



NORTH CAROLINA

State Board of Elections

Mailing Address:
P.O. Box 27255
Raleigh, NC 27611-7255

Phone: (919) 733-7173
Fax: (919) 715-0135

November 29, 2016

A. Grant Whitney, Jr.
Chair

Rhonda Amoroso
Secretary

Joshua Malcolm
Member

Dr. Maja Kricker
Member

Judge James Baker
Member

Kimberly Westbrook Strach
Executive Director

Re: Representation of agency defendants in *DeLuca v. Strach et al.* now pending in the United States District Court for the Eastern District of North Carolina

Board Members & Executive Director Strach:

This correspondence serves to notify the Board that the Office of the Governor has disapproved the retention of Charles Marshall, Craig Schauer, and Jessica Thaller-Moran as counsel in the above-referenced action. He has approved only Thomas Ziko, whose role was to be as co-counsel in a more limited capacity alongside the firm of Brooks Pierce. As you are aware, the plaintiff seeks a preliminary injunction to block certification of the ballots of same-day registrants, and the Court has set a filing deadline of tomorrow evening (Nov. 30), followed by argument this Friday (Dec. 2). I believe the defense of our agency will be materially prejudiced absent immediate action to secure additional representation in this case.

Agency counsel will immediately notice our appearance in the case in order to mitigate the effects of ongoing delay unless I receive alternative instruction from this Board assembled in emergency or special session. Counsel will also file a request for a one-day extension of time to respond, and we will accordingly prepare necessary filings in defense of the agency. I understand this Board's unanimous vote on Sunday to have authorized me to take all steps necessary to secure representation from the individuals named in the motion, including entering into requisite representation agreements.

Sincerely,

Joshua Lawson
General Counsel, State Board of Elections

Encl.: Correspondence regarding representation (Nov. 21-29)

Lawson, Joshua

From: Stephens, Bob
Sent: Tuesday, November 29, 2016 10:22 AM
To: Lawson, Joshua
Cc: Strach, Kim
Subject: RE: Request for authorization to employ private counsel pursuant to G.S. § 147-17

We have received the request below to retain outside legal counsel as contained in your November 27, 2016 letter. The request to retain Thomas Ziko is granted subject to terms of the letter. The request to retain the firm of Brooks Pierce and the other individual Brooks Pierce lawyers referenced in the letter is not approved.

Robert C. Stephens
General Counsel
Office of the Governor of North Carolina
Phone: 919/814-2027
Email: bob.stephens@nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Lawson, Joshua
Sent: Sunday, November 27, 2016 5:28 PM
To: Stephens, Bob <bob.stephens@nc.gov>
Cc: Harris, Jonathan <jonathan.harris@nc.gov>; Strach, Kim <kim.strach@ncsbe.gov>; Whitney, A. Grant <grantwhitney@parkerpoe.com>; SBOE_Grp - Legal.Team <Legal.Team@ncsbe.gov>
Subject: Request for authorization to employ private counsel pursuant to G.S. § 147-17

Mr. Stephens:

I hope you are well. Attached, please find correspondence regarding representation in *DeLuca v. Strach et al.*, which is currently pending before Chief U.S. District Court Judge James C. Dever III.

Sincerely,

—
Josh Lawson | General Counsel
o: 919-715-9194 | f: 919-715-0135



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Lawson, Joshua

From: Lawson, Joshua
Sent: Monday, November 28, 2016 9:23 PM
To: Stephens, Bob
Cc: Harris, Jonathan; Strach, Kim; Whitney, A. Grant; SBOE_Grp - Legal.Team
Subject: RE: Request for authorization to employ private counsel pursuant to G.S. § 147-17

I received your text on my state cell this evening, and we are eager to provide tonight whatever items you consider outstanding. As you are aware, counsel must be secured as quickly as possible to avoid prejudicing the defense of our agency and the underlying statutes, and we appreciate your ongoing review. The Board on Sunday received a briefing regarding perceived conflicts and unanimously sought approval from your office. The filing deadline for our response is Wednesday.

Sincerely,

Josh Lawson | General Counsel
o: 919-715-9194 | f: 919-715-0135



From: Lawson, Joshua
Sent: Monday, November 28, 2016 6:01 PM
To: Stephens, Bob <bob.stephens@nc.gov>
Cc: Harris, Jonathan <jonathan.harris@nc.gov>; Strach, Kim <kim.strach@ncsbe.gov>; Whitney, A. Grant <grantwhitney@parkerpoe.com>; SBOE_Grp - Legal.Team <Legal.Team@ncsbe.gov>
Subject: RE: Request for authorization to employ private counsel pursuant to G.S. § 147-17

Good evening,

I hope Charles Marshall was able to provide you helpful information. Thank you for taking his call.

Judge Dever this afternoon issued an order setting a response deadline for this evening on a motion to intervene. We do not believe the Board's interests are prejudiced by foregoing an opportunity to file a written response to their motion. This matter is progressing very quickly, however, and your expedited review is deeply appreciated. Please let us know if we can provide you additional information regarding our need for counsel in this matter. My cell is 919-402-6972.

Very sincerely,

Josh Lawson | General Counsel
o: 919-715-9194 | f: 919-715-0135



From: Stephens, Bob
Sent: Monday, November 28, 2016 9:26 AM
To: Lawson, Joshua <joshua.lawson@ncsbe.gov>
Cc: Harris, Jonathan <jonathan.harris@nc.gov>; Strach, Kim <kim.strach@ncsbe.gov>; Whitney, A. Grant

<grantwhitney@parkerpoe.com>; SBOE_Grp - Legal.Team <Legal.Team@ncsbe.gov>

Subject: RE: Request for authorization to employ private counsel pursuant to G.S. § 147-17

I presume that the Brooks Pierce law firm did a conflicts check in connection with this matter. Please provide that to me.

Robert C. Stephens
General Counsel
Office of the Governor of North Carolina
Phone: 919/814-2027
Email: bob.stephens@nc.gov

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Subject: Request for authorization to employ private counsel pursuant to G.S. § 147-17

Mr. Stephens:

I hope you are well. Attached, please find correspondence regarding representation in *DeLuca v. Strach et al.*, which is currently pending before Chief U.S. District Court Judge James C. Dever III.

Sincerely,

—
Josh Lawson | General Counsel
o: 919-715-9194 | f: 919-715-0135



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State Board of Elections

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November 27, 2016

VIA E-MAIL

The Honorable Patrick Lloyd McCrory
Governor of North Carolina
c/o General Counsel Bob Stephens
bob.stephens@nc.gov

Re: Request for authorization to employ private counsel pursuant to G.S. § 147-17

Dear Governor McCrory:

Pursuant to G.S. § 147-17, the State Board of Elections requests your permission to employ private counsel from the law firm of Brooks, Pierce, McLendon, Humphrey & Leonard LLP joined by co-counsel Thomas Ziko on behalf of agency defendants named in *DeLuca v. Strach et al.* We anticipate involvement by Charles Marshall (\$375/hour), Thomas Ziko (\$300/hour) and associates Craig Schauer and/or Jessica Thaller-Moran (\$225/hour). The State Board voted this unanimously this afternoon to request your approval of the foregoing.

I have enclosed a scheduling order from Chief U.S. District Court Judge James C. Dever III, which sets a filing deadline of Wednesday (11/30) ahead of a hearing this Friday (12/2). We appreciate your expedited review of this request.

Should additional information be helpful in your review, please do not hesitate to contact me directly by cell at (919)402-6972.

Sincerely,

Joshua Lawson
General Counsel, State Board of Elections

Cc.: A. Grant Whitney, Jr., Chair, State Board of Elections
Kimberly Westbrook Strach, Executive Director, State Board of Elections

Encl.: Order of Chief U.S. District Court Judge James C. Dever III

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:16-CV-913-D

FRANCIS X. DE LUCA,)
)
 Plaintiff,)
)
 v.)
)
 THE NORTH CAROLINA)
 STATE BOARD OF ELECTIONS,)
 KIM WESTBROOK STRACH,)
 A. GRANT WHITNEY,)
 RHONDA K. AMOROSO,)
 JOSHUA D. MALCOLM,)
 JAMES BAKER, and MAJA KRIKER,)
)
 Defendants.)

ORDER

The court will hold a hearing on plaintiff's motion for a preliminary injunction [D.E. 8] at **11:00 a.m. on Friday, December 2, 2016**, in courtroom one of the Terry Sanford Federal Building, 310 New Bern Avenue, Raleigh, North Carolina. Defendants' response to plaintiff's motion for a preliminary injunction is due no later than **5:00 p.m. on Wednesday, November 30, 2016**.

SO ORDERED. This 23 day of November 2016.



JAMES C. DEVER III
Chief United States District Judge

Lawson, Joshua

From: Lawson, Joshua
Sent: Monday, November 21, 2016 11:54 AM
To: 'gkelley@ncdoj.gov'
Cc: Strach, Kim; 'Whitney, A. Grant'; SBOE_Grp - Legal.Team; 'apeters@ncdoj.gov'
Subject: Re: Request for authorization to employ private counsel pursuant to G.S. §§ 114-2.3 and 147-17
Attachments: Correspondence_2016-11-21.pdf

Importance: High

Chief Deputy Attorney General Kelley:

Attached, please find time-sensitive correspondence regarding the State Board of Elections. Thank you for ensuring the attached request is circulated to appropriate persons within the Department of Justice.

Very sincerely,

—
Josh Lawson | General Counsel
o: 919-715-9194 | f: 919-715-0135





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State Board of Elections

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Raleigh, NC 27611-7255

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November 21, 2016

VIA E-MAIL

The Honorable Roy A. Cooper, III
N.C. Department of Justice
Office of the Attorney General
c/o Chief Deputy Attorney General Grayson Kelley
gkelley@ncdoj.gov

Re: Request for authorization to employ private counsel pursuant to G.S. §§ 114-2.3 and 147-17

Dear Attorney General Cooper:

Pursuant to G.S. § 114-2.3, and out of an abundance of caution, the State Board of Elections requests your permission to employ private counsel. Department of Justice attorneys on Friday informed agency staff that separate representation may be advisable to avoid perceived conflicts of interest in connection with this agency's effort to authenticate and certify the 2016 general election. The State Board yesterday voted unanimously to seek appropriate authorizations.

Agency action over the next several days may result in litigation for which representation is necessary. Accordingly, I request that your decision be rendered at your earliest opportunity, and that your determination be communicated to the Office of Governor Pat McCrory for his review pursuant to G.S. § 147-17.

Should any additional information be helpful in your review, please do not hesitate to contact me.

Sincerely,

Joshua Lawson
General Counsel, State Board of Elections

Cc.: A. Grant Whitney, Jr., Chair, State Board of Elections
Kimberly Westbrook Strach, Executive Director, State Board of Elections