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May 16, 2022

Karen Brinson Bell  
State Board of Elections  
430 N. Salisbury St., 3<sup>rd</sup> Floor, Dobbs Building  
Raleigh, NC 27603

Dear Ms. Bell,

Based on the plain language of NC General Statute 163-278.16B, I am asking the State Board of Elections to rule that the \$4,000 sent by Phil Berger Jr.'s campaign committee to NC for Justice PAC is an illegal contribution.

The campaign committee, Berger for Justice, describes the \$4,000 payment as a "contribution" and the PAC lists it among "contributions" received. However, NCGS 163-278.16B clearly prohibits Berger for Justice and other candidate campaign committees from making contributions to PACs. The law specifies that candidate committees may only contribute to another candidate committee or to a political party committee or its affiliate or caucus. If the General Assembly intended to allow contributions to PACs, the law (which was updated as recently as 2018) would have included "political committees" among the permitted recipients of contributions.

Moreover, it would be an act of outrageous overreach for the State Board of Elections to redefine the term "expenditure" as used in NCGS 163-278.16B to include this \$4,000 "contribution." I recognize it may be difficult for the Board of Elections to rule against actions by the son of state Senate boss Phil Berger Sr. who may retaliate by undercutting the Board's budget. However, by adhering to the law and rules of legislative construction, the conservative and proper decision is to (1) find that the \$4,000 contribution is illegal and (2) order NC for Justice PAC to forfeit the \$4,000 it received on April 26 and send it to the Board of Elections for deposit in the Civil Penalty and Forfeiture Fund to benefit public schools in North Carolina.

In a previous complaint, I asked the Board to investigate and penalize the apparently willful failure of Phil Berger Jr.'s campaign committee to disclose who paid the costs of three fund-raising events in 2016. The Berger committee eventually amended its reports to reveal that the three events were in the home of, or financed by, a lobbyist and two political appointees. The Board declined to issue any penalty for Berger's failure to disclose this vital information to the public. In this case, I am not asking for a penalty against Berger or his committee.

In addition to the Berger committee's \$4,000 contribution to NC for Justice PAC, the PAC disclosed on May 5 that it received contributions from four other candidate committees between April 25 and April 27: Committee to Elect Jeff Carpenter (\$5,600 on April 25), Jim Perry Committee (\$5,600 on April 26), David Willis for NC (\$1,000 on April 27) and Todd Johnson for NC Senate (\$1,000 on April 28). All these contributions – and others by candidate committees that may be disclosed on future reports – should be declared illegal and the funds sent to the Board for deposit in the Civil Penalty and Forfeiture Fund.

Receiving illegal contributions is not the only problem with NC for Justice PAC. In fact, this PAC has engaged in so many violations of campaign finance law in less than a month that I urge the State Board of Elections to use its authority under NCGS 163-278.34(c) to order the PAC to “cease and desist” operations after it disgorges the illegal contributions described above. Here is a partial list of the apparent violations:

- The PAC filed an inaccurate and misleading Organizational Disclosure Report dated and postmarked April 26, 2022. That report (1) provided an incorrect “period end date,” (2) failed to disclose details about contributions received on or before April 26, and (3) listed \$25 as an inaccurate total for the contributions received on or before April 26. As noted above, the PAC later revealed that it received a \$5,600 contribution on April 25 from the Committee to Elect Jeff Carpenter, \$4,000 on April 26 from Berger for Justice, and \$5,600 on April 26 from the Jim Perry Committee, plus the cash contribution of \$25 from something called “Caswell Conservatives.” At a minimum, details about the April 25 contribution and the cash contribution should have been provided to the public on the disclosure report dated April 26. That report is here:

<https://cf.ncsbe.gov/CFOrgLkup/ViewDocumentImage/?DID=273443>

- The PAC failed to submit a corrected Organizational Disclosure Report for more than two weeks after the State Board notified the PAC’s treasurer by email on April 29 about the incorrect “period end date” on the April 26 report. To my knowledge, the corrected report has still not been filed in clear defiance of the Board’s directive. The Board’s April 29 email message is here:

<https://cf.ncsbe.gov/CFOrgLkup/ViewDocumentImage/?DID=273513>

- The \$25 from the vague entity “Caswell Conservatives” may be an illegal contribution from a candidate committee, unregistered committee, or company. Curiously, its listed address at PO Box 111 is the address in Yanceyville for NC for Justice PAC, as well as for the town council campaign of C. Keith Tatum and for his businesses. Tatum is a friend of Phil Berger Jr. and was appointed to the State Bar’s Disciplinary Hearing Commission in 2019 by Sen. Phil Berger Sr. Tatum is listed as a “Tea Party leader” in his 2014 endorsement of Phil Berger Jr.’s failed run for Congress: <http://teapartyexpress.org/8222/tea-party-express-endorses-phil-berger-jr-for-congress>

- On May 5, the PAC sent a partial Disclosure Report that lacked the required cover page and therefore could not be accepted by the State Board as a legitimate First Quarter Disclosure Report. See report here: <https://cf.ncsbe.gov/CFOrgLkup/ViewDocumentImage/?DID=275472>

- On May 13, the State Board sent the PAC’s treasurer a “High Importance” email about the failure of the PAC to file proper reports. The email stated the PAC’s violations in these words: “NC FOR JUSTICE PAC has not filed an Organizational Disclosure Report (covering from 4/20/2022 through the first ten days) or a 2022 First Quarter Report (covering from where the Organizational Disclosure Report ended through 4/30/2022).” This May 13 email is at:

<https://cf.ncsbe.gov/CFOrgLkup/ViewDocumentImage/?DID=275503>

- On May 6, the PAC created a Facebook page that featured a professionally designed mailer, complete with a bulk mail indicia, which attacked Republican Judge Donna Stroud and included endorsements for her opponent in the primary and for two other Republican judicial candidates. See: <https://www.facebook.com/NC-for-Justice-PAC-101099045939537/> The mailer says, “Paid For By NC For Justice PAC,” but it violates NCGS 163-278.39 because it does not include the

required legend stating it is either “Authorized by [name of candidate], candidate for [name of office]” or “Not authorized by a candidate.”

• The PAC’s partial Disclosure Report sent on May 5 indicates it made no expenditures, which is another apparent violation because the PAC posted the finished mailer attacking Stroud on its new Facebook page on the morning of May 6, and NCGS 163-278.6(51) says “expenditures” include “any contract, agreement, or other obligation to make an expenditure.” How could the PAC create that mailer, which includes a third party’s bulk mail permit number, without incurring a disclosable expenditure?

• Finally, the mailer attacking Stroud and endorsing other candidates raises the critical question of whether the money spent to produce and mail the advertisement is an independent expenditure or an in-kind contribution to support a candidate’s election. Either way, NC for Justice PAC appears to have violated state law. If it’s an in-kind contribution, it would likely violate the \$5,600 limit that a PAC may donate to a candidate in the primary. If it’s an independent expenditure, then the PAC violated NCGS 163-278.12(e) which requires disclosure of the money spent within 48 hours of incurring an independent expenditure of \$5,000 or more. NC for Justice PAC looks and spends like an independent expenditure committee, rather than a normal PAC that makes contributions to candidates – but either way, it is systematically and repeatedly violating campaign finance laws designed for the public’s benefit and fair elections.

I look forward to learning what actions the Board will take regarding this complaint.

Sincerely,

Bob Hall

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

The undersigned, being first duly sworn, hereby certifies that he is a registered voter in NC and that the information in this letter is true and correct to the best of his knowledge and belief.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Sworn to (or affirmed) and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

(NOTARY STAMP OR SEAL)

My commission expires: \_\_\_\_\_