

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
20 CVS 5035

**AFFIDAVIT OF REVEREND T.  
ANTHONY SPEARMAN**

1. I am of legal age and competent to provide this affidavit. All the information herein is based on my own personal knowledge unless otherwise indicated.
2. I am the President of the North Carolina State Conference of the National Association for the Advancement of Colored People ("NC NAACP") - a plaintiff in this action - and I am authorized to provide this affidavit on the NC NAACP's behalf.
3. In this capacity, I have advocated for the voting rights of the NC NAACP's members at both the state and the federal level-having, for example, offered testimony before the United States House of Representatives regarding the certification of certain unsecure voting machines

and called for the State Board of Elections to focus more on cybersecurity in advance of the 2020 election cycle and to forbid the usage of insecure voting machines like the ExpressVote for all voters. A copy of my written testimony to the United States House of Representatives is appended as Exhibit A, and a copy of my letter to the North Carolina State Board of Elections is appended as Exhibit B.

4. The NC NAACP is the state conference of the nation's oldest and largest civil rights organization. We are the second largest state conference of the NAACP in the United States. For over 70 years, the NC NAACP has pursued its mission to ensure the political, educational, social and economic equality of rights of all persons and to eliminate racial hatred and discrimination. We have followed a variety of strategies to carry out this goal, including public education and advocacy, filing Title VI administrative claims, and pursuing litigation in order to challenge racially discriminatory policies and practices and to enforce anti-discrimination laws for the benefit of its members.

5. The NC NAACP advocated against and contested North Carolina's and counties' use of the ExpressVote. For example, the NC NAACP organized an emergency meeting in September 2019 at the New Light Baptist Church in Greensboro in which computer scientists and other experts and election administrators educated NC NAACP members and other members of the public about the vulnerabilities and security risks created by using the ExpressVote. The event was livestreamed at North Carolina churches in Raleigh, Fayetteville, Charlotte, and Broadway.

6. Due in part to this advocacy, some counties, such as the Guilford County Board of Elections, decided to use a hand-marked paper ballot system instead of the ExpressVote.<sup>1</sup>

Several counties, however, decided to proceed with purchasing ExpressVote machines.

7. NC NAACP has had to divert personnel, time, and resources away from its planned activities in order to focus on the technological vulnerabilities that the ExpressVote has and, on information and belief, will introduce into North Carolina elections; to study the ExpressVote and identify security risks; advocate against the certification of the ExpressVote and its procurement by the ExpressVote counties; and convene meetings and educate members of the public and elected officials about the ExpressVote and the potential security risks and other dangers it creates. On information and belief, if another election is allowed to go forward using these machines, NC NAACP will continue to suffer such injuries.

8. The use of the ExpressVote machines for all voters in some counties has detracted from the NC NAACP's fundamental mission, which includes fighting gerrymandering and other impediments to voting that undermine free and fair elections, to its detriment. The NC NAACP will be injured by the continued use of the ExpressVote in future elections.

9. The NC NAACP has approximately 20,000 members in North Carolina. The NC NAACP has active branches in nearly every county in North Carolina, including in Alamance, Ashe, Buncombe, Burke, Cherokee, Davie, Davidson, Forsyth, Haywood, Henderson, Jackson, Lenoir, Mecklenburg, New Hanover, Pender, Perquimans, Polk, Rutherford, Surry, Transylvania, and Warren Counties, which use the ExpressVote.

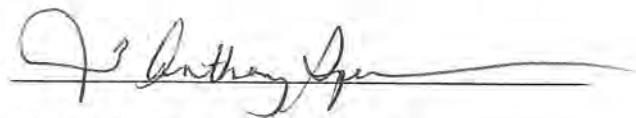
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<sup>1</sup> I am a member of the Guilford Board of Elections and I voted in favor of the county's plan to use hand-marked paper ballots instead of the ExpressVote. This declaration reflects my own views and is not written in my official capacity as a member of the Guilford County Board of Elections.

10. NC NAACP members include individuals whose constitutional rights are at risk due to their votes being manipulated or otherwise not being recorded accurately by the ExpressVote. NC NAACP members face the imminent and substantial risk that their votes may not be counted at all, that their selections may not be recorded accurately, or that they will have to choose not to vote in order to avoid using the ExpressVote, which will pose a serious and unnecessary risk to their health and lives during the novel coronavirus pandemic. The interests of these members that NC NAACP seeks to protect are germane to its purpose.

11. The foregoing is true and accurate to the best of my knowledge under penalty of perjury.

Executed July 13, 2020, at Grunsboro, North Carolina.

A handwritten signature in cursive script, appearing to read "T. Anthony Spearman", written over a horizontal line.

Reverend T. Anthony Spearman

# Exhibit A

**Reverend Dr. T. Anthony Spearman**

**Written Testimony**

**To the**

**Congress of the United States**

**House of Representatives**

**Committee on House Administration**

**January 9, 2020**

I am the Reverend Dr. T. Anthony Spearman. I am an ordained elder in the African Methodist Episcopal Zion Church, the President of the North Carolina State Conference of Branches of the National Association for the Advancement of Colored People and a member on the Guilford County Board of Elections. I am honored to be here today, and although not a vendor or an expert, I hope that the testimony I offer on the election security question will help us move closer to "form a more Perfect Union, establish Justice, Insure domestic tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity" and shape, for generations to come, a newer and truer democracy than the one present to us today.

I was reared in a household where the right to vote was held sacred and I learned to exercise that right by voting in every election since my eighteenth year of existence. For nearly fifty years I have participated in Voter Registration Drives, Get Out the Vote efforts and while pastoring encouraged and led these endeavors at the church, going from door to door registering people to vote and most recently, in my role as President of the State Conference of Branches NAACP requesting the opportunity to get into the jails to register eligible voters. I am a staunch advocate of the 15<sup>th</sup> Amendment which states, "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. The Congress shall have power to enforce this article by appropriate legislation."

My experience as a Board of Elections precinct worker in the State of North Carolina began around 2007 in Catawba County after a growing number of church members began venting their frustrations with the voting process, which sounded a great deal like voter suppression but more importantly they had no one to voice their concerns. Coincidentally, this was the same year that Same Day Registration began in the state allowing voters to cast ballots during the early voting period (third Thursday before an election until the Saturday prior to Election Day) which led to an increase in voter participation during the November 2008 presidential election. There, in Catawba County, voters voted by hand marking their paper ballots and I was assigned to a precinct in the white community of Sherrill's Ford, where things usually ran smoothly. I began working as an Election Day Specialist (EDS) who managed all the questions of voters whose names did not appear on the books and directed them to the correct precinct or cleared the way

for them to at least cast a provisional ballot. Then I worked my way through the ranks serving as an assistant, and judge.

It was around this time, post *Shelby v. Holder* (June 25, 2013 when the Supreme Court of the United States returned its decision eviscerating Section 4 of the Voting Rights Act of 1965) that my activism for voting rights spiked and my perspicacity for voter suppression grew, resulting in increased attendance at Legislative sessions in Raleigh and County Board of Election meetings and staying abreast of voting laws enacted, which instantly increased after June 25, 2013, like the "monster" voter suppression law **House Bill 589; an act to restore confidence in government by establishing the voter information verification act to promote the electoral process through education and increased registration of voters and by requiring voters to provide photo identification before voting to protect the right of each registered voter to cast a secure vote with reasonable security measures that confirm voter identity as accurately as possible without restriction, and to further reform the election laws; the bill's short title was known as the Voter Information Verification Act or (VIVA).** The bill was introduced as a 14-page document but by the time of its ratification had mushroomed into a 64-page monstrosity that reduced the number of early voting days, did away with same day registration and pre-registration of 16-17-year olds and eliminated out of precinct voting. A rash of other bad bills that would have made it harder for a person to vote soon followed.

In 2014 when I was appointed to a church in Greensboro an opportunity to work in a precinct in Guilford County presented itself and there I worked as a judge and on to becoming the Chief Judge of FEN1, one of the largest African American precincts in the county. In Guilford County, iVotronics or direct-recording electronics (DREs) were in use and among my growing concerns while serving the precinct were problems that arose with the touch screen or iVotronic devices. Eventually, the opportunity arose to offer myself for a seat on the Guilford County Board of Elections.

I was first elected to the Guilford County Board of Elections in 2017 for a two-year term and reelected in January of 2019 for another two-year term. During my first term I was the only member without a legal degree and the only African American, but I sat at the table on that board with my experience of working in the precinct and passion for the voter.

Having had the opportunity to serve the public as a member of the Hickory Public School Board of Education I developed a discipline of being responsible and accountable to the people I served. There, rather than being overly concerned with always arriving at consensus as a board (for appearance sake) I learned to ask questions and vote my conscience. I am certain this was a by-product of my activist background and I resolved to take that same discipline on to the Guilford County Board of Elections.

On April 16, 2019 the NC NAACP legal team made a presentation entitled "The Fight Against Voter Suppression Continues." On April 18, 2019 the Mueller Report was released which I bought and read.

On May 21, 2019, Dr. Rodney Sadler, the Health Chair of the NC NAACP Executive Committee text to introduce me to a John Brakey, an election specialist and Executive Director of AUDIT

USA (Americans United for Democracy, Integrity and Transparency in Elections). He was in North Carolina examining our elections process. On Saturday, June 1, 2019, I invited John to join me during the Annual Conference of the West Central North Carolina Conference of the Piedmont Episcopal District of the African Methodist Episcopal Zion Church. There I serve as the Director of Voter Registration of the entire district covering three conferences.

From that day my knowledge of all aspects of elections began to increase and I became familiar with terms like Election Assistance Commission (EAC), Voluntary Voting Systems Guidelines (VVSG), cybersecurity and seeking to make elections transparent, trackable and publicly verifiable. Through Brakey, I started reading election law blogs and educating myself on the certification process. It seemed that the decertification of DREs was imminent and the certification of new machines was soon to occur, but then on June 24, 2019 I received a text stating that the NC General Assembly was planning to extend the use of DREs through the 2020 election. This would be the second time that their life had been extended after a bill passed in 2013 outlawing their use after 2018. It was then that I grew suspicious and turned to scrutinizing voting system vendors, especially Election Systems & Software (ES&S). It was also about this time that I learned of a \$10 million dollar bond to keep other vendors out of North Carolina from bidding on new equipment. The \$10 million would effectively mandate a single source for NC election machines, forcing all 100 counties to buy the same brand of equipment at non-competitive prices. This was not good democracy. Had Guilford County worked so long with ES&S equipment that they developed a bias which prevented the consideration of other vendors? I could not say but it sometimes appeared that many of the board decisions were relegated to the director or at least reliance on his "recommendations" without much discussion began to disturb me and I vocalized my concern and conducted research on my own.

This was about the time that legislative changes to absentee ballots began surfacing largely because of the election fraud discovered in North Carolina's Ninth Congressional District and I first met with Karen Brinson-Bell, the new Executive Director of the State Board of Elections at the Legislative Building. By the time our brief meeting ended, I sensed she was strongly biased toward the vendor, ES&S and was not open to talking with outside experts or specialists.

I became aware that ES&S employed six lobbyists and I knew one of them reasonably well. We talked. He shared concerns about the DREs and how they were banned in Florida in 2006 but he was a strong supporter of the expensive BMDs which I am not, mainly because of the bar codes they use, which I cannot read.

Some of the papers of experts like Professor Duncan Buell and Phillip Stark began to inform me about the dangers of these machines creating long lines and perpetuating voter suppression.

On Sunday July 28, 2019, the State Board of Elections held an open meeting. Convinced that the board intended to certify machines that night, many advocates of hand marked paper ballots filled the room.

That night the board voted 3-2 to delay certification until the next meeting. The chair resigned the next day.



On August 23, 2019, the meeting was held with the new Chair presiding and the vote to certify three vendors (ES&S, Hart InterCivic and Clear Ballot) carried 3-2.

Many of us reminded the State Board of

***§163A-1115(e) "Prior to certifying a voting system, the State Board shall review, or designate an independent expert to review, all source code made available by the vendor pursuant to this section and certify only those voting systems compliant with State and federal law. At a minimum, the State Board's review shall include a review of security, application vulnerability, application code, wireless security, security policy and processes, security/policy program management, technology infrastructure and security controls, security organization and governance, and operational effectiveness, as applicable to that voting system. Any portion of the report containing specific information related to any trade secret as designated pursuant to G.S. 132-1.2 shall be confidential and shall be accessed only under the rules adopted pursuant to subdivision (9) of subsection (f) of this section. The State Board may hear and discuss the report of any such review under G.S. 143-318.11 (a)(1).***

Having met with a number of election specialists and experts the NC NAACP organized an emergency town hall meeting asking the question, "Who Shall Profit? Vendors or Voters." The Emergency Town Hall meeting was streamed in five locations, Charlotte, Raleigh, Fayetteville, Winston-Salem and Broadway, NC. We featured experts; among them Dr. Andrew Appel, and Professor Duncan Buell and we drew one County Board of Elections member, one State Board of Elections member and one Guilford County Commissioner.

After two postponements to vote on a system, Guilford County Board of Elections decided to proceed with Hand Marked Paper Ballots. Below is a list of the equipment we will purchase.

- For the polling places: **ES&S DS200 Digital Scanner** with paper ballots
- Formula for this was one unit per voting site (165 precincts + 30 early voting sites + 25 spares).
- For ADA compliance: **ES&S AutoMark Ballot Marking Device**
- Formula for this was one unit per voting site (165 precincts + 30 early voting sites and no spares because they can be reallocated between the voting methods very easily).
- For High-Speed Central Scanning: **ES&S DS850 Digital Scanner**
- Formula for this was two units to expedite any large recounts and also to have one as a backup.
- As for booths, the county is buying enough nice folding booths with aluminum legs to equal the footprint of our current voting machines (about 1,400) and then buying another 800-1000 corrugated plastic privacy screens that will sit on table tops (folding tables, cafeteria tables, library tables, etc.).

- The software version is ElectionWare 5.2.2.0.
- Additionally, Guilford County will enter into a contract that allows us to code our own ballots – that is create and design our own paper ballots and program the units and tabulation software – without the vendor. Many counties rely on the vendor to program their elections, but Guilford County's Director and Assistant Director have been trained and are authorized to do our own.

The Guilford County Board of Commissioners had budgeted \$8,000,000 for the voting system and our total cost came to \$2,200,000 amounting to a savings of \$5,800,000 which the commissioners partially reallocated to increase the pay of school bus drivers and other employees.

We would hope others would follow the Guilford County model. We remain reasonably assured that it will help to restore trust and confidence in the election process.

# EMERGENCY TOWN HALL MEETING

## WHO SHALL PROFIT?

### Vendors or Voters



**Monday, September 16**

• **6:00 pm** •

**New Light Baptist Church  
1105 Willow Rd., Greensboro, NC**

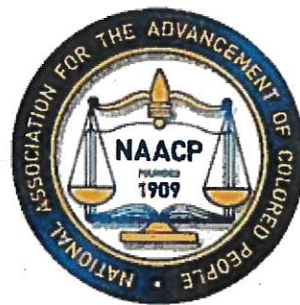
**Join the discussion on how we can make every vote count. Experts will be on hand to explain the risks of electronic voting.**

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**Watch the live stream at  
Little Rock AME Zion Church,  
401 N. McDowell St., Charlotte, NC 28204**

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**Questions?  
Call 919.682.4700 or  
email [info@naacpnc.org](mailto:info@naacpnc.org)**



# Forward Together, **Not One Step Back!**

# Exhibit B

The Honorable Roy Cooper  
Governor of North Carolina  
Raleigh, North Carolina

BY EMAIL

October 18, 2019

Dear Governor Cooper,

In the last three years reports of unprecedented cyber threats against election infrastructure in the United States have blanketed the news and rattled the public. Former Department of Homeland Security Nielsen has said, “[t]here is little doubt that adversaries and non-state actors continue to view elections as a target for cyber and influence operations,” warning “[o]ur democracy itself is in the crosshairs.” The stark truth is that the foreign nation states and other bad actors targeting our elections are highly motivated and possess significant financial and technical resources able to disrupt or manipulate our election infrastructure. We cannot ignore or minimize the magnitude of this threat.

Our election infrastructure must be strong, secure, transparent and trustworthy. Our election administrators must be determined to protect our elections and prioritize security, transparency, auditability and trustworthiness in our election systems. In his short tenure, recently appointed North Carolina State Board of Elections Chair Damon Circosta has not only failed to prioritize security and trustworthy election systems, Mr. Circosta has exhibited unqualified unfamiliarity and disdain for critical election security principles. For this reason, we are writing to ask you to request the immediate resignation of Damon Circosta from the State Board of Elections.

We do not make this request lightly. However, against the background of these profound threats we believe it is not only appropriate, but necessary. North Carolina’s State Election Board has been riven with controversy over the past three years and struggled earn the confidence of the North Carolina electorate. The Board has been widely criticized for failing for over two years to investigate the widespread failure of electronic pollbooks in 2016<sup>1</sup> provided by a vendor that had been attacked by Russian agents. North Carolina’s election troubles were again in the national media with election misconduct in the CD-9 contest. North Carolina’s elections have been marred with poor leadership and inattention to election integrity threats. Moreover, we have uncovered evidence indicating North Carolina’s Board staff has ignored critical source code testing and security evaluations required by North Carolina law, and inaccurately represented to Board members that systems conformed to the latest federal voting system standards. These failures mean that the State has certified for use systems that rely on outdated Microsoft CE which reached End-of-Life over six years ago and that counties are now contemplating

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<sup>1</sup> Nicole Perlroth, “in Election Interference it’s What Reporters Didn’t Find that Matters,” *The New York Times*, Sept. 1, 2017

purchasing, and several are piloting in elections next month. (We enclose our letter the Board outlining this concern.)

Under Mr. Circosta's leadership the State Board has also refused to discharge its duties under the provisions of §163A-1166(b) which requires the State Board to establish "what constitutes a vote and what will be counted as a vote," for all voting equipment. The State Board has certified new voting equipment with a radically different ballot in the form of a ballot summary card on which votes are recorded in both plain text form and encoded in a barcode. Given that the ballot summary card for these systems will include two different records of vote choices, it is absolutely imperative that the State Board comply with State statute and fulfil its obligations to define which the official vote will be. Though this issue has been raised with Chair Circosta, he has ignored the requests and neglected these duties.

Mr. Circosta has failed to convene Board meetings to address these and other urgent security concerns. With Mr. Circosta at the helm, these failures persist and will persist.

As governor of North Carolina you have the considerable responsibility to appoint the majority of the state board members. The Board's actions and position regarding the security of North Carolina's election systems are a direct reflection of the Governor's position and priorities. Chair Circosta's actions have reflected a failure to comprehend the profound security challenges threatening our election systems. Mr. Circosta's dismissal of the critical security issues was accompanied by a disrespectful disregard of North Carolina's citizens and their profound hunger for a secure, transparent and trustworthy voting system. Furthermore, Mr. Circosta's conduct demonstrated a lack of political sensitivity to the intense spotlight North Carolina's elections will be under in the 2020 election cycle. We hope this does not reflect your position and policies.

We respectfully urge you to request the immediate resignation from the State Board of Elections and to quickly appoint a replacement member committed to ensuring North Carolina's elections are a model of security for the nation, providing that all votes are recorded and counted transparently, accessibly, auditably and securely for all voters.

We stand ready to assist your office in any way necessary. We thank you for your consideration and welcome your questions and comments.

Sincerely,

Susan Greenhalgh  
Vice President of Policy and Programs  
National Election Defense Coalition  
Davis, California

Dr. T. Anthony Spearman  
Greensboro, North Carolina

Lynn Bernstein  
Director and Co-founder  
Transparent Elections North Carolina  
Cary, North Carolina

Marilyn Marks  
Executive Director  
Coalition for Good Governance  
Charlotte, North Carolina