

Voter Registration Purges in North Carolina

*North Carolina State Conference of the NAACP
v. North Carolina State Board of Elections
(Loretta C. Biggs, M.D.N.C. 1:16-cv-1274)*

Eight days before a presidential election, a federal complaint challenged widespread cancellation of voter registrations based on single instances of undeliverable mail. Finding that the National Voter Registration Act proscribed systematic voter registration cancellations less than ninety days before a federal election and proscribed cancellations based on evidence of residence changes before two federal elections had occurred, a district judge enjoined the voter registration cancellation program at issue in an opinion issued four days before the election. The judge issued a permanent injunction about two years later.

Topics: Nullifying registrations. *Topics:* Registration challenges; National Voter Registration Act.

A state unit and a county unit of the NAACP and four voters whose voter registrations were challenged as part of what the plaintiffs called en masse challenges filed a federal complaint in the Middle District of North Carolina against election officials of North Carolina and three of its counties on October 31, 2016, eight days before a general election, claiming that the late and widespread challenges violated the National Voter Registration Act (NVRA).¹ With their complaint, the plaintiffs filed a motion for a temporary restraining order.²

On the day that the case was filed, Judge Loretta C. Biggs set it for hearing two days later.³ Judge Biggs issued a twenty-eight-page opinion on November 4 explaining her reasons for granting the plaintiffs a preliminary injunction.⁴

1. Complaint, *N.C. State Conference of the NAACP v. N.C. State Bd. of Elections*, No. 1:16-cv-1274 (M.D.N.C. Oct. 31, 2016), D.E. 1; *N.C. State Conference of the NAACP v. N.C. State Bd. of Elections*, 283 F. Supp. 3d 393, 397 (M.D.N.C. 2017); see Pub. L. No. 103-31, 107 Stat. 77 (1993), as amended, 52 U.S.C. §§ 20501–20511. See generally Robert Timothy Reagan, *Motor Voter: The National Voter Registration Act* (Federal Judicial Center 2014).

2. Amended Temporary Restraining Order, *N.C. State Conference of the NAACP*, No. 1:16-cv-1274 (M.D.N.C. Oct. 31, 2016), D.E. 21; Temporary Restraining Order, *id.* (Oct. 31, 2016), D.E. 3; *N.C. State Conference of the NAACP*, 283 F. Supp. 3d at 397.

3. Order, *N.C. State Conference of the NAACP*, No. 1:16-cv-1274 (M.D.N.C. Oct. 31, 2016), D.E. 24; see Transcript, *id.* (Nov. 2, 2016, filed Oct. 23, 2017), D.E. 79; Minutes, *id.* (Nov. 2, 2016), D.E. 40; *N.C. State Conference of the NAACP*, 283 F. Supp. 3d at 397; see also Martha Waggoner & Jonathan Drew, *Judge Says Voter-Challenge Process Seems “Insane” in Swing State of N.C.*, Miami Herald, Nov. 3, 2016, at 16A.

4. Opinion, *N.C. State Conference of the NAACP*, No. 1:16-cv-1274 (M.D.N.C. Nov. 4, 2016), D.E. 42, 2016 WL 6581284; *N.C. State Conference of the NAACP*, 283 F. Supp. 3d at 397–98; see Preliminary Injunction, *N.C. State Conference of the NAACP*, No. 1:16-cv-1274 (M.D.N.C. Nov. 4, 2016), D.E. 43; see also Anne Blythe, *Judge: N.C. Counties Must Restore Voters*, Winston-Salem J., Nov. 5, 2016, at A7; Jonathan Drew & Gary D. Robertson, *Judge Says N.C. Counties Must Restore Voters Removed from Rolls*, Miami Herald, Nov. 5, 2016, at

“[T]here is little question that the County Boards’ process of allowing third parties to challenge hundreds and, in Cumberland County, thousands of voters within 90 days before the 2016 General Election constitutes the type of ‘systematic’ removal prohibited by the NVRA.”⁵

“[T]he only evidence presented [to the county boards] was . . . one mailing returned and marked undeliverable.”⁶ “The mailing was marked ‘DO NOT FORWARD’; however, the NVRA expressly states that the notice must be sent by forwardable mail.”⁷

- (1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant—

. . .

(B) (i) has failed to respond to a notice . . .

- (2) [that] is a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address . . .⁸

Moreover, the NVRA forbids cancelation of the voter registration until after two general federal elections.⁹ The counties’ violation of this provision created a second reason for the plaintiffs’ likelihood of success on the merits.¹⁰

On August 7, 2018, Judge Biggs permanently enjoined “Defendants from canceling the registration of voters in violation of the NVRA’s prior notice and waiting period requirement and 90-day prohibition on systematic removals, as well as order[ed] the Executive Director of the State Board to ensure statewide compliance with the NVRA.”¹¹

16A; Allan J. Lichtman, *The Embattled Vote in America 207* (2018); Michael Wines, *Judge’s Ruling Preserves Voting Rights for Thousands in North Carolina*, N.Y. Times, Nov. 5, 2016, at A13.

5. Opinion, *supra* note 4, at 12–13.

[T]he Court concludes that the County Boards’ reliance on a single mailing that was returned undeliverable as the basis for sustaining a challenge, resulting in the County Boards systematically purging between 3,500 and 4,000 voters from registration rolls within 90 days of the General Election, was a likely violation of the NVRA.

Id. at 18.

6. *Id.* at 14.

7. *Id.* at 19 (citation omitted).

8. 52 U.S.C. § 20507(d).

9. *Id.* § 20507(d)(1)(B)(ii).

10. Opinion, *supra* note 4, at 21.

11. Opinion at 24, N.C. State Conference of the NAACP v. N.C. State Bd. of Elections, No. 1:16-cv-1274 (M.D.N.C. Aug. 7, 2018), D.E. 114, 2018 WL 3748172; *see* N.C. State Conference of the NAACP v. N.C. State Bd. of Elections, 283 F. Supp. 3d 393 (M.D.N.C. 2017) (denying motions to dismiss the complaint).