

September 25, 2020

The following is a statement from Damon Circosta, chair of the North Carolina State Board of Elections:

Voters deserve to have full confidence in their election process. To ensure that voters have that confidence, they deserve all of the facts when the impartiality of their election administration and security are questioned in the public sphere.

Earlier this week, two members of our board resigned their seats claiming they were misled and did not have full access to information before they took an important vote. This is simply not true.

On September 15, the State Board of Elections voted 5-0 to seek settlement of various lawsuits pertaining to three aspects of how elections are conducted during the coronavirus pandemic. This outstanding litigation creates uncertainty for voters and election administrators about the election process. In an effort to see if settlement was possible, I contacted counsel at the Attorney General's office, as they represent the State Board in litigation matters. I requested a memo assessing the advantages and disadvantages of settling these lawsuits. I then called the Board meeting so we could seek counsel's advice and determine whether it would be in the best interest of voters for the Board to pursue settlement.

After nearly three hours of discussion, I made a motion to direct the Executive Director of the State Board of Elections to pursue settlement under very specific circumstances. My motion was seconded and every member – Republicans and Democrats – voted to support it.

The meeting was held in closed session. Closed session meetings are permitted under the law, but in my tenure as Chair, I am reluctant to call a closed session unless it is necessary. The public has a right to know the public's business. In this instance, closed session was necessary so that members could consult with our attorneys, preserve the attorney-client privilege, and give instructions concerning the handling of any potential settlement to ongoing litigation. Had we deliberated these issues in open session, the plaintiffs in these cases would know the authority limits of our settlement negotiators, undermining our attorneys' ability to reach the best possible settlement for our agency and for voters.

In closed session, all five members of the Board engaged in a robust and deliberate discussion about possible settlement options. We were aided in our deliberations by a memo from the Attorney General's office as well as a memo from our agency counsel. These documents laid out considerations – for and against – settlement of these cases. Additionally, our agency counsel's office has prepared minutes of the closed session meeting.

It is an unusual step to divulge these deliberations and the documents that accompany them. I remind Board members at the beginning of every closed session meeting that the attorney-client privilege does not belong to any individual member but to the Board as a whole.

In their resignation letters, the resigning State Board members took it upon themselves to discuss what happened during the closed session, even though as individual board members they did not have the right to do that. They also made unsupported claims about what transpired in the meeting. As such, the Board authorized the release of the minutes of the closed session meeting as well as of the documents that were discussed. The public has a right to know the truth about what happened during this closed

session and about the contents of the documents provided to all members. Any assertion that a member was misled or not fully apprised of the issues at hand is incorrect.

Let's not lose sight of the big picture. In the midst of a pandemic, the State Board of Elections voted to settle outstanding lawsuits so that voters have clarity on what the rules are, how they can cast a secure ballot, and the process by which their ballot will be received, tracked, and authenticated.

As Chair, I sought consensus from all members and was pleased when we were able to unanimously agree to a motion that will help ensure the election process is secure, all eligible ballots will be counted, and that North Carolinians are safe when they are casting their vote.

A handwritten signature in black ink, appearing to read 'Damon Circosta', written in a cursive style.

Damon Circosta
Chair, N.C. State Board of Elections