

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

2011 DEC 15 PM 2:56

11-CVS-16896

MARGARET DICKSON, et al.,

WAKE COUNTY C.S.C.

Plaintiffs,

v.

ROBERT RUCHO, et al.,

Defendants.

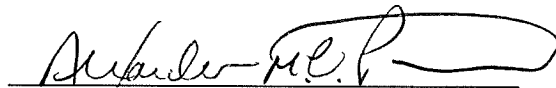
**DEFENDANTS' FIRST
NOTICE OF FILING
[OTHR]**

Defendants' respectfully file the following document, attached hereto, in support of their request that judgment be entered for them:

1. Affidavit of Gary O. Bartlett, Executive Director of the State Board of Elections.

Respectfully submitted, this the 15th day of December, 2011.

ROY COOPER
ATTORNEY GENERAL OF NORTH CAROLINA



Alexander McC. Peters
Special Deputy Attorney General
N.C. State Bar No. 13654
apeters@ncdoj.gov

Susan K. Nichols
Special Deputy Attorney General
N.C. State Bar No. 9904
snichols@ncdoj.gov

N.C. Department of Justice
P.O. Box 629
Raleigh, N.C. 27602
Telephone: 919.716.6900
Facsimile: 919.716.6763

Counsel for All Defendants

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

Thomas A. Farr
N.C. State Bar No. 10871
thomas.farr@ogletreedeakins.com

Phillip J. Strach
N.C. State Bar No. 29456
phil.strach@ogletreedeakins.com

4208 Six Forks Road, Suite 1100
Raleigh, North Carolina 27622
Telephone: 919.787.9700
Facsimile: 919.783.9412

Counsel for the Legislative Defendants

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing **DEFENDANTS' FIRST NOTICE OF FILING** in the above titled action upon all other parties to this cause by:

- [] Hand delivering a copy hereof to each said party or to the attorney thereof;
- [] Transmitting a copy hereof to each said party via facsimile transmittal;
- [X] By email transmittal;
- [X] Depositing a copy hereof, first class postage pre-paid in the United States mail, properly addressed to:

Edwin M. Speas, Jr.
John W. O'Hale
Caroline P. Mackie
POYNER SPRUILL LLP
Post Office Box 1801
Raleigh, NC 27602-1801
espeas@poynerspruill.com
johale@poynerspruill.com
Cmackie@poynerspruill.com
Counsel for Dickson Plaintiffs

Anita S. Earls
Clare Barnett
Allison Riggs
SOUTHERN COALITION FOR SOCIAL JUSTICE
1415 Highway 54, Suite 101
Durham, NC 27707
anita@southerncoalition.org
ClareBarnett@southerncoalition.org
AllisonRiggs@southerncoalition.org

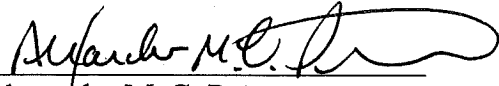
Adam Stein
FERGUSON STEIN CHAMBERS GRESHAM &
SUMTER, P.A.
312 West Franklin Street
Chapel Hill NC 27516
astein@fergusonstein.com
Counsel for NAACP Plaintiffs

Irving Joyner
Jennifer Watson Marsh
North Carolina NAACP
P.O. Box 335
Durham, NC 27702
jwmarsh1@gmail.com

Victor L. Goode
Assistant General Counsel,
NAACP
4805 Mt. Hope Drive
Baltimore, MD 21215-3297
vgoode@naacpnet.org

*Counsel for Plaintiffs NC NAACP, Davis,
Hightower, Gardenhight, Rivers, Murphy,
White, Lewis, Albert, Brown and Lanier*

This the 15th day of December, 2011.



Alexander McC. Peters
Special Deputy Attorney General

STATE OF NORTH CAROLINA

COUNTY OF WAKE

MARGARET DICKSON, et al.,

Plaintiffs,

vs.

ROBERT RUCHO, et al.,

Defendants.

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

11CVS16896

)
)
)
)
)
)
)
)
)
)
)
)

AFFIDAVIT OF
GARY O. BARTLETT

NOW COMES Gary O. Bartlett, after first being duly sworn, and deposes and says:

1. I am over 18 years of age, legally competent to give this affidavit and have personal knowledge of the facts set forth in it.
2. I am the Executive Director of the State Board of Elections ("State Board"). I was appointed on August 3, 1993, and have been reappointed every four years since that date to serve as Executive Director. I am also the Chief Elections Officer for the State of North Carolina under the National Voter Registration Act of 1993. Professionally, I served as a board member of the Elections Center, a nonprofit national organization promoting the education of elections officials. I have served on the National Task Force on Election Reform created by the Elections Center and as Co-Chair of its National Task Force on Elections Accessibility. I am an active member of the National Association of State Elections Directors. I was appointed in 2002 to a two-year term on the Federal Elections Commission Advisory Panel, a body of 20 members with experience in elections from around the country. I also serve as North Carolina's representative on the Standards Board of the United States Elections Assistance Commission.

3. My responsibilities as Executive Director of the State Board include election and campaign reporting administration for the State of North Carolina. The State Board also has supervisory responsibilities for the 100 county boards of elections. One of the most significant functions of elections administration is preparing the ballots to be used in the general election and conducting orderly and fair elections using those ballots.

4. Even-numbered years such as 2012 are major election years in North Carolina because of the number of federal, state and county offices on the ballot. In addition, 2012 is a presidential election year, and as in 2008, it currently appears that North Carolina's primary may be significant for one of the major political parties. There have been numerous news reports indicating both major political parties consider North Carolina to be a battleground state which could well increase turnout above the record set in 2008. Among the offices that will be on the ballot are:

- 170 legislative seats, including 50 State Senator offices and
120 State House of Representatives offices
- 13 seats for Member of the House of Representatives of Congress
- One seat for Supreme Court Justice
- Three seats for Court of Appeals Judgeships
- 16 Superior Court Judgeships
- 152 District Court Judgeships
- Approximately one thousand races for county offices, including County Commissioners, Clerk of Superior Court, Register of Deeds, Sheriff, School Board, and all other county offices filled by election by the people.

- Eight municipalities which, pursuant to N.C. Gen. Stat. § 160A-23.1, postponed their elections last year and will hold them this year according to the schedule for county offices

In addition, one constitutional amendment is on the statewide ballot for the May primary.

Other county ballot referenda may be on either the primary or general election ballot.

5. Candidate filing for the 2012 elections begins at noon on February 13, and ends on February 29, 2012. The primary will be held on May 8, 2012, and the general election will be held on November 6, 2012. All these deadlines are dates set by statute, and the primary and general election dates are traditional dates that have been in place for many years.

Components of the Elections Process

6. There are a number of steps in the election process necessary to accommodate the needs of voters, candidates, and elections administrators.

7. Registered voters interested in running for public office need to know which offices will be on the ballot and the area represented by each office. They need to know as early as possible the configurations of the districts in order to determine their potential for success and whether they will file for a given seat. In order to campaign effectively, a candidate must know the parameters of the district he or she is seeking to represent. Knowing the constituency is essential to evaluating the prospects of a candidacy, and requires evaluating factors such as political and grassroots support, fund raising potential, and ability to communicate with the voters. Without adequate time to prepare, potential candidates may forego seeking election. Any delays in establishing district boundaries creates an unfair and uneven playing field with a decisive advantage to wealthy candidates and incumbents. Finally, often potential candidates consider the viability of running for

more than one office before settling on the office for which they will file. Keeping all the offices on the same election schedule facilitates this decision making.

8. Voters must be educated early and often by candidates and elections officials about the districts to which they have been assigned and the candidates for office in those districts. North Carolina has over six million registered voters, and providing adequate public information about election changes such as redistricting is an arduous task. As a result of the decennial census, districts have been redrawn for not just State legislative offices and Congress, but for school board, county commission, and municipal offices as well. Because of this necessary, widespread redistricting, education about reassignments is most important in the first election following the census. In addition to educating the voters, elections officials in all 100 counties must assure that every voter is properly assigned to the correct districts and must change all address geocode ranges in their databases to reflect district changes. Since the legislative and Congressional plans and others have been precleared, counties have already begun this assignment process.

9. The State and county boards of elections will have fewer than three weeks from the close of the filing period on February 29, 2012, to the beginning of the absentee voting period for the primary to complete ballot preparation. This process requires designing the ballots and having each county's and municipality's ballots approved by the State Board of Elections, correcting and returning proofs, having ballots printed and distributing the ballots.

10. North Carolina must have adequate time for absentee ballots to be mailed to members of the armed services and their dependents living overseas and returned by them. State law now requires absentee ballots to be ready 60 days before a general election, with a possibility of shortening the period to 45 days for the primary if the State Board votes to do so and the shortened period is

precleared. N.C. Gen. Stat. § 163-22 (k). Otherwise, 50 days is required for absentee voting before a primary. Absentee balloting is scheduled to begin on March 19, 2012 for the primary. The United States Department of Defense recommends 60 days for absentee balloting in order to reach defense personnel in remote locations. There are major military installations in North Carolina that currently have personnel in Afghanistan or otherwise at heightened status because of the world situation. An adequate absentee balloting period is necessary in order to avoid the situation found in some states in which ballots were being received and counted well after election day. Thus, in calculating an election schedule, at least 45 days must be allowed before the primary and 60 days before the general election for absentee voting.

11. For the primary scheduled for May 8, first notice of this year's primary election and registration deadline must be published in local newspapers by March 24, 2012. Notices of changes of precinct or voting places must be published by that same date and individual voter notices must be mailed by April 8. April 13, 2012, is the last day to publish the third and final notice of the primary and the registration deadline for the primary. Similar notices will be required for the general election.

Concerns about Changing the Date of the Primary

12. Primaries and elections for all the offices listed in paragraph 4 are scheduled to be held on the same day to enhance voter turnout and to minimize cost to the people of North Carolina. Experience has demonstrated that special, single-office primaries or general elections normally attract much smaller voter turnout than regularly-scheduled elections or primaries in which voters cast ballots simultaneously for candidates for all offices up for election that year. In addition, each statewide election costs approximately \$5,000,000 to \$6,500,000 to implement, depending on

whether there are hotly contested races, whether a large turnout is expected so that polling place staffing requirements will be greatly increased, and the number of ballot referenda. It is premature to give a more precise estimate since there has been no filing period yet. Unbudgeted expenses for separate primaries would be of particular concern this year given the budget constraints experienced by the State and county governments.

13. Historically, North Carolina has held its primaries in the spring and only once, in 1976, voluntarily scheduled a primary as late as August. That experiment lasted for the one primary election and was never repeated by the legislature except when preclearance had not been obtained in time for the filing period to open. Candidates have found it difficult to campaign in the summer.

14. North Carolina was forced by court order to hold a stand-alone September primary for Congressional races in 1998. Turnout was abysmal, only eight percent; by contrast, turnout for the state elections held on the regularly scheduled May date was eighteen percent. (The May turnout was also adversely impacted by the removal of the Congressional races from the regular primary.) The primary was also postponed in 2002 until September with turnout of only 21%. The primary was rescheduled to July 20, 2004, because preclearance had not been obtained in time to open filing on schedule. The Democratic and Republican Parties chose to forego the presidential primary that year. *See Ex. A.* Turnout for the primary was only 16%. By contrast, the turnout was 37% in the most recent presidential election year - 2008 - when the presidential nominee of one of the major political parties was still in doubt by the time of the North Carolina primary.

15. It is significant that when the Congressional primary was held in early September in 1998, the court eliminated the second primary for the election. The second primary has not been eliminated in North Carolina and, if necessary, must be held seven weeks after the primary. It is

scheduled for June 26, 2012. Only the legislature or a court could eliminate the second primary.

16. A second primary may not realistically be held later than July 17, 2012, and still have the general election in November. If the second primary were changed to this date, the first primary would need to be held on May 19, 2012. In order to allow for a two-week candidate filing period, adequate time for ballot preparation (18 days), and forty-five days for absentee balloting, the filing period must open by March 16, 2012. Eliminating the second primary would move this timetable back so that the primary could be held in mid-July.

17. In order to open the filing period, any revisions to districting plans and any changes in the election schedule and processes would have to be precleared as well, whether they were adopted by the General Assembly or ordered by a state court. While the U.S. Department of Justice may expedite a preclearance request, there is no guarantee that they will do so and a minimum of 60 days must be allowed following the submission of a request for preclearance.

18. As explained above, there is very little unallocated time in the elections schedule between the close of filing on February 29 and the primary on May 8. Even if the ballot preparation time were shortened to 18 days, the amount considered to be the absolute minimum required, the absentee balloting period shortened by five days, and the candidate filing period shortened to eight days, only 17 days are gained. The staffs of the county and State board of elections would need to reassign voters to the correct districts if there were changes in the districts. This means that to hold the primary on May 8, precleared redistricting plans would need to be in place by February 24 and reassignment of voters would have to take place during the filing period and the ballot preparation period. A schedule this tight would put added demands on elections officials; operating under such a tight timetable can undermine the successful conduct of the elections.

19. Any change in the date of the primary would have several additional consequences I have not discussed above. First, any change in an election practice or procedure, including changing the date of an election, affecting a county covered by the preclearance requirements of the Voting Rights Act would require preclearance by the U.S. Department of Justice. This may add sixty days or more to the time it would take to implement the change. Second, it has become increasingly difficult for county boards of elections to find persons willing to serve as poll officials or workers on election day. Moving the primary into the summer months would place on the counties the additional burden of locating workers to replace “regulars” who may not be available because of the change in date. Third, it also has become increasingly difficult to find facilities that are accessible to the handicapped as required by law and that have adequate parking. There are almost 2800 precincts in the state and finding suitable, available facilities for a polling place can be very difficult. Changing the statutory date of a primary or election necessitates locating new facilities in at least some precincts because the facilities will be otherwise reserved. Finally, county boards of elections have in place contracts with printing firms, voting equipment programmers and others that may be affected by a change in the date of the primary. Printers and contractors providing elections expertise generally serve governmental bodies in other states and changes in North Carolina’s schedule can cause more conflicts to develop with commitments in other states. All of these factors will increase the cost to the State and the counties if the date of the primary is changed.

Split Precincts

20. Precincts are split by boundaries such as those for legislative, county commission, school board and similar districts. They are also split by municipal boundaries for municipal elections. Any split in a precinct adds a layer of responsibility for elections officials. Split precincts tend to affect

the urban counties the most. Split precincts are a part of elections administration that must be managed and we have done so successfully in the past. Experience has shown that split precincts cause greater difficulties in the first election after redistricting or an annexation because they are new, but that poll workers are acclimated to the changes by the next election.

21. I believe I would be doing a disservice to the Court and the voters, candidates and office holders not to identify the difficulties of changing the election schedule. I hope that North Carolina's elections process is never considered by the public to be deficient. For these reasons, I view it as my responsibility to inform the Court of the complexity of the elections process and the need to give elections officials adequate time to perform their jobs correctly.

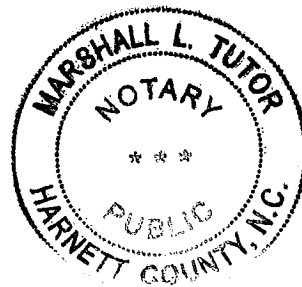
This the 15 day of December, 2012.

Gary O. Bartlett
Gary O. Bartlett, Executive Director
State Board of Elections

Subscribed and sworn to before me
this the 15 day of December, 2011.

Marshall L. Tutor
Notary Public

My commission expires: 6/13/2014



STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE STATE BOARD OF ELECTIONS

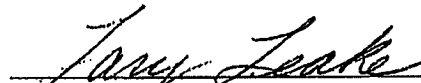
IN THE MATTER OF THE
2004 PRESIDENTIAL PREFERENCE
PRIMARIES

ORDER

THIS MATTER CAME BEFORE THE STATE BOARD OF ELECTIONS on February 16, 2004. Appearing at the hearing were Scott Falmlen, Executive Director of the North Carolina Democratic Party and Bill Peaslee, Political Director and Special Legal Counsel for the North Carolina Republican Party. The State Board received letters dated February 9 and February 16, 2004, from Barbara Allen, Chair of the North Carolina Democratic Party, an e-mail dated February 10, 2004, from Sean Haugh, Executive Director of the Libertarian Party of North Carolina, and comments from Mr. Falmlen and Mr. Peaslee. The three parties, which are the recognized parties in North Carolina, represented that (1) with respect to the Democratic Party, the presidential preference primary would not be a timely means of allocating delegates for 2004 because the primary is scheduled for July 20, 2004, and their national convention is scheduled to begin on July 26, 2004; (2) with respect to the Republican Party, they anticipate no need to allocate delegates since they have only one candidate for president and see no need for a Republican presidential preference primary, and (3) with respect to the Libertarian party, they do not desire to hold a presidential preference primary, preferring to select delegates to their national convention at their state convention. Both Mr. Falmlen and Mr. Peaslee stated that their respective parties would not object to the cancellation of the 2004 presidential preference primary.

THEREFORE, pursuant to the authority delegated to the State Board in Section 5 of Session Law 2003-434 (Extra Session), it is hereby ordered that no presidential preference primary will be held in North Carolina in 2004 and that each recognized political party shall choose and allocate delegates to its national convention according to the procedures it adopts and implements for 2004. It is further ordered that with respect to those seventeen-year-old voters who would otherwise be entitled to register and vote in a presidential preference primary under N.C. Gen. Stat. § 163-213.2, they shall be allowed to register to vote beginning on March 5, 2004, but shall be eligible to vote only in primary elections until they are qualified to vote by attaining the age of eighteen. The rules of each political party will determine whether such registered voters are qualified to participate in choosing and allocating delegates to each party's national convention.

SO ORDERED, this the 24th day of February, 2004.



Larry Leake, Chairman
State Board of Elections