IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No. 5:22-cv-276-D

NORTH CAROLINA GREEN PARTY, et al., Plaintiffs, v. NORTH CAROLINA STATE BOARD OF ELECTIONS, et al., Defendants.	)	**DECLARATION OF PAUL COX**

I, Paul Cox, swear under penalty of perjury that the following information is true to the best of my knowledge and state as follows:

1. I am over 18 years old. I am competent to give this declaration and have personal knowledge of the facts set forth herein.

2. I am an associate general counsel for the North Carolina State Board of Elections, a position I have held since October 2021. In this role, I provide legal advice to the State Board and its staff on matters of election administration, including on the processing of petitions for new political parties under N.C.G.S. § 163-96. I also provide guidance to the directors and staff of county boards of elections on these matters. And I have access to State Board records involving the Green Party's petition campaign beginning in early 2021. Before serving in my current role, I was the State Board's outside counsel at the North Carolina Department of Justice.

3. On March 27, 2018, the Green Party of North Carolina was officially recognized by the State Board as a political party under N.C.G.S. § 163-96. The party met the requirements of a new state law that permitted recognition of a political party that had a candidate on the ballot in at least 70 percent of the states in the last presidential election.

4. Following the certification of the 2020 general election, the Green Party lost recognition in this state, by operation of N.C.G.S. § 163-97, after the party's candidates failed to poll at least 2% of the statewide vote cast for governor or presidential electors in the November 2020 general election.

5. The Green Party then started a new petition drive in February 2021 to seek recognized political party status under N.C.G.S. § 163-96(a)(2). In the administrative form attached as **Exhibit 1**, the State Board informed the Green Party that their deadline to deliver signatures to the county boards for verification was May 17, 2022, based on the understanding that the party was seeking recognition in the next statewide general election, which would have been November 2022.

6. In October 2021, State Board staff received inquiries from county board staff in at least five counties regarding petition sheets recently submitted by the Green Party where the chairman of the party listed in the heading of the petition was from years ago, or where some of the signers on the petition pages had died or had been removed from the county's voter rolls years before. This information suggested to us and county board staff that the campaign was turning in petition sheets that were outdated, had been collected prior to the Green Party's recognition in 2018, and were ineligible for consideration during the current petition round.

7. In response, on October 5, 2021, I wrote to the Green Party's chair Tony Ndege to explain that signatures gathered in a prior petition round, before the party gained recognition and then lost it, would not be valid for the current petition round, under our interpretation of N.C.G.S. § 163-96. That message is attached as **Exhibit 2**. I also asked Mr. Ndege, "Were any of the petition signatures that the Green Party has been submitting to the county boards collected in a prior round of recognition? If so, the party will need to identify any such signatures so that the

county boards does not erroneously count them." Mr. Ndege never responded and, to our knowledge, never contacted any county boards to address this irregularity—nor did anyone else from the Green Party.

8. Faced with this lack of cooperation, the State Board tried a different method to ensure the integrity of the petition process. We confirmed with all organizations seeking new party status the valid chairs for their parties for this petition round. The current and valid chair is required to be listed in the heading of each petition page under N.C.G.S. § 163-96(b). The Green Party, through Chair Tony Ndege, confirmed that the valid chairs for this petition drive were himself and Jan Martell. We provided this information in December 2021 to all county boards in the email attached as **Exhibit 3**, directing the county boards not to count petition sheets that identified outdated chairs.

9. On March 13, 2022, a representative of the Green Party wrote to State Board staff indicating that there had been a mistake in the paperwork initiating the party's petition, and that they were not seeking recognition in 2022, but were instead seeking recognition in 2024. The representative asked the State Board to amend its records to reflect a 2024 signature date, as shown in the email attached as **Exhibit 4**. By taking this action, the State Board changed the deadline in its Petition Module IT system[1] for the party to submit signatures to county boards to May 17, 2024. Two months later, when the party changed its mind and instead submitted

[1] Petition Module is a software system and database developed by the State Board and accessible to all county boards. The system is linked to the statewide voter registration file. It allows county boards to check signatures against the county's registration records which include voters' contact details and images of their signatures from voter registration forms. The county board's determination as to whether a signature is that of a registered voter and should therefore be counted or not is recorded in Petition Module, the results of which are reported in real time to the State Board. The overall tallies of submitted and approved signatures per county for each petition campaign are also updated in real time on the State Board's public website at https://vt.ncsbe.gov/PetLkup/.

signatures for recognition in 2022, this created confusion and delay, because many county boards inadvertently validated signatures that arrived after the May 17, 2022 deadline for recognition this year, because the Petition Module IT system recognized them as timely for 2024 recognition, when they were not timely for recognition this year.

10. In April, May, and June 2022, multiple county boards alerted the State Board to potential signs of signature fraud in connection with the Green Party petition campaign, and State Board staff investigated these matters, as detailed in the affidavit of Lead Investigator Matthew Martucci.

11. On May 26, Green Party Secretary Michael Trudeau emailed State Board staff complaining that county boards were not processing signature sheets turned in to the county boards within the two weeks required under N.C.G.S. § 163-96(c). The party was concerned that this would prevent it from delivering its signatures to the State Board, after county verification, before the June 1 deadline in subsection (a)(2) of the statute.

12. I wrote back to Mr. Trudeau in the email attached as **Exhibit 5** to assure him that the State Board would consider petition sheets to be delivered timely as long as they were delivered to the county boards by the statutory deadline of May 17. I wrote, "The State Board will not hold it against your petition if a county board has not returned to you the petition sheets that you have provided to the county board by the 5 p.m. May 17 deadline." I further explained that the court-ordered delay of the primary this year resulted in the unusual situation of the petition deadline falling on the same day as the statewide primary, and that the ten-day canvass period following an election is one of the busiest and most stressful times for county board staff. This fact, coupled with the Memorial Day holiday that fell within the same canvass period, was hindering county progress on reviewing the petition sheets. I also informed him that my

colleague Tiffany Holden would be in the office on June 1 "to accept [his] petition to the State Board," which she did. Green Party representatives would later claim, including in filings with this Court, that State Board staff did not show up for a meeting that was allegedly scheduled with them on June 1. But no one at the State Board agreed to schedule a meeting with the Green Party on June 1, and in fact, most staff (myself included) were working remotely at that time due to a spike in COVID cases in the community and among colleagues.

13. I also emailed the county boards on three separate occasions between May 27 and June 6, urging them to complete their review of the Green Party petitions, and to ensure that no untimely petition sheets had been validated at the county level. Those emails are attached as **Exhibit 6**. (The email addresses for the 100 county directors do not appear in the "To" line of the email in the exhibit because we typically BCC directors when sending out communications, to avoid accidental reply-all responses.)

14. The Green Party filed its petition sheets with the State Board in four separate deliveries throughout the month of June: on June 1, June 8, and June 17, June 24. As soon as those deliveries were made, typically on the same day, State Board staff would scan those petition sheets and proceed to conduct reviews of the sheets for sufficiency, as further described below. This review was conducted during a time when the State Board was extremely busy supporting the 100 county boards in their post-canvass activities, including with numerous protests and candidate challenges, and was preparing for the election that was to come on July 26 involving 15 counties, voting for which started on June 24. I repeatedly urged the party to deliver new sheets as soon as they were available, but the party delayed delivering many of these sheets throughout the month of June.

15. On Saturday, June 11, the secretary of the Green Party wrote to explain that the party had not yet turned in to the State Board large stacks of petition sheets that it nonetheless had on hand because it was under the impression that it could not submit copies to the State Board. I wrote back on Monday, June 13, saying, "Please submit the petitions as you receive them back from the county boards. If this is in the form of copies, that's fine, as long as you are submitting the petitions as the county boards have returned them to you, and they are accompanied by the county board certifications required by GS 163-96(c). It has not been clear to us until now that you actually had received petition copies from the county boards but were waiting to submit to us until you received originals. Do not continue to wait to submit those petitions that you have received back from the county boards with the required certifications." This email exchange is attached as **Exhibit 7**.

16. Given the various issues with this petition campaign that had been brought to the State Board's attention as detailed above and in the affidavit of Matthew Martucci, and pursuant to the State Board's duty to "determine the sufficiency of petitions filed with it" under N.C.G.S. § 163-96(a)(2), State Board staff conducted various reviews of the petition sheets that it received.

17. First, staff reviewed all signature sheets to flag any batches of sheets that had indications that they were delivered past the deadline to the county boards. Signatures sheets are typically time-stamped by county boards when received. In this review, State Board staff identified numerous batches across the state that were delivered after the deadline but had been verified nonetheless by the county boards. This resulted, at least in part, from the confusion regarding the year in which the Green Party was seeking recognition, as explained in Paragraph 9 above. Any such batches were flagged to the county boards in question for the county boards to update their data within Petition Module to remove late-arriving sheets.

18. Second, staff reviewed all signature sheets for any signs of potential fraud on the face of the signature pages—for example, multiple entries in the same handwriting. For any pages that generated suspicion, staff contacted county boards for the county boards to review those pages and compare signatures against the registration records. For any changes generated by this review, the county boards were instructed to provide records demonstrating those changes to the Green Party.

19. Third, staff reviewed all signature sheets to identify any pages that listed an outdated party chair and were therefore ineligible under N.C.G.S. § 163-96, and discounted any approved signatures on those pages.

20. Fourth, staff compared the records of county signature review contained in the Petition Module database with all physical signature sheets that the State Board received, to ensure that there were no discrepancies in the numbers of signatures reviewed and approved per county with the records we received from the campaign. This review did not produce any discrepancies except minor ones that could be accounted for by things like duplicate entries on the sheets that did not count more than once, or approved signatures on paper that had been subsequently disapproved for late arrival, for example.

21. These review processes occurred throughout the month of June due to the iterations of petitions that were delivered to the State Board throughout that month by the Green Party. They were conducted promptly upon receiving the petitions.

22. In late June, the State Board also received complaints from a Wake County voter against the chairs of four county boards—Wake, Durham, Guilford, and Johnston—alleging that these boards had failed to adequately review signatures for the Green Party petition and that the board had verified numerous signatures in error. We forwarded these complaints to the

corresponding county board staff for their review for any obvious errors in processing. County board staff confirmed that most of the issues alleged in these complaints were not in fact errors but were instead properly assessed signatures. The complainant evidently misunderstood the petition and voter registration records, mistaking many entries as having been approved when they were not, or incorrectly identifying voters. However, a handful of signatures were discounted in Johnston County, based on the complaint, because they had arrived at the county board after the deadline.

23. Additionally, also in late June, the State Board received three separate letters from this same Wake County voter or his legal representatives with numerous affidavits or declarations from voters seeking to have their names removed from the Green Party petition, with some claiming that they were misled about the purpose of the petition, and with three claiming they never signed the petition. State Board investigators independently confirmed that the three voters had not signed the petition. Otherwise, however, the State Board has taken no action with respect to the voters seeking to remove their names or claiming to have been misled by the petition campaign. The State Board could consider the affidavits from individuals stating they were misled about the purpose of the petition campaign in the event that the number of such voters would make a difference in the final assessment of the petition's sufficiency. The State Board could also consider the voters seeking to be removed from the petition, but whether that action is possible for a new party petition is an open question of state law.

24. In the meantime and separate from these above review efforts, the State Board's investigators had been gathering evidence that placed a significant number of approved signatures in doubt, as explained in the declaration of Matthew Martucci. The executive director of the State Board explained what staff's investigation and review of the petition sheets had

revealed in a presentation to the State Board at a public meeting on June 30. A copy of the slides accompanying her presentation, which were posted publicly with the State Board's meeting materials online, is attached as **Exhibit 8**.

25. In the days before the State Board's June 30 meeting where the recognition of the Green Party was to be considered, and based on the information recently gathered by State Board investigators and the various administrative reviews explained above, staff identified a universe of potentially fraudulent or otherwise invalid signatures that could exceed the number of signatures that the county boards had initially approved above the legal threshold for party recognition. Examples of otherwise invalid signatures included those that were delivered after the deadline or were collected under an old party chair's name, but had originally been approved by the county boards. This led the State Board to decide on June 30 that it could not conclude that the Green Party's petition was sufficient at that time, and the State Board directed staff to work diligently in its review to ascertain the definite scope of fraudulent or otherwise invalid signatures that had been approved.

26. On or about July 7, when discussing the ongoing review of petitions and complaints we had received with a county director, I learned that the staff for that county board had not compared signatures on the petition sheets with the signatures of the corresponding voters in the registration records. The county board staff had verified whether a signer's information corresponded with a registered voter in the county, but did not check to see whether the signature itself resembled that of the voter. Subsequently, I learned that numerous other counties, including ones accounting for large volumes of the Green Party's signatures, had not been conducting signature matching for some or all of the petition sheets they received. For many years, it has been the State Board's interpretation of N.C.G.S. § 163-96(c) that the

requirements to "examine the signatures" and confirm "that the signatures on the petition have been checked against the registration records" mean that the county boards must compare petition signatures with corresponding voter signatures on file to determine if there is a reasonable resemblance. The State Board's instructional materials on petition processing stated as much, as shown in **Exhibit 9**. This failure to conduct proper signature review perhaps accounted for the fact that our investigators were identifying numerous voters whose signatures were counted but who had not, in fact, signed the petition.

27. Having been alerted to the fact that the review of this petition was not conducted correctly among some counties, which would undermine the State Board's ability to conclude that the petitions were "sufficien[t]," N.C.G.S. § 163-96(a)(2), we instructed the county boards that had not already done so to compare the signatures they had approved for the Green Party petition with those in the registration records, and to report back to the State Board and the Green party within three weeks with any changes. Our general counsel sent an email directing the county boards to do this on July 11, a copy of which is attached as **Exhibit 10**. Although we would have preferred to ask the counties to conduct this review in a shorter timeframe, many of the largest jurisdictions (and thus the largest sources of Green Party petitions) were conducting elections during this time, with absentee and early voting having already started, and election day approaching on July 26. These counties included Wake, Guilford, and Mecklenburg, which, alone, accounted for about 40% of the initially approved signatures for this petition campaign.

28. Based on the results of the county boards' signature review and any information uncovered by the State Board's investigation since the Board's June 30 meeting, staff plans to report its findings to the State Board at its meeting scheduled for August 1.

This concludes my declaration.

Pursuant to 28 U.S.C. § 1746(2), I verify under penalty of perjury that the foregoing Declaration is true and correct in substance and in fact to the best of my knowledge and belief.

This the 29th day of July, 2022.



Paul M. Cox