



# NORTH CAROLINA

## State Board of Elections

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**KIM WESTBROOK STRACH**  
*Executive Director*

### MEMO

**TO:** County Boards of Elections  
**FROM:** Josh Howard, Chairman  
**RE:** Notice Regarding Social Media  
**DATE:** August 5, 2014

### Notice Regarding Social Media

Since taking office on May 1, 2013, the current Members of the State Board have repeatedly stressed to county board members and staff that it will strictly enforce N.C. GEN. STAT. § 163-39 and the limitations that statute imposes on the political activities of those subject to its restrictions. This provision, among other things, bars board members and staffers from making written or oral statements intended for the public at large supporting either candidates or referenda.

On September 23, 2013, the U.S. Court of Appeals for the Fourth Circuit handed down a legal opinion in *Bland v. Roberts*, 730 F.3d 368 (4th Cir. 2013), dealing with Facebook "likes" and their treatment as political speech. In a rich opinion, the *Bland* Court stated that "liking a political candidate's campaign page communicates the user's approval of the candidate and supports the campaign by associating the user with it. In this way, it is the Internet equivalent of displaying a political sign in one's front yard, which the Supreme Court has held is substantive speech." *Id.* at 386. The Court also said, "[o]n the most basic level, clicking on the 'like' button literally causes to be published the statement that the User 'likes' something, which is itself a substantive statement. In the context of a political campaign's Facebook page, the meaning that the user approves of the candidacy whose page is being liked is unmistakable." *Id.*

Members and staff of county boards of elections and the State Board of Elections may try to limit the *Bland* opinion to the particular facts of that case, but they should know that they engage in political speech via social media at their peril when it comes to this Board's enforcement of N.C. GEN. STAT. § 163-39.

Members and staff are encouraged to review and give great weight to the *Bland* opinion and its take on social media. Compliance with N.C. GEN. STAT. § 163-39 may require board members and staff to review their previous social media posts and take action to cure any perception of bias the posts might cast over their official actions. Please do not hesitate to contact staff at the State Board with any questions regarding this Memo.