



To: Damon Circosta, North Carolina State Board of Elections Chair
CC: Jeff Carmon, Board Member; Stacy “Four” Eggers IV, Board Member; Tommy Tucker, Board Member; Stella Anderson, Secretary; Karen Brinson Bell, State Board Executive Director.

December 16, 2022

Dear Chair Circosta and Members of the North Carolina State Board of Elections,

We write to express deep concern regarding the conduct of two Surry County Board of Elections members, Jerry Forestieri and Tim DeHaan, during the 2022 election canvass period, and to urge the State Board to take immediate steps to remove these board members for violating the oaths of their office and their duties under applicable law.

As the State Board is aware, during the Surry County Board of Elections’ November 18, 2022 county canvass meeting, Forestieri and DeHaan presented a letter baselessly calling into question the credibility of the 2022 elections in North Carolina. The letter was signed by them using their full titles as Secretary and Member of the Surry County Board of Elections respectively, and they presented this letter during the course of exercising those duties.

The letter’s inflammatory language is dangerous misinformation that constitutes an attack on North Carolina’s laws, election integrity, and voter confidence. Forestieri and DeHaan asserted that they “don’t view election law per NCSBE as legitimate or Constitutional,” and go on to describe North Carolina election law administered by the North Carolina State Board of Elections as “grotesque” and a “perverse sham of our real election laws as enacted by our General Assembly.” Ultimately, they conclude that recent federal court rules (which, as described below, they erroneously represent) are “perverting our election practices” and that “this most recent election has again failed to show it did not produce false results.” They make this shocking assertion without citing one scintilla of evidence of election manipulation, much less evidence (credible or otherwise) that any ineligible voters cast a ballot in 2022.

As the meeting recording indicates, Forestieri and DeHaan introduced this letter with the objective of appending it to the formal certification of Surry County’s canvass results. After the Surry County Elections Director received guidance from counsel at the State Board of Elections that the letter could not be included, Forestieri refused to sign-off on Surry County’s official results due to the concerns reflected in the letter. While Mr. DeHaan did approve the official election results, he made no efforts to disclaim the statements made in the signed letter, nor did he ask to have his signature removed from that letter, which was made public at the canvass meeting.

Forestieri and DeHaan’s efforts to baselessly undermine the canvass of election results for Surry County constitute a violation of their oath of office and duties to complete canvass, that requires their immediate removal.

When they assumed their positions as County Board of Elections Members, Forestieri and DeHaan swore they would “support the Constitution of the United States,” “support, maintain and defend the Constitution of said

State, not inconsistent with the Constitution of the United States,” and execute the duties of their office “according to law.” N.C. Gen. Stat. § 163-30(e). Following each election, they are required to “complete the canvass of votes cast and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly.” N.C. Gen. Stat. § 163-182.5.

By releasing the November 18 Letter and failing to certify the 2022 Election Results, Forestieri and DeHaan intentionally and undeniably violated their oaths and sworn duties. This fact is apparent by the text of their letter itself, the first sentence of which admits that the 2022 general election in Surry County was “conducted in full compliance with applicable laws,” with the only possible exception of poll worker actions unrelated to their basis for objecting to the certification of election results. In other words, they admit that votes were “counted and tabulated correctly” under N.C. Gen. Stat. § 163-182.5. But instead of carrying out their duty to “complete canvass” under that same provision, they call the canvass results into question and “decline to certify these election results as credible,” a statement that Forestieri acted upon in declining to vote in favor of finalizing results.

Forestieri and DeHaan’s purported basis for questioning the credibility of Surry County’s election results is also a gross misreading and misrepresentation of two federal court decisions. *First*, they incorrectly contend voter ID was not required in the 2022 general election due to Judge Bigg’s 2018 decision regarding voter ID, and further contend this decision relied on the National Voter Registration Act (NVRA). But as the State Board is well aware, the most recent voter ID legislation, S.B. 824, was not in place for the 2022 general election because it was permanently enjoined by a *state* court three-judge panel in a September 2021 decision in *Holmes v. Moore*, No. 18 CVS 15292. There, following a three-week trial, the panel ruled that S.B. 824 violated the North Carolina Constitution’s Equal Protection Clause under Article I, Section 19 because it was enacted with the intent to discriminate against African American voters. *Second*, they incorrectly assert that a second federal court decision imposed an “injunction against voter challenges of registrations for previously registered voters based on change of address.” But the 2018 injunction recognized the illegality of a limited set of systematic removals that violate specific procedural and time-bar provisions of the NVRA, *not* a blanket ban on all challenges. See *N.C. State Conference of the NAACP v. Bipartisan State Bd. of Elecs. & Ethics Enf’t*, No. 1:16CV1274 (M.D.N.C. Aug. 8, 2018).

Most importantly, both of the aforementioned state and federal court decisions interpret and enforce the requirements of North Carolina’s state Constitution and the federal Constitution, which Forestieri and DeHaan have sworn and are bound to support and defend in the course of their official duties. To the extent their complaint is with federal law, our state Constitution unambiguously states in Sections 3 and 5 of its Declaration of Rights under Article I that federal law is the supreme law of the land in North Carolina. Forestieri and DeHaan cannot alone decide what the law does or does not require. By calling into question the legitimacy of state and federal Constitutional requirements, and doing so under the color of exercising their official duties as Members of the Surry County Board of Elections and with the goal of obstructing the canvass of official results during a county Board meeting, they have violated the most central oath and duties of their office.

While Forestieri and DeHann are free to disagree with court rulings as a matter of personal opinion, they are not permitted to violate their oaths of office and fail to execute their official duties to support and uphold legally binding election law because they view this law as somehow illegitimate.

Forestieri and DeHaan’s violations of their sworn duties as County Board of Election Members cannot go unchecked; a failure of the State Board to remove them from office would set a dangerous precedent that would pave the way for baseless attacks on the credibility of our elections. We urge the State Board to immediately exercise its power “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.” N.C. Gen. Stat. § 163-22. The security, integrity, and voter confidence in North Carolina’s elections depend upon it.

Sincerely,

[Advance Carolina](#)

[Common Cause North Carolina](#)

[Democracy North Carolina](#)

[North Carolina Voters for Clean Elections](#)

[Southern Coalition for Social Justice](#)