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Congress of the United States

House of Representatives COMMITTEE ON HOUSE ADMINISTRATION

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ONE HUNDRED SIXTEENTH CONGRESS

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October 01, 2020

VIA POSTAL MAIL WITH COPY TO ELECTRONIC MAIL

Mr. Damon Circosta
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Raleigh, NC 27611-7255

Ms. Stella Anderson
Board Secretary
North Carolina State Board
of Elections
P.O. Box 27255
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Mr. Jeff Carmon
Board Member
North Carolina State Board
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Ms. Karen Brinson Bell
Executive Director
North Carolina State Board
of Elections
P.O. Box 27255
Raleigh, NC 27611-7255

Dear Board Members Circosta, Anderson, and Carmon and Executive Director Bell:

As Ranking Member of the U.S. House of Representatives Committee on House Administration, which has broad jurisdiction over election issues, I write to you to share my concerns regarding the North Carolina State Board of Elections' ("NCSBE") proposed settlement with North Carolina Alliance for Retired Americans. This letter addresses this proposed settlement and requests a response to reassure me, as well as the voters of North Carolina, that—despite the ill-advised timing of these proposed changes—the NCSBE will conduct this election fairly and impartially.

The NCSBE boldly proclaims that it “. . . is the state agency charged with the administration of the elections process . . .”¹ Presumably, this means a *free, fair and equitable* elections process, yet—unbelievably—*mere weeks* before Election Day and after nearly 320,000 North Carolinians *have already voted*,² the NCSBE is attempting to change the rules of the election. Recently, the NCSBE entered into a proposed settlement with an organization represented by unabashed Democratic lawyer Marc Elias, who is arguably one of the most partisan political operatives in the election bar and represents a veritable laundry list of Democratic Party organs and affiliated groups. To be clear, Mr. Elias is not focused on good governance; rather, he traverses the country, picking up clients sympathetic to his main goal, which is to score victories for

¹ *About NCSBE, North Carolina State Board of Elections*, <https://www.ncsbe.gov/about-ncsbe>.

² See *infra* n. 7.

Democrats in court,³ even when those ideas have been defeated at the ballot box. Yet, he is the person to whom NCSBE has chosen, by virtue of this settlement, to abdicate its responsibility to administer a free, fair, and equitable election. Since the North Carolina General Assembly has already rejected a number of the policies in this proposed settlement,⁴ and state and federal courts have *also* ruled against such drastic changes,⁵ I am left with no other obvious explanation for the Board's actions than partisan politics. Apparently, the NCSBE is focused more on scoring baseless political points by kowtowing to the Democrats' hired gun than administering an election North Carolinians can trust.

Regardless of the Board's motivations for these changes, there is simply *not enough time* to implement them four weeks before Election Day and equally for all voters. This election is already underway, and our Constitution demands that all North Carolinians cast their ballot under the same set of rules.⁶ As of the date of this letter, nearly 320,000 North Carolinians have voted,⁷ and hundreds of thousands more have requested ballots. Local elections officials are *already* administering this election, and any sort of massive, last-minute course correction is sure to cause confusion, leading to election administration errors and omissions at the expense of North Carolina voters. If, after the election, the Board feels that these policies merit further consideration, it should work through the appropriate, lawful channels and engage in the appropriate voter education. But the middle of an election is never the time to change the rules. Such mid-stream changes are neither fair nor equitable and risk disenfranchising voters who—understandably—may not realize that the rules have shifted under their feet.

This sort of political gamesmanship with something as important as the vote is wholly unacceptable. North Carolinians understand better than most the need for careful and transparent election administration free from political games, and the NCSBE should focus its efforts on these

³ *Marc E. Elias, Perkins Coie*, <https://www.perkinscoie.com/en/professionals/marc-e-elias.html> (“Marc represents dozens of U.S. senators, governors, representatives and their campaigns as well as the Democratic National Committee, Democratic Senatorial Campaign Committee, Democratic Congressional Campaign Committee, National Democratic Redistricting Committee, Priorities USA, Senate Majority PAC and House Majority PAC. Marc served as general counsel to Hillary Clinton’s presidential campaign in 2016 and John Kerry’s presidential campaign in 2004.”) *See, e.g., States, Democracy Docket*, <https://www.democracydocket.com/states/>; *Meet the Team, Democracy Docket*, <https://www.democracydocket.com/about-us/meet-the-team/>.

⁴ In June, legislators addressed pandemic concerns by passing House Bill 1169 which amends the two witness requirement for submitting an absentee ballot down to one. N.C. Gen. Stat. S.L. 2020-17. The Executive Director of Common Cause NC, a left-leaning nonprofit, said the bill was “...a significant and positive step toward ensuring every voter is able to safely and securely cast a ballot in their year’s elections.” Bryan Warner, *Common Cause NC statement on enactment of bipartisan bill to prepare state for elections amid COVID-19*, Common Cause, (June 2020), <https://www.commoncause.org/north-carolina/press-release/common-cause-nc-statement-on-enactment-of-bipartisan-bill-to-prepare-state-for-elections-amid-covid-19/>.

⁵ *See Chambers v. North Carolina*, No. 20 CVS 500124 (Wake Cnty. Super. Ct.); *See also Democracy North Carolina et al v. North Carolina State Board of Elections et al*, No. 1:2020cv00457 (M.D.N.C. 2020). Order Ct. Finds Status Conference Necessary, pg. 10, *Democracy N.C. v. N.C. State Bd. of Elections*, No. 1:20CV00457 (M.D.N.C. July 27, 2020) (“to the degree this court’s order was used as a basis to eliminate the one-witness requirement, this court finds such an interpretation unacceptable”).

⁶ U.S. Const., Amend. XIV. *See also Bush v. Gore*, 531 U.S. 98 (2000).

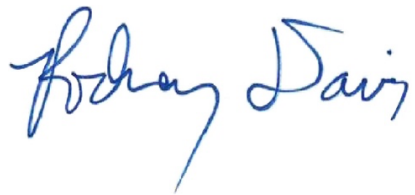
⁷ *N.C. Absentee Statistics for the 2020 General Election (Oct. 2, 2020)*, N.C. State Bd. of Elections, https://s3.amazonaws.com/dl.ncsbe.gov/Press/NC%20Absentee%20Stats%20for%202020%20General%20Election/Absentee_Stats_2020General_10022020.pdf

admirable and necessary goals. You might recall that the state saw a massive election scandal unfold in 2018 when political operatives tampered with thousands of unlawfully harvested ballots,⁸ destroying the legitimacy of an election and leading to the NCSBE's appropriate refusal to certify the election in North Carolina's 9th congressional district. Importantly, had the NCSBE instead certified that election, this Committee would have exercised its authority to conduct an investigation on behalf of the U.S. House of Representatives and made a recommendation to the full House whether to seat either candidate or to order a new election.⁹ In light of the serious election administration concerns laid bare by this proposed settlement, we will not hesitate to exercise our constitutional authority now or in the future to ensure that congressional elections are administered with integrity and fairness in North Carolina.

These recent developments have left me deeply concerned about the administration of this election in North Carolina. Please respond with a detailed explanation describing how the Board will address these concerns and ensure this election is administered with fairness and equity in North Carolina.

Please submit your response to my office by October 12, 2020. If you have any questions, please contact my staff at the Committee on House Administration at (202) 225-8281 and ask for Caleb Hays, Chief Legal Counsel for Elections.

Sincerely,



Rodney Davis
Ranking Member

CC:

Kathy Holland,	Director, Alamance County BOE
Patrick Wike,	Director, Alexander County BOE
Sherry Dawson,	Director, Alleghany County BOE
Sherry Melton,	Director, Anson County BOE
John Shepherd,	Director, Ashe County BOE
Sheila Ollis,	Director, Avery County BOE
Kellie Harris Hopkins	Director, Beaufort County BOE
Sheila Holloman	Director, Bertie County BOE

⁸ N.C. Gen. Stat. Ann. § 163-226.3, "It shall be unlawful: (5) For any person to take into that person's possession for delivery to a voter or for return to a county board of elections the absentee ballot of any voter, provided, however, that this prohibition shall not apply to a voters' near relative or the voter's verifiable legal guardian."

⁹ See 2 U.S.C. §§ 381-396. See also U.S. Const., Art. 1, § 5.

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Damon Circosta, Stella Anderson, Jeff Carmon, and Karen Brinson Bell

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Director, Yancey County BOE