

NORTH CAROLINA

State Board of Elections

Mailing Address:
P.O. Box 27255
Raleigh, NC 27611-7255

Phone: (919) 733-7173
Fax: (919) 715-0135

JOAN M. FLEMING, CFE
Chief, Investigations Division

July 18, 2016

Mr. Jay N. DeLancy, Director
Voter Integrity Project
4441 Six Forks Road
#106-223
Raleigh, NC 27609-5729

RE: Case Number 2016-079

Dear Mr. DeLancy,

Reference is made to two complaints you filed, as the Director of the Voter Integrity Project (VIP) with our office on 05/27/2016 and 06/21/2016. This office has carefully reviewed both complaints, which are summarized as follows:

Complaint dated 5/27/2016

In your complaint of 05/27/2016, you stated that on 05/26/2016, you received information from two unaffiliated voters, that during the first day of early voting for the June 7, 2016 Primary Election, they were misled about ballot choices by a poll worker employed by the Wake County Board of Elections.

In your complaint, you advised that the voters informed you that a Wake County BOE poll worker "said they could only have a Democrat, Libertarian, or Nonpartisan ballot" and that she "made no mention of the Republican ballot." You also described how, as an unaffiliated registered voter in Wake County, you went to the same early voting site where you sought out and were able to video-record the same poll worker as she assisted you. You stated that the poll worker informed you that, "your choices are the Democratic, the Libertarian, or the Non-Partisan" ballots, and that she went on to describe the similarity of those ballots, after which you stated that she lowered her voice and mentioned there was also a Republican ballot. You state that you discussed your experience and the experience of the above two voters with Wake County BOE Director Gary Sims on 05/27/2016, and that based upon that discussion, you are, "convinced it will not happen again at this location."

In the same complaint, and also on the VIP website, you allege that the poll worker, and possibly others, were "committing partisan voter suppression" in that the poll worker, "incorrectly told the couple they could only have either a Democrat ballot or a Nonpartisan ballot." You further conclude that, "a paid election official was caught misleading three voters in order to achieve some sort of partisan goal." You state that, "While she didn't act exactly as the [complainants] described, she clearly tried to deceive me out of my Republican ballot." The assisting poll worker's name, party affiliation, and photographs of her that you obtained from your video and her Facebook page are prominently displayed on the VIP website which also links to the headline, "Wake County Election Employee Could Face Felony Voter Suppression Charges."

In your complaint, you recommend that, if within our authority, the State Board of Elections direct Wake County BOE Director Sims fire the poll worker and possibly replace or fire her site supervisor. You also recommend that the State Board supervise the Wake County BOE in pulling the voter history of every unaffiliated voter who accepted a nonpartisan ballot on 05/26/2016 in order to contact each of those voters concerning the ballot they were offered. Finally, you request that the State Board identify to you the full names of all Wake County early voting location poll workers who were paid as election assistants or as an election supervisor for the "March primary election."

Findings:

The Wake County BOE took immediate corrective action in considering the information from both the complainants and the poll worker, as well as reviewing the circumstances. The second voter reported her concerns to the help desk prior to casting her ballot and she was immediately offered the correct ballot. The first voter, who had already processed his ballot through a tabulator, was allowed to vote a provisional ballot which was counted as his vote. As demonstrated in your video, you did receive a protracted explanation of the unaffiliated ballot from the poll worker, but were in fact, offered a Republican ballot by the poll worker at the end of that explanation. When interviewed by Director Sims, the poll worker stated that she was trying to explain an unusual circumstance with the unaffiliated ballot choices and was not intentionally trying to minimize any of the other ballot choices. The poll worker and site supervisor were counseled and reassigned from their duties by Director Sims. Director Sims has stated that he believes the poll worker "got lost" in her explanation of the ballots and inadvertently failed to offer all ballots to the couple in question. The State Board has recommended to Director Sims that he emphasize the use of the training materials provided by both the State Board (NC Voting Site Station Guide) as well as any supplemental County training materials when training poll workers.

There have been no prior complaints against this poll worker, who has been employed since 2004. No additional complaints were received from voters in regards to ballots offered and provided to voters by this poll worker or others at this voting site. Taken as a whole, the facts presented within the complaint do not support the conclusion that the poll worker in question acted with criminal intent to intimidate or discourage potential voters from exercising their right to vote. This office has made no referrals of this matter to the Wake County District Attorney's Office and knows of no such referrals being made by any other entity. As such, investigation into the above complaint is considered closed.

Complaint dated 6/21/2016

In your complaint dated 06/21/2016, you provided affidavits from three Orange County voters who allege that during the June 7, 2016 Primary Election, a poll worker employed by the Orange County Board of Elections engaged in an act of voter suppression, and on three occasions poll workers failed to enforce the North Carolina Voter ID law. The substance of the voter ID allegation is that three voters were allowed to vote without first presenting a ID to two different poll workers. One of these voters stated, via affidavit, that the poll worker who assisted her made a statement that her ID was "the first one that she (the poll worker) had checked that day." The substance of the voter suppression allegation appears to be that a voter was allegedly advised that she should not mark her ballot for the congressional races and should only do so for the judicial races because doing so would cause her ballot to be "misread" by the machine. This same voter further stated, in her affidavit, that she was not asked for ID.

Findings:

At the request of an Orange County Board of Elections member, the Orange County Board of Elections staff conducted a telephonic survey of voters from the specific precinct in question. The survey included voters who cast ballots before the time that the complainants voted and after that time, and these voters were assisted by the same poll workers referenced in your complaint. The survey did not identify any voters who reported that they were not asked for ID or who stated that they were instructed not to vote in

any contest. Based upon the above survey results, the allegation of a statement by a poll worker that one of the complainant's IDs was the "first one I've seen today", has been contradicted by information and facts obtained from other voters, showing facts to the contrary. There were no additional complaints that ID was not being checked and no intentional pattern of failing to enforce the ID requirement has been established by available evidence.

The allegation that a poll worker instructed a voter not to vote in all of the contests on the ballot because it would cause her vote to be misread could not be substantiated. There were no reports from voters surveyed, or any other voters (other than the single affidavit you provided) of similar instructions being given to any other voters and no pattern of voter suppression was revealed. As such, investigation into this complaint is considered closed.

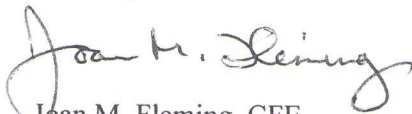
Notwithstanding the results of our investigation, the Orange County Board of Elections Director has advised all staff of the importance of consistently checking voter ID. Additionally, the Director will continue to remind voters and staff that if they see or encounter an irregularity during voting, they should immediately report it to the Chief Judge at the precinct.

Allegations of voter suppression by anyone, including poll workers, are considered serious matters that, if supported by facts, will be referred by our office to the appropriate District Attorney. Likewise, allegations of intentional poll worker misconduct, will be thoroughly investigated and, if warranted based upon evidence of criminal intent, will be referred for prosecution.

The privacy of voters and safety of poll workers are also taken very seriously by the NCSBE. Please be aware that NC GS 163-166.3 (b) prohibits the taking of photos, including video, of any voter within the voting enclosure, "except with the permission of *both the voter and the chief judge of the precinct*".

If you have questions, concerns, or information you wish to discuss, you may contact me at 919-715-1792.

Sincerely,



Joan M. Fleming, CFE
Chief Investigator
North Carolina State Board of Elections

Cc: Gary Sims, Director, Wake County Board of Elections
Tracy Reams, Director, Orange County Board of Elections