

Bob Hall
5706 Old Stony Way
Durham, NC 27705
sprc@mindspring.com

January 22, 2020

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

Dear Ms. Bell,

I am requesting a comprehensive investigation and appropriate enforcement action regarding apparent illegal activities by (1) the NC Heritage PAC which began in early 2016, (2) the NC Division, Sons of Confederate Veterans [herein referred to as NC SCV], and (3) individual leaders and affiliated organizations of NC SCV involved in illegally financing the NC Heritage PAC.

Based on reporting by *The Daily Tar Heel* (see Appendix) and my additional research and interviews with people in NC SCV, I believe that the activities described in this letter, upon verification by the State Board's investigation, should lead to the following enforcement actions:

- Termination of the NC Heritage PAC as a political action committee illegally created by NC SCV in violation of state (and federal) laws;
- Penalties against leaders of NC SCV for (a) soliciting contributions to the NC Heritage PAC during NC SCV local and state meetings, (b) depositing money intended for a NC SCV affiliate in the PAC's account, (c) attributing PAC donations to individuals who were not the true donors, and (d) filing false campaign finance disclosure reports with the State Board;
- Penalties against NC SCV and NC Division, Sons of Confederate Veterans, Camp #1695 for using organizational resources to support the operations of a PAC;
- Disgorgement or forfeiture of any funds held by the NC Heritage PAC through payment of its funds to the NC Civil Penalty and Forfeiture Fund;
- Disgorgement of the \$28,500 that the NC Heritage PAC contributed to state legislators, Agriculture Commissioner Steve Troxler and other candidates by directing their campaign committees to send payments to the State Board equal to the amount they received from the PAC.

Termination of the NC Heritage PAC. Based on public documents and my interviews, NC SCV leaders mistakenly believed the nonprofit organization could create and financially support a political action committee because of a provision in NC law. The 2016 Statement of Organization of the NC Heritage PAC clearly identifies NC SCV as the PAC's "connected or affiliated organization" (see <https://cf.ncsbe.gov/CFOrgLkup/ViewDocumentImage/?DID=194476>). In addition, the PAC's First Quarter 2016 disclosure report itemizes several NC SCV contributions to the PAC to pay for its incorporation, website and donor portal. The report includes comments that NC SCV is a 501(c)(3) organization eligible to contribute in accordance with NC General Statute 163-278.19(f) (see pages 19-22 of the report at <https://cf.ncsbe.gov/CFOrgLkup/ViewDocumentImage/?DID=195199>).

According to my interviews, NC SCV leaders relied on legal advice that NCGS 163-278.19(f)* applies to a nonprofit corporation organized under Section 501(c)(3) of IRS Code, such as NC SCV. But that advice is wrong. NCGS 163-278.19(f)* codifies federal court decisions that exempt certain nonprofits from the ban against making a political contribution; however, the court decisions and federal rules indicate that these qualifying nonprofits must be advocacy organizations (generally 501(c)(4) corporations) whose donors do not receive a tax deduction for their donations, unlike the donors to charities. Qualified nonprofits do not include 501(c)(3) organizations, such as NC SCV, which are nonprofit charities and which by tax law are barred, **without exception**, from donating to candidates or PACs (see IRS: <https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations>). NC SCV's 501(c)(3) tax-exempt status comes from its creation as an affiliate of the national Sons of Confederate Veterans (see http://www.ncscv.org/images/forms/articles_of_association.pdf).

I am told that the advice about NCGS 163-278.19(f), no doubt well intended, came from a retired state judge. No one gave me a name, but I note that retired Superior Court Judge Samuel T. Currin is one of the first donors to the NC Heritage PAC, donating \$50 on Feb. 24, 2016 and \$50 on Feb. 25, 2016. Currin is also a former US Attorney and former NC Republican Party chair. As US Attorney during the intense Jesse Helms vs. Jim Hunt 1984 election, Currin's office sent incorrect warnings to local election officials asserting, for example, that payments to people who drive voters to the polls are illegal (see <https://www.washingtonpost.com/archive/politics/1986/10/02/second-time-around-for-a-judgeship/227fa78e-fca0-4314-b99c-cea302b0b8a7/>). Currin was sent to federal prison in 2007 on charges related to tax fraud and money laundering (<https://oklahoman.com/article/3119204/former-judge-prosecutor-sentenced-in-nc>).

There's a second reason NC SCV leaders may be forgiven for believing the group is a qualified nonprofit under NCGS 163-278.19(f). In the spring of 2017, during a routine review, a staff auditor at the State Board of Elections asked the Heritage PAC treasurer if NC SCV met the provisions of the law allowing certain nonprofits to make political contributions. The auditor, who was apparently not versed in 501(c)(3) tax law, then simply accepted the contributions as permissible after receiving a letter from NC SCV Commander R. Kevin Stone asserting that NC SCV met all the criteria of NCGS 163-278.19(f) (see <https://cf.ncsbe.gov/CFOrgLkup/ViewDocumentImage/?DID=208691>).

Regardless of how the mistake happened, the crucial facts are that NC SCV, a 501(c)(3) organization, sponsored and financed the creation and operation of the NC Heritage PAC, in violation of state and federal law – which makes the whole enterprise illegal and therefore the PAC should be terminated by the State Board of Elections. (The IRS may also have an interest in reviewing NC SCV's violation of 501(c)(3) rules.) Individual members of NC SCV are certainly free to set up a new PAC, as long as they do not illegally use the finances, facilities, meetings, mailing lists, or other resources of NC SCV or any other 501(c)(3) organization for the PAC's creation or operation.

Penalties against NC SCV leaders. Key NC SCV leaders may be forgiven for following a former judge's incorrect advice. But the State Board certainly needs to hold accountable the leaders who deliberately engaged in illegal activities to grow and sustain the NC Heritage PAC. According to *The Daily Tar Heel* report and allegation from people I interviewed: (1) multiple leaders solicited cash and other contributions during NC SCV local and state meetings; (2) some leaders asked NC SCV members to put their names on phony PAC donations, as though the money was their own; (3) a leader of the "NC Mechanized Calvary" (NC SCV's motorcycle affiliate) allegedly funneled money

intended for the affiliate into the PAC; and (4) some leaders used other methods to move cash into the PAC and list contributions without correct identifying information. If State Board investigators verify that these practices occurred, it would mean, at a minimum, that leaders violated numerous state campaign finance laws against conspiring to make and accept PAC donations “in the name of another,” make and accept cash donations in excess of \$50, make and accept other illegal PAC contributions, and prepare and file false and incomplete disclosure reports for the PAC.

I will provide you with contact information for NC SCV members I interviewed who are upset with their leaders’ improper actions and abuse of authority. *The Daily Tar Heel* article provides many details involving former Mechanized Calvary Captain Bill Starnes, NC SCV Commander Kevin Stone, NC Heritage PAC president Frank Powell, and PAC treasurer Mitchell Flinchum.

Penalties against NC SCV and its affiliates. The Heritage PAC’s disclosure reports indicate that (1) NC SCV donated \$1,743.48 as in-kind support by paying bills for the PAC’s incorporation, web site and donor portal; and (2) NC SCV Camp #1695 based in Elm City, NC, donated \$200 directly to the PAC. It is reasonable to penalize the organizations for these illegal contributions. It’s important to note that on its annual reports to the IRS (viewed through GuideStar), NC SCV consistently responds “No” to the question, “*Did the organization engage, directly or indirectly, in political campaign activities on behalf of or in opposition to candidates for public office?*” The organization cannot escape culpability for its illegal political donations. In addition, depending on the State Board’s findings, it may be appropriate to penalize NC SCV and some of its affiliates as organizations for systematic and willful violations of campaign finance laws carried out by their leaders.

Forfeiture of remaining Heritage PAC funds. According to its latest disclosure report, the NC Heritage PAC had less than \$5,600 in its bank account as of December, 31, 2019. Fines and forfeitures ordered by the State Board due to illegal contributions and other activity may wipe out that balance. Based on my previous description of the PAC’s creation and operation, it seems appropriate for the State Board to order that any remaining funds be forfeited to the NC Civil Penalty and Forfeiture Fund to benefit public schools, in accordance with NCGS 163-278.34.

Forfeiture of \$28,500 in contributions received by candidates. The State Board routinely orders campaign committees to disgorge or forfeit illegal contributions they receive, even though the committee may be innocent of any wrongdoing. For example, in 2018 the State Board ordered dozens of legislators to forfeit contributions they received from the Pfizer Inc. PAC because the contributions were made during a General Assembly session, a violation of NCGS 163-278.13B. Because the NC Heritage PAC was illegally created and sustained, per my description above, its contributions to candidates and officials were made from an illegal entity, using illegal funds. Therefore, I am asking the State Board to direct the campaign committees of the following officials to send a check, equal to the amount they received from the PAC during 2016-2019, to the State Board of Elections with “NC Civil Penalty and Forfeiture Fund” in the memo line:

NAME	AMOUNT	Rep. Julia Howard	\$1,000
Ag Comm. Steve Troxler	\$3,500	Rep. David Lewis	\$2,000
Sen. John Alexander	\$2,000	Speaker Tim Moore	\$2,500
Sen. Phil Berger	\$2,500	Rep. Larry Pittman	\$3,000
Sen. Harry Brown	\$1,000	Rep. John Sauls	\$1,000
Sen. Carl Ford	\$1,000	Rep. Mitchell Setzer	\$1,000
Rep. Jerry Carter	\$ 500	Rep. Michael Speciale	\$2,000

In addition, the following losing candidates in 2016 (Buck Newton and Gary Pendleton) or in 2018 (the others listed) with active committees should be ordered to make refunds:

Buck Newton for Atty General	\$1,000
House candidate Rhonda Allen	\$1,000
House candidate Marcus Cooke	\$1,000
Former Rep. Mike Clampitt	\$1,000
Durham sheriff candidate Paul Martin	\$ 500
Former Rep. Gary Pendleton	\$1,000

The total is \$28,500. (A \$1,500 donation to Dan Forest was not delivered and voided in April 2019).

A comprehensive investigation may uncover other violations of state law. Please let me know if I can be of assistance and notify me about actions the State Board will be taking regarding this complaint.

Sincerely,

Bob Hall

*NCGS 163-278.19(f) was adopted in 1999 (Session Law 1999-31) to address a US Court of Appeals decision in the lengthy litigation of *NC Right to Life v. Bartlett* (168 F.3d 705). The Court ruled that NC's blanket ban on corporations making contributions should not apply to a 501(c)(4) nonprofit like NC Right to Life Inc. with limited business interests that engages in "issue advocacy" and promoting political ideas. The Court ruling and the new law did not apply to a 501(c)(3) charitable corporation.

In 2019, after NC election laws were re-recodified, NCGS 163-278.19(f) became NCGS 278.19(h).

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STATE OF NORTH CAROLINA
COUNTY OF _____

The undersigned, being first duly sworn, hereby certifies that he is a registered voter in North Carolina 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 _____, 2020.

Signature of Notary Public

Printed Name of Notary Public

(NOTARY STAMP OR SEAL)

My commission expires: _____

Published January 10, 2020

Confederate group in Silent Sam deal accused of violating tax and campaign finance laws

By *Charlie McGee*

For years, the pro-Confederate group that the UNC System dealt \$2.6 million has been violating federal tax laws, operating a political action committee in violation of its tax-exempt status and facilitating political donations through illegal means, according to numerous individual first-hand accounts, a slew of internal communications provided to The Daily Tar Heel and multiple expert legal opinions.

The North Carolina Division Sons of Confederate Veterans Inc. struck a pair of backdoor deals last November with UNC System Board of Governors members. [A predetermined lawsuit and settlement gave the group Silent Sam and \\$2.5 million in UNC System money](#) for the Confederate monument’s “preservation and benefit.” A week previous, [the system paid \\$74,999 to the SCV for an agreement](#) to limit its display of Confederate symbolism on UNC System property.

Last month, multiple current members of the SCV spoke to The Daily Tar Heel, [alleging financial improprieties among the group’s leadership, referencing intermingling with gangs and hate groups, and describing threats and slurs](#) that have been issued toward members who raise questions, including about the settlement and its financial winnings.

Those members and others have since shared further information with the DTH. They have been granted anonymity based on personal safety concerns.

'Cigar box in the gun safe'

The SCV has held a federal and state tax-exempt status in North Carolina for over a decade, according to filings with the U.S. Internal Revenue Service. The group’s 501(c)(3) nonprofit status legally defines it as having been formed for charitable, religious or educational purposes.

The mechanized cavalry, a nationwide subgroup of motorcycle-riding SCV members, filed for its own 501(c)(3) status in March 2019 under the name “SCVMC 2nd Bn Co B 1st Plt,” according to the N.C. Department of the Secretary of State’s website.

No further documentation on the group is available in the department’s database, but the cavalry’s nonprofit status is listed online as being active.

The cavalry requires new recruits to have active SCV membership, and charges its own \$100 fee upfront.

An SCV member provided the DTH a list of all active cavalry members in North Carolina as of early 2019. It included over 400 unique names, equivalent to around \$45,000 in cavalry membership fees.

The member noted that many past and current cavalry members in the state were not on the 2019 list because they weren't active during the timeframe that the list applies to. He recalled a temporary spike in 2015 after a pro-Confederate white supremacist murdered nine Black church attendants in South Carolina.

The cavalry fees are paid in either cash or check, multiple members said. Members are told not to make such checks out to the organization itself, but instead to Bill Starnes, the cavalry's former captain and SCV's legislative officer.

Starnes declined an interview request when the DTH reached him by phone.

In an email last April, Starnes responded to concerns over his use of cavalry funds, saying the cavalry has never held a bank account.

"We tend to have the cigar box in the gun safe approach," Starnes wrote. "So the checks are made out to the Captain, ie, Bill Starnes, so they can be cashed."

The membership collections, and other funds raised by the cavalry, have not been tracked for years, multiple members said. That could raise problems for the SCV, the cavalry or Starnes himself, according to Felicia Branch, attorney at Branch Tax Law Firm.

"If they are writing checks to him as an individual, I don't see how that's not income to him," Branch said. "A 501(c)(3) can charge membership dues, that's tax-exempt. But he's not, unless he began this other nonprofit called 'Bill Starnes.'"

Starnes told members in his "cigar box" email that when the SCV needs it, he uses cavalry funds for "a cash influx into the PAC," referring to a political action committee launched by the SCV in 2016 — one which has pumped thousands into campaigns statewide and, according to experts, exists in violation of the SCV's tax-exempt status.

'This whole bad situation'

The NC Heritage PAC was certified by the N.C. State Board of Elections in 2016. In the PAC's statement of organization, it listed "North Carolina Division Sons of Confederate Veterans" as its connected organization. Both of its designated treasurers were active SCV members.

John Wallace, former assistant attorney general in the N.C. Department of Justice's antitrust division, told the DTH that under no circumstances is a 501(c)(3) organization legally permitted to create and operate an active PAC.

"The SCV misrepresented their eligibility to serve as a sponsoring organization for the purportedly affiliated committee," Wallace said. "Misrepresenting its qualification to the State Board staff results in violations both of state law and the C3 status of SCV. Further, SCV has accepted contribution as deductible when in fact such contributions should not be deductible by their donors, given the political activity of SCV."

The Heritage PAC reported \$4,597.48 for the 2016 fiscal first quarter, according to the elections board. The SCV was listed as providing \$1,943.48 of that money across six contributions, with various descriptions such as "TO JAKE SULLIVAN FOR WEB DOMAIN" and "TO FRANK POWELL FOR DONATION PORTAL."

Powell is the SCV's national magazine editor. Sullivan was the SCV's chief of staff last February, when he contacted Bob Rucho — a UNC System Board of Governors member since 2017 and former

Republican state senator — to meet about Silent Sam, according to documents released publicly by the UNC System.

The PAC replicated all but one of those first quarter donations as expenditures in its report, omitting a \$200 SCV contribution to the PAC — the only one lacking a description.

“Contributions by a C3 could subject the C3 to loss of its tax-exemption,” Wallace said in an email to the DTH. “Acceptance by a PAC of a corporate contributions, including contributions from C3 entities, constitutes the acceptance of corporate contributions, another misdemeanor.”

In a Board of Elections memo dated April 28, 2017, auditor Jane Steffens noted the PAC received multiple in-kind contributions from the SCV, stating that all nonprofits must meet specific criteria, according to state law, for a PAC to legally take their contributions.

However, while reviewing the SCV's compliance she based her final decision on the word of Kevin Stone, commander of the SCV's North Carolina division. Stone had sent her a letter saying the organization met all necessary criteria, and Steffens declared its contributions permissible.

Steffens noted that she'd had contact with one of the PAC's treasurers, Mitchell Flinchum, through the audit process.

Wallace said assuming no bad intentions, “this whole bad situation” may have stemmed from SCV leadership not understanding the restraints of its specific 501(c)(3) status. He called Steffens a capable auditor, but noted that she isn't a tax lawyer.

“What was missing from that whole discussion, and what is absolutely inherent in the proper resolution of the issue, is that if you are a (501(c)(3)), you are absolutely prohibited from intervening in political campaigns,” Wallace told the DTH. “And so, nobody ever — because it's such an absolute prohibition and jeopardizes the tax-exempt status of the organization — it is simply something that nobody needed to have said.”

The Heritage PAC has reported activity for every fiscal period since it was founded in 2016, according to the Board of Elections website.

During the third quarter of 2018, an active period for the most recent state election, the SCV's PAC donated \$1,000 to each of six Republican candidates — David Lewis, Johnny Alexander, Larry Pittman, Michael Speciale, Mike Clampitt and Mitchell Setzer — and \$500 to Republican candidates Paul Martin and Marcus Cooke.

The DTH cross-referenced internal membership materials, provided by first-hand sources, and found a large portion of PAC contributions have come from individual SCV members.

Multiple members described SCV leadership, Starnes in particular, using the SCV's two statewide annual events — its winter and summer “Divisional Executive Council” meetings — to facilitate PAC contributions over the last few years.

As the members describe it, Starnes divided up mass sums of money into increments among members attending DEC meetings, telling them the SCV can't donate the money as an organization.

Those members are then told to provide the specific individual information required by the state for all political contributions exceeding \$50.

Some members suspect Starnes has doled out cavalry funds in these situations.

One email provided to the DTH shows an SCV member in 2017 telling Flinchum, the PAC's treasurer, "I put 300 in the PAC. Bill said I needed to fill out a paper? Thank you."

Flinchum told them, "if you like," to just email him the necessary set of information — name, address, phone number, email, occupation and employer.

Multiple legal experts told the DTH that a tactic of this nature is blatantly illegal, regardless of the group's nonprofit status, known as "contributing in the name of another" under state law.

Wallace said PAC solicitation should never occur at a 501(c)(3) organization meeting. He added that Flinchum's participation and acknowledgement of the scheme is "in the nature of perjury," given his role as PAC treasurer officially reporting contributions to the state.

"Contributions in the name of another constitute class II misdemeanors," Wallace said in an email. "However, a statement made under oath, such as that made by a treasurer 'knowing the information to be untrue,' is guilty of a class I felony."