

No. 320P24

SUPREME COURT OF NORTH CAROLINA

JEFFERSON GRIFFIN,)
)
 Petitioner,)
)
 v.)
)
 NORTH CAROLINA STATE BOARD)
 OF ELECTIONS,)
)
 Respondent,)
)
 and)
)
 ALLISON RIGGS, et al.,)
)
 Intervenor-Respondents.)

From the North Carolina State
Board of Elections

BRIEF OF RESPONDENT

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Board of Elections

BRIEF FOR RESPONDENT

ISSUES PRESENTED

- I. Has Petitioner satisfied the procedural prerequisites for seeking a writ of prohibition, including a showing that no other adequate remedy exists to address his claims?
- II. Does our State's version of the *Purcell* principle bar Petitioner's post-election challenge to longstanding elections rules?
- III. Would granting Petitioner's requested relief to disenfranchise lawful voters and cancel votes of only some identically situated voters violate the Fourteenth Amendment, as well as this Court's precedent?
- IV. Did Plaintiff adequately serve his election protests on challenged voters, where he merely sent them a postcard with a QR code?
- V. On Petitioner's first election protest, did the State Board correctly conclude that Petitioner failed to establish probable cause to believe that any challenged voter registered to vote in violation of the law?
- VI. On Petitioner's second election protest, did the Board correctly conclude that the General Assembly declined to require military and overseas voters to provide a copy of a photo ID alongside their absentee ballot?

- VII. On Petitioner's third election protest, did the Board correctly decline to strike down as unconstitutional a state statute allowing certain citizens who have never resided in North Carolina to vote?
- VIII. If this Court were to reverse the Board's legal determinations for dismissing Petitioner's protests at the initial pre-factfinding stage, should this Court remand for additional proceedings or resolve disputed facts for the first time on appeal?

INTRODUCTION

In this lawsuit, Petitioner seeks to retroactively change longstanding elections rules after an election has already taken place in the hope that disenfranchising over 65,000 voters would reverse his narrow loss in the recent contest for a seat on this Court. Petitioner does not dispute that all of these voters followed the official guidance in place at the time of the election. For his main election protests involving allegedly improper voter registrations and military and overseas voters, Petitioner has failed to identify a single voter who is not lawfully eligible to vote in North Carolina. Nor does he dispute that many of these voters have voted in North Carolina, without challenge or controversy, for decades.

Affording Petitioner this extraordinary relief would be inappropriate for several reasons. To start, the petition is procedurally improper: Under this Court's settled jurisprudence, a writ of prohibition is available only when no other adequate remedy can afford the requested relief. But here, there is a legislatively prescribed procedural path for seeking judicial review of election protests—one that Petitioner has himself followed in pending parallel proceedings in Wake County Superior Court. There is no need to circumvent that ordinary process here.

Petitioner's requested relief also violates the *Purcell* principle. This bedrock rule of judicial restraint is meant to avoid just this kind of last-minute request for courts to intervene in elections—intervention that undermines public faith in both our democracy and our judiciary. If there were ever a case to invoke the *Purcell* principle, it would be a case where this Court is asked to retroactively cancel votes in order to alter the result of an election for *a seat on this Court*.

If the Court declines to apply the *Purcell* principle, it would then have to confront the reality of what Petitioner is asking for. Petitioner requests to throw out the votes of tens of thousands of North Carolina citizens, many of whom are active-duty military, who followed official guidance from election

officials in registering to vote and casting their ballots. As federal courts, including the Fourth Circuit, have squarely held, this relief would violate the Fourteenth Amendment's Due Process Clause. This Court has likewise held that courts may not throw out votes that were cast in compliance with official guidance, even if that guidance may have been inaccurate.

Moreover, Petitioner demands relief that would clearly violate the Equal Protection Clause. On his main protests, he asks this Court to cancel certain disfavored voters, while simultaneously *not* cancelling votes from identically situated persons. Specifically, for voters whose records do not include an identification number in the Board's database, he has challenged only those voters who voted absentee or early in-person—not the tens of thousands who voted on election day. And for military and overseas absentee voters who did not provide a copy of their photo ID alongside their ballots, he has challenged only voters in four large, urban counties—while asking the Court to leave intact identically situated votes in the State's other 96 counties. He thus invites this Court to order an obvious equal protection violation of enormous magnitude.

For these and other reasons detailed below, the State Board of Elections respectfully requests that this Court deny the petition. This is the

last uncertified statewide race in the entire nation. Denying the petition would put the last election cycle behind us, and allow our electoral system to move forward without the destabilizing and delegitimizing effects associated with cancelling tens of thousands of lawful votes. Any concerns this Court might have with the substantive claims Petitioner has advanced can be resolved in the ordinary course in advance of the next election cycle.

STATEMENT OF THE CASE

Petitioner Judge Jefferson Griffin filed a petition for writ of prohibition in this Court seeking an order prohibiting Respondent the North Carolina State Board of Elections from counting certain ballots in the election for Seat 6 of this Court. Respondent removed the case to the United States District Court for the Eastern District of North Carolina, and the federal district court later issued an order remanding the case to this Court. This Court issued an order granting Petitioner's motion for a temporary stay of the certification of the election and setting an expedited briefing schedule.

STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW

Petitioner filed this petition for writ of prohibition as an original action in this Court. As explained below, the petition is procedurally

improper because it circumvents our State's established procedures for judicial review of election protests. *See infra* Part I.

STATEMENT OF THE FACTS

A. Petitioner files hundreds of election protests.

Petitioner Judge Jefferson Griffin and Intervenor Associate Justice Allison Riggs were candidates in the statewide 2024 general election for Associate Justice on the North Carolina Supreme Court. Final canvassed results show Justice Riggs prevailed by 734 votes.¹

On November 19, 2024, Petitioner filed hundreds of election protests throughout the State challenging the election results, alleging that certain voters' ballots were invalid. (Pet. App. 39) In his protests, Petitioner challenged, among others, the following three categories of voters:

- In nearly all of the State's one hundred counties, Petitioner challenged 60,273 ballots cast by registered voters with allegedly incomplete voter registrations. However, he only challenged ballots cast by individuals who voted early or voted absentee. He did not challenge ballots cast by tens of thousands of identically situated voters who voted in-person on election day.²

¹ *NC SBE Election Contest Details*, N.C. State Bd. of Elections, bit.ly/3PA7R6P (last visited Jan. 21, 2025).

² (See Pet. App. 368-411, 428-63, 480-94, 511-79, 596-634, 651-95, 722-41, 758-87, 804-35, 852-87, 904-1007, 1024-45, 1062-103, 1120-77, 1204-19, 1236-76, 1293-309, 1326-45, 1362-448, 1475-95, 1512-84, 1595-617, 1634-728, 1745-830,

- In four of North Carolina's counties (Buncombe, Durham, Forsyth, and Guilford), Petitioner challenged absentee ballots cast by both military and overseas voters who did not include a photocopy of a photo identification (or an ID exception form) with their ballots. Petitioner's protests, however, only identified specific voters whose votes he was challenging in Guilford County. In that county, he challenged 1,409 votes.³
- In fifty-three of North Carolina's counties, Petitioner challenged 266 ballots cast by overseas citizens who voted absentee and who have never resided in the United States.⁴

B. The Board takes jurisdiction over three categories of protests.

When an election protest is filed with a county board, the State Board may take jurisdiction over the protest and resolve it in the first instance.

1895-915, 1932-78, 1995-2065, 2082-107, 2124-42, 2159-210, 2227-44, 2261-82, 2299-335, 2352-401, 2418-580, 2597-615, 2632-58, 2675-721, 2732-47, 2764-95, 2812-87, 2904-40, 2957-73, 2990-3039, 3056-96, 3113-89, 3206-44, 3261-332, 3349-95, 3412-85, 3518-691, 3708-38, 3755-830, 3847-902)

³ (See Pet. App. 696-705, 1178-87, 1449-58, 1585-94, 1831-78, 2722-31) Petitioner initially challenged voters in Cumberland and New Hanover counties as well, but declined to pursue these challenges.

⁴ (See Pet. App. 352-67, 412-27, 464-79, 495-510, 580-95, 635-50, 706-21, 742-57, 788-803, 836-51, 888-903, 1008-23, 1046-61, 1104-19, 1188-203, 1220-35, 1277-92, 1310-25, 1346-61, 1459-74, 1496-511, 1618-33, 1729-44, 1879-94, 1916-31, 1979-94, 2066-81, 2108-23, 2143-58, 2211-26, 2245-60, 2283-98, 2336-51, 2402-17, 2581-96, 2616-31, 2659-74, 2748-63, 2796-811, 2888-903, 2941-56, 2974-89, 3040-55, 3097-112, 3190-205, 3245-60, 3333-48, 3396-411, 3486-517, 3692-707, 3739-54, 3831-46)

N.C. Gen. Stat. § 163-182.12. On November 20, the Board voted unanimously to take jurisdiction over the three categories of protests listed above, which “presented legal questions of statewide significance.” (Pet. App. 41) The Board instructed county boards to consider Petitioner’s other protests, “which were focused on individual, fact-specific determinations of voter eligibility.”⁵ (Pet. App. 41)

After this meeting, Petitioner filed additional untimely protests after the statutory deadline. *See* N.C. Gen. Stat. § 163-182.9(b)(4). These protests sought to add additional ballots to Petitioner’s challenges with respect to the second and third categories listed above.

With respect to the third category, Petitioner tried to update his protests by newly challenging the votes of 4,100 military and overseas voters

⁵ The remaining three categories of protests challenged ballots cast by voters (1) who were serving a felony sentence; (2) who were deceased; and (3) whose registrations were denied or removed. (Pet. App. 41) On December 27, 2024, the Board dismissed these protests for failure to substantially comply with service requirements and because they challenged an inadequate number of votes to change the outcome of the contest. N.C. State Bd. of Elections, Decision and Order at 1-2 (Dec. 27, 2024). Petitioner declined to appeal that decision to Wake County Superior Court by the January 9, 2025 statutory deadline. *See* N.C. Gen. Stat. § 163-182.14(b). As a result, the Board was required by statute to certify the election by January 10, 2025 absent a court order. *See id.* On January 7, 2025, this Court issued a stay of the statutory certification deadline. Am. Order at 2.

in Buncombe, Durham, and Forsyth counties. (Pet. App. 177-343) He did not, however, seek to challenge the more than 25,000 identically situated voters across the State.⁶

C. The Board dismisses the protests.

When the Board takes jurisdiction over protests initially filed with a county board, the Board follows the same procedures for resolving the protests as the county boards. See N.C. Gen. Stat. §§ 163-182.10, -182.11(b), -182.12. Those procedures first require the Board to give the protest “preliminary consideration.” N.C. Gen. Stat. § 163-182.10(a). At this preliminary-consideration stage, the Board must answer two questions. First, did the protest comply with the protest-filing requirements in N.C. Gen. Stat. § 163-182.9? *Id.* Second, did the protest “establish[] probable cause to believe that a violation of election law or irregularity or misconduct has occurred”? *Id.* For a protest to proceed beyond the preliminary-consideration stage, the Board must answer both questions in the affirmative. *Id.* (“If the board determines that one or both requirements are not met, the board shall dismiss the protest.”).

⁶ Petitioner did not include in the appendix to his petition the protests for seven additional counties that he filed on the second category.

Protests that meet these preliminary requirements then proceed to an evidentiary hearing. *Id.* § 163-182.10(a), (c)-(d). Following this hearing, the Board must issue a “written decision” with findings of fact and conclusions of law. *Id.* § 163-182.10(d). The findings of fact must be “based exclusively on the evidence” presented at the hearing “and on matters officially noticed.” *Id.* § 163-182.10(d)(1). The conclusions of law must be based on whether there is “substantial evidence of a violation, irregularity or misconduct sufficient to cast doubt on the results of the election.” *See id.* §§ 163-182.10(d)(2)(a)-(e).

If the Board finds substantial evidence of a violation, the Board may correct vote totals, order a recount, or take “[a]ny other action within [its] authority.” *See id.* § 163-182.10(d)(2)(e); *see also id.* § 163-182.12. In addition, under certain circumstances, the Board may order a new election. *Id.* § 163-182.13. Decisions of the State Board may be appealed to Wake County Superior Court. *Id.* § 163-182.14.

In line with this procedure, on December 11, the Board held a public meeting to consider the protests over which it had retained jurisdiction. (Pet. App. 38) Two days later, the Board dismissed the protests at the “preliminary consideration” stage—concluding both that Petitioner had

failed to comply with procedural filing requirements, and that he had failed to establish “probable cause” of a violation of law. (Pet. App. 38-80)

With respect to all three categories of protests, the Board held that Petitioner “failed to serve” affected voters, in violation of the North Carolina Administrative Code and “the requirements of constitutional due process.” (Pet. App. 43) The Board reasoned that Petitioner’s chosen method of service—a postcard with a QR code—did not provide affected voters adequate notice that their vote was being challenged. (Pet. App. 48-51)

The Board also recognized that the additional protests that Petitioner filed after the deadline “may not have been timely filed under [section] 163-182.9(b)(4),” but did not decide whether these protests were timely since it “dismiss[ed] these protests for other reasons.” (Pet. App. 43 n.4)

The Board then examined each category of protests individually, outlining the reasons why each protest was “legally invalid.” (Pet. App. 77) On the first category of protests about alleged incomplete voter registrations, the Board held that the federal Help America Vote Act (HAVA) foreclosed Petitioner’s requested relief to cancel the votes of affected voters. (Pet. App. 54-57) The Board further held that, “to the extent there is a potential violation of HAVA involved in registration of voters in the past, it

was remedied consistent with a separate provision of HAVA.” (Pet. App. 57) That “separate provision . . . states that a new voter registration applicant must provide an alternative form of identification before or upon voting for the first time, if the state did not have a system complying with the requirement to collect a driver’s license number or last four digits of a social security number.” Pet. App. 56 (citing 52 U.S.C. § 21083(b)(1)–(3)).

The Board also noted the recent decision of the U.S. District Court for the Eastern District of North Carolina in *Republican National Committee v. North Carolina State Board of Elections*, No. 5:24-cv-00547, slip op. at 4 (E.D.N.C. Nov. 22, 2024)—a case in which the federal court denied the plaintiffs in that case relief similar to what Petitioner seeks here. (Pet. App. 57). Acknowledging the federal court’s reasoning that “there had been no meaningful opportunity for the voters at issue to address any potential deficiency far enough in advance of the election to comply with the law,” the Board similarly concluded that votes cannot be invalidated *after* an election when eligible voters complied with all the instructions they had been given when they registered and voted. (Pet. App. 57-59) Doing so, the Board held, would violate “substantive due process protections under the U.S. Constitution.” (Pet. App. 60-62)

The Board also rejected Petitioner's protests as to the votes of military and overseas voters who did not include a copy of their photo identification with their ballots. (Pet App. 69) One of its administrative rules, the Board explained, expressly provides that these voters were "not required to submit a photocopy of acceptable photo identification" with their absentee ballots. (Pet. App. 73-74 (citing 08 N.C. Admin. Code 17 .0109(d))).

The Board further explained that absentee voting by military and overseas voters is governed by the Uniform Military and Overseas Voters Act (UMOVA), a law unanimously passed by the General Assembly in 2011, which allows these voters to use special procedures to register to vote, request an absentee ballot, and submit an absentee ballot. *See* N.C. Gen. Stat. §§ 163-258.6 to -258.15. These procedures, the Board noted, do not require military and overseas voters to include a copy of their photo identification when submitting their absentee ballot. (Pet. App. 69-71) Moreover, because these procedures originate under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), which UMOVA applies to state elections, the Board concluded that imposing an identification requirement on voters covered by UOCAVA that is

inconsistent with federal law would likely violate the Supremacy Clause of the U.S. Constitution. (Pet. App. 74-76)

The Board also rejected Petitioner’s protests as to overseas voters who have never resided in the United States but whose parents had been North Carolina residents. (Pet. App. 66) In dismissing this category of protests, the Board noted that UMOVA “specifically authorized U.S. citizens who have never lived in the United States to vote in North Carolina elections if they have a familial connection to this state.” (Pet. App. 66-67) The Board elected not to “ignore” this state statute. (Pet. App. 66)

D. Petitioner files an original action in this Court, and the Board removes to federal court.

On December 18, 2024, Petitioner filed an original action, framed as a petition for writ of prohibition, in this Court challenging the Board’s final decision and requesting that ballots in the three categories of protests not be counted. The petition seeks declaratory rulings that this requested relief would *not* violate a variety of state and federal laws—including the Board’s service rules for election protests; HAVA, 52 U.S.C. § 20901, *et seq.*; the National Voter Registration Act (NVRA), 52 U.S.C. § 20501, *et seq.*; the Voting Rights Act (VRA), 52 U.S.C. § 10307; the Civil Rights Act, 52 U.S.C.

§ 10101; and the Fourteenth Amendment to the United States Constitution.

(Pet. 70-71)

The Board removed this matter to the U.S. District Court for the Eastern District of North Carolina on December 19, 2024. *Griffin v. N.C. State Bd. of Elections*, No. 5:24-cv-00724, D.E. 1 (E.D.N.C.).

The next day, Petitioner separately filed three petitions for judicial review in Wake County Superior Court of the three categories of protests over which the Board took jurisdiction. *See Griffin v. N.C. State Bd. of Elections*, No. 24CV040622-910 (Wake Cnty. Sup. Ct.); *Griffin v. N.C. State Bd. of Elections*, No. 24CV040619-910 (Wake Cnty. Sup. Ct.); *Griffin v. N.C. State Bd. of Elections*, No. 24CV040620-910 (Wake Cnty. Sup. Ct.). The Board again removed those petitions to federal court. *See Griffin v. N.C. State Bd. of Elections (Griffin II)*, No. 5:24-cv-00731, D.E. 1 (E.D.N.C.).

On January 3, 2025, Petitioner filed a motion to remand this case back to this Court. *Griffin*, D.E. 48. Three days later, the district court granted the motion and remanded the case to this Court. *Griffin*, D.E. 50. That same evening, the district court *sua sponte* remanded the three petitions for judicial review to Wake County Superior Court as well. *Griffin II*, D.E. 24, 25.

Respondent appealed the district court's remand decisions to the U.S. Court of Appeals for the Fourth Circuit. *Griffin*, D.E. 52; *Griffin II*, D.E. 26. The Board moved in the Fourth Circuit for a temporary administrative stay and stay pending appeal, on which the Fourth Circuit has yet to rule. No. 25-1018 (4th Cir.) D.E. 10. The Fourth Circuit granted Intervenor Justice Riggs' motion for expedited review, setting a schedule that will have the appeal briefed and argued by January 27, 2025. *See* No. 25-1018 (4th Cir.), D.E. 18, 33.

On January 7, 2025, this Court issued an order granting Petitioner's motion for a temporary stay of the certification of the election and setting an expedited briefing schedule. Am. Order (Jan. 7, 2025). This Court noted that this case is simultaneously pending in the Fourth Circuit, and concluded that "in the absence of a stay from federal court, this matter should be addressed expeditiously because it concerns certification of an election." *Id.* at 1.

Justice Allen wrote a separate concurrence, emphasizing that this Court's order granting a stay "should not be taken to mean that [Petitioner] will ultimately prevail on the merits." *Id.* at 1 (Allen, J., concurring).

Justice Earls and Justice Dietz dissented from the grant of a temporary stay. Justice Earls concluded that Petitioner's motion was "procedurally improper" because "his rights can be vindicated through existing legal

channels.” *Id.* at 1-2 (Earls, J., dissenting). Justice Earls also concluded that Petitioner had failed to show a likelihood of success on the merits of each of his challenges and that “the public interest requires that the Court not interfere with the ordinary course of democratic processes as set by statute and the State Constitution.” *Id.* at 1, 4-6.

Justice Dietz dissented on different grounds. Justice Dietz expressed that he “would deny the petition and dismiss the stay request” under our State’s version of the *Purcell* principle, which provides that, “as elections draw near, judicial intervention becomes inappropriate because it can damage the integrity of the election process.” *Id.* at 1 (Dietz, J., dissenting) (citations omitted). He explained that the petition presents “post-election litigation that seeks to remove the legal right to vote from people who lawfully voted under the laws and regulations that existed during the voting process.” *Id.* Justice Dietz emphasized “[t]he harm this type of post-election legal challenge could inflict on the integrity of our elections.” *Id.* Though he expressed that some of Petitioner’s legal challenges might be valid, Justice Dietz noted that “these potential legal errors by the Board could have been—and should have been—addressed in litigation long before” the election at issue. *Id.* at 1, 4. But he explained that “once people are actually *voting* in

the election, it is far too late to challenge the laws and rules used to administer that election.” *Id.* at 5.

SUMMARY OF THE ARGUMENT

The petition should be denied for four threshold reasons.

First, Petitioner does not even claim to have satisfied the procedural prerequisites to seeking a writ of prohibition. For well over a century, this Court has strictly enforced the rule that a writ of prohibition is available only when “no other adequate remedy exists to address” the claimed injury. Scherer & Leerberg, *North Carolina Appellate Practice and Procedure* § 22.02 (2022). Thus, this Court has long held that prohibition is unavailable whenever “ordinary remedies provided by law” are available to redress a petitioner’s claim. *State v. Whitaker*, 114 N.C. 818, 19 S.E. 376, 376-77 (1894).

Here, of course, Petitioner has a readily available mechanism for seeking the relief he requests: the statutory process for judicial review of election protests. Indeed, Petitioner currently has, in Wake County Superior Court, pending petitions seeking the exact same relief he seeks here. In addition, the writ of prohibition allows this Court to issue commands to *other courts*. Here, however, Petitioner seeks a writ directed to the State

Board, an executive agency. Tellingly, Petitioner cites no case in history where this Court has ever issued a writ of prohibition to an executive agency.

Second, Petitioner's request that this Court retroactively change election rules to alter the result in his recent election violates this Court's version of the *Purcell* principle. As several Justices of this Court have emphasized, the *Purcell* principle serves as an important tool of judicial restraint, to prevent last-minute judicial changes to election rules. Strict, dispassionate adherence to this doctrine "protects the State's interest in running an orderly, efficient election" and preserves the public's "confidence in the fairness of the election." *Democratic Nat'l Comm. v. Wisc. State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring).

The circumstances of this case scream out for application of the *Purcell* principle. Petitioner here delayed bringing his claims until *after* the election results showed that he had lost. He now seeks to change longstanding election rules with novel legal claims—including claims that would require courts to strike down state statutes passed by the General Assembly. And the result would be to retroactively disenfranchise more than 65,000 voters, many of whom have been voting in North Carolina elections without controversy for *decades*. Under *Purcell*, these claims can and should be

litigated on a going-forward basis. But it is far too late to alter the rules of an election that has already taken place.

Third, Petitioner's requested remedy would violate the Fourteenth Amendment as well as this Court's precedent. As several federal courts have held, it is flatly unconstitutional for a court to retroactively cancel votes that were cast in compliance with official guidance from election officials. *See, e.g., Griffin v. Burns*, 570 F.2d 1065, 1075-76 (1st Cir. 1978). This is true even when that guidance turned out to be inaccurate. *See id.* When voters have cast ballots in accordance with "the instructions of the officials charged with running the election," it violates due process to cancel their votes. *Id.*

This Court's precedent is even more directly on point. This Court has twice specifically held that that it is unlawful to discount votes based on alleged noncompliance by election officials during the registration process. *See Woodall v. Western Wake Highway Comm'n*, 176 N.C. 377, 388-89, 97 S.E. 226, 231-32 (1918); *Overton v. Mayor of Hendersonville*, 253 N.C. 306, 315-16, 116 S.E.2d 808, 815 (1960). These precedents recognize that when a lawful voter casts a ballot after being duly registered, it would be "hostile to the free exercise of the right of franchise" to cancel their ballot merely because "the

voter may not actually have complied entirely with the requirements of the registration law.” *Woodall*, 176 N.C. at 388-89, 97 S.E. at 231-32.

Petitioner’s requested remedy is unconstitutional for another reason as well. As the U.S. Supreme Court has held, it violates the Equal Protection Clause to arbitrarily “value one person’s vote over that of another.” *Bush v. Gore*, 531 U.S. 98, 104-05 (2000) (per curiam). But Petitioner asks this Court to do just that. He specifically seeks to cancel votes of people who he claims are improperly registered, but *only* those who voted absentee or early in-person—leaving intact the votes of identically situated persons who voted on election day. Likewise, Petitioner seeks to cancel the votes of military and overseas voters who did not submit a copy of their photo ID (or an exception form) along with the federal UOCAVA form. But he asks that only voters from four large, urban counties have their votes cancelled. All the other identically situated voters in the State’s other 96 counties, according to Petitioner, should continue to have their ballots counted. Granting this arbitrary request would blatantly violate the Equal Protection Clause.

Fourth, Petitioner’s protests should be denied because he failed to provide voters with constitutionally adequate notice that he was challenging their votes. To comply with procedural due process, notice must be

“reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of [a matter] and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr., Co.*, 339 U.S. 306, 314 (1950). Petitioner failed to do so here. Challenged voters were mailed a postcard stating that their votes *may* be subject to a protest, along with a QR code that, when scanned with a smartphone, linked to a list of *hundreds* of protests, many of which contained *thousands* of names, out of alphabetical order, on *hundreds* of pages. This form of notice quite obviously would guarantee that a “significant number” of voters would not understand their votes were being challenged, and therefore violates procedural due process. *Greene v. Lindsey*, 456 U.S. 444, 453 (1982).

For each of these independent reasons, the petition should be denied at the threshold. Petitioner’s claims can and should be resolved on a prospective basis, through ordinary litigation processes, not through an unprecedented writ that seeks to overturn the results of an election.

But even if this Court were inclined to consider Petitioner’s claims in this posture, they would each fail on the merits.

First, on Petitioner’s protest regarding allegedly improper registrations, Petitioner has failed to establish probable cause to believe that

any challenged voter *actually* registered to vote and cast ballots in violation of HAVA or its state-law analog. HAVA and corresponding state law explicitly contemplate numerous situations in which a voter may lawfully register and vote, even though their records lack a social security or driver's license number in the Board's database. For example, some challenged voters registered *before* HAVA was even enacted, and nothing in HAVA requires previously registered voters to provide an identification number to remain on the rolls. As another example, HAVA and state law explicitly allow voters to register by mail without providing an identification number, so long as they provide a HAVA-qualifying ID when they first vote. And yet another example: HAVA and state law recognize that, due to database-matching errors, many voters who *did*, in fact, provide an identification number at registration may not have that number reflected in the Board's database. HAVA and state law therefore provide that these voters also may vote if they show a HAVA ID before voting for the first time.

Because Petitioner failed to satisfy his burden to show that any individual voter whose registration records lack an identification number *actually* was ineligible to register and vote, the Board correctly dismissed Petitioner's first protest.

Second, on Petitioner's protest challenging military and overseas voters who voted absentee without providing a copy of their photo ID, the Board rightly concluded that these voters cast ballots consistent with North Carolina law. The General Assembly chose to incorporate into state law a federal statute, UOCAVA, that allows military and overseas voters to cast ballots using a federal form that does not require supplying a copy of one's photo ID. This state statute is codified in a *separate article* of the General Statutes from the article that sets out voting rules for the general public. And the legislature made clear that the requirement to show a copy of an ID only applies to the general public.

Third, on Petitioner's protest directed to citizens who have never lived in North Carolina, Petitioner asks this Court to strike down as unconstitutional a statute passed by the General Assembly. As an initial matter, this is a facial challenge that must be directed to a three-judge panel. But even if this Court were to disregard the three-judge-panel statute, Petitioner has failed to meet the high bar needed to succeed on his facial challenge. Nothing in the state constitution creates a durational residency requirement to vote, and so the General Assembly's policy choice to enfranchise this small group of overseas citizens was constitutional.

For all these reasons, Petitioner’s protests fail on the merits. But even if this Court were to disregard all of the above and conclude that Petitioner’s protests state valid claims for relief, Petitioner is wrong that this Court can skip past factfinding and the Board’s remedial process and award him the election. Below, the Board dismissed Petitioner’s protests at the preliminary stage—akin to a dismissal on the pleadings. Thus, the only remedy available to Petitioner at this stage would be a remand to the Board for further proceedings, including an evidentiary hearing.

In sum, this Court should deny the petition outright as procedurally and constitutionally defective. But even if this Court were to consider Petitioner’s arguments, those arguments fail on the merits. And even if this Court were to consider and agree with the merits of Petitioner’s claims, the only proper relief would be a remand to the Board.

ARGUMENT

Standard of Review

All of the issues raised in the petition are questions of law that this Court reviews de novo. *State v. Wilkins*, 909 S.E.2d 215, 219 (N.C. 2024).

Discussion of Law

I. The Petition Should Be Denied Because Petitioner Has Failed to Establish the Requirements for a Writ of Prohibition.

The writ of prohibition is reserved for cases of “extreme necessity,” and there are therefore stringent guardrails limiting its use. *Holly Shelter R.R. Co. v. Newton*, 133 N.C. 132, 45 S.E. 549, 550 (1903). Because the Petition here fails to meet at least two of the writ’s requirements, it should be denied.

First, as Petitioner’s own authorities confirm, it has been “settled” for more than a century that the writ of prohibition “does not lie” if another avenue for relief is available—including direct appeal. *State v. Whitaker*, 114 N.C. 818, 820, 19 S.E. 376, 376-77 (1894).

As this Court has long advised, a writ of prohibition is to be used “with great caution and forbearance,” and only where “none of the ordinary remedies provided by law will give the desired relief.” *Id.* at 820, 19 S.E. at 377. For that reason, prohibition is unavailable where a “grievance” can be addressed through “the ordinary course of judicial proceedings.” *Id.* at 820, 19 S.E. at 376. As a result, “where there is *any sufficient remedy* by ordinary methods”—whether “appeal, injunction” or otherwise—prohibition “will not issue.” *Holly Shelter*, 133 N.C. at 132, 45 S.E. at 550 (emphasis added); *see also State v. Inman*, 224 N.C. 531, 542, 31 S.E.2d 641, 646-47 (1944) (“prohibition

[is] uniformly denied where there is [an]other remedy”); Elizabeth B. Scherer & Matthew N. Leerberg, *North Carolina Appellate Practice and Procedure* § 22.02 (2022) (petitioner seeking a writ of prohibition must show “no other adequate remedy exists to address” the claimed injury); *White v. Willett*, 456 S.W.3d 810, 812 (Ky. 2015) (same).

Petitioner declines to cite a single case where this Court has previously granted a writ of prohibition. He cites only three cases where this Court even *considered* granting the writ—and in all three cases the Court declined to do so. See *Whitaker*, 114 N.C. at 818, 19 S.E. at 376-77; *Mountain Retreat Ass’n v. Mt. Mitchell Dev. Co.*, 183 N.C. 43, 45, 110 S.E. 524, 525 (1922); *State v. Allen*, 24 N.C. 183, 188-91 (1841). And the small handful of cases over the past century that undersigned counsel have been able to identify where the writ was granted all involve situations where, in accordance with black-letter law, “no other adequate remedy exist[ed]” to address the claimed wrong. Scherer & Leerberg, § 22.02; e.g., *State v. Hunt*, 357 N.C. 454, 591 S.E.2d 502 (2003).

Here, however, Petitioner can readily seek relief through “the ordinary course of judicial proceedings.” *Whitaker*, 114 N.C. at 818, 19 S.E. at 376. All final decisions by the Board are immediately appealable to Wake County Superior Court, which can “stay certification” of an election if

necessary. N.C. Gen. Stat. § 163-182.14(b). From there, direct appeal is available to the Court of Appeals and, ultimately, this Court. Election-related challenges are addressed this way every election cycle.

And of course, Petitioner has himself also followed this clear procedural pathway for judicial review: In addition to filing a petition for a writ of prohibition in this Court, Petitioner chose to *also* file petitions for judicial review in Wake County Superior Court in the ordinary course. Those protests remain pending in superior court right now. Petitioner therefore cannot make the threshold showing required for issuance of the writ—that “no other adequate remedy exists” other than prohibition to seek his requested relief. Scherer & Leerberg, § 22.02.

Second, the Board is not one of “the other courts” to which this Court may issue the writ. Our state Constitution empowers this Court to issue writs of prohibition as “necessary to give it general supervision and control over the proceedings of the other courts.” N.C. Const. art. IV § 12(1). That power does not extend to executive agencies like the Board.

As Petitioner’s own authorities again confirm, the writ of prohibition is used “only to restrain *judicial action*.” *Whitaker*, 114 N.C. at 818, 19 S.E. at 377 (emphasis added); *see also Allen*, 24 N.C. (2 Ired.) at 188-89 (writ of

prohibition’s “appropriate purpose is to restrain *other courts*”) (emphasis added). But the Board is not aware of any case—and Petitioner cites none—in which this Court has *ever* issued a writ of prohibition directly to an administrative agency. And for good reason: Our state constitution expressly distinguishes “the judicial powers of administrative agencies” from those exercised by our “unified judicial system,” the General Court of Justice. *Compare* N.C. Const. art. IV § 2 *with* §§ 3, 12. In text and in practice, agencies are categorically different from the “other courts” this Court supervises, even if agencies sometimes exercise “incident” judicial power. *Id.* §§ 3, 12.⁷

⁷ Petitioner cites *Moses v. State Highway Commission*, which recognizes that, through proper exercise of its “supervisory jurisdiction,” this Court might answer questions that “aid State agencies in the performance of their duties.” Pet. Br. at 5 (quoting 261 N.C. 316, 317, 134 S.E. 2d 664, 665 (1964)). True as it is, this statement hardly supports issuing the writ to administrative agencies. Indeed, in *Moses* itself, this Court took up an interlocutory appeal *from superior court*—a classic exercise of “the supervisory jurisdiction given to it” by the Constitution and the General Statutes. *Id.* Petitioner further cites *Comm. to Elect Dan Forest v. Emps. Pol. Action Comm.*, 376 N.C. 558, 568 n.11, 853 S.E.2d 698, 708 n.11 (2021). *Comm. to Elect Dan Forest v. Emps. Pol. Action Comm.*, 376 N.C. 558, 568 n.11, 853 S.E.2d 698, 708 n.11 (2021). But of course, that case did not involve a writ of prohibition—it was about standing. *Id.* at 558, 853 S.E.2d at 714. And although the decision contains dicta on prerogative writs to inform its standing analysis, it does not cite a single case in which this (or any other) Court has ever issued a writ of prohibition to an executive agency. *See, e.g., id.* at 569-70, 853 S.E.2d at 714.

Article IV, § 12—which authorizes use of the writ—is titled “Jurisdiction of the General Court of Justice.” The subsections that follow describe the respective jurisdictions of four distinct courts: this Court, the Court of Appeals, the Superior Court, and the District Courts and Magistrates. N.C. Const. art. IV § 12(1)-(4). Agencies are not included in that list. Thus, section 12’s reference to “the other courts” supervised by this Court is best understood to refer to the courts listed in the section—those comprising the General Court of Justice. *See Wynn v. Frederick*, 385 N.C. 576, 582, 895 S.E.2d 371, 377 (2023) (“general words will be interpreted to fall within the same category as those [specifically] designated”).

In sum, Petitioner has improperly sought to bypass the General Assembly’s established procedural pathway for seeking judicial review of election protests. Because Petitioner clearly cannot establish that a writ of prohibition is the *only* way he can obtain relief on his claims and because the writ can only be issued to other courts, the petition should be denied.

II. Petitioner’s Requested Relief Violates the *Purcell* Principle.

Even if this Court were to overlook the basic procedural defects described above, the petition should be denied for an additional threshold

reason: The relief that Petitioner seeks is foreclosed by the *Purcell* principle. See generally *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam).

A. *Purcell* is a neutral rule of judicial restraint that guards against late-breaking judicial changes to election rules.

The *Purcell* principle “reflects a bedrock tenant of election law: When an election is close at hand, the rules of the road must be clear and settled.” *Merrill v. Milligan*, 142 S. Ct. 879, 880-81 (2022) (Kavanaugh, J., concurring). “Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.” *Id.* at 881. A state therefore has an “extraordinarily strong interest in avoiding late, judicially imposed changes to its election laws and procedures.” *Id.*

Given these concerns, *Purcell* serves as an “important principle of judicial restraint.” *Democratic Nat’l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring). Adhering to *Purcell* “protects the State’s interest in running an orderly, efficient election and in giving citizens (including the losing candidates and their supporters) confidence in the fairness of the election.” *Id.* It “also discourages last-minute litigation and instead encourages litigants to bring any substantial challenges to election rules ahead of time, in the ordinary litigation process.” *Id.*

The way that *Purcell* discourages last-minute litigation over election rules is particularly important in a state like North Carolina, where elections are often close and contested. As Judge Wilkinson has recently explained, “[o]ver the past five years, North Carolina has been flooded with dozens of challenges to the State’s electoral regulations.” *Sharma v. Hirsch*, 121 F.4th 1033, 1043 (4th Cir. 2024). Although such challenges may be “reasonably grounded in the law,” “the constant pull to the courtroom leaves state election officials frequently operating in a provisional state, never knowing if and when their procedures will be overturned.” *Id.* “This state of affairs is not conducive to the most efficient administration of elections.” *Id.*

When it applies, the *Purcell* principle may be overcome only rarely. To justify court intervention of election rules in the period surrounding an the election, a plaintiff must establish “at least” four requirements: (1) “the underlying merits are entirely clearcut in favor of the plaintiff”; (2) “the plaintiff would suffer irreparable harm absent” judicial intervention; (3) “the plaintiff has not unduly delayed bringing the complaint to court”; and (4) “the changes in question are at least feasible before the election without significant cost, confusion, or hardship.” *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring).

To be sure, the *Purcell* principle is a federal rule that applies to federal courts. But “this Court has long acknowledged a state version of *Purcell* (although not always by name).” Am. Order at 5 (Jan. 7, 2025) (Dietz, J., dissenting). This Court first recognized the principle just one year after *Purcell* was decided, in *Pender County v. Bartlett*, 361 N.C. 491, 649 S.E.2d 364 (2007). In that case, the Court held that a state house district was not required under the Voting Rights Act and thus had to comply with our state constitution’s whole county provision. *Id.* at 510, 649 S.E.2d at 376. The Court accordingly ordered the General Assembly to redraw the district. *Id.* The Court also recognized, however, that candidates had already been preparing for the upcoming 2008 election “in reliance upon the districts as presently drawn.” *Id.* As a result, “to minimize disruption to the ongoing election cycle,” the Court stayed its order requiring the General Assembly to redraw the district “until after the 2008 election.” *Id.*

Several Justices of this Court have since emphasized the importance of this principle. *E.g.*, Am. Order at 5 (Jan. 7, 2025) (Dietz, J., dissenting); *Holmes v. Moore*, 382 N.C. 690, 691, 876 S.E.2d 903, 904 (2022) (Newby, C.J., dissenting) (citing *Purcell* and dissenting from expedited consideration given an “impending” election); *Harper v. Hall*, 382 N.C. 314, 319, 874 S.E.2d 902,

906 (2022) (Barringer, J., dissenting) (stating that expedited consideration of challenge to state election rules “would appear to be a clear violation of the Supreme Court of the United States’ ‘repeated emphasis’ that ‘courts ordinarily should not alter state election laws in the period close to an election’” (cleaned up) (quoting *DNC*, 141 S. Ct. at 30) (Kavanaugh, J., concurring)).

B. If ever there were a case that called for applying the *Purcell* principle, this case is it.

Purcell applies here. Indeed, it is difficult to imagine a case that more squarely calls for *Purcell*'s application.

To begin, there can be no doubt that this case involves a challenge to election rules in a period close to the election—and that “the changes in question” are not “feasible *before* the election.” *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring) (emphasis added). The election concluded two months ago, followed by multiple recounts confirming the winner. To change the rules of the election now—months after millions of North Carolinians have already cast their ballots—would “fundamentally alter[] the nature of the election” and “gravely affect the integrity of the election process.” *See Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S.

423, 424-25 (2020) (per curiam). That is exactly the intolerable outcome the *Purcell* principle seeks to avoid.

Petitioner falls far short of establishing that the *Purcell* principle can be overcome on these facts. First, Petitioner has not shown that the merits here are “entirely clearcut” in his favor. *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). To the contrary, as discussed below, the opposite is true. See *infra* Part V. But even if the Court were inclined to agree with Petitioner on the merits of one or more of his challenges, Petitioner must show not only that his arguments are legally correct, but also that his arguments are “entirely clearcut.” *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring) (emphasis added). Yet all of Petitioner’s challenges implicate novel and unprecedented challenges to longstanding election rules. Indeed, Petitioner cites *no case* by this Court to have *ever* accepted any of his arguments. By definition, then, the merits here cannot be “entirely clearcut” in his favor.

Second, Petitioner unduly delayed challenging the election rules. See *id.* As for Petitioner’s challenge to voters who lack a driver’s license or social security number in the Board’s database, it is undisputed that the voter-registration form that he contests was in place long before this election—with affected voters likely casting *millions of ballots* without challenge

during that time.⁸ It was not until October 2023 when a voter took issue with the form. (Pet. App. 162) In December 2023, the Board concluded that “the appropriate remedy is to implement changes recommended by staff to the voter registration application form and any related materials” only on a going-forward basis. (Pet. App. 165) Petitioner thus had almost a year before the election to challenge this decision. He did not. *Purcell* bars Petitioner from waiting until *after* the election to challenge this rule in an effort to reverse his election loss. *See Little v. Reclaim Idaho*, 140 S. Ct. 2616, 2617 (2020) (Roberts, C.J., concurring) (party challenging election rule “delayed unnecessarily its pursuit of relief until more than a month after the deadline for submitting signatures”).

The delay is even starker with respect to the other categories of voters that Petitioner challenges. Petitioner’s challenge to so-called “never residents” concerns a law that the General Assembly passed more than a decade ago. Act of June 16, 2011, S.L. No. 2011-182, sec. 1, 2011 N.C. Sess. Laws

⁸ While this case was still in federal court, intervenors filed affidavits from voters whose votes Petitioner has challenged. Those voters affirmed that they most recently registered to vote in 2009, 2014, and 2020 and had regularly voted since without issue until Petitioner challenged their votes. *See Griffin*, No. 5:24-cv-00724, D.E. 24-2, 24-3, 24-4 (E.D.N.C.).

687, 687-92. And Petitioner’s challenge to the photo ID requirements for military and overseas voters concerns a Board rule promulgated through an open process long before the election, interpreting statutes that have been in place for years. 8 N.C. Admin. Code 17 .0109(d). The time to challenge these rules for the 2024 election has long since passed. In short, “these potential legal errors by the Board could have been—and should have been—addressed in litigation long before people went to the polls in November.” Am. Order at 4 (Jan. 7, 2025) (Dietz, J., dissenting); see *Benisek v. Lamone*, 585 U.S. 155, 159 (2018) (per curiam) (party unreasonably delayed challenging election map when it waited “until six years, and three general elections,” after the map was adopted to bring suit).

Third, making the changes that Petitioner requests at this late date will come at “significant cost, confusion, [and] hardship.” *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). Accepting Petitioner’s arguments would create “chaos for candidates, campaign organizations, independent groups, political parties, and voters”—in this and future elections. *Id.* at 880. “Permitting post-election litigation that seeks to rewrite our state’s election rules—and, as a result, remove the right to vote in an election from people who already lawfully voted under the existing rules—invites incredible mischief.” Am.

Order at 5 (Jan. 7, 2025) (Dietz, J., dissenting). “It will lead to doubts about the finality of vote counts following an election, encourage novel legal challenges that greatly delay certification of the results, and fuel an already troubling decline in public faith in our elections.” *Id.*

* * *

As Judge Dever recently put it in a case involving a similar effort to rewrite the State’s election rules close to an election, the *Purcell* principle is a “heavy gate with flashing red lights amplified by loud sirens” calling for judicial restraint. *Pierce v. N.C. State Bd. of Elecs.*, 713 F. Supp. 3d 195, 242 (E.D.N.C. 2024), *aff’d*, 97 F.4th 194 (4th Cir. 2024). And as the U.S. Supreme Court has demonstrated, the *Purcell* principle may be applied consistently to guard against late-breaking changes to election rules—regardless of the challenger’s political affiliation. *Compare, e.g., DNC*, 141 S. Ct. at 30 (Kavanaugh, J., concurring), *with, e.g., Moore v. Harper*, 142 S. Ct. 1089, 1089 (2022) (Kavanaugh, J., concurring).

In sum, following *Purcell*’s neutral and evenhanded rule preserves the public’s faith in the election process, and ensures against courts excessively entangling themselves in hotly disputed political contests. This Court should deny the petition under the *Purcell* principle.

C. Petitioner’s *Purcell* arguments are wrong.

Petitioner disclaims the *Purcell* principle, but his arguments only underscore why adhering to *Purcell*’s neutral rule is so important here.

1. *Purcell* does not bar Petitioner—or any other party—from seeking prospective relief for future elections.

First, Petitioner claims that applying *Purcell* here would prevent anyone from ever challenging the election rules at issue. Br. 2. That is emphatically not the case.

Nothing in the Board’s arguments here means that “the legal issues presented are foreclosed from further judicial scrutiny.” *Trump v. Biden*, 951 N.W.2d 568, 577 n.11 (Wis. 2020). *Purcell* does not bar Petitioner from seeking *forward-looking* relief for future elections if he challenges the rules sufficiently in advance of the next election. See *Hendon v. N.C. State Bd. of Elections*, 710 F.2d 177, 182 (4th Cir. 1983) (noting “the general rule that denies relief with respect to past elections,” but that the “corollary to judicial reluctance to interfere with election results is the obligation to afford prospective relief”). In fact, most of the protests here are the subject of pending lawsuits, outside of the context of this particular case, that seek changes to the State’s election rules for future elections. For example,

plaintiffs in a case pending before the U.S. District Court for the Eastern District of North Carolina are currently seeking prospective relief of this kind with respect to the alleged HAVA violations here. *Republican Nat'l Comm.*, slip op. at 4 (*Purcell* does not apply when a plaintiff “seek[s] prospective relief unconnected with the most recent election.”). And plaintiffs in a case pending before both this Court and the Wake County Superior Court are challenging the constitutionality of the state law that permits individuals who have never resided in North Carolina to vote in state elections. See *Kivett v. N.C. State Bd. of Elections*, No. 281P24 (N.C. Nov. 1, 2024). Thus, applying *Purcell* here will not immunize these or other future election challenges from judicial review. Many are currently being litigated, and can be resolved in plenty of time before voters next go to the polls.

One of Petitioner’s own cases illustrates how *Purcell* allows parties to properly challenge election rules. Petitioner cites *La Unión del Pueblo Entero v. Abbott*, 705 F. Supp. 3d 725 (W.D. Tex. 2023), as supporting his argument that *Purcell* does not apply here because the election has already concluded. Br. 44-45. But that case concerned a post-election challenge seeking *prospective* relief for *future* elections. In fact, the federal district court there granted injunctive relief in November 2023—but only for the 2024 primaries,

which were “months away” while *declining* to grant relief for the November 2023 election, which had “already occurred.” *Entero*, 705 F. Supp. 3d at 767. Here, by contrast, Petitioner seeks to retroactively change election rules for an election that has already concluded.

Nor does *Purcell* foreclose challenges based on unanticipated events that take place during an election. Because the *Purcell* principle seeks to ensure clear and settled election rules, it does not apply to claims arising from unforeseen election-day errors or improprieties. When a party brings “claims . . . of improper electoral activity”—rather than “issues that arise in the administration of every election”—those claims do not face the *Purcell* bar because the party lacked advance notice of the alleged impropriety. *See Trump*, 951 N.W.2d at 577 (drawing this distinction for purposes of evaluating undue delay).

For this reason, Petitioner’s reliance on this Court’s decision in *James v. Bartlett*, 359 N.C. 260, 607 S.E.2d 638 (2005), is misplaced. Br. 43-44. In *James*, two candidates challenged whether the Board could lawfully count provisional ballots cast on election day at a precinct other than the voter’s correct precinct. 359 N.C. at 263, 607 S.E.2d at 640. The defendants argued

that the challengers had waited too long to contest the Board's counting such out-of-precinct provisional ballots. *Id.* at 265, 607 S.E.2d at 641.

The Court rejected this delay argument, observing that “[t]he facts do not support defendants’ allegations.” *Id.* The Court explained that the election marked “the first time in North Carolina history that State election officials counted out-of-precinct provisional ballots.” *Id.* What is more, when one of the challengers had asked the Board *before* the election whether the Board intended to count such votes, the Board’s General Counsel “failed to indicate that [it] would count out-of-precinct provisional ballots.” *Id.* “This response, coupled with the absence of any clear statutory or regulatory directive that such action would be taken, failed to provide plaintiffs with adequate notice that election officials would count” the ballots. *Id.* The challengers therefore did not unreasonably delay in bringing their claims.

Given these facts, the Court’s decision in *James* hardly stands for the proposition that this Court has rejected the *Purcell* principle, as Petitioner claims. Br. 43. Unlike the challengers in *James*—candidates who had no prior notice that the Board would take certain action before the election—Petitioner was on notice long before the election of the rules that he now challenges. Petitioner is therefore incorrect that applying *Purcell* here would

require this Court to overturn its precedent or otherwise insulate election rules from legal challenges.⁹

All told, *Purcell* does not apply when a party seeks forward-looking relief well in advance of an election, or when a party challenges unanticipated election-day developments. But the *Purcell* principle is at its zenith when, as here, a party seeks backward-looking relief in the context of an election that has already taken place. Changing election rules mid-stream—or, even worse, after the fact—“fundamentally alters the nature of the election” and “gravely affect[s] the integrity of the election process.” *Republican Nat’l Comm.*, 589 U.S. at 424-25; see also, e.g., *Pierce*, 97 F.4th at 226 *Pierce v. N.C. State Bd. of Elecs.*, 97 F.4th 194, 226 (4th Cir. (*Purcell* applies when an election “is well underway”); Am. Order at 5 (Jan. 7, 2025) (Dietz, J., dissenting) (“[O]nce people are actually *voting* in the election, it is far too late to challenge the laws and rules used to administer that election.”); *Trump*, 951 N.W.2d at 577 (laches barred candidate who “waited

⁹ Petitioner’s reliance on *Hunter v. Hamilton Cnty. Bd. of Elections*, 635 F.3d 219 (6th Cir. 2011), is misplaced for similar reasons. Br. 45. That case involves alleged errors committed by poll workers. *Hunter*, 635 F.3d at 222. The challenger in *Hunter* therefore could not possibly have brought a pre-election suit to contest the poll-worker error. See *id.* at 244-45.

until after the election to raise selective challenges that could have been raised long before the election”); *Liddy v. Lamone*, 919 A.2d 1276, 1291 (Md. 2007) (“Allowing challenges to be brought at such a late date would call into question the value and the quality of our entire elections process and would only serve as a catalyst for future challenges. Such delayed challenges go to the core of our democratic system and cannot be tolerated.”).

For this reason, the Supreme Court has repeatedly invoked the *Purcell* principle *during* an election cycle—after some votes have already been cast. In so doing, the Court has made clear that any votes that were cast that complied with the election rules in place at the time *may not be thrown out*. See *Andino v. Middleton*, 141 S. Ct. 9, 9-10 (2020) (invoking *Purcell* to stay an injunction that had been entered against a state election rule, but expressly ordering that ballots cast before the stay “may not be rejected for failing to comply” with the reinstated election rule).

As this decision recognizes, *Purcell* continues to apply even if the challenger’s underlying claims may have merit. Under *Purcell*, the proper posture for litigating election claims is prospectively, not retrospectively. Thus, in many cases, courts have applied *Purcell* even while “recogniz[ing] and respect[ing] the seriousness of the [challenger’s] claim.” *Liddy*, 919 A.2d

at 1290; compare also, e.g., *Merrill*, 142 S. Ct. at 882 (Kavanaugh, J., concurring) (applying *Purcell* while emphasizing that any change to election rules “can take effect for congressional elections that occur after [the election]”), with *Allen v. Milligan*, 599 U.S. 1, 42 (2023) (later affirming change to election rules and permitting it to take place for future elections).

In sum, the *Purcell* principle applies here, regardless of this Court’s views on the merits of Petitioner’s arguments. Those arguments can be considered in due course before the next election cycle.

2. Applying *Purcell* would not “invalidate” the election-protest statutes.

Second, Petitioner argues that *Purcell* does not apply in cases under the election-protest statutes. Br. 42-43. Specifically, he reasons that applying *Purcell* in this fashion would “invalidate” the “statutory remedy” for election protests “that was lawfully enacted by the legislature.” Br. 42. As an initial matter, it is hard to take this concern seriously from Petitioner—it is *Petitioner* who has refused to follow the statutory procedures for seeking judicial review of election protests.

Even if Petitioner were following the election-protest statutes, moreover, applying *Purcell* in this context would do nothing to “invalidate”

those statutes, as Petitioner claims. Br. 43. *Purcell* is simply an election-law analog to laches. *Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016) (Sutton, J.) (“Call it what you will—laches, the *Purcell* principle, or common sense—the idea is that courts will not disrupt imminent elections absent a powerful reason for doing so.”); *DeVisser v. Sec’y of State*, 981 N.W.2d 30, 35 (Mich. 2022) (Welch, J., concurring) (*Purcell* is, “in essence, the equitable doctrine of laches applied in a unique way to election matters”). Courts routinely apply laches to bar claims for equitable relief, without fear that doing so would somehow “invalidate” a statute. *See, e.g., Taylor v. City of Raleigh*, 290 N.C. 608, 622, 227 S.E.2d 576, 584 (1976) (delay giving rise to laches is “fatal to the plaintiff’s remedy in equity, even though much less than the statutory period of limitations”) (quoting *Teachey v. Gurley*, 214 N.C. 288, 294, 199 S.E. 83, 88 (1938)). Legislatures are “understood to legislate against a background of common-law adjudicatory principles.” *Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104, 108 (1991). Laches is one such principle. *See, e.g., Teachey*, 214 N.C. at 294, 199 S.E. at 88.

Petitioner also asserts that he is unaware of any cases applying *Purcell* after an election to bar a statutory protest remedy. Br. 43. But the Wisconsin Supreme Court has done just that. In an opinion by Justice

Hagedorn, the court applied laches to bar post-election challenges to roughly 220,000 votes under Wisconsin's election-protest statute. *Trump*, 951 N.W.2d at 570. The court explained that “the proposition that laches may bar an untimely election challenge . . . appears to be recognized and applied universally.” *Id.* at 572-73 & n.7 (collecting cases).

Applying this principle, the court found unreasonable delay in bringing election challenges when those challenges similarly concerned events and rules in place long before the start of the election. *Id.* at 575 (“Waiting until after an election to challenge the sufficiency of a form application in use statewide for at least a decade is plainly unreasonable.”); *id.* (same for challenge to election-agency guidance “relied on in 11 statewide elections” since 2016). “The time to challenge election policies,” the court explained, “is not after all ballots have been cast and the votes tallied.” *Id.* at 575-76. Rather, “[p]arties bringing election-related claims have a special duty to bring their claims in a timely manner.” *Id.* at 577. “Failure to do so affects everyone, causing needless litigation and undermining confidence in the election results.” *Id.*

The Wisconsin Supreme Court's decision is on all fours here.

Petitioner here was on notice long before the election took place of the rules

that he now contests. The election-protest statutes do not bar the application of the *Purcell* principle on these facts.

3. The *Purcell* principle is not limited to federal courts.

Third, Petitioner contends that *Purcell* only makes sense as a rule for federal, not state, courts. Br. 46-47. But, as discussed above, this Court has already applied this principle to state elections in *Pender County*. *See supra* Part II.A. Petitioner does not even acknowledge this case, much less explain why it would not apply here.

Lacking any support in this Court’s case law, Petitioner resorts to out-of-state authority, making the sweeping claim that “many” state courts have rejected *Purcell*. Br. 46. But he cites all of two States. Br. 46-47. And he is wrong about one: Petitioner asserts that the Ohio Supreme Court has rejected *Purcell*, Br. 46, but that court held just the opposite several months ago. *State ex rel. Ohio Democratic Party v. LaRose*, No. 2024-1361 *State ex rel. Ohio Democratic Party v. LaRose*, , 2024 WL 4488054, at *5 (Ohio Oct. 15, 2024) (per curiam) (“Though *Purcell* is a federal case and therefore not binding on this court, we find its logic persuasive.”); *see id.* (“While primarily built on principles of federalism, *Purcell* also stands for the common-sense principle that judges—novices in election administration—should not

meddle in elections at the last minute . . . because when they do, they are likely to do more harm than good.”). Petitioner also contends that the New York Court of Appeals has rejected *Purcell*. Br. 46. But the court did so in adjudicating partisan-gerrymandering claims that are not justiciable in our State. Compare *Harkenrider v. Hochul*, 197 N.E.3d 437, 454 n.16 (N.Y. 2022), with *Harper*, 382 N.C. at 319, 874 S.E.2d at 906 (Barringer, J., dissenting) (expressing that adjudicating partisan-gerrymandering claims on expedited basis violated *Purcell*). And in any event, contrary to Petitioner’s claim, the vast majority of state high courts to have considered the issue have followed *Purcell*.¹⁰

III. Retroactively Changing Election Rules Here Would Violate the Fourteenth Amendment to the U.S. Constitution.

The Court should deny the petition for another threshold reason as well. If the Court declines to follow the *Purcell* principle and instead opts to

¹⁰ See, e.g., *Fay v. Merrill*, 256 A.3d 622, 638 n.21 (Conn. 2021); *New PA Project Educ. Fund v. Schmidt*, 327 A.3d 188, 189 (Pa. 2024) (per curiam); *League of United Latin Am. Citizens of Iowa v. Pate*, 950 N.W.2d 204, 216 (Iowa 2020) (per curiam); *Liddy*, 919 A.2d at *Liddy v. Lamone*, 919 A.2d 1287-88; *All. for Retired Ams. v. Sec’y of State*, 240 A.3d 45, 49-50 (Me. 2020); *Moore v. Lee*, 644 S.W.3d 59, 65-66 (Tenn. 2022); *Maricopa Cnty. Recorder v. Az. Sec’y of State*, No. CV-24-0221-SA, 2024 WL 4299099, at *3 (Az. Sept. 20, 2024) (unpublished); *In re Hotze*, 627 S.W.3d 642, 645-46 & n.18 (Tex. 2020).

retroactively change the rules of the election after all the votes have been cast, it would violate the Fourteenth Amendment to the United States Constitution.

A. Retroactively cancelling votes violates due process.

It is “patent[ly] and fundamental[ly]” unfair to change the rules governing an election after it has already taken place. *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978); see *Hendon*, 710 F.2d at 182 (describing this principle as “settled”). For that reason, the Fourteenth Amendment’s Due Process Clause bars the systematic, “retroactive invalidation” of votes. *Burns*, 570 F.2d at 1079-80.

The seminal case on this point is *Griffin v. Burns*. There, election officials in Rhode Island issued absentee ballots in a party primary—a practice which had been in place for seven years, and which the officials believed was authorized by state law. *Id.* at 1067. After the primary, the losing candidate asserted that use of such ballots was unlawful. *Id.* The state supreme court agreed, invalidated those ballots, and changed the outcome of the election. *Id.*

The First Circuit held that this abrupt reversal violated due process. *Id.* at 1078. As the court explained, because absentee voters had cast their

ballots in an “officially-endorsed manner,” invalidating their ballots en masse resulted in “broad-gauged unfairness” of a constitutional magnitude. *Id.* at 1073, 1077. Put another way: the U.S. Constitution forbids a state from discounting votes cast in accordance with “long-standing practice” and “the instructions of the officials charged with running the election.”¹¹ *Id.* at 1075-76; *see also, e.g., Bennett v. Yoshina*, 140 F.3d 1218, 1226 (9th Cir. 1998); *Roe v. Alabama*, 43 F.3d 574, 580 (11th Cir. 1995) (retroactively eliminating a requirement of Alabama law that absentee ballots contain the signatures of two witnesses or a notary after voting had begun violated due process); *Baber v. Dunlap*, 349 F. Supp. 3d 68, 76 (D. Me. 2018) (“*Baber v. Dunlap*, 349 F. Supp. 3d 68, 76 (D. Me. 2018) (“[or this Court to change the rules of the election, after the votes have been cast, could well offend due process”).

¹¹ For the same reasons explained above, *see supra* Part II.C.1, *James v. Bartlett*, 359 N.C. 260 (2005), is not in tension with the Fourteenth Amendment. The out-of-precinct ballots challenged in that case were cast *contrary to* longstanding practice, governing statutes, and the Board’s own official guidance. *Id.* at 265-68, 607 S.E.2d at 641-43. When the Board counted out-of-precinct ballots anyway, this Court rightly reversed. *Id.* at 271, 607 S.E.2d at 645. In contrast here, state law, the Board’s regulations, and judicial decisions issued before the election all affirmed that the ballots Petitioner challenges *would* be counted.

This Court's precedent similarly recognizes the acute unfairness that would result from cancelling votes that were cast in compliance with guidance from election officials. In fact, this Court has specifically held that an error by election officials in the processing of voter registration cannot be used to discount a voter's ballot. In *Woodall v. Western Wake Highway Commission*, 176 N.C. 377, 97 S.E. 226 (1918), registrars failed to administer an oath to voters, which was then a legal prerequisite to registration. *Id.* at 388, 97 S.E. at 231. This Court rejected the argument that those votes should be canceled, explaining:

A vote received and deposited by the judges of the election is presumed to be a legal vote, although the voter may not actually have complied entirely with the requirements of the registration law; and it then devolves upon the party contesting to show that it was an illegal vote, and this cannot be shown by proving merely that the registration law had not been complied with.

Id. at 389, 97 S.E. at 232. To hold otherwise would "be regarded as hostile to the free exercise of the right of franchise." *Id.* This Court reaffirmed *Woodall* decades later. It held in *Overton v. Mayor of Hendersonville*, 253 N.C. 306, 316, 116 S.E.2d 808, 815 (1960):

[A] statute prescribing the powers and duties of registration officers should not be so construed as to make the right to vote by registered voters depend upon a strict observance by the registrars of all the minute directions of the statute in preparing the voting list, and thus render the constitutional right of

suffrage liable to be defeated, without the fault of the elector, by the fraud, caprice, ignorance, or negligence of the registrars.

These principles fully apply here. The rules Petitioner challenges have long been in place, without issue or protest. The challenged voters have thus voted in line with longstanding state law, administrative guidance, and judicial decisions. It would therefore be unlawful to cancel their ballots.

In sum, voters who followed all the official guidance in place when they registered and cast their ballots may not be retroactively disenfranchised because of alleged errors by election officials. Were the law otherwise, it would “permit, if not encourage, parties who could raise a claim to lay by and gamble upon receiving a favorable decision of the electorate and then, upon losing, seek to undo the ballot results in a court action.”

Hendon, 710 F.2d at 182 (cleaned up). Both the Fourteenth Amendment and this Court’s precedents bar that patently unfair result.

B. *Anderson-Burdick* produces the same outcome.

Although the Board discussed these due-process protections at length, Pet. App. 23-25, Petitioner does not mention them at all. Instead, he asserts that the *Anderson-Burdick* line of cases provides the right framework for evaluating any Fourteenth Amendment concerns stemming from his protests. See Br. 56-60.

Assuming that *Anderson-Burdick* even applies to post-election challenges like these, it yields the same result. Under that test, state actions that “impose a severe burden on ballot access” are “subject to strict scrutiny.” *Pisano v. Strach*, 743 F.3d 927, 933 (4th Cir. 2014). The protests here clearly fail to satisfy that standard. Were the protests to succeed, they would impose the severest possible burden on voting—literally cancelling votes—while advancing only peripheral state interests at best.

In arguing otherwise, Petitioner mischaracterizes both the relative “burden” and the State’s interests. Br. at 57-58. Asking voters to append a driver’s license or social security number to their registration form would perhaps impose a modest burden *before an election takes place*. The same is clearly true for photo ID requirements. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 189-90 (2008). But the relevant “burden” here is Petitioner’s attempt to irrevocably nullify voters’ ballots *after the fact*. Doing so is plainly unconstitutional under *Anderson-Burdick*.

C. Petitioner’s desired relief would also violate the Equal Protection Clause.

Separately, sustaining Petitioner’s protests would violate the Equal Protection Clause. “Having once granted the right to vote on equal terms,

the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush v. Gore*, 531 U.S. 98, 104-05 (2000) (per curiam). But were Petitioner to prevail, "the standards for accepting or rejecting" ballots would "vary" for wholly arbitrary reasons. *Id.* at 106.

Petitioner writes that "anybody who wants to vote in North Carolina must be a resident and lawfully registered—no exceptions are allowed." Br. 57. But, under the hood, his protests tell a different story.

Most of the votes that Petitioner seeks to cancel were cast by voters whose registration records in the Board's database do not include a social security or driver's license number. Critically, Petitioner does not challenge *all* voters whose records lack this information. Instead, he challenges only the approximately 60,000 of these votes cast *before* election day—either absentee-by-mail or early in-person. He has not challenged the approximately tens of thousands of identically situated voters within this category who voted *on election day*. See, e.g., *Republican Nat'l Comm. v. N.C. State Bd. of Elections (RNC)*, 120 F.4th 390, 399 (4th Cir. 2024) (noting allegation that 225,000 registered voters were missing this data in their records). By seeking only to invalidate a subset of identically situated voters, Petitioner would force the Board to arbitrarily "value one person's vote over

that of another.” *Bush*, 531 U.S. at 104-05. This would plainly violate the Equal Protection Clause. *Id.*; see *Lecky v. Va. State Bd. of Elections*, 285 F. Supp. 3d 908, 920 (E.D. Va. 2018) (“Courts have generally found equal protection violations where a lack of uniform standards and procedures results in arbitrary and disparate treatment of different voters.”).

The same is true for the next-largest category of voters that Petitioner challenges—military and overseas voters who did not provide a copy of their photo ID when casting absentee ballots. Among the 32,033 voters falling into this category,¹² Petitioner has chosen to challenge only the 5,509 voters hailing from four of North Carolina’s 100 counties—Buncombe, Durham, Forsyth, and Guilford. *See supra* n.3. And only one of these protests (Guilford) was timely, meaning that only that one county’s 1,409 votes were properly challenged. In other words, Petitioner asks this Court to cancel the votes of only a fraction of the military and overseas voters who he claims voted improperly. But as the Supreme Court has held, it violates equal protection for “the standards for accepting” ballots “[to] vary . . . from county

¹² See *N.C. Absentee & Early Voting Statistics for the 2024 General Election*, N.C. State Bd. of Elections, <https://tinyurl.com/4jyz2fh8> (last visited Jan. 20, 2025).

to county.” *Bush*, 531 U.S. at 106. This Court has an “obligation to avoid [such] arbitrary and disparate treatment of the members of its electorate.”

Id. at 105.

IV. Petitioner’s Failure to Adequately Notify Voters of His Protests Violates Procedural Due Process.

This Court should also deny Petitioner for a final threshold reason:

Petitioner did not provide voters with constitutionally adequate notice of his protests.

Voters have a “constitutionally protected liberty interest” in their right to vote. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 227 (M.D.N.C. 2020); see *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (“*vBurdick v. Takushi*, 504 U.S. 428, 433 (1992) (“[oting is of the most fundamental significance under our constitutional structure.”) (cleaned up).

As a result, when a voter’s “ballot [is] challenged,” due process requires that voters be “given notice,” so they can take steps to protect their vote.

Democracy N.C., 476 F. Supp. 3d at 228. Constitutionally adequate notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of [a matter] and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950); see also *In re Chastain*, 909 S.E.2d 475, 481

(N.C. 2024) (same). That is why the Board’s rules direct protesters to serve voters with copies of protests that concern “the eligibility or ineligibility of particular voters.” 08 N.C. Admin. Code 02 .0111.¹³

Here, the notice that Petitioner provided voters was not “reasonably calculated” to inform them that he sought to invalidate their votes. *Mullane, Co.*, 339 U.S. at 314. Petitioner did not send physical copies of his protests to voters’ addresses. Instead, Petitioner’s political party mailed voters a postcard, which stated that their “vote *may* be affected by one or more protests filed in relation to the 2024 General Election.” (Pet. App. 175 (emphasis added)) The postcard did not inform voters that their vote *was* actually under protest. It also did not inform voters that it was meant to effect formal service of an election protest.

Rather, the postcard merely directed voters “to scan a QR code to view the protest filings.” (Pet. App. 175) This QR code, when scanned with a smartphone, took users to a website where hundreds of protests were listed.

¹³ The Board specifically directs protestors: “You must serve copies of all filings on every person with a direct stake in the outcome of this protest (‘Affected Parties’). . . . If a protest concerns the eligibility or ineligibility of particular voters, all such voters are Affected Parties and must be served.” 08 N.C. Admin. Code 02 .0111.

(Pet. App. 78 (showing smartphone screenshots)) Voters then, to find out if any protests concerned them, had to scour hundreds of protests to try to locate their names on attached spreadsheets. These spreadsheets listed voters' names in small print, out of alphabetical order. Some spreadsheets contained hundreds of pages, listing thousands of names. (Pet. App. 79)

In these circumstances, neither the postcard nor its QR code were reasonably calculated to apprise voters that their votes were being contested. The postcard did not even inform voters that their votes had *actually* been challenged. Vague, equivocal notice of this kind, which does not “specifically” disclose that a person’s rights will be impaired, does not give “adequate notice.” *In re Linkous*, 990 F.2d 160, 162 (4th Cir. 1993); *see e.g.*, *Fogel v. Zell*, 221 F.3d 955, 962 (7th Cir. 2000) (if a “notice is unclear,” it is not adequate); *Griffin v. Griffin*, 348 N.C. 278, 280, 500 S.E.2d 437, 439 (1998) (a party’s notice to an attorney only saying it was seeking sanctions against him was inadequate because “[t]he bases for the sanctions must be alleged”).

This lack of specificity, moreover, was not cured by the QR code. Many voters do not own smartphones. *See Pew, Mobile Fact Sheet* (Nov. 13, 2024), <https://tinyurl.com/yeywjxfn> (noting that one in five senior citizens do not have a smartphone) (last visited January 19, 2025); *see also* No. 5:24-

cv-00724, D.E. 24-2, 24-3, 24-4 (E.D.N.C.) (affidavits from voters attesting that they do not know how to use QR codes). These voters would therefore not have been able to scan the code to learn if a protest affected them. As a result, in “a significant number of instances,” notice by QR code would not “provide [voters with] actual notice” of protests. *Greene v. Lindsey*, 456 U.S. 444, 453 (1982). As the U.S. Supreme Court has held, where a chosen form of notice will not notify a “significant number” of persons, as here, it does not satisfy “due process.” *Id.*¹⁴

Despite this precedent, Petitioner argues that the U.S. Supreme Court has held that notice is sufficient so long as most affected persons receive notice. Br. 51-52. Petitioner is mistaken. The Court has actually held that where service of papers via “the mails” is possible, then that form of notice is required. *Mullane*, 339 U.S. at 319; see also *Greene*, 456 U.S. at 455. By relying on QR codes instead, Petitioner failed to provide adequate notice.

¹⁴ Petitioner notes that the Board has sent voters mailers with QR codes. Br. 51. The mailers that Petitioner references, however, were not meant to provide notice of formal proceedings. Unlike the postcards that Petitioner sent voters, moreover, the Board’s mailers did not rely on QR codes to convey their primary message. (See Pet. App. 350-51)

But even if a QR code could theoretically provide adequate notice, it did not do so here. The Fourth Circuit, for instance, has held that an eviction warning provided inadequate notice when “it [was] time-consuming to wade through” the entire form at issue to locate the warning, which was listed “in small print two-thirds of the way down the back of a form.”

Todman v. Mayor & City Council of Baltimore, 104 F.4th 479, 488-89 (4th Cir. 2024). Here, for voters to find out if protests affected them, they had to “wade through” hundreds of protests, some of which listed thousands of names “in small print.” *Id.* This kind of needle-in-a-haystack notice offends due process as it is not “reasonably calculated” to convey notice. *Id.* at 488.

Despite these serious defects, Petitioner suggests that the failure of his protests to comply with due process should be ignored because he had no obligation to serve his protests on voters at all. Br. 50. He claims that the county boards have exclusive statutory responsibility for “giv[ing] notice” of “protest hearing[s].” N.C. Gen. Stat. § 163-182.10(b).

Notwithstanding that statutory duty of county boards, however, the Board also has distinct statutory authority to “promulgate rules providing for adequate notice” of election protests. *Id.* § 163-182.10(e). The Board’s rulemaking authority is thus not limited to prescribing rules for the *county*

boards to follow when they provide notice of a *hearing*, as Petitioner argues. *Id.* § 163-182.10(b)(2). Instead, the Board has ample authority to require that separate notice also be provided when persons *file protests* that initiate legal proceedings, as Petitioner did here. That authority is especially important where, as here, protests directly implicate constitutional rights.

The Board's duly promulgated rules, moreover, leave no doubt that Petitioner was required to notify voters in this situation, *see* 08 N.C. Admin. Code 02 .0111—which Petitioner expressly agreed to do. (*See, e.g.*, Pet. App. 355) Given this commitment, Petitioner cannot now claim he had no obligation to notify the voters he seeks to disenfranchise. *Cf. State v. Gillespie*, 362 N.C. 150, 152, 655 S.E.2d 355, 356 (2008) (noting that parties can “waive[]” arguments through “consent[]”).

In sum, the petition should be denied because Petitioner failed to serve his protests consistent with procedural due process.

V. Each of Petitioner's Protests Fail on the Merits.

For all the reasons described above, this Court should deny the petition outright. But even if this Court were to consider the protests on their merits, it should still deny the petition because the Board correctly dismissed Petitioner's protests for failing to set out valid claims for relief.

A. Petitioner's HAVA protest is meritless.

1. North Carolina law implements HAVA for state elections.

HAVA seeks to establish “uniform and nondiscriminatory election technology and administration requirements” across the States to govern federal elections. Pub. L. No. 107-252, §§ 301-12, 116 Stat. 1666, 1704-15 (2002). Among other things, HAVA directs States to establish “a single, uniform, official, centralized, interactive computerized statewide voter registration list” to “serve as the official voter registration list” for all federal elections. 52 U.S.C. §§ 21083(a)(1)(A), (a)(1)(A)(viii).

HAVA also imposes voter-list-maintenance and registration requirements on States. As for voter-list maintenance, HAVA directs States to maintain voter lists “on a regular basis.” *Id.* § 21083(a)(2)(A). But HAVA limits how they may do so. For example, States may only remove individuals from the voter list consistent with the requirements in the NVRA, Pub. L. No. 103-31, 107 Stat. 77 (1993). *Id.* §§ 21083(a)(2)(A)(i)-(iii).

As for voter-registration applications, HAVA generally prohibits States from “accept[ing] or process[ing]” any application unless it includes the applicant’s driver’s license number or the last four digits of the applicant’s

social security number. *Id.* § 21083(a)(5)(A)(i). HAVA instructs state election officials to establish a system to attempt to “match” the identification number provided in an application with existing government records, *id.* § 21083(a)(5)(B)(i), and to establish state-law procedures to address registrations that do not match with such records, *see id.*

§ 21083(a)(5)(A)(iii). However, HAVA does not make a match a prerequisite to accepting an application. *See id.* §§ 21083(a)(5)(A), (b).

HAVA allows certain voters who do not provide a driver’s license number or the last four digits of their social security number in a registration application to register to vote. For applicants who have not been “issued” either number, HAVA instructs States to instead assign “a number which will serve to identify the applicant for voter registration purposes.” *Id.*

§ 21083(a)(5)(A)(ii). And if a State did not have a system complying with the requirement to collect a driver’s license number or last four digits of a social security number, HAVA provides that a new voter registration applicant by mail may vote by providing an alternative form of identification before or upon voting for the first time. *See id.* §§ 21083(b)(1)-(3). This identification—a so-called HAVA ID—may include “a current and valid photo identification” or “a copy of a current utility bill, bank statement,

government check, paycheck, or other government document that shows the name and address of the voter.” *Id.* §§ 21083(b)(2)(A)(i)-(ii).

Although HAVA itself only applies to federal elections, in 2003, the General Assembly enacted a statute that applied HAVA’s federal rules to state elections. The law’s express purpose was to “ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002.” Act of June 19, 2003, S.L. No. 2003-226, sec. 1, 2003 N.C. Sess. Laws 341, 341. The law specifically instructed the Board to ensure “[c]ompliance [w]ith [f]ederal [l]aw” by “updat[ing] the statewide computerized voter registration list and database to meet the requirements of section 303(a) of the Help America Vote Act of 2002.” *Id.* sec. 6 (codified at N.C. Gen. Stat. § 163-82.11(c)).

Through this Act, the General Assembly amended several of North Carolina’s voter registration and list-maintenance statutory provisions to incorporate HAVA’s requirements. For example, state law now requires all voter registration applications to “request” that voters provide their driver’s license number or the last four digits of their social security number. N.C. Gen. Stat. § 163-82.4(a)(11). Like HAVA, however, the statute allows voters

who have not been issued one of those numbers to receive a “unique identifier number” from the Board for registration. *Id.* § 163-82.4(b). Like HAVA, North Carolina law also requires voters who register by mail and who have not had their driver’s license or social security number validated beforehand to present a HAVA ID when they vote for the first time. *Id.* §§ 163-166.12(a)-(b), (f). And although state law directs county boards to attempt to match an identification number provided on a registration form with an existing government database, *id.* §§ 163-82.12(6)-(9), when the information provided by the voter does not match, voters may vote by providing a HAVA ID before voting for the first time, *id.* § 163-166.12(d); see also *Voting Site Station Guide* 19, N.C. State Bd. of Elections, bit.ly/3BQDmWR (last visited January 21, 2025) (same).

The result is that, like most States, North Carolina has a single voter registration system for both federal and state elections that incorporates HAVA’s requirements. *RNC*, 120 F.4th at 401 (“North Carolina has a unified registration system for both state and federal elections.”); N.C. Gen. Stat. § 163-82.11(a) (“The system shall serve as the single . . . official list of registered voters . . . for the conduct of all elections in the State.”). North

Carolina “thus is bound by” provisions of federal law, like HAVA, governing voter registration and list maintenance. *RNC*, 120 F.4th at 401.

2. Canceling the challenged votes would violate HAVA and the NVRA.

To begin, Petitioner’s HAVA protest is meritless because his proposed remedy of canceling these votes would run afoul of HAVA and the NVRA. Both HAVA and North Carolina law require any voter-registration list maintenance to be performed in accordance with the NVRA. 52 U.S.C. § 21083(a)(2)(A); N.C. Gen. Stat. § 163-82.14. The NVRA only allows the removal of ineligible voters from the rolls in specific, enumerated circumstances: (1) at the request of the registrant, (2) for criminal conviction or mental incapacity, as provided by State law, (3) for death or a change in residence, and (4) if an individual has not participated or responded to a notice in two consecutive federal general elections. 52 U.S.C. § 20507(a)(3), (a)(4), (b)(2). Petitioner does not claim that his basis for canceling these votes falls among these narrow, enumerated reasons. The NVRA therefore squarely forecloses Petitioner’s requested relief. *See RNC*, 120 F.4th at 402-03 (concluding that the NVRA does not authorize removal from voter rolls based on this same allegation of HAVA non-compliance).

Moreover, the NVRA forecloses Petitioner's relief for a separate reason as well. Under the NVRA, systematic removals, other than by registrant request, felony conviction, or death, must be completed "not later than 90 days prior to the date of a primary or general election for Federal office." 52 U.S.C. § 20507(c)(2)(A). While we are not technically within this quiet period, requiring the Board to purge voters now would clearly violate the quiet period's purpose. *See id.* Congress enacted the quiet period to "prevent the discriminatory nature of periodic voter purges." S. Rep. 103-6, at 20 (1993). It would be strange indeed for Congress to have instituted a prophylactic prohibition against voter purges for the 90-day period before an election only for the State to implement mass voter purges *after* an election has occurred.

3. Petitioner has not established probable cause of any HAVA violation.

In any event, Petitioner has not shown probable cause of a HAVA violation here. At bottom, probable cause requires "a reasonable ground for belief" that the law has been violated, a belief that must be "particularized with respect to" the individual who allegedly committed the legal violation. *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (quoting *Ybarra v. Illinois*, 444

U.S. 85, 91 (1979)). In other words, the question is whether an objectively reasonable decisionmaker can reach a “reasonable conclusion to be drawn from the facts known . . . at the time” that a legal violation “has been or is being committed.” *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004).

Under this standard, Petitioner has failed to show probable cause of any HAVA violation. Petitioner’s protest is based on a list of over 60,000 registered voters—provided to him by the Board—who lack a recorded driver’s license or social security number in the Board’s database and who voted early or absentee in the 2024 elections.¹⁵ Petitioner carelessly assumes that all of these voters are improperly registered. Br. 33. But this assumption is indisputably false.

For a variety of reasons, a voter may lack a driver’s license or social security number in their records and still be legally registered.

First, voters who have not been issued a driver’s license or social security number will necessarily lack this information in the Board’s database. But these voters are nonetheless allowed to register to vote using a

¹⁵ As noted above, this list is vastly underinclusive, as it excludes in-person voters. *See supra* Part III.Cp 7.

number assigned to them by the Board. 52 U.S.C. § 21083(a)(5)(A)(ii); N.C. Gen. Stat. § 163-82.4(b) (state law implementing this HAVA requirement).

Second, many voters who *did*, in fact, provide an identification number when they registered may nevertheless not have that number recorded in the Board's database because of a database-matching failure. (Pet. App. 53 (“Unvalidated identification numbers are not retained in a voter's registration record.”)) As discussed, HAVA instructs state election officials to establish a system to attempt to “match” the identification number provided in an application with existing government records. 52 U.S.C. § 21083(a)(5)(B)(i); N.C. Gen. Stat. §§ 163-82.12(6)-(9) (state law implementing this HAVA requirement). But county workers may make “routine data-entry errors” that do not enable a match and cause the database to lack a recorded identification number. (Pet. App. 62 n.16) Voters may also make a data-entry error in their registration form causing the database to lack this information. (Pet. App. 53) The matching error may also result from voters having different names at different points in

their lives—for example, differences between married and maiden names or hyphenated last names.¹⁶

Importantly, HAVA explicitly contemplates that these kinds of matching errors might occur and that voters are not improperly registered as a result. See 52 U.S.C. §§ 21083(a)(5)(A), (b). Instead, HAVA directs States to establish procedures to address registrations that do not match existing government records. *Id.* § 21083(a)(5)(A)(iii); N.C. Gen. Stat. § 163-166.12(d) (implementing this HAVA requirement); *cf. Wash. Ass’n of Churches v. Reed*, 492 F. Supp. 2d 1264, 1296 (W.D. Wash. 2006) (“HAVA’s matching requirement was intended as an administrative safeguard for ‘storing and managing the official list of registered voters,’ and not as a restriction on

¹⁶ It is a matter of public record that some voters provided a driver’s license or social security number when they initially registered but nonetheless lack this information in the Board’s database because of a matching error, for example, caused by the discrepancy between the voter’s maiden and married name. Joe Bruno, *Voter whose ballot is being challenged provided SSN during registration*, WSOC-TV, Jan. 8, 2025, bit.ly/3CoNuWY. It is also a matter of public record that the Social Security Administration’s database matching program “to assist States with verifying the accuracy of voter information for newly registered voters . . . [does] not always provide States with accurate verification responses for individuals who were registering to vote” and “may indicate a no-match when a match does in fact exist in SSA records.” Off. of the Inspector Gen., Soc. Sec. Admin., A-03-09-29115, *Quick Response Evaluation: Accuracy of the Help America Vote Verification Program Responses 4* (2009), bit.ly/4g7Ltw4.

voter eligibility.” (quoting 52 U.S.C. § 21083(a)(1)(A)(i)). North Carolina has done so by allowing voters to provide a HAVA ID before or upon voting for the first time. In doing so, the General Assembly made clear that “[i]f that identification is provided and the board of elections does not determine that the individual is otherwise ineligible to vote a ballot, the failure of identification numbers to match shall not prevent that individual from registering to vote and having that individual’s vote counted.” N.C. Gen. Stat. § 163-166.12(d). Thus, the law is clear that voters whose information was subject to a matching error *may register and vote* even though their voter records lack an identification number in the Board’s database.

Third, even assuming that North Carolina’s registration system did not previously comply with HAVA, voters who applied to register by mail without providing a driver’s license or social security number would nonetheless have been eligible to register upon providing a HAVA ID before or when voting for the first time. *See* 52 U.S.C. §§ 21083(b)(1)-(3); N.C. Gen. Stat. §§ 163-166.12(a)-(b), (f) (implementing this HAVA requirement). Thus, both HAVA and state law make clear that these voters may register and vote even if the Board’s database lacks an identification number.

Petitioner is simply wrong that HAVA and state law always require voters who register by mail to provide a driver's license or social security number to register. Br. 36-37. In a variety of circumstances—if such voters do not have this information when they register, if officials are unable to match their information with an existing government database, or if voters register under a system that is not set up to halt a registration that lacks an identification number—both HAVA and state law allow those voters to register and vote by providing HAVA ID on or before voting in their first election. 52 U.S.C. §§ 21083(b)(1)-(2); N.C. Gen. Stat. §§ 163-166.12(a)-(b). Voters who register by mail and who provide a driver's license or social security number that matches with an existing government database are merely *exempt* from the requirement that they provide HAVA ID. 52 U.S.C. § 21083(b)(3)(B); N.C. Gen. Stat. § 163-166.12(f)(2).

Fourth, although Petitioner purports to challenge only those voters who were registered after HAVA's effective date, some of these voters actually “registered *prior* to the effective date of HAVA but a new registration was created for them that is not linked to that older registration.” (Pet. App. 62 n.16 (emphasis added)) Yet nothing in HAVA or the state law that implements HAVA required voters who registered to vote

before HAVA's effective date to re-register in compliance with HAVA's requirements. Indeed, as one of Petitioner's own cited cases holds, Br. 45, "HAVA did not direct states to purge all existing voters from state rolls and force them to re-register in accordance with the new federal requirements." *Entero*, 705 F. Supp. 3d at 752. After all, "[s]uch a requirement would almost certainly violate the constitution." *Id.* at 752 n.21.

Fifth, voters may lack this information in the Board's database because they "supplied such a number in a previous application under a different registration record than the one challenged." (Pet. App. 62 n.16) But again, nothing in HAVA or the state law that implements HAVA provides any basis to conclude that such voters would be improperly registered.

All told, there are therefore at least five independent ways that a voter may have registered to vote in full compliance with HAVA, but their records nevertheless lack an identification number in the Board's database.

Petitioner has failed to even *attempt* to establish probable cause that *any* of the 60,000 voters he targets fall outside these circumstances. Lacking any particularized, objectively reasonable facts *with respect to any individual voter*, Petitioner cannot meet the probable-cause standard. *Ybarra*, 444 U.S. at 91 (probable cause must be "particularized with respect to that person").

As a leading treatise explains, “it is commonly said” that “events as consistent with innocent as with [unlawful] activity,” without more, are “too equivocal to form the basis” of probable cause. 2 W. LaFare et al., *Criminal Procedure* § 3.3(b) (4th ed.) (cleaned up). That is the case here.

4. Petitioner’s contrary arguments are unpersuasive.

At the outset, Petitioner contends that HAVA does not apply here, because the statute governs only federal elections. Br. 39-40. But as discussed, the General Assembly has expressly applied HAVA’s federal-election requirements to state elections as well. *See supra* Part V.A.1. Petitioner cites this Court’s decision in *James* for the proposition that HAVA itself does not apply to state elections. Br. 39. That is true. But as *James* goes on to confirm, the General Assembly then passed a law “in response to Congress’ passage of the Help America Vote Act” that implemented HAVA’s requirements for state elections. 359 N.C. at 267, 607 S.E.2d at 643. Thus, whether this Court examines HAVA itself or its implementing state laws, the analysis is the same.

When Petitioner addresses HAVA, his arguments are unpersuasive. Petitioner is correct that HAVA generally prohibits a State from processing a voter-registration application unless it includes a driver’s license or social

security number. 52 U.S.C. § 21083(a)(5)(A)(i)(I)-(II); see Br. 34. But Petitioner proceeds as if this were HAVA's only provision.

To the contrary, as discussed, HAVA elsewhere explicitly allows some voters to register and cast ballots absent this information. Moreover, HAVA explicitly contemplates that voters may still register when they provide one of these numbers but that number does not validate against other government databases. 52 U.S.C. § 21083(a)(5)(A)(iii). And importantly here, when a number does not validate, the Board does not retain it, and the voter's database record will lack a number. (Pet. App. 53) Thus, there are many voters within this group who *did* provide a driver's license or social security number when registering, but because the number did not validate, the statewide database lacks an entry in that data field. (Pet. App. 53)

All told, HAVA expressly contemplates that many lawfully registered voters will not have a validated identification number in their voter records, and creates a process for verifying their identity to allow them to vote. Thus, no voter that Petitioner targets could have cast a ballot without at least first presenting election officials with a HAVA ID —just as federal law requires.

Petitioner's reliance on the so-called "cure" provision in section 163-82.4(f) reflects a simple misunderstanding of the statute. Petitioner claims

that the procedures set out in this provision are the only way to “cure” voter registrations that lack a driver’s license or social security number. Br. 39. But section 163-82.4(f) applies *before* a voter has been registered by a county board. N.C. Gen. Stat. § 163-82.4(f). And it requires the *county board*, not the voter, to take steps in the event of an incomplete voter registration by contacting the voter and giving the voter an opportunity to correct the application. *Id.* Here, by contrast, Petitioner is challenging the votes of voters who are *already* on the voter rolls. And as explained above, there are at least five independent ways that a voter may be lawfully registered, but lack an identification record in the Board’s database.

Petitioner’s focus on the cure provision demonstrates a more fundamental defect in his arguments: Petitioner confuses voter registration with voter *eligibility*. Petitioner has never suggested that the more than 60,000 voters he challenges in this protest category are *actually* ineligible to vote in North Carolina elections. See N.C. Gen. Stat. § 163-55 (outlining statutory qualifications to vote); N.C. Const. art. VI, § 2 (same, constitutional). Moreover, all persons who register to vote, including those challenged here, are required to affirm that they meet all the qualifications to vote, under penalty of a Class I felony. See N.C. Gen. Stat. §§ 163-

82.4(c)(1), (e); *see also* North Carolina Voter Registration Form, Section 11, bit.ly/4iUMGtv (last visited January 21, 2025). Petitioner therefore openly seeks to use technicalities to disenfranchise tens of thousands of *lawful North Carolina voters*—many of whom have been voting without controversy in North Carolina elections *for decades*. Nothing in HAVA or the state law that implements HAVA permits this audacious request. Indeed, this Court has twice rejected arguments of just this kind. *See supra* Part III.A. And as discussed above, the federal constitution affirmatively forbids it. *Id.*

B. Military and overseas voters did not have to submit a copy of identification with their absentee ballots.

Petitioner next seeks to cancel the votes of military and overseas voters who followed North Carolina statutory law and the Board’s official guidance by not including a copy of their identification with their absentee ballot. Br. 16-21. As already noted, however, under the rules in place at the time of the election, “[m]ilitary and [o]verseas [v]oters” were “not required to submit a photocopy of acceptable photo identification” or an affidavit explaining their reason for not doing so. 08 N.C. Admin. Code 17 .0109(d).

As explained above, disenfranchising voters—many of whom are active-duty military, both stationed in North Carolina and overseas—after they relied on that unequivocal guidance from the Board would violate their

constitutional rights. *See supra* Part III.A. And doing so in the selective way that Petitioner proposes—where he challenges *only* military and overseas voters in a handful of large, urban counties that voted disproportionately for his opponent in the 2024 election—would violate the U.S. Constitution once again. *See supra* Part III.C.¹⁷

In any event, even if none of that were so, the guidance that the Board conveyed to military and overseas voters about their exemption from usual identification rules accurately described North Carolina law.

1. North Carolina law does not require military and overseas voters to submit a copy of identification.

The Board’s rules, as noted, provide that military and overseas voters are “not required to submit a photocopy of acceptable photo identification” with their absentee ballots. 08 N.C. Admin. Code 17 .0109(d). This rule reflects the fact that absentee ballots in North Carolina can be submitted

¹⁷ Petitioner implies that he only seeks to cancel ballots cast by “overseas” voters. Br. 16. In fact, his protests explicitly challenge votes cast by members of our military, many of whom do not reside overseas. *See* Pet. App. 177-343 (challenging both military and non-military voters in Buncombe, Durham, and Forsyth counties); *N.C. Absentee & Early Voting Statistics for the 2024 General Election* 2-4, N.C. State Bd. of Elections (showing that total votes that Petitioner challenges necessarily includes military votes), <https://tinyurl.com/4jyzzfh8> (last visited Jan. 21, 2025).

under two different sets of statutory rules—one for civilian residents, and another for military and overseas voters.

For civilian residents, absentee ballots must be cast under Article 20 of Chapter 163 of the General Statutes. Under that article, all absentee ballots must be “accompanied by a photocopy of [an] identification” or an excuse “affidavit.” N.C. Gen. Stat. § 163-230.1(f1). By its own terms, however, this requirement is limited to only voters who cast ballots under Article 20. That article states that “ballots [voted] *under this section* [in Article 20] shall be accompanied by a photocopy of identification.” *Id.* (emphasis added).

Military and overseas voters, however, may choose to cast absentee ballots under a distinct set of rules. In 2011, the General Assembly enacted model legislation known as UMOVA, which is today codified in Article 21A of Chapter 163. *See* 2011 N.C. Sess. Laws at 686-92. UMOVA implements under state law a federal law, UOCAVA, which requires states to allow military and overseas voters to register, request ballots, and vote by mail in federal elections using specific federal forms. *See* 52 U.S.C. §§ 20301-11.

In implementing UOCAVA through UMOVA, the legislature chose to allow military and overseas voters to vote in both federal *and* state elections under UOCAVA’s rules. *See, e.g.*, N.C. Gen. Stat. § 163-258.3; *see also* Unif.

Mil. & Overseas Voter Act, at 2 (Nat'l Conf. of Comm'rs on Unif. State Laws 2010) (explaining that UMOVA's purpose is "to extend to state elections the assistance and protections for military and overseas voters currently found in federal law"), <https://tinyurl.com/4jnhw54k> (last visited Jan. 21, 2025).

Notably, nothing in UOCAVA allows states to require that military and overseas voters present identification before they can cast ballots. *See* 52 U.S.C. §§ 20301-11. And federal law also separately exempts persons voting under UOCAVA from other rules that require voters to present identification to vote. *See id.* § 21083(b)(3)(C). Accordingly, when Virginia once considered imposing a state-law photo identification requirement on UOCAVA voters, the Trump Administration informed Virginia that such a rule would violate federal law. It explained that military and overseas voters "face complexities in the voting process" that other voters "do not face," and that requiring "additional identification" unlawfully "adds to the burden" that these voters already "face when attempting to vote."¹⁸

¹⁸ *See* Letter from David Beirne, Director, Fed. Voting Assistance Program, to Edgardo Cortes, Comm'r, Va. Dep't of Election (Feb. 6, 2017), <https://tinyurl.com/2me8w77n> (last visited Jan. 21, 2025).

Because it was designed to extend UOCAVA's rules to state elections, UMOVA naturally does not contain any provisions that require military and overseas voters to provide a copy of a photo identification with their ballots either. *See* N.C. Gen. Stat. §§ 163-258.1 to -258.31. UMOVA rather contains distinct provisions that provide for a voter's identity to be verified by other means, which do not require the submission of copied identification. *See, e.g., id.* §§ 163-258.4(e), -258.13.

Thus, Petitioner is wrong to claim that state law required military and overseas voters to submit a copy of photo identification with their ballots. UMOVA contains no such rule, which would be inconsistent with federal law. Indeed, given the weakness of his arguments, the Board rejected Petitioner's protest on this issue in a unanimous vote. (Pet. App. 76)

2. Petitioner fails to show that military and overseas voters had to submit a copy of identification.

Despite all this authority, Petitioner nonetheless advances a series of arguments to try to show that military and overseas voters, like other voters, had to present a copy of an identification with their absentee ballots. None of his arguments are persuasive.

First, Petitioner argues that “federal law” has no relevance with respect to the proper interpretation of UMOVA. Br. 22. As just shown, however, the General Assembly enacted UMOVA “to extend to state elections the assistance and protections for military and overseas voters currently found in federal law.” Unif. Mil. & Overseas Voter Act, at 2. UMOVA therefore applies to both “federal” and “[s]tate” elections uniformly, without distinction. N.C. Gen. Stat. § 163-258.3(1). The legislature therefore plainly meant for our State’s rules for state elections in this area to be applied consistently with the federal rules that govern federal elections.

Second, Petitioner argues that the “general absentee voting provisions of Article 20 [for civilian residents] apply to overseas absentee voting under Article 21”—where UMOVA is codified. Br. 16. In support of this argument, he cites Article 20’s final provision, entitled “Article 21A relating to absentee voting by military and overseas voters not applicable.” N.C. Gen. Stat. § 163-239. This provision states that “[e]xcept as otherwise provided therein, Article 21A of this Chapter shall not apply to or modify the provisions of this Article [20].” *Id.* Petitioner reads this provision as applying all of Article 20’s rules, including its photo-identification rules, to persons voting under UMOVA’s provisions in Article 21A.

Petitioner has things backwards. On its face, the provision does not apply Article 20's rules to the military and overseas voters who cast absentee ballots under Article 21A. It does the opposite. It provides that the rules in "Article 21A . . . shall not apply to or modify . . . Article [20]." *Id.* (emphasis added). It thus makes clear that voters who do not qualify to vote under Article 21A must vote under Article 20's provisions alone.

The broader text of Article 20 leaves no doubt that the General Assembly did not intend its provisions to generally apply to UMOVA's provisions in Article 21A. When provisions in Article 20 do apply to ballots cast under Article 21A, they expressly say so. *See, e.g.*, N.C. Gen. Stat. § 163-231(b)(1) (specifying that rules that appear in Article 20 for the transmission of ballots apply to ballots cast under both "Article [20] and Article 21A"). No such express language referencing Article 21A, however, appears in Article 20's provision requiring civilian residents to submit "a photocopy of identification" with their ballots. *Id.* § 163-230.1(fi). That rule thus does not apply to voters under Article 21A. *See Fid. Bank v. N.C. Dep't of Revenue*, 370 N.C. 10, 21-22, 803 S.E.2d 142, 150 (2017) (giving effect to legislature's decision only to "selectively" cross-reference another law).

Third, Petitioner next argues that Article 20's provisions concerning "container-return envelopes" show that persons voting under UMOVA must provide a copy of their identification with their ballots. Br. 17 (quoting N.C. Gen. Stat. § 163-231(b)(1)). Section 163-230.1(fi) in Article 20, he claims, mandates that all ballots in a "container-return envelope," including those cast under UMOVA, "must contain a valid photo identification." Br. 17.

Section 163-230.1(fi), however, says nothing at all about what voters casting ballots under UMOVA's distinct provisions in Article 21A must do. That provision instead mandates that "voted ballots *under this section*" in Article 20 "shall be accompanied by a photocopy of identification." N.C. Gen. Stat. § 163-230.1(fi) (emphasis added). Ballots cast under UMOVA, however, are not cast under "th[at] section." Thus, this provision actually undermines Petitioner's argument rather than supports it.

Fourth, Petitioner claims that if the General Assembly had meant to exempt UMOVA voters from the new photo-identification rules in Article 20 that it enacted in 2019, it would have expressly said so. Br. 16-17. Petitioner again gets things backwards. If the legislature had meant to apply Article 20's new identification rules to UMOVA's provisions in Article 21A, then it would have amended Article 21A to provide so. But the 2019 session law that

newly required voters under Article 20 to provide “a photocopy of identification,” N.C. Gen. Stat. § 163-230.1(f1), did not amend *any provision* in Article 21A, thereby leaving its preexisting rules in place. *See* Act of Nov. 6, 2019, S.L. No. 2019-239, 2019 N.C. Sess. Laws 1118.

Indeed, in 2019, the legislature likely chose not to amend UMOVA’s provisions in Article 21A because it knew that requiring military and overseas voters to present a copy of their identification in federal elections would violate federal law, including under guidance from the Trump Administration. *See supra* Part V.B.1. And it likely also understood that imposing divergent rules for state elections would defeat UMOVA’s purpose of extending “to state elections the assistance and protections for military and overseas voters currently found in federal law.” Unif. Mil. & Overseas Voter Act, at 2. Thus, despite Petitioner’s claims otherwise, the enactment history of Article 20’s photo identification rules actually shows that they *do not* apply to UMOVA.

Fifth, Petitioner maintains that the Board’s administrative rule that confirms that military and overseas voters need not submit identification with their ballots is based on an “unconstitutional” legislative “delegation.” Br. 20. As just shown, however, the Board’s rule is entirely consistent with

the statutes that the General Assembly has enacted on this subject. Indeed, the Rules Review Commission voted unanimously that this rule was “within the authority delegated to the [Board] by the General Assembly.” N.C. Gen. Stat. § 150B-21.9(a)(1); *see also* Pet. App. 74. Petitioner’s makeweight claims to the contrary are meritless.

Sixth, Petitioner finally argues that allowing military and overseas voters to cast absentee ballots without providing a copy of identification is irrational and therefore unconstitutional. Br. 21. He claims that there is “no legitimate reason to impose a greater burden—photo identification—on those living in North Carolina than is imposed on those living abroad.” *Id.*

At the outset, Petitioner misunderstands UMOVA. That law not only applies to persons residing abroad, it also applies to military voters on active duty (and their spouses and dependents) within the United States. *See* N.C. Gen. Stat. § 163-258.2(7).

The State, moreover, surely has a compelling interest in reducing the many “logistical obstacles” that military and overseas Americans face in voting. Unif. Mil. & Overseas Voter Act, at 1. As the Trump Administration has explained, military and overseas voters “face complexities in the voting process” that other voters “do not face.” Letter from David Beirne to

Edgardo Cortes, *supra*. Helping these voters participate in our democracy, as many other states have also done, is hardly irrational.

Petitioner therefore fails to show that military and overseas voters had to submit a copy of an identification with their absentee ballots. His protests on this basis should therefore be rejected.

C. The North Carolina Constitution does not prohibit overseas voters who have never lived in North Carolina from voting.

Petitioner also challenges the votes of 266 overseas citizens who the General Assembly has explicitly allowed to vote even though they have never resided in North Carolina. Br. 22-32. Petitioner claims that this statute violates our state constitution, and so these votes should be cancelled.

For multiple reasons, this argument fails at the threshold. This category of voters, of course, is too small to independently alter the results of the election. And granting this relief now, after votes have been cast and counted, would be unconstitutional. There is no dispute that, under the rules established by our legislature at the time of the election, these citizens were allowed to vote. *See supra* Parts II & III.

But even if this Court were to consider this argument on the merits, Petitioner has failed to establish “beyond a reasonable doubt” that this state

statute is unconstitutional. *Harper v. Hall*, 384 N.C. 292, 324, 886 S.E.2d 393, 414-15 (2023).

1. Petitioner has failed to satisfy the standards to succeed on his facial challenge.

The inherited-resident statute allows an overseas voter who has never lived in the United States to vote in North Carolina elections if they have never registered in another state and their parent or legal guardian last lived in North Carolina. N.C. Gen. Stat. § 163-258.2(1)(e). Petitioner claims that this statute violates our state constitution because, in his view, the constitution requires a voter to have “resided in the State of North Carolina for one year” before the election. Br. 23 (quoting N.C. Const. art. VI, § 2).

At the outset, this is a classic facial constitutional challenge. Petitioner claims that subsection (1)(e) is unconstitutional in all circumstances. See *Cooper v. Berger*, 371 N.C. 799, 803, 822 S.E.2d 286, 291 (2018) (holding that a challenge to a statute requiring gubernatorial appointees to the Cabinet to be subject to advice and consent under all circumstances was facial).

Petitioner claims otherwise, but his arguments on this score are clearly incorrect. First, he notes that he is only seeking to cancel a “small subset of UMOVA-covered voters.” Br. 28 n.7. That is true, but irrelevant. Petitioner is unequivocally asking this Court to cancel the votes of *anyone* covered by

section 163-258.2(1)(e). He thus challenges the entire statutory provision, which by definition is a facial challenge. Second, he notes that he seeks relief only as to “this election protest”—in essence, only for himself. Br. 28 n.7. This argument likewise fails. Although there is no “clear-cut test to distinguish facial challenges from as-applied challenges,” “the label [that a plaintiff gives it] is not what matters.” *Kelly v. State*, 286 N.C. App. 23, 31-32, 878 S.E.2d 841, 848-49 (2022) (cleaned up). Rather, the test is whether the “claim and the relief that would follow *could* reach beyond the particular circumstances” of a given case. *Singleton v. N.C. Dep’t of Health & Hum. Servs.*, 906 S.E.2d 806, 808 (N.C. 2024) (cleaned up) (emphasis added). Here, there is no question that, if Petitioner’s arguments are correct, then the entire statutory provision is unconstitutional and cannot be applied to any other race.¹⁹

¹⁹ Petitioner again strangely insists that he is not challenging the votes of military inherited-resident voters. Br. 29-30. But he offers no explanation for how his challenge to subsection (1)(e) could plausibly be read to exclude members of the military. By its terms, subsection (1)(e) covers any “overseas voter”—which, of course, includes those serving abroad in the military. And even if this Court were to credit Petitioner’s position, that would only give rise to an equal protection violation, as he would challenge only some identically situated voters.

Because Petitioner’s challenge to this statute is a facial one, it must be brought in the Superior Court of Wake County before a three-judge panel. See N.C. Gen. Stat. § 1-267.1(a) (“Any action that is a facial challenge to the validity of an act of the General Assembly shall be . . . transferred to the Superior Court of Wake County.”). There are no exceptions to section 267.1 that allow facial challenges to be brought under different vehicles directly in the Supreme Court. Petitioner seems to concede as much, as he does not claim that he may bypass the three-judge panel process if his claim is, indeed, a facial challenge. Br. 28 n.7. As a result, even if this Court believes this claim should move forward, it should direct the case to a Wake County three-judge panel.

2. Even if this Court could reach the substance of Petitioner’s protest, it fails on its merits.

This Court is required to presume that subsection (1)(e)—like all “laws duly enacted by the General Assembly”—is valid. *Fearrington v. City of Greenville*, 386 N.C. 38, 54, 900 S.E.2d 851, 867 (2024) (cleaned up). A challenged law can only be unconstitutional where it is “plainly and clearly the case.” *Id.* And, as this Court recently held, “a claim that a law is unconstitutional must surmount the high bar imposed by the presumption of constitutionality and meet the highest quantum of proof, a showing that

the statute is unconstitutional beyond a reasonable doubt.” *Harper*, 384 N.C.at 324, 886 S.E.2d at 414-15. Petitioner fails to meet this high bar.

The North Carolina Constitution does not contain a durational residency requirement. It instead provides that “[a]ny person who has resided in the State of North Carolina for one year . . . *shall be entitled to vote* at any election held in this State.” N.C. Const. art. VI, § 2(1) (emphasis added). Petitioner reads this clause as a durational residency requirement—that a person may not vote unless she has resided in North Carolina for at least a year. That interpretation misreads the provision’s text: The text confers an affirmative *guarantee* that otherwise-qualified citizens who reside here for at least a year “shall be entitled to vote.” *Id.* Moreover, nothing in the provision’s text forecloses the General Assembly from choosing to extend the franchise beyond this group by statute. *See Harper*, 384 N.C. at 323, 886 S.E.2d at 414 (holding that the legislature is authorized to pass laws unless the constitution expressly forecloses it from doing so).

The sole case Petitioner relies on is not to the contrary. *Bouvier v. Porter*, 386 N.C. 1, 900 S.E.2d 838 (2024), held that those involved in an election protest have an absolute privilege from defamation claims. *Id.* at 2, 900 S.E.2d at 842. In the course of describing the general background law,

the Court noted that the Constitution and state statutes generally deem “[c]ertain categories of individuals . . . ineligible to vote,” including nonresidents. *Id.* at 4 n.2, 900 S.E.2d at 843 n.2. But that general statement was clearly not intended to be determinative. After all, the Court’s list included “convicted felons”—who are explicitly *not* barred from voting in North Carolina elections, so long as their rights have been restored by law. *See* N.C. Const. art. VI, § 2(3); N.C. Gen. Stat. § 163-275(5). As with felons, it is up to the General Assembly to determine residency requirements, and it has done so in section 163-155. And again, there is no dispute that the legislature expressly granted the franchise to the challenged voters here.

Finally, interpreting the state constitution to include a one-year durational residency requirement would violate the federal constitution. In *Dunn v. Blumstein*, the Supreme Court considered a Tennessee statute that imposed a one-year durational residency requirement for voting. 405 U.S. 330, 334 (1972). The Court held that this requirement violated the Equal Protection Clause because it impermissibly discriminated against new residents. *Id.* at 360.

It is true that the Supreme Court left open a state’s ability to restrict the franchise to “bona fide” residents. *Id.* at 343-44. This Court has likewise

recognized the State's right to impose bona fide residency requirements that are "appropriately defined and uniformly applied." *Lloyd v. Babb*, 296 N.C. 416, 440, 251 S.E.2d 843, 859 (1979). But subsection (1)(e), which grants the franchise to certain overseas voters, does just that. And again, nothing in the text of our state constitution forecloses the legislature from extending the franchise to citizens who inherit their residence from their parents.

In sum, more than a decade ago, the General Assembly made a conscious decision to allow the small category of challenged voters to vote in state elections. (Pet. App. 68) Petitioner cannot meet his heavy burden to show that this statute is unconstitutional beyond a reasonable doubt.

VI. Petitioner's Proposed Remedy Is Improper and Unlawful

For all the above reasons, this Court should deny the writ of prohibition. But even if this Court were to consider the petition and agree with Petitioner that the Board erred in adjudicating his protests, Petitioner's proposed remedy is clearly improper. Under these circumstances, the only appropriate remedy would be for this Court to remand to the State Board for further proceedings, including factfinding hearings on Petitioner's protests.²⁰

²⁰ Given the individualized nature of Petitioner's protests, on remand, the State Board may direct initial hearings to be conducted at the county level where individual voter records are most conveniently available.

A. Petitioner's request that this Court selectively consider only certain protests is obviously improper.

Petitioner raised challenges to three different groups of votes at the same time, which were adjudicated by the Board simultaneously. Petitioner then chose to file this petition challenging all three protests. At this point, he has two choices: He can forgo further review of certain protests, or he can seek review of them all.

Petitioner instead makes an utterly baffling request: that this Court address his protests seriatim in an order of his choosing and stop whenever the election results turn in his favor. Br. 71-73. This request is improper and unlawful in numerous respects. At the outset, nothing in the elections statutes provides for piecemeal consideration of protests, to say nothing of immediately halting that consideration as soon as the outcome shifts in favor of one candidate.

Moreover, it is “not the role of the appellate courts to make findings of fact.” *Nale v. Allen*, 199 N.C. App. 511, 521, 682 S.E.2d 231, 238 (2009). But that is precisely what Petitioner is asking this Court to do here. Petitioner asks this Court—in the first instance, without the benefit of a factual record—to make factual findings about whether each challenged ballot is unlawful. But the General Assembly has directed such factfinding to be

conducted by the State Board and county boards, not by this Court. N.C. Gen. Stat. §§ 163-182.10, -182.12.

Proceeding along the lines that Petitioner proposes would also violate the Equal Protection Clause. In *Bush v. Gore*, for example, the Florida Supreme Court allowed certification of a partial tally of votes identified through a single manual recount. 531 U.S. 98, 103 (2000). The U.S. Supreme Court reversed, holding that it would be unlawful to count these votes, uncovered during only a partial manual recount, without allowing for a complete tallying of outstanding votes. *Id.* at 108. The Florida Supreme Court's contrary ruling, the U.S. Supreme Court held, violated equal protection, because it would give greater value to some votes than others. *Id.* Petitioner's proposal gives rise to the same equal protection concerns here. If this Court were to simply stop counting votes as soon as one of Petitioner's challenges succeeded in flipping the results of the contest, it would value certain challenged votes over others. *See supra* Part III.C.

B. Petitioner is wrong that the substantial-evidence standard applies at this stage of the process.

Petitioner is also incorrect to argue that the substantial-evidence standard of review applies at this stage of his election protests. Br. 67. His

argument to the contrary misunderstands the current procedural posture of this case.

As described above, the statutory framework for adjudicating elections protests involves multiple steps, including an evidentiary hearing to test a protester's allegations against the evidence. *See supra* at 10-12.pp 7-15 Here, the Board dismissed the protests at a preliminary, threshold stage of the process. Specifically, the Board held that the protests failed at the outset because he failed to comply with filing requirements and failed to “establish[] probable cause to believe that a violation of election law or irregularity or misconduct has occurred.” N.C. Gen. Stat. § 163-182.9; *see* Pet. App. 51, 66.

Because the Board dismissed the protests at this initial stage, it never moved on to conducting a hearing, where it could receive evidence and engage in factfinding to test Petitioner's factual allegations. *See id.*; N.C. Gen. Stat. § 162-182.10(c). As a result, the question before this Court is limited to whether the Board's decision on its initial consideration of Petitioner's protests was legally correct. If this Court disagrees with the Board's legal decisions, the only appropriate remedy would be to remand to for evidentiary hearings. It is *at a hearing* that the State Board or county

boards would apply the substantial-evidence standard to resolve Petitioner's protests. *Id.* § 162-182.10(d). Following hearings, the Board would be then required to "make a written decision on each protest" stating its findings of facts and accompanying conclusions of law. *Id.*

As a result, the question before this Court is limited to whether the Board applied the law correctly. Petitioner is simply wrong that this Court may consider his factual allegations under the substantial-evidence standard. Rather, the only appropriate remedy should the Board's threshold legal decisions be reversed, is to remand for evidentiary hearings, applying the substantial-evidence standard at that time.

C. Petitioner is wrong that the only appropriate remedy to any error here is discounting the challenged ballots wholesale.

Petitioner also incorrectly describes the remedies available to the Board following an evidentiary hearing. Petitioner claims that "discount[ing] . . . the unlawful ballots" is "the normal result of a successful election protest." Br. 70. This is incorrect. In reality, the Board is authorized by statute to take a wide variety of measures, as appropriate in a particular case, in response to an adjudicated election violation. Specifically, the General Assembly has authorized the Board, subject to judicial review, to correct vote totals, order a recount, or take any other action "necessary to assure that an

election is determined without taint of fraud or corruption and without irregularities that may have changed the result of an election.” N.C. Gen. Stat. §§ 163-182.10(d), -182.12. In addition, under certain limited circumstances, the Board may also order a new election. *Id.* § 163-182.13(a).

Neither of the cases Petitioner cites supports his claim that discounting ballots is the sole appropriate remedy for the Board to take. In *James*, the Court held that out-of-precinct provisional ballots could not be counted. 359 N.C. at 271, 607 S.E.2d at 645. But that was a case-specific ruling that applied to out-of-precinct provisional ballots—which had *never before* been counted in the State’s history, and which the Board had specifically advised before the election would not be counted. *Id.* at 265, 607 S.E.2d at 641. Nothing in *James* said or suggested that discounting ballots is the ordinary or expected remedy in election protests generally. The same is true of *Bouvier*. There, this Court merely stated that “[w]here [an] irregularity affects the election results, the county board of elections *may* order the ballots excluded from the vote total.” *Bouvier*, 386 N.C. at 5, 900 S.E.2d at 843 (emphasis added). Again, this Court has never said that canceling votes is either a necessary or always appropriate remedy.

In sum, should this Court reverse the Board's initial legal determinations and order a factfinding hearing, and should the Board ultimately find that Petitioner has adduced substantial evidence of an election law violation, discounting ballots is only one of several remedies authorized by law.

D. Petitioner's suggested remedy is overbroad and violates federal law.

Finally, granting Petitioner's proposed remedy, especially at this preliminary stage of the process based only on Petitioner's factual allegations, would violate numerous federal laws.

First, as described above, granting Petitioner's requested relief would violate the Fourteenth Amendment because he seeks to change—after the election has taken place—the rules in place at the time of the election. *See supra* Part III.

Second, as described above, Petitioner's proposed remedy would also run afoul of the NVRA. *See supra* Part V.A.2.

Third, Petitioner's requested relief would also violate the Voting Rights Act. The VRA prohibits election officials from discounting ballots that have been cast in an election. Under the VRA, election officials may not “fail or

refuse to permit any person to vote who is entitled to vote” or otherwise “willfully fail or refuse to tabulate, count, and report such person’s vote.” 52 U.S.C. § 10307(a). Here, the Board has determined that all three categories of voters whose ballots are being challenged *are* qualified to vote. And other than the small handful of voters who have never resided in North Carolina, Petitioner does not dispute that the voters he challenges are lawful, eligible voters. The VRA thus prohibits the Board from refusing to count their votes.

Fourth, Petitioner’s proposed remedy on his HAVA challenge would invalidate the votes of countless voters who registered in full compliance with HAVA and its accompanying state laws. As described above, there are several reasons why a voter’s records might lack an identification number, but the voter is still properly registered. *See supra* Part V.A.3. Thus, even if Petitioner is correct on his challenge, factfinding would therefore be needed to determine if any of the challenged voters did, in fact, register improperly.²¹

²¹ Factfinding would also be needed to confirm that the 266 voters identified by Petitioner as inherited residents really are overseas voters who fit into that category. Recent analysis suggests, for example, that at least three of those individuals voted in person. *See* Christopher A. Cooper, *Analysis of UOCAVA Voters Who Did Not Supply Voter ID and “Never Resident” Voters Challenged in the 2024 North Carolina State Supreme Court Election*, <https://tinyurl.com/2thcsebr> (last accessed Jan. 21, 2025).

Moreover, awarding Petitioner his requested relief, and thereby disenfranchising tens of thousands of voters, without providing those voters proper notice and a meaningful opportunity to be heard, would violate their procedural due process rights. *See supra* Part IV. Those voters are owed notice and an opportunity to take appropriate steps to defend their votes. These steps include, at minimum, the right to prove at a factfinding stage that they are lawfully entitled to vote.

Fifth, as also described above, Petitioner's requested relief would violate the Fourteenth Amendment's Equal Protection Clause. *See supra* Part III. Petitioner's HAVA challenge is limited to early and absentee voters, leaving out identically situated voters who cast ballots on election day. Petitioner's UOCAVA challenge of military and overseas voters who did not provide copies of their photo identification is likewise irrationally selective, as it targets only voters in four, large urban counties—leaving out identically situated voters across the rest of the State.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court deny the petition.

This 21st day of January, 2025.

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This 21st day of January, 2025.

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§ 163-55. Qualifications to vote; exclusion from electoral franchise.

(a) Residence Period for State Elections. – Every person born in the United States, and every person who has been naturalized, and who shall have resided in the State of North Carolina and in the precinct in which the person offers to vote for 30 days next preceding an election, shall, if otherwise qualified as prescribed in this Chapter, be qualified to vote in the precinct in which the person resides. Removal from one precinct to another in this State shall not operate to deprive any person of the right to vote in the precinct from which the person has removed until 30 days after the person's removal.

Except as provided in this Chapter, the following classes of persons shall not be allowed to vote in this State:

- (1) Persons under 18 years of age.
- (2) Any person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

(b) Precincts. – For purposes of qualification to vote in an election, a person's residence in a precinct shall be determined in accordance with G.S. 163-57. Qualification to vote in referenda shall be treated the same as qualification for elections to fill offices.

(c) Elections. – For purposes of the 30-day residence requirement to vote in an election in subsection (a) of this section, the term "election" means the day of the primary, second primary, general election, special election, or referendum. (19th amendt. U.S. Const.; amendt. State Const., 1920; 1901, c. 89, ss. 14, 15; Rev., ss. 4315, 4316; C.S., ss. 5936, 5937; Ex. Sess. 1920, c. 18, s. 1; 1933, c. 165, s. 4; 1945, c. 758, s. 7; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1; 1973, c. 793, s. 18; 2005-2, s. 2; 2008-150, s. 5(a); 2009-541, s. 5; 2013-381, s. 49.1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-82.4. Contents of application form.

(a) Information Requested of Applicant. – The form required by G.S. 163-82.3(a) shall request the applicant's:

- (1) Name,
- (2) Date of birth,
- (3) Residence address,
- (4) County of residence,
- (5) Date of application,
- (6) Gender,
- (7) Race,
- (8) Ethnicity,
- (9) Political party affiliation, if any, in accordance with subsection (d) of this section,
- (10) Telephone number (to assist the county board of elections in contacting the voter if needed in processing the application),
- (11) Drivers license number or, if the applicant does not have a drivers license number, the last four digits of the applicant's social security number,

and any other information the State Board finds is necessary to enable officials of the county where the person resides to satisfactorily process the application. The form shall require the applicant to state whether currently registered to vote anywhere, and at what address, so that any prior registration can be cancelled. The portions of the form concerning race and ethnicity shall include as a choice any category shown by the most recent decennial federal census to compose at least one percent (1%) of the total population of North Carolina. The county board shall make a diligent effort to complete for the registration records any information requested on the form that the applicant does not complete, but no application shall be denied because an applicant does not state race, ethnicity, gender, or telephone number. The application shall conspicuously state that provision of the applicant's telephone number is optional. If the county board maintains voter records on computer, the free list provided under this subsection shall include telephone numbers if the county board enters the telephone number into its computer records of voters.

(b) No Drivers License or Social Security Number Issued. – The State Board shall assign a unique identifier number to an applicant for voter registration if the applicant has not been issued either a current and valid drivers license or a social security number. That unique identifier number shall serve to identify that applicant for voter registration purposes.

(c) Notice of Requirements, Attestation, Notice of Penalty, and Notice of Confidentiality. – The form required by G.S. 163-82.3(a) shall contain, in uniform type, the following:

- (1) A statement that specifies each eligibility requirement (including citizenship) and an attestation that the applicant meets each such requirement, with a requirement for the signature of the applicant, under penalty of a Class I felony under G.S. 163-275(13).
- (2) A statement that, if the applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.
- (3) A statement that, if the applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(d) Party Affiliation or Unaffiliated Status. – The application form described in G.S. 163-82.3(a) shall provide a place for the applicant to state a preference to be affiliated with one of the political parties in G.S. 163-96, or a preference to be an "unaffiliated" voter. Every person who applies to register shall state his preference. If the applicant fails to declare a preference for a party or for unaffiliated status, that person shall be listed as "unaffiliated", except

that if the person is already registered to vote in the county and that person's registration already contains a party affiliation, the county board shall not change the registrant's status to "unaffiliated" unless the registrant clearly indicates a desire in accordance with G.S. 163-82.17 for such a change. An unaffiliated registrant shall not be eligible to vote in any political party primary, except as provided in G.S. 163-119, but may vote in any other primary or general election. The application form shall so state.

(e) Citizenship and Age Questions. – Voter registration application forms shall include all of the following:

- (1) The following question and statement:
 - a. "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.
 - b. "If you checked 'no' in response to this question, do not submit this form."
- (2) The following question and statement:
 - a. "Will you be 18 years of age on or before election day?" and boxes for the applicant to check to indicate whether the applicant will be 18 years of age or older on election day.
 - b. "If you checked 'no' in response to this question, do not submit this form."

(f) Correcting Registration Forms. – If the voter fails to complete any required item on the voter registration form but provides enough information on the form to enable the county board of elections to identify and contact the voter, the voter shall be notified of the omission and given the opportunity to complete the form at least by 5:00 P.M. on the day before the county canvass as set in G.S. 163-182.5(b). If the voter corrects that omission within that time and is determined by the county board of elections to be eligible to vote, the board shall permit the voter to vote. If the information is not corrected by election day, the voter shall be allowed to vote a provisional official ballot. If the correct information is provided to the county board of elections by at least 5:00 P.M. on the day before the county canvass, the board shall count any portion of the provisional official ballot that the voter is eligible to vote. (1901, c. 89, s. 12; Rev., s. 4319; C.S., s. 5940; Ex. Sess. 1920, c. 93; 1933, c. 165, s. 5; 1951, c. 984, s. 1; 1953, c. 843; 1955, c. 800; c. 871, s. 2; 1957, c. 784, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1971, c. 1166, s. 6; 1973, c. 793, s. 27; c. 1223, s. 3; 1975, c. 234, s. 2; 1979, c. 135, s. 1; c. 539, ss. 1-3; c. 797, ss. 1, 2; 1981, c. 222; c. 308, s. 2; 1991 (Reg. Sess., 1992), c. 1044, s. 18(a); 1993, c. 74, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1999-424, s. 7(c), (d); 1999-453, s. 8(a); 2003-226, s. 9; 2004-127, s. 4; 2005-428, s. 15; 2007-391, s. 20; 2008-187, s. 33(a); 2009-541, s. 9(a); 2013-381, s. 12.1(c); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-82.11. Establishment of statewide computerized voter registration.

(a) Statewide System as Official List. – The State Board of Elections shall develop and implement a statewide computerized voter registration system to facilitate voter registration and to provide a central database containing voter registration information for each county. The system shall serve as the single system for storing and managing the official list of registered voters in the State. The system shall serve as the official voter registration list for the conduct of all elections in the State. The system shall encompass both software development and purchasing of the necessary hardware for the central and distributed-network systems.

(b) Uses of Statewide System. – The State Board of Elections shall develop and implement the system so that each county board of elections can do all the following:

- (1) Verify that an applicant to register in its county is not also registered in another county.
- (2) Be notified automatically that a registered voter in its county has registered to vote in another county.
- (3) Receive automatically data about a person who has applied to vote at a drivers license office or at another public agency that is authorized to accept voter registration applications.

(c) Compliance With Federal Law. – The State Board of Elections shall update the statewide computerized voter registration list and database to meet the requirements of section 303(a) of the Help America Vote Act of 2002 and to reflect changes when citizenship rights are restored under G.S. 13-1.

(d) Role of County and State Boards of Elections. – Each county board of elections shall be responsible for registering voters within its county according to law. Each county board of elections shall maintain its records by using the statewide computerized voter registration system in accordance with rules promulgated by the State Board of Elections. Each county board of elections shall enter through the computer system all additions, deletions, and changes in its list of registered voters promptly to the statewide computer system.

(e) Cooperation on List for Jury Commission. – The State Board of Elections shall assist the Division of Motor Vehicles in providing to the county jury commission of each county, as required by G.S. 20-43.4, a list of all registered voters in the county and all persons in the county with drivers license records. The list of registered voters provided by the State Board of Elections shall not include any registered voter who has been inactive for eight years or more. (1993 (Reg. Sess., 1994), c. 762, s. 2; 2003-226, s. 6; 2007-512, s. 4; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-82.12. Promulgation of guidelines relating to computerized voter registration.

The State Board of Elections shall make all guidelines necessary to administer the statewide voter registration system established by this Article. All county boards of elections shall follow these guidelines and cooperate with the State Board of Elections in implementing guidelines. These guidelines shall include provisions for all of the following:

- (1) Establishing, developing, and maintaining a computerized central voter registration file.
- (2) Linking the central file through a network with computerized voter registration files in each of the counties.
- (3) Interacting with the computerized drivers license records of the Division of Motor Vehicles and with the computerized records of other public agencies authorized to accept voter registration applications.
- (4) Protecting and securing the data.
- (5) Converting current voter registration records in the counties in computer files that can be used on the statewide computerized registration system.
- (6) Enabling the statewide system to determine whether the voter identification information provided by an individual is valid.
- (7) Enabling the statewide system to interact electronically with the Division of Motor Vehicles system to validate identification information.
- (8) Enabling the Division of Motor Vehicles to provide real-time interface for the validation of the drivers license number and last four digits of the social security number.
- (9) Notifying voter-registration applicants whose drivers license or last four digits of social security number does not result in a validation, attempting to resolve the discrepancy, initiating investigations under G.S. 163-33(3) or challenges under Article 8 of this Chapter where warranted, and notifying any voters of the requirement under G.S. 163-166.12(b2) to present identification when voting.
- (10) Enabling the statewide system to assign a unique identifier to each legally registered voter in the State.
- (11) Enabling the State Board of Elections to assist the Division of Motor Vehicles in providing to the jury commission of each county, as required by G.S. 20-43.4, a list of all registered voters in the county and all persons in the county with drivers license records. (1993 (Reg. Sess., 1994), c. 762, s. 2; 2003-226, s. 7(a); 2007-391, s. 21(b); 2008-187, s. 33(a); 2013-410, s. 14(a); 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 4.5(c).)

§ 163-166.12. Requirements for certain voters who register by mail.

(a) Voting in Person. – An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, shall present to a local election official at a voting place before voting there one of the following:

- (1) A current and valid photo identification.
- (2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(b) Voting Mail-In Absentee. – An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, in order to cast a mail-in absentee vote, shall submit with the mailed-in absentee ballot one of the following:

- (1) A copy of a current and valid photo identification.
- (2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(c) Notation of Identification Proof. – The county board of elections shall note the type of identification proof submitted by the voter under the provisions of subsection (a) or (b) of this section and may dispose of the tendered copy of identification proof as soon as the type of proof is noted in the voter registration records. The county board of elections shall create a list denoting the voter, the method of voting by the voter, and type of identification proof submitted by the voter, which shall be a public record.

(d) Voting When Identification Numbers Do Not Match. – Regardless of whether an individual has registered by mail or by another method, if the individual has provided with the registration form a drivers license number or last four digits of a Social Security number but the computer validation of the number as required by G.S. 163-82.12 did not result in a match, and the number has not been otherwise validated by the board of elections, in the first election in which the individual votes that individual shall submit with the ballot the form of identification described in subsection (a) or subsection (b) of this section, depending upon whether the ballot is voted in person or absentee. If that identification is provided and the board of elections does not determine that the individual is otherwise ineligible to vote a ballot, the failure of identification numbers to match shall not prevent that individual from registering to vote and having that individual's vote counted.

(e) The Right to Vote Provisionally. – If an individual is required under subsection (a), (b), or (d) of this section to present identification in order to vote, but that individual does not present the required identification, that individual may vote a provisional official ballot. If the voter is at the voting place, the voter may vote provisionally there without unnecessary delay. If the voter is voting by mail-in absentee ballot, the mailed ballot without the required identification shall be treated as a provisional official ballot.

(f) Exemptions. – This section does not apply to any of the following:

- (1) An individual who registers by mail and submits as part of the registration application either of the following:
 - a. A copy of a current and valid photo identification.
 - b. A copy of a "HAVA document" as defined in G.S. 163-82.6B(e).
- (2) An individual who registers by mail and submits as part of the registration application the individual's drivers license number or at least the last four digits of the individual's social security number where an election official matches either or both of the numbers submitted with an existing State identification record bearing the same number, name, and date of birth

contained in the submitted registration. If any individual's number does not match, the individual shall provide identification as required in subsection (d) of this section in the first election in which the individual votes.

- (3) An individual who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.
- (4) An individual who is entitled to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act.
- (5) An individual who is entitled to vote otherwise than in person under any other federal law. (2003-226, s. 16; 2004-127, s. 3; 2007-391, s. 21(a); 2008-187, s. 33(a); 2013-381, s. 16.4; 2013-410, s. 14(b); 2017-6, s. 3; 2018-146, s. 3.1(a), (b); 2023-140, ss. 10(b), 26.)

§ 163-182.9. Filing an election protest.

(a) Who May File a Protest With County Board. – A protest concerning the conduct of an election may be filed with the county board of elections by any registered voter who was eligible to vote in the election or by any person who was a candidate for nomination or election in the election.

(b) How Protest May Be Filed. – The following principles shall apply to the filing of election protests with the county board of elections:

- (1) The protest shall be in writing and shall be signed by the protester. It shall include the protester's name, address, and telephone number and a statement that the person is a registered voter in the jurisdiction or a candidate.
- (2) The protest shall state whether the protest concerns the manner in which votes were counted and results tabulated or concerns some other irregularity.
- (3) The protest shall state what remedy the protester is seeking.
- (4) The timing for filing a protest shall be as follows:
 - a. If the protest concerns the manner in which votes were counted or results tabulated, the protest shall be filed before the beginning of the county board of election's canvass meeting.
 - b. If the protest concerns the manner in which votes were counted or results tabulated and the protest states good cause for delay in filing, the protest may be filed until 5:00 P.M. on the second business day after the county board of elections has completed its canvass and declared the results.
 - c. If the protest concerns an irregularity other than vote counting or result tabulation, the protest shall be filed no later than 5:00 P.M. on the second business day after the county board has completed its canvass and declared the results.
 - d. If the protest concerns an irregularity on a matter other than vote counting or result tabulation and the protest is filed before election day, the protest proceedings shall be stayed, unless a party defending against the protest moves otherwise, until after election day if any one of the following conditions exists:
 1. The ballot has been printed.
 2. The voter registration deadline for that election has passed.
 3. Any of the proceedings will occur within 30 days before election day.

(c) State Board to Prescribe Forms. – The State Board of Elections shall prescribe forms for filing protests. (2001-398, s. 3; 2005-428, s. 4; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-182.10. Consideration of protest by county board of elections.

(a) Preliminary Consideration. – The following principles shall apply to the initial consideration of election protests by the county board of elections:

- (1) The county board shall, as soon as possible after the protest is filed, meet to determine whether the protest substantially complies with G.S. 163-182.9 and whether it establishes probable cause to believe that a violation of election law or irregularity or misconduct has occurred. If the board determines that one or both requirements are not met, the board shall dismiss the protest. The board shall notify both the protester and the State Board of Elections. The protester may file an amended protest or may appeal to the State Board. If the board determines that both requirements are met, it shall schedule a hearing.
- (2) If a protest was filed before the canvass and concerns the counting and tabulating of votes, the county board shall resolve the protest before the canvass is completed. If necessary to provide time to resolve the protest, the county board may recess the canvass meeting, but shall not delay the completion of the canvass for more than three days unless approved by the State Board of Elections. Resolution of the protest shall not delay the canvass of ballot items unaffected by the protest. The appeal of a dismissal shall not delay the canvass.
- (3) If a protest concerns an irregularity other than the counting or tabulating of votes, that protest shall not delay the canvass.

(b) Notice of Hearing. – The county board shall give notice of the protest hearing to the protester, any candidate likely to be affected, any election official alleged to have acted improperly, and those persons likely to have a significant interest in the resolution of the protest. Each person given notice shall also be given a copy of the protest or a summary of its allegations. The manner of notice shall be as follows:

- (1) If the protest concerns the manner in which the votes were counted or the results tabulated, the protester shall be told at the time of filing that the protest will be heard at the time of the canvass. Others shall be notified as far in advance of the canvass as time permits.
- (2) If the protest concerns a matter other than the manner in which votes were counted or results tabulated, the county board shall comply with rules to be promulgated by the State Board of Elections concerning reasonable notice of the hearing.

Failure to comply with the notice requirements in this subsection shall not delay the holding of a hearing nor invalidate the results if it appears reasonably likely that all interested persons were aware of the hearing and had an opportunity to be heard.

(c) Conduct of Hearing. – The following principles shall apply to the conduct of a protest hearing before the county board of elections:

- (1) The county board may allow evidence to be presented at the hearing in the form of affidavits or it may examine witnesses. The chair or any two members of the board may subpoena witnesses or documents. Each witness must be placed under oath before testifying.
- (2) The county board may receive evidence at the hearing from any person with information concerning the subject of the protest. The person who made the protest shall be permitted to present allegations and introduce evidence at the hearing. Any other person to whom notice of hearing was given, if present, shall be permitted to present evidence. The board may allow evidence by affidavit. The board may permit evidence to be presented by a person to whom notice was not given, if the person apparently has a significant interest in the

resolution of the protest that is not adequately represented by other participants.

- (3) The hearing shall be recorded by a reporter or by mechanical means, and the full record of the hearing shall be preserved by the county board until directed otherwise by the State Board.

(d) Findings of Fact and Conclusions of Law by County Board. – The county board shall make a written decision on each protest which shall state separately each of the following:

- (1) Findings of fact. – The findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them.

- (2) Conclusions of law. – The conclusions the county board may state, and their consequences for the board's order, are as follows:

- a. "The protest should be dismissed because it does not substantially comply with G.S. 163-182.9." If the board makes this conclusion, it shall order the protest dismissed.

- b. "The protest should be dismissed because there is not substantial evidence of a violation of the election law or other irregularity or misconduct." If the county board makes this conclusion, it shall order the protest dismissed.

- c. "The protest should be dismissed because there is not substantial evidence of any violation, irregularity, or misconduct sufficient to cast doubt on the results of the election." If the county board makes this conclusion, it shall order the protest dismissed.

- d. "There is substantial evidence to believe that a violation of the election law or other irregularity or misconduct did occur, and might have affected the outcome of the election, but the board is unable to finally determine the effect because the election was a multicounty election." If the county board makes this conclusion, it shall order that the protest and the county board's decision be sent to the State Board for action by it.

- e. "There is substantial evidence to believe that a violation of the election law or other irregularity or misconduct did occur and that it was sufficiently serious to cast doubt on the apparent results of the election." If the county board makes this conclusion, it may order any of the following as appropriate:

1. That the vote total as stated in the precinct return or result of the canvass be corrected and new results declared.

2. That votes be recounted.

3. That the protest and the county board's decision be sent to the State Board for action by it.

4. Any other action within the authority of the county board.

- (3) An order. – Depending on the conclusion reached by the county board, its order shall be as directed in subdivision (c)(2). If the county board is not able to determine what law is applicable to the Findings of Fact, it may send its findings of fact to the State Board for it to determine the applicable law.

(e) Rules by State Board of Elections. – The State Board of Elections shall promulgate rules providing for adequate notice to parties, scheduling of hearings, and the timing of deliberations and issuance of decision. (2001-398, s. 3; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-182.11. Appeal of a protest decision by the county board to the State Board of Elections.

(a) Notice and Perfection of Appeal. – The decision by the county board of elections on an election protest may be appealed to the State Board of Elections by any of the following:

- (1) The person who filed the protest.
- (2) A candidate or elected official adversely affected by the county board's decision.
- (3) Any other person who participated in the hearing and has a significant interest adversely affected by the county board's decision.

Written notice of the appeal must be given to the county board within 24 hours after the county board files the written decision at its office. The appeal to the State Board must be in writing. The appeal must be delivered or deposited in the mail, addressed to the State Board, by the appropriate one of the following: (i) the end of the second day after the day the decision was filed by the county board in its office, if the decision concerns a first primary; or (ii) the end of the fifth day after the day the decision was filed in the county board office, if the decision concerns an election other than a first primary.

The State Board shall prescribe forms for filing appeals from the county board.

(b) Consideration of Appeal by State Board. – In its consideration of an appeal from a decision of a county board of elections on a protest, the State Board of Elections may do any of the following:

- (1) Decide the appeal on the basis of the record from the county board, as long as the county board has made part of the record a transcript of the evidentiary hearing.
- (2) Request the county board or any interested person to supplement the record from the county board, and then decide the appeal on the basis of that supplemented record.
- (3) Receive additional evidence and then decide the appeal on the basis of the record and that additional evidence.
- (4) Hold its own hearing on the protest and resolve the protest on the basis of that hearing.
- (5) Remand the matter to the county board for further proceedings in compliance with an order of the State Board.

The State Board shall follow the procedures set forth in subsections (c) and (d) of G.S. 163-182.10 except where they are clearly inapplicable.

The State Board shall give notice of its decision as required by G.S. 163-182.14, and may notify the county board and other interested persons in its discretion. (2001-398, s. 3; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-182.12. Authority of State Board of Elections over protests.

The State Board of Elections may consider protests that were not filed in compliance with G.S. 163-182.9, may initiate and consider complaints on its own motion, may intervene and take jurisdiction over protests pending before a county board, and may take any other action necessary to assure that an election is determined without taint of fraud or corruption and without irregularities that may have changed the result of an election. Where a known group of voters cast votes that were lost beyond retrieval or where a known group of voters was given an incorrect ballot style, the State Board of Elections may authorize a county board of elections to allow those voters to recast their votes during a period of two weeks after the canvass by the State Board of Elections required in G.S. 163-182.5(c). If there is no State Board canvass after the election, the State Board may authorize the county board to allow the recasting of votes during the two weeks after the county canvass set in G.S. 163-182.5(a). If the State Board approves a recasting of votes under this section, any procedures the county board uses to contact those voters and allow them to recast their votes shall be subject to approval by the State Board. Those recast votes shall be added to the returns and included in the canvass. The recasting of those votes shall not be deemed a new election for purposes of G.S. 163-182.13. (2001-398, s. 3; 2005-428, s. 17; 2007-391, s. 12; 2008-187, s. 33(a); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-182.13. New elections.

(a) **When State Board May Order New Election.** – The State Board may order a new election, upon agreement of at least five of its members, in the case of any one or more of the following:

- (1) Ineligible voters sufficient in number to change the outcome of the election were allowed to vote in the election, and it is not possible from examination of the official ballots to determine how those ineligible voters voted and to correct the totals.
- (2) Eligible voters sufficient in number to change the outcome of the election were improperly prevented from voting.
- (3) Other irregularities affected a sufficient number of votes to change the outcome of the election.
- (4) Irregularities or improprieties occurred to such an extent that they taint the results of the entire election and cast doubt on its fairness.

(b) **State Board to Set Procedures.** – The State Board of Elections shall determine when a new election shall be held and shall set the schedule for publication of the notice, preparation of absentee official ballots, and the other actions necessary to conduct the election.

(c) **Eligibility to Vote in New Election.** – Eligibility to vote in the new election shall be determined by the voter's eligibility at the time of the new election, except that in a primary, no person who voted in the initial primary of one party shall vote in the new election in the primary of another party. The State Board of Elections shall promulgate rules to effect the provisions of this subsection.

(d) **Jurisdiction in Which New Election Held.** – The new election shall be held in the entire jurisdiction in which the original election was held.

(e) **Which Candidates to Be on Official Ballot.** – All the candidates who were listed on the official ballot in the original election shall be listed in the same order on the official ballot for the new election, except in either of the following:

- (1) If a candidate dies or otherwise becomes ineligible between the time of the original election and the new election, that candidate may be replaced in the same manner as if the vacancy occurred before the original election.
- (2) If the election is for a multiseat office, and the irregularities could not have affected the election of one or more of the candidates, the new election, upon agreement of at least five members of the State Board, may be held among only those candidates whose election could have been affected by the irregularities.

(f) **Tie Votes.** – If ineligible voters voted in an election and it is possible to determine from the official ballots the way in which those votes were cast and to correct the results, and consequently the election ends in a tie, the provisions of G.S. 163-182.8 concerning tie votes shall apply.

(g) **Primary Required for a New Election.** – For any new congressional general election ordered under subsection (a) of this section, a primary for that election shall be conducted. The State Board shall determine when the primary shall be held, and shall set the schedule for publication of the notice, preparation of absentee official ballots, and the other actions necessary to conduct the primary. (2001-398, s. 3; 2003-278, s. 8(a); 2008-150, s. 2(a); 2016-125, 4th Ex. Sess., s. 5(j); 2017-6, ss. 2, 3, 7(j); 2018-146, ss. 1, 3.1(a), (b); 2023-139, s. 5.2.)

§ 163-182.14. Appeal of a final decision to superior court; appeal to the General Assembly or a house thereof.

(a) Final Decision. – A copy of the final decision of the State Board of Elections on an election protest shall be served on the parties personally or through delivery by U.S. mail or a designated delivery service authorized under 26 U.S.C. § 7502(f)(2) if that delivery provides a record of the date and time of delivery to the address provided by the party. A decision to order a new election is considered a final decision for purposes of seeking review of the decision.

(b) Timing of Right of Appeal. – Except in the case of a general or special election to either house of the General Assembly or to an office established by Article III of the Constitution, an aggrieved party has the right to appeal the final decision to the Superior Court of Wake County within 10 days of the date of service.

After the decision by the State Board of Elections has been served on the parties, the certification of nomination or election or the results of the referendum shall issue pursuant to G.S. 163-182.15 unless an appealing party obtains a stay of the certification from the Superior Court of Wake County within 10 days after the date of service. The court shall not issue a stay of certification unless the petitioner shows the court that the petitioner has appealed the decision of the State Board of Elections, that the petitioner is an aggrieved party, and that the petitioner is likely to prevail in the appeal.

If service is by mail or a designated delivery service, the additional time after service provided in Rule 6(e) of the North Carolina Rules of Civil Procedure shall apply to both the time for appeal and the time to obtain a stay under this subsection.

(c) Contests for General Assembly and Executive Branch Offices. – In the case of a general or special election to either house of the General Assembly or to an office established by Article III of the Constitution, an unsuccessful candidate has the right to appeal the final decision to the General Assembly in accordance with Article 3 of Chapter 120 and G.S. 163-182.13A, as appropriate.

After the decision by the State Board of Elections has been served on the parties, the certification of nomination or election shall issue pursuant to G.S. 163-182.15 unless a contest of the election is initiated pursuant to Article 3 of Chapter 120 or G.S. 163-182.13A, as appropriate.

(d) Attorney's fees shall not be awarded against the State Board of Elections in any election protest brought under this Article. (2001-398, s. 3; 2003-278, s. 8(b); 2005-3, s. 4; 2008-150, s. 4(a); 2009-541, s. 27; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-230.1. Simultaneous issuance of absentee ballots with application.

(a) Written Request. – A qualified voter who is eligible to vote by absentee ballot under G.S. 163-226, or that voter's near relative or verifiable legal guardian, shall complete a request form for an absentee application and absentee ballots so that the county board of elections receives that completed request form not later than 5:00 P.M. on the Tuesday before the election. That completed written request form shall be in compliance with G.S. 163-230.2. The county board of elections shall enter in the register of absentee requests, applications, and ballots issued the information required in G.S. 163-228 as soon as each item of that information becomes available. Upon receiving the completed request form, the county board of elections shall cause to be mailed to that voter a single package that includes all of the following:

- (1) The official ballots the voter is entitled to vote.
- (2) A container-return envelope for the ballots, printed in accordance with G.S. 163-229.
- (3) An instruction sheet.
- (4) A clear statement of the requirement for a photocopy of identification described in G.S. 163-166.16(a) or an affidavit as described in G.S. 163-166.16(d)(1), (d)(2), or (d)(3) with the returned ballot.

(a1) Mailing of Application and Ballots. – The ballots, envelope, and instructions shall be mailed to the voter by the county board's chair, member, officer, or employee as determined by the board and entered in the register as provided by this Article.

(a2) Publish Deadline for Written Request and Ballot. – At least once per primary or election, each county board of elections and the State Board shall publish on its website or in any mailing sent to voters the following information:

- (1) The date by which a completed request form as described in subsection (a) of this section must be received by a county board of elections.
- (2) The means by which the voter's marked absentee ballot must be returned to the county board of elections.
- (3) The date and time the voter's completed absentee ballot must be received by the county board of elections in order to be counted.

(b) Absence for Sickness or Physical Disability. – Notwithstanding the provisions of subsection (a) of this section, if a voter expects to be unable to go to the voting place to vote in person on election day because of that voter's sickness or other physical disability, that voter or that voter's near relative or verifiable legal guardian may make the request for absentee ballots in person to the board of elections of the county in which the voter is registered after 5:00 P.M. on the Tuesday before the election but not later than 5:00 P.M. on the day before the election. The county board of elections shall treat that completed request form in the same manner as a request under subsection (a) of this section but may personally deliver the application and ballots to the voter or that voter's near relative or verifiable legal guardian, and shall enter in the register of absentee requests, applications, and ballots issued the information required in G.S. 163-228 as soon as each item of that information becomes available. The county board of elections shall personally deliver to the requester in a single package:

- (1) The official ballots the voter is entitled to vote.
- (2) A container-return envelope for the ballots, printed in accordance with G.S. 163-229.
- (3) An instruction sheet.
- (4) A clear statement of the requirement for a photocopy of identification described in G.S. 163-166.16(a) or an affidavit as described in G.S. 163-166.16(d)(1), (d)(2), or (d)(3) with the returned application and voted ballots.

(c) Delivery of Absentee Ballots and Container-Return Envelope to Applicant. – When the county board of elections receives a completed request form for applications and absentee ballots from the voter, or the near relative or the verifiable legal guardian of that voter, the county board shall promptly issue and transmit them to the voter in accordance with the following instructions:

- (1) On the top margin of each ballot the applicant is entitled to vote, the chair, a member, officer, or employee of the board of elections shall write or type the words "Absentee Ballot No. ____ " or an abbreviation approved by the State Board and insert in the blank space the number assigned the applicant's application in the register of absentee requests, applications, and ballots issued. That person shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter. Alternatively, the board of elections may cause to be barcoded on the ballot the voter's application number, if that barcoding system is approved by the State Board.
- (2) The chair, member, officer, or employee of the board of elections shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, in accordance with the terms of G.S. 163-229(b), the absentee voter's name, the absentee voter's application number, and the designation of the precinct in which the voter is registered. If the ballot is barcoded under this section, the envelope may be barcoded rather than having the actual number appear. The person placing the ballots in the envelopes shall leave the container-return envelope holding the ballots unsealed.
- (3) The chair, member, officer, or employee of the board of elections shall then place the unsealed container-return envelope holding the ballots together with printed instructions for voting and returning the ballots, in an envelope addressed to the voter at the post office address stated in the request, seal the envelope, and mail it at the expense of the county board of elections: Provided, that in case of a request received after 5:00 P.M. on the Tuesday before the election under the provisions of subsection (b) of this section, in lieu of transmitting the ballots to the voter in person or by mail, the chair, member, officer, or employee of the board of elections may deliver the sealed envelope containing the instruction sheet and the container-return envelope holding the ballots to a near relative or verifiable legal guardian of the voter.

The county board of elections may receive completed written request forms for applications at any time prior to the election but shall not mail applications and ballots to the voter or issue applications and ballots in person earlier than 60 days prior to the statewide general election in an even-numbered year, or earlier than 50 days prior to any other election. No election official shall issue applications for absentee ballots except in compliance with this Article.

(d) Voter to Complete. – The application shall be completed and signed by the voter personally, the ballots marked, the ballots sealed in the container-return envelope, and the certificate completed as provided in G.S. 163-231.

(e) Approval of Applications. – At its next official meeting after return of the completed container-return envelope with the voter's ballots, the county board of elections shall determine whether the container-return envelope has been properly executed. If the board determines that the container-return envelope has been properly executed, it shall approve the application and deposit the container-return envelope with other container-return envelopes for the envelope to be opened and the ballots counted at the same time as all other container-return envelopes and absentee ballots.

If a container-return envelope contains a curable deficiency, the county board of elections shall promptly notify the voter of the deficiency and the manner in which the voter may cure the deficiency. Curable deficiencies are deficiencies that can be cured with supplemental documentation or attestation provided by the voter, including when any of the following occurs:

- (1) The voter did not sign the voter certification as required by G.S. 163-231(a)(4).
- (2) The voter signed the application in the wrong place on the application.
- (3) The voter failed to include with the container-return envelope a photocopy of identification described in G.S. 163-166.16(a) or an affidavit as described in G.S. 163-166.16(d)(1), (d)(2), or (d)(3), as required by subsection (f1) of this section.

The identification of the two persons witnessing the casting of the absentee ballot in accordance with G.S. 163-231(a) is not a curable deficiency. Any container-return envelope with a curable deficiency that is transmitted to the county board shall be considered timely if cure documentation is received no later than the end of business on the business day before the canvass conducted by the county board of elections held pursuant to G.S. 163-182.5. Cure documentation may be transmitted via e-mail to the county board of elections if the deficiency is one described in subdivision (3) of this subsection. The notification of voters regarding curable deficiencies is an administrative task that may be performed by county board staff and is not required to be performed at an absentee meeting as provided for in subsection (f) of this section. The voter shall be notified of curable deficiencies by mail, and by telephone or email if the telephone number or email address was provided by the voter on the request form for absentee ballots.

(f) Required Meeting of County Board of Elections. – During the period commencing on the fifth Tuesday before an election, in which absentee ballots are authorized, the county board of elections shall hold one or more public meetings each Tuesday at 5:00 P.M. for the purpose of action on applications for absentee ballots. At these meetings, the county board of elections shall pass upon applications for absentee ballots.

If the county board of elections changes the time of holding its meetings or provides for additional meetings in accordance with the terms of this subsection, notice of the change in hour and notice of the schedule of additional meetings, if any, shall be published in a newspaper circulated in the county at least 30 days prior to the election.

At the time the county board of elections makes its decision on an application for absentee ballots, the board shall enter in the appropriate column in the register of absentee requests, applications, and ballots issued opposite the name of the applicant a notation of whether the applicant's application was "Approved" or "Disapproved".

The decision of the board on the validity of an application for absentee ballots shall be final subject only to such review as may be necessary in the event of an election contest. The county board of elections shall constitute the proper official body to pass upon the validity of all applications for absentee ballots received in the county; this function shall not be performed by the chair or any other member of the board individually.

(f1) Each container-return envelope returned to the county board with application and voted ballots under this section shall be accompanied by a photocopy of identification described in G.S. 163-166.16(a) or an affidavit as described in G.S. 163-166.16(d)(1), (d)(2), or (d)(3).

(g) Rules. – The State Board, by rule or by instruction to the county board of elections, shall establish procedures to provide appropriate safeguards in the implementation of this section. The State Board shall adopt rules to provide for the forms of identification that shall be included with returned application and voted ballots. At a minimum, the rules shall include the following:

- (1) Acceptable photocopies of forms of readable identification, as described in G.S. 163-166.16(a).

- (2) A process for a voter without acceptable photocopies of forms of readable identification under subdivision (1) of this subsection to complete an alternative affidavit in accordance with G.S. 163-166.16(d)(1), (d)(2), or (d)(3) that includes inability to attach a physical copy of the voter's identification with the returned application and voted ballots as a reasonable impediment to compliance with the identification requirement, provided the reasonable impediment includes one of the following:
- a. The number of the voter's North Carolina drivers license issued under Article 2 of Chapter 20 of the General Statutes, including a learner's permit or a provisional license.
 - b. The number of the voter's special identification card for nonoperators issued under G.S. 20-37.7.
 - c. The last four digits of the voter's social security number.

(h) Recodified as G.S. 163-226(f) by Session Laws 2019-239, s. 1.2(a), effective January 1, 2020, and applicable to elections conducted on or after that date. (1983, c. 304, s. 1; 1985, c. 759, ss. 5.1-5.5; 1991, c. 727, s. 6.3; 1993, c. 553, s. 67; 1995, c. 243, s. 1; 1999-455, s. 10; 2001-337, s. 3; 2002-159, s. 55(m); 2009-537, s. 5; 2013-381, s. 4.2; 2017-6, s. 3; 2018-144, s. 3.4(i); 2018-146, s. 3.1(a), (b); 2019-239, s. 1.2(a), (b); 2020-17, s. 4; 2023-139, s. 6.5; 2023-140, s. 35.)

§ 163-231. Voting absentee ballots and transmitting them to the county board of elections.

(a) Procedure for Voting Absentee Ballots. – In the presence of two persons who are at least 18 years of age, and who are not disqualified by G.S. 163-226.3(a)(4) or G.S. 163-237(c), the voter shall do all of the following:

- (1) Mark the voter's ballots, or cause them to be marked by that person in the voter's presence according to the voter's instruction.
- (2) Fold each ballot separately, or cause each of them to be folded in the voter's presence.
- (3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in the voter's presence.
- (4) Make the application printed on the container-return envelope according to the provisions of G.S. 163-229(b) and make the certificate printed on the container-return envelope according to the provisions of G.S. 163-229(b).
- (5) Require those two persons in whose presence the voter marked that voter's ballots to sign and print their names on the application and certificate as witnesses and to indicate those persons' addresses. Failure to list a ZIP code does not invalidate the application and certificate. Failure to include a printed witness name does not invalidate the application and certificate if the identity of an individual can solely be ascertained by the witness's signature.
- (6) Do one of the following:
 - a. Have the application notarized. The notary public may be the person in whose presence the voter marked that voter's ballot.
 - b. Have the two persons in whose presence the voter marked that voter's ballots to certify that the voter is the registered voter submitting the marked ballots.

Alternatively to the prior paragraph of this subsection, any requirement for two witnesses shall be satisfied if witnessed by one notary public, who shall comply with all the other requirements of that paragraph. The notary shall affix a valid notarial seal to the envelope, and include the word "Notary Public" below his or her signature.

The persons in whose presence the ballot is marked shall at all times respect the secrecy of the ballot and the privacy of the absentee voter, unless the voter requests assistance and that person is otherwise authorized by law to give assistance. When thus executed, the sealed container-return envelope, with the ballots enclosed, shall be transmitted in accordance with the provisions of subsection (b) of this section to the county board of elections which issued the ballots.

(b) Transmitting Executed Absentee Ballots to County Board of Elections. – The sealed container-return envelope in which executed absentee ballots have been placed shall be transmitted to the county board of elections who issued those ballots as follows:

- (1) All ballots issued under the provisions of this Article and Article 21A of this Chapter shall be transmitted by one of the following means:
 - a. Mail or commercial courier service, at the voter's expense, and received by the county board not later than 7:30 P.M. on the day of the statewide primary or general election or county bond election.
 - b. Delivered in person, by the voter or the voter's near relative or verifiable legal guardian, to the county board not later than 7:30 P.M. on the day of the statewide primary or general election or county bond election.
 - c. Electronically transmitted to the county board, if the ballot was issued under the provisions of Article 21A of this Chapter.
- (2) If ballots are received later than the hour stated in subdivision (1) of this subsection, those ballots shall not be accepted unless required by federal law

or the ballots are received in accordance with Article 21A of this Chapter or the State Board or court order extended the closing time of the polls for every poll in the county in accordance with G.S. 163-166.25. If the State Board or court order so extended the closing time of the polls, the ballots shall be received by the closing time as extended by the State Board or court order in order to be counted.

(c) Delivering Executed Absentee Ballots in Person. – For purposes of this section, "Delivered in person" includes physically handing the voted absentee ballot to an election official at an early voting site under Part 5 of Article 14A of this Chapter during any time that early voting site is open for voting, but does not include depositing the voted absentee ballot in a drop box or other location designated for the return of voted absentee ballots. The voted absentee ballots delivered to the early voting site shall be kept securely and delivered by election officials at that early voting site to the county board of elections office for processing. (1939, c. 159, ss. 2, 5; 1941, c. 248; 1943, c. 736; c. 751, s. 1; 1945, c. 758, s. 5; 1963, c. 457, ss. 2, 5; 1967, c. 775, s. 1; 1971, c. 1247, s. 3; 1973, c. 536, s. 1; 1977, c. 469, s. 1; 1979, c. 799, s. 5; 1985, c. 562, ss. 1, 2; 1987, c. 583, ss. 1, 2; 1989 (Reg. Sess., 1990), c. 991, s. 4; 1999-455, s. 11; 2009-537, ss. 6, 8(a); 2011-182, s. 5; 2013-381, s. 4.4; 2014-111, s. 11; 2017-6, s. 3; 2018-144, s. 3.4(j); 2018-146, ss. 3.1(a), (b), 4.8; 2023-140, s. 35.)

§ 163-239. Article 21A relating to absentee voting by military and overseas voters not applicable.

Except as otherwise provided therein, Article 21A of this Chapter shall not apply to or modify the provisions of this Article. (1963, c. 457, s. 11; 1967, c. 775, s. 1; 1977, c. 469, s. 1; 2011-182, s. 8; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

Article 21A.

Uniform Military and Overseas Voters Act.

Part 1. Uniform Military and Overseas Voters Act.

§ 163-258.1. Short title.

This Article may be cited as the Uniform Military and Overseas Voters Act. (2011-182, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-258.2. Definitions.

As used in this Article:

- (1) "Covered voter" means any of the following:
 - a. A uniformed-service voter or an overseas voter who is registered to vote in this State.
 - b. A uniformed-service voter defined in subdivision (7) of this section whose voting residence is in this State and who otherwise satisfies this State's voter eligibility requirements.
 - c. An overseas voter who, before leaving the United States, was last eligible to vote in this State and, except for a State residency requirement, otherwise satisfies this State's voter eligibility requirements.
 - d. An overseas voter who, before leaving the United States, would have been last eligible to vote in this State had the voter then been of voting age and, except for a State residency requirement, otherwise satisfies this State's voter eligibility requirements.
 - e. An overseas voter who was born outside the United States, is not described in sub-subdivision c. or d. of this subdivision, and, except for a State residency requirement, otherwise satisfies this State's voter eligibility requirements, if:
 1. The last place where a parent or legal guardian of the voter was, or under this Article would have been, eligible to vote before leaving the United States is within this State; and
 2. The voter has not previously registered to vote in any other state.
- (2) "Dependent" means an individual recognized as a dependent by a uniformed service.
- (3) "Military-overseas ballot" means any of the following:
 - a. A federal write-in absentee ballot described in the Uniformed and Overseas Citizens Absentee Voting Act, section 103, 42 U.S.C. § 1973ff-2.
 - b. A ballot specifically prepared or distributed for use by a covered voter in accordance with this Article.
 - c. A ballot cast by a covered voter in accordance with this Article.
- (4) "Overseas voter" means a United States citizen who is outside the United States.
- (5) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (6) "Uniformed service" means any of the following:

- a. Active and reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard of the United States.
 - b. The Merchant Marine, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration of the United States.
 - c. The National Guard and state militia units.
- (7) "Uniformed-service voter" means an individual who is qualified to vote and is one of the following:
- a. A member of the active or reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States who is on active duty.
 - b. A member of the Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States.
 - c. A member of the National Guard or State militia unit who is on activated status.
 - d. A spouse or dependent of a member referred to in this subdivision.
- (8) "United States," used in the territorial sense, means the several states, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States. (2011-182, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-258.3. Elections covered.

The voting procedures in this Article apply to all of the following:

- (1) A primary, general, or special election for federal or State office.
- (2) A State ballot measure.
- (3) A primary, general, special, or runoff election for local government office or a local ballot measure if absentee balloting is allowed under Article 20 of this Chapter. (2011-182, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-258.4. Role of State Board of Elections.

(a) The State Board of Elections is the State official responsible for implementing this Article and the State's responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. § 1973ff, et seq.

(b) The State Board of Elections shall make available to covered voters information regarding voter registration procedures for covered voters and procedures for casting military-overseas ballots. The State Board of Elections may delegate the responsibility under this subsection only to the State office designated in compliance with the Uniformed and Overseas Citizens Absentee Voting Act, section 102(b)(1), 42 U.S.C. § 1973ff-1(b)(1).

(c) The State Board of Elections shall establish an electronic transmission system through which covered voters may apply for and receive voter registration materials, military-overseas ballots, and other information under this Article.

(d) The State Board of Elections shall develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized

to vote in any jurisdiction in this State, and, to the extent reasonably possible, shall do so in coordination with other states.

(e) The State Board of Elections shall prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of an overseas-military ballot. The declaration shall be based on the declaration prescribed to accompany a federal write-in absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act, section 103, 42 U.S.C. § 1973ff-2, as modified to be consistent with this Article. The State Board of Elections shall ensure that a form for the execution of the declaration, including an indication of the date of execution of the declaration, is a prominent part of all balloting materials for which the declaration is required. (2011-182, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-258.5. Overseas voter's registration address.

In registering to vote, an overseas voter who is eligible to vote in this State shall use and shall be assigned to the precinct of the address of the last place of residence of the voter in this State, or, in the case of a voter described by G.S. 163-258.2(1)e., the address of the last place of residence in this State of the parent or legal guardian of the voter. If that address is no longer a recognized residential address, the voter shall be assigned an address for voting purposes. (2011-182, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-258.6. Methods of registering to vote.

(a) In addition to any other approved method for registering to vote, a covered voter may use a federal postcard application, as prescribed under the Uniformed and Overseas Citizens Absentee Voting Act, section 101(b)(2), 42 U.S.C. § 1973ff(b)(2), or the application's electronic equivalent, to apply to register to vote.

(b) A covered voter may use the declaration accompanying the federal write-in absentee ballot, as prescribed under the Uniformed and Overseas Citizens Absentee Voting Act, section 103, 42 U.S.C. § 1973ff-2, to apply to register to vote simultaneously with the submission of the federal write-in absentee ballot.

(c) The State Board of Elections shall ensure that the electronic transmission system described in G.S. 163-258.4(c) is capable of accepting both a federal postcard application and any other approved electronic registration application sent to the appropriate election official. The voter may use the electronic transmission system or any other approved method to register to vote.

(d) A covered voter's registration to vote by any method authorized by this section may be received at any time prior to the primary or election, but no later than 5:00 P.M. on the day before the primary or election. (2011-182, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-258.7. Methods of applying for military-overseas ballot.

(a) A covered voter who is registered to vote in this State may apply for a military-overseas ballot using either the regular application provided by Article 20 of this Chapter or the federal postcard application, as prescribed under the Uniformed and Overseas Citizens Absentee Voting Act, section 101(b)(2), 42 U.S.C. § 1973ff(b)(2), or the application's electronic equivalent.

(b) A covered voter who is not registered to vote in this State may use the federal postcard application or the application's electronic equivalent simultaneously to apply to register to vote under G.S. 163-258.6 and to apply for a military-overseas ballot.

(c) The State Board of Elections shall ensure that the electronic transmission system described in G.S. 163-258.4(c) is capable of accepting the submission of both a federal postcard application and any other approved electronic military-overseas ballot application sent to the appropriate election official. The voter may use the electronic transmission system or any other approved method to apply for a military-overseas ballot.

(d) A covered voter may use the declaration accompanying the federal write-in absentee ballot, as prescribed under the Uniformed and Overseas Citizens Absentee Voting Act, section 103, 42 U.S.C. § 1973ff-2, as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate election official no later than 5:00 P.M. on the day before the election.

(e) To receive the benefits of this Article, a covered voter shall inform the appropriate election official that the voter is a covered voter. Methods of informing the appropriate election official that a voter is a covered voter include any of the following:

- (1) The use of a federal postcard application or federal write-in absentee ballot.
- (2) The use of an overseas address on an approved voter registration application or ballot application.
- (3) The inclusion on an approved voter registration application or ballot application of other information sufficient to identify the voter as a covered voter.

(f) This Article does not preclude a covered voter from voting an absentee ballot under Article 20 of this Chapter. (2011-182, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-258.8. Timeliness and scope of application for military-overseas ballot.

An application for a military-overseas ballot is timely if received by the appropriate election official by 5:00 P.M. of the day before the election or primary. An application from a covered voter for a military-overseas ballot shall be considered a valid absentee ballot request for any election covered under G.S. 163-258.3 held during the calendar year in which the application was received. (2011-182, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-258.9. Transmission of unvoted ballots.

(a) Not later than 60 days before the statewide general election in even-numbered years and not later than 50 days before any other election, the county board of elections shall transmit a ballot and balloting materials to all covered voters who by that date submit a valid military-overseas ballot application, except for a second primary. Provided, in a presidential election year, the board of elections shall provide general election ballots no later than three days after nomination of the presidential and vice presidential candidates if that nomination occurs later than 63 days prior to the statewide general election and makes compliance with the 60-day deadline impossible. However, in the case of municipal elections, absentee ballots shall be made available no later than 30 days before an election. For a second primary which includes a candidate for federal office, the county board of elections shall transmit a ballot and balloting material to all covered voters who by that date submit a valid military-overseas ballot application no later than 45 days before the second primary. For a second primary which does not include a candidate for federal office, the transmission of the ballot and ballot materials shall be as soon as practicable and shall be transmitted electronically no later than three business days and by mail no later than 15 days from the date the appropriate board of elections orders that the second primary be held pursuant to G.S. 163-111. If additional offices are added to the ballot to fill a vacancy occurring

after the deadline provided by this subsection, those ballots shall be transmitted as soon as practicable.

(b) A covered voter who requests that a ballot and balloting materials be sent to the voter by electronic transmission may choose facsimile transmission or electronic mail delivery, or, if offered by the voter's jurisdiction, Internet delivery. The election official in each jurisdiction charged with distributing a ballot and balloting materials shall transmit the ballot and balloting materials to the voter using the means of transmission chosen by the voter.

(c) If a ballot application from a covered voter arrives after the jurisdiction begins transmitting ballots and balloting materials to voters, the official charged with distributing a ballot and balloting materials shall transmit them to the voter not later than two business days after the application arrives. (2011-182, s. 1; 2013-381, s. 17(b); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-258.10. Timely casting of ballot.

To be valid, a military-overseas ballot shall either be received by the appropriate county board of elections no later than the close of the polls, or the covered voter shall submit the ballot for mailing, electronic transmission, or other authorized means of delivery not later than 12:01 A.M., at the place where the voter completes the ballot, on the date of the election. (2011-182, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-258.11. Federal write-in absentee ballot.

A covered voter may use the federal write-in absentee ballot, in accordance with the Uniformed and Overseas Citizens Absentee Voting Act, section 103, 42 U.S.C. § 1973ff-2, to vote for all offices and ballot measures in a covered election. (2011-182, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-258.12. Receipt of voted ballot.

(a) A valid military-overseas ballot cast in accordance with G.S. 163-258.10 shall be counted if it is delivered to the address that the appropriate State or local election office has specified by the end of business on the business day before the canvass conducted by the county board of elections held pursuant to G.S. 163-182.5 to determine the final official results.

(b) If the ballot is timely received, it may not be rejected on the basis that it has a late postmark, an unreadable postmark, or no postmark. (2011-182, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-258.13. Declaration.

Each military-overseas ballot shall include or be accompanied by a declaration signed by the voter declaring that a material misstatement of fact in completing the document may be grounds for a conviction of perjury under the laws of the United States or this State. (2011-182, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-258.14. Confirmation of receipt of application and voted ballot.

The State Board of Elections, in coordination with local election officials, shall implement an electronic free access system by which a covered voter may determine by telephone, electronic mail, or Internet whether:

- (1) The voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted; and

- (2) The voter's military-overseas ballot has been received and the current status of the ballot. (2011-182, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-258.15. Use of voter's electronic mail address.

(a) The county board of elections shall request an electronic mail address from each covered voter who registers to vote after January 1, 2012. An electronic mail address provided by a covered voter is not a public record under Chapter 132 of the General Statutes. The address may be used only for official communication with the voter about the voting process, including transmitting military-overseas ballots and election materials if the voter has requested electronic transmission, and verifying the voter's mailing address and physical location, as needed. The request for an electronic mail address shall describe the purposes for which the electronic mail address may be used and include a statement that any other use or disclosure of the electronic mail address is prohibited.

(b) A covered voter who provides an electronic mail address may request that the voter's application for a military-overseas ballot be considered a standing request for electronic delivery of a ballot for all elections held through December 31 of the year following the calendar year of the date of the application or another shorter period the voter specifies, including for any runoff elections that occur as a result of such elections. An election official shall provide a military-overseas ballot to a voter who makes a request for each election to which the request is applicable. A covered voter entitled to receive a military-overseas ballot for a primary election under this subsection is also entitled to receive a military-overseas ballot for the general election. (2011-182, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-258.16. Publication of election notice.

(a) Not later than 100 days before a regularly scheduled election to which this Part applies, and as soon as practicable in the case of an election or vacancy election not regularly scheduled, each county board of elections shall prepare an election notice for that jurisdiction to be used in conjunction with the federal write-in absentee ballot described in G.S. 163-258.11. For a second primary required by G.S. 163-111, the county board of elections shall prepare, no later than the day following the date the appropriate board of elections orders that a second primary be held, an election notice for that jurisdiction to be used in conjunction with the federal write-in absentee ballot. The election notice shall contain a list of all of the ballot measures and federal, State, and local offices that, as of that date, the official expects to be on the ballot on the date of the election. The notice also shall contain specific instructions for how a voter is to indicate on the federal write-in absentee ballot the voter's choice for each office to be filled and for each ballot measure to be contested.

(b) A covered voter may request a copy of an election notice. The official charged with preparing the election notice shall send the notice to the voter by facsimile, electronic mail, or regular mail, as the voter requests.

(c) As soon as ballot styles are printed, the county board of elections shall update the notice with the certified candidates for each office and ballot measure questions and make the updated notice publicly available.

(d) A county board of elections that maintains an Internet Web site shall make updated versions of its election notices regularly available on the Web site. (2011-182, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-258.17. Prohibition of nonessential requirements.

(a) If a voter's mistake or omission in the completion of a document under this Article does not prevent determining whether a covered voter is eligible to vote, the mistake or omission does not invalidate the document. Failure to satisfy a nonessential requirement, such as using paper or envelopes of a specified size or weight, does not invalidate a document submitted under this Article. In any write-in ballot authorized by this Article or in any vote for a write-in candidate on a regular ballot, if the intention of the voter is discernable under this State's uniform definition of what constitutes a vote, as required by the Help America Vote Act, 42 U.S.C. § 15481(a)(6), an abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be accepted as a valid vote.

(b) An authentication, other than the declaration specified in G.S. 163-258.13 or the declaration on the federal postcard application and federal write-in absentee ballot, is not required for execution of a document under this Article. The declaration and any information in the declaration may be compared against information on file to ascertain the validity of the document. (2011-182, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-258.18. Issuance of injunction or other equitable relief.

A court may issue an injunction or grant other equitable relief appropriate to ensure substantial compliance with, or enforce, this Article on application by:

- (1) A covered voter alleging a grievance under this Article; or
- (2) An election official in this State. (2011-182, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-258.19. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. (2011-182, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-258.20. Relation to Electronic Signatures in Global and National Commerce Act.

This Article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. § 7003(b). (2011-182, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-258.21. Reserved for future codification purposes.

§ 163-258.22. Reserved for future codification purposes.

§ 163-258.23. Reserved for future codification purposes.

§ 163-258.24. Reserved for future codification purposes.

§ 163-258.25. Reserved for future codification purposes.

Part 2. Other Military and Overseas Voters Absentee Provisions.

§ 163-258.26. Certified list of approved military-overseas ballot applications; record of ballots received; disposition of list; list constitutes registration.

(a) Preparation of List. – The chair of the county board of elections shall prepare, or cause to be prepared, a list in quadruplicate of all military-overseas ballots returned to the county board of elections under this Article to be counted which have been approved by the county board of elections. At the end of the list the chair shall execute the following certificate under oath:

"State of North Carolina

County of _____

I, _____, Chair of the _____ County Board of Elections, do hereby certify that the foregoing is a list of all executed military-overseas ballots to be voted in the election to be conducted on the _____ day of _____, _____, which have been approved by the County Board of Elections. I further certify that I have issued ballots to no other persons than those listed herein and further that I have not delivered military-overseas ballots to persons other than those listed herein; that this list constitutes the only precinct registration of covered voters whose names have not heretofore been entered on the regular registration of the appropriate precinct.

This the _____ day of _____, _____.

(Signature of Chair of County
Board of Elections)

Sworn to and subscribed before me this _____ day of _____, _____

(Signature of Officer administering oath)

(Title of officer)"

(b) Distribution of List. – No earlier than 3:00 P.M. on the day before the election and no later than 10:00 A.M. on election day, the chair shall cause one copy of the list of executed military-overseas ballots, which may be a continuing countywide list or a separate list for each precinct, to be immediately deposited as first-class mail to the State Board of Elections. The chair shall retain one copy in the board office for public inspection and shall cause two copies of the appropriate precinct list to be delivered to the chief judge of each precinct in the county. The chief judge shall post one copy in the voting place and retain one copy until all challenges of absentee ballots have been heard by the county board of elections. Challenges shall be made as provided in G.S. 163-89.

After receipt of the list of absentee voters required by this section the chief judge shall call the name of each person recorded on the list and enter an "A" in the appropriate voting square on the voter's permanent registration record, if any, or a similar entry on the computer list used at the polls. If such person is already recorded as having voted in that election, the chief judge shall enter a challenge which shall be presented to the chair of the county board of elections for resolution by the board of elections prior to certification of results by the board.

(c) List Constitutes Registration. – The "List of Applicants for Military-Overseas Ballots to Whom Ballots Have Been Issued" prescribed by this section, when delivered to the chief judges of the various precincts, shall constitute the only precinct registration of the covered voters listed thereon whose names are not already entered in the registration records of the appropriate precinct.

Chief judges shall not add the names of persons listed on the covered voters list to the regular registration books of their precincts.

(d) Counting Ballots, Hearing Challenges. – The county board of elections shall count military-overseas ballots as provided for civilian absentee ballots in G.S. 163-234, and shall hear challenges as provided in G.S. 163-89. (1941, c. 346, ss. 7-10, 12, 13; 1943, c. 503, ss. 4, 5; 1963, c. 457, s. 15; 1967, c. 775, s. 1; 1973, c. 536, s. 2; 1977, c. 265, s. 17; 1979, c. 797, s. 3; 1981, c. 155, s. 2; c. 308, s. 3; 1983, c. 331, s. 4; 1993 (Reg. Sess., 1994), c. 762, ss. 56, 57; 1999-456, s. 59; 2011-182, s. 2; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-258.27. Article inapplicable to persons after change of status; reregistration not required.

An individual who no longer qualifies as a covered voter under the provisions of this Article shall not be entitled subsequently to vote by military-overseas ballot under this Article, but if the covered voter was registered under the provisions of this Article that voter's registration shall remain valid for the remainder of the calendar year that voter registered, and that voter shall be entitled to vote in any primary or election for the remainder of the calendar year without having to reregister. If requested by election officials, the voter shall present proof of military status at the time of registration. This section does not entitle a person to vote in North Carolina if that person has become disqualified because of change of permanent residence to another State or because of conviction of a felony. (1943, c. 503, s. 12; 1967, c. 775, s. 1; 1999-424, s. 7(k); 2001-466, s. 4(e); 2011-182, s. 2; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-258.28. Registration and voting on primary or election day.

Notwithstanding any other provisions of this Chapter, an individual shall be permitted to register in person at any time the office of the board of elections or the voting place is open, including the day of a primary or election if that individual was absent on the day the registration records close for an election, but returns to that individual's county of residence in North Carolina thereafter, and if the absence is due to uniformed service as defined by G.S. 163-258.2.

If an individual so absent on the day registration closes shall appear in person at the voting place on election day and is otherwise eligible to vote, that individual shall be entitled to register and vote at the voting place that day, regardless of whether the person's uniformed service status has changed since the close of registration. (1977, c. 93; 1999-424, s. 7(l); 2001-353, s. 3; 2009-281, s. 1; 2011-182, s. 2; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-258.29. Early voting.

Notwithstanding any other provisions of this Chapter, any covered voter under this Article shall be permitted to vote a ballot during early voting pursuant to Part 5 of Article 14A of this Chapter if the covered voter has not already voted an absentee ballot which has been returned to the board of elections, and if the covered voter will not be in the county on the day of the primary or election.

In the event an absentee application or ballot has already been mailed to the covered voter applying to vote during early voting pursuant to Part 5 of Article 14A of this Chapter, the board of elections shall void the application and ballot unless the voted absentee ballot has been received by the board of elections. The covered voter shall be eligible to vote during early voting pursuant to Part 5 of Article 14A of this Chapter no later than 5:00 P.M. on the day next preceding the primary,

second primary or election. (1977, c. 93; 1979, c. 797, s. 4; 2011-182, s. 2; 2017-6, s. 3; 2018-144, s. 3.4(l); 2018-146, s. 3.1(a), (b); 2023-140, s. 36.)

§ 163-258.30. Regulations of State Board of Elections.

(a) The State Board shall adopt rules and regulations to carry out the intent and purpose of G.S. 163-258.28 and G.S. 163-258.29 and to ensure that a proper list of persons voting under said sections shall be maintained by the boards of elections, and to ensure proper registration records.

(b) The State Board shall be the single office responsible for providing information concerning voter registration and absentee voting procedures to be used by covered voters as to all elections and procedures relating to the use of federal write-in absentee ballots. Unless otherwise required by law, the State Board shall be responsible for maintaining contact and cooperation with the Federal Voting Assistance Program, the United States Department of Defense, and other federal entities that deal with military and overseas voting. The State Board shall, as needed, make recommendations concerning military and overseas citizen voting to the General Assembly and other State officials. (1977, c. 93; 1987, c. 827, s. 1; 2003-226, s. 18; 2011-182, s. 2; 2012-194, s. 37; 2017-6, s. 3; 2018-146, s. 3.1(a), (b), 4.5(g); 2023-139, s. 5.6.)

§ 163-258.31. Emergency powers.

If an international, national, or local emergency or other situation arises that makes substantial compliance with this Article or the Uniformed and Overseas Citizens Absentee Voting Act impossible or unreasonable, the State Board of Elections may prescribe, by emergency rule, such special procedures or requirements as may be necessary to facilitate absentee voting by those absent uniformed services voters or overseas voters directly affected who are eligible to vote in this State. The rule shall become effective when filed with the Codifier of Rules. (2009-537, s. 9; 2011-182, s. 2; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

tion in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote, and (2) to enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated. Such persons so assigned shall report to an examiner appointed for such political subdivision, to the Attorney General, and if the appointment of examiners has been authorized pursuant to section 1973a(a) of this title, to the court.”

§ 10306. Poll taxes

(a) Congressional finding and declaration of policy against enforced payment of poll taxes as a device to impair voting rights

The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.

(b) Authority of Attorney General to institute actions for relief against enforcement of poll tax requirement

In the exercise of the powers of Congress under section 5 of the fourteenth amendment, section 2 of the fifteenth amendment and section 2 of the twenty-fourth amendment, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting, or substitute therefor enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) and the purposes of this section.

(c) Jurisdiction of three-judge district courts; appeal to Supreme Court

The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

(Pub. L. 89-110, title I, §10, Aug. 6, 1965, 79 Stat. 442; renumbered title I, Pub. L. 91-285, §2, June 22, 1970, 84 Stat. 314; amended Pub. L. 94-73, title IV, §408, Aug. 6, 1975, 89 Stat. 405.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 1973h of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

1975—Subsec. (b). Pub. L. 94-73, §408(2), (3), inserted reference to section 2 of twenty-fourth amendment.

Subsec. (d). Pub. L. 94-73, §408(1), struck out subsec. (d) which related to post-payment of poll taxes in event of a judicial declaration of constitutionality.

§ 10307. Prohibited acts

(a) Failure or refusal to permit casting or tabulation of vote

No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of chapters 103 to 107 of this title or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person’s vote.

(b) Intimidation, threats, or coercion

No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 10302(a), 10305, 10306, or 10308(e) of this title or section 1973d or 1973g of title 42.¹

(c) False information in registering or voting; penalties

Whoever knowingly or willfully gives false information as to his name, address or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than \$10,000 or imprisoned not more than five years, or both: *Provided, however,* That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

(d) Falsification or concealment of material facts or giving of false statements in matters within jurisdiction of examiners or hearing officers; penalties

Whoever, in any matter within the jurisdiction of an examiner or hearing officer knowingly and willfully falsifies or conceals a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(e) Voting more than once

(1) Whoever votes more than once in an election referred to in paragraph (2) shall be fined

¹ See References in Text note below.

not more than \$10,000 or imprisoned not more than five years, or both.

(2) The prohibition of this subsection applies with respect to any general, special, or primary election held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

(3) As used in this subsection, the term "votes more than once" does not include the casting of an additional ballot if all prior ballots of that voter were invalidated, nor does it include the voting in two jurisdictions under section 10502 of this title, to the extent two ballots are not cast for an election to the same candidacy or office.

(Pub. L. 89-110, title I, §11, Aug. 6, 1965, 79 Stat. 443; renumbered title I, Pub. L. 91-285, §2, June 22, 1970, 84 Stat. 314; amended Pub. L. 91-405, title II, §204(e), Sept. 22, 1970, 84 Stat. 853; Pub. L. 94-73, title IV, §§404, 409, Aug. 6, 1975, 89 Stat. 404, 405.)

Editorial Notes

REFERENCES IN TEXT

Sections 1973d and 1973g of title 42, referred to in subsec. (b), were repealed by Pub. L. 109-246, §3(c), July 27, 2006, 120 Stat. 580.

CODIFICATION

Section was formerly classified to section 1973i of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

1975—Subsec. (c). Pub. L. 94-73, §404, inserted reference to Guam and Virgin Islands.

Subsec. (e). Pub. L. 94-73, §409, added subsec. (e).

1970—Subsec. (c). Pub. L. 91-405 substituted reference to Delegate from District of Columbia for Delegates or Commissioners from territories or possessions.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91-405, set out as an Effective Date note under section 25a of Title 2, The Congress.

§ 10308. Civil and criminal sanctions

(a) Depriving or attempting to deprive persons of secured rights

Whoever shall deprive or attempt to deprive any person of any right secured by section 10301, 10302, 10303, 10304, or 10306 of this title or shall violate section 10307(a) of this title, shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

(b) Destroying, defacing, mutilating, or altering ballots or official voting records

Whoever, within a year following an election in a political subdivision in which an observer has been assigned (1) destroys, defaces, mutilates, or otherwise alters the marking of a paper ballot which has been cast in such election, or (2) alters any official record of voting in such

election tabulated from a voting machine or otherwise, shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

(c) Conspiring to violate or interfere with secured rights

Whoever conspires to violate the provisions of subsection (a) or (b) of this section, or interferes with any right secured by section 10301, 10302, 10303, 10304, 10306, or 10307(a) of this title shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

(d) Civil action by Attorney General for preventive relief; injunctive and other relief

Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 10301, 10302, 10303, 10304, 10306, or 10307 of this title, section 1973e of title 42,¹ or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (1) to permit persons listed under chapters 103 to 107 of this title to vote and (2) to count such votes.

(e) Proceeding by Attorney General to enforce the counting of ballots of registered and eligible persons who are prevented from voting

Whenever in any political subdivision in which there are observers appointed pursuant to chapters 103 to 107 of this title any persons allege to such an observer within forty-eight hours after the closing of the polls that notwithstanding (1) their listing under chapters 103 to 107 of this title or registration by an appropriate election official and (2) their eligibility to vote, they have not been permitted to vote in such election, the observer shall forthwith notify the Attorney General if such allegations in his opinion appear to be well founded. Upon receipt of such notification, the Attorney General may forthwith file with the district court an application for an order providing for the marking, casting, and counting of the ballots of such persons and requiring the inclusion of their votes in the total vote before the results of such election shall be deemed final and any force or effect given thereto. The district court shall hear and determine such matters immediately after the filing of such application. The remedy provided in this subsection shall not preclude any remedy available under State or Federal law.

(f) Jurisdiction of district courts; exhaustion of administrative or other remedies unnecessary

The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether a person asserting rights under the provisions of chapters 103 to 107 of this title shall have exhausted any administrative or other remedies that may be provided by law.

¹ See References in Text note below.

may be used for any purpose other than voter registration.

(b) Federal Government and private sector co-operation

All departments, agencies, and other entities of the executive branch of the Federal Government shall, to the greatest extent practicable, cooperate with the States in carrying out subsection (a), and all nongovernmental entities are encouraged to do so.

(c) Armed Forces recruitment offices

(1) Each State and the Secretary of Defense shall jointly develop and implement procedures for persons to apply to register to vote at recruitment offices of the Armed Forces of the United States.

(2) A recruitment office of the Armed Forces of the United States shall be considered to be a voter registration agency designated under subsection (a)(2) for all purposes of this chapter.

(d) Transmittal deadline

(1) Subject to paragraph (2), a completed registration application accepted at a voter registration agency shall be transmitted to the appropriate State election official not later than 10 days after the date of acceptance.

(2) If a registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the date of acceptance.

(Pub. L. 103-31, § 7, May 20, 1993, 107 Stat. 80.)

CODIFICATION

Section was formerly classified to section 1973gg-5 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

EX. ORD. NO. 12926. IMPLEMENTATION OF NATIONAL VOTER REGISTRATION ACT OF 1993

Ex. Ord. No. 12926, Sept. 12, 1994, 59 F.R. 47227, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to ensure, as required by section 7(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg [sic] [52 U.S.C. 20506(b)] (“the Act”), that departments, agencies, and other entities of the executive branch of the Federal Government cooperate with the States in carrying out the Act’s requirements, it is hereby ordered as follows:

SECTION 1. *Assistance to States.* To the greatest extent practicable, departments, agencies, and other entities of the executive branch of the Federal Government that provide, in whole or in part, funding, grants, or assistance for, or with respect to the administration of, any program of public assistance or services to persons with disabilities within the meaning of section 7(a) of the Act shall: (a) provide, to State agencies administering any such program, guidance for the implementation of the requirements of section 7 of the Act, including guidance for use and distribution of voter registration forms in connection with applications for service;

(b) assist each such State agency administering any such program with the costs of implementation of the Act [52 U.S.C. 20501 et seq.], consistent with legal authority and the availability of funds, and promptly indicate to each State agency the extent to which such assistance will be made available; and

(c) designate an office or staff to be available to provide technical assistance to such State agencies.

SEC. 2. *Armed Forces Recruitment Offices.* The Secretary of Defense is directed to work with the appropriate State elections authorities in each State to develop procedures for persons to apply to register to vote at Armed Forces recruitment offices as required by section 7(c) of the Act.

SEC. 3. *Acceptance of Designation.* To the greatest extent practicable, departments, agencies, or other entities of the executive branch of the Federal Government, if requested to be designated as a voter registration agency pursuant to section 7(a)(3)(B)(ii) of the Act, shall: (a) agree to such a designation if agreement is consistent with the department’s, agency’s, or entity’s legal authority and availability of funds; and

(b) ensure that all of its offices that are located in a particular State will have available to the public at least one of the national voter registration forms that are required under the Act to be available in that State.

WILLIAM J. CLINTON.

§ 20507. Requirements with respect to administration of voter registration

(a) In general

In the administration of voter registration for elections for Federal office, each State shall—

(1) ensure that any eligible applicant is registered to vote in an election—

(A) in the case of registration with a motor vehicle application under section 20504 of this title, if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(B) in the case of registration by mail under section 20505 of this title, if the valid voter registration form of the applicant is postmarked not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(C) in the case of registration at a voter registration agency, if the valid voter registration form of the applicant is accepted at the voter registration agency not later than the lesser of 30 days, or the period provided by State law, before the date of the election; and

(D) in any other case, if the valid voter registration form of the applicant is received by the appropriate State election official not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(2) require the appropriate State election official to send notice to each applicant of the disposition of the application;

(3) provide that the name of a registrant may not be removed from the official list of eligible voters except—

- (A) at the request of the registrant;
- (B) as provided by State law, by reason of criminal conviction or mental incapacity; or
- (C) as provided under paragraph (4);

(4) conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of—

- (A) the death of the registrant; or
- (B) a change in the residence of the registrant, in accordance with subsections (b), (c), and (d);

(5) inform applicants under sections 20504, 20505, and 20506 of this title of—

(A) voter eligibility requirements; and

(B) penalties provided by law for submission of a false voter registration application; and

(6) ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public.

(b) Confirmation of voter registration

Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office—

(1) shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.) [now 52 U.S.C. 10301 et seq.]; and

(2) shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote, except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters if the individual—

(A) has not either notified the applicable registrar (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar; and then

(B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office.

(c) Voter removal programs

(1) A State may meet the requirement of subsection (a)(4) by establishing a program under which—

(A) change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed; and

(B) if it appears from information provided by the Postal Service that—

(i) a registrant has moved to a different residence address in the same registrar's jurisdiction in which the registrant is currently registered, the registrar changes the registration records to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or

(ii) the registrant has moved to a different residence address not in the same registrar's jurisdiction, the registrar uses the notice procedure described in subsection (d)(2) to confirm the change of address.

(2)(A) A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.

(B) Subparagraph (A) shall not be construed to preclude—

(i) the removal of names from official lists of voters on a basis described in paragraph (3)(A) or (B) or (4)(A) of subsection (a); or

(ii) correction of registration records pursuant to this chapter.

(d) Removal of names from voting rolls

(1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant—

(A) confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered; or

(B)(i) has failed to respond to a notice described in paragraph (2); and

(ii) has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

(2) A notice is described in this paragraph if it is a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address, together with a notice to the following effect:

(A) If the registrant did not change his or her residence, or changed residence but remained in the registrar's jurisdiction, the registrant should return the card not later than the time provided for mail registration under subsection (a)(1)(B). If the card is not returned, affirmation or confirmation of the registrant's address may be required before the registrant is permitted to vote in a Federal election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice, and if the registrant does not vote in an election during that period the registrant's name will be removed from the list of eligible voters.

(B) If the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered, information concerning how the registrant can continue to be eligible to vote.

(3) A voting registrar shall correct an official list of eligible voters in elections for Federal office in accordance with change of residence information obtained in conformance with this subsection.

(e) Procedure for voting following failure to return card

(1) A registrant who has moved from an address in the area covered by a polling place to an address in the same area shall, notwithstanding failure to notify the registrar of the change of address prior to the date of an election, be permitted to vote at that polling place upon oral or written affirmation by the registrant of the change of address before an election official at that polling place.

(2)(A) A registrant who has moved from an address in the area covered by one polling place to an address in an area covered by a second polling place within the same registrar’s jurisdiction and the same congressional district and who has failed to notify the registrar of the change of address prior to the date of an election, at the option of the registrant—

(i) shall be permitted to correct the voting records and vote at the registrant’s former polling place, upon oral or written affirmation by the registrant of the new address before an election official at that polling place; or

(ii)(I) shall be permitted to correct the voting records and vote at a central location within the same registrar’s jurisdiction designated by the registrar where a list of eligible voters is maintained, upon written affirmation by the registrant of the new address on a standard form provided by the registrar at the central location; or

(II) shall be permitted to correct the voting records for purposes of voting in future elections at the appropriate polling place for the current address and, if permitted by State law, shall be permitted to vote in the present election, upon confirmation by the registrant of the new address by such means as are required by law.

(B) If State law permits the registrant to vote in the current election upon oral or written affirmation by the registrant of the new address at a polling place described in subparagraph (A)(i) or (A)(ii)(II), voting at the other locations described in subparagraph (A) need not be provided as options.

(3) If the registration records indicate that a registrant has moved from an address in the area covered by a polling place, the registrant shall, upon oral or written affirmation by the registrant before an election official at that polling place that the registrant continues to reside at the address previously made known to the registrar, be permitted to vote at that polling place.

(f) Change of voting address within a jurisdiction

In the case of a change of address, for voting purposes, of a registrant to another address within the same registrar’s jurisdiction, the registrar shall correct the voting registration list accordingly, and the registrant’s name may not be removed from the official list of eligible voters by reason of such a change of address except as provided in subsection (d).

(g) Conviction in Federal court

(1) On the conviction of a person of a felony in a district court of the United States, the United States attorney shall give written notice of the conviction to the chief State election official designated under section 20509 of this title of the State of the person’s residence.

(2) A notice given pursuant to paragraph (1) shall include—

- (A) the name of the offender;
- (B) the offender’s age and residence address;
- (C) the date of entry of the judgment;
- (D) a description of the offenses of which the offender was convicted; and

(E) the sentence imposed by the court.

(3) On request of the chief State election official of a State or other State official with responsibility for determining the effect that a conviction may have on an offender’s qualification to vote, the United States attorney shall provide such additional information as the United States attorney may have concerning the offender and the offense of which the offender was convicted.

(4) If a conviction of which notice was given pursuant to paragraph (1) is overturned, the United States attorney shall give the official to whom the notice was given written notice of the vacation of the judgment.

(5) The chief State election official shall notify the voter registration officials of the local jurisdiction in which an offender resides of the information received under this subsection.

(h) Omitted

(i) Public disclosure of voter registration activities

(1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

(2) The records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made.

(j) “Registrar’s jurisdiction” defined

For the purposes of this section, the term “registrar’s jurisdiction” means—

- (1) an incorporated city, town, borough, or other form of municipality;
- (2) if voter registration is maintained by a county, parish, or other unit of government that governs a larger geographic area than a municipality, the geographic area governed by that unit of government; or
- (3) if voter registration is maintained on a consolidated basis for more than one municipality or other unit of government by an office that performs all of the functions of a voting registrar, the geographic area of the consolidated municipalities or other geographic units.

(Pub. L. 103-31, § 8, May 20, 1993, 107 Stat. 82; Pub. L. 107-252, title IX, § 903, Oct. 29, 2002, 116 Stat. 1728.)

REFERENCES IN TEXT

The Voting Rights Act of 1965, referred to in subsec. (b)(1), is Pub. L. 89-110, Aug. 6, 1965, 79 Stat. 437, which is classified generally to chapters 103 (§10301 et seq.), 105 (§10501 et seq.), and 107 (§10701 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 1973gg-6 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

Section is comprised of section 8 of Pub. L. 103-31. Subsec. (h) of section 8 of Pub. L. 103-31 enacted section 3629 of Title 39, Postal Service, and amended sections 2401 and 3627 of Title 39.

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107-252 inserted before period at end “, except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters if the individual—

“(A) has not either notified the applicable registrar (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar; and then

“(B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office”.

§ 20508. Federal coordination and regulations

(a) In general

The Election Assistance Commission—

(1) in consultation with the chief election officers of the States, shall prescribe such regulations as are necessary to carry out paragraphs (2) and (3);

(2) in consultation with the chief election officers of the States, shall develop a mail voter registration application form for elections for Federal office;

(3) not later than June 30 of each odd-numbered year, shall submit to the Congress a report assessing the impact of this chapter on the administration of elections for Federal office during the preceding 2-year period and including recommendations for improvements in Federal and State procedures, forms, and other matters affected by this chapter; and

(4) shall provide information to the States with respect to the responsibilities of the States under this chapter.

(b) Contents of mail voter registration form

The mail voter registration form developed under subsection (a)(2)—

(1) may require only such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant), as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;

(2) shall include a statement that—

(A) specifies each eligibility requirement (including citizenship);

(B) contains an attestation that the applicant meets each such requirement; and

(C) requires the signature of the applicant, under penalty of perjury;

(3) may not include any requirement for notarization or other formal authentication; and

(4) shall include, in print that is identical to that used in the attestation portion of the application—

(i) the information required in section 20507(a)(5)(A) and (B) of this title;

(ii) a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(iii) a statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(Pub. L. 103-31, § 9, May 20, 1993, 107 Stat. 87; Pub. L. 107-252, title VIII, § 802(b), Oct. 29, 2002, 116 Stat. 1726.)

CODIFICATION

Section was formerly classified to section 1973gg-7 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-252 substituted “Election Assistance Commission” for “Federal Election Commission” in introductory provisions.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-252 effective upon appointment of all members of the Election Assistance Commission under section 20923 of this title, see section 21134(a) of this title.

§ 20509. Designation of chief State election official

Each State shall designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities under this chapter.

(Pub. L. 103-31, § 10, May 20, 1993, 107 Stat. 87.)

CODIFICATION

Section was formerly classified to section 1973gg-8 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

§ 20510. Civil enforcement and private right of action

(a) Attorney General

The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as is necessary to carry out this chapter.

(b) Private right of action

(1) A person who is aggrieved by a violation of this chapter may provide written notice of the violation to the chief election official of the State involved.

(2) If the violation is not corrected within 90 days after receipt of a notice under paragraph (1), or within 20 days after receipt of the notice if the violation occurred within 120 days before the date of an election for Federal office, the aggrieved person may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.

(3) If the violation occurred within 30 days before the date of an election for Federal office, the aggrieved person need not provide notice to the chief election official of the State under paragraph (1) before bringing a civil action under paragraph (2).

(c) Attorney’s fees

In a civil action under this section, the court may allow the prevailing party (other than the

(2) Voting information defined

In this section, the term “voting information” means—

- (A) a sample version of the ballot that will be used for that election;
- (B) information regarding the date of the election and the hours during which polling places will be open;
- (C) instructions on how to vote, including how to cast a vote and how to cast a provisional ballot;
- (D) instructions for mail-in registrants and first-time voters under section 21083(b) of this title;
- (E) general information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and
- (F) general information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.

(c) Voters who vote after the polls close

Any individual who votes in an election for Federal office as a result of a Federal or State court order or any other order extending the time established for closing the polls by a State law in effect 10 days before the date of that election may only vote in that election by casting a provisional ballot under subsection (a). Any such ballot cast under the preceding sentence shall be separated and held apart from other provisional ballots cast by those not affected by the order.

(d) Effective date for provisional voting and voting information

Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2004.

(Pub. L. 107-252, title III, §302, Oct. 29, 2002, 116 Stat. 1706.)

CODIFICATION

Section was formerly classified to section 15482 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

§ 21083. Computerized statewide voter registration list requirements and requirements for voters who register by mail

(a) Computerized statewide voter registration list requirements

(1) Implementation

(A) In general

Except as provided in subparagraph (B), each State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State (in this

subsection referred to as the “computerized list”), and includes the following:

- (i) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.
- (ii) The computerized list contains the name and registration information of every legally registered voter in the State.
- (iii) Under the computerized list, a unique identifier is assigned to each legally registered voter in the State.
- (iv) The computerized list shall be coordinated with other agency databases within the State.
- (v) Any election official in the State, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.
- (vi) All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.
- (vii) The chief State election official shall provide such support as may be required so that local election officials are able to enter information as described in clause (vi).
- (viii) The computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State.

(B) Exception

The requirement under subparagraph (A) shall not apply to a State in which, under a State law in effect continuously on and after October 29, 2002, there is no voter registration requirement for individuals in the State with respect to elections for Federal office.

(2) Computerized list maintenance

(A) In general

The appropriate State or local election official shall perform list maintenance with respect to the computerized list on a regular basis as follows:

- (i) If an individual is to be removed from the computerized list, such individual shall be removed in accordance with the provisions of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.) [now 52 U.S.C. 20501 et seq.], including subsections (a)(4), (c)(2), (d), and (e) of section 8 of such Act (42 U.S.C. 1973gg-6) [now 52 U.S.C. 20507].
- (ii) For purposes of removing names of ineligible voters from the official list of eligible voters—
 - (I) under section 8(a)(3)(B) of such Act (42 U.S.C. 1973gg-6(a)(3)(B)) [now 52 U.S.C. 20507(a)(3)(B)], the State shall coordinate the computerized list with State agency records on felony status; and
 - (II) by reason of the death of the registrant under section 8(a)(4)(A) of such Act (42 U.S.C. 1973gg-6(a)(4)(A)) [now 52

U.S.C. 20507(a)(4)(A)], the State shall coordinate the computerized list with State agency records on death.

(iii) Notwithstanding the preceding provisions of this subparagraph, if a State is described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-2(b)) [now 52 U.S.C. 20503(b)], that State shall remove the names of ineligible voters from the computerized list in accordance with State law.

(B) Conduct

The list maintenance performed under subparagraph (A) shall be conducted in a manner that ensures that—

- (i) the name of each registered voter appears in the computerized list;
- (ii) only voters who are not registered or who are not eligible to vote are removed from the computerized list; and
- (iii) duplicate names are eliminated from the computerized list.

(3) Technological security of computerized list

The appropriate State or local official shall provide adequate technological security measures to prevent the unauthorized access to the computerized list established under this section.

(4) Minimum standard for accuracy of State voter registration records

The State election system shall include provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

(A) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.) [now 52 U.S.C. 20501 et seq.], registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(5) Verification of voter registration information

(A) Requiring provision of certain information by applicants

(i) In general

Except as provided in clause (ii), notwithstanding any other provision of law, an application for voter registration for an election for Federal office may not be accepted or processed by a State unless the application includes—

- (I) in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number; or
- (II) in the case of any other applicant (other than an applicant to whom clause

(ii) applies), the last 4 digits of the applicant's social security number.

(ii) Special rule for applicants without driver's license or social security number

If an applicant for voter registration for an election for Federal office has not been issued a current and valid driver's license or a social security number, the State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. To the extent that the State has a computerized list in effect under this subsection and the list assigns unique identifying numbers to registrants, the number assigned under this clause shall be the unique identifying number assigned under the list.

(iii) Determination of validity of numbers provided

The State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with State law.

(B) Requirements for State officials

(i) Sharing information in databases

The chief State election official and the official responsible for the State motor vehicle authority of a State shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration.

(ii) Agreements with Commissioner of Social Security

The official responsible for the State motor vehicle authority shall enter into an agreement with the Commissioner of Social Security under section 405(r)(8) of title 42 (as added by subparagraph (C)).

(C) Omitted

(D) Special rule for certain States

In the case of a State which is permitted to use social security numbers, and provides for the use of social security numbers, on applications for voter registration, in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note), the provisions of this paragraph shall be optional.

(b) Requirements for voters who register by mail

(1) In general

Notwithstanding section 6(c) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4(c)) [now 52 U.S.C. 20505(c)] and subject to paragraph (3), a State shall, in a uniform and nondiscriminatory manner, require an individual to meet the requirements of paragraph (2) if—

- (A) the individual registered to vote in a jurisdiction by mail; and
- (B)(i) the individual has not previously voted in an election for Federal office in the State; or

(ii) the individual has not previously voted in such an election in the jurisdiction and the jurisdiction is located in a State that does not have a computerized list that complies with the requirements of subsection (a).

(2) Requirements

(A) In general

An individual meets the requirements of this paragraph if the individual—

(i) in the case of an individual who votes in person—

(I) presents to the appropriate State or local election official a current and valid photo identification; or

(II) presents to the appropriate State or local election official a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or

(ii) in the case of an individual who votes by mail, submits with the ballot—

(I) a copy of a current and valid photo identification; or

(II) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

(B) Fail-safe voting

(i) In person

An individual who desires to vote in person, but who does not meet the requirements of subparagraph (A)(i), may cast a provisional ballot under section 21082(a) of this title.

(ii) By mail

An individual who desires to vote by mail but who does not meet the requirements of subparagraph (A)(ii) may cast such a ballot by mail and the ballot shall be counted as a provisional ballot in accordance with section 21082(a) of this title.

(3) Inapplicability

Paragraph (1) shall not apply in the case of a person—

(A) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) [now 52 U.S.C. 20505] and submits as part of such registration either—

(i) a copy of a current and valid photo identification; or

(ii) a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter;

(B)(i) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) [now 52 U.S.C. 20505] and submits with such registration either—

(I) a driver's license number; or

(II) at least the last 4 digits of the individual's social security number; and

(ii) with respect to whom a State or local election official matches the information

submitted under clause (i) with an existing State identification record bearing the same number, name and date of birth as provided in such registration; or

(C) who is—

(i) entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act [52 U.S.C. 20301 et seq.];

(ii) provided the right to vote otherwise than in person under section 20102(b)(2)(B)(ii) of this title; or

(iii) entitled to vote otherwise than in person under any other Federal law.

(4) Contents of mail-in registration form

(A) In general

The mail voter registration form developed under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) [now 52 U.S.C. 20505] shall include the following:

(i) The question "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(ii) The question "Will you be 18 years of age on or before election day?" and boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on election day.

(iii) The statement "If you checked 'no' in response to either of these questions, do not complete this form."

(iv) A statement informing the individual that if the form is submitted by mail and the individual is registering for the first time, the appropriate information required under this section must be submitted with the mail-in registration form in order to avoid the additional identification requirements upon voting for the first time.

(B) Incomplete forms

If an applicant for voter registration fails to answer the question included on the mail voter registration form pursuant to subparagraph (A)(i), the registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election for Federal office (subject to State law).

(5) Construction

Nothing in this subsection shall be construed to require a State that was not required to comply with a provision of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.) [now 52 U.S.C. 20501 et seq.] before October 29, 2002, to comply with such a provision after October 29, 2002.

(c) Permitted use of last 4 digits of social security numbers

The last 4 digits of a social security number described in subsections (a)(5)(A)(i)(II) and (b)(3)(B)(i)(II) shall not be considered to be a social security number for purposes of section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note).

(d) Effective date

(1) Computerized statewide voter registration list requirements

(A) In general

Except as provided in subparagraph (B), each State and jurisdiction shall be required to comply with the requirements of subsection (a) on and after January 1, 2004.

(B) Waiver

If a State or jurisdiction certifies to the Commission not later than January 1, 2004, that the State or jurisdiction will not meet the deadline described in subparagraph (A) for good cause and includes in the certification the reasons for the failure to meet such deadline, subparagraph (A) shall apply to the State or jurisdiction as if the reference in such subparagraph to “January 1, 2004” were a reference to “January 1, 2006”.

(2) Requirement for voters who register by mail

(A) In general

Each State and jurisdiction shall be required to comply with the requirements of subsection (b) on and after January 1, 2004, and shall be prepared to receive registration materials submitted by individuals described in subparagraph (B) on and after the date described in such subparagraph.

(B) Applicability with respect to individuals

The provisions of subsection (b) shall apply to any individual who registers to vote on or after January 1, 2003.

(Pub. L. 107-252, title III, §303, Oct. 29, 2002, 116 Stat. 1708.)

REFERENCES IN TEXT

The National Voter Registration Act of 1993, referred to in subsecs. (a)(2)(A)(i), (4)(A) and (b)(5), is Pub. L. 103-31, May 20, 1993, 107 Stat. 77, which is classified principally to chapter 205 (§20501 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

Section 7 of the Privacy Act of 1974, referred to in subsecs. (a)(5)(D) and (c), is section 7 of Pub. L. 93-579, which is set out as a note under section 552a of Title 5, Government Organization and Employees.

The Uniformed and Overseas Citizens Absentee Voting Act, referred to in subsec. (b)(3)(C)(i), is Pub. L. 99-410, Aug. 28, 1986, 100 Stat. 924, which is classified principally to chapter 203 (§20301 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 15483 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

Section is comprised of section 303 of Pub. L. 107-252. Subsec. (a)(5)(C) of section 303 of Pub. L. 107-252 amended section 405 of Title 42, The Public Health and Welfare.

§ 21084. Minimum requirements

The requirements established by this subchapter are minimum requirements and nothing in this subchapter shall be construed to prevent a State from establishing election technology and administration requirements that are more

strict than the requirements established under this subchapter so long as such State requirements are not inconsistent with the Federal requirements under this subchapter or any law described in section 21145 of this title.

(Pub. L. 107-252, title III, §304, Oct. 29, 2002, 116 Stat. 1714.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this title”, meaning title III of Pub. L. 107-252, Oct. 29, 2002, 116 Stat. 1704, which is classified principally to this subchapter. For complete classification of title III to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 15484 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

§ 21085. Methods of implementation left to discretion of State

The specific choices on the methods of complying with the requirements of this subchapter shall be left to the discretion of the State.

(Pub. L. 107-252, title III, §305, Oct. 29, 2002, 116 Stat. 1714.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this title”, meaning title III of Pub. L. 107-252, Oct. 29, 2002, 116 Stat. 1704, which is classified principally to this subchapter. For complete classification of title III to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 15485 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

PART B—VOLUNTARY GUIDANCE

§ 21101. Adoption of voluntary guidance by Commission

(a) In general

To assist States in meeting the requirements of part A of this subchapter, the Commission shall adopt voluntary guidance consistent with such requirements in accordance with the procedures described in section 21102 of this title.

(b) Deadlines

The Commission shall adopt the recommendations under this section not later than—

(1) in the case of the recommendations with respect to section 21081 of this title, January 1, 2004;

(2) in the case of the recommendations with respect to section 21082 of this title, October 1, 2003; and

(3) in the case of the recommendations with respect to section 21083 of this title, October 1, 2003.

(c) Quadrennial update

The Commission shall review and update recommendations adopted with respect to section 21081 of this title no less frequently than once every 4 years.

(Pub. L. 107-252, title III, §311, Oct. 29, 2002, 116 Stat. 1715.)

08 NCAC 17 .0109 PHOTO IDENTIFICATION FOR ABSENTEE-BY-MAIL BALLOTS

(a) Identification Requirement for Absentee-by-Mail Ballots. Photo identification accompanying a voter's absentee ballot pursuant to G.S. 163-230.1(f1) is acceptable if it is a photocopy of a type of photo identification acceptable for voting purposes under 18 NCAC 17 .0101(a)(1), is readable, and the name appearing on the identification is the same as or substantially equivalent to the name contained in the voter's voter registration record in accordance with 08 NCAC 17 .0101(a)(3). As used in this Rule, "readable" means that, on the photocopy of identification required by this Rule, the name on the identification can be read and the photograph depicts a person, as opposed to displaying, for example, a mere shadow or outline of a person. A photo identification shall not be rejected due to differences between the address appearing on an absentee voter's photo identification and any address contained on the voter's absentee request form, absentee ballot application, or registration record. A copy of photo identification that is acceptable under this Rule need include only the side of the identification (or, if the identification is a booklet, the page of the identification) where the person's name and photo appears.

(b) Initial Review by County Board Staff. County Board staff shall, upon receipt of a voter's absentee ballot application, determine whether the application is accompanied by a photocopy of photo identification that is acceptable under Paragraph (a) of this Rule, or, if the application is accompanied by an affidavit claiming an exception to the identification requirement pursuant to G.S. 163-166.16(d), determine whether the affidavit includes the affirmations required by G.S. 163-166.16(d) for that exception and, if applicable, the personal identification number required to be provided by G.S. 163-230.1(g)(2). Staff shall review the registration records to determine whether the number provided matches the corresponding number in the registration records. The number required to be provided by G.S. 163-230.1(g)(2) is deficient only if it does not match the corresponding number listed in the voter's voter registration record.

If staff identify any deficiency, they shall mail written notice of the deficiency to the voter within one business day of identifying the deficiency, informing the voter that the voter, the voter's verifiable legal guardian or near relative, or a person of the voter's choice if the voter needs assistance due to the voter's disability, may provide a photocopy of the voter's acceptable photo identification or a completed affidavit claiming an exception. The notice shall state the photocopy or affidavit must be received by the county board by 5 p.m. on the business day before the county canvass. The notice of the deficiency shall also be provided by telephone or email if the telephone number or email address was provided by the voter on the request form for the absentee ballot. The voter may transmit either of the above documentation curing the deficiency in person, by mail, or by email.

(c) Final Review by County Board. The county board shall, at the first meeting held pursuant to G.S. 160-230.1(f) after the application and ballot is received, proceed as follows:

- (1) If the voter has submitted a photocopy of their photo identification, the county board shall make its determination whether the identification is acceptable under Paragraph (a) of the Rule. A final determination that the photocopy of the photo identification is not acceptable under Paragraph (a) of this Rule shall require a unanimous vote by the county board. If the county board makes a final determination that a voter's photocopy of the photo identification is not acceptable, staff shall notify the voter as provided in Paragraph (b) of this Rule, and the county board shall reserve its final decision on the approval of the absentee application until the next official meeting after it receives documentation curing the deficiency or the county canvass, whichever occurs first.
- (2) If the voter has completed an affidavit claiming an exception to the identification requirement pursuant to G.S. 163-166.16(d) and is otherwise eligible to vote, the county board may reject that person's ballot only if the county board unanimously finds that the affidavit is false. The county board shall substantiate any finding of falsity with grounds recorded in a written decision, and those grounds shall be based only on facts and not speculation. Before rejecting a voter's ballot because of a finding of falsity, the county board shall provide the voter advance notice and an opportunity to address the county board prior to the completion of canvass on any grounds that the county board is considering regarding the falsity of the affidavit. The notice shall identify the specific reasons the county board is considering the affidavit to be potentially false and inform the voter how the voter may address the reasons for potential falsity, which shall include the options to provide a written explanation or documentation or to address the board at a meeting in person. The county board shall send the notice via U.S. Mail within one business day of a county board's preliminary finding of falsity, provided that the opportunity to be heard is at least five days from the date of mailing. The notice shall be mailed for next-day delivery if the opportunity to be heard is less than five days from the date mailing. Notice shall also be provided within one business day of a county board's preliminary finding of falsity by any email address or phone number that the county board possesses for the voter. The notice and opportunity to address the county board

provided for in this Subparagraph shall be offered only to those voters for whom a number of county board members equal to one less than all of the members of the county board, or more, have identified a specific reason, based only on facts and not speculation, to find that the affidavit claiming an exception to the identification requirement is false.

- (3) If a voter's photocopy of photo identification or affidavit claiming an exception to the identification requirement pursuant to G.S. 163-166.16(d) is deemed deficient upon initial review under Paragraph (b) of this Rule, the county board shall reserve its final decision on the approval of the absentee application until the next official meeting after it receives documentation curing the deficiency identified pursuant Paragraph (b) of this Rule or the county canvass, whichever occurs first.

(d) Exception for Military and Overseas Voters. A voter who is casting a ballot pursuant to G.S. 163, Article 21A, Part 1 is not required to submit a photocopy of acceptable photo identification under Paragraph (a) of this Rule or claim an exception under G.S. 163-166.16(d).

(e) Return of Original Form of Identification. If a voter sends their original form of photo identification in the container-return envelope, or if a voter or other person permitted to return the voter's absentee ballot hand-delivers an absentee ballot to the county board of elections that is not accompanied by a photocopy of the voter's photo identification and the voter or other person has the voter's photo identification that is a type acceptable for voting purposes under 08 NCAC 17 .0101(a)(1) on hand, the county board shall make a photocopy of the identification, which shall serve as an acceptable photo identification accompanying the voter's absentee ballot. When a voter sends their original form of photo identification in the container-return envelope, the county board shall notify the voter by mail and by any email address or phone number that the county board possesses for the voter that the original photo identification will be returned to the voter. The county board shall use a method of return that documents receipt of the photo identification.

*History Note: Authority G.S. 163-22; 163-166.7; 163-166.16; 163-230.1;
Temporary Adoption Eff. August 23, 2019; January 1, 2020;
Temporary Rule Exp. Eff. October 11, 2020;
Temporary Adoption Eff. August 1, 2023;
Eff. April 1, 2024.*

08 NCAC 02 .0111 ELECTION PROTEST FORM

All persons bringing an election protest under Article 15A shall complete and timely file the following form. For the purposes of this Rule, "timely" means within the time required by G.S. 163-182.9(b). Please note this form shall not be used to challenge the registration of an individual voter or to report an incident other than an irregularity affecting the outcome of an election.

ELECTION PROTEST

(Use of this form is required by G.S. 163-182.9(c))

This form must be filed with the county board of elections within the timeframes set out in G.S. 163-182.9(b)(4). Please print or type your answers. Use additional sheets if needed to answer the below questions fully. Number the pages of all additional sheets. Please note that filings will be a public record. Please redact all confidential information, such as date of birth, Social Security number, and driver's license number.

Respond to all prompts. Failure to complete this form as required may result in the dismissal of your protest. Attach additional sheets as necessary, including all exhibits and supplemental documents. All attachments are deemed incorporated and covered under the Protest Certification.

PROTESTOR

1. Provide your preferred contact information:

Name: _____ County of Residence: _____
Email: _____ Phone: _____
Mailing Address: _____

NOTE: You will be deemed to consent to service at all of the above addresses (including email), unless you attach an addendum indicating otherwise.

2. Are you represented by counsel? Yes No

NOTE: If you answered Yes, above, your counsel must complete and you must attach the Counsel Certification Addendum.

3. Mark all that describe you:

- Candidate for the office of _____
- Registered voter eligible to participate in the protested election contest
- Neither of the above*

**If you select this option, you are not eligible to file a protest.*

PROTEST SCOPE

4. List all election contests subject to your protest and calculate the margin of votes separating the apparent winner from the runner-up as of the date of filing. Your response does not waive your right to contest the validity of the current vote count. If your protest concerns all contests on the ballot, you must include the vote margin for each contest.

Protested Contest(s)	Current Vote Margin (subtract runner-up totals from apparent winner's totals)
Example: Mayor of Townsville	75

5. This protest alleges (*select at least one*):

- A defect in the manner by which votes were counted or results tabulated sufficient to cast doubt on the apparent results of the election.
- A violation of election law, irregularity, or misconduct sufficient to cast doubt on the apparent results of the election.

FACTUAL BASIS & LEGAL ARGUMENT

6. Provide all factual allegations in support of your protest. If any fact you allege is outside the scope of your personal knowledge, you may attach affidavits from those who have personal knowledge of that fact. All facts you allege in connection with this protest must be true and accurate to the best of your knowledge, and brought in the sincere belief that the facts alleged form a good faith basis to protest the conduct and results of the election.

7. List all individuals, if any, you may call as witnesses to substantiate facts listed in Prompt 6. If there are multiple individuals, summarize the facts of which the individual has personal knowledge.

8. Cite any statute or case, administrative rule or decisions, and election policy or procedure that supports your claim set out under Prompt 5.

RELIEF

9. What effect do you believe the facts alleged in response to Prompt 6, if proven, will have on the electoral outcome in the protested contest(s)? Your response should account for the current vote margin calculated in response to Prompt 4.

- The electoral outcome of the protested contest(s) will change.
- The electoral outcome of the protested contest(s) will not change.
- I am uncertain whether the outcome of the contest(s) will change.
- Other _____

10. What relief do you seek?

- Correct the vote count
- A new election
- Other: _____

ASSISTANCE

11. List all persons who assisted you in preparing the contents of this protest and indicate the nature of the assistance provided:

Note: For protestors represented by an attorney, this protest is the initial filing in a proceeding as defined by N.C. State Bar Rules. See 27 N.C.A.C. 02 Rule 1.00(n).

12. Has any candidate, political party, organization, or person acting on behalf of the same requested that you bring this protest?

- Yes
- No

13. Have you received any financial or other benefit or promise of future financial or other benefit in exchange for filing this protest?

- Yes
- No

AFFECTED PARTIES & SERVICE

You must serve copies of all filings on every person with a direct stake in the outcome of this protest ("Affected Parties"). Affected Parties include every candidate seeking nomination or election in the protested contest(s) listed under Prompt 4, not only the apparent winner and runner-up. If a protest concerns the eligibility or ineligibility of particular voters, all such voters are Affected Parties and must be served. Address information for registered voters is available from the county board of elections or using the Voter Lookup at www.ncsbe.gov.

Materials may be served by personal delivery, transmittal through U.S. Mail or commercial carrier service to the Affected Party's mailing address of record on file with the county board of elections or the State Board, or by any other means affirmatively authorized by the Affected Party. If you know the Affected Party is represented by an attorney, service must be made on his or her counsel. Service must occur within one (1) business day of filing materials with the county board of elections. If service is by transmittal through the U.S. Mail or commercial carrier service, service will be complete when the properly addressed, postage-paid parcel is deposited into the care and custody of the U.S. Mail or commercial carrier service. It is your responsibility to ensure service is made on all Affected Parties.

14. List all Affected Parties, including their service address:

<i>Affected Party</i>	<i>Service Address</i>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PROTESTOR CERTIFICATION

15. By signing this protest application, you affirm the following:

I, _____ (*full name*), swear, under penalty of perjury, that the information provided in this protest filing is true and accurate to the best of my knowledge, and that I have read and understand the following:

(initial)

- _____ I have reviewed the statutes and administrative rules governing election protests, including all deadlines.
- _____ My protest must originate with a filing at the county board of elections.
- _____ I must timely serve all Affected Parties.
- _____ I must prove by *substantial evidence* either the existence of a defect in the manner by which votes were counted or results tabulated or the occurrence of a violation of election law, irregularity, or misconduct, either of which were sufficient to cast doubt on the apparent results of the election.
- _____ It is a crime to interfere unlawfully with the conduct and certification of an election.
- _____ It is a crime to interfere unlawfully with the ability of a qualified individual to vote and to have that vote counted in the election.
- _____ The facts I allege in connection with this protest are true and accurate to the best of my knowledge, and I have a good faith basis to protest the conduct and results of the election.

Submitting fraudulently or falsely completed declarations is a Class I felony under Chapter 163 of the General Statutes. This notice is provided pursuant to S.L. 2013-381, s. 5.4.

Signature of Protestor: _____ Date: _____
(This signature must be signed in the presence of a notary)

State of North Carolina, County of _____

Sworn to (or affirmed) and subscribed before me this the ____ day of _____, 20__.

(Official Seal)

Official Signature of Notary

_____, Notary Public
Printed Name

My commission expires: _____

Date/Time Filed with County Board

(completed by the county board)

NOTE: The county board must provide the State Board with a complete copy of a filed protest within one business day after it is filed. In addition, the county board shall provide a copy of the election audit with this copy of the protest.

Please direct any questions to your county board of elections or the North Carolina State Board of Elections & Ethics Enforcement, PO Box 27255, Raleigh, NC 27611-7255.

COUNSEL OF RECORD ADDENDUM

If you answered Yes to Prompt 2 on the above, your attorney must complete this form and you must file it with your Election Protest Application.

Attorney Must complete all of the following:

Protestor Name: _____ Protestor County: _____
Attorney Name: _____
Attorney Email: _____ Attorney Phone: _____

I am a member in good standing with the North Carolina State Bar
 I am not licensed to practice law in North Carolina but am a member in good standing in _____ (State or District of Columbia), and do hereby apply to appear pro hac vice and certify that I have or will file all appropriate documents required under G.S. 84-4.1.

Law Firm: _____
Bar Number: _____

I (choose one) am am not:
Subject to any order of any court or administrative agency disbaring, suspending, enjoining, restraining, or otherwise restricting me in the practice of law. If you are subject to any orders, explain in the space below.

I represent the Protestor whose name is provided above. I have read and understand the laws governing election protests in North Carolina General Statutes Chapter 163 and Title 8 of the N.C. Administrative Code. I swear/attest that the information I have provided in this Addendum is true and accurate to the best of my knowledge.

Attorney Signature Date

*History Note: Authority G.S. 163-22; 163-182.9;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004;
Readopted Eff. September 1, 2018;
Amended Eff. November 1, 2020.*

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2003-226
HOUSE BILL 842**

AN ACT TO PROVIDE FOR A SYSTEM FOR ALL NORTH CAROLINA ELECTIONS THAT COMPLIES WITH THE HELP AMERICA VOTE ACT AND TO HELP PREVENT DUPLICATE NAMES ON JURY LISTS.

The General Assembly of North Carolina enacts:

SECTION 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.

SECTION 2. G.S. 163-82.10(a) reads as rewritten:

"(a) ~~Application Form Becomes Official Record.~~ - The State voter registration system is the official voter registration list for the conduct of all elections in the State. A completed and signed registration application form, if available, described in G.S. 163-82.3, once approved by the county board of elections, becomes backup to the official registration record of the voter. Electronically captured images of the signatures of voters, full or partial social security numbers, and drivers license numbers that may be generated in the voter registration process, by either the State Board of Elections or a county board of elections, are confidential and shall not be considered public records and subject to disclosure to the general public under Chapter 132 of the General Statutes. Disclosure of drivers license numbers in

violation of this subsection shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of drivers license numbers in violation of this subsection as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The county board of elections shall maintain custody of ~~the official~~any paper hard copy registration records of ~~all~~ voters in the county and shall keep them in a place where they are secure."

SECTION 3. G.S. 163-82.10 is amended by adding a new subsection to read:

"(a1) Paperless, Instant Electronic Transfer. - The application described in G.S. 163-82.3 may be either a paper hard copy or an electronic document."

SECTION 4. G.S. 163-82.6(b) reads as rewritten:

"(b) Signature. - The form shall be valid only if signed by the applicant. An electronically captured image of the signature of a voter on an electronic voter registration form offered by a State agency shall be considered a valid signature for all purposes for which a signature on a paper voter registration form is used."

SECTION 5. G.S. 132-1.2 reads as rewritten:

"§ 132-1.2. Confidential information.

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

- (1) Meets all of the following conditions:
 - a. Constitutes a "trade secret" as defined in G.S. 66-152(3).
 - b. Is the property of a private "person" as defined in G.S. 66-152(2).
 - c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.
 - d. Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.
- (2) Reveals an account number for electronic payment as defined in G.S. 147-86.20 and obtained pursuant to Articles 6A or 6B of Chapter 147 of the General Statutes or G.S. 159-32.1.
- (3) Reveals a document, file number, password, or any other information maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes.
- (4) Reveals the electronically captured image of an individual's signature, drivers license number, or a portion of an individual's social security number if the agency has those items because they are on a voter registration document."

SECTION 6. G.S. 163-82.11 reads as rewritten:

"§ 163-82.11. Establishment of statewide computerized voter registration.

(a) Statewide System as Official List. - The State Board of Elections shall develop and implement a statewide computerized voter registration system to facilitate voter registration and to provide a central database containing voter registration information for each county. The system shall serve as the single system for storing and managing the official list of registered voters in the State. The system shall serve as the official voter registration list for the conduct of all elections in the State. The system shall encompass both software development and purchasing of the necessary hardware for the central and distributed-network systems.

(b) Uses of Statewide System. - The State Board of Elections shall develop and implement the system so that each county board of elections ~~can~~ can do all the following:

- (1) Verify that an applicant to register in its county is not also registered in another ~~county;~~ county.
- (2) Be notified automatically that a registered voter in its county has registered to vote in another ~~county;~~ and county.
- (3) Receive automatically data about a person who has applied to vote at a drivers license office or at another public agency that is authorized to accept voter registration applications.

(c) Compliance With Federal Law. - The State Board of Elections shall update the statewide computerized voter registration list and database to meet the requirements of section 303(a) of the Help America Vote Act of 2002 and to reflect changes when citizenship rights are restored under G.S. 13-1.

(d) Role of County and State Boards of Elections. - Each county board of elections shall be responsible for registering voters within its county according to law. Each county board of elections shall maintain its ~~own computer file of registered voters records by using the statewide computerized voter registration system~~ in accordance with rules promulgated by the State Board of Elections. Each county board of elections shall ~~transmit~~ enter through the computer ~~network system~~ all additions, deletions, and changes in its list of registered voters promptly to the statewide computer file. ~~system. The State Board of Elections shall maintain a continually updated duplicate file of each county's registered voters.~~

(e) Cooperation on List for Jury Commission. - The State Board of Elections shall assist the Division of Motor Vehicles in providing to the county jury commission of each county, as required by G.S. 20-43.4, a list of all registered voters in the county and all persons in the county with drivers license records."

SECTION 7.(a) G.S. 163-82.12 reads as rewritten:

"§ 163-82.12. Promulgation of ~~rules~~ guidelines relating to computerized voter registration.

The State Board of Elections shall make all ~~rules~~ guidelines necessary to administer the statewide voter registration system established by this Article. All county boards of elections shall follow these guidelines and cooperate with the State Board of Elections in implementing guidelines. These ~~rules~~ guidelines shall include provisions ~~for:~~ for all of the following:

- (1) Establishing, developing, and maintaining a computerized central voter registration ~~file;~~ file.
- (2) Linking the central file through a network with computerized voter registration files in each of the ~~counties;~~ counties.
- (3) Interacting with the computerized drivers license records of the Division of Motor Vehicles and with the computerized records of other public agencies authorized to accept voter registration ~~applications;~~ applications.
- (4) Protecting and securing the ~~data;~~ and data.
- (5) Converting current voter registration records in the counties in computer files that can be used on the statewide computerized registration system.
- (6) Enabling the statewide system to determine whether the voter identification information provided by an individual is valid.
- (7) Enabling the statewide system to interact electronically with the Division of Motor Vehicles system to validate identification information.
- (8) Enabling the Division of Motor Vehicles to provide real-time interface for the validation of the drivers license number and last four digits of the social security number.
- (9) Enabling the statewide system to assign a unique identifier to each legally registered voter in the State.
- (10) Enabling the State Board of Elections to assist the Division of Motor Vehicles in providing to the jury commission of each county, as required by G.S. 20-43.4, a list of all registered voters in the county and all persons in the county with drivers license records.

These guidelines shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the guidelines and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those guidelines shall be made available to the public upon request or otherwise by the State Board."

SECTION 7.(b) G.S. 163-82.19 reads as rewritten:

"§ 163-82.19. Voter registration at drivers license ~~offices.~~ offices; coordination on data interface.

(a) Voter Registration at Drivers License Offices. - The Division of Motor Vehicles shall, pursuant to the rules adopted by the State Board of Elections, modify its forms so that any eligible person who applies for original issuance, renewal or correction of a drivers license, or special identification card issued under G.S. 20-37.7 may, on a part of the form, complete an application to register to vote or to update his registration if the voter has changed his address or moved from one precinct to another or from one county to another. The person taking the application shall ask if the applicant is a citizen of the United States. If the applicant states that the applicant is not a citizen of the United States, or declines to answer the question, the person

taking the application shall inform the applicant that it is a felony for a person who is not a citizen of the United States to apply to register to vote. Any person who willfully and knowingly and with fraudulent intent gives false information on the application is guilty of a Class I felony. The application shall state in clear language the penalty for violation of this section. The necessary forms shall be prescribed by the State Board of Elections. The form must ask for the previous voter registration address of the voter, if any. If a previous address is listed, and it is not in the county of residence of the applicant, the appropriate county board of elections shall treat the application as an authorization to cancel the previous registration and also process it as such under the procedures of G.S. 163-82.9. If a previous address is listed and that address is in the county where the voter applies to register, the application shall be processed as if it had been submitted under G.S. 163-82.9.

Registration shall become effective as provided in G.S. 163-82.7. Applications to register to vote accepted at a drivers license office under this section until the deadline established in G.S. 163-82.6(c)(2) shall be treated as timely made for an election, and no person who completes an application at that drivers license office shall be denied the vote in that election for failure to apply earlier than that deadline.

All applications shall be forwarded by the Department of Transportation to the appropriate board of elections not later than five business days after the date of acceptance, according to rules which shall be promulgated by the State Board of Elections. Those rules shall provide for a paperless, instant, electronic transfer of applications to the appropriate ~~county~~ board of elections.

(b) Coordination on Data Interface. - The Department of Transportation jointly with the State Board of Elections shall develop and operate a computerized interface to match information in the database of the statewide voter registration system with the drivers license information in the Division of Motor Vehicles to the extent required to enable the State Board of Elections and the Department of Transportation to verify the accuracy of the information provided on applications for voter registration, whether the applications were received at drivers license offices or elsewhere. The Department of Transportation and the State Board shall implement the provisions of this subsection so as to comply with section 303 of the Help America Vote Act of 2002. The Department of Transportation shall enter into an agreement with the Commissioner of Social Security so as to comply with section 303 of the Help America Vote Act of 2002."

SECTION 7.(c) G.S. 20-43.4 reads as rewritten:

"§ 20-43.4. Current list of licensed drivers to be provided to jury commissions.

The Commissioner of Motor Vehicles shall provide to each county jury commission an alphabetical list of all persons that ~~he~~the Commissioner has determined are residents of the county, who will be 18 years of age or older as of the first day of January of the following year, and licensed to drive a motor vehicle ~~as of July 1, 1983, and as of July 1 of each biennium thereafter, odd-numbered year,~~ provided that if an annual jury list is being prepared under G.S. 9-2(a), the list to be provided to the county jury commission shall be provided annually. The list shall include those persons whose license to drive has been suspended, and those former

licensees whose license has been canceled. The list shall contain the address and zip code of each driver, plus ~~his~~ the driver's date of birth and birth, sex, and drivers license number, and may be in either printed or computerized form, as requested by each county. Before providing the list to the county jury commission, the Commissioner shall have computer-matched the list with the voter registration list of the State Board of Elections to eliminate duplicates. The Commissioner shall include in the list provided to the county jury commission names of registered voters who do not have drivers licenses, and shall indicate the licensed or formerly licensed drivers who are also registered voters, the licensed or formerly licensed drivers who are not registered voters, and the registered voters who are not licensed or formerly licensed drivers. The list so provided shall be used solely for jury selection and election records purposes and no other. Information provided by the Commissioner to county jury commissions and the State Board of Elections under this section shall remain confidential, shall continue to be subject to the disclosure restriction provisions of G.S. 20-43.1, and shall not be a public record for purposes of Chapter 132 of the General Statutes."

SECTION 7.(d) G.S. 9-2 reads as rewritten:

"§ 9-2. Preparation of jury list; sources of names.

(a) It shall be the duty of the jury commission ~~beginning July 1, 1981, (and each biennium thereafter)~~ on July 1 of every odd-numbered year to prepare a list of prospective jurors qualified under this Chapter to serve in the biennium beginning ~~January 1, 1982, (and each biennium thereafter).~~ on January 1 of the next year. Instead of providing a list for an entire biennium, the commission may prepare a list each year if the senior regular resident superior court judge requests in writing that it do so.

(b) In preparing the list, the jury commission shall use the ~~voter registration records of the county-~~ list of registered voters and persons with drivers license records supplied to the county by the Commissioner of Motor Vehicles pursuant to G.S. 20-43.4. The commission may use fewer than all the names from the ~~voter~~ list if it uses a random method of selection. The commission may use other sources of names deemed by it to be reliable.

(c) ~~Effective July 1, 1983, the list of licensed drivers residing in each county, as supplied to the county by the Division of Motor Vehicles pursuant to G.S. 20-43.4, shall also be required as a source of names for use by the commission in preparing the jury list.~~

(d) ~~When more than one source is used to prepare the jury list the jury commission shall take randomly a sample of names from the list of registered voters and each additional source used. The same percentage of names must be selected from each list. The names selected from the voter registration list shall be compared with the entire list of names, from the second source. Duplicate names shall be removed from the voter registration sample, and the remaining names shall then be combined with the sample of names selected from the second source to form the jury list. If more than two source lists are used, the same procedure must be used to remove duplicates.~~

(e) ~~As an alternative to the procedure set forth in subsection (d), the~~ The jury commission ~~may shall~~ merge the entire list of names of each source ~~used, used~~ ~~remove the duplicate names,~~ and randomly select the desired number of names to form the jury list.

(f) The jury list shall contain not less than one and one-quarter times and not more than three times as many names as were drawn for jury duty in all courts in the county during the previous biennium, or, if an annual list is being prepared as requested under subsection (a) of this section the jury list shall contain not less than one and one-quarter times and not more than three times as many names as were drawn for jury duty in all courts in the county during the previous year but in no event shall the list include fewer than 500 names, except that in counties in which a different panel of jurors is selected for each day of the week, there is no limit to the number of names that may be placed on the jury list.

~~(g) The custodian of the appropriate election registration records in each county shall cooperate with the jury commission in its duty of compiling the list required by this section.~~

(h) As used in this section 'random' or 'randomly' refers to a method of selection that results in each name on a list having an equal opportunity to be selected."

SECTION 8. Article 13A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-166.7A. Voter education and information.

(a) Posting the Information. - For each election that involves candidates for federal or State office, each county board of elections shall post at each active voting place the following information in a manner and format approved by the State Board of Elections:

- (1) A sample ballot as required by G.S. 163-165.2.
- (2) The date of the election and the hours the voting place will be open.
- (3) Instructions on how to vote, including how to cast a vote or correct a vote on the voting systems available for use in that voting place.
- (4) Instructions on how to cast a provisional ballot.
- (5) Instructions to mail-in registrants and first-time voters on how to comply with the requirements in section 303(b) of the Help America Vote Act of 2002 concerning voter identifications.
- (6) General information on voting rights under applicable federal and State law, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if the voter believes those rights have been violated.
- (7) General information on federal and State laws that prohibit acts of fraud and misrepresentation as to voting and elections.

(b) Intent. - The posting required by subsection (a) of this section is intended to meet the mandate of the voting information requirements in section 302(b) of the Help America Vote Act of 2002."

SECTION 9. G.S. 163-82.4 reads as rewritten:

"§ 163-82.4. Contents of application form.

(a) Information Requested of Applicant. - The form required by G.S. 163-82.3(a) shall request the applicant's:

- (1) Name,
- (2) Date of birth,
- (3) Residence address,
- (4) County of residence,
- (5) Date of application,
- (6) Gender,
- (7) Race,
- (7a) Ethnicity,
- (8) Political party affiliation, if any, in accordance with subsection (c) of this section,
- (9) Telephone number (to assist the county board of elections in contacting the voter if needed in processing the application),
- (10) Drivers license number or, if the applicant does not have a drivers license number, the last four digits of the applicant's social security number,

and any other information the State Board finds is necessary to enable officials of the county where the person resides to satisfactorily process the application. The form shall require the applicant to state whether currently registered to vote anywhere, and at what address, so that any prior registration can be cancelled. The portions of the form concerning race and ethnicity shall include as a choice any category shown by the most recent decennial federal census to compose at least one percent (1%) of the total population of North Carolina. The county board shall make a diligent effort to complete for the registration records any information requested on the form that the applicant does not complete, but no application shall be denied because an applicant does not state race, ethnicity, gender, or telephone number. The application shall conspicuously state that provision of the applicant's telephone number is optional. If the county board maintains voter records on computer, the free list provided under this subsection shall include telephone numbers if the county board enters the telephone number into its computer records of voters.

(a1) No Drivers License or Social Security Number Issued. - The State Board shall assign a unique identifier number to an applicant for voter registration if the applicant has not been issued either a current and valid drivers license or a social security number. That unique identifier number shall serve to identify that applicant for voter registration purposes.

(b) Notice of Requirements, Attestation, Notice of Penalty, and Notice of Confidentiality. - The form required by G.S. 163-82.3(a) shall contain, in uniform type, the following:

- (1) A statement that specifies each eligibility requirement (including citizenship) and an attestation that the applicant meets each such

requirement, with a requirement for the signature of the applicant, under penalty of a Class I felony under G.S. 163-275(4).

- (2) A statement that, if the applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.
- (3) A statement that, if the applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(c) **Party Affiliation or Unaffiliated Status.** - The application form described in G.S. 163-82.3(a) shall provide a place for the applicant to state a preference to be affiliated with one of the political parties in G.S. 163-96, or a preference to be an "unaffiliated" voter. Every person who applies to register shall state his preference. If the applicant fails to declare a preference for a party or for unaffiliated status, that person shall be listed as "unaffiliated", except that if the person is already registered to vote in the county and that person's registration already contains a party affiliation, the county board shall not change the registrant's status to "unaffiliated" unless the registrant clearly indicates a desire in accordance with G.S. 163-82.17 for such a change. An unaffiliated registrant shall not be eligible to vote in any political party primary, except as provided in G.S. 163-119, but may vote in any other primary or general election. The application form shall so state.

(d) **Citizenship and Age Questions.** - Voter registration application forms shall include all of the following:

- (1) The question 'Are you a citizen of the United States of America?' and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.
- (2) The question 'Will you be 18 years of age on or before election day?' and boxes for the applicant to check to indicate whether the applicant will be 18 years of age or older on election day.
- (3) The statement 'If you checked "no" in response to either of these questions, do not complete this form.'

If the voter fails to answer the question set out in subdivision (1) of this subsection, the person filling out the registration shall be notified of the omission and given the opportunity to complete the form in a timely manner in order to be registered for the next election."

SECTION 10. G.S. 163-82.10A reads as rewritten:

"§ 163-82.10A. Permanent voter registration numbers.

~~Each county board of elections~~ The statewide voter registration system shall assign to each voter a unique registration number. That number shall be permanent for that voter and shall not be changed or reassigned by the county board of elections."

SECTION 11. G.S. 163-165.7 reads as rewritten:

"§ 163-165.7. Voting systems: powers and duties of State Board of Elections.

The State Board of Elections shall have authority to approve types, makes, and models of voting systems for use in elections and referenda held in this State. Only

voting systems that have been approved by the State Board shall be used to conduct elections under this Chapter, and the approved systems shall be valid in any election or referendum held in any county or municipality. The State Board may use guidelines, information, testing reports, certification, decertification, recertification, and any relevant data produced by the Election Assistance Commission, its Standards Board, its Board of Advisors, or the Technical Guidelines Development Committee as established in Title II of the Help America Vote Act of 2002 with regard to any action or investigation the State Board may take concerning a voting system. The State Board may use, for the purposes of voting system certification, laboratories accredited by the Election Assistance Commission under the provisions of section 231(2) of the Help America Vote Act of 2002. The State Board may, upon request of a local board of elections, authorize the use of a voting system not approved for general use. The State Board may also, upon notice and hearing, disapprove types, makes, and models of voting systems. Upon disapproving a type, make, or model of voting system, the State Board shall determine the process by which the disapproved system is discontinued in any county. If a county makes a showing that discontinuance would impose a financial hardship upon it, the county shall be given up to four years from the time of State Board disapproval to replace the system. A county may appeal a decision by the State Board concerning discontinuance of a voting system to the superior court in that county or to the Superior Court of Wake County. The county has 30 days from the time of the State Board's decision on discontinuance to make that appeal.

Subject to the provisions of this Chapter, the State Board of Elections shall prescribe rules for the adoption, handling, operation, and honest use of voting systems, including, but not limited to, the following:

- (1) Types, makes, and models of voting systems approved for use in this State.
- (2) Form of official ballot labels to be used on voting systems.
- (3) Operation and manner of voting on voting systems.
- (4) Instruction of precinct officials in the use of voting systems.
- (5) Instruction of voters in the use of voting systems.
- (6) Assistance to voters using voting systems.
- (7) Duties of custodians of voting systems.
- (8) Examination of voting systems before use in an election.
- (9) Compliance with section 301 of the Help America Vote Act of 2002."

SECTION 12. G.S. 163-165.4A reads as rewritten:

"§ 163-165.4A. ~~Punch-Card ballots.~~Punch-card ballots and lever machines.

(a) No ballot may be used in any referendum, primary, or other election as an official ballot if it requires the voter to punch out a hole with a stylus or other tool.

(a1) No lever machine voting system may be used in any referendum, primary, or other election as a means of voting the official ballot. A 'lever machine voting system' is a voting system on which the voter casts a vote by pressing a lever and the vote is mechanically recorded by the machine.

(b) In any counties that used punch-card ballots as official ballots or lever machines in the election of November 2000, and in any municipalities located in those counties, this section becomes effective January 1, 2006. It is the intent of the General Assembly that any county that uses county funds to replace voting equipment to satisfy this section shall be given priority in appropriations to counties for voting equipment."

SECTION 13. G.S. 163-182.1 reads as rewritten:

"§ 163-182.1. Principles and rules for counting official ballots.

(a) General Principles That Shall Apply. - The following general principles shall apply in the counting of official ballots, whether the initial count or any recount:

- (1) Only official ballots shall be counted.
- (2) No official ballot shall be rejected because of technical errors in marking it, unless it is impossible to clearly determine the voter's choice.
- (3) If it is impossible to clearly determine a voter's choice in a ballot item, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which the voter's choice can be clearly determined.
- (4) If an official ballot is marked in a ballot item with more choices than there are offices to be filled or propositions that may prevail, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which there is no overvote and the voter's choice can be clearly determined.
- (5) If an official ballot is rejected by a scanner or other counting machine, but human counters can clearly determine the voter's choice, the official ballot shall be counted by hand and eye.
- (6) Write-in votes shall not be counted in party primaries or in referenda, but shall be counted in general elections if all of the following are true:
 - a. The write-in vote is written by the voter or by a person authorized to assist the voter pursuant to G.S. 163-166.8.
 - b. The write-in vote is not cast for a candidate who has failed to qualify under G.S. 163-123 as a write-in candidate.
 - c. The voter's choice can be clearly determined.
- (7) Straight-party ticket and split-ticket votes shall be counted in general elections according to the following guidelines:
 - a. If a voter casts a vote for a straight-party ticket, that vote shall be counted for all the candidates of that party, other than those for President and Vice President, in the partisan ballot items on that official ballot except as otherwise provided in this subdivision.
 - b. If a voter casts a vote for a straight-party ticket and also votes in a partisan ballot item for a candidate not of that party, the official ballot shall be counted in that ballot item only for

the individually marked candidate. In partisan ballot items where no mark is made for an individual candidate, the official ballot shall be counted for the candidates of the party whose straight ticket the voter voted.

- c. If a voter casts a vote for a straight-party ticket and also casts a write-in vote in any partisan ballot item, the straight-party ticket vote shall not control the way the official ballot is counted in that ballot item, except to the extent it would control in the case of crossover voting under this subdivision. The following principles shall apply:
1. If the write-in vote is proper under subdivision (6) of this subsection, that write-in candidate shall receive a vote.
 2. If the write-in vote is not proper under subdivision (6) of this subsection and no other candidate is individually marked in that ballot item, then no vote shall be counted in that ballot item.
 3. If the straight-ticket voter casts both write-in votes and individually marked votes for ballot candidates in a ballot item, then the write-in and individually marked votes shall be counted unless the write-in is not proper under subdivision (6) of this subsection or an overvote results.

~~(b) Rules and Directions by State Board of Elections. - The State Board of Elections shall promulgate rules where necessary to apply the principles in subsection (a) of this section to each voting system in use in the State. The rules shall prescribe procedures and standards for each type of voting system. Those procedures and standards shall be followed uniformly throughout the State in all places where that type of voting system is used. The State Board shall direct the county boards of elections in the application of the principles and rules in individual circumstances.~~

(b) Procedures and Standards. - The State Board of Elections shall adopt uniform and nondiscriminatory procedures and standards for voting systems. The standards shall define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State. The State Board shall adopt those procedures and standards at a meeting occurring not earlier than 15 days after the State Board gives notice of the meeting. The procedures and standards adopted shall apply to all elections occurring in the State and shall be subject to amendment or repeal by the State Board acting at any meeting where notice that the action has been proposed has been given at least 15 days before the meeting. These procedures and standards shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the procedures and standards and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a) (6). Copies of those procedures and standards shall be made available to the public

upon request or otherwise by the State Board. For optical scan and direct record systems, those procedures and standards shall provide that if the voter selects votes for more than the number of candidates to be elected or proposals to be approved in a ballot item, the voting system shall do all the following:

- (1) Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.
- (2) Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.
- (3) Provide the voter with the opportunity to correct the official ballot before it is accepted and counted."

SECTION 14. G.S. 163-166.01 reads as rewritten:

"§ 163-166.01. Hours for voting.

In every election, the voting place shall be open at 6:30 A.M. and shall be closed at 7:30 P.M. In extraordinary circumstances, the county board of elections may direct that the polls remain open until 8:30 P.M. If any voter is in line to vote at the time the polls are closed, that voter shall be permitted to vote. No voter shall be permitted to vote who arrives at the voting place after the closing of the polls.

Any voter who votes after the statutory poll closing time of 7:30 P.M. by virtue of a federal or State court order or any other lawful order, including an order of a county board of elections, shall be allowed to vote, under the provisions of that order, only by using a provisional official ballot. Any special provisional official ballots cast under this section shall be separated, counted, and held apart from other provisional ballots cast by other voters not under the effect of the order extending the closing time of the voting place. If the court order has not been reversed or stayed by the time of the county canvass, the total for that category of provisional ballots shall be added to the official canvass."

SECTION 14.1. G.S. 163-166.7 reads as rewritten:

"§ 163-166.7. Voting procedures.

(a) Checking Registration. - A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence address. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots. If a precinct official states that the person is duly registered, the person shall sign the pollbook, other voting record, or voter authorization document in accordance with subsection (c) of this section before voting.

(b) Distribution of Official Ballots. - If the voter is found to be duly registered and has not been successfully challenged, the official assigned to distribute the official ballots shall hand the voter the official ballot that voter is entitled to vote, or that voter shall be directed to the voting equipment that contains the official ballot. No

voter in a primary shall be permitted to vote in more than one party's primary. The precinct officials shall provide the voter with any information the voter requests to enable that voter to vote as that voter desires.

(c) The State Board of Elections shall promulgate rules for the process of voting. Those rules shall emphasize the appearance as well as the reality of dignity, good order, impartiality, and the convenience and privacy of the voter. Those rules, at a minimum, shall include procedures to ensure that all the following occur:

- (1) The voting system remains secure throughout the period voting is being conducted.
- (2) Only properly voted official ballots are introduced into the voting system.
- (3) Except as provided by G.S. 163-166.9, no official ballots leave the voting enclosure during the time voting is being conducted there.
- (4) All improperly voted official ballots are returned to the precinct officials and marked as spoiled.
- (5) Voters leave the voting place promptly after voting.
- (6) Voters not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote.
- (7) Information gleaned through the voting process that would be helpful to the accurate maintenance of the voter registration records is recorded and delivered to the county board of elections.
- (8) The registration records are kept secure.
- (9) Party observers are given access as provided by G.S. 163-45 to current information about which voters have voted.
- (10) The voter, before voting, shall sign that voter's name on the pollbook, other voting record, or voter authorization document. If the voter is unable to sign, a precinct official shall enter the person's name on the same document before the voter votes.

SECTION 15. Article 13A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-166.11. Provisional voting requirements.

If an individual seeking to vote claims to be a registered voter in a jurisdiction and though eligible to vote in the election does not appear on the official list of eligible registered voters in the voting place, that individual may cast a provisional official ballot as follows:

- (1) An election official at the voting place shall notify the individual that the individual may cast a provisional official ballot in that election.
- (2) The individual may cast a provisional official ballot at that voting place upon executing a written affirmation before an election official at the voting place, stating that the individual is a registered voter in

the jurisdiction in which the individual seeks to vote and is eligible to vote in that election.

- (3) At the time the individual casts the provisional official ballot, the election officials shall provide the individual written information stating that anyone casting a provisional official ballot can ascertain whether and to what extent the ballot was counted and, if the ballot was not counted in whole or in part, the reason it was not counted. The State Board of Elections or the county board of elections shall establish a system for so informing a provisional voter. It shall make the system available to every provisional voter without charge, and it shall build into it reasonable procedures to protect the security, confidentiality, and integrity of the voter's personal information and vote.
- (4) The cast provisional official ballot and the written affirmation shall be secured by election officials at the voting place according to guidelines and procedures adopted by the State Board of Elections. At the close of the polls, election officials shall transmit the provisional official ballots cast at that voting place to the county board of elections for prompt verification according to guidelines and procedures adopted by the State Board of Elections.
- (5) The county board of elections shall count the individual's provisional official ballot for all ballot items on which it determines that the individual was eligible under State or federal law to vote."

SECTION 16. Article 13A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-166.12. Requirements for certain voters who register by mail.

(a) Voting in Person. - An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, shall present to a local election official at a voting place before voting there one of the following:

- (1) A current and valid photo identification.
- (2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(b) Voting Mail-In Absentee. - An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, in order to cast a mail-in absentee vote, shall submit with the mailed-in absentee ballot one of the following:

- (1) A copy of a current and valid photo identification.
- (2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

The county board of elections shall note the type of identification proof submitted by the voter and may dispose of the tendered copy of identification proof as soon as

the type of proof is noted in the voter registration records.

This subsection shall not apply to persons entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.

(c) The Right to Vote Provisionally. - If an individual is required under subsection (a) or (b) of this section to present identification in order to vote, but that individual does not present the required identification, that individual may vote a provisional official ballot. If the voter is at the voting place, the voter may vote provisionally there without unnecessary delay. If the voter is voting by mail-in absentee ballot, the mailed ballot without the required identification shall be treated as a provisional official ballot.

(d) Exemptions. - This section does not apply to any of the following:

(1) An individual who registers by mail and submits as part of the registration application either of the following:

a. A copy of a current and valid photo identification.

b. A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(2) An individual who registers by mail and submits as part of the registration application the individual's drivers license number or at least the last four digits of the individual's social security number where an election official matches either or both of the numbers submitted with an existing State identification record bearing the same number, name, and date of birth contained in the submitted registration.

(3) An individual who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.

(4) An individual who is entitled to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act.

(5) An individual who is entitled to vote otherwise than in person under any other federal law."

SECTION 17.(a) Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 8A.

"HAVA Administrative Complaint Procedure.

"§ 163-91. Complaint procedure.

(a) The State Board of Elections shall establish a complaint procedure as required by section 402 of Title IV of the Help America Vote Act of 2002 for the resolution of complaints alleging violations of Title III of that Act.

(b) With respect to the adoption of the complaint procedure under this section, the State Board of Elections is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption or amendment of the complaint

procedure under this section, the State Board of Elections shall complete all of the following:

- (1) Publish the proposed plan in the North Carolina Register at least 30 days prior to the adoption of the final complaint procedure.
- (2) Accept oral and written comments on the proposed complaint procedure.
- (3) Hold at least one public hearing on the proposed complaint procedure.

(c) Hearings and final determinations of complaints filed under the procedure adopted pursuant to this section are not subject to Articles 3 and 4 of Chapter 150B of the General Statutes."

SECTION 17.(b) G.S. 150B-1(c) is amended by adding a new subdivision to read:

"(c) Full Exemptions. - This Chapter applies to every agency except:

- ...
- (6) The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes."

SECTION 18. G.S. 163-256 reads as rewritten:

"§ 163-256. Regulations of State Board of Elections.

(a) The State Board of Elections shall adopt rules and regulations to carry out the intent and purpose of G.S. 163-254 and 163-255, and to ensure that a proper list of persons voting under said sections shall be maintained by the boards of elections, and to ensure proper registration records, and such rules and regulations shall not be subject to the provisions of ~~G.S. 150B-9~~, Article 2A of Chapter 150B of the General Statutes.

(b) The State Board of Elections shall be the single office responsible for providing information concerning voter registration and absentee voting procedures to be used by absent uniformed services voters and overseas voters as to all elections and procedures relating to the use of federal write-in absentee ballots. Unless otherwise required by law, the State Board of Elections shall be responsible for maintaining contact and cooperation with the Federal Voting Assistance Program, the United States Department of Defense, and other federal entities that deal with military and overseas voting. The State Board of Elections shall, as needed, make recommendations concerning military and overseas citizen voting to the General Assembly, the Governor, and other State officials."

SECTION 19. G.S. 163-245 reads as rewritten:

"§ 163-245. Persons in armed forces, their spouses, certain veterans, civilians working with armed forces, and members of Peace Corps may register and vote by mail.

(a) Any individual who is eligible to register and who is qualified to vote in any statewide primary or election held under the laws of this State, and who is absent from the county of his residence in any of the capacities specified in subsection (b) of

this section, shall be entitled to register by mail and to vote by military absentee ballot in the manner provided in this Article.

(b) The provisions of this Article shall apply to the following persons:

- (1) Individuals serving in the armed forces of the United States, including, but not limited to, the army, the navy, the air force, the marine corps, the coast guard, the Merchant Marine, the National Oceanic and Atmospheric Administration, the commissioned corps of the Public Health Service, and members of the national guard and military reserve.
- (2) Spouses of persons serving in the armed forces of the United States residing outside the counties of their spouses' voting residence.
- (3) Disabled war veterans in United States government hospitals.
- (4) Civilians attached to and serving outside the United States with the armed forces of the United States.
- (5) Members of the Peace Corps.

(c) An otherwise valid voter registration or absentee ballot application submitted by an absent uniformed services voter during a year shall not be refused or prohibited on the grounds that the voter submitted the application before the first date on which the county board of elections otherwise accepts those applications submitted by absentee voters who are not members of the uniformed services for that year.

(d) If any absent uniformed services or overseas voter submits a voter registration application or absentee ballot request, and the request is rejected, the board of elections that makes the rejection shall notify the voter of the reasons for the rejection.

(e) The requirement for any oath or affirmation to accompany any document as to voter registration or absentee ballots under this Article may be met by use of the standard oath prescribed by the Presidential designee under section 101(b)(7) of the Uniformed and Overseas Citizens Absentee Voting Act."

SECTION 20. G.S. 163-247(3) reads as rewritten:

- "(3) If a single application from an absentee uniformed voter is received by an election official, it shall be considered a valid absentee ballot request with respect to all general, primary, and runoff elections for federal, State, county, or those municipal offices in which absentee ballots are allowed under the provisions of G.S. 163-302, ~~held during the calendar year the application was received~~ held through the next two regularly scheduled general elections for federal office. This subdivision does not apply to a special election not involving the election of candidates, unless that special election is being held on the same day as a general or primary election."

SECTION 21. Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-82.27. Help America Vote Act of 2002.

As used in this Chapter, the term 'Help America Vote Act of 2002' means the Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42

U.S.C. §§ 15481-15485. Citations to titles and sections of the Help America Vote Act of 2002 are as they appear in the Public Law. The State Board shall have the authority to adopt rules and guidelines to implement the minimum requirements of the Help America Vote Act of 2002."

SECTION 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.

In the General Assembly read three times and ratified this the 11th day of June, 2003.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 12:48 p.m. this 19th day of June, 2003

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-182
HOUSE BILL 514

AN ACT TO ADOPT PROVISIONS OF THE UNIFORM MILITARY AND OVERSEAS VOTERS ACT PROMULGATED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAW, WHILE RETAINING EXISTING NORTH CAROLINA LAW MORE BENEFICIAL TO THOSE VOTERS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 21A.

"Uniform Military and Overseas Voters Act.

"§ 163-258.1. Short title.

This Article may be cited as the Uniform Military and Overseas Voters Act.

"§ 163-258.2. Definitions.

As used in this Article:

- (1) "Covered voter" means any of the following:
 - a. A uniformed-service voter or an overseas voter who is registered to vote in this State.
 - b. A uniformed-service voter defined in subdivision (7) of this section whose voting residence is in this State and who otherwise satisfies this State's voter eligibility requirements.
 - c. An overseas voter who, before leaving the United States, was last eligible to vote in this State and, except for a State residency requirement, otherwise satisfies this State's voter eligibility requirements.
 - d. An overseas voter who, before leaving the United States, would have been last eligible to vote in this State had the voter then been of voting age and, except for a State residency requirement, otherwise satisfies this State's voter eligibility requirements.
 - e. An overseas voter who was born outside the United States, is not described in sub-subdivision c. or d. of this subdivision, and, except for a State residency requirement, otherwise satisfies this State's voter eligibility requirements, if:
 1. The last place where a parent or legal guardian of the voter was, or under this Article would have been, eligible to vote before leaving the United States is within this State; and
 2. The voter has not previously registered to vote in any other state.
- (2) "Dependent" means an individual recognized as a dependent by a uniformed service.
- (3) "Military-overseas ballot" means any of the following:



- a. A federal write-in absentee ballot described in the Uniformed and Overseas Citizens Absentee Voting Act, section 103, 42 U.S.C. § 1973ff-2.
- b. A ballot specifically prepared or distributed for use by a covered voter in accordance with this Article.
- c. A ballot cast by a covered voter in accordance with this Article.
- (4) "Overseas voter" means a United States citizen who is outside the United States.
- (5) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (6) "Uniformed service" means any of the following:
 - a. Active and reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard of the United States.
 - b. The Merchant Marine, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration of the United States.
 - c. The National Guard and state militia units.
- (7) "Uniformed-service voter" means an individual who is qualified to vote and is one of the following:
 - a. A member of the active or reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States who is on active duty.
 - b. A member of the Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States.
 - c. A member of the National Guard or State militia unit who is on activated status.
 - d. A spouse or dependent of a member referred to in this subdivision.
- (8) "United States," used in the territorial sense, means the several states, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

"§ 163-258.3. Elections covered.

The voting procedures in this Article apply to all of the following:

- (1) A primary, general, or special election for federal or State office.
- (2) A State ballot measure.
- (3) A primary, general, special, or runoff election for local government office or a local ballot measure if absentee balloting is allowed under Article 20 of this Chapter.

"§ 163-258.4. Role of State Board of Elections.

(a) The State Board of Elections is the State official responsible for implementing this Article and the State's responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. § 1973ff, et seq.

(b) The State Board of Elections shall make available to covered voters information regarding voter registration procedures for covered voters and procedures for casting military-overseas ballots. The State Board of Elections may delegate the responsibility under this subsection only to the State office designated in compliance with the Uniformed and Overseas Citizens Absentee Voting Act, section 102(b)(1), 42 U.S.C. § 1973ff-1(b)(1).

(c) The State Board of Elections shall establish an electronic transmission system through which covered voters may apply for and receive voter registration materials, military-overseas ballots, and other information under this Article.

(d) The State Board of Elections shall develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in this State, and, to the extent reasonably possible, shall do so in coordination with other states.

(e) The State Board of Elections shall prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of an overseas-military ballot. The declaration shall be based on the declaration prescribed to accompany a federal write-in absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act, section 103, 42 U.S.C. § 1973ff-2, as modified to be consistent with this Article. The State Board of Elections shall ensure that a form for the execution of the declaration, including an indication of the date of execution of the declaration, is a prominent part of all balloting materials for which the declaration is required.

"§ 163-258.5. Overseas voter's registration address.

In registering to vote, an overseas voter who is eligible to vote in this State shall use and shall be assigned to the precinct of the address of the last place of residence of the voter in this State, or, in the case of a voter described by G.S. 163-258.2(1)e., the address of the last place of residence in this State of the parent or legal guardian of the voter. If that address is no longer a recognized residential address, the voter shall be assigned an address for voting purposes.

"§ 163-258.6. Methods of registering to vote.

(a) In addition to any other approved method for registering to vote, a covered voter may use a federal postcard application, as prescribed under the Uniformed and Overseas Citizens Absentee Voting Act, section 101(b)(2), 42 U.S.C. § 1973ff(b)(2), or the application's electronic equivalent, to apply to register to vote.

(b) A covered voter may use the declaration accompanying the federal write-in absentee ballot, as prescribed under the Uniformed and Overseas Citizens Absentee Voting Act, section 103, 42 U.S.C. § 1973ff-2, to apply to register to vote simultaneously with the submission of the federal write-in absentee ballot.

(c) The State Board of Elections shall ensure that the electronic transmission system described in G.S. 163-258.4(c) is capable of accepting both a federal postcard application and any other approved electronic registration application sent to the appropriate election official. The voter may use the electronic transmission system or any other approved method to register to vote.

(d) A covered voter's registration to vote by any method authorized by this section may be received at any time prior to the primary or election, but no later than 5:00 P.M. on the day before the primary or election.

"§ 163-258.7. Methods of applying for military-overseas ballot.

(a) A covered voter who is registered to vote in this State may apply for a military-overseas ballot using either the regular application provided by Article 20 of this Chapter or the federal postcard application, as prescribed under the Uniformed and Overseas Citizens Absentee Voting Act, section 101(b)(2), 42 U.S.C. § 1973ff(b)(2), or the application's electronic equivalent.

(b) A covered voter who is not registered to vote in this State may use the federal postcard application or the application's electronic equivalent simultaneously to apply to register to vote under G.S. 163-258.6 and to apply for a military-overseas ballot.

(c) The State Board of Elections shall ensure that the electronic transmission system described in G.S. 163-258.4(c) is capable of accepting the submission of both a federal postcard application and any other approved electronic military-overseas ballot application sent to the appropriate election official. The voter may use the electronic transmission system or any other approved method to apply for a military-overseas ballot.

(d) A covered voter may use the declaration accompanying the federal write-in absentee ballot, as prescribed under the Uniformed and Overseas Citizens Absentee Voting Act, section 103, 42 U.S.C. § 1973ff-2, as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate election official no later than 5:00 P.M. on the day before the election.

(e) To receive the benefits of this Article, a covered voter shall inform the appropriate election official that the voter is a covered voter. Methods of informing the appropriate election official that a voter is a covered voter include any of the following:

- (1) The use of a federal postcard application or federal write-in absentee ballot.
- (2) The use of an overseas address on an approved voter registration application or ballot application.
- (3) The inclusion on an approved voter registration application or ballot application of other information sufficient to identify the voter as a covered voter.

(f) This Article does not preclude a covered voter from voting an absentee ballot under Article 20 of this Chapter.

"§ 163-258.8. Timeliness and scope of application for military-overseas ballot.

An application for a military-overseas ballot is timely if received by the appropriate election official by 5:00 P.M. of the day before the election or primary. An application from a covered voter for a military-overseas ballot shall be considered a valid absentee ballot request for any election covered under G.S. 163-258.3 held during the calendar year in which the application was received.

"§ 163-258.9. Transmission of unvoted ballots.

(a) Not later than 60 days before the statewide general election in even-numbered years and not later than 50 days before any other election, the county board of elections shall transmit a ballot and balloting materials to all covered voters who by that date submit a valid military-overseas ballot application, except for a second primary. However, in the case of municipal elections, absentee ballots shall be made available no later than 30 days before an election. For a second primary which includes a candidate for federal office, the county board of elections shall transmit a ballot and balloting material to all covered voters who by that date submit a valid military-overseas ballot application no later than 45 days before the second primary. For a second primary which does not include a candidate for federal office, the transmission of the ballot and ballot materials shall be as soon as practicable and shall be transmitted electronically no later than three business days and by mail no later than 15 days from the date the appropriate board of elections orders that the second primary be held pursuant to G.S. 163-111. If additional offices are added to the ballot to fill a vacancy occurring after the deadline provided by this subsection, those ballots shall be transmitted as soon as practicable.

(b) A covered voter who requests that a ballot and balloting materials be sent to the voter by electronic transmission may choose facsimile transmission or electronic mail delivery, or, if offered by the voter's jurisdiction, Internet delivery. The election official in each jurisdiction charged with distributing a ballot and balloting materials shall transmit the ballot and balloting materials to the voter using the means of transmission chosen by the voter.

(c) If a ballot application from a covered voter arrives after the jurisdiction begins transmitting ballots and balloting materials to voters, the official charged with distributing a ballot and balloting materials shall transmit them to the voter not later than two business days after the application arrives.

"§ 163-258.10. Timely casting of ballot.

To be valid, a military-overseas ballot shall either be received by the appropriate county board of elections no later than the close of the polls, or the covered voter shall submit the ballot for mailing, electronic transmission, or other authorized means of delivery not later than 12:01 A.M., at the place where the voter completes the ballot, on the date of the election.

"§ 163-258.11. Federal write-in absentee ballot.

A covered voter may use the federal write-in absentee ballot, in accordance with the Uniformed and Overseas Citizens Absentee Voting Act, section 103, 42 U.S.C. § 1973ff-2, to vote for all offices and ballot measures in a covered election.

"§ 163-258.12. Receipt of voted ballot.

(a) A valid military-overseas ballot cast in accordance with G.S. 163-258.10 shall be counted if it is delivered to the address that the appropriate State or local election office has specified by the end of business on the business day before the canvass conducted by the county board of elections held pursuant to G.S. 163-182.5 to determine the final official results.

(b) If the ballot is timely received, it may not be rejected on the basis that it has a late postmark, an unreadable postmark, or no postmark.

"§ 163-258.13. Declaration.

Each military-overseas ballot shall include or be accompanied by a declaration signed by the voter declaring that a material misstatement of fact in completing the document may be grounds for a conviction of perjury under the laws of the United States or this State.

"§ 163-258.14. Confirmation of receipt of application and voted ballot.

The State Board of Elections, in coordination with local election officials, shall implement an electronic free access system by which a covered voter may determine by telephone, electronic mail, or Internet whether:

- (1) The voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted; and
- (2) The voter's military-overseas ballot has been received and the current status of the ballot.

"§ 163-258.15. Use of voter's electronic mail address.

(a) The county board of elections shall request an electronic mail address from each covered voter who registers to vote after January 1, 2012. An electronic mail address provided by a covered voter is not a public record under Chapter 132 of the General Statutes. The address may be used only for official communication with the voter about the voting process, including transmitting military-overseas ballots and election materials if the voter has requested electronic transmission, and verifying the voter's mailing address and physical location, as needed. The request for an electronic mail address shall describe the purposes for which the electronic mail address may be used and include a statement that any other use or disclosure of the electronic mail address is prohibited.

(b) A covered voter who provides an electronic mail address may request that the voter's application for a military-overseas ballot be considered a standing request for electronic delivery of a ballot for all elections held through December 31 of the year following the calendar year of the date of the application or another shorter period the voter specifies, including for any runoff elections that occur as a result of such elections. An election official shall provide a military-overseas ballot to a voter who makes a request for each election to which the request is applicable. A covered voter entitled to receive a military-overseas ballot for a primary election under this subsection is also entitled to receive a military-overseas ballot for the general election.

"§ 163-258.16. Publication of election notice.

(a) Not later than 100 days before a regularly scheduled election to which this Article applies, and as soon as practicable in the case of an election or vacancy election not regularly scheduled, each county board of elections shall prepare an election notice for that jurisdiction to be used in conjunction with the federal write-in absentee ballot described in G.S. 163-258.11. For a second primary required by G.S. 163-111, the county board of elections shall prepare, no later than the day following the date the appropriate board of elections orders that a second primary be held, an election notice for that jurisdiction to be used in conjunction with the federal write-in absentee ballot. The election notice shall contain a list of all of the

ballot measures and federal, State, and local offices that, as of that date, the official expects to be on the ballot on the date of the election. The notice also shall contain specific instructions for how a voter is to indicate on the federal write-in absentee ballot the voter's choice for each office to be filled and for each ballot measure to be contested.

(b) A covered voter may request a copy of an election notice. The official charged with preparing the election notice shall send the notice to the voter by facsimile, electronic mail, or regular mail, as the voter requests.

(c) As soon as ballot styles are printed, the county board of elections shall update the notice with the certified candidates for each office and ballot measure questions and make the updated notice publicly available.

(d) A county board of elections that maintains an Internet Web site shall make updated versions of its election notices regularly available on the Web site.

"§ 163-258.17. Prohibition of nonessential requirements.

(a) If a voter's mistake or omission in the completion of a document under this Article does not prevent determining whether a covered voter is eligible to vote, the mistake or omission does not invalidate the document. Failure to satisfy a nonessential requirement, such as using paper or envelopes of a specified size or weight, does not invalidate a document submitted under this Article. In any write-in ballot authorized by this Article or in any vote for a write-in candidate on a regular ballot, if the intention of the voter is discernable under this State's uniform definition of what constitutes a vote, as required by the Help America Vote Act, 42 U.S.C. § 15481(a)(6), an abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be accepted as a valid vote.

(b) An authentication, other than the declaration specified in G.S. 163-258.13 or the declaration on the federal postcard application and federal write-in absentee ballot, is not required for execution of a document under this Article. The declaration and any information in the declaration may be compared against information on file to ascertain the validity of the document.

"§ 163-258.18. Issuance of injunction or other equitable relief.

A court may issue an injunction or grant other equitable relief appropriate to ensure substantial compliance with, or enforce, this Article on application by:

- (1) A covered voter alleging a grievance under this Article; or
- (2) An election official in this State.

"§ 163-258.19. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

"§ 163-258.20. Relation to Electronic Signatures in Global and National Commerce Act.

This Article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. § 7003(b)."

SECTION 2. Article 21 of Chapter 163 of the General Statutes is repealed, except that G.S. 163-251, 253, 254, 255, 256, and 258 are recodified as G.S. 163-258.21 through G.S. 163-258.26, respectively, and as such read as rewritten:

"§ ~~163-258-21~~163-258.21. Certified list of approved ~~military-absentee~~military-overseas ballot applications; record of ballots received; disposition of list; list constitutes registration.

(a) Preparation of List. – The ~~chairman~~chair of the county board of elections shall prepare, or cause to be prepared, a list in quadruplicate of all ~~military-absentee~~military-overseas ballots returned to the county board of elections under this Article to be counted which have been approved by the county board of elections. At the end of the list the ~~chairman~~chair shall execute the following certificate under oath:

"State of North Carolina

County of _____

I, _____, ~~Chairman~~Chair of the _____ County Board of Elections, do hereby certify that the foregoing is a list of all executed ~~military-absentee~~military-overseas ballots to be voted in the election to be conducted on the _____ day of _____, _____, which have been approved by the County Board of Elections. I further certify that I have issued ballots to no other persons than those listed herein and further that I have not delivered ~~military-absentee~~military-overseas ballots to persons other than those listed herein; that this list constitutes the only precinct registration of ~~military-absentee~~covered voters whose names have not heretofore been entered on the regular registration of the appropriate precinct.

This the _____ day of _____, _____.

(Signature of ~~Chairman~~Chair of County Board of Elections)

Sworn to and subscribed before me this _____ day of _____,

(Signature of Officer administering oath)

(Title of officer)"

(b) Distribution of List. – No earlier than 3:00 P.M. on the day before the election and no later than 10:00 A.M. on election day, the ~~chairman~~chair shall cause one copy of the list of executed ~~military-absentee~~military-overseas ballots, which may be a continuing countywide list or a separate list for each precinct, to be immediately deposited as first-class mail to the State Board of Elections. The ~~chairman~~chair shall retain one copy in the board office for public inspection and ~~he~~shall cause two copies of the appropriate precinct list to be delivered to the chief judge of each precinct in the county. The chief judge shall post one copy in the voting place and retain one copy until all challenges of absentee ballots have been heard by the county board of elections. Challenges shall be made as provided in G.S. 163-89.

After receipt of the list of absentee voters required by this section the chief judge shall call the name of each person recorded on the list and enter an "A" in the appropriate voting square on the voter's permanent registration record, if ~~any~~ any, or a similar entry on the computer list used at the polls. If such person is already recorded as having voted in that election, the chief judge shall enter a challenge which shall be presented to the ~~chairman~~chair of the county board of elections for resolution by the board of elections prior to certification of results by the board.

(c) List Constitutes Registration. – The "List of Applicants for ~~Military Absentee~~Military-Overseas Ballots to Whom Ballots Have Been Issued" prescribed by this section, when delivered to the chief judges of the various precincts, shall constitute the only precinct registration of the ~~military-absentee~~covered voters listed thereon whose names are not already entered in the registration records of the appropriate precinct. Chief judges shall not add the names of persons listed on the ~~military-absentee-covered voters~~ list to the regular registration books of their precincts.

(d) Counting Ballots, Hearing Challenges. – The county board of elections shall count ~~military-military-overseas~~ ballots as provided for civilian absentee ballots in G.S. 163-234, and shall hear challenges as provided in G.S. 163-89.

"§ 163-258.22. Article inapplicable to persons after change of status; reregistration not required.

~~Upon discharge from the armed forces of the United States or termination of any other status qualifying the voter to register and vote by absentee ballot~~An individual who no longer qualifies as a covered voter under the provisions of this Article, ~~the voter~~Article shall not be entitled subsequently to vote by ~~military absentee ballot, military-overseas ballot~~ under this Article, but if the covered voter was registered under the provisions of this Article that voter's registration shall remain valid for the remainder of the calendar year that voter registered, and that voter shall be entitled to vote in any primary or election for the remainder of the calendar year without having to reregister. If requested by election officials, the voter shall present proof of military status at the time of registration. This section does not entitle a person to vote in North Carolina if that person has become disqualified because of change of permanent residence to another State or because of conviction of a felony.

"§ 163-258.23. Registration and voting on primary or election day.

Notwithstanding any other provisions of ~~Chapter 163 of the General Statutes, this Chapter,~~ an individual shall be permitted to register in person at any time the office of the board of elections or the voting place is open, including the day of a primary or election if that individual was absent on the day the registration records close for an election, but returns to that individual's county of residence in North Carolina thereafter, and if the absence is due to uniformed service as defined by G.S. 163-258.2. ~~an occupation or status of that individual listed below:~~

- ~~(1) Individuals serving in the armed forces of the United States, including (but not limited to) the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Merchant Marine, the National Oceanic and Atmospheric Administration, the commissioned corps of the Public Health Service, and members of the National Guard and military reserve.~~
- ~~(2) Spouses of individuals serving in the armed forces of the United States residing outside the counties of their spouses' voting residence.~~
- ~~(3) Disabled war veterans in United States government hospitals.~~
- ~~(4) Civilians attached to and serving outside the United States with the armed forces of the United States.~~
- ~~(5) Members of the Peace Corps.~~

If an individual so absent on the day registration closes shall appear in person at the voting place on election day and is otherwise eligible to vote, that individual shall be entitled to register and vote at the voting place that day, regardless of whether the person's ~~occupation or status as outlined in subdivisions (1) through (5) of this section~~ uniformed service status has changed since the close of registration.

"§ 163-258.24. Absentee voting at office of board of elections.

Notwithstanding any other provisions of ~~Chapter 163 of the General Statutes, this Chapter,~~ any ~~person eligible to vote an absentee ballot pursuant to G.S. 163-245~~covered voter under this Article shall be permitted to vote an absentee ballot pursuant to G.S. 163-227.2 if the ~~person~~ covered voter has not already voted an absentee ballot which has been returned to the board of elections, and if ~~he~~ the covered voter will not be in the county on the day of the primary or election.

In the event an absentee application or ballot has already been mailed to ~~such person~~the covered voter applying to vote pursuant to G.S. 163-227.2, the board of elections shall void the application and ballot unless the voted absentee ballot has been received by the board of elections. ~~Such person~~The covered voter shall be eligible to vote pursuant to G.S. 163-227.2 no later than 5:00 P.M. on the day next preceding the primary, second primary or election.

"§ 163-258.25. Regulations of State Board of Elections.

(a) The State Board of Elections shall adopt rules and regulations to carry out the intent and purpose of G.S. ~~163-254 and 163-255, 163-278.23 and G.S. 163-278.24~~ and to ensure that a proper list of persons voting under said sections shall be maintained by the boards of

elections, and to ensure proper registration records, and such rules and regulations shall not be subject to the provisions of Article 2A of Chapter 150B of the General Statutes.

(b) The State Board of Elections shall be the single office responsible for providing information concerning voter registration and absentee voting procedures to be used by ~~absent uniformed services voters and overseas~~ covered voters as to all elections and procedures relating to the use of federal write-in absentee ballots. Unless otherwise required by law, the State Board of Elections shall be responsible for maintaining contact and cooperation with the Federal Voting Assistance Program, the United States Department of Defense, and other federal entities that deal with military and overseas voting. The State Board of Elections shall, as needed, make recommendations concerning military and overseas citizen voting to the General Assembly, the Governor, and other State officials.

"§ 163-258.26. Emergency powers.

If an international, national, or local emergency or other situation arises that makes substantial compliance with this Article or the Uniformed and Overseas Citizens Absentee Voting Act impossible or unreasonable, the State Board of Elections may prescribe, by emergency rule, such special procedures or requirements as may be necessary to facilitate absentee voting by those absent uniformed services voters or overseas voters directly affected who are eligible to vote in this State. The rule shall become effective when filed with the Codifier of Rules."

SECTION 3. G.S. 163-22(k) reads as rewritten:

"(k) Notwithstanding the provisions contained in Article 20 or Article ~~21~~ 21A of Chapter 163 the State Board of Elections shall be authorized, by resolution adopted prior to the printing of the primary ballots, to reduce the time by which absentee ballots are required to be printed and distributed for the primary election from 50 days to 45 days. This authority shall not be authorized for absentee ballots to be voted in the general election, except if the law requires ballots to be available for mailing 60 days before the general election, and they are not ready by that date, the State Board of Elections shall allow the counties to mail them out as soon as they are available."

SECTION 4. G.S. 163-111(e) reads as rewritten:

"(e) Date of Second Primary; Procedures. – If a second primary is required under the provisions of this section, the appropriate board of elections, State or county, shall order that it be held ~~seven weeks after the first primary.~~ 10 weeks after the first primary if any of the offices for which a second primary is required are for a candidate for the office of United States Senate or member of the United States House of Representatives. Otherwise, the second primary shall be held seven weeks after the first primary.

There shall be no registration of voters between the dates of the first and second primaries. Persons whose qualifications to register and vote mature after the day of the first primary and before the day of the second primary may register on the day of the second primary and, when thus registered, shall be entitled to vote in the second primary. The second primary is a continuation of the first primary and any voter who files a proper and timely written affirmation of change of address within the county under the provisions of G.S. 163-82.15, in the first primary may vote in the second primary without having to refile that written affirmation if ~~he~~ the voter is otherwise qualified to vote in the second primary. Subject to this provision for registration, the second primary shall be held under the laws, rules, and regulations provided for the first primary."

SECTION 5. G.S. 163-231(b) reads as rewritten:

"(b) Transmitting Executed Absentee Ballots to County Board of Elections. – The sealed container-return envelope in which executed absentee ballots have been placed shall be transmitted to the county board of elections who issued them as follows: All ballots issued under the provisions of Articles 20 and ~~21~~ 21A of this Chapter shall be transmitted by mail or by commercial courier service, at the voter's expense, or delivered in person, or by the voter's

near relative or verifiable legal guardian not later than 5:00 p.m. on the day before the statewide primary or general election or county bond election. Ballots issued under the provisions of Article 21A of this Chapter may also be electronically transmitted. If ballots are received later than that hour, they shall not be accepted unless (i) federal law so requires, (ii) if ballots issued under Article 20 of this Chapter are postmarked by the day of the statewide primary or general election or county bond election and are received by the county board of elections not later than three days after the election by 5:00 p.m., or (iii) if ballots issued under ~~Article 21~~Article 21A of this Chapter are received by the county board of elections not later than the end of business on the business day before the canvass conducted by the county board of elections held pursuant to G.S. 163-182.5. ~~three days after the election by 5:00 p.m.~~ Ballots issued under Article 20 of this Chapter not postmarked by the day of the election shall not be accepted by the county board of elections."

SECTION 6. G.S. 163-232.1(b) reads as rewritten:

"(b) The county board of elections shall prepare, or cause to be prepared, a list in at least triplicate, of all ~~military absentee~~military-overseas ballots issued under ~~Article 21~~Article 21A of this Chapter and returned to the county board of elections to be counted, which have been approved by the county board of elections, have not been included on the certified list prepared pursuant to G.S. 163-232, and which have been received by the county board of elections not later than three days after the election by 5:00 p.m. The list shall be supplemented with new information each business day following the day of the election until the deadline for receipt of such absentee ballots. At the end of the list, the ~~chairman~~chair shall execute the following certificate under oath:

"State of North Carolina

County of _____

I, _____, ~~chairman~~chair of the _____ County Board of Elections, do hereby certify that the foregoing is a list of all executed ~~military absentee~~military-overseas ballots to be voted in the election to be conducted on the ____ day of _____, _____, which have been approved by the county board of elections, and which have been postmarked by the day of the statewide primary or general election or county bond election and received by the county board of elections not later than three days after the election by 5:00 p.m. I further certify that I have issued ballots to no other persons than those listed herein and further that I have not delivered ~~military absentee~~military-overseas ballots to persons other than those listed herein; that this list constitutes the only precinct registration of ~~military absentee~~covered voters whose names have not heretofore been entered on the regular registration of the appropriate precinct.

This the _____ day of _____, _____

(Signature of ~~chairman~~chair of
county board of elections)

Sworn to and subscribed before me this _____ day of _____, _____.

Witness my hand and official seal.

(Signature of officer
administering oath)

(Title of officer)".

SECTION 7. G.S. 163-234(2) reads as rewritten:

"(2) The county board of elections shall meet at 5:00 p.m. on election day in the board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 p.m. on election day and those received pursuant to

G.S. 163-231(b)(ii) or (iii). Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, provided the elector shall not in any manner interfere with the election officials in the discharge of their duties.

Provided, that the county board of elections is authorized to begin counting absentee ballots issued under Article 21A of this Chapter between the hours of 9:00 A.M. and 5:00 P.M. and to begin counting all absentee ballots between the hours of 2:00 p.m. and 5:00 p.m. upon the adoption of a resolution at least two weeks prior to the election wherein the hour and place of counting absentee ballots shall be stated. Such resolution also may provide for an additional meeting following the day of the election and prior to the day of canvass to count absentee ballots received pursuant to G.S. 163-231(b)(ii) or (iii) as provided in subdivision (10) of this section. A copy of the resolutions shall be published once a week for two weeks prior to the election, in a newspaper having general circulation in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. The count shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable necessity, except that if the count has been completed prior to the time the polls close, it shall be suspended until that time pending receipt of any additional ballots. Nothing in this section shall prohibit a county board of elections from taking preparatory steps for the count earlier than the times specified in this section, as long as the preparatory steps do not reveal to any individual not engaged in the actual count election results before the times specified in this subdivision for the count to begin. By way of illustration and not limitation, a preparatory step for the count would be the entry of tally cards from direct record electronic voting units into a computer for processing. The board shall not announce the result of the count before 7:30 p.m."

SECTION 8. G.S. 163-239 reads as rewritten:

"§ 163-239. Article 21-21A relating to absentee voting by ~~servicemen and certain civilians~~ military and overseas voters not applicable.

Except as otherwise provided therein, Article 21-21A of this Chapter, ~~relating to absentee registration and voting by servicemen and certain civilians,~~ Chapter shall not apply to or modify the provisions of this Article."

SECTION 9. G.S. 163-82.10(a) reads as rewritten:

"(a) Official Record. – The State voter registration system is the official voter registration list for the conduct of all elections in the State. The State Board of Elections and the county board of elections may keep copies of voter registration data, including voter registration applications, in any medium and format expressly approved by the Department of Cultural Resources pursuant to standards and conditions established by the Department and mutually agreed to by the Department and the State Board of Elections. A completed and signed registration application form, if available, described in G.S. 163-82.3, once approved by the county board of elections, becomes backup to the official registration record of the voter. Full or partial social security numbers, dates of birth, the identity of the public agency at which the voter registered under G.S. 163-82.20, any electronic mail address submitted under Article 21A of this Chapter, and drivers license numbers that may be generated in the voter registration process, by either the State Board of Elections or a county board of elections, are confidential and shall not be considered public records and subject to disclosure to the general public under Chapter 132 of the General Statutes. Cumulative data based on those items of information may be publicly disclosed as long as information about any individual cannot be discerned from the

disclosed data. Disclosure of information in violation of this subsection shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of information in violation of this subsection as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The signature of the voter, either on the paper application or an electronically captured image of it, may be viewed by the public but may not be copied or traced except by election officials for election administration purposes. Any such copy or tracing is not a public record."

SECTION 10. This act becomes effective January 1, 2012.

In the General Assembly read three times and ratified this the 16th day of June, 2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 11:15 a.m. this 20th day of June, 2011

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

SESSION LAW 2019-239
SENATE BILL 683

AN ACT TO AMEND THE LAWS GOVERNING MAIL-IN ABSENTEE BALLOTS; TO RESTORE THE LAST SATURDAY OF EARLY ONE-STOP VOTING; TO EXTEND THE TIME BY WHICH COUNTY BOARDS OF ELECTION NEED TO REPLACE DIRECT RECORD ELECTRONIC VOTING EQUIPMENT UNDER CERTAIN CONDITIONS; TO AUTHORIZE A COUNTY TO TEST NEW VOTING EQUIPMENT DURING A SIMULATED ELECTION; AND TO MAKE APPROPRIATIONS FOR CURRENT OPERATIONS OF THE STATE BOARD OF ELECTIONS, CONSISTENT WITH HOUSE BILL 966 OF THE 2019 REGULAR SESSION.

The General Assembly of North Carolina enacts:

PART I. AMEND LAWS GOVERNING MAIL-IN ABSENTEE BALLOTS

SECTION 1.1.(a) G.S. 163-228 reads as rewritten:

"§ 163-228. Register of absentee requests, applications, and ballots issued; a public record.

(a) ~~The~~ With respect to each request for mail-in absentee ballots, the State Board of Elections shall approve an official register in which the county board of elections in each county of the State shall record the following information:

- (1) Name of voter for whom application and ballots are being requested, and, if applicable, the name and address of the voter's near relative or verifiable legal guardian who requested the application and ballots for the voter.
- (2) Number of assigned voter's application when issued.
- (3) Precinct in which the applicant is registered.
- (4) Address to which ballots are to be mailed, ~~or, if the voter voted pursuant to G.S. 163-227.2, 163-227.5, and 163-227.6, a notation of that fact.~~ mailed.
- (5) Repealed by Session Laws 2009-537, s. 3, effective January 1, 2010, and applicable with respect to elections held on or after that date.
- (6) Date request for application for ballots is received by the county board of elections.
- (7) The voter's party affiliation.
- (8) The date the ballots were mailed or delivered to the voter.
- (9) Whatever additional information and official action may be required by this Article.

(a1) With respect to each early "one-stop" absentee ballot voted under G.S. 163-227.2, 163-227.5, and 163-227.6, the State Board shall approve an official register in which the county board of elections in each county of the State shall record the following information:

- (1) Name of voter for whom application and ballots are being requested.
- (2) Number of assigned voter's application when issued.
- (3) The precinct in which the voter is registered.
- (4) The date the voter voted early "one-stop."
- (5) The voter's party affiliation.

(6) Whatever additional information and official action may be required by this Article.

(b) ~~The State Board of Elections may provide for the register official registers required by this section to be kept by electronic data processing equipment, and a copy shall be printed out each business day or a supplement printed out each business day of new information equipment.~~

(c) The official register required by subsection (a) of this section shall be confidential and not a public record until the opening of the voting place in accordance with G.S. 163-166.01, at which time the official register shall constitute a public record. The official register of absentee requests, applications and ballots issued required by subsection (a1) of this section shall constitute a public record and shall be opened to the inspection of any registered voter of the county within 60 days before and 30 days after an election in which absentee ballots were authorized, or at any other time when good and sufficient reason may be assigned for its inspection.

(d) The State Board shall require the county board of elections to transmit information in the official register provided for in this section and the list required by G.S. 163-232 ~~to be transmitted~~ to the State Board. The State Board shall adopt rules to implement this subsection, including frequency of transmittal.

(e) Notwithstanding subsection (c) of this section, the State Board or a county board of elections shall inform the voter of the status of that voter's request for mail-in absentee ballots upon inquiry of the voter or the voter's near relative or verifiable legal guardian."

SECTION 1.1.(b) G.S. 163-233 reads as rewritten:

"§ 163-233. Applications for absentee ballots; how retained.

(a) The county board of elections shall retain, in a safe place, the original of all applications made for absentee ~~ballots and shall make them~~ ballots, which shall be available to inspection by the State Board of Elections or to any person upon the directive of the State Board of Elections Board. Any copies of any photographic identification associated with the absentee ballots shall not be a public record.

(b) The county board of elections shall create a list of applications made for absentee ballots received by the county board, which shall be updated daily from the date the county board begins to mail application and ballots through the date of canvass. Such list shall be a public record.

(c) All applications for absentee ballots shall be retained by the county board of elections for a period of one year after which ~~they those applications~~ may be destroyed."

SECTION 1.1.(c) G.S. 163-82.10 reads as rewritten:

"§ 163-82.10. Official record of voter registration.

(a) Official Record. – The State voter registration system is the official voter registration list for the conduct of all elections in the State. The State Board ~~of Elections~~ and the county board of elections may keep copies of voter registration data, including voter registration applications, in any medium and format expressly approved by the Department of Natural and Cultural Resources pursuant to standards and conditions established by the Department and mutually agreed to by the Department and the State ~~Board of Elections Board.~~ A completed and signed registration application form, if available, described in G.S. 163-82.3, once approved by the county board of elections, becomes backup to the official registration record of the voter.

(a1) Personal Identifying Information. – Full or partial social security numbers, dates of birth, the identity of the public agency at which the voter registered under G.S. 163-82.20, any electronic mail address submitted under this Article, Article 20, or Article 21A of this Chapter, photocopies of identification for voting, and drivers license numbers that may be generated in the voter registration process, numbers, whether held by either the State Board ~~of Elections~~ or a county board of elections, are confidential and shall not be considered public records and subject to disclosure to the general public under Chapter 132 of the

General Statutes. Cumulative data based on those items of information may be publicly disclosed as long as information about any individual cannot be discerned from the disclosed data. Disclosure of information in violation of this subsection shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of information in violation of this subsection as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

(a2) Voter Signatures. – The signature of the voter, either on the paper application or an electronically captured image of it, whether held by the State Board or a county board of elections, may be viewed by the public but may not be copied or traced except by election officials for election administration purposes. Any such copy or tracing is not a public record.

...."

SECTION 1.2.(a) G.S. 163-230.1(h) is recodified as G.S. 163-226(f).

SECTION 1.2.(b) G.S. 163-230.1, as amended by subsection (a) of this section, reads as rewritten:

"§ 163-230.1. Simultaneous issuance of absentee ballots with application.

(a) Written Request. – A qualified voter who ~~desires to vote by absentee ballot, is eligible to vote by absentee ballot under G.S. 163-226,~~ or that voter's near relative or verifiable legal guardian, shall complete a request form for an absentee application and absentee ballots so that the county board of elections receives that completed request form not later than 5:00 P.M. on the Tuesday before the election. That completed written request form shall be in compliance with G.S. 163-230.2. The county board of elections shall enter in the register of absentee requests, applications, and ballots issued the information required in G.S. 163-228 as soon as each item of that information becomes available. Upon receiving the completed request form, the county board of elections shall cause to be mailed to that voter a single package that includes all of the following:

- (1) The official ballots ~~that the~~ voter is entitled to vote.
- (2) A container-return envelope for the ballots, printed in accordance with G.S. 163-229.
- (3) An instruction sheet.
- (4) A clear statement of the requirement for a photocopy of identification described in G.S. 163-166.16(a) or an affidavit as described in G.S. 163-166.16(d)(1), (d)(2), or (d)(3) with the returned ballot.

(a1) Mailing of Application and Ballots. – The ballots, envelope, and instructions shall be mailed to the voter by the county board's ~~chairman, chair,~~ member, officer, or employee as determined by the board and entered in the register as provided by this Article.

(b) Absence for Sickness or Physical Disability. – Notwithstanding the provisions of subsection (a) of this section, if a voter expects to be unable to go to the voting place to vote in person on election day because of that voter's sickness or other physical disability, that voter or that voter's near relative or verifiable legal guardian may make the request ~~under subsection (a) of this section for absentee ballots~~ in person to the board of elections of the county in which the voter is registered after 5:00 p.m. on the Tuesday before the election but not later than 5:00 p.m. on the day before the election. The county board of elections shall treat that completed request form in the same manner as a request under subsection (a) of this section but may personally deliver the application and ballots to the voter or that voter's near relative or verifiable legal ~~guardian-guardian,~~ and shall enter in the register of absentee requests, applications, and ballots issued the information required in G.S. 163-228 as soon as each item of that information becomes available. The county board of elections shall personally deliver to the requester in a single package:

- (1) The official ballots the voter is entitled to vote.
- (2) A container-return envelope for the ballots, printed in accordance with G.S. 163-229.
- (3) An instruction sheet.

- (4) A clear statement of the requirement for a photocopy of identification described in G.S. 163-166.16(a) or an affidavit as described in G.S. 163-166.16(d)(1), (d)(2), or (d)(3) with the returned application and voted ballots.

(c) Delivery of Absentee Ballots and Container-Return Envelope to Applicant. – When the county board of elections receives a completed request form for applications and absentee ballots, ballots from the voter, or the near relative or the verifiable legal guardian of that voter, the county board shall promptly issue and transmit them to the voter in accordance with the following instructions:

- (1) On the top margin of each ballot the applicant is entitled to vote, the chair, a member, officer, or employee of the board of elections shall write or type the words "Absentee Ballot No. ____ " or an abbreviation approved by the State Board of Elections and insert in the blank space the number assigned the applicant's application in the register of absentee requests, applications, and ballots issued. That person shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter. Alternatively, the board of elections may cause to be barcoded on the ballot the voter's application number, if that barcoding system is approved by the State Board of Elections Board.
- (2) The chair, member, officer, or employee of the board of elections shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, in accordance with the terms of G.S. 163-229(b), the absentee voter's name, the absentee voter's application number, and the designation of the precinct in which the voter is registered. If the ballot is barcoded under this section, the envelope may be barcoded rather than having the actual number appear. The person placing the ballots in the envelopes shall leave the container-return envelope holding the ballots unsealed.
- (3) The chair, member, officer, or employee of the board of elections shall then place the unsealed container-return envelope holding the ballots together with printed instructions for voting and returning the ballots, in an envelope addressed to the voter at the post office address stated in the request, seal the envelope, and mail it at the expense of the county board of elections: Provided, that in case of a request received after 5:00 p.m. on the Tuesday before the election under the provisions of subsection (b) of this section, in lieu of transmitting the ballots to the voter in person or by mail, the chair, member, officer, or employee of the board of elections may deliver the sealed envelope containing the instruction sheet and the container-return envelope holding the ballots to a near relative or verifiable legal guardian of the voter.

The county board of elections may receive completed written request forms for applications at any time prior to the election but shall not mail applications and ballots to the voter or issue applications and ballots in person earlier than 60 days prior to the statewide general election in an even-numbered year, or earlier than 50 days prior to any other election, except as provided in G.S. 163-227.2, 163-227.5, and 163-227.6. No election official shall issue applications for absentee ballots except in compliance with this Article.

(d) Voter to Complete. – The application shall be completed and signed by the voter personally, the ballots marked, the ballots sealed in the container-return envelope, and the certificate completed as provided in G.S. 163-231.

(e) Approval of Applications. – At its next official meeting after return of the completed container-return envelope with the voter's ballots, the county board of elections

shall determine whether the container-return envelope has been properly executed. If the board determines that the container-return envelope has been properly executed, it shall approve the application and deposit the container-return envelope with other container-return envelopes for the envelope to be opened and the ballots counted at the same time as all other container-return envelopes and absentee ballots.

(f) Required Meeting of County Board of Elections. – During the period commencing on the third Tuesday before an election, in which absentee ballots are authorized, the county board of elections shall hold one or more public meetings each Tuesday at 5:00 p.m. for the purpose of action on applications for absentee ballots. At these meetings, the county board of elections shall pass upon applications for absentee ballots.

If the county board of elections changes the time of holding its meetings or provides for additional meetings in accordance with the terms of this subsection, notice of the change in hour and notice of the schedule of additional meetings, if any, shall be published in a newspaper circulated in the county at least 30 days prior to the election.

At the time the county board of elections makes its decision on an application for absentee ballots, the board shall enter in the appropriate column in the register of absentee requests, applications, and ballots issued opposite the name of the applicant a notation of whether the applicant's application was "Approved" or "Disapproved".

The decision of the board on the validity of an application for absentee ballots shall be final subject only to such review as may be necessary in the event of an election contest. The county board of elections shall constitute the proper official body to pass upon the validity of all applications for absentee ballots received in the county; this function shall not be performed by the ~~chairman~~ chair or any other member of the board individually.

(f1) Each container-return envelope returned to the county board with application and voted ballots under this section shall be accompanied by a photocopy of identification described in G.S. 163-166.16(a) or an affidavit as described in G.S. 163-166.16(d)(1), (d)(2), or (d)(3).

(g) Rules. – The State Board of Elections, Board, by rule or by instruction to the county board of elections, shall establish procedures to provide appropriate safeguards in the implementation of this section. The State Board shall adopt rules to provide for the forms of identification that shall be included with returned application and voted ballots. At a minimum, the rules shall include the following:

- (1) Acceptable photocopies of forms of readable identification, as described in G.S. 163-166.16(a).
- (2) A process for a voter without acceptable photocopies of forms of readable identification under subdivision (1) of this subsection to complete an alternative affidavit in accordance with G.S. 163-166.16(d)(1), (d)(2), or (d)(3) that includes inability to attach a physical copy of the voter's identification with the written request as a reasonable impediment to compliance with the identification requirement. If a reasonable impediment under this subdivision states inability to attach a physical copy of the voter's identification with the written request, the reasonable impediment shall include one of the following:
 - a. The number of the voter's North Carolina drivers license issued under Article 2 of Chapter 20 of the General Statutes, including a learner's permit or a provisional license.
 - b. The number of the voter's special identification card for nonoperators issued under G.S. 20-37.7.
 - c. The last four digits of the voter's social security number."

SECTION 1.3.(a) G.S. 163-230.2 reads as rewritten:

"§ 163-230.2. Method of requesting absentee ballots.

(a) Valid Types of Written Requests. – A completed written request form for ~~an absentee ballot~~ ballots as required by G.S. 163-230.1 is valid only if it is on a form created by the State Board and signed by the voter requesting absentee ballots or that voter's near relative or verifiable legal guardian. The State Board shall make the form available at its offices, online, and in each county board of elections office, and that form may be reproduced. ~~A voter may make a request in person or by writing to the county board for the form to request an absentee ballot.~~ The request form for an absentee ballot created by the State Board shall require at least the following information:

- (1) The name and address of the residence of the voter.
- (2) The name and address of the voter's near relative or verifiable legal guardian if that individual is making the request.
- (3) The address of the voter to which the application and absentee ballots are to be mailed if different from the residence address of the voter.
- (4) ~~The identification required in accordance with State Board rules, as provided in subsection (f) of this section.~~ One of the following:
 - a. The number of the applicant's North Carolina drivers license issued under Article 2 of Chapter 20 of the General Statutes, including a learner's permit or a provisional license.
 - b. The number of the applicant's special identification card for nonoperators issued under G.S. 20-37.7.
 - c. The last four digits of the applicant's social security number.
- (5) The voter's date of birth.
- (6) The signature of the voter or of the voter's near relative or verifiable legal guardian if that individual is making the request.
- (7) A clear indicator of the date the election generating the request is to be held, except for annual calendar year requests in accordance with G.S. 163-226(b).

(b) Request to Update Voter Registration. – A completed request form for ~~an absentee ballot~~ ballots shall be deemed a request to update the official record of voter registration for that voter and shall be confirmed in writing in accordance with G.S. 163-82.14(d).

(c) Return of Request. – The completed request form for ~~an absentee ballot~~ ballots shall be delivered to the county board of elections. ~~If the voter does not include the information requested in subdivision (a)(4) of this section, a copy of a document listed in G.S. 163-166.12(a)(2) shall accompany the completed request form.~~ elections only by any of the following:

- (1) The voter.
- (2) The voter's near relative or verifiable legal guardian.
- (3) A member of a multipartisan team trained and authorized by the county board of elections pursuant to G.S. 163-226.3.

(d) Confirmation of Voter Registration. – Upon receiving a completed request form for ~~an absentee ballot~~ ballots, the county board shall confirm that voter's registration. If that voter is confirmed as a registered voter of the county, the absentee ballots and certification form shall be mailed to the voter, unless personally delivered in accordance with G.S. 163-230.1(b). If the voter's official record of voter registration conflicts with the completed request form for ~~an absentee ballot~~ ballots or cannot be confirmed, the voter shall be so notified. If the county board cannot resolve the differences, no application or absentee ballots shall be issued.

(e) Invalid Types of Written Requests. – ~~A request is not valid if it does not comply with subsection (a) of this section.~~ If a county board of elections receives a request for ~~an absentee ballot~~ ballots that does not comply with this subsection or subsection (a) of this

section, the board shall not issue an application and ~~ballot~~-ballots under G.S. 163-230.1. A request for absentee ballots is not valid if any of the following apply:

- (1) The completed written request is not on a form created by the State Board.
- (2) The completed written request is completed, partially or in whole, or signed by anyone other than the voter, or the voter's near relative or verifiable legal guardian. A member of a multipartisan team trained and authorized by the county board of elections pursuant to G.S. 163-226.3 may assist in completion of the request.
- (3) The written request does not contain all of the information required by subsection (a) of this section.
- (4) The completed written request is returned to the county board by someone other than a person listed in subsection (c) of this section, the United States Postal Service, or a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2).

(e1) Assistance by Others. – If a voter is in need of assistance completing the written request form due to blindness, disability, or inability to read or write and there is not a near relative or legal guardian available to assist that voter, the voter may request some other person to give assistance, notwithstanding any other provision of this section. If another person gives assistance in completing the written request form, that person's name and address shall be disclosed on the written request form in addition to the information listed in subsection (a) of this section.

(f) ~~Rules by State Board. – The State Board shall adopt rules for the enforcement of this section, including rules to provide for the forms of identification that must be included with the written request for an absentee ballot. At a minimum, the rules shall include the following:~~

- ~~(1) Acceptable forms of readable identification that are substantially similar to those required under G.S. 163-166.16.~~
- ~~(2) A process for a voter without acceptable readable identification under subdivision (1) of this section to complete an alternative affidavit in accordance with G.S. 163-166.16(d)(1), (d)(2), or (d)(3) that includes lack of access to a method to attach an electronic or physical copy of the identification card to the written request as a reasonable impediment to compliance with the identification requirement.~~
- ~~(3) A process for a voter to request the option to return the information required by subdivision (1) or (2) of this section with the absentee ballot container return envelope, as provided in G.S. 163-229.section."~~

SECTION 1.3.(b) G.S. 163-226(b) reads as rewritten:

"(b) ~~Annual Request by Person With Sickness or Physical Disability. – If the applicant so requests and reports in the application that the voter has a sickness or physical disability that is expected to last the remainder of the calendar year, the application shall constitute a voter may request for an to vote by mail-in absentee ballot for all of the primaries and elections held during the calendar year when the application-completed written request under G.S. 163-230.1 is received.~~"

SECTION 1.3.(c) G.S. 20-30(6) reads as rewritten:

- (6) To make a color photocopy or otherwise make a color reproduction of a drivers license, learner's permit, or special identification card which has been color-photocopied or otherwise reproduced in color, unless such color photocopy or other color reproduction was authorized by the ~~Commissioner~~ Commissioner or is made to comply with G.S. 163-230.2. It shall be lawful to make a black and white photocopy of a drivers license, learner's permit, or special identification card or otherwise make a

black and white reproduction of a drivers license, learner's permit, or special identification card."

SECTION 1.3.(d) On or before May 1, 2020, the State Board of Elections shall report to the Joint Legislative Elections Oversight Committee and the General Assembly as to its plans to implement Sections 1.2 and 1.3 of this act and any recommendations for statutory changes necessary to implement these provisions.

SECTION 1.3.(e) Notwithstanding G.S. 163-230.2, as amended by this section, the State Board shall issue absentee application and ballots to any voter who has submitted a valid request for absentee ballots prior to the effective date of this act for elections held in 2019 and 2020.

SECTION 1.4. G.S. 163-229(b) reads as rewritten:

"(b) Application on Container-Return Envelope. – In time for use not later than 60 days before a statewide general election in an even-numbered year, and not later than 50 days before a statewide primary, other general election or county bond election, the county board of elections shall print a sufficient number of envelopes in which persons casting absentee ballots may transmit their marked ballots to the county board of elections. However, in the case of municipal elections, sufficient container-return envelopes shall be made available no later than 30 days before an election. Each container-return envelope shall have printed on it an application which shall be designed and prescribed by the State ~~Board of Elections, Board,~~ providing for all of the following:

- (1) The voter's certification of eligibility to vote the enclosed ballot and of having voted the enclosed ballot in accordance with this Part.
- (2) A space for identification of the envelope with the voter and the voter's signature.
- (3) A space for the identification of the two persons witnessing the casting of the absentee ballot in accordance with G.S. 163-231, those persons' signatures, and those persons' addresses.
- (4) A space for the name and address of any person who, as permitted under G.S. 163-226.3(a), assisted the voter if the voter is unable to complete and sign the certification and that individual's signature.
- (5) A space for approval by the county board of elections.
- (6) A space to allow reporting of a change of name as provided by G.S. 163-82.16.
- (7) A prominent display of the unlawful acts under G.S. 163-226.3 and G.S. 163-275, except if there is not room on the envelope, the State Board ~~of Elections~~ may provide for that disclosure to be made on a separate piece of paper to be included along with the container-return envelope.
- (8) An area to attach additional documentation necessary to comply with the identification requirements in accordance with State Board rules, as provided in ~~G.S. 163-230.2~~ G.S. 163-230.1.

The container-return envelope shall be printed in accordance with the instructions of the State ~~Board of Elections, Board,~~ which shall prohibit the display of the voter's party affiliation on the outside of the container-return envelope."

SECTION 1.5.(a) G.S. 163-237 reads as rewritten:

"§ 163-237. Certain violations of absentee ballot law made criminal offenses.

(a) False Statements under Oath Made Class ~~2-1~~ Misdemeanor. – If any person shall willfully and falsely make any affidavit or statement, under oath, which affidavit or statement under oath, is required to be made by the provisions of this Article, ~~he~~ that person shall be guilty of a Class ~~2-1~~ misdemeanor.

(b) False Statements Not under Oath Made Class ~~2-1~~ Misdemeanor. – Except as provided by G.S. 163-275(16), if any person, for the purpose of obtaining or voting any official ballot under the provisions of this Article, shall willfully sign any printed or written

false statement which does not purport to be under oath, or which, if it purports to be under oath, was not duly sworn to, ~~he that person~~ shall be guilty of a Class 2-1 misdemeanor.

(c) Candidate Witnessing Absentee Ballots of Nonrelative Made Class 2-1 Misdemeanor. – A person is guilty of a Class 2-1 misdemeanor if that person acts as a witness under G.S. 163-231(a) in any primary or election in which the person is a candidate for nomination or election, unless the voter is the candidate's near relative as defined in ~~G.S. 163-230.1(f)~~. G.S. 163-226(f).

(d) Fraud in Connection with Absentee Vote; Forgery. – Any person attempting to aid and abet fraud in connection with any absentee vote cast or to be cast, under the provisions of this Article, shall be guilty of a misdemeanor. Attempting to vote by fraudulently signing the name of a regularly qualified voter is a Class 1-G felony.

(d1). Sell or Attempt to Sell Completed Absentee Ballot. – Any person who sells or attempts to sell, or purchases or agrees to purchase, a completed written request, a completed application for absentee ballots, or voted absentee ballots, shall be guilty of a Class I felony.

(d2). Destruction of Absentee Ballot. – Any person who intentionally, with the intent of obstructing a vote by a registered voter, fails to deliver or intentionally destroys a completed written request, a completed application for absentee ballots, or voted absentee ballots, shall be guilty of a Class G felony.

(d3). Copies or Retention of Identifying Information. – Any person, other than the voter or near relative or verifiable legal guardian of that voter, who copies or otherwise retains the request for absentee ballots, a completed application for absentee ballots, or any identifying information, as defined in G.S. 14-113.20, disclosed in a request or application, shall be guilty of a Class G felony.

(d4). Compensation Based on Requests. – Any person who compensates another, or who accepts compensation, based on the number of returned written requests for absentee ballots under G.S. 163-230.2, shall be guilty of a Class I felony.

(d5). Intent to Unlawfully Influence. – Any person who commits, attempts to commit, or conspires to commit a crime identified in G.S. 163-82.6(b), 163-226.3(a), 163-274, 163-275, or this section with the intent to unlawfully influence or interfere with a primary or election, or to otherwise unlawfully gain, shall be guilty of a Class F felony.

(d6). Disclosure of Register of Absentee Ballot Requests. – Notwithstanding G.S. 132-3(a), any person who steals, releases, or possesses the official register of absentee requests for mail-in absentee ballots as provided in G.S. 163-228 prior to the opening of the voting place in accordance with G.S. 163-166.01, for a purpose other than the conduct of business at the county board of elections, shall be guilty of a Class G felony.

(e) Violations Not Otherwise Provided for Made Class 2-1 Misdemeanors. – If any person shall willfully violate any of the provisions of this Article, or willfully fail to comply with any of the provisions thereof, for which no other punishment is herein provided, ~~he that person~~ shall be guilty of a Class 2-1 misdemeanor."

SECTION 1.5.(b) This section becomes effective December 1, 2019, and applies to offenses committed on or after that date.

SECTION 1.6. Rule Making. – The State Board of Elections shall adopt emergency rules for the implementation of this Part in accordance with G.S. 150B-21.1A. This section does not require any rule making if not otherwise required by law.

PART II. RESTORE THE LAST SATURDAY OF EARLY ONE-STOP VOTING

SECTION 2.(a) G.S. 163-227.2(b) reads as rewritten:

"(b) Not earlier than the third ~~Wednesday~~ Thursday before an election, in which absentee ballots are authorized, in which a voter seeks to vote and not later than ~~7:00 P.M. on the last Friday~~ 3:00 P.M. on the last Saturday before that election, the voter shall appear in person only at the office of the county board of elections, except as provided in G.S. 163-227.6. A county board of elections shall conduct one-stop voting on the last

Saturday before the election from 8:00 A.M. until 3:00 P.M. That voter shall enter the voting enclosure at the board office through the appropriate entrance and shall at once state his or her name and place of residence to an authorized member or employee of the board and present photo identification in accordance with G.S. 163-166.16. In a primary election, the voter shall also state the political party with which the voter affiliates and in whose primary the voter desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party under G.S. 163-119, the voter shall state the name of the authorizing political party in whose primary he wishes to vote. The board member or employee to whom the voter gives this information shall announce the name and residence of the voter in a distinct tone of voice. After examining the registration records, an employee of the board shall state whether the person seeking to vote is duly registered. If the voter is found to be registered that voter may request that the authorized member or employee of the board furnish the voter with an application form as specified in G.S. 163-277. application for absentee ballots. The voter shall complete the application in the presence of the authorized member or employee of the board, and shall deliver the application to that person."

SECTION 2.(b) G.S. 163-227.6, as amended by S.L. 2019-22, reads as rewritten:

"§ 163-227.6. Sites and hours for one-stop voting.

(a) Notwithstanding any other provision of G.S. 163-227.2, 163-227.5, and this section, a county board of elections by unanimous vote of all its members may provide for one or more sites in that county for absentee ballots to be applied for and cast under these sections. Every individual staffing any of those sites shall be a member or full-time employee of the county board of elections or an employee of the county board of elections whom the board has given training equivalent to that given a full-time employee. Those sites must be approved by the State Board of Elections as part of a Plan for Implementation approved by both the county board of elections and by the State Board of Elections which shall also provide adequate security of the ballots and provisions to avoid allowing persons to vote who have already voted. The Plan for Implementation shall include a provision for the presence of political party observers at each one-stop site equivalent to the provisions in G.S. 163-45 for party observers at voting places on election day. A county board of elections may propose in its Plan not to offer one-stop voting at the county board of elections office; the State Board may approve that proposal in a Plan only if the Plan includes at least one site reasonably proximate to the county board of elections office and the State Board of Elections finds that the sites in the Plan as a whole provide adequate coverage of the county's electorate. If a county board of elections has considered a proposed Plan or Plans for Implementation and has been unable to reach unanimity in favor of a Plan, a member or members of that county board of elections may petition the State Board of Elections to adopt a plan for it. If petitioned, the State Board may also receive and consider alternative petitions from another member or members of that county board. The State Board of Elections may adopt a Plan for that county. The State Board, in that plan, shall take into consideration factors including geographic, demographic, and partisan interests of that county whether the Plan disproportionately favors any party, racial or ethnic group, or candidate.

(b) The State Board of Elections shall not approve, either in a Plan approved unanimously by a county board of elections or in an alternative Plan proposed by a member or members of that board, a one-stop site in a building that the county board of elections is not entitled under G.S. 163-129 to demand and use as an election-day voting place, unless the State Board of Elections finds that other equally suitable sites were not available and that the use of the sites chosen will not unfairly advantage or disadvantage geographic, demographic, or partisan interests of that county. disproportionately favor any party, racial or ethnic group, or candidate. In providing the site or sites for one-stop absentee voting under G.S. 163-227.2, 163-227.5, and this section, the county board of elections shall make a request to the State, county, city, local school board, or other entity in control of the building

that is supported or maintained, in whole or in part, by or through tax revenues at least 90 days prior to the start of one-stop absentee voting under these sections. The request shall clearly identify the building, or any specific portion thereof, requested the dates and times for which that building or specific portion thereof is requested and the requirement of an area for election related activity. If the State, local governing board, or other entity in control of the building does not respond to the request within 20 days, the building or specific portion thereof may be used for one-stop absentee voting as stated in the request. If the State, local governing board, or other entity in control of the building or specific portion thereof responds negatively to the request within 20 days, that entity and the county board of elections shall, in good faith, work to identify a building or specific portion thereof in which to conduct one-stop absentee voting under 163-227.2, 163-227.5, and this section. If no building or specific portion thereof has been agreed upon within 45 days from the date the county board of elections received a response to the request, the matter shall be resolved by the State ~~Board of Elections~~Board.

(c) For all sites approved for one-stop voting under this section, a county board of elections shall provide the following:

- (1) Each one-stop site across the county shall be open at that same location during the period required by G.S. 163-227.2(b).
- (2) If any one-stop site across the county is opened on any day during the period required by G.S. 163-227.2(b), all one-stop sites shall be open on that day.
- (3) On each weekday during the period required by G.S. 163-227.2(b), all one-stop sites shall be open from ~~7:00 A.M. to 7:00 P.M.~~8:00 A.M. to 7:30 P.M.
- (4) If the county board of elections opens one-stop sites on Saturdays other than the last Saturday before the election during the period required by G.S. 163-227.2(b), then all one-stop sites shall be open for the same number of hours uniformly throughout the county on those Saturdays.
- (5) If the county board of elections opens one-stop sites on Sundays during the period required by G.S. 163-227.2(b), then all one-stop sites shall be open for the same number of hours uniformly throughout the county on those Sundays.
- (6) All one-stop sites shall be open on the last Saturday before the election, for the hours required under G.S. 163-227.2(b) for that last Saturday.

(d) Notwithstanding subsection (c) of this section, a county board of elections by unanimous vote of all its members may propose a Plan for Implementation providing for the number of sites set out below in that county for absentee ballots to be applied for and cast with days and hours that vary from the county board of elections, or its alternate, and other additional one-stop sites in that county. If the county board of elections is unable to reach unanimity in favor of a Plan for Implementation, a member or members of the county board of elections may petition the State Board to adopt a plan for the county and the State Board may adopt a Plan for Implementation for that county. However, any Plan of Implementation approved under this subsection shall provide for uniform location, days, and hours for that one site throughout the period required by ~~G.S. 163A-1300(b)~~G.S. 163-227.2(b). This subsection applies only to a county that meets any of the following:

- (1) One site in a county that includes a barrier island, which barrier island meets all of the following conditions:
 - a. It has permanent inhabitation of residents residing in an unincorporated area.
 - b. It is bounded on the east by the Atlantic Ocean and on the west by a coastal sound.

- c. It contains either a National Wildlife Refuge or a portion of a National Seashore.
 - d. It has no bridge access to the mainland of the county and is only accessible by marine vessel.
- (2) Up to two sites in a county that is bounded by the largest sound on the East Coast and the county seat is located at the intersection of two rivers, which divide the county.
- (e) Notwithstanding ~~G.S. 163A-1300~~ G.S. 163-227.2 and subdivisions (c)(2) and (c)(3) of this section, a county board of elections by unanimous vote of all its members may propose a Plan for Implementation providing for sites in that county for absentee ballots to be applied for and cast in elections conducted in odd-numbered years. The proposed Plan for Implementation shall specify the hours of operation for the county board of elections for an election conducted in that county for that odd-numbered year. If the county board of elections is unable to reach unanimity in favor of a Plan for Implementation for that odd-numbered year, a member or members of the county board of elections may petition the State Board to adopt a Plan for Implementation for the county, and the State Board may adopt a Plan for Implementation for that county. However, throughout the period required by ~~G.S. 163A-1300(b)~~, G.S. 163-227.2(b), any Plan of Implementation approved under this subsection shall provide for a minimum of regular business hours consistent with daily hours presently observed by the county board of elections for the county board of elections, or its alternate, and for uniform locations, days, and hours for all other additional one-stop sites in that county."

PART III. EXTENSION OF TIME BY WHICH COUNTY BOARDS OF ELECTIONS NEED TO REPLACE DIRECT RECORD ELECTRONIC VOTING EQUIPMENT UNDER CERTAIN CONDITIONS

SECTION 3.(a) Notwithstanding Section 3.11 of S.L. 2018-13, the State Board of Elections (State Board) may authorize, upon such terms and conditions as the State Board deems appropriate, a county board of elections to use a direct record electronic (DRE) voting system in any election prior to July 1, 2020, provided the State Board determines the following conditions are satisfied:

- (1) The county board of elections submits a hardship request to the State Board to use a DRE voting system in an election or elections prior to July 1, 2020, as specified in the request, and provides documentation that replacement of the machines prior to July 1, 2020, would create an undue hardship for the county.
- (2) The county board of elections provides sufficient information for the State Board to conclude that the use of the DRE voting system will not jeopardize the security of the election or elections.
- (3) The county board of elections has begun the process and time line for replacing the DRE voting system and provides documentation to the State Board regarding the time line for that process and specifically the time of testing as required by G.S. 163-165.9.

SECTION 3.(b) This section is effective when it becomes law and expires August 1, 2020.

PART IV. AUTHORIZE A COUNTY TO TEST NEW VOTING EQUIPMENT DURING A SIMULATED ELECTION

SECTION 4.(a) G.S. 163-165.9(a) reads as rewritten:

"(a) Before approving the adoption and acquisition of any voting system by the board of county commissioners, the county board of elections shall do all of the following:

- (1) Recommend to the board of county commissioners which type of voting system should be acquired by the county.
- (2) Witness a demonstration, in that county or at a site designated by the State ~~Board of Elections, Board,~~ of the type of voting system to be recommended and also witness a demonstration of at least one other type of voting system certified by the State ~~Board of Elections Board.~~
- (3) ~~Test, Test the voting system in at least one of the following ways:~~
 - a. ~~during~~ During an election, the proposed voting system in at least one precinct in the county where the voting system would be used if adopted.
 - b. During a simulated election, in accordance with standards established by the State Board."

SECTION 4.(b) This section is effective when it becomes law.

PART V. APPROPRIATIONS FOR THE STATE BOARD OF ELECTIONS

SECTION 5.1. The appropriations made in this Part and S.L. 2019-209 are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget for the State Board of Elections in accordance with the State Budget Act. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes, and the savings shall revert to the appropriate fund at the end of each fiscal year, except as otherwise provided by law.

CURRENT OPERATIONS AND EXPANSION

SECTION 5.2. Appropriations from the General Fund for the budget of the State Board of Elections are made for the fiscal biennium ending June 30, 2021, as follows:

Current Operations – General Fund 2020-2021	FY 2019-2020	FY
Elections		
Requirements	\$8,091,301	
\$6,980,220		
Less: Receipts	\$102,000	
\$102,000		
Net Appropriation	\$7,989,301	
\$6,878,220		

OTHER APPROPRIATIONS

SECTION 5.3.(a) State funds, as defined in G.S. 143C-1-1(d)(25), are appropriated for each fiscal year of the 2019-2021 fiscal biennium, as follows:

- (1) All budget codes listed in the Governor's Recommended Budget and in the Budget Support Document for State Board of Elections for the 2019-2021 fiscal biennium submitted pursuant to G.S. 143C-3-5 are appropriated up to the amounts specified, as adjusted by the General Assembly in this act.
- (2) Departmental receipts up to the amounts needed to implement the legislatively mandated salary increases and employee benefit increases provided in this Part for each fiscal year of the 2019-2021 fiscal biennium.

SECTION 5.3.(b) Receipts collected in a fiscal year in excess of the amounts appropriated by this section shall remain unexpended and unencumbered until appropriated by the General Assembly, unless the expenditure of overrealized receipts in the fiscal year in which the receipts were collected is authorized by G.S. 143C-6-4. Overrealized receipts are appropriated in the amounts necessary to implement this subsection.

SECTION 5.3.(c) Funds may be expended only for the specified programs, purposes, objects, and line items or as otherwise authorized by the General Assembly.

OTHER RECEIPTS FROM PENDING AWARD GRANTS

SECTION 5.4.(a) Notwithstanding G.S. 143C-6-4, the State Board of Elections may, with approval of the Director of the Budget, spend funds received from grants awarded subsequent to the enactment of this Part for grant awards that are for less than two million five hundred thousand dollars (\$2,500,000), do not require State matching funds, and will not be used for a capital project. The State Board of Elections shall report to the Joint Legislative Commission on Governmental Operations within 30 days of receipt of such funds.

The State Board of Elections may spend all other funds from grants awarded after the enactment of this Part only with approval of the Director of the Budget and after consultation with the Joint Legislative Commission on Governmental Operations.

SECTION 5.4.(b) The Office of State Budget and Management shall work with the State Board of Elections to budget grant awards according to the annual program needs and within the parameters of the respective granting entities. Depending on the nature of the award, additional State personnel may be employed on a time-limited basis. Funds received from such grants are hereby appropriated and shall be incorporated into the authorized budget of the State Board of Elections.

SECTION 5.4.(c) Notwithstanding the provisions of this section, the State Board of Elections may not accept a grant not anticipated in this Part if acceptance of the grant would obligate the State to make future expenditures relating to the program receiving the grant or would otherwise result in a financial obligation as a consequence of accepting the grant funds.

STATE BOARD OF ELECTIONS – USE OF GENERAL FUND APPROPRIATIONS

SECTION 5.5. Of the funds appropriated in this Part to the State Board of Elections (Budget Code 18025) from the General Fund, the sum of one million six hundred ten thousand two hundred fifty-two dollars (\$1,610,252) for the 2019-2020 fiscal year and the sum of four hundred ninety-nine thousand one hundred seventy-one dollars (\$499,171) for the 2020-2021 fiscal year shall be used as follows:

- (1) User Support Assistance (Fund Code 1300). – One hundred ten thousand thirteen dollars (\$110,013) on a recurring basis in the 2019-2020 fiscal year and one hundred sixty-five thousand twenty dollars (\$165,020) on a recurring basis in the 2020-2021 fiscal year to establish two User Support Specialist positions. These positions are effective November 1, 2019.
- (2) Voter Identification (ID) (Fund Code 1400). – One million one hundred sixty-six thousand eighty-eight dollars (\$1,166,088) on a nonrecurring basis in the 2019-2020 fiscal year to implement the voter ID requirements pursuant to S.L. 2018-144, Implementation of Voter ID Constitutional Amendment.
- (3) Salary Reserve (Fund Code Multiple). – Twenty-two thousand two hundred twenty dollars (\$22,220) on a recurring basis for each year of the 2019-2021 fiscal biennium to adjust the salary of an existing position that will be designated as the Board's General Counsel.
- (4) Base Budget Adjustment (Fund Code Multiple). – Three hundred eleven thousand nine hundred thirty-one dollars (\$311,931) on a recurring basis for each year of the 2019-2021 fiscal biennium to correct the base budget to reflect actual agency composition.

ELECTIONS GENERAL FUND REDUCTIONS

SECTION 5.6. Of the funds appropriated in this Part to the State Board of Elections (Budget Code 18025), the sum of four hundred fifty-four thousand two hundred forty-eight dollars (\$454,248) for each year of the 2019-2021 fiscal biennium shall be reduced as follows:

- (1) Vacant Position Elimination (Fund Code 1300). – One hundred thirty-three thousand four hundred fifty-five dollars (\$133,455) on a recurring basis in the 2019-2020 fiscal year to eliminate a vacant General Counsel (60088198) position.
- (2) Personal Services Reduction (Fund Code Multiple). – Three hundred twenty thousand seven hundred ninety-three dollars (\$320,793) on a recurring basis in the 2019-2020 fiscal year to reduce the personal services budget for positions.

ELECTIONS SPECIAL FUND

SECTION 5.7. The funds appropriated in this Part to the State Board of Elections Special Fund (28025) are adjusted as follows:

- (1) HAVA Election Security Funds (Fund Code 2401). – Three million dollars (\$3,000,000) on a nonrecurring basis in each year of the 2019-2021 fiscal biennium to modernize the Statewide Elections Information Management System.

ELECTIONS MODIFICATIONS

VACANT POSITION ELIMINATION FLEXIBILITY AND REPORT

SECTION 5.8. Notwithstanding any provision of this act to the contrary, the State Board of Elections shall meet the personal services reduction required by this act by eliminating positions, either vacant or filled, for each year of the 2019-2021 fiscal biennium. By December 1, 2019, and December 1, 2020, the Board shall submit a report to the Joint Legislative Oversight Committee on General Government, the House of Representatives Appropriations Subcommittee on General Government, the Senate Appropriations Committee on General Government and Information Technology, and the Fiscal Research Division on the actions taken to achieve the budgeted reduction for vacant position eliminations for the fiscal year. The report shall include a list of each alternative position eliminated, along with its position number, title, and the amount of salary and fringe benefits associated with each position.

ELECTIONS/DESIGNATE EXISTING POSITION AS AGENCY GENERAL COUNSEL

SECTION 5.9. The State Board of Elections shall designate one of its current full-time employee positions as "Agency General Counsel." The State Board of Elections shall consult with the Office of State Human Resources and the Office of State Budget and Management to ensure that the designation authorized by this section is made in accordance with State policies and procedures.

STATE BUDGET ACT APPLIES

SECTION 5.10.(a) The provisions of the State Budget Act, Chapter 143C of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this Part by reference.

SECTION 5.10.(b) The budget enacted by the General Assembly is for the maintenance of the State Board of Elections for the 2019-2021 biennial budget as provided in G.S. 143C-3-5. This budget includes the appropriations of State funds as defined in G.S. 143C-1-1(d)(25).

The Director of the Budget submitted a recommended budget to the General Assembly in the Governor's Recommended Budget and in the Budget Support Document for the State Board of Elections for the 2019-2021 fiscal biennium, dated March 2019. The adjustments to the recommended budget for the State Board of Elections made by the General Assembly are set out in this act.

SECTION 5.10.(c) The budget enacted by the General Assembly for the State Board of Elections shall also be interpreted in accordance with the provisions of this Part and other appropriate legislation. In the event that there is a conflict between the line-item budget certified by the Director of the Budget for the State Board of Elections and the budget enacted by the General Assembly for the State Board of Elections, the budget enacted by the General Assembly for the State Board of Elections shall prevail.

APPROPRIATIONS LIMITATIONS AND DIRECTIONS APPLY

SECTION 5.11.(a) If House Bill 966, 2019 Regular Session, becomes law, then Section 25.1 and Section 25.2 of that act are repealed.

SECTION 5.11.(b) Except where expressly repealed or amended, S.L. 2019-209, and any other enactments affecting the State budget during the 2019 Regular Session of the General Assembly, shall remain in effect.

MOST TEXT APPLIES ONLY TO THE 2019-2021 FISCAL BIENNIUM

SECTION 5.12. Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2019-2021 fiscal biennium, the textual provisions of this Part apply only to funds appropriated for, and activities occurring during, the 2019-2021 fiscal biennium.

EFFECT OF HEADINGS

SECTION 5.13. The headings to the Parts, subparts, and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act, except for effective dates referring to a Part or subpart.

SEVERABILITY CLAUSE

SECTION 5.14. If any section or provision of this Part is declared unconstitutional or invalid by the courts, it does not affect the validity of this Part as a whole or any part other than the part so declared to be unconstitutional or invalid.

EFFECTIVE DATE

SECTION 5.15. Except as otherwise provided, this Part becomes effective July 1, 2019.

PART VI. REPORT ON POST-ELECTION AUDITS

SECTION 6.(a) Article 15A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-182.12A. Post-election audits.

After conducting a post-election audit, the State Board shall produce a report which summarizes the audit, including the rationale for and the findings of the audit. The report shall be submitted to the Joint Legislative Elections Oversight Committee and the Joint Legislative Oversight Committee on General Government within 10 business days of the date the audit is completed."

SECTION 6.(b) This section is effective when it becomes law and applies to post-election audits conducted on or after that date.

PART VII. EFFECTIVE DATE

SECTION 7. Except as otherwise provided, this act becomes effective January 1, 2020, and applies to elections conducted on or after that date.

In the General Assembly read three times and ratified this the 30th day of October, 2019.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 2:14 p.m. this 6th day of November, 2019