

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

NORTH CAROLINA STATE CONFERENCE :
OF THE NAACP; MOORE COUNTY : No. 16-cv-1274
BRANCH OF THE NAACP; JAMES :
EDWARD ARTHUR, SR.; JAMES MICHAEL :
BROWER, GRACE BELL HARDISON; and :
JAMES L. COX; :

Plaintiffs; :

The NORTH CAROLINA STATE BOARD OF :
ELECTIONS (“State BOE”); A. GRANT :
WHITNEY, JR. in his official capacity as :
Chairman of the State BOE; RHONDA K. :
AMOROSO, in her official capacity as :
Secretary of the State BOE; KIM :
WESTBROOK STRACH, in her official :
Capacity as Executive Director of the State :
BOE; JOSHUA D. MALCOLM, in his official :
Capacity as Member of the State BOE; JAMES :
BAKER, in his official capacity as Member of :
the State BOE; MAJA KRICKER, in her :
official capacity as Member of the State BOE; :
the BEAUFORT COUNTY BOARD OF :
ELECTIONS (“Beaufort BOE”); JAY :
MCROY, in his official capacity as Chairman :
of the Beaufort BOE; JOHN B.TATE, III, in :
his official capacity as Secretary of the Beaufort :
BOE; THOMAS S. PAYNE, II, in his official :
Capacity as Member of the Beaufort BOE; :
KELLIE HARRIS HOPKINS, in her official :
Capacity as Director of the Beaufort BOE; the :
MOORE COUNTY BOARD OF ELECTIONS :
 (“Moore BOE”); SUSAN T. ADAMS, in her :
_____ :

Official capacity as Chairman of the Moore :
BOE; CAROLYN M. MCDERMOTT, in her :
Official capacity as Secretary of the Moore :
BOE; WILLIAM R. PARKE, in his official :
Capacity as member of the Moore BOE; :
GLENDA M. CLENDENIN, in her official :
Capacity as Director of the Moore BOE; the :
CUMBERLAND COUNTY BOARD OF :
ELECTIONS (“Cumberland BOE”); JAMES :
H. BAKER, in his official capacity as :
Chairperson of the Cumberland BOE; :
ROBERT KEVIN HIGHT, in his official :
Capacity as Secretary of the Cumberland BOE; :
HARVEY RAYNOR III, in his official capacity :
As Member of the Cumberland BOE; and :
TERRI ROBERTSON, in her official capacity :
as Director of the Cumberland BOE, :
: :
Defendants. :

 :

Motion to Dismiss Complaint

Comes now the Moore County Board of Elections (Moore BOE); Susan T. Adams, in her Official capacity as Chairman of the Moore BOE, Carolyn M. McDermott, in her Official capacity as Secretary of the Moore BOE; William R. Parke, in his Official capacity as Member of the Moore BOE and Glenda M. Clendenin in her Official capacity as Director of the Moore BOE pursuant to Rule 12(b) of the Federal Rules of Civil Procedure and moves to dismiss this action on the following grounds:

1. Failure of the complaint to show that a plaintiff has standing to challenge the action in question, and therefore jurisdiction is not established.
2. Failure of the complaint to show that a defendant named herein, specifically including the Moore County Board of Elections (Moore BOE); Susan T. Adams, in her Official capacity as Chairman of the Moore BOE, Carolyn M. McDermott, in her Official

capacity as Secretary of the Moore BOE; William R. Parke, in his Official capacity as Member of the Moore BOE and Glenda M. Clendenin in her Official capacity as Director of the Moore BOE, has taken any action that affects any plaintiff, and therefore jurisdiction is not established because no case or controversy exists between the parties.

3. That the Organizational Plaintiff, the North Carolina NAACP, fails to demonstrate standing to pursue any relief.
4. That as to the herein named defendants, the plaintiff's complaint fails to indicate the existence of an actual controversy or case alleging injury in fact, any causal relationship between the injury and the challenged conduct, and a likelihood that the injury will be redressed by a favorable decision.
5. That the named plaintiffs herein fail to show any injury or irreparable harm to the named plaintiffs based upon conduct of the named defendants.
6. That the named plaintiffs have an available adequate remedy at law, and there is no evidence that if the entry of the temporary restraining order is denied that the plaintiffs will suffer irreparable harm.
7. That at present, the plaintiffs have available One Stop-Same Day Registry and may register to vote and vote until the close of Early Voting on Saturday on Saturday, November 5, 2016 at 1:00 PM.

This the 1st day of November, 2016.

BY: /s/ R. Ward Medlin
R. WARD MEDLIN
NC Bar # 13817
Moore County Attorney's Office
County of Moore
P.O. Box 905
Carthage, NC 28327

T: (910) 947-4014
F: (910) 947-1049
rmedlin@moorecountync.gov
Attorney for Defendant Moore County

BY: /s/ Misty Randall Leland
MISTY RANDALL LELAND
NC Bar # 28320
Moore County Attorney's Office
County of Moore
P.O. Box 905
Carthage, NC 28327
T: (910) 947-4012
F: (910) 947-3612
mistyleland@moorecountync.gov
Attorney for Defendant Moore County

CERTIFICATE OF SERVICE

I hereby certify that on the 1st^t day of November, 2016, the foregoing document was electronically filed using the CM/ECF system and a copy was sent via U.S. First Class Mail, postage prepaid, to:

Eric P. Brown
Stacey M. Leyton
Peder J. Thoreen
Connie K. Chan
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108

Penda D. Hair
Leah J. Kang
Caitlin A. Swain
FORWARD JUSTICE
1401 New York Avenue, NW, Suite 1225
Washington, DC 20005

Irving Joyner
P.O. Box 374
Cary, NC 27512

Mary Joyce Carlson
1101 New York Avenue NW
Washington DC 20008

Lawson, Joshua L.
NC State Board of Elections
P.O. Box 27255
Raleigh, NC 27611

David C. Francisco
Beaufort County Attorney
P.O. Box 38
Washington, NC 27889

Rickey L. Moorefield
Cumberland County Attorney
P.O. Box 1829 (28302)
117 Dick Street (28301)
Fayetteville, NC 28301

s/ Misty Randall Leland
MISTY RANDALL LELAND
Moore County Attorney's Office

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No.: 1-16-cv-1274**

North Carolina NAACP, et al)	
Plaintiffs,)	
)	
v.)	
)	Affidavit of Glenda M. Clendenin
)	
The North Carolina State Board)	
of Elections, et al:)	
Defendants.)	

The Affiant, being first duly sworn, deposes and states as follows:

1. My name is Glenda M. Clendenin and, unless otherwise indicated, I have personal knowledge of the information and facts set forth in this Affidavit.
2. I currently serve as the Director of the Moore County Board of Elections, and have served in this capacity for thirty (31) years.
3. During the months of June and July 2016, N. Carol Wheeldon, 50 Lake Forest Drive, SW, Pinehurst, NC 28374, a registered voter and citizen of Moore County, and pursuant to N.C.G.S. 163-85 caused to be filed 498 voter registration challenges.
4. That as to the ethnicity of the original 498 voter challenges; there were 365 challenges to White voters, 92 challenges as to Black voters, 7 challenges as to American Indian, 31 challenges as to other and 3 challenges as to unknown.
5. That as to Political Breakdown of the original 498 challenges, there were 154 challenges as to Democrats, there were 136 challenges as to Republicans, there were 195 challenges as to unaffiliated voters, there were 10 challenges as to Libertarians and 3 challenges as to unknown.

6. That the Moore County Board of Elections prior to the scheduling of the formal individual preliminary hearings on the challenged voter registrations undertook an independent investigation to determine voter status, by reviewing social media including Face Book and official tax records in effort to locate challenged/named voters.
7. That when the investigation disclosed alternate addresses, and in effort to preserve the voter registration and eligible voter status thereby eliminating the legal challenge, the Moore County Board of Elections attempted communications with the challenged/named voter through telephone calls or direct mailing, similar to letter forwarded to James Michael Brower dated July 13, 2016, a copy attached hereto as Exhibit 1 and incorporated herein by reference.
8. That the letter addressed to Mr. James Michael Brower at an alternate address on July 13, 2016, prior to the scheduling of the individual preliminary hearings of September 6, 2016, requested Mr. Brower's **immediate** attention to this matter.
9. That the voter registration records are updated regularly and daily; based upon information received from the NC Department of Motor Vehicles, other NVRA agencies, Court Felony Conviction Reports, Cancellation reports from other states (previously registered voters register in another states), Cancellation requests from other jurisdictions (previously registered voters register in another county or jurisdiction of the state) and requests of registered voters.
10. That the investigations and list maintenance as to voter status continued through the individual Hearings on the Challenge as provided under N.C.G.S. 163-86 and concluded October 14, 2016.

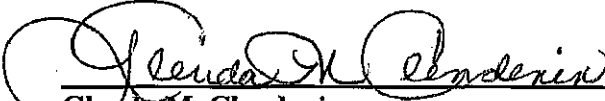
11. That on September 6, 2016 at 9:00 AM, individual preliminary hearings were held on each of the challenged voter registrations as challenged by N. Carol Wheeldon.
12. That during the course of the preliminary hearings and leading up to the September 30th, 2016 Notice of Hearing on approximately approximately 100 of the challenged 498 voter registrations were resolved, with the voter registration challenge overruled based upon information determined during the investigations conducted by the Moore County Board of Elections; some resolved through determinations of registration in another jurisdiction, some resolved through discovery of obituary confirming death, many resolved by determining challenged voter continued to reside in county and maintained eligibility to vote in the jurisdiction and challenge dismissed.
13. That following the individual preliminary hearings on the challenged voter registrations and findings of probable cause; 399 challenge letter notifications were forwarded to challenged voters at the addresses provided on the voter registration attaching the original voter registration challenge.
14. That attached as Exhibit 2 is a copy of a representative letter, the actual letter sent to James Michael Brower dated September 30, 2016; advising as to the date and hour of hearing scheduled for October 14, 2016 at 9:00 AM, and as to the process and options related to the hearing.
15. That in addition to the challenged voter the following persons were notified as to the hearing, N. Carol Wheeldon, Challenger, the Democratic Party Chairman, the Republican Party Chairman and the Libertarian Party Chair.

16. That pursuant to N.C.G.S. 163-86, individual hearings on the 399 challenge letter notifications were conducted on October 14, 2016, and following which 374 voters were removed from the voter registry.
17. That during the hearings of October 14, 2016, and based upon information discovered by the Moore County Board of Elections 10 challenged voter registrations were resolved without removal.
18. Following the October 14, 2016 Hearings and prior to the beginning of the One Stop Absentee Voting 374 voters were removed from the voter registry.
19. That as to the sustained challenged voters removed from the registry, 279 were White, 69 were Black and 35 were designated other.
20. That the racial demographic for Moore County as of the census data available on July 1, 2015, a county with a population of 94,532 consists of 82.7% White, 12.9% Black, 1% American Indian and 1.3% Asian.
21. From the original 498 voter challenges there were 374 voters removed from the voter registry, statistically 57% were White and 13.85% were Black.
22. Of the 374 voters removed following the Hearing on Challenge of the 399 noticed; 74.5% were White and 18.4% were Black.
23. That of the original 365 White voters challenged, 279 White voters were removed from the voter registry, a statistical representation of 76.43%.
24. That of the original 92 Black voters challenged, 69 Black voters were removed from the voter registry, a statistical representation of 75%.
25. That of the 374 voters removed from the voter registry, the BOE received notification that at least three (3) moved to another jurisdiction or state and registered there.

26. That an additional 5 voters removed from the voter registry completed same day registration during the One Stop Absentee Voting process and voted in the 2016 general election.

FURTHER THE AFFIANT SAYETH NAUGHT.

This the 1st day of November, 2016.


Glenda M. Clendenin

Sworn to and subscribed before me this day by Glenda M. Clendenin.

✓ I have personal knowledge of the identity of the principal(s).

Date: 11-01-16

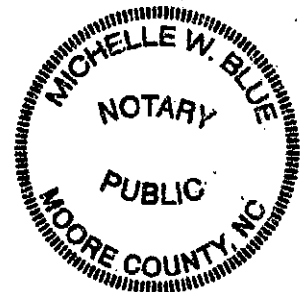
Michelle W. Blue

Notary Public

Michelle W. Blue

My Commission Expires: 01/31/2020

Printed or typed name of Notary Public

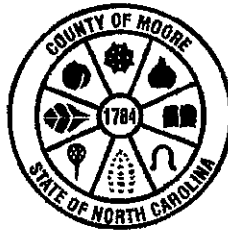


MOORE COUNTY BOARD OF ELECTIONS

700 PINEHURST AVENUE • P.O. BOX 787
CARTHAGE, NORTH CAROLINA 28327
TELEPHONE (910) 947-3868 • FAX (910) 947-2389
email: elections@moorecountync.gov • www.moorecountync.gov

SUSAN T. ADAMS
CHAIRMAN

GLEND A. M. CLENDENIN
DIRECTOR



CAROLYN M. McDERMOTT
SECRETARY

WILLIAM R. (BILL) PARKE
MEMBER

July 13, 2016

Mr. James Michael Brower
1164 Spies Rd
Robbins, NC 27325

Dear Mr. Brower:

We have had a legal challenge issued against the address listed on your voter registration record (105 Bear Creek Lane). Information indicates that you may now reside at the address above.

In order to correct your record and dismiss the challenge, we ask that you please correct your information by completing and returning the enclosed Voter Registration form.

Thank you for your **immediate** attention to this matter. Should you have questions, please contact this office.

Sincerely,

MOORE COUNTY BOARD OF ELECTIONS

Michelle W. Blue, Voter Registration Services Coordinator

enclosures
/mwb

Exhibit 1

NORTH CAROLINA VOTER REGISTRATION APPLICATION

07

Please use black ink and print legibly.

1 Are you a citizen of the United States of America? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No IF YOU CHECKED "NO" IN RESPONSE TO THIS QUESTION, DO NOT SUBMIT THIS FORM.	Will you be at least 18 years of age on or before election day? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No IF YOU CHECKED "NO" IN RESPONSE TO THIS QUESTION, DO NOT SUBMIT THIS FORM.
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2 Last Name (Required) BROWER First Name (Required) JAMES Middle Name (Required) MICHAEL <input type="checkbox"/> Jr <input type="checkbox"/> Sr <input type="checkbox"/> II <input type="checkbox"/> III <input type="checkbox"/> IV <input type="checkbox"/> V	3 Date of Birth MMDDYYYY (Required) State of Birth/Country of Birth If you know your NC Voter Registration Number, enter it below. If you have a NC drivers license or non-operators ID card, enter the number below. Enter the last 4 digits of your SSN. <input type="checkbox"/> Check here if you do not have a NC drivers license, ID card, or a SSN.
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RESIDENTIAL ADDRESS INFORMATION - No P.O. Boxes or Rural Routes

4 Street Address where you live (Required) 1164 SDIES ROAD City (Required) ROBBINS County MOORE	Apartment, Lot, or Unit Number State NC Zip Code Have you lived here for 30 days or more? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No," date moved? MMDDYYYY Phone (Optional)
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MAILING ADDRESS

5 Mailing Address (If you do not receive mail at your residential address) Mailing Address Line 1 Mailing Address Line 2 City State Zip Code
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MAP/DIAGRAM

If you do not have a street address, draw a map of where you reside. Please include roads and landmarks.

6	GENDER	RACE	ETHNICITY	POLITICAL PARTY AFFILIATION
	<input type="checkbox"/> Female <input checked="" type="checkbox"/> Male	<input checked="" type="checkbox"/> African American/Black <input type="checkbox"/> Asian <input type="checkbox"/> White <input type="checkbox"/> American Indian/Alaska Native <input type="checkbox"/> Multiracial <input type="checkbox"/> Other	<input type="checkbox"/> Hispanic/Latino <input checked="" type="checkbox"/> Not Hispanic/Latino	<input checked="" type="checkbox"/> Democrat <input type="checkbox"/> Republican <input type="checkbox"/> Libertarian <input type="checkbox"/> Unaffiliated <input type="checkbox"/> Other _____ If you indicate a political party that is not currently qualified, or you do not indicate a choice, you will be listed as "Unaffiliated."

PREVIOUS VOTER REGISTRATION (This information will be used to cancel your previous voter registration in another county or state.)

7 Last Name used in Previous Registration Previous Address 105 BEAR CREEK LANE Previous City ROBBINS	First Name used in Previous Registration Previous County Previous State NC Previous Zip Code
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I attest, under penalty of perjury, that in addition to having read and understood the contents of this form, that:

- I am a United States citizen, as indicated above;
 - I am at least 18 years of age, or will be by the date of the general election;
 - I shall have been a resident of North Carolina, this county, and precinct for 30 days before the election in which I intend to vote;
 - I will not vote in any other county or state after submission of this form and if I am registered elsewhere, I am canceling that registration at this time; and
 - I have not been convicted of a felony, or if I have been convicted of a felony, I have completed my sentence, including any probation or parole.
- (Citizenship and voting rights are automatically restored upon completion of the sentence. No special document is needed.)

Fraudulently or falsely completing this form is a Class I Felony under Chapter 163 of the NC General Statutes.

James Michael Brower
 Signature (Required)

10-14-16
 Date

version112015

MOISTEN, FOLD, SEAL AND MAIL TO YOUR COUNTY BOARD OF ELECTIONS.

MOORE COUNTY BOARD OF ELECTIONS

700 PINEHURST AVENUE • P.O. BOX 787
CARTHAGE, NORTH CAROLINA 28327
TELEPHONE: (910) 947-3868 • FAX: (910) 947-2389
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STATE OF NORTH CAROLINA
COUNTY OF MOORE

Before the Moore County
Board of Elections
File No. 16 BOE 542

TO: James Michael Brower
105 Bear Creek Ln
Robbins, NC 27325

NOTICE OF CHALLENGE AND NOTICE OF HEARING ON CHALLENGE

Notice is hereby given to **James Michael Brower** of a Challenge of your right to remain registered to vote. The reason asserted in the Notice of Challenge is that James Michael Brower **is not a resident of the precinct in which s/he is registered**. A copy of the **NOTICE OF CHALLENGE** filed with the Moore County Board of Elections is attached hereto.

A Preliminary Hearing was conducted on September 6, 2016 in accordance with G. S. 163-85. The Challenge was filed by N. Carol Wheeldon. The members of the Moore County Board of Elections have found probable cause exists that James Michael Brower is not a resident of the precinct in which s/he is registered.

IN ACCORDANCE WITH G. S. 163-86, NOTICE is hereby given to James Michael Brower that the Moore County Board of Elections will conduct a Hearing on the Challenge on Friday, October 14, 2016 at 9:00 a.m. in the Commissioners Meeting Room, One Courthouse Square, Carthage, NC. The challenged registrant shall appear in person at the challenge hearing. If s/he is unable to appear in person, s/he may be represented by another person and must tender to the county board of elections an affidavit that s/he is a citizen of the United States, is at least 18 years of age or will become 18 by the date of the next general election, has or will have resided in this State and in the precinct for which registered for 30 days by the date of the next primary or election, is not disqualified from voting by the Constitution or laws of this State, is named James Michael Brower and was duly registered as a voter of Robbins precinct in such name, and is the person represented to be by the affidavit. The hearing may be recorded or a court reporter may be arranged by any interested party at that party's expense.

As required by law, copy of this **NOTICE OF HEARING ON CHALLENGE** is given to the following individuals, addressed as follows:

N. Carol Wheeldon, Challenger, 50 Lake Forest Dr, SW, Pinehurst, NC 28374
Paul E. Dunham, Chairman, Moore County Democratic Party, 465 Dogwood Ln, Southern Pines, NC 28387
John N. Rowerdink, Chairman, Moore County Republican Party, 15 McMichael Dr, Pinehurst, NC 28374
J. J. Summerell, Chairman, Libertarian Party of NC, PO Box 28141, Raleigh, NC 27611

Dated this 30th day of September, 2016

Susan T. Adams, Chairman
Moore County Board of Elections

Exhibit 2