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VIA E-MAIL

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State Board Members

Damon Circosta, Chair
Stella Anderson, Secretary
Jeff Carmon
Stacy “Four” Eggers IV
Tommy Tucker

Re: Request Related to Signature Verification for Absentee Voting

Dear Members and Staff of the North Carolina State Board of Elections,

We write in response to the Request for a Declaratory Ruling Pursuant to N.C.G.S. § 150B-4 (the “Request”) by the North Carolina Republican Party, James H. Baker, and Jerry Alan Branson (the “Petitioners”).¹ The Request urges the North Carolina State Board of Elections (the “State Board”) to issue a written decision rejecting the Petitioners’ interpretation of N.C.G.S. § 230.1 and N.C.G.S. § 230.2 as it relates to the utilization of signature comparisons in approving or disapproving requests for an absentee ballot and absentee container-return envelopes. As described in detail below, this Request implores the State Board to ignore North Carolina law in order to institute an unreliable, unchecked, discretionary mechanism for challenging and throwing out lawfully cast ballots, all under the guise of rooting out the rare-to-nonexistent threat of absentee ballot voter fraud. For these reasons, and the additional reason that the Petitioners are not “Aggrieved Persons” under N.C.G.S. § 150B-4 and thus cannot avail themselves of the “Declaratory Ruling” mechanism in the first place, this effort to force the removal of the State Board’s prohibition against signature matching should be denied.

¹ A copy of the Request is *available at* [https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2022-06-09/Request%20for%20a%20Declaratory%20Ruling%20from%20NCSBE%20\(5-14-22\).pdf](https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2022-06-09/Request%20for%20a%20Declaratory%20Ruling%20from%20NCSBE%20(5-14-22).pdf).

About Us: The Southern Coalition for Social Justice partners with communities of color and economically disadvantaged communities in the South to defend and advance their political, social, and economic rights through the combination of legal advocacy, research, organizing, and communications.



I. The State Board’s Prohibition Against Signature Verification is Consistent with North Carolina Election Laws Governing the Treatment of Absentee Ballots.

First and foremost, signature matching in the manner advocated by the Petitioners is completely inconsistent with North Carolina Election Law. North Carolina currently has a robust system of verification for absentee ballot requests and ballots themselves to ensure the sanctity of those ballots. The state’s system makes no mention whatsoever of signature matching or verification.

Under North Carolina law, a “qualified voter who is eligible to vote by absentee ballot” can obtain an absentee application and ballot by completing a specific request form, which is created and distributed by the State Board. N.C.G.S. § 163-230.1. The form requires the voter provide several pieces of personal identifying information, including: “the name and address of the residence of the voter;” one of a driver’s license number, nonoperators identification number, or the “last four digits of the applicant’s social security number;” “the voter’s date of birth;” and “the signature of the voter.” N.C.G.S. § 163-230.2(a). The county boards’ process completed request forms in accordance with N.C.G.S. § 163-230.2, which states in relevant part:

Upon receiving a completed request form for absentee ballots, the county board shall confirm that voter’s registration. If that voter is confirmed as a registered voter of the county, the absentee ballots and certification form shall be mailed to the voter . . . If the voter’s official record of voter registration conflicts with the completed request form for absentee ballots or cannot be confirmed, the voter shall be so notified. If the county board cannot resolve the differences, no application or absentee ballots shall be issued.

N.C.G.S. § 163-230.2(d). The county boards are also prohibited from issuing an application and ballot if the request for an absentee ballot is “not valid.” N.C.G.S. § 163-230.2(e). If the request “is not on a form created by the State Board,” “is completed, partially or in whole, or signed by anyone other than the voter . . .”, “does not contain all of the information required by [N.C.G.S. § 163-230(a)],” or is “returned to the county board” by an ineligible person, the request will be rejected as invalid. N.C.G.S. § 163-230.2(e). This statutory scheme safeguards a voter’s access to the ballot and protects against ballots reaching ineligible recipients by specifying the precise manner in which an eligible voter can request an absentee ballot and the particular grounds under which the county board can reject the request. Signature matching is not identified as part of this process.

Furthermore, North Carolina law establishes mechanisms to guarantee the identity of the voters who receive and submit an absentee application and ballot. Voters must complete the absentee ballot 1) in the presence of two witnesses; 2) have those two witnesses sign the application and certify as to those witnesses’ addresses; and 3) have those two witnesses certify that the voter is the registered voter submitting the marked ballot.² N.C.G.S. § 163-231(a). For the application and ballot to be valid, “[t]he application shall be completed and signed by the voter personally, the

² In the alternative, under N.C.G.S. § 163-231(a), a notary public can satisfy “any requirement for two witnesses... who shall comply with all the other requirements[.]” The notary public is required to “affix a valid notarial seal to the envelope, and include the word ‘Notary Public’ below [their] signature.” *Id.*



ballots marked, the ballots sealed in the container-return envelope, and the certificate completed . . .” N.C.G.S. § 163-230.1. Each county board is responsible for determining “whether the container-return envelope has been properly executed.” N.C.G.S. § 163-230.1(e)

In sum, North Carolina statutes establish a number of procedures regarding absentee ballots that voters and elections officials must abide by, which operate in concert to ensure voters who request and fill out an absentee ballot are who they say they are. Proper statutory interpretation begins with “the plain words of the statute,” *Correll v. Div. of Soc. Servs.*, 332 N.C. 141, 144 (1992), and, here, it is clear that those words say nothing about signature matching or verification.³

In contrast, states that impose signature matching requirements explicitly require the process in their statutes. California, for example, requires elections officials who receive absentee ballot requests to “compare the signature on the identification envelope with . . . the signature appearing on the voter’s affidavit of registration or any previous affidavit of registration of the voter” or “[t]he signature appearing on a form issued by an elections official that contains the voter’s signature and that is part of the voter’s registration record.” Cal. Elec. Code § 3019(a)(1)(A)-(B). Similarly, Florida requires county supervisors who receive absentee ballots to “compare the signature of the elector on the voter’s certificate with the signature of the elector in the registration books or the precinct register . . .” Fla. Stat. § 101.68. It also requires canvassing boards to compare signatures on absentee ballot cure affidavits: “The canvassing board must . . . compare the signature of the elector on the voter’s certificate or on the vote-by-mail ballot cure affidavit . . . with the signature of the elector in the registration books or the precinct register . . .” Fla. Stat. § 101.68(1)(c)(1).

These states also explain, in specific detail, the mechanics and procedures to be used during the signature matching process in their statutes, specifying who compares a voter’s signature, which election materials require a matching signature, and what baseline signature is appropriate for comparison, among other protocols. *See, e.g.*, Colo. Rev. Stat. § 1-7.5-107.3(1)(a) (“[I]n every mail ballot election that is coordinated with or conducted by the county clerk and recorder, an election judge shall compare the signature on the self-affirmation on each return envelope with the signature of the eligible elector stored in the statewide voter registration system . . .”); 10 ILCS. Comp. Stat. Ann. 5/19-8(g) (“[T]he election judge or official shall compare the voter’s signature on the certification envelope of that vote by mail ballot with the signature of the voter on file in the office of the election authority.”); Tex. Elec. Code § 87.027 (“The signature verification committee shall compare the signature on each carrier envelope certificate, except those signed for a voter by a witness, with the signature on the voter’s ballot application to determine whether the signatures are those of the voter.”); Tenn. Code § 2-6-202 (“Upon receipt of a written request, the administrator of elections shall compare the signature of the voter with the signature on the voter’s registration record in whatever form.”).

Because there is absolutely nothing in North Carolina law about signature matching, it is unclear what procedures would be appropriate if county boards suddenly began implementing signature matching. To grant the Petitioners’ request, the State Board would need to invent detailed

³ Consequently, the Petitioners’ contention that failure to conduct signature verification “would be in direct conflict with the applicable statutes, which could create criminal liability” is baseless. Request at 5-7. *Imposing* signature verification would conflict with existing statutory law; respecting the law as it is cannot impose criminal liability.



procedures at multiple junctures, without any legislative guidance informing that process, while simultaneously displacing or diminishing various other detailed provisions regulating the absentee ballot process and guaranteeing security against fraud that already exist. The State Board should resist this demand to rewrite statutory law simply because the Petitioners disagree with and misconstrue the current statutory scheme.

II. County Board Members Do Not Have Inherent Authority From Their Duty to Administer Elections to Implement Additional Ballot Verification Measures.

Because there is plainly no statutory basis under North Carolina law for utilizing signature verification in connection with absentee ballots, the Request argues that signature matching should be permitted because of a purported inherent authority flowing to county board members simply because they are administrators of elections. Specifically, the Petitioners contend that the ability to utilize signature matching processes can be found in the “general duties” outlined in the election code that, broadly speaking, require county board of elections members to ensure that only lawful voters are permitted to vote and that the official ballots are accurately counted. *See* Request at 3 (citing N.C.G.S. § 163-236), 4 (citing N.C.G.S. § 163-234(11)), and 5 (citing N.C.G.S. §§ 163-166.10, 163-182.5). From this, the Petitioners conclude that a board member is “neglecting his or her duties” and failing to uphold their oath of office (with potential criminal consequences) if the member fails to “exhaust all available resources to confirm that the signature provided on an [absentee ballot request form or] absentee container-return envelope is that of the purported voter.” Request at 4. This logic fails under even the most minimal scrutiny.

First, creating this supposed authority for a very particular election administrative process from a general listing of board member roles and responsibilities is guaranteed to infect North Carolina elections with highly subjective, non-uniform barriers to voting access. As noted above, there are no statutory procedures to guide the actual signature matching process for the individual board members performing them. Moreover, these officials are not trained in any form of handwriting analysis or signature matching expertise. Without procedures addressing, for example, how to match signatures, the degree to which signatures must deviate to trigger scrutiny, and the process for reviewing a ballot once it has been called into question, voters will face uneven and, in some cases, wildly different acceptance rates of absentee request forms and ballots simply based on the county where the voter resides. Such a system would run afoul of the State Board’s obligation to maintain “uniform and nondiscriminatory procedures and standards for voting systems,” N.C.G.S. § 163-182.1(b), and raise potential Equal Protection and Due Process issues across the state.

Second, the Petitioners’ stated justification for allowing this added layer of voter scrutiny—i.e., a supposed duty to “exhaust all available resources to” verify the absentee ballot signatures—would seemingly have no boundaries in the hands of an overzealous election board member dead-set on proving that a signature presented to the board is not that of the voter, regardless of whether there is any reasonable basis to believe so. The same logic which supports the contention that a board member is “neglecting his or her duties” when accepting an absentee ballot or request form “without fully verifying the voter’s signature” could just as easily apply to efforts to verify the circumstances surrounding the signing of the request form or ballot via investigatory telephone calls or home visits by county board staff members.



Third, the threat of criminal prosecution for anything less than “exhaust[ing] all available resources to confirm that the signature provided on an absentee container-return envelope is that of the purported voter,” Request at 4, offers no limiting principle that would avoid this scenario. In fact, should the State Board accept the Petitioners’ reasoning, the specter of criminal liability would incentivize maximalist interpretations of these general take-care provisions. While this Request only addresses signature matching, providing the relief it seeks would create a slippery slope for future unsound, unauthorized methods of challenging the validity of signed voting forms and ballots, and accelerates an atmosphere of fear and distrust in elections.

III. From a Policy Perspective, Signature Matching is Unreliable, Incredibly Subjective, and Likely to Discriminate Against Certain Groups of Voters.

Signature matching inevitably leads to discrimination against certain voters attempting to legally cast ballots. It is especially troublesome for racial and ethnic minority voters; young or first-time voters; disabled voters; and voters of advanced age, all of whom are more likely to have variations in their signatures.

Studies of states allowing signature matching found that these demographic attributes are highly correlated with ballot rejection. In Washington, state auditors determined that “[b]allots from younger voters, male voters, and voters belonging to certain racial and ethnic groups were more likely to be rejected.” Office of the Washington State Auditor Pat McCarthy, *Evaluating Washington’s Ballot Rejection Rates* (2022). In Georgia, researchers found that “[r]acial and ethnic minority groups are more likely than their white counterparts to cast a timely ballot that is rejected,” and such groups “are more likely than their white counterparts to cast a ballot that is rejected for mistakes on the return envelope.” Enrijeta Shino et al., *Determinants of Rejected Mail Ballots in Georgia’s 2018 General Election*, 75 Pol. Res. Q. 231 (2021).

Social science research confirms that a voter’s signature can change for many reasons. Physical factors, such as age, illness, injury, medication, eyesight, alcohol, and drugs; mechanical factors, such as pen type, ink, writing surface and body position, and paper quality; and psychological state of mind as well as environment, can all alter the appearance of a handwritten signature. See Tomislav Fotak et al., *Handwritten Signature Identification Using Basic Concepts of Graph Theory*, 7 WSEAS Transactions on Signal Processing 145 (2011). Individuals of advanced age are particularly vulnerable to having their valid signatures deemed inauthentic. See Michael P. Caligiuri et al., *Kinematics of Signature Writing in Healthy Aging*, 59 J. of Forensic Science, 1020 (2014). Challenges can also emerge from “low-resolution (and at times illegible) digital signatures collected by the DMV,” and by printed names that some voters write in lieu of signatures on ballot return envelopes, among other issues. See Roxana Arjon et al., *Signature Verification and Mail Ballots: Guaranteeing Access While Preserving Integrity*, Stanford Law School Law and Policy Lab, Spring 2019-2020 (Policy Practicum: Every Vote Counts).

In part because handwriting can vary for many reasons, signature matching by non-experts is unreliable. Non-experts are simply more likely to deem valid signatures to be inauthentic: in one study, non-experts erroneously declared authentic signatures to be inauthentic in 26 percent of cases. M. Kam et al., *Signature Authentication by Forensic Document Examiners*, 46 J. Forensic



Sci., 884 (2001). Automatic “signature verification software” is also no solution: such verification is more likely to invalidate signatures by individuals who have undergone a name change, including women, trans people, or domestic abuse survivors. Kyle Wiggers, *Automatic Signature Verification Software Threatens to Disenfranchise U.S. Voters*, VentureBeat (Oct. 25, 2020, 10:25 AM), <https://venturebeat.com/2020/10/25/automatic-signature-verification-software-threatens-to-disenfranchise-u-s-voters/>; see also David A. Graham, *Signed, Sealed, Discarded*, The Atlantic (Oct. 21, 2020, 5:47 PM), <https://www.theatlantic.com/ideas/archive/2020/10/signature-matching-is-the-phrenology-of-elections/616790/>; Lila Carpenter, *Signature Match Laws Disproportionately Impact Voters Already on the Margins*, ACLU Blog (Nov. 2, 2018, 2:45 PM), <https://www.aclu.org/blog/voting-rights/signature-match-laws-disproportionately-impact-voters-already-margins>.

Indeed, lawsuits in states with signature matching reveal substantial due process issues, which the State Board would be wise to avoid here. See *Saucedo v. Gardner*, 2018 DNH 160, 355 F. Supp. 3d 202, 212 (noting variances between polling places in the 2016 General Election in New Hampshire and finding variable rejection rates between municipalities and within them); *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1339–40 (N.D. Ga. 2018) (finding a procedural Due Process violation from a Georgia signature matching law).

IV. The State Board Should Reject the Request because the Petitioners Are Not “Persons Aggrieved” under N.C.G.S. § 150B-4 and Therefore Lack Standing to Request a Declaratory Ruling and/or Pursue Subsequent Judicial Review.

The Petitioners’ request to alter North Carolina elections pursuant to the Declaratory Rulings section (N.C.G.S. §150B-4) of the Administrative Procedure Act (N.C.G.S. Chapter 150B). N.C.G.S. §150B-4 states, in relevant part, that “[o]n request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency, except when the agency for good cause finds issuance of a ruling undesirable.” A request for a declaratory ruling made to the State Board must include “a statement as to why the petitioner is a person aggrieved, and the consequences of a failure to issue a declaratory ruling.” See 08 NCAC 15.0102. The term “person aggrieved” is defined as “. . . any person or group of persons of common interest directly or indirectly affected substantially in his or its person, property, or employment by an administrative decision.” N.C.G.S. § 150B-2(6).

Although the Request includes an “Aggrieved Parties” subsection, see Request at 5, the Petitioners have failed to identify how they have been “affected substantially” either “directly or indirectly” in their “person, property, or employment” by the State Board’s prohibition against scrutinizing absentee ballots through the process of signature matching. For example, the North Carolina Republican Party simply details a broad goal of “ensuring individuals running as Republican candidates are afforded the opportunity to do so and that the Republican voters of the state have the right to select the candidate of their choosing” (Request at 6), but fails to explain how the State Board’s guidance on signature verification thwarts any of those goals. Board Member James H. Baker contends that he is aggrieved because “he has a duty to follow the law as passed by the General Assembly and the NCSBE has effectively prevented him from doing that.” Request at 6. This argument, however, is plainly contradicted by a review of the election code (as



detailed *supra* Section I), and one cannot invoke the remedial procedures of the North Carolina Administrative Procedure Act by asserting speculative harm based on a convoluted reading of the law.

Finally, Jerry Alan Branson claims he is “harmed” “in his capacity as a candidate” and “as an individual voter registered to vote” because the Guilford County Board of Elections’ “inability . . . to use all available means to verify that absentee request forms and absentee container-return envelopes are properly executed.” Request at 7. But that conclusory statement fails to connect this supposed restriction on the county board’s operations to any actual (let alone “substantial”) harm to his “person, property, or employment.”

Case law on alleging a tangible injury necessary to satisfy the “persons aggrieved” standard further demonstrates the inadequacy of the Petitioners’ allegations here. *See Empire Power Co. v. N. Carolina Dep’t of Env’t, Health & Nat. Res., Div. of Env’t Mgmt.*, 337 N.C. 569, 589–90 (1994) (a property owner immediately adjacent and downwind of a utility company that received a permit for construction and air emission was a person aggrieved); *Meads v. North Carolina Dep’t of Agric., Food & Drug Protection Div., Pesticide Sec.*, 349 N.C. 656, 669–70 (1998) (an individual was aggrieved where the Pesticide Board revoked his license and fined him); *Orange Cnty. v. Dept. of Transportation*, 46 N.C. App. 350, 360–62, *disc. rev. denied*, 301 N.C. 94 (N.C. Ct. App. 1980) (plaintiffs were aggrieved persons where a proposed highway corridor threatened plaintiffs’ owned properties and a plaintiff county’s tax base and planning jurisdiction). Hypothetical future injuries, like those detailed by the Petitioners, are also insufficient. *See Diggs v. N. Carolina Dep’t Of Health And Hum. Servs.*, 157 N.C. App. 344, 348 (N.C. Ct. App. 2003) (plaintiff, a former public assistance recipient, was not an aggrieved person based on the agency’s practice of calculating debt repayment, because “[a]t most, petitioner may be aggrieved at some unspecified point in the future if certain events occur.”).

In sum, the Petitioners’ claims of harm are far too generalized to satisfy the “aggrieved person” standard under the North Carolina Administrative Procedure Act. These alleged harms also suffer from being speculative and hypothetical, with no credible evidence submitted that illegal absentee ballots have been accepted (let alone submitted in the first place), that this form of signature verification would prevent illegal absentee ballots from being accepted (and not simply disenfranchise lawful voters), or that the consequences so feared by the Petitioners will ever come to pass.

The Petitioners’ baseless claim dooms the Request because without a valid request from a person aggrieved an agency’s declaratory ruling has no legal effect. *See Diggs*, 157 N.C. App. at 348 (“The validity of any declaratory ruling issued pursuant to N.C.G.S. § 150B-4 is contingent upon the satisfaction of [] two prerequisites [a request for a declaratory ruling is made by a person aggrieved]. Because petitioner was not aggrieved at the time the request was made, the request was ineffective to trigger the issuance of a declaratory ruling, and the declaratory ruling has no effect . . .”).

For this added reason, the Petitioners’ Request should be rejected.



CONCLUSION

Because the Request has no legal support under North Carolina law, is bad policy from both an election administration and social science perspective, and fails to meet the preconditions for consideration under the North Carolina Administrative Procedure Act, it should be denied.

If you have any questions, please do not hesitate to contact us.

Sincerely,

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