyer, chair of the Northampton County Republican Party, emailed his protest about an “absentee ballot mill” to the Northampton County Board of Elections. Dyer told Democracy NC that he “got the stuff” from Steve Roberts, the McCrory campaign attorney with HVJT. He acknowledged that the protest didn’t have details about his county and said Roberts explained he “couldn’t provide any because of the ongoing investigation in Bladen County.” The Northampton protest used the same language, format and general accusation as other protests about “harvesting” absentee ballots. This cookie-cutter approach often led to sloppy errors in the protests. For example, Raymond Dyer’s protest in the Northampton County included this statement: “To confirm the integrity of the absentee ballots cast in Durham County, my representative visited the county’s Board of Elections on November 16, 2016 . . . to visually inspect the absentee ballots . . . . I was denied access to visually review these documents.” It is doubtful that Dyer went to Durham to review ballots cast in Northampton County.

Dyer’s emailed protest apparently never reached the Northampton County Board of Elections. Board

director Susie Squire said she heard about the protest but never received it, so no action was taken by her board.

### **GREENE COUNTY**

Sara Sparks, chair of the Greene County Republican County Party, hand delivered her protest alleging “a scheme to operate an absentee ballot mill.” It also forgot to change “Durham County” in one part to “Greene County,” but it included specific allegations, based on research by McCrory campaign staffer Jeff Hauser, that three Greene County residents witnessed “at least 72,” “at least 11,” and “at least 10 other” ballots, respectively.

Sparks said one of the staff people with the McCrory campaign asked her to sign the protest and put her in touch with the attorney who prepared it. “I really didn’t write it or know anything about it,” she told Democracy NC. “My name is on it, but I didn’t write it.” She hand delivered it to the Greene County Board of Elections and thought they handled the protest very well.

Board of Elections director Steve Hines said his office took the time to compare the voter’s signature on absentee ballot to the signatures of the witnesses and to the signature on the voter’s registration card. They found no irregularities. In addition, the individuals named in the protest for witnessing multiple ballots took the trouble of bringing sworn affidavits to the preliminary hearing attesting that they did not sign ballots in place of voters.

### **FRANKLIN COUNTY**

Danny Pearce, a vice chair of the Franklin County Republican Party, delivered a protest about “an absentee ballot mill” to the Franklin County Board of Elections on November 17. The protest references the one filed in Bladen County and said that Emily Weeks, a staff member of the NC Republican Party in Raleigh (now press secretary for the NC GOP), “attempted to inspect absentee ballots or envelopes in Franklin County and was denied twice.”

Lisa Goswick, director of the Franklin County Board of Elections, said Emily Weeks first came on November 9, the day after the election, which shows how quickly the McCrory/NCGOP team began

taking action. Goswick asked her to come back when the crush of processing ballots slacked up a little. Pearce came several days later and received permission to look at the absentee ballot envelopes after the county board met about his protest.

Pearce told Democracy NC that he and his wife and Larry Norman, an attorney from Louisburg “sent by the Republican Party,” looked over the ballot envelopes and found “about 40” that appeared to be witnessed by the same people. Pearce said the state GOP also sent “a young guy” who took notes and “was very evasive with us.” Pearce said the protest and follow-up seemed to be coordinated through the attorney at the party, Tom Stark, who “was smack in the middle of it all.”

Pearce became more suspicious when he saw that the witnesses were also active with a local African-American group, the Franklin County PAC, which the protest said received a donation from the NC Democratic Party. He compared the handwriting on their witness signatures to the voters’ signatures and found nothing irregular. “I was hoping it would turn up something,” he said, “but nothing was found.”

## MOORE COUNTY

The protest for Moore County was sent by email from Steve Roberts of the HVJT law firm and signed by John Rowerdink, chair of the Moore County Republican Party. It declared that ballots of four individuals should be invalidated because they “were cast by the following persons known to have voted in multiple states.” Glenda Clendenin, director of the Moore County Board of Elections, said her staff researched the allegations and notified the voters about a preliminary hearing scheduled to determine if sufficient evidence justified holding a full hearing. Clendenin’s research uncovered one of the rare cases where the evidence indicated that someone did vote in two states in the 2016 general election. Kaley I. Mulder, one of the four people accused by Rowerdink, apparently voted in Florida and North Carolina – and then she moved out of the county fairly quickly. The Moore County Board of Elections has referred her case to the local district attorney and the State Board of Elections.

The other three voters accused by Rowerdink are completely innocent and still upset that he could so easily begin a legal proceeding against them with no

evidence. “I was shocked and horrified and furious to learn our name was on a list with people who were alleged to have broken a federal law,” said Anne Hughes who was accused with her husband. “There should be a higher burden before people are accused of voting in two states,” added William Hughes. “Everybody should have the same right to be able to vote. It’s the bedrock of democracy.”

The fourth voter accused, Carol Ann Turner, made a special effort to cancel her registration in Maryland before the general election. “They need to provide proof before they accuse me of voting twice,” she said about her accuser. She wondered why false claims of voter fraud are growing and getting more attention. “Where are the laws that protect those of us who haven’t done anything wrong and allow those who want to make up these stories to be able to do that?” Turner said what she feels “is disbelief, it’s anger, it’s frustration, but most of all it’s sadness that this is where we’re at.”

Rowerdink, the county Republican Party chair, has no regrets about filing the protest. “It sounded credible and I wanted to support the governor’s campaign and didn’t want fraud to occur,” he told Democracy North Carolina. He had “no problem with filing it,” but he said he withdrew the protest at the preliminary hearing because “the legal team never provided evidence to support the claims.” He said he had an email exchange with McCrory’s team before the hearing, trying to get something to back up the protest. “They were not very responsive,” he said. “They left me hanging.” Lacking anything more to present to the board, he withdrew the protest. He feels his effort was justified because the board’s staff learned through its own research that one of the voters had voted twice.

## LEE COUNTY

On November 17, attorney Steven P. Saxe of the HVJT law firm sent a protest to the Lee County Board of Elections that was signed by Charles Staley, chair of the Lee County Republican Party. The protest falsely accused one voter of voting while serving a felony sentence. Staley’s protest said he made the accusation, “Based on a review of the public records.” However, records at the NC Department of Public Safety clearly shows that the voter completed his felony sentence in January 1997, nearly a decade before the protest.

Staley told Democracy North Carolina he “spearheaded the complaint” but it came from the McCrory campaign. He didn’t try to verify the information, but after the county board determined that the accused voter had finished his sentence, Staley said he “did my own investigation.” Staley is a former probation officer and has access to a secure system to look up the status of probationers. He used that system to verify that the man was “an eligible voter.”

Staley also said he saw the whole list of people being accused as felony voters by the McCrory campaign, but he didn’t try to verify their status. “I was on the inside of it all,” he said, but he recently retired, gave up his positions with the party, and is moving with his wife to Carteret County. He still believes that McCrory won the election and that votes were illegally added in Durham County after the election to give Roy Cooper and now Attorney General Josh Stein their victories.

James W. Creacy, the voter falsely accused by Staley, didn’t like being pulled into a political fight and publicly charged with voter fraud because of a felony record from many years earlier. He wondered how he could get his record expunged so his name wouldn’t be misused and his past wouldn’t create new problems. “I’m 68 now. It’s not fair,” he said.

## BRUNSWICK COUNTY

On November 17, attorney Erin Clark, attorney for Pat McCrory’s campaign at the HVJT law firm, sent a protest to the Brunswick County Board of Elections signed by Joseph Agovino, chair of the Brunswick County Republican Party. The protest accused Joseph D. Golden of voting in two states and said it is based “Upon review of early voting files from other states.” Agovino told Democracy NC that the GOP attorneys informed him they had “ironclad” evidence that Golden voted in Maryland’s general election, so he agreed to sign the protest. However, the Brunswick County Board of Elections staff investigated and learned that Golden, although registered in Maryland earlier in 2016, did not vote there in the November election. The board notified Golden about a preliminary hearing, but said he didn’t need to change his planned trip for that day because the matter would be easily resolved.

However, Golden soon found his name on the

front page of the local newspapers as being charged with voter fraud. Someone on social media wrote, “There’s a cheater amongst us.” Golden was surprised and frustrated by the experience. “This is not how you want to begin living in a new community,” he said.

For his part, Agovino now wonders, “Why did I get myself involved in this crap.” Shortly before the hearing, he contacted the state Republican Party to get documentation from the attorney to back up the claim of double voting, but he was told “she’s left” and they had nothing for him. He felt “hung out to dry,” he told us. “I didn’t have enough information to follow through,” so on the day of the hearing, he withdrew the protest. But by then, the damage to Golden’s reputation and Agovino’s credibility had been done.

***“Why did I get myself involved in this crap”  
- Joseph Agovino, after he couldn’t get  
the attorney’s help to back up his protest***

## GUILFORD COUNTY

Three protests filed in Guilford County say they’re from William C. Porter, but underneath his signature on each one are the words “authorized by / spr,” as in Steve P. Roberts, the HVJT attorney who emailed the protests to the county board of elections. Porter is a leader in the Guilford County Republican Party and attended the preliminary hearing where the county board discussed the protests. He may have thought he was just helping Gov. McCrory, but he got an earful after the hearing from Karen Niehans, one of the people he accused of voting in two states. Several weeks later, Niehans, her husband, and two other voters falsely accused of committing fraud filed a [defamation lawsuit](#) against Porter in Guilford County Superior Court.

Karen Niehans learned about the preliminary hearing from a certified letter sent by the Guilford County Board of Elections. The letter said Mr. and Mrs. Niehans’ “eligibility to vote” had been questioned and they should attend the hearing, but attendance wasn’t required. Karen recounted other confusing aspects of the ordeal to Democracy NC, including being sworn in at the hearing and grilled by a board member, “Can you prove you didn’t vote

in another state?” Taken aback, she and her husband tried to explain they were new to the state and only voted once. Then Karen remembered she had an email exchange on her phone with an elections official in Wisconsin that included her refusing the official’s offer to send an absentee ballot. The board finally voted to dismiss the protest. On her way out, Karen [went to the back of the room](#) to confront her accuser, William Porter. “Why did you do this to us?” she demanded. He had no answer for her.

Gabriel Thabet, a registered Republican, finished parole for his felony sentence 17 years ago, but Porter accused him of illegal voting in 2016. In an opinion column published in the [Greensboro News & Record](#), Thabet said the accusation “scared me to death.” He thought he must have done something wrong, but finally realized “I was the person who was wronged.” He said he decided to “fight back” by joining the defamation lawsuit against Porter. “At the national level, accusations have been made that millions of people voted illegally in this past election. These are broad and baseless allegations with an apparent intent to intimidate people – like me – from voting,” he wrote. “Now is the time that voters fight back against false accusations.”

## ORANGE COUNTY

On November 17, Orange County Republican Party Vice-Chair Evelyn Poole-Kober accused six voters of voting in multiple states; they were mostly UNC-CH students or recent graduates. Steven Saxe of the HVJT law firm sent the protest to the Orange County Board of Elections in an email attachment. Tracy Reams, director of the elections board, followed up with Poole-Kober, who said she suspected the voters cast ballots in Maryland in addition to North Carolina. The election board staff contacted officials in Maryland and learned that, while all the voters had previously been registered there, none cast absentee or other ballots in Maryland’s general election.

Poole-Kober did not attend the preliminary hearing on November 18, and no one else provided evidence to support the protest. According to the minutes of the meeting, Board member Jamie Cox noted that “there is a complete lack of substantial evidence that indicate a violation of election laws or other irregularity or misconduct. . . . Mr. Cox felt the protest was filed to delay canvass and frivolous in nature given the fact that the protestor was not

present. Mr. Cox made a motion and Mr. Randall seconded the motion that the protest be dismissed. The motion was unanimous. The Board dismissed the protest at 11:40 am.”

Aysha Nasir, a graduate of UNC and one of the accused voters, initially suspected that her ballot was being challenged because “of my Muslim name.” It made her feel “targeted” and “awfully vulnerable” to be picked out and accused of something she didn’t do. After seeing the names of other voters similarly charged, she realized her name wasn’t the issue, but she still felt subject to arbitrary harassment. “You obey the law, you do all the stuff you’re supposed to, and then some person just randomly, without any burden of proof, can accuse you of breaking the law,” she said.

## MECKLENBURG COUNTY

On November 17, attorney Erin Clark with HVJT sent a protest to the Mecklenburg County Board of Elections signed by Brenda Brown, voter registration chair of the Mecklenburg County Republican Party. The protest accused two voters of voting while serving a felony sentence. It is based “Upon review of the North Carolina Department of Corrections active prisoner and parole database.” Brown told [WFAE-FM radio](#) that she filed the protest because “there were things in 2012 and in previous elections that concerned me, and then at the very last minute when our voter ID elections laws were overturned, I was concerned we would see that exact same problem again.” But Brown presented no evidence to back up her claims.

Freddie Williams, who Brown falsely accused of committing voter fraud, is concerned, too. He’s worried that it’s too easy to file irresponsible charges against innocent voters. He thinks “it’s a good idea” for the State Board of Elections to require people to present some evidence to back up their claim before a complaint is accepted.

## ROCKINGHAM COUNTY

Local Republican Party activist Thomas Schoolfield hand delivered his protest to the Rockingham County Board of Elections, charging three voters with voting in two states. However, all three accusations proved to be false and the board voted to dismiss the protest.

According to Tina Caldwell, director of the elections board, one of the accused voters had a different middle name and different age from the voter who cast the ballot in the second state, Washington.

The other two voters, Cheryl and James Holcombe, had voted in the Virginia primary but moved to North Carolina, registered and voted only in this state in the general election. “This is all very alarming to us,” Cheryl Holcombe said after learning that she and her husband were accused of voter fraud. Thomas Schoolfield, a trustee of the Rockingham County Community College and retired executive from Burlington Mills, didn’t want to discuss his protest with Democracy NC, saying only that it turned out there was “no record of them having voted in two states.”

## FORSYTH COUNTY

On November 17, attorney Steve Roberts with HVJT sent two protests to the CBOE signed by Linda Petrou, vice chair of the Forsyth County Republican Party. One protest named two voters who it said had died – but one of them turned out to be alive. The other protest accused two voters of voting while serving a felony sentence. “It really concerns me when I see people who aren’t eligible to vote voting,” Petrou told the [News & Observer](#). She said she would not have filed the protest “if some lawyer friends of mine hadn’t approached me.” When informed that one of her accused voters was not serving a felon sentence, she sluffed it off: “I don’t think anyone pays attention,” she told the reporter.

The falsely accused voter, Barron R. McCollum, was not amused. “They should at least find out if I’m still considered a felon instead of taking it for granted,” he told Democracy NC. McCollum said he didn’t like the fact that Petrou seemed concerned about voters she thought cheated but not about people who filed bogus protests. He was notified about the preliminary hearing, but the letter arrived after the meeting had already begun. The Forsyth County Board of Elections unanimously dismissed the protest because it received no evidence to substantiate the accusations. Petrou told the [Winston-Salem Journal](#) that the Republican attorney said she didn’t need to attend the elections board meeting. “My understanding was that they had all the information they needed,” she said. “Something fell through the cracks.”

## JOHNSTON COUNTY

Denise Rentz, now chair of the Johnston County Republican Party, told Democracy NC she read the protest via email and authorized attorneys at the HVJT law firm to sign her name and submit it on November 17. She was not sure whether the law firm represented the McCrory campaign or NC Republican Party. The two were “on the same page, working together,” she said.

Rentz’s protest is one of several submitted with a signature and then the initials of a Holtzman Vogel attorney under the signature. In this case, the initials are EC, presumably for Erin Clark, although Rentz said Clark is not the woman she talked with; it may have been Gabriela Fallon, an associate at the firm who handled protest submission in a few other counties.

On November 18, the scheduled day for canvass, the Johnston County Board of Elections discussed the protest, read relevant statutes, and made an initial conclusion that it amounted to a late challenge of the registration eligibility of four voters based on their alleged felony convictions, not a protest asserting an irregularity or mistake that might influence the election outcome. One board member said it looked like an effort “to shoehorn challenges that have passed their deadline into a protest.” Since the canvass had to be postponed for other reasons, the board delayed their decision and eventually forwarded the protest to the State Board of Elections.

Rentz thought the county board handled everything properly and “professionally.” She agreed that the basic problem was “the lawyers didn’t submit the paperwork properly.” She thought it was “too bad” that the county couldn’t do anything to disqualify the votes, but she understood that four votes would not have changed the election outcome at the county level.

Actually, at least one of the four voters accused of voter fraud is completely innocent. Johnny L. Benson is 71 years old and has a different middle initial from the 48-year-old man serving a felony sentence, who did not vote in 2016. Benson says he votes “every time” and used early voting 2016 to join his wife. He believes the board of elections should change its procedures so somebody like him can’t be so easily accused of a crime.

## GRANVILLE COUNTY

Floyd Adsit, chair of the Granville County Republican Party, recalled working with “a hired gun out of Virginia” – an attorney named “Steve” – to prepare a protest and have it filed. Tonya Burnette, director of the Granville County Board of Elections, said she received the protest as an attachment to a November 17th email from Steve Roberts of the HVJT law firm. The protest accused one voter of voting while being “adjudged guilty of a felony.”

Burnette forwarded information about the voter to the county sheriff, who wrote back that a search of the voter’s name and birthdate established that he “has not been convicted of any felony charge.” Adsit told Democracy NC that he initially “got information from the attorney” about the voter’s felony conviction, but upon receiving a copy of the sheriff’s statement, Adsit immediately sent Burnette a memo withdrawing his protest – the same day it was filed. “I didn’t have reason to doubt the sheriff. I know him,” said Adsit. “That was enough for me.”

## WAKE COUNTY

Charles Hellwig, now chair of the Wake County Republican Party, filed three protests that were emailed to the county board of elections on November 17 by Gabriela Fallon of the HVJT law firm. One protest named two voters who the county board confirmed died after they cast early ballots. Another protest named three “persons adjudged guilty of felony” who cast “invalid ballots” – except two of the three were obvious cases of mistaken identity; the innocent voters had family members with different ages on felony probation.

The third protest listed 22 individuals accused of voting in Wake County and in another state in the November 2016 election. At the preliminary hearing, an attorney for the McCrory campaign presented a spreadsheet with information about the voters and people with similar names who supposedly voted in another state. The spreadsheet included obvious mismatched names and it listed the majority of voters as all voting in Maryland on the same day. By a 2-to-1 vote, the Wake County Board of Elections dismissed the protest. Subsequent research confirmed the bogus quality of the spreadsheet.

Robert Chadwick, who moved to North Carolina from Virginia, was disturbed to learn he was on the list of alleged double voters. “It was a total shock,” he said. “Someone just randomly pulled my name out of a hat and said, ‘That guy cheated.’ It really hurt me.” He thought the current process makes it too easy to claim someone committed voter fraud without any evidence. He added, “Whatever needs to be done to stop this in the future, I think now is the time to let’s push this button and make that happen.”

## BEAUFORT COUNTY

Joseph Knox volunteered with the McCrory campaign throughout the summer and fall of 2016, and at age 20 he served as the youngest delegate in the nation to the Republican National Convention. He told Democracy NC that Robert Andrews, state grassroots director for the McCrory campaign, asked him to file a protest being prepared by attorneys and he agreed. Erin Clark of the HVJT law firm sent the protest to the county board of elections by email on Saturday, November 19. It listed three voters “adjudged guilty of a felony” and said their ballots should be disqualified.

*The Washington Daily Times* published the names of the three voters in its [November 22](#) edition, but later that day, the county board dismissed the protest. In a front-page story on [November 23](#), the newspaper said, “Knox, who wanted [the three] ballots excluded from vote counts, failed to appear at the preliminary hearing conducted by the board.”

Knox told Democracy NC that the attorney said he didn’t need to show up at the hearing. When he learned the protest was dismissed, he notified the attorney and was told “they would try to follow up.” He didn’t hear anything later from the attorney; meanwhile, he did hear from several friends and party members who chastised him for not attending the meeting. That attention really bothered him. “I was between a rock and a hard place,” he said. The attorneys said he didn’t need to attend to defend the protest, but the county board “threw it out” because no evidence was presented to back up the charges.

It’s doubtful that Knox will jump so quickly to accuse people of voter fraud in a legal document. That’s good – but it’s a little late for one of the people Knox falsely accused and the newspaper named as possibly linked to voter fraud. Sylvester

D. Ore is not serving a felony sentence and has not lost his right to vote. “I don’t like it,” he said about being accused of fraud. “That’s saying I’ve gotten involved with wrong kind of people. That’s not me!”

## HARNETT COUNTY

B. Carolyn Elmore, vice chair of the Harnett County Republican Party submitted her protest by hand to the county board of elections on November 18, 2016. She accused Michael Conwell of voting while being “adjudged guilty of a felony.” The elections staff

investigated the protest and quickly found that Conwell was not serving a felony sentence. In fact, his supervised probation for a misdemeanor conviction had ended; his status with the NC Department of Public Safety is shown as “inactive” on its public search site.

Elmore didn’t want to talk with Democracy NC about her protest. “That was five months ago,” she said. “I’ve put that behind me.” But Conwell is still unhappy he was falsely accused of voter fraud. “It was wrong,” he said. “It should never have happened.” ■

County	Protestor	Category	Number Voters
Alamance	Carter	Felony Sentence	2
Alamance	Carter	Voted 2 States	1
Alexander	Sims	Deceased	1
Beaufort	Knox	Felony Sentence	3
Bertie	Terry	Felony Sentence	1
Bladen	Dowless	Absentee Fraud	~275
Brunswick	Agovino	Voted 2 States	1
Buncombe	Newton	Deceased	2
Buncombe	Newton	Felony Sentence	1
Burke	Parris	Deceased	3
Cabarrus	Kennedy	Deceased	5
Cabarrus	Kennedy	Felony Sentence	1
Carteret	Newton/ Pruett	Felony Sentence	1
Cleveland	Bowland	Felony Sentence	1
Craven	Mischka	Deceased	2
Craven	Mischka	Felony Sentence	1
Cumberland	Reinoehl	Felony Sentence	1
Cumberland	Reinoehl	Voted 2 States	7
Davidson	Younts	Deceased	1
Durham	Posthill	Absentee Fraud	0
Durham	Posthill	Felony Sentence	7
Durham	Posthill	Voted 2 States	17
Forsyth	Petrou	Deceased	2
Forsyth	Petrou	Felony Sentence	2
Franklin	Pearce	Absentee Fraud	42
Granville	Adsit	Felony Sentence	1
Greene	Sparks	Absentee Fraud	~94

County	Protestor	Category	Number Voters
Guilford	Porter	Deceased	1
Guilford	Porter	Felony Sentence	8
Guilford	Porter	Voted 2 States	9
Halifax	Myrick	Absentee Fraud	~24
Halifax	Myrick	Felony Sentence	1
Harnett	Elmore	Felony Sentence	1
Hoke	Hartman	Felony Sentence	1
Iredell	Corbin	Deceased	3
Jackson	Hammond	Felony Sentence	1
Johnston	Rentz	Felony Sentence	4
Lee	Staley	Felony Sentence	1
Mecklenberg	Brown	Felony Sentence	2
Moore	Rowerdink	Voted 2 States	4
New Hanover	Anderson	Absentee Fraud	0
New Hanover	Sengsoul- avong	Felony Sentence	2
Northampton	Dyer	Absentee Fraud	0
Orange	Poole- Kober	Voted 2 States	6
Person	Wrenn	Deceased	1
Rockingham	Schoolfield	Voted 2 States	3
Stokes	McBride	Felony Sentence	1
Wake	Bunn	Absentee Fraud	0
Wake	Hellwig	Deceased	2
Wake	Hellwig	Felony Sentence	3
Wake	Hellwig	Voted 2 States	22
Wayne	Heath	Felony Sentence	1
Wayne	Heath	Voted 2 States	1