

**TO:** North Carolina State Board of Elections

**FROM:** Petitioners Stella Anderson, Jesse Presnell, and Ian O'Keefe

**RE:** Response of William P. Aceto dated 10/11/2013

**DATE:** October 17, 2013

Mr. William Aceto asks the State Board of Elections to summarily dismiss our Complaint (Petition) of October 8, 2013 contending, "*It fails to allege any violation of Chapter 163 of the North Carolina General Statutes.*"

We disagree and therefore **oppose Mr. Aceto's request for summary dismissal.**

Our Petition requests that the State Board remove Mr. Aceto and Mr. Luke Eggers from the Watauga County Board of Elections for "*official misconduct, participation in intentional irregularities, unethical actions, and incapacity and incompetency to discharge the duties of their offices.*" These are all charges that fall within the parameters of Chapter 163 of the North Carolina General Statutes, and we have provided details and exhibits substantiating these charges.

Furthermore:

**1. There is no Statutory Procedure for Summary Dismissal of Voter Complaints under 08 NCAC 03 .0100.**

Mr. Aceto is requesting summary judgment under 08 NCAC 03 .0301. This section addresses State Board of Elections' investigations of criminal violations. Our Petition accuses Mr. Aceto and Mr. Luke Eggers of official misconduct but does not call for criminal investigation. Most of our allegations do not rise to the level of criminal behavior. Having said that, we believe that Mr. Aceto has perjured himself with his sworn response, which contains multiple falsehoods, and we respectfully request that you refer this matter to the North Carolina Attorney General's office for appropriate action.

We are aware that the rules of the Board allow it to consider a case on affidavits, but in a case such as this, involving a systematic and widespread abuse of authority, we believe that such process is wholly

inadequate and that the Board cannot get a clear picture of the circumstances leading to the Petition without a full hearing with key witnesses present who can testify under oath. In addition, there are several people with material information who cannot provide affidavits. In particular, Jane Ann Hodges, the Director of the Watauga County Board of Elections, has essentially been threatened with dismissal if she provides information other than that permitted by Mr. Aceto and Mr. Eggers' newly adopted description of her duties, one of the items about which we have complained.

We suspect that Mr. Aceto's response was prepared by County Attorney Stacy C. Eggers, IV, the brother of Board Chair Luke Eggers and that he believes summary judgment is appropriate in this situation. However, NCGS 1A, Rule 56, which relates to summary judgment, does not apply to our Petition.

**2. Mr. Aceto's Response to our Petition is Inadequate and Does Not Address the Majority of the Petition Claims.**

Mr. Aceto is not entitled to a ruling in his favor as a matter of law. In his responses to our Petition, Mr. Aceto, by means of an affidavit affirmed by his secretary, either (1) did not address the charges we outlined in our Petition, or (2) made statements which we deny below. Further, there are genuine issues as to material facts.

**3. Petitioners are Entitled to a Hearing on the Complaint.**

Our Petition involves the official misconduct of both Mr. Aceto and Mr. Eggers, and their conduct is intertwined. Mr. Eggers himself has chosen not to respond and it is unconscionable that the Board would accept Mr. Aceto's written responses without requiring that he, Mr. Eggers and other key witnesses who will be identified, should be subpoenaed and should appear and testify.

Because the facts are in dispute, Mr. Aceto and Mr. Eggers must be questioned as to the validity of Mr. Aceto's responses and to satisfy the unanswered charges in our Petition regarding their breach of duty to their office.

NC General Statute §163-22 gives the State Board of Elections the authority "to remove from office any member of a county board of elections for incompetency, neglect or failure to perform duties, fraud, or for any other satisfactory cause." 08 NCAC 03 .0102 directs

that "If the charges thus filed show *prima facie* a violation of the election law, a breach of official duty, a participation in intentional irregularities, incapacity **OR** incompetency to discharge the duties of the office," the State Board of Elections **shall** hold a hearing on the charges.

Determination of the facts and of the truth of the charges in our Petition cannot be decided through mere affidavit. Dereliction of duty in this case involves a pattern of misbehavior which cannot easily be resolved through written statements for which there is no opportunity for follow-up questions and inquiry. Further, we (as Petitioners) have evidence which is highly technical in nature and requires testimony of expert witnesses. Such testimony is essential for the Board to address the charges in our Petition.

**We therefore formally request, pursuant to 08 NCAC 03 .0106, that the State Board conduct the hearing required by NC General Statute §163-22, and we make application to the Board for subpoenas to be issued to witnesses to be heard orally at the hearing.** These witnesses will present direct testimony regarding the facts in dispute as well as offer testimony regarding thus-far unanswered charges. We have provided a brief statement of what is expected to be proved by each witness and noted why affidavits of such witnesses are not satisfactory to answer our claims.

#### **4. Responses to Mr. Aceto's Specific Assertions.**

We deny Mr. Aceto's assertions in his "*general response to the Complaint*" that the New River 3 polling location is central to the precinct and is located on a "*major Boone road.*" We also deny Mr. Aceto's assertion that "*These changes are reasonable and provide better access for a majority of voters in the precinct.*" We continue to maintain, and have presented evidence in our original Petition to prove, that the reasons behind this and other precinct location changes enacted by Mr. Aceto and Mr. Luke Eggers was a single-minded effort to target, frustrate and suppress the votes of a specific demographic group of voters.

In addition to denying Mr. Aceto's general assertion that he desires to be "*politically neutral and not be used as a pawn by either political party for gain or advantage,*" our specific responses to Mr. Aceto's assertions in response to our Petition follow:

1. Mr. Aceto's response is irrelevant to the claim in our Petition, and

his response does not deny or offer any evidence to the contrary of our claim. As this claim in our Petition involves the actions of Mr. Luke Eggers, Mr. Aceto cannot respond on behalf of Mr. Eggers.

2. Mr. Aceto's response is irrelevant to our claim, and his response does not deny or offer any evidence to the contrary of our claim. In addition, upon information and belief, we assert that Mr. Aceto's statement concerning the expressed concerns of Director Hodges is false.

3. Mr. Aceto's response is irrelevant to our claims, and his response does not deny or offer any evidence to the contrary of our claims. Furthermore, we assert that while Mr. Aceto may or may not have been provided a copy of the resolutions prior to the meeting of August 12, 2013, he was nonetheless unquestionably privy to the full details of the resolutions and prepared to defend said resolutions in advance of that meeting.

4. Mr. Aceto's response does not deny our claim that he and Mr. Eggers discussed and shared the full details of their planned, intended actions, in advance of the August 12 meeting, with the Chair of the Republican Party, whose brother is a candidate in the upcoming Town of Boone Municipal elections. We allege that this action, in concert with other actions taken by Mr. Luke Eggers and Mr. Aceto prior and subsequent to their first meeting, demonstrate that Mr. Eggers and Mr. Aceto intentionally decided on specific action items outside of a public meeting, contrary to the conduct required of their office, with the intent to suppress the votes of certain voter groups within the Town of Boone in order to impact both the November 2013 Town of Boone municipal election as well as future elections in favor of the preferred candidates of the Watauga County Republican Party.

5. We re-assert this claim as stated in our Petition and are prepared to offer an affidavit or testimony from a person with direct knowledge of Mr. Aceto's actions in support of this claim after the November 5, 2013 municipal elections.

6. Mr. Aceto's response is irrelevant to our claims and he does not deny or offer any evidence to the contrary of our claims.

7. Mr. Aceto's response is irrelevant to our claims, and his response does not deny or offer any evidence to the contrary of our claims. We maintain that while Mr. Eggers and Mr. Aceto may or may not be *"fully capable of forming (their) own independent opinions of all matters"*

*which have come before the Board,*" they have nonetheless abdicated, intentionally and behind the scenes, their full duties and responsibilities as Board members to the Election Board's attorney, Mr. "Four" Eggers (Luke Eggers' brother). Their actions have brought discredit upon the Watauga County Board of Elections and have cast the entire election process in a very negative light, especially to students at Appalachian State University, who as a result of their malfeasance will likely have a cynical view of the electoral process for some time to come.

8. We assert that Mr. Aceto's statement in his response is false. The voters of Watauga County and elsewhere have an interest in the government working transparently. Mr. Aceto and Mr. Eggers have violated Director Hodges' First Amendment right to free speech and have overtly and intentionally sought, in the establishment of new restrictive duties, to deter whistle-blowing and frustrate her ability to efficiently provide services and/or professional, confidential, and experienced advice to both the Board and voters. We maintain that the duties and restrictions placed on Director Hodges as outlined in our Petition were unreasonable and illegitimate, imposed purely for partisan political purposes arising from a paranoid view of her execution of her duties. Ms. Hodges has always had a reputation for efficiency, fairness, and even-handedness in this community, and there was no legitimate basis for the actions of Mr. Aceto and Mr. Eggers.

9. Mr. Aceto's response does not offer any evidence to the contrary of our claims. We sustain these claims.

10. Mr. Aceto's response does not offer any evidence to the contrary of our claims as outlined in our Petition. We sustain these claims.

11. Mr. Aceto's response does not and cannot address our claims involving the actions of Mr. Luke Eggers and County Attorney Four Eggers, as specified in our Petition.

12. Mr. Aceto does not address the majority of our claims, and we stand by all of the claims asserted in our Petition. Furthermore, Mr. Aceto knew that the resolution considered by the Board regarding the Legends polling location was based on a location in the Student Union other than the one actually under consideration by the Board. In short, the rationale asserted in the "Legends" resolution does not even relate to the actual Student Union polling location under consideration at the time.

13. We deny Mr. Aceto's claim that the minutes of the Watauga County Board of Elections "accurately reflect the business conducted by the Board." Further, Mr. Aceto does not address the other claim in our Petition. We stand behind the claims asserted in our Petition. As to Mr. Aceto's statement about "drafts" of minutes, recent information from Director Hodges indicates that Mr. Aceto no longer allows Board of Elections staff to even draft Board meeting minutes.

14. We challenge Mr. Aceto's response as false. Furthermore, Mr. Aceto does not address any of the specific charges detailed in our Petition.

15. We challenge Mr. Aceto's response as false. Furthermore, Mr. Aceto does not address any of the specific charges detailed in our Petition.

**We are formally requesting subpoenas for testimony in a hearing on these matters from the following individuals. We provided their contact information (mailing addresses) in our original Petition.**

**Jane Ann Hodges**

Ms. Hodges is the Director of the Watauga County Board of Elections and has served in this position for almost 27 years. Due to the 'gag order' of Mr. Aceto and Mr. Luke Eggers, imposed with the newly adopted policy dictating her duties and responsibilities, Ms. Hodges is not free to submit information without facing possible retaliation and retribution if she is not subpoenaed.

Director Hodges must testify to the sworn oath of office presented by Mr. Luke Eggers; how obsolete CBE letterhead could have come into his possession; to the details of communications with Mr. Eggers and/or Mr. Aceto as outlined in our Petition and referenced in Mr. Aceto's response; to the timeline and materials provided to her office for the August 12 meeting; to the details regarding the duties assigned to her by Mr. Luke Eggers and Mr. Aceto; to details regarding the Linville Falls Room in ASU's Student Union as compared to the Legends building as suitable polling places; and to issues related to the minutes, resolutions and agendas for Board meetings.

**Kathleen Campbell**

Ms. Campbell is the third Board member for the Watauga Board of Elections. Ms. Campbell must testify to the details of her communications and interactions with fellow Board members Mr. Luke Eggers and Mr. Aceto. Ms. Campbell is actually the only person who can testify to her experiences working with Mr. Aceto and Mr. Eggers. Ms. Campbell herself is being targeted by Anne Marie Yates, the local chair of the Republican Party and sister of a candidate for municipal office, and has been the recipient of repeated public record requests. Due to her concern about continued retaliation if she speaks the truth about the misdeeds by Mr. Aceto and Mr. Eggers which she has witnessed, she is reluctant to testify absent a subpoena.

**Jesse Presnell**

Mr. Presnell is an expert on document 'metadata' (digital properties) and on voting demographics in Watauga County. He can illustrate to the Board the significance of the document properties ('digital thumbprints') for the resolutions and other documents submitted by Mr. Luke Eggers and Mr. Aceto as their own. Mr. Presnell can illustrate for the Board why the decisions of Mr. Luke Eggers and Mr. Aceto as to the location of polling places were not for the purposes presented by Mr. Aceto in his response.

**Diane Cornett Deal**

Ms. Deal is the Clerk of Superior Court for Watauga County. Ms. Deal must testify to the circumstances of Mr. Eggers presenting himself to be administered his oath of office, his initial act of deception as an appointed member of the Board. Ms. Deal was put in an untenable position with the presence of County Attorney Four Eggers and his presentation to Ms. Deal of the oath of office for his brother Luke on official County Board of Elections letterhead. Ms. Deal can attest to the usual administration of the oath of office to newly appointed Board members.

**Stacy C. Eggers, IV**

Mr. "Four" Eggers is the County Attorney and therefore the attorney for the County Board of Elections. He is the brother of Mr. Luke Eggers. Mr. Four Eggers must be questioned as to his role in getting his brother Luke sworn in; his actions to effectively run the Board of Elections through his brother Luke; and his authorship of the resolutions, minutes and other official documents as well as his presentation of these documents as if they were prepared by his brother Luke and/or Mr. Aceto. Mr. Four Eggers was still a member of

the Board of Elections when the mandatory organizational meeting of the Board took place in July, but he did not attend, and he should be questioned as to why he did not do so and thereafter advised Mr. Aceto that it was appropriate to defer the election of officers until August. Furthermore, since Mr. Four Eggers freely engaged in discussions of policy with Mr. Aceto when he was still a member of the Board before his brother was sworn into the position, his actions bear on the allegations regarding Mr. Aceto's own violations of the Open Meetings Law. Mr. Four Eggers will not provide truthful information in these matters unless he is placed under oath.

**Anne Marie Yates**

Ms. Yates is the current Chair of the Watauga County Republican Party and the sister of a current candidate for municipal office. Furthermore, she is the wife of a Watauga County Commissioner. The Watauga County Commission has now taken actions which suggest that it believes that the Watauga County Board of Elections is under its authority and control. Ms. Yates must testify under oath and be subject to questioning in a hearing as to exactly how she acquired advance knowledge of the specifics of the matters the Board was to vote on at the August 12 meeting.

Stella Anderson  
Stella Anderson

Jesse Presnell  
Jesse Presnell

Ian O'Keefe  
Ian O'Keefe

Sworn to before me this 17<sup>th</sup> day of October, 2013

Notary Kendra C. JACKSON

Signature Kendra C. JACKSON

Expires 09.28.2015

