



JOSH STEIN
ATTORNEY GENERAL

LESLIE COOLEY DISMUKES
CRIMINAL BUREAU CHIEF

CASE DECLINATION SUMMARY

To: Attorney General Josh Stein

CC: Swain Wood, First Assistant Attorney General and General Counsel

From: Leslie Cooley Dismukes, Criminal Bureau Chief
Boz Zellinger, Section Head, Special Prosecutions and Law Enforcement

Date: December 30, 2022

Re: Investigation into allegations of election fraud by Mark and Debra Meadows

I. SCOPE OF REVIEW

On March 14, 2022, our office received a letter from District Attorney Ashley Welch requesting that we assume responsibility for the investigation and any potential prosecution resulting from allegations of voter fraud by Mark Meadows due to her conflict of interest. We accepted this matter the same day. On March 17, 2022, we requested that the State Bureau of Investigation (SBI) initiate an investigation into any allegations of voter fraud, and they did so. The SBI concluded the initial portion of its investigation in early November 2022, and we began our review of the file.

The allegations of voter fraud were brought to light by media reports which indicated that Mr. and Mrs. Meadows had claimed residence at a mobile home in Scaly Mountain, North Carolina for purposes of voting in Macon County in the 2020 election. Mr. and Mrs. Meadows had previously owned a home in Sapphire, North Carolina, which is in Transylvania County, and were registered to vote at that location. The report indicated that Mr. Meadows had never been physically present at the Scaly Mountain address and thus questioned his residency there. For all relevant time periods Mr. Meadows was a federal employee who had not surrendered his North Carolina residency.

We have reviewed the entirety of the SBI file, relevant media reports, and the January 6th Select Committee Report, as well as the transcripts of witness interviews released by the January 6th Select Committee. Additionally, should any information become available over the course of investigations into allegations of wrongdoing by Mr. Meadows in other jurisdictions we will review that information to determine if it affects our analysis in this case. The allegations against

Mr. Meadows in other jurisdictions are distinct from this case and may become relevant only if they bear directly on the question of potential voter fraud in North Carolina.

It should also be noted that Mr. and Mrs. Meadows declined to be interviewed by the SBI.

II. ANALYSIS

North Carolina General Statute § 163-57(8) states, “If a person removes to the District of Columbia or other federal territory to engage in the government service, that person shall not be considered to have lost residence in this State during the period of such service unless that person votes in the place to which the person removed, and the place at which that person resided at the time of that person’s removal shall be considered and held to be the place of residence.”

A plain reading of this residency exception establishes two things: 1) a person does not lose residence in North Carolina during a period of government service unless they vote in another state or territory, and 2) because the statute provides a mechanism for determining an individual’s residence for purposes of voting, a physical residence in North Carolina is not required of those individuals who fall within this exception. As it relates to Mr. Meadows, the investigation revealed that he did not vote elsewhere during the 2020 election cycle, nor did he make any formal efforts to change his permanent residence to the District of Columbia or Virginia. Under N.C.G.S. § 163-57(8) he therefore remained a resident of North Carolina and was entitled to lawfully vote in the State during the 2020 election.

It is likely that § 163-57(8) was constructed this way in order to encourage public service and to avoid penalizing those individuals who serve North Carolina through employment with the federal government. Any other interpretation of this exception could have a chilling effect on public service and on the exercise of the right to vote.

Because it is clear that Mr. Meadows could lawfully vote in North Carolina in 2020, the key questions are whether it was proper for him to vote in Macon County, as opposed to Transylvania County where he was previously registered, and whether he had any felonious intent in changing his residence, and/or completing his voter registration form, or completing his request for an absentee ballot. These are also the key questions as to Mrs. Meadows because a court could conclude she should receive the same flexibility as her spouse in terms of residency, given the totality of the circumstances.

As an initial proposition, § 163-57(1)(c) makes clear that North Carolina’s residency requirement is permissive. It states, in pertinent part, “[r]esidence shall be broadly construed to provide all persons with the opportunity to register and to vote, including stating a mailing address different from residence address.” The breadth of this requirement is consistent with the notion that the right to vote is “a fundamental political right...[to] be shared equally by all citizens.” Lloyd v. Babb, 296 N.C. 416, 438 (1979) (quoting Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886)).

Only a few cases discuss § 163-57, and none discuss subsection (8).¹ The majority of these cases discuss how to determine residency for students. These cases put forth a test for residency and supply factors for determining an individual's residence for purposes of voting. We use them by analogy.

For purposes of voting in North Carolina, residence and domicile are synonymous. Hall v. Wake County Bd. of Elections, 280 N.C. 600, 605 (1972); Lloyd v. Babb, 296 N.C. 416, 435 (1979). A person's physical presence is one factor to be considered determining a person's residence, but it is not, in and of itself, dispositive. See Hall v. Wake County Bd. of Elections, 280 N.C. 600, 609 (1972); Lloyd v. Babb, 296 N.C. 416, 441 (1979). Similarly, the duration for which a person has maintained a residence is not, alone, a dispositive factor. See Lloyd v. Babb, 296 N.C. 416, 439-441 (1979). "A person has domicile for voting purposes at a place if he (1) has abandoned his prior home, (2) has a *present* intention to make this place his home, and (3) has no intention *presently* to leave that place." Lloyd v. Babb, 296 N.C. 416, 449 (1979) (emphasis added); see also Owens v. Chaplin, 228 N.C. 705, 709 (1948). The North Carolina Supreme Court places great weight on a person's present intention, and does not require a person to commit for an "indefinite future" to a location. Lloyd v. Babb, 296 N.C. 416, 449 (1979). "All of the surrounding circumstances and the conduct of the person must be taken into consideration." Hall v. Wake County Bd. of Elections, 280 N.C. 600, 609 (1972).

While the interplay between the residency requirement in § 163-57(1) and the exception set forth in § 163-57(8) have not been addressed previously by our courts, we believe that we must consider the purpose and spirit behind the exception for government service in analyzing Mr. Meadows's residency.

To make the determination regarding whether Mr. Meadows lawfully voted in Macon County, we have weighed § 163-57(8), as well as the totality of the circumstances uncovered by the SBI investigation. Those circumstances include the following:

Factors Weighing in Favor of Residence in Macon County:

- Mr. and Mrs. Meadows leased the residence in Macon County. The investigation revealed that Mr. and Mrs. Meadows signed a lease for the property at 495 McConnell Road in Scaly Mountain. The investigation uncovered a copy of the lease from the lessor, who also indicated that she had checks from Mr. and Mrs. Meadows in satisfaction of the rent. This Scaly Mountain lease was signed on September 21, 2020, for a one-year period beginning on September 1, 2020, and ending on August 31, 2021. This time period exceeded the 30-day residency requirement for purposes of voting in the November 3, 2020, election.
- Mrs. Meadows was physically present at the Scaly Mountain residence during the relevant time period. Witness statements place Mrs. Meadows and her children at the residence in October of 2020. Additionally, cell phone records for Mrs.

¹ Similarly, there is no previous Attorney General's Advisory Opinion or State Board of Elections Memo specifically on point. This issue has not been litigated in North Carolina and so we must conduct our analysis based on the case law that exists for somewhat similar situations.

Meadows show her use of cell towers in the vicinity of Scaly Mountain on October 25th and 26th, 2020.

- Mr. and Mrs. Meadows sold (and therefore abandoned) their residence in Sapphire, NC. The investigation showed this property was sold on March 31, 2020.
- Mr. and Mrs. Meadows did not register to vote or vote in Virginia or the District of Columbia.
- Mr. and Mrs. Meadows maintained North Carolina Driver's Licenses.
- Mr. and Mrs. Meadows maintained a North Carolina P.O. Box for purposes of receiving mail.
- The new residence for Mr. and Mrs. Meadows was still within the 11th Congressional District which Mr. Meadows had represented in Congress.
- Mr. and Mrs. Meadows filed North Carolina taxes for 2020.
- Mr. Meadows listed North Carolina for his state withholding on his personnel paperwork for his job as Chief of Staff.

Factors Weighing Against Residence in Macon County

- Mr. Meadows was almost certainly never physically present at the Scaly Mountain address. Mr. and Mrs. Meadows lived at 1023 Royal Street #302 in Alexandria, Virginia while Mr. Meadows was serving in Congress and as Chief of Staff. The United States Secret Service records obtained as a part of this investigation show that Mr. Meadows had no official travel to North Carolina from September to November 2020, and that he did not request any unaccompanied travel leave to visit North Carolina during this time. That said, § 163-57(8) does not require the physical presence of a federal government servant in North Carolina in order for them to maintain residence and vote in North Carolina.
- Mr. and Mrs. Meadows did not switch the addresses on their Driver's Licenses from Sapphire, NC to Scaly Mountain, NC.
- The Scaly Mountain mobile home was different in kind from other homes Mr. and Mrs. Meadows have owned in North Carolina.

North Carolina General Statutes §§163-274 and 163-275 list the offenses constituting misdemeanors and felonies related to voter fraud in North Carolina. It is also possible that conduct prosecutable under these statutes could constitute the common law offense of Obstruction of Justice. In order to prove beyond a reasonable doubt that Mr. or Mrs. Meadows committed a

felony under § 163-275, we would need to demonstrate that they knowingly swore to false information on their voter forms. In order to prove beyond a reasonable doubt that Mr. or Mrs. Meadows committed a misdemeanor under § 163-274 we would need to demonstrate that the information on the elections forms was false. In any event, the statute of limitations for misdemeanors ran before this office received the report. On the facts available to us at the current time, a felony prosecution under these statutes would have a low likelihood of success.

In coming to this conclusion, we considered the following:

- Perhaps most significantly, Mr. Meadows is excepted from many of the requirements for traditional voters because of his status as a public servant under § 163-57(8).
- The totality of the circumstances. We considered all of the factors detailed above in their totality, as our state supreme court has made clear that no one factor is dispositive. The factors weighing in favor of residence in Macon County outnumber the factors weighing against residence. Perhaps the most important factor is the existence of the lease for the Scaly Mountain address, which was signed on September 21, 2020. The law makes no distinction between renting and owning when it comes to a determination of residence. The voter registration form was signed on September 19, 2020, indicating that Mr. and Mrs. Meadows were moving to the residence in Scaly Mountain on September 20, 2020, the next day. The form was submitted to the local board of elections on September 21, 2020. The absentee ballot request form signed on October 1, 2020, also gives the Scaly Mountain address with a move-in date of September 20, 2020.
- The difficulty of proving beyond a reasonable doubt that Mr. and Mrs. Meadows knowingly swore to false information. With regard to the test from Lloyd, there is definitive evidence of factor #1, that Mr. and Mrs. Meadows abandoned their previous home in Sapphire. Considering the facts above, the evidence is likely insufficient to prove beyond a reasonable doubt that Mr. and Mrs. Meadows did not have a present intention to make Scaly Mountain their legal residence under § 163-57 (factor #2), or that they had an intention to presently leave Scaly Mountain (factor #3), particularly given the fact that their lease ran through the end of August, 2021. Therefore, we will likely be unable to prove beyond a reasonable doubt that Mr. and Mrs. Meadows do not meet the test for residency in Macon County. Further, on these same facts, we are unlikely to prove beyond a reasonable doubt that they knowingly intended to make a false statement on their voter application forms or absentee ballot request forms.
- The clear preference under North Carolina law that all eligible voters should be allowed to vote. N.C.G.S. § 163-57(1)(c) states plainly that we should err on the side of allowing individuals to vote. This sentiment is echoed in the case law. As a public policy matter, prosecutions do not typically result when voters

make mistakes or enter incorrect information on their voter registration forms. In fact, even where the local or state boards of election have sustained a challenge to a voter's residence, we are unaware of any resulting prosecutions. In the end, it should not matter whether the challenged voter is the White House Chief of Staff or a Congressional Intern. Absent proof of felonious intent, a prosecution should not proceed.

- Prosecution of this matter could have a chilling effect on both public service and on voting. Public service is one of the most noble professions. N.C.G.S. § 163-57(8) was likely enacted in order to facilitate North Carolinians' service to our federal government. To initiate a prosecution against someone who qualifies for this exception could chill other citizens from choosing to serve. As noted above, such prosecutions could also chill voting generally.

While a person in Mr. Meadows's position and with his background should be more familiar with the rules and requirements of residence and voting in North Carolina, the law does not distinguish between him and the average citizen when it comes to making a residency determination. Likewise, we cannot consider any other bad acts that Mr. Meadows may have committed in other jurisdictions regarding other matters, as they do not bear on the facts of this case.

Because it is unlikely that we can prove beyond a reasonable doubt that either Mr. or Mrs. Meadows knowingly swore to false information considering the signed lease, and because Mr. Meadows is explicitly excepted from certain residency requirements as a result of his service to the federal government, we decline prosecution of this matter.