

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

SANDRA LITTLE COVINGTON, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 1:15-cv-399
)	
THE STATE OF NORTH CAROLINA, et al.,)	
)	
Defendants.)	

**POSITION STATEMENT BY
THE STATE OF NORTH CAROLINA AND THE STATE BOARD OF ELECTIONS
DEFENDANTS IN RESPONSE TO THE COURT’S JUNE 9 NOTICE; RESPONSE TO
PLAINTIFFS’ MOTION TO SET DEADLINES FOR REMEDIAL PLAN AND
PLAINTIFFS’ MOTION FOR EXPEDITED EVIDENTIARY HEARING**

INTRODUCTION

The Supreme Court has summarily affirmed this Court's judgment that 28 state legislative districts drawn by the North Carolina General Assembly are unconstitutional racial gerrymanders. *North Carolina v. Covington*, 137 S. Ct. 1624, 1625 n.* (2017).

The Supreme Court has also asked this Court to reconsider whether a special election would be a proper remedy for the General Assembly's unconstitutional districting. *Id.* at 1625-26. Specifically, the Supreme Court has directed this Court to consider "the severity and nature" of the constitutional violation, "the extent of the likely disruption to the ordinary processes of governance if early elections are imposed," and "the need to act with proper judicial restraint when intruding on state sovereignty." *Id.* at 1626.

On June 8, Plaintiffs moved that this Court (1) set a hearing on the need for and feasibility of holding a special election before the 2018 elections and (2) set a series of deadlines to develop a remedial districting plan. (Docs. 150, 151.)

The next day, this Court directed Defendants to respond to Plaintiffs' motions. The Court also invited Defendants to discuss how the factors stated by the Supreme Court apply in the circumstances of this case. (Doc. 153 at 3-4.) The Court also invited Defendants to address, among other points, what steps the State has taken to comply with this Court's August 11, 2016, order, and whether the State is entitled to additional time to comply with that order. *Id.* at 4.

The State Defendants¹ respectfully offer this response to the Court's June 9 order and Plaintiffs' June 8 motions.

¹ The State Defendants who are filing this response are the State of North Carolina ("the State") and the State Board of Elections and its members, all of whom have been sued in their official capacities ("the State Board"). Under a recently enacted state statute, the Bipartisan State Board of Elections and Ethics Enforcement has replaced the State Board of Elections. *See*

The State does not dispute the severity of the harms that flow from unconstitutional gerrymandering. Even so, a special election would disrupt the ordinary processes of state government and would intrude to some degree on state sovereignty. But should the Court decide that the nature and severity of the harms found in this case justify such a remedy, the State and the State Board stand ready to implement it.

The State takes no position on the schedule for the creation of a remedial map-drawing plan, but it believes that a swift decision on a remedy would advance the public interest. To devise that remedy, the Court should follow fair procedures that will allow the Court to hear from all parties and to gather any further information the Court needs.

The General Assembly has scheduled two “special sessions” to commence on August 3, 2017 and September 6, during which it can respond to “actions related to litigation concerning the districts for . . . State House [and] State Senate.” Resolution 2017-12, §§ 1.2(4) (session commencing on August 3), 2.2(7) (session commencing on September 6).

The State Board takes no position on the merits of Plaintiffs’ motions or on the questions posed by the Court in its June 9 order. The Declaration of Kim Westbrook Strach (Ex. A) is offered with this position statement, and the State Board staff stands ready and willing to assist the Court by providing further information as the Court finds necessary.

2017 N.C. SESS. LAW 6, sec. 4(c). The new Bipartisan Board does not yet have members appointed to it.

The Attorney General of North Carolina represents the State and the State Board of Elections defendants in this case. Section IV of this response discusses this issue.

ARGUMENT

I. The Public Interest Calls for a Prompt Decision on the Schedule for Map Drawing and Elections.

The State acknowledges that racially gerrymandered districts constitute a severe constitutional violation. The State takes no position on whether the severity of the constitutional violation found by this Court warrants a special election before the scheduled 2018 elections. Nor does the State take a position on a preferred schedule for map drawing.

The State believes that the public interest is best served by a prompt decision on the schedule for map drawing and on whether any other remedies, including special elections, will be required before the scheduled 2018 elections. A decision on these issues will give the State, the State Board, candidates, and voters the ability to plan and prepare for whatever remedy the Court finds appropriate.

A special-elections remedy would undoubtedly cause some disruption to the governance of North Carolina and would intrude on state sovereignty to some degree. However, if the Court finds that any disruption or intrusion is outweighed by the need to remedy the constitutional violation, the State and the State Board stand ready to administer that remedy.

A. The Formation of 28 Racially Gerrymandered Districts Has Caused a Severe Constitutional Violation.

The General Assembly's 2011 districting maps created 28 racially gerrymandered state legislative districts; the gerrymander affected 19 House of Representatives districts and nine Senate districts. As this Court has stated, this racial gerrymandering has caused North Carolinians to suffer "severe constitutional harms." *Covington*, 316 F.R.D. 117, 177 (M.D.N.C. 2016), *aff'd*, 137 S. Ct. 1624, 1625 (2017).

Since the General Assembly enacted the 2011 maps, the State has had three election cycles for the General Assembly. The State vigorously defended those maps against constitutional challenge. However, this Court and the Supreme Court concluded that the challenges had merit. In light of these findings, the State acknowledges that racially gerrymandered districts constitute a severe constitutional violation.

B. A Special Election Would Disrupt the Ordinary Processes of State Governance.

The Supreme Court has also asked this Court to consider the extent of the likely disruption to the State if early elections are imposed. *Covington*, 2017 WL 2407467, at *3.

The extent to any disruption is, to some extent, dependent on the timing of early elections. Any special election should occur while the General Assembly is in recess. After a special election, the General Assembly would then convene for and carry out its 2018 legislative session in the ordinary course.

A special election would require special procedures, which may require this Court to issue special orders that would minimize the associated disruption. The General Assembly's current legislative session adjourned on June 30. The General Assembly is expected to reconvene for its 2018 legislative session on May 16, 2018. Resolution 2017-12, § 3.1. To avoid interrupting the regularly scheduled business of the General Assembly, if this Court were to order a special election, it should be scheduled to take place no later than March 2018. If a general election were to occur after January 30, 2018, it would likely require some adjustments to the 2018 election cycle. N.C. Gen. Stat. § 163-106.

An estimate for the likely expense to counties of carrying out a special election is approximately \$9.5 million for the primary election and \$9.5 million for the general election. (Doc. 136-3 ¶¶ 41-44.) This estimate includes expenses related to printing and counting ballots,

securing early-voting sites, administering the absentee-balloting process, administering operations on Election Day, and canvassing. (Doc. 136-3 ¶¶ 41, 44.) The estimate is based on experience from 2014, which included a statewide election for federal and state offices, including the United States Senate. Here, a special election would be of more limited scope than the 2014 election.

The record shows that a special election could take place no earlier than 26 weeks after legislative maps are final. (Doc. 136-3 ¶ 38; Declaration of Kim Westbrook Strach (Ex. A) ¶ 3.) This period includes 13 weeks to prepare for the primary election and 13 weeks to prepare for the general election. (Doc. 136-3 ¶ 38; Ex. A ¶ 3.)

In sum, a new election would require special procedures and would impose financial costs to counties as well as to the State. However, if the Court orders the State to hold a special election before the scheduled elections in 2018, the State and the State Board stand ready to administer that remedy.

C. A Special Election Would Intrude on State Sovereignty, But May Still Be Appropriate.

The Supreme Court has also asked this Court to consider the intrusions on state sovereignty that would result from ordering a special election. *Covington*, 2017 WL 2407467, at *3.

Holding a special election would intrude on the sovereignty of North Carolina, because it would require temporarily suspending provisions of the North Carolina Constitution. A special election would temporarily shorten the terms of certain legislators from two years to one. *See* N.C. Const. art. II, § 6 (establishing two-year terms for legislators). Because suspending this and other constitutional provisions would disrupt the State's usual procedures for governing itself, this Court should not lightly set these provisions aside—even temporarily.

Should the Court order a special election to take place before the scheduled 2018 elections, the State and State Board stand ready to comply.

II. The State Has Not Yet Drawn New Maps.

The August 11 order directed “the North Carolina General Assembly to draw remedial districts in their next legislative session to correct the constitutional deficiencies in the Enacted Plans.” 316 F.R.D. at 177. The order, however, did not set a more specific deadline for compliance. *See id.*

On June 29, the General Assembly adjourned but scheduled two special sessions to begin on August 3 and September 6, 2017. Resolution 2017-12, §§ 1.2(4), 2.2(7). During these two sessions, the General Assembly can consider redistricting. *Id.* The General Assembly has also appointed members to the House and Senate redistricting committees, and leaders have committed to finishing new maps by mid-November.²

III. The Attorney General Represents the State and the State Board.

This Court has also asked the parties to address which defendants have authority under state law to address the above questions on behalf of the State. (Doc. 153 at 4.) This section addresses that issue.

Under North Carolina law, the Attorney General of North Carolina represents the State of North Carolina, as well as the State Board. The Attorney General’s authority to represent the State has overlapping roots in the North Carolina Constitution, common law, and statutes. Under the North Carolina Constitution, the Attorney General is an independently elected executive-branch officer whose authority includes powers that existed at common law. N.C. Gen. Stat. §

² Colin Campbell, *No Voter ID Revival Before Lawmakers Left Raleigh*, News & Observer (July 1, 2017), available at <http://www.newsobserver.com/news/politics-government/politics-columns-blogs/under-the-dome/article159235729.html>.

114-1.1; see *Steelman v. City of New Bern*, 184 S.E.2d 239, 241 (N.C. 1971) (“common law” refers to the “common law of England as of the date of the signing of the Declaration of Independence”).

At the core of the Attorney General’s powers is “the common law duty to prosecute all actions necessary for the protection and defense . . . of the sovereign people of North Carolina.” *Martin v. Thornburg*, 359 S.E.2d 472, 479 (N.C. 1987); cf. *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 609 (1982) (holding that the Commonwealth of Puerto Rico, acting through its Attorney General, has parens patriae standing to “protect its residents”). This means that the Attorney General has the common-law authority “to appear for and to defend the State or its agencies in all actions in which the State may be a party or interested.” *Martin*, 359 S.E.2d at 479.

In keeping with these principles:

- Section 114-2(1) of the North Carolina General Statutes entrusts the Attorney General “to appear for the State in any . . . court or tribunal in any cause or matter, civil or criminal, in which the State may be a party or interested.” N.C. Gen. Stat. § 114-2(1) (2015).
- Section 114-2(2) entrusts the Attorney General “to represent all State departments, agencies, institutions, commissions, bureaus or other organized activities of the State which receive support in whole or in part from the State.” *Id.* § 114-2(2).
- Finally, the Attorney General, on request of a state officer or employee, may represent that officer or employee when he is sued “on account of an act done or

omission made in the scope and course of his employment” for the State. *Id.*
§ 143-300.4.

Section 147-17 of the General Statutes creates possible exceptions to these duties, but those exceptions do not apply here. That statute provides that the Governor of North Carolina may “employ private counsel as he may deem proper or necessary to represent the interest of the State.” *Id.* § 147-17(a). The Governor may also employ outside counsel for state agencies and officers, but only on an express condition: “if the Attorney General has advised him . . . that it is impracticable for the Attorney General to render the legal services.” *Id.*

Here, the above powers of the Governor are not in use. The Attorney General has not advised the Governor that it is impracticable for him to represent the State Board or its former members, nor has the Governor employed outside counsel for the State.

In sum, the Attorney General represents the State, as well as the State Board, in this case.³

CONCLUSION

For the reasons stated above, the State respectfully requests a swift decision on the issues before the Court and stands ready to administer whatever remedy the Court determines to be appropriate.

This 6th day of July, 2017.

JOSH STEIN
ATTORNEY GENERAL

/s/ Alexander McC. Peters

³ In this case, the plaintiffs have sued four individual legislators in their official capacities. (Doc. 11 at 1-2.) These legislators are not represented by the Attorney General. Rather, these legislators are represented by outside counsel of their choosing, consistent with a recently amended statute that governs the retention of private counsel by the General Assembly. *See* N.C. Gen. Stat. § 120-32.6(a), *as amended by* 2017 N.C. SESS. LAW 57, sec. 6.7.

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CERTIFICATE OF SERVICE

I, Alexander McC. Peters, hereby certify that I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will provide electronic notification of the same to the following:

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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
NO. 1:15-CV-00399**

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

**DECLARATION OF
KIM WESTBROOK STRACH
(June 13, 2017)**

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

1. I am over 18 years of age, legally competent to give this declaration and have personal knowledge of the facts set forth in it.
2. I am the Executive Director of the North Carolina Bipartisan State Board of Elections & Ethics Enforcement (“State Board”), a new agency combining statutory duties formerly assigned to the State Board of Elections, State Ethics Commission, and certain lobbying compliance officers within the Secretary of State’s Office. Prior to the merger, I served as Executive Director of the State Board of Elections from May 2013 through May 2017. I remain the Chief State Elections Officer for North Carolina for purposes of coordinating compliance under the National Voter Registration Act of 1993, and I remain responsible for the administration of elections in North Carolina.

3. I have reviewed my declaration of October 28, 2016 (the “2016 Declaration”) and incorporate its contents herein, (**Exhibit A**), as follows:

<i>Section</i>	<i>Paragraphs</i>
Role as Executive Director.....	3
Overview of the 2016 Election Cycle for the General Assembly.....	4-12
Logistical Considerations regarding a Special Election for the General Assembly in 2017.....	13
2017 Election Cycle.....	14-16
Geocoding Changes: 21 days.....	17-20
Ballot Preparation and Proofing: 3 weeks.....	21-25
Burning Media: 2 weeks.....	26-28
L&A Testing: 2 days.....	29-31
Absentee Voting & Final Preparations: 50 days.....	32-34
Canvass Process: 3 weeks (without protests)	35-37
Special Elections Scenarios.....	38-39
Costs.....	40-47
Unification of the Election Calendar and Voter Expectations.....	48-52

4. This submission updates the Court on relevant developments that have occurred since my 2016 Declaration. As before, estimated timelines will vary, depending upon the scope and complexity of new districting efforts, including whether any special election is statewide or confined to particular districts.

5. The State Board may ordinarily act under G.S. § 163-22.2 to adopt temporary rules implementing an order of this Court. However, members of the State Board have not yet been appointed by the Governor, who has challenged legislation creating the new State Board. Staff has not been delegated authority to adopt temporary rules. Therefore, unless and until the Governor makes appointments, the State Board is unable to adjust any portion of the election schedule set by law, such as the length of the absentee voting period or the

dates of a primary or general election. Any departure from the statutory election schedule must be made either by the General Assembly or by an order of the Court.

6. I will make myself available should the Court desire logistical estimates regarding specific election scenarios, such as a reduction of either absentee voting or the one-stop early voting period, or the elimination of one or more primary elections. It is necessary presently to emphasize that all estimated timeframes in my 2016 Declaration assume scheduled municipal primaries and elections are merged in any remedial special election plans (i.e. avoiding conflicting voter registration deadlines and public confusion, while managing limited county resources). *See* 2016 Declaration at Paragraphs 48 and 49.

7. Since my last declaration, North Carolina held the 2016 General Election. More than 4.7 million voters participated, with 2.9 million ballots cast at early voting sites. The election was held November 8, with the final canvass occurring on December 15 (37 days after the election), following protest proceedings and one statewide recount. Final canvass of the March Primary occurred on May 31 (61 days after the election).

8. On April 26, 2017, I appeared before the House Committee on Elections and Ethics Law and notified members that the General Assembly's recent adoption of a 10-day canvass period (S.L. 2016-109) coupled with the court-ordered reimplementations of a 17-day early voting period created a serious logistical infeasibility: Early voting for the general election would begin before the primary canvass. Necessary statutory changes have been proposed. *See* N.C. House Bill 843 (eliminating the October municipal election, among other things). The State Board Office has created a calendar reflecting the schedule proposed in that bill. **(Exhibit B)**

9. The current municipal schedule differs from estimates provided in my 2016 Declaration because statewide elections are more complex than local municipal elections and the municipal schedule is internally inconsistent, pending adoption of legislation requested by the State Board. *See* Paragraph 8, *supra*.

10. Unless altered by the General Assembly or by an order of this Court, 50 days of absentee voting are required prior to a special primary or special general election (unless reduced to 45 days by the State Board, which is not presently appointed). *See* G.S. § 163-227.3. Thirty (30) days of mail absentee voting are required prior to a municipal election. *Id.* A reduction of mail absentee voting to fewer than 30 days does not shorten the overall election schedule, because the time estimated to complete other concurrent tasks do not compress into fewer than 30 days (ex. programming tabulators and touch-screen voting machines, logic and accuracy testing, mock election, and testing, etc.).

11. Unless altered by the General Assembly or by an order of this Court, statutes require a 17-day early voting period ending on the Saturday preceding Election Day. G.S. § 163-227.2(b).

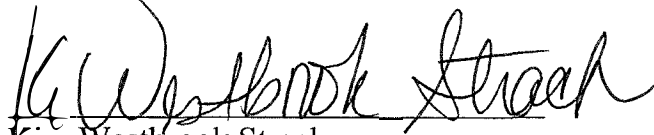
12. The beginning of early voting is the end-point by which all systems must be ready (ballot preparation, burning media, logic and accuracy testing, mock elections, etc.). I have reviewed business processes and consulted with senior staff to ensure time estimates in this declaration reflect the minimal time necessary to ensure the accuracy of elections.

13. Under current law, candidate filing for the 2018 General Election—including those seeking election to the General Assembly—will run from noon to noon, February 12 through February 28. A statewide primary election is scheduled for May 8, 2018, followed

by a general election on November 6, 2018. Proposed legislation would move candidate filing to December, though such legislation has not passed. *See* Senate Bill 655.

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

Executed this 13th day of June, 2017.

A handwritten signature in black ink, appearing to read "Kim Westbrook Strach". The signature is written in a cursive, flowing style.

Kim Westbrook Strach

Executive Director

N.C. Bipartisan State Board of Elections & Ethics Enforcement

**IN THE UNITED STATES DISTRICT COURT
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NO. 1:15-CV-00399**

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

**DECLARATION OF
KIM WESTBROOK STRACH
(October 28, 2016)**

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

1. I am over 18 years of age, legally competent to give this declaration and have personal knowledge of the facts set forth in it.
2. I am the Executive Director of the North Carolina State Board of Elections (“State Board”), a position I have held since May 2013. My statutory duties as Executive Director of the State Board include staffing, administration, and execution of the State Board’s decisions and orders. I am also the Chief Elections Officer for the State of North Carolina under the National Voter Registration Act of 1993 (“NVRA”). As Executive Director of the State Board, I am responsible for the administration of elections in the State of North Carolina. The State Board has supervisory responsibilities for the 100 county boards of elections, and as Executive Director of the State Board, I provide guidance to the directors of the county boards.

3. As the Executive Director of the State Board and Chief Elections Officer for the State of North Carolina, I am familiar with the procedures for registration and voting in this State. I am also responsible for implementing the laws passed by the North Carolina General Assembly, supervising the conduct of orderly, fair, and open elections, and ensuring that elections in North Carolina are administered in such a way as to preserve the integrity of and protect the public confidence in the democratic process.

**I. OVERVIEW OF 2016 ELECTION CYCLE
FOR THE GENERAL ASSEMBLY**

4. An election cycle requires the commitment of significant administrative resources by state and county-level elections officials, who must coordinate both primary (when required) and general election contests.

5. Candidate filing for the 2016 Elections Cycle began at noon on December 1, 2015, and ended at noon on December 21, 2015. This filing period included those seeking election to the North Carolina's 120 State House districts and 50 State Senate districts, among other offices. In all, 277 candidates filed for either State House or State Senate.

6. If a primary was required in a particular contest, an election was held on March 15, 2016 (the "March Primary"), pursuant to N.C. Session Law 2015-258, which moved the statewide primaries from May to March for the 2016 election cycle. All second primaries were canceled in order to accommodate a separate congressional primary on June 7 (the "June Primary"). See N.C. Session Law 2016-2.

7. Absentee voting for the March Primary began on January 25, 2016. The Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), and the Military and Overseas Voter Empowerment Act (MOVE), which amended UOCAVA, requires that ballots be available no later than 45 days before an election involving a federal office.¹ N.C. GEN. STAT. § 163-227.3 requires that absentee ballots be available 60 days in advance of a general election in even-numbered years and 50 days in advance of any other statewide election.

8. More than 2.3 million voters participated in the March Primary, surpassing all previous primaries in this state. The June Primary included election for candidates in sixteen partisan primaries for nominations in eleven of North Carolina’s thirteen congressional districts. Just over 509,000 ballots were cast in that election.

9. More than 55,000 voters requested absentee ballots during the March Primary, more than 3,700 of which were requested by military and overseas voters. During the June Primary, more than 15,000 voters requested absentee ballots, including more than 600 by military and overseas voters.

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

¹ Absentee ballots had already been shipped when congressional elections were enjoined pending the implementation of new district boundaries. While the federal contest was no longer active, the absentee voting period in the March Primary was run under the UOCAVA deadlines.

11. Absentee voting for the November General Election began September 9. One-stop early voting began on October 20 and will end on November 5 in accord with county plans that include more than 42,000 early voting hours across 444 one-stop sites. Early voting plans during the November General Election exceeded early voting during the 2012 General Election in total hours (16% increase) and total sites (21% increase). In the 2014 General Election, a non-presidential year, counties offered approximately 25,700 cumulative early voting hours statewide.

12. Overall participation increased roughly 4.3% between the 2008 and 2012 general elections. If a similar increase occurs in 2016, participation could surpass 4.7 million voters, a record in North Carolina.

II. LOGISTICAL CONSIDERATIONS REGARDING A SPECIAL ELECTION FOR THE GENERAL ASSEMBLY IN 2017

13. Logistical considerations affecting a special election in 2017 for seats in the State House and State Senate (“Special Election”) involve a number of complex administrative processes, statutory deadlines, and significant planning. All estimates are limited by uncertainty as to the scope of any redistricting effort, enabling legislation, and the actions of this Court, though the below estimates are based on a broad redistricting effort involving numerous jurisdictions.

2017 Election Cycle

14. There are no state or federal contests scheduled for an election in 2017, though various municipalities will hold local elections in September, October and/or

November, depending on the municipality. Municipal election dates and deadlines are not uniform across the state.

15. Furthermore, as described herein, the county elections administrators will also face the additional tasks associated with changing jurisdictional lines, and additional costs of holding an election.

16. UOCAVA and MOVE would not trigger absentee requirements for a Special Election in 2017. State law, however, would establish a 50-day absentee voting period, including one-stop early voting over a 17-day period.

Geocoding Changes: 21 Days

17. Redistricting requires both state and county elections administrators to assign individual voters to their proper jurisdiction, a largely manual process that involves changes to each voter's "geocode" in the Statewide Elections Information Management System ("SEIMS"). The complexity of reassignment procedures varies, depending on the number of jurisdictions that divide a particular county and the number of voters affected. If a county is not wholly nested within a jurisdiction, elections administrators must assign voters to new jurisdictions on a street-by-street basis within SEIMS, often requiring the use of physical maps along with the time and attention of a county board's most senior staff.

18. Until elections officials complete jurisdictional changes in SEIMS, ballot preparation and voting equipment coding cannot begin in those jurisdictions; neither can potential candidates positively identify which voters reside within the revised district. Accordingly, candidate filing activity usually occurs only after changes have been entered by county elections officials. SEIMS jurisdictional data serves as the backbone to voting

processes throughout the counties, and finalizing jurisdictional changes within SEIMS is a prerequisite to vital features of elections administration in our state.

19. While the scope of any possible approved redistricting is currently unknown, staff estimates based on recent experience indicate that geocoding could take approximately three (3) weeks, after our agency receives new jurisdiction files. Changes following the recent congressional redistricting plan affecting North Carolina's 13 congressional districts took more than two (2) weeks. This task was completed within a short timeframe because 87 counties were wholly nested within single districts. Of the remaining counties that involved more than one congressional district, no county straddled more than two districts. State-level legislative districts, by contrast, encompass 120 State House districts and 50 State Senate districts. Additional subdivisions require additional time. Without additional time, the risk of mistakes becomes higher in geocoding at the county level that could negatively affect voting in a Special Election.

20. The candidate filing for State House and State Senate is ordinarily conducted over three weeks. *See* N.C. GEN. STAT. § 163-106(c). During a special filing period designated for congressional candidates ahead of the June Primary, the General Assembly directed that filing begin at noon on March 16 and closed at noon on March 25. While it is administratively preferable for all geocoding activity to be complete prior to candidate filing—and candidates may prefer to know with certainty which voters are in their district—it may be possible to check candidate eligibility on a one-off basis while geocoding is occurring. Accordingly, the most compressed schedule would have geocoding and candidate filing occurring concurrently.

Ballot Preparation and Proofing: 3 Weeks

21. Both candidate filing and geocoding processes must be final *before* ballot preparation and election coding can begin. Because county board of elections must issue unique ballots that display the appropriate combination of contests for a particular voter, information compiled by SEIMS—including jurisdictional data and candidate information—is central to the creation of specific “ballot styles” that must be prepared, printed, and coded for proper scanning in the tabulation machines. Ballot styles ensure that each voter obtains a single ballot containing only contests in which that voter is eligible to participate. In a primary, ballot styles are used to ensure affiliated voters cannot participate in a different party’s primary. Because North Carolina recognizes three political parties (Democrat, Libertarian, and Republican), there are potentially three primary contests for each partisan office on the ballot, resulting in vastly more ballot styles in an even-year primary than in a general election.

22. The process of generating and proofing ballot styles is highly complex and involves multiple technical systems and quality control checkpoints that reach well beyond printing.

23. Each ballot style is assigned a number in order to allow a poll worker to pull and issue the correct ballot to a voter. These ballot style numbers are not generated in SEIMS but in separate voting tabulation software, which are then manually entered into SEIMS and made available to the poll worker in a poll book. This is a particularly significant tool during early voting, when there could be more than 300 unique ballot styles in a single voting location, though it is uncertain whether enabling legislation or judicial

mandate would require early voting opportunities during any Special Election. Data from SEIMS is used to code voting equipment so each machine tabulator accurately reads results from the distinct ballot styles within a particular county.

24. Changes made to jurisdictions after ballots have been coded run a risk that voters receive an incorrect ballot style containing contests in which the voter is ineligible to participate. As a safeguard against such errors, ballot styles must regenerate every time a jurisdictional change is entered.

25. Once jurisdictions are properly assigned, the time required for ballot preparation and election coding depends on the type of election. Staff informs me that ballot preparation and coding could be completed in as little as three (3) weeks, leaving no margins for error. This represents the bare minimum of time necessary, depending on the number of counties affected by redistricting. Ballot preparation and election coding during the March Primary, however, occurred over five (5) weeks, including several weekends.

Burning Media: 2 weeks

26. Once ballots are prepared and voting systems are coded, county boards of elections must load data onto physical media cards that are placed in tabulation machines, a process called “burning media.” The media cards ensure that the tabulators anticipate the layout of ballots and properly attribute votes based on the ballot markings.

27. Counties that use touch-screen voting machines—including the populous Mecklenburg County—must prepare digital ballots that will display properly and interact with the machine’s software.

28. Staff informs me that burning media and preparing touch-screen ballots ordinarily takes a minimum of two (2) weeks for a Special Election.

L&A Testing: 2 days

29. After burning media, but before the first ballot is tabulated on the first day of one-stop early voting, counties must conduct logic and accuracy testing (“L&A testing”) to ensure tabulation machines accurately read ballots. This process involves running a test deck of ballots through tabulation machines within the county and auditing results. L&A testing allows counties to assess whether tabulators recognize and properly record results for the ballot styles in that county.

30. Staff informs me that conducting L&A testing can be completed over the course of roughly two (2) days.

31. On an administrative level, it is preferable to conduct L&A testing before the absentee by mail period begins in order to avoid an improper reading due to changes in the tabulation logic as a result of L&A testing.

Absentee Voting and Final Preparations: 50 Days

32. Applicable state law would require that counties begin responding to absentee ballot requests 50 days before Election Day.

33. The 50-day absentee voting period will also include a 17-day one-stop early voting period, beginning 20 days before Election Day.

34. Approximately two (2) weeks before one-stop early voting begins, the State Board hosts a mock election during which all counties upload results into SEIMS, mimicking Election Night. These mock elections test county systems and ensure SEIMS

is accurately processing and aggregating results. The State Board also relies on mock elections to test the accuracy of its web-based elections results page.

***Canvass Processes: 3 weeks
(without protests)***

35. The finalization process for a primary would include a canvass by the county boards of election—a certification process occurring 10 days after the primary—and a final canvass by the State Board to aggregate totals in multicounty jurisdictions and to certify the accuracy of the election as a whole. State law does not designate a deadline for the State Board’s canvass of a primary election. Post-election proceedings may affect the State Board’s ability to canvass, including recounts, the filing and adjudication of elections protests, and a sample audit of election returns.

36. The deadlines to initiate certain post-election proceedings fall after the date of county canvass. Accordingly, the time needed to canvass by the county or by the State Board would not necessarily be the same as the time needed to code ballots for the next election. Assuming every effort is made to audit results and compact the timeframe of post-elections proceedings, the most conservative estimate for canvass would likely be the three (3) weeks set out by statute for a general election. It is also not certain that any recount or protest would occur, though it is difficult to overstate the effect of any lingering post-election proceeding on the effort to begin ballot preparation and election coding ahead of a general election.

37. The deadline for filing an election protest is no later than 5 p.m. on the second business day after county canvass. Under ordinary circumstances, county boards of

election hold a preliminary consideration meeting, followed by a properly noticed and transcribed hearing that results in a written order, which may be appealed to the State Board with subsequent recourse in Superior Court. Taking into consideration notice to parties, the production of transcripts, and windows of appeal, this process can take many weeks. A truncated, three-week canvass period would materially affect the recourse ordinarily available to aggrieved candidates and members of the public.

Special Elections Scenarios

38. Because the three-week period necessary to perform geocoding changes following redistricting (Paragraphs 18-21, *supra*) is equal to the estimated three-week period required to canvass an election, it is helpful for planning purposes to consider that any Special Election would require roughly 13 weeks between each Election Day. Accordingly, a Special Election requiring one primary and a general election would require that the primary be no earlier than 13 weeks after the State Board receives approved shapefiles, and the general election may be held no earlier than 26 weeks after the State board receives approved shapefiles. The same would be true for a Special Election requiring a second primary, though the general election would be pushed back at least 13 additional weeks, for an Election Day no earlier than 39 weeks after the State Board receives approved shapefiles.

39. Because it is administratively preferable to burn media and finalize L&A testing before absentee ballots are mailed, a 15-week buffer between each Election Day would be preferable in order to ensure that absentee ballots do not require a hand-eye count. Accordingly, it is preferable to plan for the first primary to take place no earlier than 15

weeks after the State Board receives approved shapefiles, with a general election planned no earlier than 30 weeks (for one primary) or 45 weeks (for two primaries) from that date.

Costs

40. Nearly all fixed costs associated with holding elections in North Carolina are born by the county boards of elections (CBEs), which are funded by their respective boards of commissioners. For municipal elections, however, state law allows CBEs to demand reimbursement from the municipality for which an election is held. In April 2015, my office communicated with a number of counties regarding cost sharing arrangements in the event a county was required to hold both a municipal election and a state-level election concurrently. A number of counties communicated concern that their municipalities would resist bearing costs if the municipal election was added to an election otherwise required. If a Special Election is ordered to occur on the same dates as a municipal election, it may be that those costs are born exclusively by the county boards of elections.

41. In April 2015, State Board staff surveyed counties to ascertain the amount of variable costs borne by the counties in the 2014 General Election. The State Board provided counties with the following examples of variable costs: printing and counting ballots, securing one-stop sites, mail-in absentee, Election Day operations, and canvassing. With 99 counties reporting, the variable costs borne by the counties in the 2014 General Election were as follows.

Total Variable Costs:	\$9,511,716.13
One-stop Early Voting:	\$2,651,455.54 (state average of \$103.56 per early-voting-hour with a wide range \$13.41—\$551.75 per early-voting-hour between counties)

42. The above figures represent the most current estimates of local variable costs associated with a North Carolina election, and do not include state-level costs.

43. Because the cost of opening all precinct locations on Election Day are relatively constant between a primary and a general election, county-level costs arising from one-stop early voting form the principle variables in estimating the combined cost of a Special Election. Non-one-stop expenses were roughly \$6.8M of the \$9.5M total, a figure that would likely remain constant for any statewide primary or statewide general election. Costs beyond one-stop early voting include expenses associated with critical aspects of elections administration and may range from securing precinct voting locations, printing ballots, coding electronic tabulators and voting systems, mail-in absentee operations, and the hiring and training of temporary precinct officials for Election Day, among other line-items.

44. A statewide primary for a Special Election would likely cost counties \$6.5M *plus the costs of one-stop early voting* at an average rate of \$103.56/hour. It is likely that a statewide general election would carry comparable costs to that in the 2014 general election: \$9.5M.

45. The number of one-stop sites across the state has steadily risen over past elections cycles, as seen below:

2010:	Primary (215 sites)	General (297 sites)
2012:	Primary (275 sites)	General (365 sites)
2014:	Primary (289 sites)	General (366 sites)
2016:	March Primary (358 sites)	General (444 sites)

46. North Carolina elections require that counties secure voting locations in 2,704 precincts. State Board records indicate that on Election Day in the 2014 General Election, nearly half of all precinct voting locations were housed in places of worship or in schools, with still more located in privately-owned facilities. Identifying and securing appropriate precinct voting locations and one-stop early voting sites can require significant advance work by county board of elections staff and coordination with the State Board.

47. For the past several election cycles, poll worker recruitment has posed a significant challenge for county-level elections administrators. State statutes impose requirements regarding the partisan make-up for judges of elections in each precinct. Often county political parties find it difficult to find individuals that are willing to serve as precinct officials on Election Day. County elections officials have found it necessary to spend more and more time recruiting early voting and Election Day poll workers, especially because technological advances in many counties now require that elections workers be familiar with computers.

Unification of the Elections Calendar and Voter Expectations

48. A Special Election in 2017 would almost certainly require special legislative action to consolidate municipal elections schedules so as to unify the election calendar across the state. Such an action may disrupt municipal processes, likely requiring that certain officials hold over until replacements are seated. State law, however, requires that voter registration be closed 25 days in advance of an election (except for same-day registrations at one-stop sites). SEIMS does not possess the capability to hold open registration for participation in certain contests while keeping the rolls closed as to all

others. Accordingly, an elections calendar that is not unified could result in as many as six 25-day periods in which the registration books are closed (150 days), the great bulk of which would be loaded into the summer and fall of 2017.

49. The public must have notice of upcoming elections. State law requires that county boards of elections prepare public notice of elections at least 45 days in advance of the election. Beyond formal notice, voters rely on media outlets, social networks, and habit both to become aware of upcoming elections and to review the qualifications of participating candidates. Decreased awareness of an election can suppress the number of individuals who would have otherwise participated and may narrow the demographic of those who do ultimately vote. Each could affect electoral outcomes.

50. Historical experience suggests that special elections result in lower voter participation. For example, a court-ordered, stand-alone 1998 September Primary for congressional races resulted in turnout of roughly 8%, compared to a turnout of 18% for the regular primary held on the regularly-scheduled May date that year. In 2004, the primary was rescheduled to July 20 because preclearance of legislative plans adopted in late 2003 had not been obtained from the United States Department of Justice in time to open filing on schedule. Both the Democratic and Republican Parties chose to forego the presidential primary that year. Turnout for the delayed primary was only 16%. The June Primary held this year drew turnout under 8%, compared to 35% during the March Primary.

51. Second primaries were not part of the 2016 cycle pursuant to a special enactment of the General Assembly as part of legislation implementing new congressional

districts. State Board records indicate that there was no second primary held in 2002 for legislative districts, nor was a second primary held in 1998 for congressional districts.

52. Jurisdictional boundaries and election dates drive our work at the State Board. Even slight changes can trigger complex and interwoven statutory requirements and involve unpredictable logistical burdens and costs borne by North Carolina's 100 counties. Our agency takes seriously its obligation to enforce fully both legislative and judicial mandates, and to work diligently to ensure decision-makers are apprised of collateral effects that may attend those decisions.

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

Executed this 27th day of October, 2016.

A handwritten signature in black ink that reads "Kim Westbrook Strach". The signature is written in a cursive, flowing style.

Kim Westbrook Strach

Executive Director

North Carolina State Board of Elections

Proposed Calendar (H.B. 843)

Date	Event	Rule
7/7/2017	Beginning of Candidate Filing	12:00 noon on First Friday in July
7/11/2017	Appointment of the CBE Board	Second Tuesday in July (For 2017 only)
7/14/2017	Resolution must be adopted to rotate names on September ballot	60 days prior to an Election or Primary
7/18/2017	End of Candidate Filing	12:00 noon on the second Tuesday following the first Friday in July
7/18/2017	Appoint precinct officials	Tuesday following the third Monday in July
7/29/2017	Publish notice for changing a precinct	45 days prior to an Election or Primary
8/13/2017	Mailing a notice for changing a precinct	30 days prior to an Election or Primary
8/13/2017	Legal Notice of Special election	30 days prior to an Election or Primary
8/13/2017	Absentee By Mail Begins	30 days prior to an Election or Primary
8/24/2017	Absentee One-Stop begins	Not earlier than the third Thursday before an election
9/8/2017	Resolution must be adopted to rotate names on November ballot	60 days prior to an Election or Primary
9/9/2017	Absentee One-Stop ends	not later than 1:00 P.M. on the last Saturday before that election
9/12/2017	1st Municipal Election	Second Tuesday after Labor Day
9/22/2017	County Canvass	Ten Days after an Election
9/22/2017	Nomination by petition of Unaffiliated Candidate	12:00 noon on the Friday preceding the seventh Saturday before the election
9/23/2017	Publish notice for changing a precinct	45 days prior to an Election or Primary
9/27/2017	Abstracts due to the state Board	Within fifteen days after a primary or election
10/3/2017	State Canvass	3 weeks after an Election (Not by statute)
10/8/2017	Mailing a notice for changing a precinct	30 days prior to an Election or Primary
10/8/2017	Legal Notice of Special election	30 days prior to an Election or Primary
10/8/2017	Absentee By Mail Begins	30 days prior to an Election or Primary
10/19/2017	Absentee One-Stop begins	Not earlier than the third Thursday before an election
11/4/2017	Absentee One-Stop ends	not later than 1:00 P.M. on the last Saturday before that election
11/7/2017	2nd Municipal Election	Tuesday after the First Monday in November
11/17/2017	County Canvass	Ten Days after an Election
11/22/2017	Abstracts due to the state Board	Within fifteen days after a primary or election
11/23/2017	Thanksgiving	Fourth Thursday of November
11/28/2017	State Canvass	3 weeks after an Election (not by statute)