



**PRESS RELEASE: SEPTEMBER 22, 2022**

## **Lawsuit Filed Against Wake County Director of Elections for Violating the Constitutional Rights of a Wake County Voter in Retaliation for her Advocacy**

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**Case # 5:22-cv-00277-BO**

**Link to legal documents & exhibits:** <https://bit.ly/3RaegnF>

**RALEIGH, NC** – Lynn Bernstein, a Wake County voter, founder of Transparent Elections NC, and a longtime election advocate, has filed a legal action in U.S. District Court alleging that her constitutional rights were violated when she was unlawfully trespassed by the Wake County Elections Director, who targeted her in retaliation for her advocacy efforts. On May 14, Elections Director Gary Sims ordered the Raleigh Police Department to “trespass” Ms. Bernstein, even though she had not entered Board of Elections (BOE) property and had done nothing wrong, facts that are backed up by surveillance footage and Raleigh police. The trespass means that Ms. Bernstein can never step foot on BOE property again, or she will be arrested and charged with criminal trespass.

“This is an egregious violation of Ms. Bernstein’s constitutional rights,” said attorney Tyler Brooks, who is representing Ms. Bernstein in her lawsuit. “When you follow the course of events and view the evidence, it is clear that Director Sims was targeting Ms. Bernstein, without cause, in an attempt to prevent her from ever again being able to lawfully observe election procedures or attend BOE meetings. The ban even prevents Ms. Bernstein from casting her vote in person.”

On behalf of Ms. Bernstein, attorney Brooks filed a Motion for Preliminary Injunction and supporting Legal Memorandum to vindicate her constitutional rights, in particular her First Amendment rights, her right to vote and petition the board on equal terms with other Wake County voters, and her Fourteenth Amendment right to due process of law. This motion follows a Complaint filed July 19, 2022.

“This retaliation is similar to what is faced by journalists and advocates in dictatorial nations and it should concern all Americans that this is happening to law-abiding citizens in the largest county in North Carolina,” Ms. Bernstein said. “This has been traumatic for me and my entire family. I have been deprived of my constitutional rights, not because I have been disruptive or have done anything wrong, but because of Mr. Sims’ vindictive response to my peaceful, lawful efforts to improve North Carolina election procedures and to increase transparency.”

On the day in question, Ms. Bernstein and John Brakey, Director of AUDIT Elections USA, were outside the BOE fence looking for a place to hold a small election night protest near the Wake BOE to bring attention to the fact that Wake County does not allow observers at the BOE on Election Night, even though many other North Carolina counties do allow such observation.



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“Both of our organizations work to improve public confidence by implementing solutions that make elections transparent, trackable, and publicly verified,” Mr. Brakey said. “Being able to observe on election night is a necessary part of citizen oversight. Transparency is the solution.”

Ms. Bernstein and Mr. Brakey were outside the fence surrounding the BOE property when Mr. Brakey momentarily stepped through an open gate, where cars were going in and out during an ongoing BOE Event. Surveillance video shows that the gate had been open all day, but as Mr. Brakey entered the open gate, Director Sims, who was standing outside, appears to close it with a remote device. During this time, Director Sims ordered his deputy to make a 911 call to the Raleigh Police Department, falsely stating that Ms. Bernstein and her associate were “tampering with a closed gate.”

After returning to Ms. Bernstein’s car, which was parked at a property next door so as not to interfere with activities at the BOE, Ms. Bernstein and Mr. Brakey were approached by a Raleigh Police Officer who told them he had been ordered to have them “trespassed,” and that if either of them ever set foot on BOE property again they would be “criminally trespassed.” The officer stated, as heard in an audio recording of the conversation, “Well, I’m not saying you did anything wrong. But like I’m saying, you know, if...if the person in charge of that property, they don’t want you there for whatever reason, because they don’t like what, you know, what party you’re affiliated with, or who you are or what you represent...” Later in the conversation, the officer says, “You might want to go that route and file some sort of a complaint against whoever this guy is. It’s like you’re being blackballed, you know.” Another officer also confirmed with Wake Security that no one had tampered with a closed gate. Link to transcript of audio <https://bit.ly/3xC8XX1>

“The Raleigh Police Department confirmed that there is no appeals process because I was not charged with a crime,” Ms. Bernstein said, “I wasn’t even given a copy of the trespass notice. I was simply told that I will be “arrested and criminally trespassed” if I ever again enter BOE property. I literally had no recourse but to file a lawsuit to have my rights reinstated.”

Director Sims has been abusive towards Ms. Bernstein in the past, which has been witnessed by others. “He has escalated his inappropriate behavior to a level that is in violation of my rights and in violation of the law, simply because he does not like citizen oversight of his activities,” Ms. Bernstein said. “In addition to preventing me from doing my advocacy work, this has also damaged my reputation because people assume I must have committed a crime in order to be trespassed, but I did nothing wrong. I was set up by Director Sims. It seems surreal but it has affected every part of my life and I am concerned that it will escalate even further.”

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