Subject: Record Request Fulfillment Notice : Elizabeth Haddix
Date: Thursday, May 9, 2024 at 2:16:34 PM Eastern Daylight Time
From: Elections
To: AO Records
Attachments: image001.png

EXTERNAL SENDER

Hello, Elizabeth Haddix

This email is to inform you that your request for the following has been fulfilled and is ready for download:

Request Type: Other
Requested Data Format: Electronic Data (Free - PDF Download)
Quantity:
Total Cost: $0

Please find the data requested at the link below.

https://dconc-my.sharepoint.com/:f:/g/personal/dlassiter_dconc_gov/Eh3zDW8G-K5OunNhIa4coqYBVMKMEPoUsKrpmL8ErPWUkw?e=Ee0U98

The Public Information Division

AMERICAN OVERSIGHT

DURHAM COUNTY
Board of Elections

Regular Meeting Agenda
Durham County Board of Elections

Web Access: Join Zoom Webinar (Public)

Telephone Access: 312-626-6799 | Access Code: 958-6528-6121#

Dawn Y. Baxton (C-D) | David K. Boone (R) | Pamela A. Oxendine (D) | James P. Weaver (R) | Donald H. Beskind (D) |

Date: Thursday, January 18, 2024 Time: 5:30 PM Location: BOE Warehouse

1. Meeting Opening
    a. Call to Order
    b. Pledge of Allegiance
    c. Approval of Agenda
    d. Approval of Minutes (12/14/2023)

2. Director's Report
    a. List Maintenance Update
    b. Financial Update
    c. Legal/Legislative Update
    d. Sample Ballots
    e. 2024 State Board of Elections Conferences

3. Public Comment and Questions
    - Public comments and questions received prior to the opening of public comment will be read aloud and responded to as appropriate during this period. To submit comments, complete the survey by clicking here.

4. New Business
    a. Appointment of 2024 Statewide Primary and Election Early Voting Officials
    b. Resolution to Delegate Absentee Ballot Preparatory Steps to the Director of Elections
    c. Resolution to Delegate Responsibilities Related to Early Voting Workers to the Director of Elections
    d. Resolution to Maintain Out-of-Precinct Polling Place Change for Precinct 54
    e. Resolution to Adopt a Time for Counting Absentee Ballots

5. General Discussion
    - Absentee by-mail voting begins on 1/19

6. Adjournment

AMERICAN OVERSIGHT

DURHAM COUNTY
Board of Elections

201 N Roxboro Street
Durham, NC 27701
(919) 560-0700

Date: Thursday, January 18, 2024	Time: 5:30 PM	Location: BOE Warehouse

Section:

1. Meeting Opening

Item #/Subject:

c. Approval of Agenda

Applicable Statutes and/or Rules:

N/A

Summary:

N/A

Resource(s):

N/A

Board Action Required:

Board action required.

AMERICAN OVERSIGHT

DURHAM COUNTY
Board of Elections

201 N Roxboro Street
Durham, NC 27701
(919) 560-0700

Date: Thursday, January 18, 2024	Time: 5:30 PM	Location: BOE Warehouse

Section:

1. Meeting Opening

Item #/Subject:

d. Approval of Minutes

Applicable Statutes and/or Rules:

N.C. Gen. Stat. §§ 163-31 and 143-318.10(e)

Summary:

This includes minutes from the 12/14/2023 Board meeting.

Resource(s):

Elections Director Derek Bowens

Attachments:

Draft minutes for the meeting.

Board Action Required:

Board action required.

AMERICAN OVERSIGHT

MEETING MINUTES

Board of Elections Meeting
Thursday, December 14, 2023
5:30 P.M.

Board Members:
Dawn Y. Baxton, Chairwoman
David K. Boone, Member
James P. Weaver, Member
Pamela A. Oxendine, Member
Donald H. Beskind, Member

Board Members Present: Chairwoman Dawn Y. Baxton, Member James P. Weaver, Member Donald H. Beskind, and Member David K. Boone

Board Staff Present: Elections Director Derek Bowens, Deputy Director Brenda Baker, and Systems Specialist Julius Richards

Guests in Attendance: Senior Assistant County Attorney Bettyna Abney

Meeting Type: In-Person and Zoom

Meeting Opening

Chairwoman Baxton called the meeting to order at approximately 5:31 p.m. at the Durham County Board of Elections Warehouse (2445 S. Alston Ave, Durham, NC 27713) and led the Pledge of Allegiance.

Approval of Agenda

Mr. Bowens presented the Board with the agenda for the meeting. Following review, Mr. Beskind moved to approve the agenda as submitted by staff. The motion carried unanimously, 4-0. Mrs. Oxendine was not present for this meeting.

Approval of Minutes

Mr. Bowens presented the Board with minutes from the 8/22/2023, 9/12/2023, 9/19/2023, 9/26/2023, 10/3/2023, 10/10/2023, 10/16/2023, 10/17/2023, 10/19/2023, 10/24/2023, 11/6/2023, 11/7/2023, 11/13/2023, 11/16/2023, and 11/17/2023 meetings. Following review, Mr. Boone moved to approve the minutes as submitted by staff. The motion carried unanimously, 4-0. Mr. Boone moved to approve the minutes for the 10/09/2023 and 10/31/2023 meetings as submitted by staff. The motion carried, 3-1 with Chairwoman Baxton abstaining since she was not present for those meetings.

Director's Report

Mr. Bowens provided an update on List Maintenance, Finances, Legislation, Monthly Voter Outreach Events, the New Facility, Candidate Filing, Redistricting, FY24-25 Budget Preparations and the 2024 State Board of Elections Winter Conference.

Public Comment

One public comment was provided in the portal and addressed by Mr. Bowens.

New Business

a. Preliminary Challenge Hearings: Leonardo Williams and Cassandra Stokes

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000004

- Mr. Bowens, Mrs. Abney, and Ms. Jacqueline Wagstaff were sworn in by Chairwoman Baxton preceding the presentation of evidence for each of the challenges. Both preliminary challenge hearings were decided as follows.

    i. Ms. Wagstaff submitted a residency challenge against Ms. Cassandra Stokes, where she argued that Ms. Stokes voted in Durham County for the past several elections under an address where she no longer resides. Ms. Wagstaff affirmed that her challenge of Ms. Stokes was related to her not being a resident of Durham County for several months. Following discussion and evaluation of the evidence presented, Mr. Boone moved that the Board dismiss the challenge due to lack of jurisdiction and the Board's inability under State Board of Elections Numbered Memorandum 2018-07 to hear a challenge alleging a registered voter is no longer a resident in Durham County. The motion passed unanimously, 4-0.

    ii. Ms. Wagstaff submitted a residency challenge against Mr. Leonardo Williams, where she argued that Mr. Williams did not live in the jurisdiction in which he held office as a City Council Member. Following discussion and evaluation of the evidence presented, Mr. Beskind moved to dismiss the challenge due to lack of probable cause. The motion passed unanimously, 4-0.

b. Adoption of 2024 Regular Meeting Schedule

- Mr. Bowens provided the Board with the 2024 Regular Meeting Schedule. Following review, Dr. Weaver moved to adopt the meeting schedule as presented. The motion carried, unanimously, 4-0.

General Discussion

There was no general discussion.

Adjournment

The Board adjourned at approximately 7:05 p.m. on a motion made by Mr. Boone. The motion carried unanimously, 4-0.

_____

Secretary

AMERICAN OVERSIGHT

DURHAM COUNTY
Board of Elections

201 N Roxboro Street
Durham, NC 27701
(919) 560-0700

Date: Thursday, January 18, 2024	Time: 5:30 PM	Location: BOE Warehouse

Section:

2. Director's Report

Item #/Subject:

N/A

Applicable Statutes and/or Rules:

N.C. Gen. Stat. § 163-35

Summary:

a. List Maintenance Update
   - Statistical overview of voter registration and list maintenance activity for 2023.

b. Financial Update
   - Salaries and Benefits expended through January 14h of FY 23-24
   - Operating Expenses through January 14th of FY 23-24
   - Overall expenditures through January 14th of FY 23-24

c. Legal/Legislative Updates
   - NC Senate Bill 747 – Signature Verification Pilot Program

d. Sample Ballots
   - Sample ballots are available for the 2024 Statewide Primary and Election. In total, Durham County will have 19 ballot styles. Voters can find their specific ballot style by calling the Board of Elections or using the State Board of Elections voter search tool found at https://vt.ncsbe.gov/RegLkup/. A compendium of all ballot styles can be found at the Board of Elections website.

e. 2024 State Board of Elections Conferences
   - The State Board of Elections Winter Conference will be held from February 4th – February 6th, 2024, in Concord, North Carolina. All Board members have been signed up for the conference and rooms have been reserved. The State Board of Elections has also announced the 2024 Summer Conference dates and location, which will be held from August 4th – August 6th, 2024, in Greensboro, North Carolina.

AMERICAN OVERSIGHT

DURHAM COUNTY
Board of Elections

201 N Roxboro Street
Durham, NC 27701
(919) 560-0700

Date: Thursday, January 18, 2024	Time: 5:30 PM	Location: BOE Warehouse

Resource(s):

Elections Director Derek Bowens

Attachments:

List Maintenance Update; Financial Update

Board Action Required:

Discuss as necessary.

AMERICAN OVERSIGHT

DURHAM COUNTY
Board of Elections

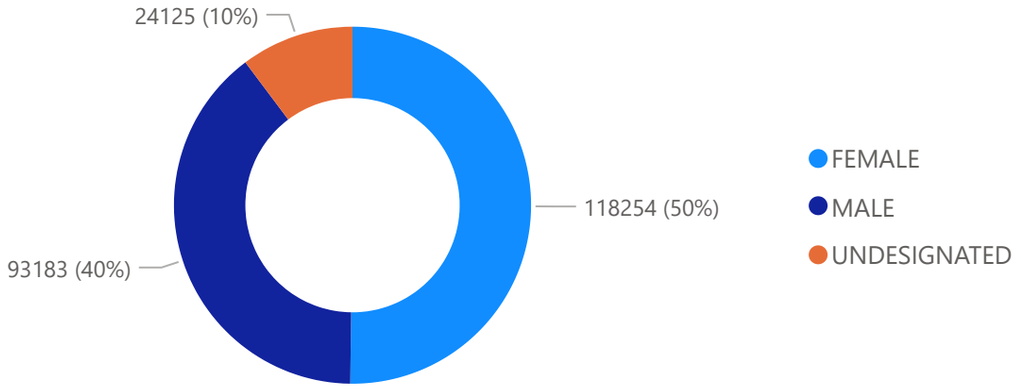
Total Registered Voters

As of January 14, 2024

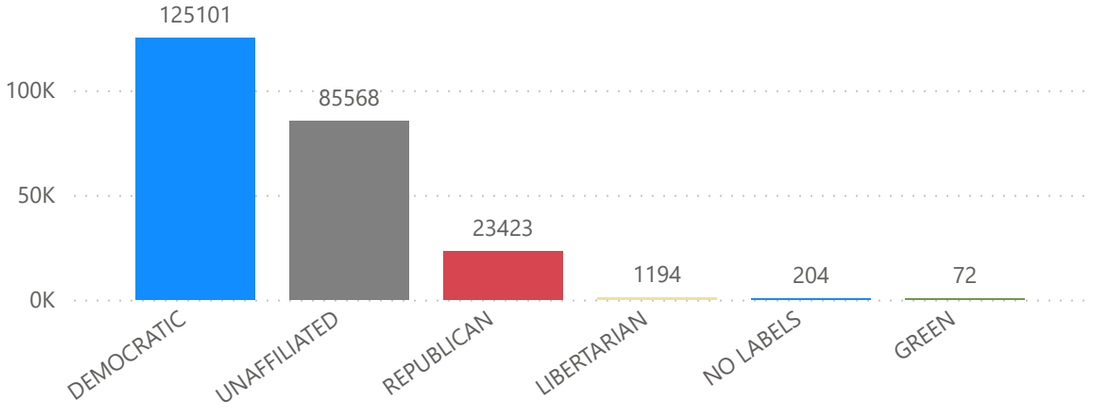
235,562

Total Registered Voters

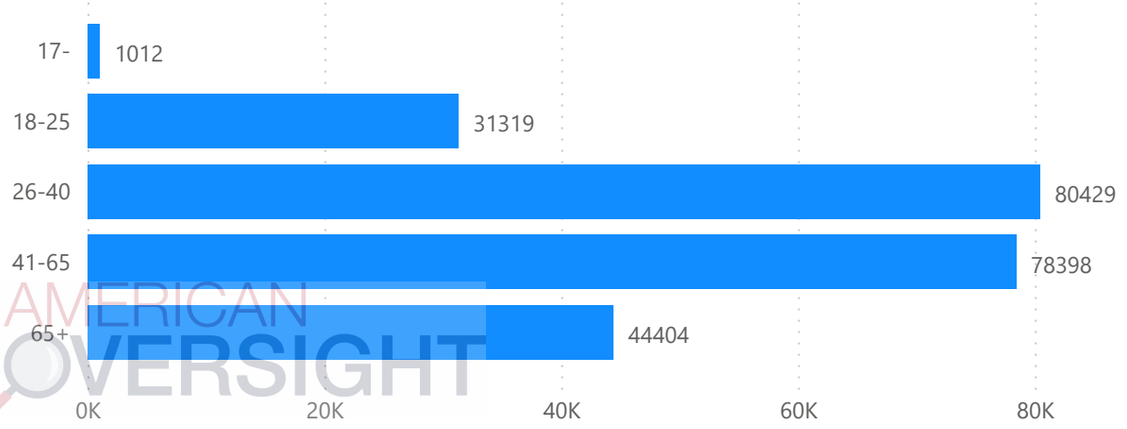
Total Registered By Gender



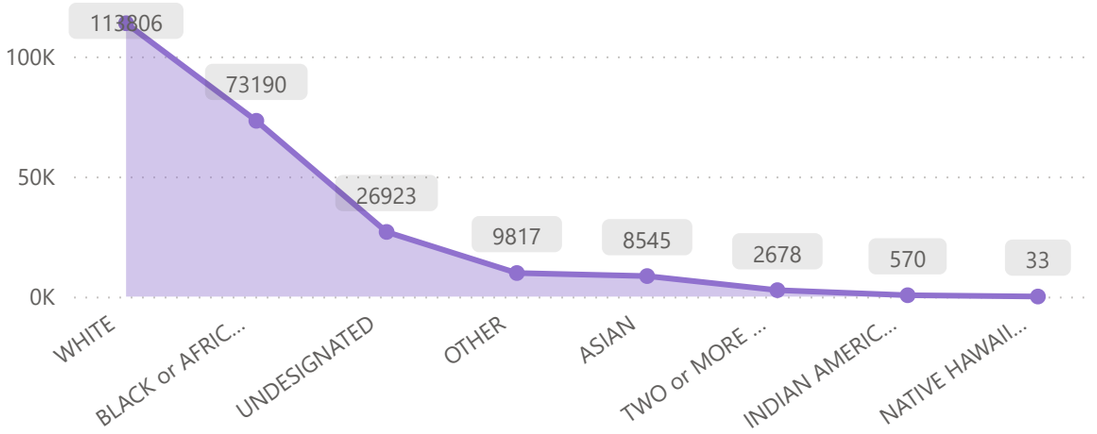
Total Registered By Party



Total Registered By Age Group



Total Registered By Race



AMERICAN OVERSIGHT

DURHAM COUNTY
Board of Elections

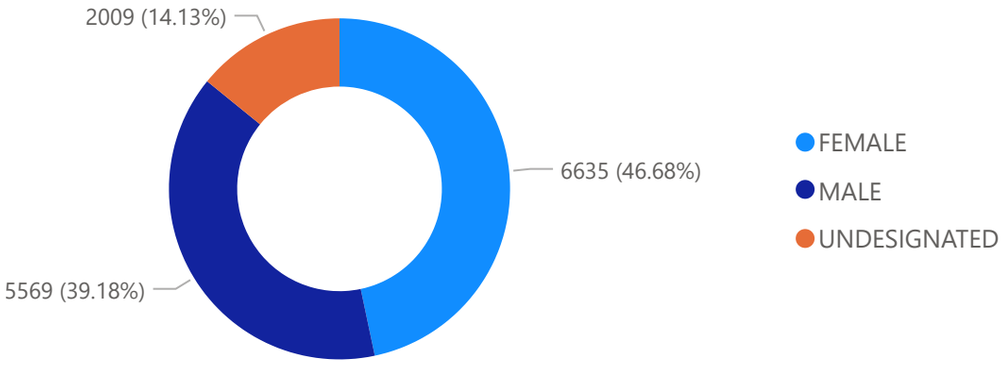
Total New Registrants

As of December 31, 2023

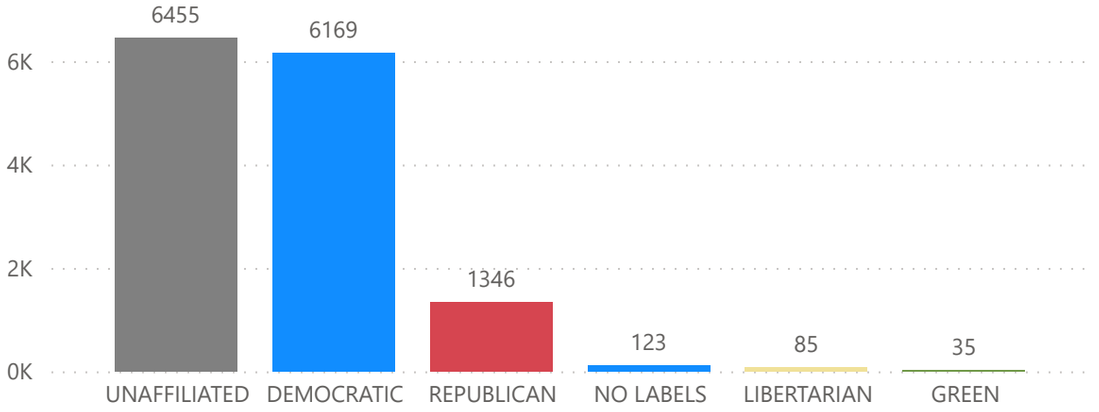
14,213

Total New Registrants

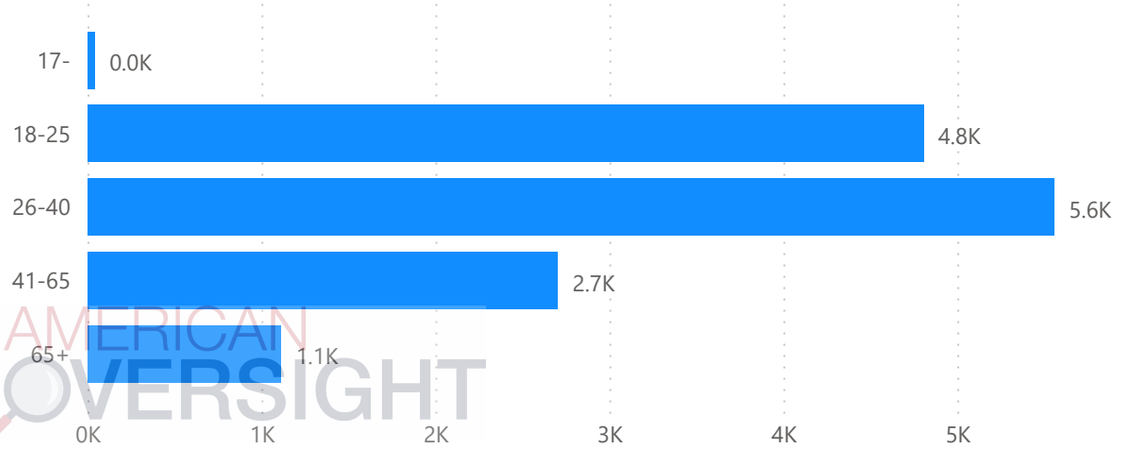
Total New Registrants By Gender



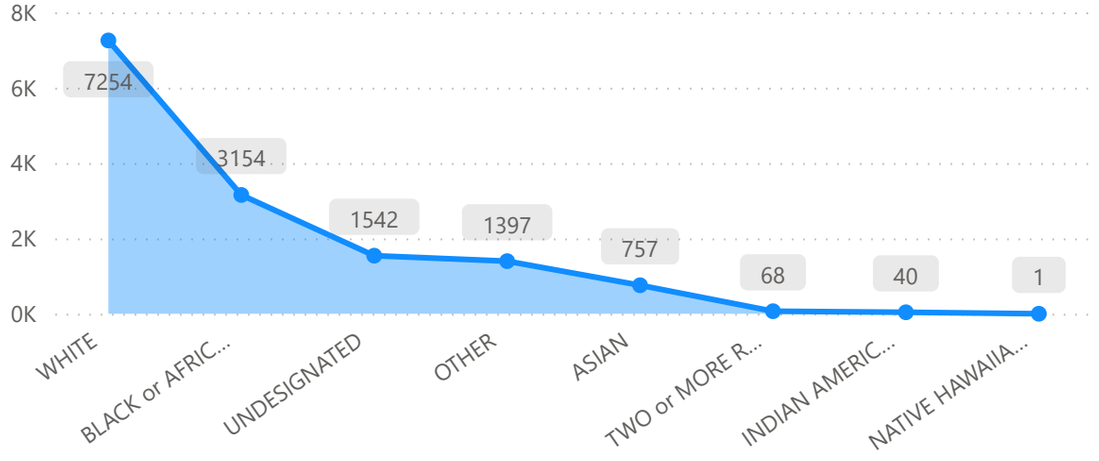
Total New Registrants By Party



Total New Registrants By Age Group



Total New Registrants By Race



AMERICAN OVERSIGHT

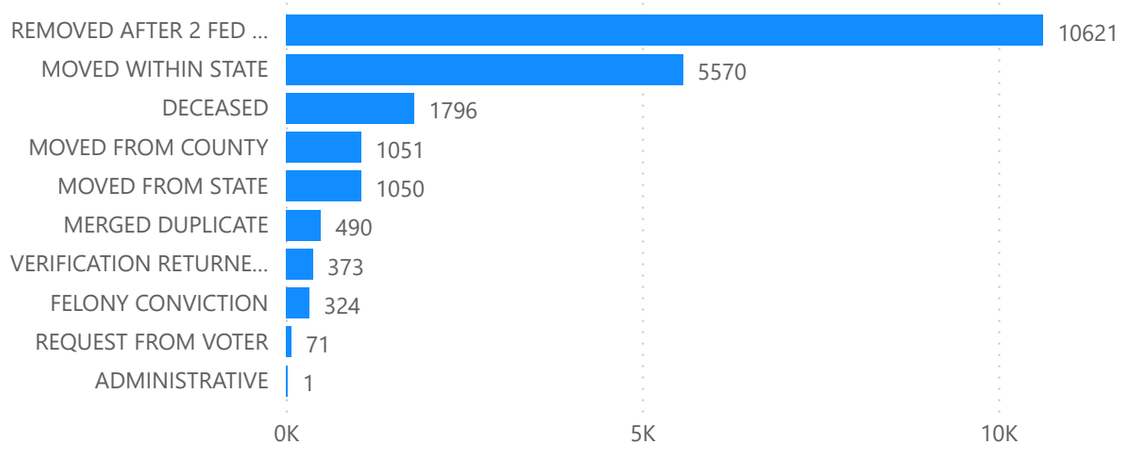
DURHAM COUNTY
Board of Elections

Total Voter Removals

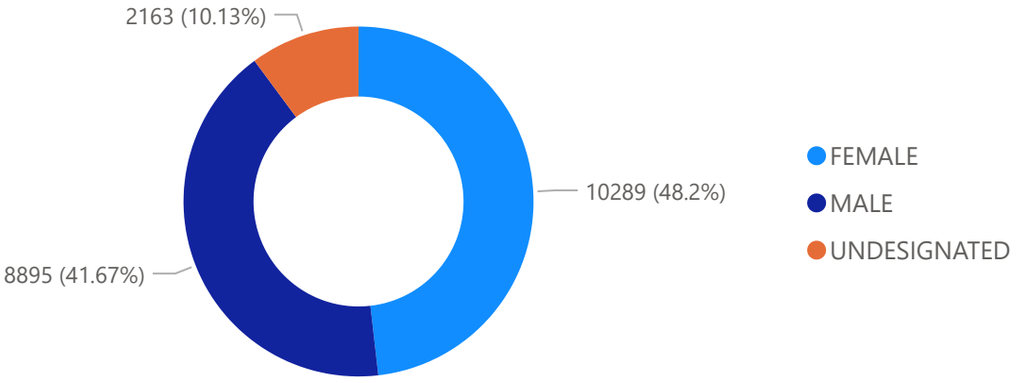
As of December 31, 2023

21,347
Total Removals

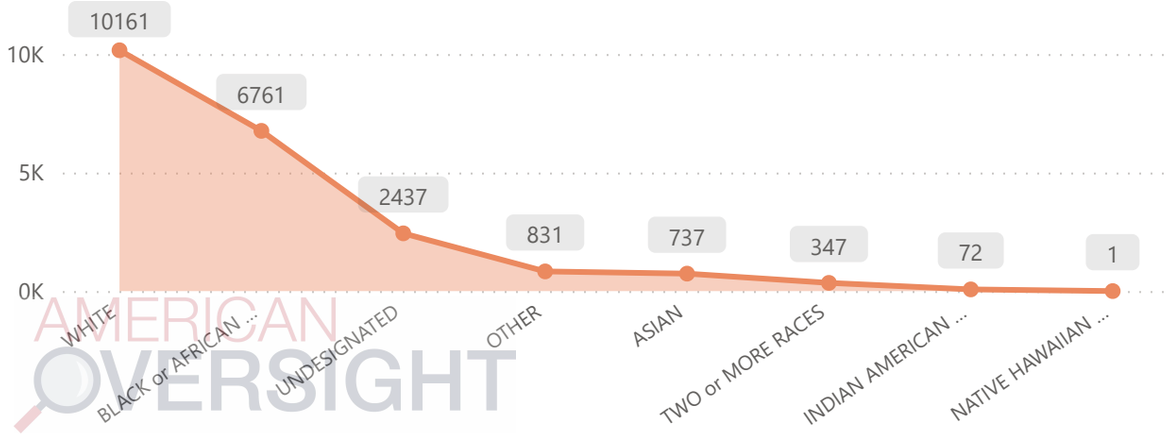
Total Removed By Reason



Total Removed By Gender

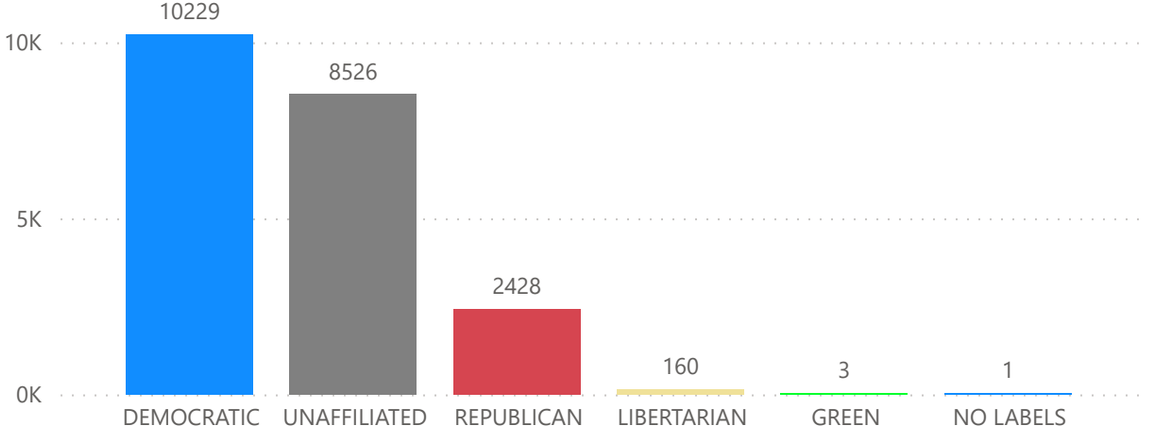


Total Removed By Race



AMERICAN OVERSIGHT

Total Removed By Party



DURHAM COUNTY
Board of Elections

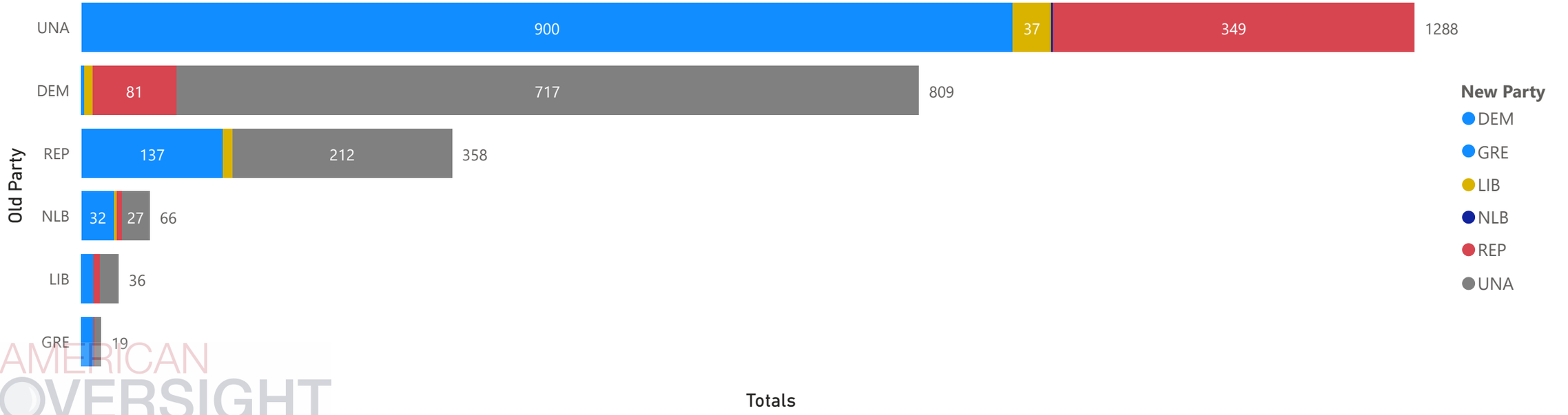
Total Party Changes

As of December 31, 2023

2,576

Total Party Changes

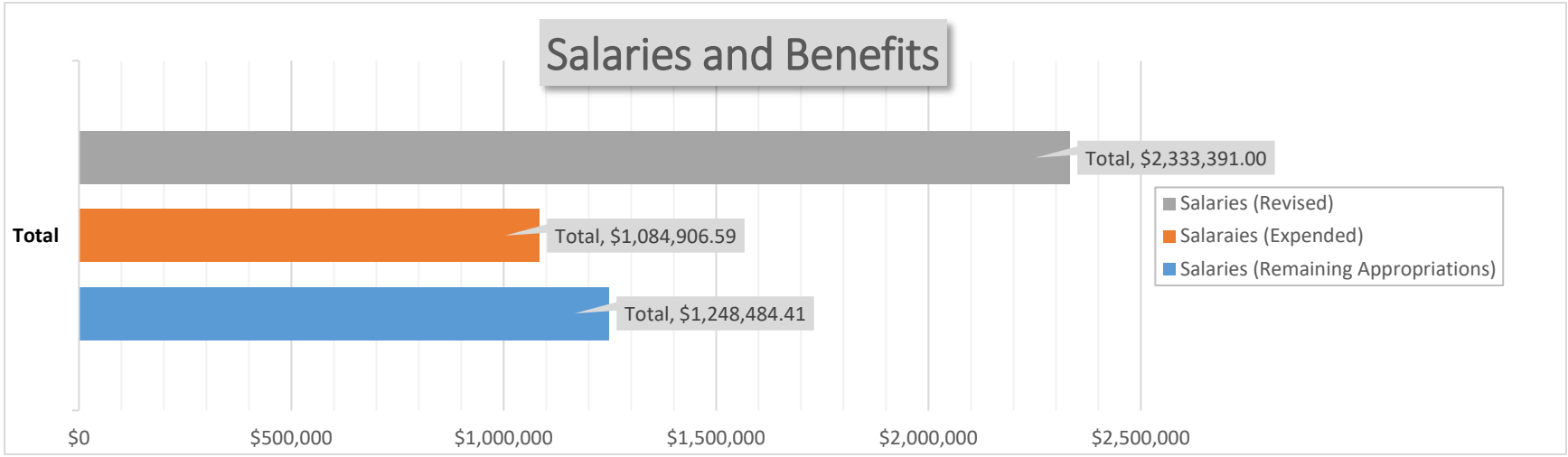
Old Party	DEM	GRE	LIB	NLB	REP	UNA	Total
UNA	900		37	2	349		**1288**
DEM		3	8		81	717	**809**
REP	137		9			212	**358**
NLB	32		2		5	27	**66**
LIB	12				6	18	**36**
GRE	12				1	6	**19**
Total	**1093**	**3**	**56**	**2**	**442**	**980**	**2576**

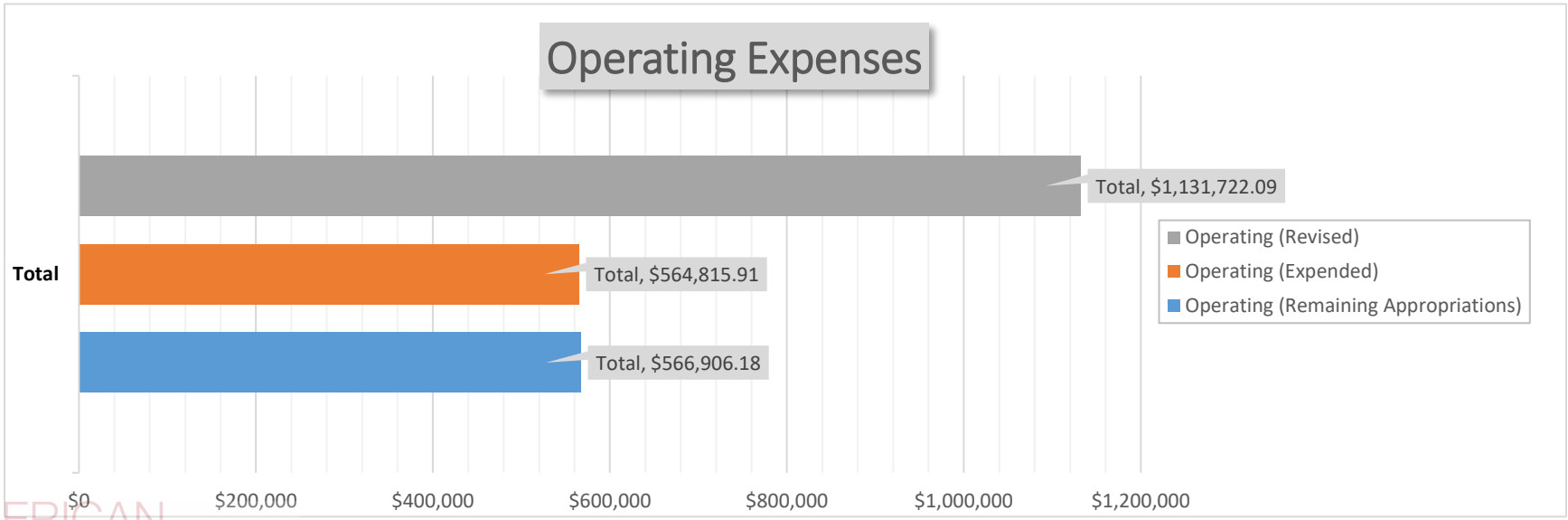


AMERICAN OVERSIGHT

DURHAM COUNTY
Board of Elections

FINANCIAL UPDATE: JANUARY 2024

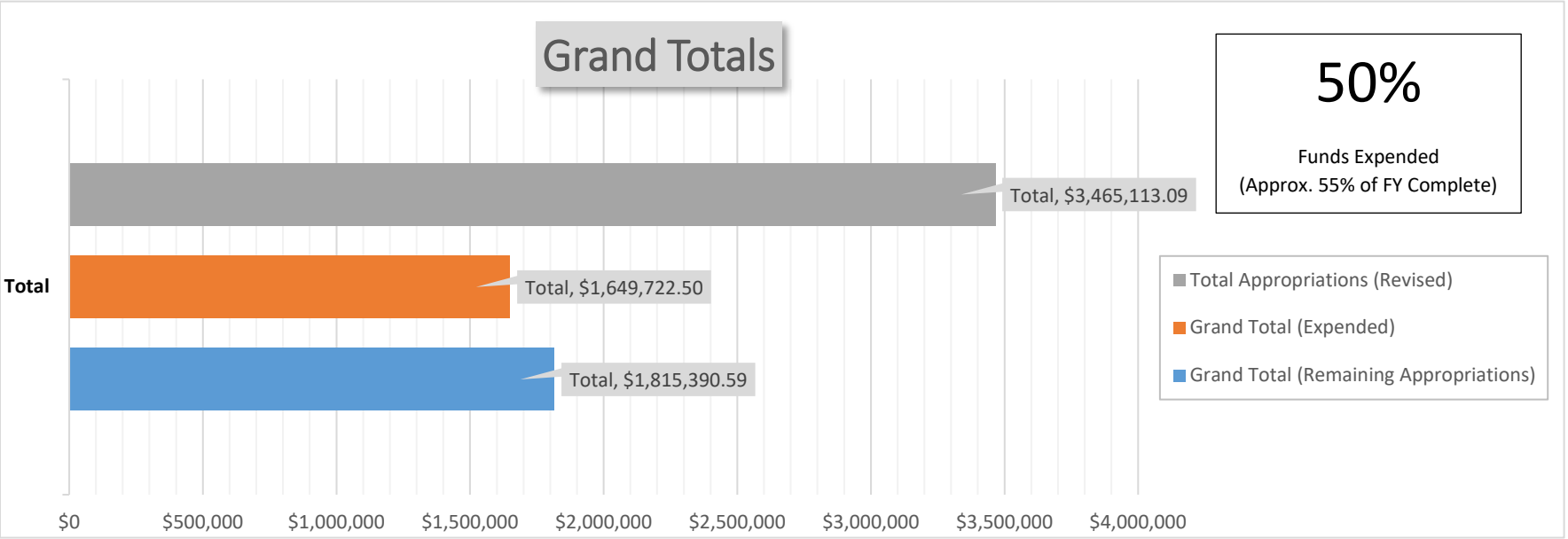




AMERICAN OVERSIGHT

DURHAM COUNTY
Board of Elections

FINANCIAL UPDATE: JANUARY 2024



- *Please note that "Grand Total (Expended)" does not include encumbrances as certain funds are technically not spent.*
- *Additional election administration expenses may be charged to the fiscal year where applicable.*

AMERICAN OVERSIGHT

DURHAM COUNTY
Board of Elections

201 N Roxboro Street
Durham, NC 27701
(919) 560-0700

Date: Thursday, January 18, 2024	Time: 5:30 PM	Location: BOE Warehouse

Section:

3. Public Comments and Questions

Item #/Subject:

N/A

Applicable Statutes and/or Rules:

N/A

Summary:

This is an opportunity for members of the public to provide comments and questions on elections-related matters.

Resource(s):

N/A

Attachments:

N/A

Board Action Required:

Discuss as necessary.

AMERICAN OVERSIGHT

DURHAM COUNTY
Board of Elections

201 N Roxboro Street
Durham, NC 27701
(919) 560-0700

Date: Thursday, January 18, 2024	Time: 5:30 PM	Location: BOE Warehouse

Section:

4. New Business

Item #/Subject:

a. Appointment of 2024 Statewide Primary and Election Early Voting Officials

Applicable Statutes and/or Rules:

N.C. Gen. Stat. § 163-166.35(a1) and SBE Numbered Memorandum 2023-07

Summary:

Pursuant to NCGS §163-166.35(a1) and SBE Numbered Memorandum 2023-07, the County Board of Elections must appoint Chief Judges, Judges, and Assistants to serve at each early voting site. County political parties are permitted to nominate workers to serve during the early voting period no later than the fifth business day before the date on which appointments are to be made. If these party nominations are timely, the County Board shall make appointments from the list of recommendations provided the recommended individuals are eligible to serve as precinct officials. The Board is responsible for assigning specific positions at each early voting location. The Board shall assure, where possible, that there is party balance at each early voting location. All appointed early voting officials must meet the same qualifications as Election Day precinct officials.

The attached nomination list includes 454 total workers that provided availability to serve during the 2024 Statewide Primary and Election Early Voting Period. Consistent with SBE Numbered Memorandum 2023-07, workers are being nominated to serve in multiple positions to allow for scheduling flexibility.

Resource(s):

Elections Director Derek Bowens

Attachments:

2024 Statewide Primary and Election Early Voting Worker Nomination List

Board Action Required:

Board action required.

AMERICAN OVERSIGHT

2024 Statewide Primary and Election Early Voting Worker Nomination List

First Name	Last Name	Party	Position	VRN	Nominated By
KIMBERLY	BATTLE	DEM	Chief Judge/Judge/Assistant	30263428	BOE
DENISE	BRANDON	DEM	Chief Judge/Judge/Assistant	391344	BOE
BARRY	BURCH	REP	Chief Judge/Judge/Assistant	654976	BOE
CAROLINE	CROCKER	DEM	Chief Judge/Judge/Assistant	30051765	BOE
MENDAL	FLOW	REP	Chief Judge/Judge/Assistant	561551	BOE
BEVERLY	GOODRICH	REP	Chief Judge/Judge/Assistant	593685	BOE
LISA	HASSLER	UNA	Chief Judge/Judge/Assistant	590316	BOE
ANASTRASIA	KIZZIE	DEM	Chief Judge/Judge/Assistant	537871	BOE
JONATHAN	LUIS	UNA	Chief Judge/Judge/Assistant	655549	BOE
AMY	MICELI	DEM	Chief Judge/Judge/Assistant	30103167	BOE
LENNACE	MURCHISON	DEM	Chief Judge/Judge/Assistant	30309155	BOE
JOHN	NOEL	DEM	Chief Judge/Judge/Assistant	698342	BOE
PHILLIS	SCOTT	UNA	Chief Judge/Judge/Assistant	569392	BOE
BEVERLY	TUCKER	UNA	Chief Judge/Judge/Assistant	602901	BOE
MINA	MURPHY	REP	Chief Judge/Judge/Assistant	30443568	BOE
BRAHMAJOTHI	MULUGU	UNA	Chief Judge/Judge/Assistant	30101117	BOE
CHARLENE	BURNS	DEM	Chief Judge/Judge/Assistant	579834	BOE
SHEILA	THERRIAULT	DEM	Chief Judge/Judge/Assistant	703239	BOE
PAMELA	BEATTY	DEM	Judge/Assistant	30365407	BOE
LAUREN	BIDDLE	UNA	Judge/Assistant	30273463	BOE
PETER	BINE	DEM	Judge/Assistant	30254219	BOE
RUTH	BOOTH	REP	Judge/Assistant	43492	BOE
JENNIFER	BOWEN	UNA	Judge/Assistant	664495	BOE
JAMES	BOWERS	DEM	Judge/Assistant	30365274	BOE
NATALIE	BOYDEN	UNA	Judge/Assistant	30231017	BOE
LISA	BUFORD	REP	Judge/Assistant	581574	BOE
MARIE	BUSH	REP	Judge/Assistant	665741	BOE
CYNTHIA	CAMPBELL	DEM	Judge/Assistant	586576	BOE
ANTHONY	CAMPIONE	REP	Judge/Assistant	30095658	BOE
TAMAR	CARROLL	UNA	Judge/Assistant	30007050	BOE
PATRICIA	CARSTENSEN	DEM	Judge/Assistant	584741	BOE
PATSY	CASH	UNA	Judge/Assistant	81166	BOE
JOSEPH	CHAN	REP	Judge/Assistant	686038	BOE
GRETCHEN	CHIARAMONTE	UNA	Judge/Assistant	644911	BOE
SHERYL	COMBEE	UNA	Judge/Assistant	30383781	BOE
DAVID	CONNELLY	DEM	Judge/Assistant	587511	BOE
MARISSA	CONTI	UNA	Judge/Assistant	30290559	BOE
MELVA	CORBIN	DEM	Judge/Assistant	30103108	BOE
DAVID	CRONBERGER	REP	Judge/Assistant	30370697	BOE
SAUNDRA	CRUMPE	DEM	Judge/Assistant	697580	BOE
SANDRA	DAVIS	DEM	Judge/Assistant	672119	BOE
DENISE	DUDLEY	DEM	Judge/Assistant	697320	BOE
TERRILEE	EBEL	REP	Judge/Assistant	30157968	BOE
EMILY	EGGE	UNA	Judge/Assistant	30049793	BOE
ALYSSA	ELLIOTT	DEM	Judge/Assistant	30182942	BOE
ANNE	FALZONE	REP	Judge/Assistant	544388	BOE
SHERRY	FONVIELLE	DEM	Judge/Assistant	30254689	BOE
WAYNE	FONVIELLE	DEM	Judge/Assistant	30254370	BOE

AMERICAN OVERSIGHT

2024 Statewide Primary and Election Early Voting Worker Nomination List

First Name	Last Name	Party	Position	VRN	Nominated By
MARY	FOSTER	UNA	Judge/Assistant	30315035	BOE
MELINDA	FRAISER	DEM	Judge/Assistant	581906	BOE
VELMA	FUTRELL	REP	Judge/Assistant	251846	BOE
LAUREN	GOODMAN	UNA	Judge/Assistant	30354386	BOE
AMY	GREEN	UNA	Judge/Assistant	550173	BOE
SHARON	GUILLORY	DEM	Judge/Assistant	30129316	BOE
STEPHANIE	HAWVER	DEM	Judge/Assistant	30426759	BOE
ERIN	HITE	DEM	Judge/Assistant	30040537	BOE
KIMBERLY	HOLT	UNA	Judge/Assistant	30024647	BOE
TAMMY	HOOD	DEM	Judge/Assistant	30236920	BOE
DOROTHY	IRBY	REP	Judge/Assistant	30210467	BOE
JO	IVERSON	DEM	Judge/Assistant	551708	BOE
BARBARA	IZLAR	DEM	Judge/Assistant	556583	BOE
KIMBERLEE	JOHNSON	DEM	Judge/Assistant	599120	BOE
SPENCIA	JOYNER	UNA	Judge/Assistant	260255	BOE
KELLI	KECK	UNA	Judge/Assistant	30186153	BOE
DELOIS	KELLEY	DEM	Judge/Assistant	263162	BOE
SUSAN	KENNEDY	UNA	Judge/Assistant	30042540	BOE
TIMOTHY	KENNEDY	REP	Judge/Assistant	30161282	BOE
JENNIFER	KILLEN	UNA	Judge/Assistant	30260322	BOE
KIRSTEN	KLIWINSKI	DEM	Judge/Assistant	30256359	BOE
MAUREEN	KURTZ	DEM	Judge/Assistant	30158360	BOE
EILEEN	LANHAM	REP	Judge/Assistant	651561	BOE
RICHARD	LAXAR	UNA	Judge/Assistant	30218719	BOE
GEORGIA	LOCKHART	DEM	Judge/Assistant	288382	BOE
JILL	LOWERY	DEM	Judge/Assistant	659855	BOE
KATHLEEN	MALLEY	UNA	Judge/Assistant	30109079	BOE
ILENE	MCCARTHY	REP	Judge/Assistant	30226454	BOE
PATRICIA	MOORMAN	UNA	Judge/Assistant	30010764	BOE
DAVID	MUMA	UNA	Judge/Assistant	30284245	BOE
DEBORAH	PARKS	REP	Judge/Assistant	30317927	BOE
JUSTIN	PERRY	UNA	Judge/Assistant	30266871	BOE
SHARON	PETTIFORD	DEM	Judge/Assistant	373929	BOE
NANCY-ANNE	POTTS	REP	Judge/Assistant	660725	BOE
MARGARET	QUINLAN	DEM	Judge/Assistant	30257588	BOE
REBECCA	REYES	DEM	Judge/Assistant	605438	BOE
CAROLYN	ROGERS	DEM	Judge/Assistant	30124772	BOE
WANDA	ROGERS	DEM	Judge/Assistant	30086571	BOE
TIFANY	ROSS	DEM	Judge/Assistant	30127519	BOE
MICHELLE	RUDOLPH	UNA	Judge/Assistant	30251072	BOE
LORRAINE	SALOIS-DEANE	UNA	Judge/Assistant	662615	BOE
PAUL	SICELOFF	DEM	Judge/Assistant	30419852	BOE
PAMELA	SINCLAIR	REP	Judge/Assistant	588655	BOE
MICHAEL	SISTROM	DEM	Judge/Assistant	30027358	BOE
CRIS	SLENTZ	UNA	Judge/Assistant	657396	BOE
NORMA	SMITH	DEM	Judge/Assistant	439565	BOE
LISA	SORG	UNA	Judge/Assistant	30098221	BOE

AMERICAN OVERSIGHT

2024 Statewide Primary and Election Early Voting Worker Nomination List

First Name	Last Name	Party	Position	VRN	Nominated By
AYAT	SOUFAN	DEM	Judge/Assistant	30408218	BOE
MARY	STEWART	REP	Judge/Assistant	570717	BOE
HOLLY	SWEREDOSKI	UNA	Judge/Assistant	694961	BOE
ELIZABETH	TALCOTT	UNA	Judge/Assistant	30357567	BOE
HEATHER	THOMAS	DEM	Judge/Assistant	30003712	BOE
LINDA	WARREN	DEM	Judge/Assistant	496681	BOE
BINTA	WATKINS	DEM	Judge/Assistant	30061766	BOE
PATRICIA	WHITEHURST	REP	Judge/Assistant	621263	BOE
CYNTHIA	WILLIAMS	DEM	Judge/Assistant	516691	BOE
MARY	WILLIAMS	DEM	Judge/Assistant	588862	BOE
NANCY	WILLIAMS	REP	Judge/Assistant	519740	BOE
LINDA	WILLIAMSON	REP	Judge/Assistant	539648	BOE
ELIZABETH	WINTERMUTE	DEM	Judge/Assistant	656369	BOE
HELEN	WOLFSON	DEM	Judge/Assistant	621853	BOE
JAMES	BEADLE	REP	Judge/Assistant	30187001	BOE
KIM	WALSH	REP	Judge/Assistant	597422	BOE
MARIAN	ABERNATHY	DEM	Assistant/Judge	30030004	BOE
SANDRA	ACKERMAN	DEM	Assistant/Judge	646201	BOE
LORRAINE	AIRALL	UNA	Assistant/Judge	30243066	BOE
JEAN	ALLEN	DEM	Assistant/Judge	540044	BOE
STUART	ALTENHAUS	UNA	Assistant/Judge	30236593	BOE
TONETTE	AMOS	DEM	Assistant/Judge	540190	BOE
SUSAN	ANDRESEN	DEM	Assistant/Judge	30109719	BOE
ANGELIQUE	WITHERSPOON	DEM	Assistant/Judge	526422	BOE
MATTIE	ATKINS	DEM	Assistant/Judge	30192232	BOE
JENNIFER	AUGELLO	DEM	Assistant/Judge	30217548	BOE
ROBERT	BAILEY	UNA	Assistant/Judge	30217053	BOE
SARAH	BALDWIN	DEM	Assistant/Judge	30233292	BOE
MARY	BANKSON	UNA	Assistant/Judge	30318165	BOE
LAVONE	BARNES	UNA	Assistant/Judge	30320531	BOE
STEPHANIE	BARNES-SIMMS	UNA	Assistant/Judge	30413487	BOE
PAIGE	BARNETT	DEM	Assistant/Judge	30412917	BOE
SANDRA	BATTLE	UNA	Assistant/Judge	30181191	BOE
TERRY	BAXTER	UNA	Assistant/Judge	30346262	BOE
DEBRA	BEHNKE	DEM	Assistant/Judge	30113811	BOE
DEBRA	BEIMDIEK	DEM	Assistant/Judge	30374362	BOE
TERRA	BIKAH	DEM	Assistant/Judge	640537	BOE
DEBORAH	BISHOP	DEM	Assistant/Judge	30056734	BOE
DANIEL	BLEDSOE	DEM	Assistant/Judge	30042241	BOE
IVIS	BOHLEN	DEM	Assistant/Judge	696643	BOE
ADAM	BONEY	DEM	Assistant/Judge	30128539	BOE
ROXANNA	BOTTJEN	REP	Assistant/Judge	30169698	BOE
MARIANNE	BOUVIER	UNA	Assistant/Judge	30408807	BOE
ROSE	BRITTON	DEM	Assistant/Judge	30256478	BOE
MICHAEL	BROACHE	DEM	Assistant/Judge	30326829	BOE
ETHEL	BRODIE	DEM	Assistant/Judge	30419296	BOE
KYRA	BROGDEN	DEM	Assistant/Judge	30106363	BOE

AMERICAN OVERSIGHT

2024 Statewide Primary and Election Early Voting Worker Nomination List

First Name	Last Name	Party	Position	VRN	Nominated By
DIANE	BROOKS-SAMPSON	DEM	Assistant/Judge	617465	BOE
CASIMIR	BROWN	DEM	Assistant/Judge	573413	BOE
DEBRA	BROWN	DEM	Assistant/Judge	30280826	BOE
VICTOR	BROWN	UNA	Assistant/Judge	30210773	BOE
MARGIT	BUCHER	DEM	Assistant/Judge	30329322	BOE
JACK	BUCKINGHAM	REP	Assistant/Judge	30374414	BOE
DEBBIE	BUFFALOE	DEM	Assistant/Judge	30010688	BOE
PEGGY	BULLOCK	DEM	Assistant/Judge	64270	BOE
DUSTIN	BURLESON	DEM	Assistant/Judge	30311913	BOE
JOYCE	BURNETTE	UNA	Assistant/Judge	704627	BOE
DILCY	BURTON	DEM	Assistant/Judge	623542	BOE
BEATRICE	BYRD	DEM	Assistant/Judge	547415	BOE
JACQUELINE	BYRD	DEM	Assistant/Judge	703990	BOE
JAMES	CALDWELL	REP	Assistant/Judge	606025	BOE
DANIELLE	CALLAHAN	UNA	Assistant/Judge	30334940	BOE
MAMIE	CAMPBELL	DEM	Assistant/Judge	30006025	BOE
MARCIA	CARPENTER	REP	Assistant/Judge	76774	BOE
JACQUELINE	CARROLL-GARCIA	DEM	Assistant/Judge	78415	BOE
MAMIE	CHAMBERS	DEM	Assistant/Judge	30316854	BOE
EULEON	CHATMAN	DEM	Assistant/Judge	538180	BOE
ELIZABETH	CHEEK	UNA	Assistant/Judge	108678	BOE
CARL	CHMIELEWSKI	UNA	Assistant/Judge	630980	BOE
GAILETTE	CLAY	DEM	Assistant/Judge	641582	BOE
ERIN	COFFMAN	DEM	Assistant/Judge	30250424	BOE
ROSALIND	COLEMAN	DEM	Assistant/Judge	97375	BOE
JOHN	COLEY	DEM	Assistant/Judge	30039190	BOE
KEVIN	COMBEE	UNA	Assistant/Judge	30383780	BOE
JOHN	COMPTON	DEM	Assistant/Judge	667380	BOE
TERRY	CURRO	UNA	Assistant/Judge	30305139	BOE
KATHRYN	DAILY	DEM	Assistant/Judge	30167511	BOE
ALMA	DAVIS	DEM	Assistant/Judge	30149813	BOE
MARVA	DAVIS	DEM	Assistant/Judge	541392	BOE
JAMES	DIGUISEPPI	DEM	Assistant/Judge	593426	BOE
GEORGE	DILL	DEM	Assistant/Judge	30326967	BOE
ELEANOR	DILLARD	DEM	Assistant/Judge	128373	BOE
BETTY	DIXON	DEM	Assistant/Judge	542503	BOE
RICKY	DIXON	DEM	Assistant/Judge	30280979	BOE
PATRICIA	DOLBY	DEM	Assistant/Judge	30189231	BOE
CAROL	DONIN	DEM	Assistant/Judge	30017962	BOE
CHRISTINA	DREW	DEM	Assistant/Judge	30107384	BOE
TRACEY	DRYDEN	DEM	Assistant/Judge	653737	BOE
LOIS	DUNCAN	REP	Assistant/Judge	602024	BOE
YVONNE	DUNLAP	DEM	Assistant/Judge	134651	BOE
KENNETH	EATON	DEM	Assistant/Judge	694026	BOE
MELANIE	EBERHART	UNA	Assistant/Judge	698737	BOE
JAMIE	EDE	UNA	Assistant/Judge	30343593	BOE
ERIC	EDELHEIT	DEM	Assistant/Judge	30325378	BOE

AMERICAN OVERSIGHT

2024 Statewide Primary and Election Early Voting Worker Nomination List

First Name	Last Name	Party	Position	VRN	Nominated By
PHILLIP	EDWARDS	DEM	Assistant/Judge	30251546	BOE
THOMAS	EDWARDS	UNA	Assistant/Judge	139923	BOE
IRIS	EGAN	UNA	Assistant/Judge	30308098	BOE
PATRICIA	ENDSLEY	DEM	Assistant/Judge	30042838	BOE
JAMES	ESHELMAN	UNA	Assistant/Judge	586141	BOE
BILLIE	ESPEJO JUAN	UNA	Assistant/Judge	30272623	BOE
KAREN	ESTEP	DEM	Assistant/Judge	30257132	BOE
BEVERLY	EVANS	DEM	Assistant/Judge	30195848	BOE
PAIGE	FAULKNER	DEM	Assistant/Judge	30234479	BOE
HELEN	FEATHERSON	DEM	Assistant/Judge	385684	BOE
RUTH	FERGUSON	UNA	Assistant/Judge	345745	BOE
SARAH	FICKE	DEM	Assistant/Judge	30113630	BOE
LLOYDINE	FOREMAN	DEM	Assistant/Judge	579869	BOE
DAWN	FORMEY	DEM	Assistant/Judge	30215000	BOE
GARY	FOUREMAN	DEM	Assistant/Judge	30052701	BOE
LAURA	FRAIOLI	DEM	Assistant/Judge	655000	BOE
BARBARA	GADIENT	DEM	Assistant/Judge	30415188	BOE
HAROLD	GADIENT	DEM	Assistant/Judge	30415189	BOE
JANET	GAMBLE	DEM	Assistant/Judge	168125	BOE
VICTORIA	GARDNER	DEM	Assistant/Judge	605186	BOE
GLORIA	GILCHRIST	UNA	Assistant/Judge	30322326	BOE
ONJERYA	GILMORE	DEM	Assistant/Judge	573497	BOE
ALAN	GORE	DEM	Assistant/Judge	30211257	BOE
MATTHEW	GOREVIN	DEM	Assistant/Judge	30273108	BOE
MARSHA	GREEN	UNA	Assistant/Judge	30162351	BOE
MICHAEL	GREEN	UNA	Assistant/Judge	30162352	BOE
JESSICA	GREY	DEM	Assistant/Judge	30253809	BOE
THOMAS	GREY	UNA	Assistant/Judge	589774	BOE
JOHN	GULLO	DEM	Assistant/Judge	592760	BOE
WILLIE	HAIRSTON	DEM	Assistant/Judge	30394437	BOE
SHARON	HALL	DEM	Assistant/Judge	635814	BOE
ANNIE	HAMILTON	DEM	Assistant/Judge	333370	BOE
PATRICIA	HANEN	DEM	Assistant/Judge	30343113	BOE
RICHARD	HANEY	DEM	Assistant/Judge	30272093	BOE
LATOYA	HANKINS	DEM	Assistant/Judge	30259059	BOE
DEBRA	HARTMAN	REP	Assistant/Judge	30066138	BOE
BETH	HARVAT	DEM	Assistant/Judge	655327	BOE
DEBRA	HAWKINS	UNA	Assistant/Judge	30186668	BOE
KAREN	HEARTH	UNA	Assistant/Judge	30312443	BOE
GLENN	HEARTWELL	DEM	Assistant/Judge	579316	BOE
MILDRED	HENDERSON	DEM	Assistant/Judge	213940	BOE
ELMER	HENKEL	DEM	Assistant/Judge	30413692	BOE
DEBORAH	HILLIARD	DEM	Assistant/Judge	221524	BOE
ERIC	HIRSCH	DEM	Assistant/Judge	30178321	BOE
PAMELA	HOBSON	DEM	Assistant/Judge	30268678	BOE
DANIEL	HODGES	DEM	Assistant/Judge	30081687	BOE
GWENDOLYN	HODGES	DEM	Assistant/Judge	695454	BOE

AMERICAN OVERSIGHT

2024 Statewide Primary and Election Early Voting Worker Nomination List

First Name	Last Name	Party	Position	VRN	Nominated By
CARL	HODGES	DEM	Assistant/Judge	30008991	BOE
VICTORIA	HOLLEY	DEM	Assistant/Judge	545431	BOE
BRIDGET	HOLLINGSWORTH	UNA	Assistant/Judge	30270495	BOE
DIANE	HOURIGAN	DEM	Assistant/Judge	30012039	BOE
GLORIA	HOWELL	DEM	Assistant/Judge	610998	BOE
MARCELLA	HUGHES	UNA	Assistant/Judge	30378126	BOE
JANIS	HUMPHREY	DEM	Assistant/Judge	30327446	BOE
KELLI	HUNNICUTT	DEM	Assistant/Judge	30313725	BOE
SYLVIA	HUNT	DEM	Assistant/Judge	237429	BOE
DEBORAH	HUNTER	DEM	Assistant/Judge	548531	BOE
JENNIFER	HUNTER	DEM	Assistant/Judge	30372959	BOE
PATRICIA	HYLDBURG	DEM	Assistant/Judge	650810	BOE
NADINE	IDOWU	DEM	Assistant/Judge	30344777	BOE
SARASVATI	ISHAYA	REP	Assistant/Judge	30086639	BOE
MARJORIE	JACOBS	DEM	Assistant/Judge	30305174	BOE
PAMELA	JERNIGAN	DEM	Assistant/Judge	580391	BOE
CAROL	JOHNSON	DEM	Assistant/Judge	689383	BOE
CASSANDRA	JOHNSON	DEM	Assistant/Judge	294733	BOE
STEWART	JOHNSON	DEM	Assistant/Judge	597582	BOE
BERTHA	JONES	DEM	Assistant/Judge	253140	BOE
CECELIA	JOSEPH	DEM	Assistant/Judge	30169802	BOE
CATHERINE	KASTIAN	DEM	Assistant/Judge	30355245	BOE
JAMES	KING	DEM	Assistant/Judge	689558	BOE
JULIE	KING	DEM	Assistant/Judge	30053734	BOE
ROBERT	KLIESEN	DEM	Assistant/Judge	634974	BOE
JAMES	KNOOP	UNA	Assistant/Judge	30184097	BOE
WILLIAM	KOERBER	DEM	Assistant/Judge	30198416	BOE
HOWARD	KOSLOW	UNA	Assistant/Judge	672933	BOE
LUCY	KRAUS	DEM	Assistant/Judge	30364358	BOE
MARY	KREGE	UNA	Assistant/Judge	30380966	BOE
KERRY	KUHLMAN	DEM	Assistant/Judge	30157266	BOE
LYDIA	KWEE	UNA	Assistant/Judge	30130370	BOE
ELGIN	LANE	DEM	Assistant/Judge	683459	BOE
JESSIE	LARKINS	UNA	Assistant/Judge	30247413	BOE
KEVIN	LAWLER	REP	Assistant/Judge	30322068	BOE
XIEMINIA	LEA	DEM	Assistant/Judge	691354	BOE
SYLVIA	LEAVER	DEM	Assistant/Judge	30170241	BOE
BILLIE	LINEBAUGH	REP	Assistant/Judge	624498	BOE
BETTY	LYONS	DEM	Assistant/Judge	548014	BOE
SHARON	MARDIS	DEM	Assistant/Judge	30048424	BOE
MARIA	MARTIN	DEM	Assistant/Judge	30334047	BOE
VALRIE	MASON	DEM	Assistant/Judge	30103130	BOE
KATIE	MCCARTHY	UNA	Assistant/Judge	30183190	BOE
JACKIE	MCCLARY	DEM	Assistant/Judge	570758	BOE
RICHARD	MCFALL	DEM	Assistant/Judge	579171	BOE
CAROLYN	MCKINNIE	DEM	Assistant/Judge	318647	BOE
KATHLEEN	MCNAMEE	DEM	Assistant/Judge	30359365	BOE

AMERICAN OVERSIGHT

2024 Statewide Primary and Election Early Voting Worker Nomination List

First Name	Last Name	Party	Position	VRN	Nominated By
PAUL	MENCHINI	DEM	Assistant/Judge	560350	BOE
WENDY	MICHENER	DEM	Assistant/Judge	30223615	BOE
AUDREY	MITCHELL	DEM	Assistant/Judge	330390	BOE
ROBERT	MITCHELL	DEM	Assistant/Judge	331650	BOE
JOANN	MOLNAR	UNA	Assistant/Judge	587331	BOE
JUDITH	MOORE	DEM	Assistant/Judge	286167	BOE
FLORA	O'BRIEN	DEM	Assistant/Judge	30021803	BOE
ROSA	PACE	DEM	Assistant/Judge	545595	BOE
CAROLYN	PACKER	UNA	Assistant/Judge	30229439	BOE
CAROLYN	PARKER	REP	Assistant/Judge	30099067	BOE
DEBORAH	PATTERSON	DEM	Assistant/Judge	30254903	BOE
DOLORES	PAYLOR	DEM	Assistant/Judge	30353428	BOE
THERESA	PERCELL	DEM	Assistant/Judge	30188277	BOE
CURTIS	PERKINS	UNA	Assistant/Judge	30355486	BOE
BYRON	PERRY	UNA	Assistant/Judge	30265584	BOE
BRUCE	PETERSON	DEM	Assistant/Judge	541339	BOE
TRACY	PIERCE	DEM	Assistant/Judge	30013357	BOE
DAVID	POTENZIANI	DEM	Assistant/Judge	30160999	BOE
JENNIFER	POTTS	DEM	Assistant/Judge	558769	BOE
ROBERTA	PRICE	DEM	Assistant/Judge	650377	BOE
JAMIE	PRITCHETT	DEM	Assistant/Judge	30267066	BOE
JAMES	RAMSAY	UNA	Assistant/Judge	30345604	BOE
DOROTHY	RASCOE	REP	Assistant/Judge	30261405	BOE
EMUNDA	REED	DEM	Assistant/Judge	678368	BOE
MONICA	REED	DEM	Assistant/Judge	30355519	BOE
STEPHANIE	RHODES	DEM	Assistant/Judge	30304657	BOE
TONJUA	RICHARDSON	DEM	Assistant/Judge	612779	BOE
LISA	RICHMOND-JOHNSON	DEM	Assistant/Judge	30381532	BOE
VIRGINIA	RICHTER	DEM	Assistant/Judge	30359353	BOE
KATHLEEN	RICKERT	DEM	Assistant/Judge	30233102	BOE
JEFFREY	RITTER	DEM	Assistant/Judge	30264822	BOE
SHELIA	ROBINSON	DEM	Assistant/Judge	30000549	BOE
JULIANNE	ROSS	UNA	Assistant/Judge	30046206	BOE
LEAH	RUTCHICK	DEM	Assistant/Judge	682474	BOE
JOSEF	SACHS	DEM	Assistant/Judge	30340022	BOE
DOUGLAS	SAMSON	UNA	Assistant/Judge	30005713	BOE
ROSE	SANCHEZ	REP	Assistant/Judge	30023065	BOE
CHRISTINE	SCALISI	DEM	Assistant/Judge	30415997	BOE
MARGARET	SCHUBERT	UNA	Assistant/Judge	575060	BOE
BURTON	SCOTT	DEM	Assistant/Judge	30409920	BOE
ESTHER	SCOTT	DEM	Assistant/Judge	30288777	BOE
SONYA	SCOTT	DEM	Assistant/Judge	588040	BOE
LINDA	SHANNAHAN	UNA	Assistant/Judge	103454	BOE
JAMES	SHAW	DEM	Assistant/Judge	545004	BOE
ONETTE	SHAW	DEM	Assistant/Judge	30025015	BOE
JOYCE	SHIPMAN	DEM	Assistant/Judge	30350024	BOE
LARRY	SILVER	DEM	Assistant/Judge	431426	BOE

AMERICAN OVERSIGHT

2024 Statewide Primary and Election Early Voting Worker Nomination List

First Name	Last Name	Party	Position	VRN	Nominated By
JUDY	SIMUEL	DEM	Assistant/Judge	537341	BOE
SARAH	SINNING	DEM	Assistant/Judge	30361412	BOE
ANDREW	SIPES	UNA	Assistant/Judge	30367816	BOE
MARILYN	SLAUGHTER	DEM	Assistant/Judge	41935	BOE
GLENDA	SMALL	UNA	Assistant/Judge	580437	BOE
TIFFANY	SMITH	DEM	Assistant/Judge	30004780	BOE
ROSALINDA	SPENCER	DEM	Assistant/Judge	668852	BOE
GARY	STEPHENS	DEM	Assistant/Judge	588853	BOE
FRANKLIN	STOUT	UNA	Assistant/Judge	30375952	BOE
CHARLEEN	STURDIVANT	DEM	Assistant/Judge	30114100	BOE
SHARON	SULLIVAN	UNA	Assistant/Judge	30224969	BOE
ANDREA	SUMNER	DEM	Assistant/Judge	30111617	BOE
MILLIE	TAN	DEM	Assistant/Judge	30159868	BOE
DELORES	TAYLOR	DEM	Assistant/Judge	460782	BOE
JAMES	TEMO	UNA	Assistant/Judge	645087	BOE
VERONICA	TERRY	DEM	Assistant/Judge	30120515	BOE
CHEVELLA	THOMAS	DEM	Assistant/Judge	562756	BOE
MARY	THOMAS	DEM	Assistant/Judge	30404634	BOE
ELIZABETH	THOMPSON	DEM	Assistant/Judge	30012630	BOE
VANESSA	THORNBURG	DEM	Assistant/Judge	583209	BOE
REGINA	THORPE	DEM	Assistant/Judge	30048878	BOE
FREDERICKA	TILLERY	DEM	Assistant/Judge	30283088	BOE
THOMAS	TODD	DEM	Assistant/Judge	30005078	BOE
JENNIFER	TOWNSEND	DEM	Assistant/Judge	30167383	BOE
RETHA	TUCK	DEM	Assistant/Judge	21889	BOE
BARBARA	TURNER	DEM	Assistant/Judge	30014831	BOE
NANCY	WAARICH-FISCHMAN	DEM	Assistant/Judge	30266235	BOE
CLIMMON	WALKER	UNA	Assistant/Judge	661307	BOE
ELOUISE	WATSON	DEM	Assistant/Judge	547074	BOE
CHERYL	WELSH	DEM	Assistant/Judge	30236585	BOE
VIRGINIA	WHITAKER	DEM	Assistant/Judge	30043035	BOE
BONNIE	WHITMORE	DEM	Assistant/Judge	565154	BOE
PATSY	WIGGINS	REP	Assistant/Judge	512774	BOE
SAMUEL	WILEN	DEM	Assistant/Judge	30170381	BOE
EMILY	WILKINS	DEM	Assistant/Judge	606348	BOE
CHERYL	WILLIAMS	DEM	Assistant/Judge	30324349	BOE
DONNA	WILLIAMS	DEM	Assistant/Judge	516870	BOE
SONJA	WILLIAMS	DEM	Assistant/Judge	611992	BOE
HOWARD	WILLIAMS	DEM	Assistant/Judge	517775	BOE
NANCY	WILLS	REP	Assistant/Judge	30324791	BOE
JAMES	WINGATE	REP	Assistant/Judge	525334	BOE
DONNA	WOLF	UNA	Assistant/Judge	30052616	BOE
RICHARD	WOLFE	DEM	Assistant/Judge	539964	BOE
CLARETHA	WOODY	DEM	Assistant/Judge	530470	BOE
CAROLYN	YOUNG	DEM	Assistant/Judge	535076	BOE
KATE	YOUNG	DEM	Assistant/Judge	30013860	BOE
ROBERT	ZIMMERMAN	UNA	Assistant/Judge	703081	BOE

AMERICAN OVERSIGHT

2024 Statewide Primary and Election Early Voting Worker Nomination List

First Name	Last Name	Party	Position	VRN	Nominated By
VANESSA	BROWN	UNA	Assistant/Judge	30164517	BOE
CYNTHIA	JONES	UNA	Assistant/Judge	30430487	BOE
EUGENE	LOFTON	DEM	Assistant/Judge	288695	BOE
JOSHUA	MILLER	UNA	Assistant/Judge	30230328	BOE
HOLLIE	PAVLICA	UNA	Assistant/Judge	30218007	BOE
CAROLINE	USHER	DEM	Assistant/Judge	484127	BOE
TAMECIA	WALLACE	DEM	Assistant/Judge	588165	BOE
LATRESHA	HARWELL	DEM	Assistant/Judge	30377657	BOE
MARIA	MOONEY	DEM	Assistant/Judge	30259216	BOE
TERESA	OROURKE	DEM	Assistant/Judge	30229674	BOE
DEBRA	BOWICK	DEM	Assistant/Judge	45451	BOE
DIANE	MCBROOM	UNA	Assistant/Judge	30420437	BOE
ERIKA	BUELL	DEM	Assistant/Judge	30166073	BOE
RHONDA	WELFARE	DEM	Assistant/Judge	30361317	BOE
LISA	HEDGEPETH	DEM	Assistant/Judge	697767	BOE
PATRICIA	TAPP	DEM	Assistant/Judge	459454	BOE
DORIS	INGRAM-RANDALL	DEM	Assistant/Judge	240034	BOE
ELIZABETH	BERMAN	DEM	Assistant/Judge	628303	BOE
ALAN	LATHAM	DEM	Assistant/Judge	30321315	BOE
DOUGLAS	WEAVER	DEM	Assistant/Judge	30250597	BOE
TONIA	POTEAT	DEM	Assistant/Judge	30329801	BOE
JOANNA	DARBY	DEM	Assistant/Judge	584745	BOE
DEBRA	TEPLIN	DEM	Assistant/Judge	30421611	BOE
BARBARA	SWARTZ	DEM	Assistant/Judge	30329299	BOE
LISA	WARNER	DEM	Assistant/Judge	692199	BOE
SUSAN	COHEN	DEM	Assistant/Judge	549565	BOE
SHARON	PURUCKER	DEM	Assistant/Judge	30349607	BOE
JOSEPH	NEWBAUER	DEM	Assistant/Judge	30279479	BOE
DOROTHY	IVES	DEM	Assistant/Judge	30046239	BOE
STEPHEN	SCHLOSS	DEM	Assistant/Judge	30245992	BOE
DEBORAH	SMITH	DEM	Assistant/Judge	435611	BOE
DONNA	STANEK	DEM	Assistant/Judge	30183467	BOE
TANICKA	WILLIAMS	UNA	Assistant/Judge	30064163	BOE
ELIZABETH	PEEPLES	DEM	Assistant/Judge	30130672	BOE
SARAH	WRIGHT	DEM	Assistant/Judge	561405	BOE
DIANE	BULLOCK	DEM	Assistant/Judge	697854	BOE
NANCY	SOWA	DEM	Assistant/Judge	30116927	BOE
LOREANA	CHAVIS	DEM	Assistant/Judge	30187610	BOE
PATRICIA	WILLIAMS	DEM	Assistant/Judge	644443	BOE
DONNA	WILSON-JOHNSON	DEM	Assistant/Judge	30343438	BOE
SHARON	SCARVILLE	DEM	Assistant/Judge	30198163	BOE
KEN'EEDRA	DURHAM	DEM	Assistant/Judge	30322878	BOE
LISBET	LOBDELL	UNA	Assistant/Judge	30226746	BOE
LOLA	SPENCER	DEM	Assistant/Judge	544910	BOE
ELIZABETH	LORD	UNA	Assistant/Judge	30039472	BOE
ANGELA	WITHERSPOON	DEM	Assistant/Judge	30358041	BOE
DAVID	KELLY	UNA	Assistant/Judge	30261540	BOE

AMERICAN OVERSIGHT

2024 Statewide Primary and Election Early Voting Worker Nomination List

First Name	Last Name	Party	Position	VRN	Nominated By
JULIA	LANGTON	DEM	Assistant/Judge	30164519	BOE
GARY	SALVNER	DEM	Assistant/Judge	30286393	BOE
ANDREA	NEWMAN	UNA	Assistant/Judge	30315854	BOE
ROBERT	RADCLIFF	UNA	Assistant/Judge	30079994	BOE
INGRID	POL	DEM	Assistant/Judge	30376628	BOE
HENRY	TRUSSELL	DEM	Assistant/Judge	30024445	BOE
HELEN	BOUSSIOS	DEM	Assistant/Judge	670149	BOE
JUDY ANN	THOMSON	DEM	Assistant/Judge	587421	BOE
EMILY	COOPER	DEM	Assistant/Judge	30120611	BOE
DEBORAH	DAWSON	UNA	Assistant/Judge	655203	BOE
STEPHANIE	GRANT	DEM	Assistant/Judge	183743	BOE
DEREK	BOWENS	UNA	Assistant/Judge	30311101	BOE
DOUGLAS	RICKERT	DEM	Assistant/Judge	30402900	BOE
AISSA	FELDMANN	DEM	Assistant/Judge	30408448	BOE
ALLEN	RAMSIER	UNA	Assistant/Judge	30428698	BOE
FELISA	ANDERSON	REP	Assistant/Judge	648079	BOE
DAWN	WINGATE	REP	Assistant/Judge	525322	BOE
KRISTEN	CARDOZA	UNA	Assistant/Judge	30341205	BOE
STEPHANIE	DIGUISEPPI	DEM	Assistant/Judge	593425	BOE
CHARLOTTE	TIMBERLAKE	DEM	Assistant/Judge	30021352	BOE
BEVERLY	HUDGINS	REP	Assistant/Judge	563257	BOE
SARA	PATILLO	UNA	Assistant/Judge	30072153	BOE
SHARON	MCCALL	UNA	Assistant/Judge	30111079	BOE
DONALD	MAUER	UNA	Assistant/Judge	30261317	BOE
HEATHER	SARA	DEM	Assistant/Judge	30337688	BOE
MARIANNE	CHOMEN	DEM	Assistant/Judge	578201	BOE
MACKENZIE	MCBRIDE BARRETT	DEM	Assistant/Judge	30264695	BOE
CHRISTINE	MAYER-PATEL	DEM	Assistant/Judge	30038752	BOE
ELIZABETH	BALKITE	UNA	Assistant/Judge	707250	BOE

Total Worker Count: **454**

AMERICAN OVERSIGHT

DURHAM COUNTY
Board of Elections

201 N Roxboro Street
Durham, NC 27701
(919) 560-0700

Date: Thursday, January 18, 2024	Time: 5:30 PM	Location: BOE Warehouse

Section:

4. New Business

Item #/Subject:

b. Resolution to Delegate Absentee Ballot Preparatory Steps to the Director of Elections

Applicable Statutes and/or Rules:

N.C. Gen. Stat. § 163-35(d) and SBE Numbered Memorandum 2020-25

Summary:

The attached resolution delegates to the Director of Elections preparatory steps related to returned absentee ballots. Delegated responsibilities included in the resolution are those suggested in SBE Numbered Memorandum 2020-25, and they are as follows:

1. Inspecting ballot envelopes and return envelopes for deficiencies and contacting voters as required by SBE Numbered Memo 2021-03.
2. Sorting ballot envelopes with accompanying photo ID documentation into categories for the board to review and take action.
3. Verifying the list of ballot envelopes against the absentee pollbook.
4. Performing ballot duplication with a bipartisan team.

The resolution works in concert with SBE Numbered Memorandum 2020-25 and does not include the delegation of any quasi-judicial or policymaking responsibilities.

Resource(s):

Elections Director Derek Bowens

Attachments:

Resolution to Delegate Absentee Ballot Preparatory Steps to the Director of Elections (Provided at Board meeting)

Board Action Required:

Board action required.

AMERICAN OVERSIGHT

DURHAM COUNTY
Board of Elections

201 N Roxboro Street
Durham, NC 27701
(919) 560-0700

Date: Thursday, January 18, 2024	Time: 5:30 PM	Location: BOE Warehouse

Section:

4. New Business

Item #/Subject:

c. Resolution to Delegate Responsibilities Related to Early Voting Workers to the Director of Elections

Applicable Statutes and/or Rules:

N.C. Gen. Stat. § 163-35(d) and SBE Numbered Memorandum 2023-07

Summary:

The attached resolution delegates to the Director of Elections specific responsibilities related to early voting workers. Delegated responsibilities included in the resolution are those suggested in SBE Numbered Memorandum 2023-07, and they are as follows:

1. Appointing replacement Chief Judges and Judges.
2. Filling vacancies in the position of Assistant.
3. Making general scheduling determinations.

The resolution works in concert with SBE Numbered Memorandum 2023-07 and does not include the delegation of any quasi-judicial or policymaking responsibilities.

Resource(s):

Elections Director Derek Bowens

Attachments:

Resolution to Delegate Responsibilities Related to Early Voting Workers to the Director of Elections (Provided at Board meeting)

Board Action Required:

Board action required.

AMERICAN OVERSIGHT

DURHAM COUNTY
Board of Elections

201 N Roxboro Street
Durham, NC 27701
(919) 560-0700

Date: Thursday, January 18, 2024	Time: 5:30 PM	Location: BOE Warehouse

Section:

4. New Business

Item #/Subject:

d. Resolution to Maintain Out-of-Precinct Polling Place Change for Precinct 54

Applicable Statutes and/or Rules:

N.C. Gen. Stat. § 163-130.1

Summary:

The Durham County Board of Elections has utilized South Regional Library as a polling place since 2010 according to archived records in the State Elections Information Management System (SEIMS). After further analysis of polling places across the county, we determined that South Regional Library is neither within the boundaries of Precinct 54 nor is it on an adjoining lot or tract to the precinct boundaries.

Due to this and limited facilities in Precinct 54, staff are requesting that the Board adopt a resolution to maintain South Regional Library as the out-of-precinct polling place for Precinct 54. The adoption of this resolution must be unanimous amongst all members to move forward.

Maintaining this polling place is subject to approval by the Executive Director of the State Board of Elections and if approved, would be effective for one primary and election.

Resource(s):

Elections Director Derek Bowens

Attachments:

Resolution to Maintain Out-of-Precinct Polling Place Change in Durham County (Provided at Board Meeting)

Board Action Required:

Board action required.

AMERICAN OVERSIGHT

DURHAM COUNTY
Board of Elections

201 N Roxboro Street
Durham, NC 27701
(919) 560-0700

Date: Thursday, January 18, 2024	Time: 5:30 PM	Location: BOE Warehouse

Section:

4. New Business

Item #/Subject:

e. Resolution to Adopt a Time for Counting Absentee Ballots

Applicable Statutes and/or Rules:

N.C. Gen. Stat. §163-234(a)(2) and (11)

Summary:

Under the statutory authority set out above, the Board of Elections may opt to begin counting absentee by-mail ballots between the times of 2:00 p.m. and 5:00 p.m. on Election Day and can also set meetings to count absentee ballots after Election Day, but prior to the scheduled canvass. The attached resolution establishes the times for counting absentee by-mail ballots for the 2024 Statewide Primary and Election.

Staff proposes that the Board meet at 2:00 p.m. on Election Day to count absentee-by-mail ballots. Additionally, staff propose that the Board meet at 2:00 p.m. on March 14, 2024, to address supplemental absentee by-mail and provisional ballots.

Resource(s):

Elections Director Derek Bowens

Attachments:

Resolution to Adopt a Time for Counting Absentee Ballots (Provided at Board Meeting)

Board Action Required:

Board action required.

AMERICAN OVERSIGHT

DURHAM COUNTY
Board of Elections

201 N Roxboro Street
Durham, NC 27701
(919) 560-0700

Date: Thursday, January 18, 2024	Time: 5:30 PM	Location: BOE Warehouse

Section:

5. General Discussion

Item #/Subject:

N/A

Applicable Statutes and/or Rules:

N/A

Summary:

Discuss other election related matters as needed.

Resource(s):

N/A

Attachments:

N/A

Board Action Required:

Discuss as necessary.

AMERICAN OVERSIGHT

Lassiter, Daniel

From: Bowens, Derek
Sent: Tuesday, January 2, 2024 1:04 PM
To: Abney, Bettyna B.; Baxton, Dawn; Beskind, Donald; David Boone; David K. Boone; Dawn Baxton; Don Beskind; James Weaver (jpweaver21@gmail.com); P. Oxendine; Pamela Oxendine; Weaver, James
Subject: Absentee By Mail Signature Verification Pilot Program: Durham Selected

Tracking:

Recipient	Read
Abney, Bettyna B.	
Baxton, Dawn	
Beskind, Donald	
David Boone	
David K. Boone	
Dawn Baxton	
Don Beskind	
James Weaver (jpweaver21@gmail.com)	
P. Oxendine	
Pamela Oxendine	
Weaver, James	Read: 1/5/2024 12:43 PM
Trapp, Shannon D.	
Craig-Ray, Deborah	Read: 1/2/2024 1:41 PM
Baker, Brenda	Read: 1/2/2024 1:22 PM

Good Afternoon, Board Members:

I hope you are well. I am emailing you to let you know that Durham County is one of the 10 counties that has been randomly selected to use pilot signature verification software for absentee-by-mail voting, during the 2024 Statewide Primary and Election, by the State Board of Elections. The data collected from this pilot will not be used to reject absentee ballots for signature discrepancies pursuant to Section 48.(c) of S.L. 2023-140. Click here to access the full session law and see below for the relevant section of the law that applies to the pilot program (pages 42-43). I will have a full update for the Board at our rescheduled 1/18 Board meeting (notice going out today). Please let me know if there are any questions in the meantime. Thanks – Derek

AMERICAN OVERSIGHT

SECTION 48.(b) The State Board of Elections shall closely monitor the pilot program established in this section. The selected county boards of elections shall report to the State Board of Elections its findings on the use of the signature verification software during the 2024 primary, including all of the following:

(1) Whether the signature verification software was used for all returned mail-in absentee ballots, and what the voter signature on the executed mail-in absentee ballot was matched against.

(2) How many executed mail-in absentee ballots were counted by the county board of elections in the 2024 primary.

(3) How many executed mail-in absentee ballots were flagged by the signature verfication software, and any information known on how close of a match the signatures must be for the signature match software to not flag the voter's signature.

(4) Information on how the signature matching software flagged an executed mail-in absentee ballot with a signature that did not match the signature on file for the voter, including any known information on the rate of error in the software.

SECTION 48.(c) In implementing the pilot program established in this section, no executed mail-in absentee ballot shall be rejected by the county board of elections for failing any signature verification. All executed mail-in absentee ballots that are otherwise eligible to be counted in accordance with Chapter 163 of the General Statutes shall be counted.

SECTION 48.(d) The State Board of Elections shall report its findings, along with any recommendations, to the General Assembly on or before May 1, 2024. The report shall be delivered to the Joint Legislative Elections Oversight Committee and shall also include the following:

(1) A compilation of the information reported from the selected county boards of elections as required by subsection (b) of this section.

(2) The estimated cost to implement signature verification for mail-in absentee ballots statewide.

(3) Any suggested law changes to fully implement signature verification statewide for mail-in absentee ballots, including suggestions on a process for how a voter can cure a deficiency related to signature verification of mail-in absentee ballots.

(4) Any other information relevant to signature verification of mail-in absentee ballots.

Derek L. Bowens
Director of Elections

DURHAM COUNTY
Board of Elections

Durham County Board of Elections
Physical address: 201 N. Roxboro Street, Durham, NC 27701
Mailing address: PO Box 868, Durham, NC 27702
Phone: (919) 560-7072
Fax: (919) 560-0688
www.dcovotes.com

AMERICAN OVERSIGHT

Lassiter, Daniel

From: Bowens, Derek
Sent: Tuesday, January 2, 2024 1:04 PM
To: Abney, Bettyna B.; Baxton, Dawn; Beskind, Donald; Boone, David; David K. Boone; Dawn Baxton; Don Beskind; James Weaver (jpweaver21@gmail.com); P. Oxendine; Oxendine, Pamela; Weaver, James
Subject: Absentee By Mail Signature Verification Pilot Program: Durham Selected

Good Afternoon, Board Members:

I hope you are well. I am emailing you to let you know that Durham County is one of the 10 counties that has been randomly selected to use pilot signature verification software for absentee-by-mail voting, during the 2024 Statewide Primary and Election, by the State Board of Elections. The data collected from this pilot will not be used to reject absentee ballots for signature discrepancies pursuant to Section 48.(c) of S.L. 2023-140. Click here to access the full session law and see below for the relevant section of the law that applies to the pilot program (pages 42-43). I will have a full update for the Board at our rescheduled 1/18 Board meeting (notice going out today). Please let me know if there are any questions in the meantime. Thanks – Derek

AMERICAN OVERSIGHT

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(2) How many executed mail-in absentee ballots were counted by the county board of elections in the 2024 primary.

(3) How many executed mail-in absentee ballots were flagged by the signature verfication software, and any information known on how close of a match the signatures must be for the signature match software to not flag the voter's signature.

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(3) Any suggested law changes to fully implement signature verification statewide for mail-in absentee ballots, including suggestions on a process for how a voter can cure a deficiency related to signature verification of mail-in absentee ballots.

(4) Any other information relevant to signature verification of mail-in absentee ballots.

Derek L. Bowens
Director of Elections

DURHAM COUNTY
Board of Elections

Durham County Board of Elections
Physical address: 201 N. Roxboro Street, Durham, NC 27701
Mailing address: PO Box 868, Durham, NC 27702
Phone: (919) 560-7072
Fax: (919) 560-0688
www.dcovotes.com

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AMERICAN OVERSIGHT

Lassiter, Daniel

From: Blackman, Allison <Allison.Blackman@ncsbe.gov>
Sent: Tuesday, October 10, 2023 9:17 AM
To: Bowens, Derek; Terri Young; Adrianne Rushton
Subject: absentee consultants needed

Happy Election Day for October Counties!

Probably not an optimal time to request, however I am looking for a few consultants to assist with laying out all the needs for the signature verification pilot project. This does not mean your county has to participate in the pilot. This is more about you as expert individuals working to ensure that we outline all needs for the IFB (Invitation for bid). You know for all things absentee I'm starting with my Hub OGs. It says two people but I would love to have all three of you. I also understand if this is more than you want to do at this point. If that's the case I will work my way through the rest of our Hub.

Here is information from Lisa about what we need and the time commitment:

- We are in the planning stage of the Signature Verification Solution Pilot Project
- We are requesting assistance from two county staff to assist with writing requirements for the Invitation For Bid (IFB) procurement method
    - DIT recommended this procurement method, re: time constraint and SBE is seeking a system that can be configured (modify settings) vs. customized (changing code)
- County input is important to provide insight on actual processes to help us hone in on potential solution needs
- A meeting will be held on or about Monday 10/16 to review the updated requirements; attendance is optional
    - Subsequent meetings may be held prior to submitting the requirements to DOA, attendance is optional
- Assisting with requirements is not a commitment nor indication of desire to participate in the pilot
- If desired, participation in the remaining procurement efforts will be discussed with the Strategy Team

Best regards,

Allison

Allison Blackman
Vote by Mail Program Specialist | CERA
NORTH CAROLINA
STATE BOARD OF ELECTIONS

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AMERICAN OVERSIGHT

Lassiter, Daniel

From: Bowens, Derek
Sent: Tuesday, January 2, 2024 5:56 PM
To: Bell, Karen B
Subject: Declined: Overview meeting regarding signature verification pilot program

Will not be able to attend. Will be in DC on Election Center business. I hope that you all record this event or memorialize important points in some way.

AMERICAN OVERSIGHT

Lassiter, Daniel

From: Public Information Office
Sent: Thursday, February 1, 2024 8:00 AM
Subject: Doyle, Bowens Guests on "In Touch with Durham County"

NEWS RELEASE

For Immediate Release **Date: 02/01/2024**
Contact: Public Information Office **Phone: (919) 560-0000/Fax: (919) 560-0020**
E-mail: publicinformationoffice@dconc.gov

Doyle, Bowens Guests on "In Touch with Durham County"

February's show discusses Durham County Tax Administration and upcoming March 5 Primary and Election

Durham, N.C. – The latest edition of the "In Touch with Durham County" show from the Durham County Public Information Office continues to bring residents of our community important information on our programs and services with the February 2024 show. Our goal is to have great conversations with our Durham County department heads, our staff, and community partners so that we can share valuable information about our programs and services.

On this month's episode, our host Durham County Chief Communications Officer Deborah Craig-Ray welcomes Durham County Tax Administrator Keyar Doyle and Durham County Elections Director Derek Bowens to our TV studio.

The show is available to watch on the DCo YouTube channel (subscribe here); as well as on the Durham County Government website and the Durham Television Network.

In segment one, Doyle visits In Touch for the first time since his appointment by the Board of County Commissioners in the fall of 2023. He chats a little bit about his background and career prior to becoming the leader of our Tax Administration as well as discussing some of the responsibilities of the job. Doyle and Craig-Ray also talk about tax bills, payment plans, and the upcoming Durham County property tax reappraisal process that will occur in 2025.

In segment two, Bowens returns to the show with lots of information regarding the Durham County Board of Elections. He immediately jumps into discussion about the upcoming 2024 Primary and Election, the early voting period, and Election Day of Tuesday, March 5, 2024. Bowens will then reflect a little on the 2020 election year, which features much of the same races as the 2024 ballot – the Board of Durham County

AMERICAN OVERSIGHT

Commissioners, state races, the Register of Deeds, and of course, the Presidential election. Bowens will also touch upon the NC Voter Photo ID requirements, absentee voting, sample ballots, key dates, and more! Lastly, he talks about Durham County's involvement in the State Board of Elections' mailed ballot signature-matching pilot program.

We hope you enjoy the show!

About "In Touch with Durham County"
The "In Touch with Durham County" show is a monthly program that provides governmental programming and access to your local government and provides timely, ongoing coverage of Durham County Government. The show airs daily on the Durham Television Network (DTN). DTN is available on Spectrum channel 8, Frontier channel 70 and AT&T U-verse channel 99. To view past editions of the "In Touch with Durham County" show, visit the DCo YouTube Channel here.

For more information on the Durham County Public Information Office, visit the PIO website, call 919-560-0000 or email publicinformationoffice@dconc.gov.

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AMERICAN OVERSIGHT

Lassiter, Daniel

From: Durham County Webmaster <durhamcounty@enotify.visioninternet.com>
Sent: Monday, January 22, 2024 8:01 PM
To: Bowens, Derek
Subject: Durham County Board of Elections Selected for Absentee By-Mail Signature Verification Pilot Program

Durham County Board of Elections Selected for Absentee By-Mail Signature Verification Pilot Program

Post Date: 01/22/2024 8:00 PM



NEWS RELEASE

Durham, N.C. - The Durham County Board of Elections was one of ten counties selected to participate in an absentee by-mail signature verification pilot program for the 2024 Statewide Primary and Election. This pilot program is required in accordance with Section 48 of Session Law 2023-140, better known as Senate Bill 747. As required by this law, the State Board of Elections will be providing all ten participating counties with signature verification software and training needed to execute the pilot program. The data collected from this pilot program will be reported to the State Board of Elections and the General Assembly.

The Board wants all residents to be aware that Section 48.(c) of Senate Bill 747 prevents properly executed by-mail ballots from being rejected due to failing signature verification. Section 48.(c) states the following:

"In implementing the pilot program established in this section, no executed mail-in absentee ballot shall be rejected by the county board of elections for failing any signature verification. All executed mail-in absentee ballots that are otherwise eligible to be counted in accordance with Chapter 163 of the General Statutes shall be counted."

For more information on the absentee by-mail signature verification pilot program, please contact the Board of Elections by phone at 919-560-0700 or email us at elections@dconc.gov.

###

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AMERICAN OVERSIGHT

From: Jacobs, Rusty
To: Bowens, Derek
Subject: follow-up - WUNC
Date: Wednesday, April 10, 2024 8:45:29 AM

Derek,
Good morning. I just wanted to circle back and see whether you saw my email from yesterday requesting a brief interview regarding the signature verification pilot. Please let me know if you have any availability this week to talk.

Thank you,
Rusty (WUNC)

Caution: **Do not click links or open attachments unless you recognize the sender and know the content is safe.**

AMERICAN OVERSIGHT

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

VOTO LATINO, WATAUGA COUNTY VOTING RIGHTS TASK FORCE, DOWN HOME NORTH CAROLINA, and SOPHIE JAE MEAD, Plaintiffs, v. ALAN HIRSCH, in his official capacity as Chair of the State Board of Elections, JEFF CARMON, in his official capacity as Secretary of the State Board of Elections, STACEY EGGERS IV, in his official capacity as Member of the State Board of Elections, KEVIN N. LEWIS, in his official capacity as Member of the State Board of Elections, SIOBHAN O'DUFFY MILLEN, in her official capacity as Member of the State Board of Elections, KAREN BRINSON BELL, in her official capacity as Executive Director of the State Board of Elections, MICHAEL BEHRENT, in his official capacity as Chair of the Watauga County Board of Elections, ERIC ELLER, in his official capacity as Member of the Watauga County Board of Elections, MATT WALPOLE, in his official capacity as Member of the Watauga County Board of Elections, LETA COUNCILL, in her official capacity as Member of the Watauga County Board of Election, and ELAINE ROTHENBERG, in her official capacity as Member of the	)	1:23-CV-861

AMERICAN OVERSIGHT

Watauga County Board of Elections,

Defendants,

and

PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate, and TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives,

Defendant-Intervenors,

and

REPUBLICAN NATIONAL COMMITTEE, NORTH CAROLINA REPUBLICAN PARTY, VIRGINIA A. WASSERBERG, and BRENDA M. ELDRIDGE,

Defendant-Intervenors.

DEMOCRATIC NATIONAL COMMITTEE and NORTH CAROLINA DEMOCRATIC PARTY,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS, KAREN BRINSON BELL, in her official capacity as Executive Director of the State Board of Elections, ALAN HIRSCH, in his official capacity as Chair of the State Board of Elections, JEFF CARMON, in his official

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000043

capacity as Secretary of the State Board of Elections, STACEY EGGERS IV, in his official capacity as Member of the State Board of Elections, KEVIN N. LEWIS, in his official capacity as Member of the State Board of Elections, SIOBHAN O'DUFFY MILLEN, in her official capacity as Member of the State Board of Elections, Defendants, and PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate, and TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives, Defendant-Intervenors, and REPUBLICAN NATIONAL COMMITTEE, NORTH CAROLINA REPUBLICAN PARTY, VIRGINIA A. WASSERBERG, and BRENDA M. ELDRIDGE, Defendant-Intervenors.	)	1:23-CV-862

MEMORANDUM OPINION AND ORDER

THOMAS D. SCHROEDER, District Judge.

In these two actions,[1] Plaintiffs contest recent changes to

[1] The actions are not consolidated but are addressed jointly here because

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000044

North Carolina's rules for voters who register and cast a ballot during the State's seventeen-day same-day registration ("SDR") period that ends the Saturday before election day. Pursuant to the State's address verification process, the county board of elections sends all same-day registrants a card by non-forwardable mail. Under Senate Bill 747 ("S. 747"), which became law on October 10, 2023, as 2023 N.C. Sess. Laws 140, if, before the close of business on the day before the canvass, the United States Postal Service returns the verification card to the county board as undeliverable — even through no fault of the voter — the county board "shall not register the applicant and shall retrieve the applicant's ballot and remove that ballot's votes from the official count." 2023 N.C. Sess. Laws 140, § 10.(a) (codified as N.C. Gen. Stat. § 163-82.6B (2024)).

Before the court are motions for preliminary injunction by Plaintiffs Voto Latino, Watauga County Voting Rights Task Force, Down Home North Carolina, and Sophie Jae Mead ("Voto Latino Plaintiffs") (VL Doc. 44), and Plaintiffs Democratic National Committee and North Carolina Democratic Party ("Party Plaintiffs") (DNC Doc. 6) (collectively, "Plaintiffs").[2] Defendants Karen

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they raise identical issues. A third case raising similar issues is also pending before this court, 1:23-cv-878. The plaintiffs there have not moved for preliminary relief.

[2] Docket entry references for case number 1:23-CV-861 are "VL Doc. XX," and for case number 1:23-CV-862 are "DNC Doc. XX."

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000045

Brinson Bell, Alan Hirsch, Jeff Carmon, Stacy Eggers IV, Kevin N. Lewis, Siobhan O'Duffy Millen, and as to 1:23-cv-862, North Carolina State Board of Elections ("NCSBE") ("State Board Defendants"), Defendant-Intervenors Senator Philip E. Berger and Speaker Timothy K. Moore ("Legislative Intervenors"), and Defendant-Intervenors Republican National Committee, North Carolina Republican Party, Virginia Ann Wasserberg, and Brenda M. Eldridge ("Party Intervenors") (collectively, "Intervenors") have responded in opposition. (VL Docs. 51, 52, 54, 60; DNC Docs. 51, 52, 53.)[3] Plaintiffs have replied. (VL Doc. 59; DNC Doc. 58.)

Voto Latino Plaintiffs seek injunctive relief, claiming violations of the First and Fourteenth Amendments to the United States Constitution, pursuant to 42 U.S.C. § 1983. (VL Doc. 1 ¶¶ 83-98.) Party Plaintiffs allege violations of the First and Fourteenth Amendments to the United States Constitution, Article I, sections 10 and 19 of the North Carolina Constitution, the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(A), the Help America Vote Act ("HAVA"), 52 U.S.C. § 21082, and the Voting Rights Act, 52 U.S.C. § 10307(b). (DNC Doc. 1 ¶¶ 52-100.) Legislative Intervenors and

[3] Voto Latino Plaintiffs named Michael Behrent, Eric Eller, Matt Walpole, Leta Councill, and Elaine Rothenberg, all of whom are members of the Watauga County Board of Elections, as Defendants. In response to Plaintiffs' motion, these Defendants state they take no position and are "obligated to faithfully administer the election laws of the State of North Carolina, whatever they may be." (VL Doc. 50 at 2-3.) Both actions otherwise share the same named Defendants and Intervenors, except that Party Plaintiffs also sue NCSBE.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000046

Party Intervenors have intervened in both cases to oppose Plaintiffs' claims and to represent the interests of the North Carolina General Assembly and their political party, respectively. (VL minute entry Nov. 15, 2023; DNC Docs. 47, 48.)

Beyond the briefs, the parties to the suit brought by Voto Latino Plaintiffs have filed declarations concerning the backgrounds and allegations of the organizational and individual Plaintiffs, depositions from leaders of the organizational Plaintiffs and Plaintiff Mead, two preliminary expert opinions and corresponding depositions, and several NCSBE "Numbered Memos," which provide guidance to county election boards. The parties to the suit brought by Party Plaintiffs likewise rely on NCSBE Numbered Memos.

The parties have requested resolution of these motions ahead of the 2024 primary election, for which same-day registration begins on February 15, 2024. The court heard argument on the motions on December 28, 2023. For the reasons set forth below, the motions will be granted in part and denied in part.

I. BACKGROUND

The North Carolina General Assembly passed S. 747 over Governor Roy Cooper's veto on October 10, 2023. 2023 N.C. Sess. Laws 140, available at https://ncleg.gov/Sessions/2023/Bills/Senate/PDF/S747v6.pdf. The relevant provisions of S. 747, "[a]n act to make various changes regarding elections law,"

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000047

became effective January 1, 2024. Id. § 50. While the bill amends several provisions of the election laws in Chapter 163 of the North Carolina General Statutes, the present motions specifically seek to enjoin the enforcement of portions of section 10.(a), codified as N.C. Gen. Stat. § 163-82.6B, which makes changes to North Carolina's SDR procedures.

A. Voter Registration

All adult citizens, except felons, are entitled to vote in North Carolina. N.C. Const. art VI, §§ 1-2; N.C. Gen. Stat. § 163-55(a). To be eligible to vote in a given county, a voter must have resided in that county for at least 30 days prior to election day, N.C. Gen. Stat. § 163-55(a), and register there, id. § 163-54.

North Carolina offers two general methods of registration. Under the first method used by nearly all North Carolinians, called "traditional registration" or "non-SDR" herein, an eligible voter may register 25 days or more before an election day. Id. § 163-82.6(d). These registrants must complete a registration application that requires name, date of birth, residential address, and mailing address, if different. Id. § 163-82.4(a); see also North Carolina Voter Registration Application, Form 06W, at https://dl.ncsbe.gov/Voter_Registration/NCVoterRegForm_06W.pdf (last accessed Jan. 18, 2024). The mailing address need not be in the same precinct or even county as the residential address. (DNC

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000048
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 7 of 94

Doc. 62 at 59:8-13.) The application also requests identifying information, such as a driver's license number, last four digits of a social security number, and gender and ethnicity, and allows an applicant to select a political party affiliation. N.C. Gen. Stat. § 163-82.4(a). The applicant must attest that he is a citizen, is 18 years old or will be on election day, and that the contents of the application are true under penalty of perjury. Id. § 163-82.4(c), (e). The non-SDR applicant need not provide any document that proves residency.

When a county board of elections receives the application, it must make a "tentative determination that the applicant is qualified to vote at the address given." Id. § 163-82.7(a).[4] If the applicant is found not qualified, the county board of elections will mail him a notice within two days of the denial which informs him of alternatives to exercise the franchise and of the opportunity to appeal under section 163-82.18.[5] Id. § 163-82.7(b).

[4] Section 163-82.7(a) does not expressly state, and the parties have not represented, what the county board's initial determination for traditional registration entails. Presumably, it involves checking the applicant's age, citizenship status, felon status, driver's license or last four digits of the social security number, if provided, etc. to determine if the applicant is qualified to vote or is already registered. See N.C. Gen. Stat. § 163-82.6B(d).

[5] An applicant who receives a denial notice may appeal within five days of receiving the notice. N.C. Gen. Stat. § 163-82.18(a). The appeal is first heard before the county board of elections, which must provide notice of its decision within five days of the hearing. Id. § 163-82.18(b). If the denial is sustained, the applicant may appeal to a superior court of the county in which the board is located within ten

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000049
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 8 of 94

If the applicant is "tentantive[ly] determin[ed]" to be qualified, the county board will implement the statutory procedures for "Verification of Address by Mail," or "address verification." Id. § 163-82.7(c). First, the county board will mail a "notice" (commonly referred to as "voter registration card"; hereinafter, "card") confirming the precinct and voting place of the voter by non-forwardable mail to the address provided on the application. Id. If the mailing address differs from the residence address, the county board will mail the verification card to the mailing address. (DNC Doc. 62 at 59:8-13); see also N.C. Gen. Stat. § 163-57(1)(c) ("Residence shall be broadly construed to provide all persons with the opportunity to register and to vote, including stating a mailing address different from residence address.").

If the Postal Service does not return the card to the county board as undeliverable, "the county board shall register the applicant to vote."[6] Id. § 163-82.7(d). If the card is returned, however, the county board will send a second card. Id. § 163-82.7(e). As with the first, if the Postal Service does not return the second card as undeliverable, "the county board shall register the applicant to vote." Id. But if the second card is returned

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days of receiving notice of the county board's final decision. Id. § 163-82.18(c).

[6] Neither the statute nor the NCSBE provides any time deadline for return of the address verification card. Thus, there is no specific time when an applicant is deemed "registered" — only the opposite.

AMERICAN OVERSIGHT

as undeliverable, the county board will deny the application and "need not try to notify the applicant further." Id. § 163-82.7(f). Voters may nevertheless check their registration status online via NCSBE's "Voter Search" tool. See NCSBE, View Your Voter Registration Status, at https://www.ncsbe.gov/registering/checking-your-registration (last accessed Jan. 9, 2024).[7]

Under the second method of registration, implemented in 2007, an individual who is qualified to register to vote may register in person and simultaneously cast a ballot at an early voting site in the individual's county of residence during the period of early voting. N.C. Gen. Stat. § 163-82.6B(a).[8] This is commonly called "same-day registration," or "SDR." To same-day register and vote, an individual must (1) complete a voter registration application; (2) provide proof of residence by presenting a HAVA[9]-compliant

[7] Section 163-82.7(g)(3) requires non-SDR voters who vote prior to failing two-card address verification to be treated "as a registered voter."

[8] Same-day registration was enacted in North Carolina in 2007. 2007 N.C. Sess. Laws 253, § 1 (codified as N.C. Gen. Stat. § 163-82.6A). Though section 163-82.6A once contained North Carolina's same-day registration rules, it was largely repealed by North Carolina Session Laws 2013-381, § 16.1. After the Fourth Circuit held this repeal unlawful, N.C. State Conf. of the NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016), section 163-82.6A was given legal effect again. However, Numbered Memo 2016-15 has effectively housed North Carolina's same-day registration laws from September 22, 2016, until January 1, 2024, because Chapter 163 was never amended to codify the holding in McCrory. (See VL Doc. 55-2 at 4 (NCSBE Numbered Memo 2016-15, Appendix A).) Section 163-82.6B now appears to abrogate the legal effect of Numbered Memo 2016-15's Appendix A. N.C. Gen. Stat. § 163-82.6B(a) ("Notwithstanding any provision of law to the contrary . . . .").

[9] Help America Vote Act, 52 U.S.C. § 20901 et seq.

AMERICAN OVERSIGHT

document listing the individual's current name and residence address; and (3) present photo identification pursuant to section 163-166.16.[10] Id. § 163-82.6B(b). A HAVA-compliant document is one of the following:

> (1) A current utility bill
> (2) A current bank statement
> (3) A current government check
> (4) A current paycheck
> (5) Another current government document
> (6) A current document issued from the institution who issued the photo identification shown by the voter pursuant to G.S. 163-166.16.

Id. § 163-82.6B(e).[11] A "current" HAVA document must be unexpired or have an issuance date within six months of presentation to an election official. (VL Doc. 55-5 at 3 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).) As with traditional registration, the mailing address on the application may be different from that on the HAVA document and can even be in a different county. (DNC Doc. 62 at 59:8-13.) Upon completing these steps, an individual then "vote[s] a retrievable ballot." N.C. Gen. Stat. § 163-82.6B(c).

Prior to S. 747, the procedures up until address verification

[10] As a technical matter, the same-day registration law prior to S. 747 did not expressly require a same-day registrant to show a photo identification to vote. However, in light of the North Carolina Supreme Court's April 2023 opinion upholding section 163-166.16, SDR voters would appear to be required to present a photo identification even without S. 747. See Holmes v. Moore, 384 N.C. 326, 460 (2023).

[11] NCSBE Numbered Memo 2023-05 provides further guidance to county boards on government documents allowable under (5) and (6). (VL Doc. 55-5 at 3-5 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).)

AMERICAN OVERSIGHT

were the same, except that the proof-of-residency documents required to be produced in person at registration were: "North Carolina drivers license, a photo identification from a government agency, or ['a current utility bill, bank statement, government check, paycheck, or other government document']." See N.C. Gen. Stat § 163-82.6A (2012), available at VL Doc. 55-2 at 4 (NCSBE Numbered Memo 2016-15, Appendix A). Additionally, rather than vote a "retrievable ballot" as S. 747 requires, the same-day registrant would previously vote a "retrievable absentee ballot as provided in G.S. 163-227.2." Id. § 163-82.6A(c) (2012) (emphasis added).

Under S. 747, after a same-day registrant casts a ballot, the county board must, within two business days of registration, "determine[]" if he is qualified to vote by verifying the North Carolina driver's license or social security number in accordance with section 163-82.12, updating the statewide registration database, and searching for possible duplicate registrations. N.C. Gen. Stat. § 163-82.6B(d). A same-day registrant's vote will be counted "unless the county board determines that the applicant is not qualified to vote in accordance with the provisions of this Chapter." Id.[12]

[12] As discussed below, the parties to civil action number 1:23-CV-862 disagree on the practical effect of this clause in terms of its provision of notice and opportunity to be heard for voters found "not qualified."

AMERICAN OVERSIGHT

B. Address Verification for SDR

If the county board of elections tentatively determines that a same-day registrant is eligible to vote (i.e., passes check of driver's license number, social security number, etc.), the county board of elections proceeds to conduct address verification by mail. The core dispute on these motions concerns S. 747's changes to the State's process for doing so for SDR voters, which the parties refer to as the "undeliverable mail provision."

Prior to S. 747, if a same-day registrant was determined eligible, the county board would conduct address verification. N.C. Gen. Stat. § 163-82.6A(d) (2012); N.C. Gen. Stat. § 163-82.7(c)-(f). Just as for non-SDR voters, if the first non-forwardable card was returned as undeliverable, the county board would send a second one. However, given the short window between early voting and the county canvass, in some instances the second card was returned as undeliverable after the county canvass. In those instances, although those SDR voters failed address verification, their votes were counted. N.C. Gen. Stat. § 163-82.7(g); (VL Doc. 55-2 at 3 (NCSBE Numbered Memo 2016-15 (Sept. 22, 2016)).)

When the Postal Service returned the second card as undeliverable before the county canvass, however, the law before S. 747 provided that the ballot (then considered a "retrievable absentee" ballot) could be challenged pursuant to section 163-89,

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000054
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 13 of 94

which authorizes a challenge procedure for absentee ballots to occur ten days after the election. Id. §§ 163-82.7(g)(2), 163-182.5. If this occurred, the county board would "need not try to notify the applicant further." Id. § 163-82.7(f).[13] However, the voter is entitled to appear and present evidence as to the validity of the ballot, provided he is notified of the challenge, for example, by another voter or organization. Id. § 163-89(e). Under this challenge system, "[n]o challenge shall be sustained unless the challenge is substantiated by affirmative proof," and "[i]n the absence of such proof, the presumption shall be that the voter is properly registered or affiliated." Id. § 163-90.1(b). In the last four even-year elections, 1,799 out of 100,578; 696 out of 45,666; 2,151 out of 116,326; and 391 out of 34,289 same-day registrants failed address verification. NCSBE, Presentation to House Oversight and Reform Committee, at 6 (June 22, 2023), at https://webservices.ncleg.gov/ViewDocSiteFile/80406 (last

[13] SDR voters may utilize NCSBE's "Voter Search" to track the status of their ballot, but NCSBE's website indicates that a voter's history "may take up to a few weeks after Election Day" to update. NCSBE, Vote Early in Person, at https://www.ncsbe.gov/voting/vote-early-person (last accessed Jan. 9, 2024). Moreover, even though SDR ballots were technically considered "absentee" ballots prior to S. 747, the court has no record that NCSBE's vote-by-mail tracking system, BallotTrax, was or is now available to SDR voters. See NCSBE, Ballot Tracking Available Again for Absentee-By-Mail Voters, at https://www.ncsbe.gov/news/press-releases/2022/03/14/ballot-tracking-available-again-absentee-mail-voters (Mar. 14, 2022) (last accessed Jan. 9, 2024).

AMERICAN OVERSIGHT

accessed Jan. 3, 2023).[14]

In reality, however, no challenges based on failed address verification have been held since August 2018. (VL Doc. 61 at 53:13-16 (State Board stating so at oral argument); VL Doc. 55-4 at 1-2 (NCSBE Numbered Memo 2018-07 (Aug. 8, 2018)); see also VL Doc. 55-3 at 8 (NCSBE Numbered Memo 2022-05 (May 12, 2022)).)[15] This results from the NCSBE's interpretation of an injunction entered in North Carolina State Conference of the NAACP v. Bipartisan Board of Elections & Ethics Enforcement, No. 1:16CV1274, 2018 WL 3748172 (M.D.N.C. Aug. 7, 2018). (See VL Doc. 55-3 at 8 (NCSBE Numbered Memo 2022-05 (May 12, 2022)) (explaining that "a 2018 federal court order [i.e., the Bipartisan Board order] prohibits any voter challenges from being brought without individualized knowledge within 90 days of a federal election"); VL Doc. 44-4 at 9-10 (Letter from State Board to Watauga County Board ordering the county board, pursuant to Bipartisan Board injunction, to halt its section 163-89 challenges based on same-day registrants' failure to complete address verification)).)

[14] The court may take judicial notice of facts that are "matters of public record." Justice 360 v. Stirling, 42 F.4th 450, 455 (4th Cir. 2022); Fed. R. Evid. 201.

[15] NCSBE updated the version of Numbered Memo 2022-05 available online on December 15, 2023, in light of S. 747. See NCSBE Numbered Memo 2022-05 (Dec. 15, 2023 update), at https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2022/Numbered%20Memo%202022-05_Absentee%20Voter%20Challenges%20by%20County%20Board.pdf. The memo before the updates is memorialized at VL Doc. 55-3 and DNC Doc. 54-3.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000056

In Bipartisan Board, individual voters in Beaufort, Cumberland, and Moore counties sent a single mailing to thousands of registered voters. Bipartisan Board, 2018 WL 3748172, at *4-9. These individuals together received thousands of pieces of mail returned as undeliverable, after which they brought challenges pursuant to N.C. Gen. Stat. §§ 163-85 and 163-86, which permit third-party challenges to a voter's right to register in a county due to, among other reasons, change in residency.[16] Id. When presented to the county boards, the single unreturned mailings constituted prima facie evidence that the corresponding voters did not reside at the address listed. Id.; N.C. Gen. Stat. § 163-85(e). The county boards thus struck the registrations of scores of registered voters, and plaintiffs sued to restore the registrations and receive prospective relief pursuant to the National Voter Registration Act ("NVRA," also known as the "Motor Voter Act"), 52 U.S.C. § 20507. Id. at *1. Finding that these third-party challenges violated 52 U.S.C §§ 20507(d)[17] and

[16] The Bipartisan Board order refers to these provisions as N.C. Gen. Stat. §§ 163A-911 and 163A-912. The provisions were re-codified by North Carolina Session Laws 2018-146, § 3.1(a), effective January 31, 2019, as N.C. Gen. Stat. §§ 163-85 and 163-86. This order will refer to the provisions as presently codified.

[17] Section 20507(d)(1) prohibits "remov[ing] 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": (1) confirms in writing that he has moved outside the registrar's jurisdiction; or (2) fails to respond to a notice as outlined under subsection (d)(2), and (3) has not voted or appeared to vote in

AMERICAN OVERSIGHT

(c)(2)(A),[18] the court permanently enjoined the NCSBE from

> (1) removing the registration of voters from the official list of eligible voters in elections for federal office through the challenge procedures set forth in N.C. Gen. Stat. §§ 163A-911 et seq.,[19] when those challenges are based on change of residency and the State has neither received written confirmation from the voter of a change of residency outside of the county, nor complied with the NVRA's prior notice requirement and two-election cycle waiting period;
>
> (2) using the challenge procedure set forth in N.C. Gen. Stat. §§ 163A-911[20] et seq. to remove voters from the rolls without individualized inquiry as to the circumstances of each voter in the 90 days preceding a federal election in the absence of a request of the registrant, necessity under State law by reason of criminal conviction or mental incapacity, or the death of the registrant; and
>
> (3) holding hearings or taking any other action(s) to process challenges filed under those provisions in the circumstances identified above.

Bipartisan Board, 2018 WL 3748172, at *12. The court found that the challenges, which occurred within 90 days of a federal election based on a single mailing, violated the NVRA because the process did not rely upon "individualized information" as to the voters sought to be removed. Id. at *6-10 (citing Arcia v. Fla. Sec'y of

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two federal election cycles following receipt of notice. Section 20507(d)(2) prescribes the content for a NVRA-compliant notice.

[18] Section 20507(c)(2)(A) provides that "[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."

[19] Now codified as N.C. Gen. Stat. §§ 163-85 et seq.

[20] Now codified as N.C. Gen. Stat. §§ 163-85 et seq.

AMERICAN OVERSIGHT

State, 772 F.3d 1335, 1346 (11th Cir. 2014)). Although Bipartisan Board dealt with challenges pursuant to section 163-85, State Board Defendants have construed the injunction to also prohibit challenges under section 163-89 for same-day registrants under the belief that the challenge procedures "bear a close resemblance" to one another. (VL Doc. 44-4 at 9-10 (pointing to the Bipartisan Board court's finding that the mailings constituted "generic evidence [that] conveyed no information about each challenged voter's specific circumstances").) As a result of Bipartisan Board and State Board Defendants' interpretation of it, failed address verifications for same-day registrants have not resulted in challenges since 2018.

S. 747 amends the address verification system for SDR voters to, as State Board Defendants contend, address the State's inability to conduct address verification before the canvass and to avoid counting ballots of SDR voters who fail address verification. (DNC Doc. 53 at 13; VL Doc. 54 at 11.) In pertinent part, the "undeliverable mail provision" now provides:

> Notwithstanding any other provision of this Chapter, if the Postal Service returns the first notice required under G.S. 163-82.7(c) as undeliverable before the close of business on the business day before canvass, the county board shall not register the applicant and shall retrieve the applicant's ballot and remove that ballot's votes from the official count.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000059
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 18 of 94

N.C. Gen. Stat. § 163-82.6B(d).[21] State Board Defendants state that all SDR voters will be given a notice at the polling place that their vote may not be counted if address verification fails, but there is no individualized notice and opportunity to be heard after the card is returned as undeliverable and before the ballot is removed from the official count. (See VL Doc. 55-6 (Notice to Same Day Registrants); VL Doc. 54 at 13 n.8 ("The State Board has also created a written notice that poll workers are required to give to all same-day registrants informing them" that, if address verification fails, their "voter registration will be denied and [their] vote will not be counted").)

State Board Defendants contend that North Carolina's interest in the undeliverable mail provision is "in ensuring only eligible ballots are counted in an election." (DNC Doc. 53 at 13.) Legislative Intervenors argue that S. 747 "(1) preserv[es] the integrity of the election process; and (2) instill[s] confidence in the fairness of the election." (DNC Doc. 52 at 17.) With respect to election integrity, Legislative Intervenors contend that the law "ensure[s] that registrant[s] live in the precinct within which they seek to vote." (Id. at 18.) They argue that

[21] It is unclear whether the provision referencing the "first notice" indicates that no second card will be sent, especially in light of the provision that the county board "shall not register" the SDR voter. State Board Defendants take the view that a second card is sent only if the first card returns after the canvass. (VL Doc. 55-5 at 7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000060
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 19 of 94

North Carolina has a "legitimate interest" in ensuring "that the card is returned before the end of the canvass," and that S. 747 is designed to bring SDR voters into parity with other voters. (VL Doc. 52 at 14; VL Doc. 61 at 66:13-15.) Legislative Intervenors also rely on the expert report and testimony of Dr. Andrew Taylor which, as discussed in more detail below, they urge shows that the undeliverable mail provision supports the State's interests. (See VL Doc. 52-1.) Party Intervenors contend that the State's "compelling interest" is in "ensuring verification of each applicant's address, which is fundamental to determining a voter's eligibility" (DNC Doc. 51 at 7-8), and in "discouraging and preventing fraud," (VL Doc. 51 at 11).

Neither State Board Defendants nor Intervenors point to any portion of the legislative history to demonstrate the General Assembly's purpose in enacting this change.[22] Legislative

[22] State Board Defendants and Intervenors have cited just one source of legislative history, a transcript of testimony by Defendant Bell before the House Committee on Oversight and Reform, available at https://webservices.ncleg.gov/ViewDocSiteFile/80708 (last accessed Jan. 17, 2024). However, neither this source nor other documents available online through the Senate Committee on Redistricting and Elections or the House Committee on Election Law and Campaign Finance Reform reveals the General Assembly's rationale for the undeliverable mail provision. This may be explained by the fact that the undeliverable mail provision appears to have been added to S. 747 by the House Committee on Election Law and Campaign Finance Reform one day before it passed the full chamber. See North Carolina General Assembly, Senate Bill 747 House Committee Substitute (Aug. 15, 2023), https://www.ncleg.gov/Sessions/2023/Bills/Senate/PDF/S747v4.pdf; see also North Carolina General Assembly, Senate Bill 747 / SL 2023-140, https://www.ncleg.gov/BillLookUp/2023/s%20747 (last accessed Jan. 17, 2024).

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000061

Intervenors represent that State Board Defendants requested the change, the evidentiary support for which is a former State and Watauga County election board member's understanding. (VL Doc. 52 at 4; Doc. 52-2 at 9.) There is no record that address verification has ever revealed a same-day registrant who was in fact ineligible to vote because he did not reside at the residence provided. In fact, State Board Defendants state that they would have "no way to know" from the card itself. (VL Doc. 61 at 60:21.)

C. Parties

Plaintiff Voto Latino is a section 501(c)(4) nonprofit that encourages voting and assists with voter registration, particularly among eligible Latino voters. (VL Doc. 1 ¶¶ 17, 18.) Plaintiff Watauga County Voting Rights Taskforce is a volunteer, nonpartisan organization that conducts voter registration drives, voter education sessions, volunteer training, community outreach, among other functions. (Id. ¶¶ 22-24.) Relevant here, the Taskforce has defended voters whose ballots have been challenged. (Id. ¶ 25.) Plaintiff Down Home North Carolina is a section 501(c)(4) nonprofit that works, in part, to ensure that rural, working-class people in North Carolina have access to the franchise. (Id. ¶ 28.) Plaintiff Sophie Jae Mead is a senior at Appalachian State University and a member of the Watauga County Voting Rights Taskforce. (Id. ¶ 31.) Her ballot was allegedly challenged under section 163-89 due to an undeliverable address

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000062
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 21 of 94

verification card in 2022. (Id. ¶ 31.) Plaintiff Democratic National Committee ("DNC") is the national committee of the Democratic Party. (DNC Doc. 1 ¶¶ 22-23.) Plaintiff North Carolina Democratic Party ("NCDP") is a state committee of the Democratic Party. (Id. ¶ 25.)

Party Plaintiffs have sued the NCSBE, which is the executive agency responsible for administering election laws in North Carolina. (Id. ¶ 28.) All Plaintiffs also have sued NCSBE's executive director, Defendant Karen Brinson Bell, NCSBE's chair, Defendant Alan Hirsch, NCSBE's secretary, Defendant Jeff Carmon, and NCSBE members, Defendants Stacy Eggers IV, Kevin N. Lewis, and Siobhan O'Duffy Millen. (Id. ¶¶ 29-34; VL Doc. 1 ¶¶ 34-35.) All these individuals are sued in their respective official capacities. (DNC Doc. 1 ¶¶ 29-34; VL Doc. 1 ¶ 34.) Voto Latino has also sued Defendant Michael Behrent, the chair of the Watauga County Board of Elections, and Defendants Leta Councill, Eric Eller, Matt Walpole, and Elaine Rothenberg, who are members of the Watauga County Board of Elections, in their respective official capacities. (VL Doc. 1 ¶ 37.)

Legislative Intervenors are Philip E. Berger, President Pro Tempore of the North Carolina Senate, and Timothy K. Moore, Speaker of the North Carolina House of Representatives. They have intervened in their respective official capacities. Party Intervenors are the North Carolina Republican Party, the

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000063

Republican National Committee, Brenda M. Eldridge, and Virginia Ann Wasserberg. Eldridge and Wasserberg are registered Republican voters who "typically vote for Republican candidates, have served as poll observers in the past, and intend to do so in the future. (DNC Doc. 48 at 3.)

D. Procedural Background

Voto Latino Plaintiffs filed their motion for preliminary injunction on November 15, 2023 (VL Doc. 44), to which State Board Defendants and Intervenors responded on December 13, 2023 (VL Docs. 50-54). In the period between the motion and responses, the parties engaged in limited discovery by mutual agreement, the result of which are filings attached to State Board Defendants' and Intervenors' responses and Voto Latino Plaintiffs' reply brief. Voto Latino Plaintiffs' motion seeks preliminary injunctive relief solely against the enforcement of the undeliverable mail provision.

In the other case, Party Plaintiffs filed their motion for preliminary injunction on October 10, 2023 (DNC Doc. 6), to which State Board Defendants and Intervenors responded on November 20, 2023 (DNC Docs. 51-53). Party Plaintiffs replied on December 4, 2023. (DNC Doc. 58.) Party Plaintiffs seek preliminary injunctive relief precluding the following:

> (1) requiring same-day registrants (i.e., voters who seek to register and vote on the same day, prior to election day) to produce documentation that other

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000064

registrants need not produce;

(2) denying a same-day registrant's application to register without providing that individual with sufficient notice and a meaningful opportunity to be heard;

(3) rejecting a same-day registrant's application to register based on the return of a single notice as undeliverable by the U.S. Postal Service;

(4) applying different voting-registration standards, practices, or procedures to different individuals in the same county; and

(5) failing to provide a free-access system by which same-day registrants can track their retrievable ballots.

(DNC Doc. 6.)

Before proceeding, it bears noting what is not presently before the court. As described above, State Board Defendants have not enforced North Carolina's two-card address verification requirement for same-day registrants since the 2018 Bipartisan Board injunction against using challenges under N.C. Gen. Stat. §§ 163-85 et seq. to remove voters from the rolls in violation of the NVRA. At present, Plaintiffs have not brought suit under the NVRA, which requires 90 days' notice before an "aggrieved person may bring a civil action." 52 U.S.C. § 20510(b). At the hearing on the present motions, Party Plaintiffs represented that they have given notice to State Board Defendants of their intent to sue and that the 90-day notice period will expire sometime this month. (DNC Doc. 62 at 78 ("Nowhere near 90 days has gone past. We didn't

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000065
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 24 of 94

think when we filed our preliminary injunction motion asking that the Court rule by January, which will be 90 days, that there would be time to get effective relief under the NVRA.").)

The parties have studiously avoided any argument as to whether the undeliverable mail provision of S. 747 complies with the NVRA and/or the Bipartisan Board injunction. Despite figuring prominently in the history of SDR, the injunction is raised only in passing in the briefs. (VL Doc. 59 at 22 n. 6; VL Doc. 54 at 6; DNC Doc. 53 at 6-7.) Though during the hearing the court probed the parties about the effect, if any, of the Bipartisan Board injunction and the NVRA on Plaintiffs' requested relief, the parties demurred (DNC Doc. 61 at 78:9-18 (Party Plaintiffs expressing that "we have not yet looked at this issue"); id. at 35:11-12 (Voto Latino Plaintiffs expressing view that "it is certainly possible that the law does violate the injunction . . . and the NVRA"); id. at 43:11-22 (State Board Defendants expressing that they "haven't completely looked at whether the new law as a whole" violates Bipartisan Board but expressing belief that challenge procedures would); id. at 77:4-11 (Legislative Intervenors expressing belief that Bipartisan Board is "distinguishable")), such that it is assuredly not raised before the court at this time. Thus, the court expresses no opinion on the effect, if any, of the injunction or the NVRA, and turns to consideration of the statutory and constitutional claims actually

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000066
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 25 of 94

raised.

II. ANALYSIS

A. Standing

Legislative Intervenors and Party Intervenors challenge the Article III standing of all Voto Latino Plaintiffs. (VL Doc. 51 at 4-7; VL Doc. 52 at 15-16.) Plaintiff Mead contends that she has standing as an individual, Plaintiff Voto Latino contends that it has standing in its own right as an organization, and Plaintiffs Task Force and Down Home NC contend that they satisfy either standing in their own right or representational standing. (VL Doc. 45 at 16-17.) Intervenors argue that the organizational Voto Latino Plaintiffs' claims are generalized grievances and that the organizations have not demonstrated that a diversion of resources "has yet to occur," and that they "may never occur." (VL Doc. 51 at 7, Doc. 52 at 15, Doc. 60 at 2-3.) Moreover, Legislative Intervenors maintain that Plaintiff Mead's injury is speculative because it involves "some *potential* SDR issue in a *future* election where she *might* utilize SDR." (VL Doc. 52 at 16 (emphasis in original).)

Legislative Intervenors also challenge the Article III standing of Party Plaintiffs. (DNC Doc. 52 at 7-8.) Party Plaintiffs argue that they have standing in their own right and representational standing. (DNC Doc. 58 at 14 n.5.) Legislative Intervenors argue that Party Plaintiffs "utterly failed to allege

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000067
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 26 of 94

that any of the same-day registration provisions challenged in S.B. 747 create[s] specific harm to their organizations or Democratic voters," such that the claims are speculative, generalized grievances. (DNC Doc. 52 at 8.)

"No lawsuit may proceed in federal court unless the party seeking relief has Article III standing." Carolina Youth Action Project v. Wilson, 60 F.4th 770, 778 (4th Cir. 2023). The basic standing requirements are that a plaintiff must show: (1) he has suffered an "injury in fact," (2) the injury is "fairly . . . trace[able] to the challenged action of the defendant," and (3) it is "likely" that "the injury will be redressed by a favorable decision." Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992) (citations and internal quotation marks omitted) (alteration and omission in original). In multi-plaintiff cases, "[a]t least one plaintiff must have standing to seek each form of relief requested in the complaint." Town of Chester v. Laroe Estates, Inc., 137 S. Ct. 1645, 1651 (2017). If there is one such plaintiff, the court need not consider whether other plaintiffs have standing to seek that same form of relief. Carolina Youth Action, 60 F.4th at 778.

The injury in fact "requirement ensures that plaintiffs have a 'personal stake in the outcome of the controversy.'" Kenny v. Wilson, 885 F.3d 280, 287 (4th Cir. 2018) (quoting Warth v. Seldin, 422 U.S. 490, 498 (1975)). An injury in fact is "'an invasion of a legally protected interest' that is 'concrete and

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000068
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 27 of 94

particularized' and 'actual or imminent, not conjectural or hypothetical.'" Spokeo, Inc. v. Robins, 578 U.S. 330, 339 (2016) (quoting Lujan, 504 U.S. at 560). "An allegation of future injury may suffice if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur." Susan B. Anthony List v. Driehaus, 573 U.S. 149, 158 (2014) (citation and internal quotation marks omitted). When plaintiffs seek prospective relief, they must establish an ongoing or imminent injury in fact. O'Shea v. Littleton, 414 U.S. 488, 495–96 (1974).

An organizational plaintiff can satisfy the standing requirements in two ways: either injury in its own right, or injury as a representative of its members. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181, 199 (2023). To have standing in its own right, the organization may show that an alleged illegal action "perceptibly impair[s]" its ability to carry out its mission, including by draining the organization's resources. Havens Realty Corp. v. Coleman, 455 U.S. 363, 379 (1982). An organization does not have standing, however, where injury results "not from any actions taken by [the defendant], but rather from the [organization's] own budgetary choices," such as "educating members, responding to member inquiries, or undertaking litigation in response to legislation." Lane v. Holder, 703 F.3d 668, 674–75 (4th Cir. 2012) (internal quotation marks and citation omitted) (finding lack of standing

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000069
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 28 of 94

where resource drain resulted from "inquiries [from members] into the operation and consequences of interstate handgun transfer provisions").

Some voter advocacy groups in this district have established standing on their own behalf under Havens Realty and Lane where they allege a link between their mission and the alleged illegal act, as well as resource expenditures beyond merely educating voters and responding to inquiries. Democracy N.C. v. N.C. State Bd. of Elections, 476 F. Supp. 3d 158, 182-83 (M.D.N.C. 2020) (finding standing where organization would divert resources to assist voters with registering to vote before 25-day deadline); Action NC v. Strach, 216 F. Supp. 3d 597, 617-18 (M.D.N.C. 2016) (finding standing where organization would divert limited time and resources to assist voters with registration after DMV allegedly failed to transmit voter registration information to NCSBE); N.C. State Conf. of the NAACP v. N.C. State Bd. of Elections, 283 F. Supp. 3d 393, 402-03 (M.D.N.C. 2017) (finding standing where organization would divert resources to combat "*en masse* voter challenges"). Moreover, a political party may have standing in its own right where a law "threatens and inhibits" the party's efforts to register eligible voters and requires diverting resources to cure ballot defects. Democratic Party of Va. v. Brink, 599 F. Supp. 3d 346, 355 (E.D. Va. 2022) (citing Crawford v. Marion Cnty. Election Bd., 472 F.3d 949, 951 (7th Cir. 2007)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000070
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 29 of 94

(Posner, J.), aff'd, 553 U.S. 181 (2008)).

To represent its members, rather than have injury in its own right, the organization must demonstrate that "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." Students for Fair Admissions, 600 U.S. at 199 (quoting Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 343 (1977)).

Standing is not "dispensed in gross"; instead, the court must consider standing with respect to the requested relief. Town of Chester, 581 U.S. at 439. The court will first consider Plaintiffs' request to enjoin the enforcement of the undeliverable mail provision — i.e., relief that all Plaintiffs join in seeking. It will then turn to Party Plaintiffs' other requested relief.

Plaintiff Voto Latino alleges that its mission is "engag[ing], empower[ing], and educat[ing] its core constituency of Latinx communities throughout the country to ensure that they are enfranchised and included in the democratic process." (VL Doc. 1 ¶ 17.) Voto Latino anticipates spending approximately $1 million during the 2024 election cycle in North Carolina, including on registering new voters through same-day registration. (Id. ¶ 18.) It contends that its mission will be frustrated because it

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000071
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 30 of 94

will divert resources ordinarily spent on issue advocacy toward encouraging eligible voters to register prior to early voting to avoid the risk of failing address verification. (Id. ¶ 19.) Further, Voto Latino contends that it will spend more resources (1) reaching out to voters to encourage them to provide a mailing address where they can receive mail as a second address, (2) registering more voters to account for those who will be erroneously not counted, and (3) contacting voters whose registrations were ultimately denied to get them registered again. (VL Doc. 51-4 at 53:24-55:1.) Moreover, Voto Latino contends that "thousands of eligible voter constituents that Voto Latino plans to assist in 2024" face an "extremely high risk" that they will be disenfranchised because of the undeliverable mail provision. (VL Doc. 1 ¶ 21.)

Plaintiff Voto Latino's allegations are sufficient to establish standing in its own right at this stage. As alleged, erroneous disenfranchisement of SDR voters would hinder Voto Latino's mission of registering eligible voters and engaging in voter advocacy. See League of Women Voters of S.C. v. Andino, 497 F. Supp. 3d 59, 75-76 (D.S.C. 2020) (finding organizational standing where state removed notice-and-cure procedure for absentee ballots and thus impaired the organization's mission to register voters). Moreover, Voto Latino sufficiently alleges resource expenditures required to address the change in law with

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000072
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 31 of 94

prospective same-day registrants. See Democracy N.C., 476 F. Supp. 3d at 182 (finding organizational standing where an organization would have to divert resources to warn voters about the risks of absentee voting and where efforts spent encouraging voter participation would be obviated by inadvertent disenfranchisement). The court further finds that Voto Latino's alleged injury is traceable to the undeliverable mail provision and would be redressable by the requested relief. Lujan, 504 U.S. at 560–61. As a result, Voto Latino has standing as an organization.

Because Plaintiff Voto Latino has standing to pursue this relief, the court need not determine the standing of the other Voto Latino Plaintiffs. Carolina Youth Action, 60 F.4th at 778. Nevertheless, it is likely that Down Home NC would have representational standing as well. Down Home NC has identified at least one member who would have standing. Summers v. Earth Island Inst., 555 U.S. 488, 498–99 (2009) (requiring an organization to name affected members, unless all members of the organization are harmed). This individual has allegedly resided in a hotel in Alamance County since a fire destroyed her home. (VL Doc. 60-3 at 67:6-8.) Down Home NC contends that she is unable to stay in the same room to establish residency, (id. at 67:6-10), and that she intends to use same-day registration in 2024, (id. at 76:4). Because a person's right to vote is "individual and personal in

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000073

nature," Reynolds v. Sims, 377 U.S. 533, 561 (1964), "'voters who allege facts showing disadvantage to themselves as individuals have standing to sue' to remedy that disadvantage." Gill v. Whitford, 138 S. Ct. 1916, 1920 (2018) (quoting Baker v. Carr, 369 U.S. 186, 206 (1962)). This individual identified by Down Home NC would have standing, as she faces a concrete and imminent risk of harm because she is unlikely to have a stable address where she can receive mail at least by early voting in February 2024. See Lujan, 504 U.S. at 564 (finding no standing upon mere "some day" intentions without "any description" of concrete plans); N.C. State Conf. of the NAACP, 283 F. Supp. 3d at 404 (finding standing where individual faced "real and imminent risk" of being unlawfully removed from voter rolls by "systematic, *en masse*" voter challenges). This individual thus has a concrete risk of having her vote not counted after she same-day registers. Moreover, the interests Down Home NC seeks to protect are germane to its stated purpose of "ensur[ing] that working-class North Carolinians . . . have access to the franchise." (VL Doc. 44-3 ¶ 5.) Finally, this individual's participation is not required in this lawsuit. Students for Fair Admissions, 600 U.S. at 199 (quoting Hunt, 432 U.S. at 343)). Accordingly, Down Home NC has satisfied the requirements of representational standing. Id.

In the other lawsuit, North Carolina Democratic Party's mission is to "elect Democratic candidates to public office

AMERICAN OVERSIGHT

throughout North Carolina." (DNC Doc. 1 ¶ 25.) The Democratic National Committee's organizational purpose is to "communicate the Democratic Party's position and messages on issues; protect the legal rights of voters; and aid and encourage the election of Democratic candidates at the national, state, and local levels, including by persuading and organizing citizens not only to register to vote as Democrats, but also to cast their votes for Democratic candidates." (Id. ¶ 23.) Party Plaintiffs contend that it is "exceedingly likely" that one or more of the 2.4 million registered Democratic Party members in North Carolina will be removed from the voting rolls. (DNC Doc. 1 ¶ 26.) Of note, however, Party Plaintiffs do not name any specific members. Party Plaintiffs also contend they are harmed as organizations because the law will "require each organization to expend and divert funds and resources that they would otherwise spend on voter outreach and mobilization efforts . . . in order to ensure that those voters are not erroneously prevented from voting." (Id. ¶ 27.) Moreover, they allege that the "likely erroneous denial of Democratic voters' right to cast a ballot and have it counted . . . undermin[es] the two organizations' abilities to succeed in getting Democrats elected." (Id.) Party Plaintiffs represented that 880 of the 2,000 voters who required a second address verification card in 2020 were registered Democrats. (DNC Doc. 62 at 13:11-12.)

For much of the same reasons as for Plaintiff Voto Latino,

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000075

Party Plaintiffs have standing on their own behalf to seek relief as to the undeliverable mail provision because they have adequately alleged a frustration of their mission of registering voters and a diversion of resources as a result of the undeliverable mail provision. See Brink, 599 F. Supp. 3d at 355; Andino, 49 F. Supp. 3d at 75-76; Democracy N.C., 476 F. Supp. 3d at 182.

Party Plaintiffs seek additional relief that Voto Latino does not. This includes "requiring same-day registrants . . . to produce documentation that other registrants need not produce; [] denying a same-day registrant's application to register without providing that individual with sufficient notice and a meaningful opportunity to be heard; [] applying different voting-registration standards, practices, or procedures to different individuals in the same county; and [] failing to provide a free-access system by which same-day registrants can track their retrievable ballots." (DNC Doc. 6.) The parties have not made any particularized arguments as to Party Plaintiffs' Article III standing for these forms of relief. The court nevertheless finds at this stage that Party Plaintiffs' standing to seek these forms of relief is no different than it is for the undeliverable mail provision, as each would redress the injuries to the missions and the resource diversions alleged above. The court will address State Board Defendants' and Intervenors' positions on statutory standing under the Civil Rights Act and the Help America Vote Act below.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000076

Having found the requisite Article III standing, the court will turn to the merits of the motions.

B. Preliminary Injunction Standard

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). Such an injunction "is an extraordinary remedy intended to protect the status quo and prevent irreparable harm during the pendency of a lawsuit." Di Biase v. SPX Corp., 872 F.3d 224, 230 (4th Cir. 2017). To demonstrate a likelihood of success on the merits, "[a] plaintiff need not establish a certainty of success, but must make a clear showing that he is likely to succeed at trial." Id.

Party Plaintiffs alone raise two statutory claims that reach S. 747's undeliverable mail provision as well as other provisions of state election law. Before the court "can address the constitutional arguments," it must "attempt to resolve" the motions "on non-constitutional grounds first, if possible." Nat'l Lab. Rels. Bd. v. Enter. Leasing Co. Se., LLC, 722 F.3d 609, 613 (4th Cir. 2013); Ashwander v. Tenn. Valley Auth., 297 U.S. 288, 347 (1936) (Brandeis, J., concurring). The court thus turns to these statutory claims first.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000077
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 36 of 94

C. Civil Rights Act

Party Plaintiffs alone argue that S. 747 violates the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(A), by applying different registration standards, practices, or procedures to different groups of individuals in the same county. (DNC Doc. 7 at 21.) Party Plaintiffs contend that S. 747 treats SDR and non-SDR voters disparately by requiring SDR voters to provide documentary proof of residency; by providing SDR voters only one mail card for address verification, instead of two; and by not providing notice and opportunity to be heard to SDR voters who are found ineligible to vote by the State Board. (Id. at 22-23.) Party Plaintiffs seek an order enjoining these differences in treatment. (DNC Doc. 6.)

In response, State Board Defendants argue that the CRA is only enforceable through 42 U.S.C. § 1983 and that Party Plaintiffs must, but did not, bring their CRA claim pursuant to that statute. (DNC Doc. 53 at 15.) Intervenors contend that Party Plaintiffs are unlikely to show that they have a private right of action to enforce their claims under 52 U.S.C. § 10101. (DNC Doc. 52 at 8-9; DNC Doc. 51 at 12-13.) Moreover, State Board Defendants and Intervenors contend that SDR and non-SDR are "inherently different" types of registration and thus require different procedures for each. (Id.; DNC Doc. 51 at 13-14 ("[T]his is not a case where different standards are applied to individuals based

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000078

on race, age, gender, neighborhood of residence, profession, etc."); DNC Doc. 52 at 10.) They argue, in addition, that Party Plaintiffs' interpretation of the CRA would put in jeopardy all requirements which apply to a set of voters, including differences between procedures for vote-by-mail and in-person voting. (DNC Doc. 53 at 16; DNC Doc. 52 at 10; DNC Doc. 51 at 14-16.)

Whether the CRA creates a private right of action is a question of "statutory standing." CGM, LLC v. BellSouth Telecommc'ns, Inc., 664 F.3d 46, 51-52 (4th Cir. 2011). Statutory standing "applies only to legislatively-created causes of action" and concerns "whether a statute creating a private right of action authorizes a particular plaintiff to avail herself of that right of action." Id. (internal quotation marks omitted).

Courts have disagreed as to whether the CRA provides a private right of action. McKay v. Thompson, 226 F.3d 752, 756 (6th Cir. 2000) (no private right of action, but decided before Gonzaga Univ. v. Doe, 536 U.S. 273 (2002)); Schwier v. Cox, 340 F.3d 1284, 1297 (11th Cir. 2003) (private right of action); Vote.org v. Callanen, 89 F.4th 459, 474-78 (5th Cir. 2023) (private right of action). The Fourth Circuit has assumed without deciding that a private right of action existed. Washington v. Finlay, 664 F.2d 913, 926 (4th Cir. 1981). And the Third Circuit reversed a district court that had found no private right of action, but the Supreme Court subsequently vacated the decision and ordered that the case be

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000079

dismissed as moot. Migliori v. Cohen, 36 F.4th 153 (3d Cir. 2022), cert. granted, judgment vacated sub nom. Ritter v. Migliori, 143 S. Ct. 297 (2022).

This statutory standing question would be properly considered on a motion to dismiss for failure to state a claim upon which relief can be granted. CGM, LLC, 664 F.3d at 51-52. Unlike a jurisdictional question that the court must answer, the statutory standing question here may be avoided where there are alternative grounds upon which to resolve the motion. Willner v. Dimon, 849 F.3d 93, 102 n.1 (4th Cir. 2017) (avoiding alternative bases to dismiss "in view of the resolution of th[e] case on other bases"). Such alternative grounds exist here to find that Party Plaintiffs are unlikely to succeed on the merits.[23]

The CRA states in part:

> No person acting under color of law shall . . . in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar subdivision who have been found by State officials to be qualified to vote[.]

52 U.S.C. § 10101(a)(2)(A) (previously codified as 42 U.S.C. § 1971). In Rokita, the plaintiffs argued that the photo ID requirement violated the CRA because all voters, namely absentee

[23] For similar reasons, the court need not address Party Plaintiffs' lack of citation to 42 U.S.C. § 1983, as raised by State Board Defendants. (DNC Doc. 53 at 15.)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000080

voters, did not need to present a photo ID. Ind. Democratic Party v. Rokita, 458 F. Supp. 2d 775, 839 (S.D. Ind. 2006), aff'd sub nom. Crawford v. Marion Cnty. Election Bd., 472 F.3d 949 (7th Cir. 2007) (Posner. J.), aff'd, 553 U.S. 181 (2008). The court rejected the plaintiffs' argument, in part, because the CRA is not intended to prevent states from providing different procedures for different methods of voting. Id. at 839-40. The court reasoned that because "absentee voting is an *inherently* different procedure from voting in person," the State must apply different "standards, practices, or procedures" to these two groups of voters. Id. at 840 (emphasis in original). The court further observed that prohibiting such differences would be a "radical departure from settled law." Id.

Here, Party Plaintiffs cite no case in support of their construction and no persuasive limiting principle that would avoid the unintended consequences identified in Rokita and by State Board Defendants and Intervenors. Party Plaintiffs urge that the CRA under their theory would only stop differential treatment "in determining whether any individual is qualified under State law or laws to vote," rather than different methods of registration or voting. (DNC Doc. 58 at 12 (quoting § 10101(a)(2)(A).) Even if this were a meaningful distinction, Party Plaintiffs have not shown that the CRA nevertheless undercuts North Carolina's ability to employ different procedures for determining one's qualifications

AMERICAN OVERSIGHT

to vote depending on how one registers, without due regard to the practical reality that offering various methods of registration — many of which may be less burdensome on voters — may require different procedures.

Moreover, Party Plaintiffs have not established a likelihood of success in demonstrating that a court may properly consider SDR registrants as a class under the CRA when comparing standards, practices, and procedures applied between "any individual" and "other individuals." See 52 U.S.C. § 10101(a)(2)(A). While the parties have not argued, and this court thus does not hold, that the CRA applies only to certain protected classes, Party Plaintiffs have not fairly raised any allegation of discrimination against a protected class, stating only in a footnote that "[h]olding same-day registrants to a higher standard is [] likely to disproportionately disenfranchise African American voters." (DNC Doc. 7 at 23 n.8; see also DNC Doc. 52 at 10 n.8 (demonstrating Legislative Intervenors' intent to move to dismiss CRA claim for failure to allege or prove race discrimination).) Party Plaintiffs' lack of authority raises considerable doubt as to their likelihood of success in showing that the CRA protects SDR voters. Consequently, the court will deny Party Plaintiffs' motion for injunctive relief under the CRA.

D. Help America Vote Act

Party Plaintiffs argue, pursuant to the Help America Vote

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000082

Act, 52 U.S.C. § 21082(a)(5), that S. 747 does not provide an individual who casts a provisional ballot with a "free access system" to track if a provisional ballot is counted and "written information" about a tracking system. (DNC Doc. 7 at 24.) Party Plaintiffs contend that the retrievable ballot under S. 747 is a "provisional ballot" under HAVA. (Id.) They thus seek an order requiring that State Board Defendants "provide a free-access system by which same-day registrants can track their retrievable ballots." (DNC Doc. 6.)

In response, State Board Defendants argue that HAVA is only enforceable through 42 U.S.C. § 1983 and that that Party Plaintiffs must, but did not, bring their HAVA claim pursuant to that statute. (DNC Doc. 53 at 17.) Legislative Intervenors contend that Party Plaintiffs are unlikely to show that they have a private right of action to enforce their claims under 52 U.S.C. § 21082. (DNC Doc. 52 at 8-9.) Moreover, State Board Defendants and Intervenors argue that a retrievable ballot under S. 747 is not a provisional ballot that triggers HAVA's requirements, and that North Carolina is otherwise in compliance with HAVA. (DNC Doc. 53 at 18-20; DNC Doc. 52 at 9; DNC Doc. 51 at 10-11.)

As with the CRA, courts have disagreed as to whether HAVA provides a private right of action. Am. Civil Rights Union v. Phila. City Comm'rs, 872 F.3d 175, 181 (3d Cir. 2017) ("HAVA does not include a private right of action that allows aggrieved parties

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000083
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 42 of 94

to sue nonconforming states."); Crowley v. Nevada ex rel. Nev. Sec'y of State, 678 F.3d 730, 735 (9th Cir. 2012) (recognizing there is no private right of action under the HAVA, and foreclosing a section 1983 suit)); Colon-Marrero v. Velez, 813 F.3d 1, 22 (1st Cir. 2016) (permitting private right of action through section 1983); Sandusky Cnty. Democratic Party v. Blackwell, 387 F.3d 565, 572 (6th Cir. 2004) (same). For the same reasons stated above for the CRA, the court need not address this statutory standing question because Party Plaintiffs' HAVA claim can be resolved on alternative grounds. See CGM, LLC, 664 F.3d at 51-52; Willner, 849 F.3d at 102 n.1 (avoiding alternative bases to dismiss "in view of the resolution of th[e] case on other bases").[24]

In relevant part, HAVA provides:

> The appropriate State or local election official shall establish a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.

52 U.S.C. § 21082(a)(5)(B). HAVA also provides that when an individual casts a provisional ballot, the "election official shall give the individual written information" about the tracking system. Id. § 21082(a)(5)(A). The provisions Party Plaintiffs

[24] Similarly, the court need not address State Board Defendants' argument regarding Party Plaintiffs' lack of citation to 42 U.S.C. § 1983. (DNC Doc. 53 at 17.)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000084

rely upon apply to an individual who "declares" that he is a "registered voter" but whose name does not appear on the official list of eligible voters. 52 U.S.C. § 21082(a).

In North Carolina, a "'[p]rovisional official ballot' means an official ballot that is voted and then placed in an envelope that contains an affidavit signed by the voter certifying identity and eligibility to vote." N.C. Gen. Stat. § 163-165(6). By contrast, a retrievable ballot is one that a voter "shall cast . . . and then shall deposit [] in the ballot box or voting system in the same manner as if such box or system was in use in a precinct on election day." N.C. Gen. Stat. § 166.45 (as amended by section 27.(c) and recodified by section 1.(b) of 2023 N.C. Sess. Laws 140). According to NCSBE Numbered Memo 2023-04, a same-day registrant who does not have a HAVA document — i.e., one who does not complete an SDR registration — may vote a provisional ballot instead of a retrievable ballot. NCSBE Numbered Memo 2023-04, at 9 (Oct. 12, 2023), https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2023/Numbered%20Memo%202023-04%20Provisional%20Ballots%20and%20Canvass%20Procedures.pdf (last accessed Jan. 2, 2023).

Here, Party Plaintiffs have not demonstrated that they are likely to succeed in showing that this provision applies to SDR voters. In their reply, Party Plaintiffs argue that SDR voters are provisional voters because they "declare they are registered

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000085

upon turning in a completed registration form" and "will not immediately appear on the list of eligible voters." (DNC Doc. 58 at 12.) While that may be one technical, if not strained, similarity between provisional voters and SDR voters, North Carolina law otherwise treats these voters differently. See, e.g., N.C. Gen. Stat. § 166.45 (requiring retrievable ballots be placed in ballot box); NCSBE Numbered Memo 2023-04, supra (outlining procedures applicable to provisional ballots to determine eligibility and to count the ballot). Moreover, Party Plaintiffs do not argue that North Carolina is otherwise out of compliance with HAVA. As a consequence, Party Plaintiffs' motion for preliminary injunction pursuant to HAVA will be denied.

E. Fourteenth Amendment Claims

1. Due Process and Anderson-Burdick

All Plaintiffs challenge portions of section 10.(a) of S. 747 (codified as N.C. Gen. Stat. § 163-82.6B) on procedural due process grounds. The parties dispute which test should apply. Plaintiffs argue that the court should apply the test set out in Mathews v. Eldridge, 424 U.S. 319 (1976). (DNC Doc. 7 at 15; VL Doc. 45 at 19.) They argue, alternatively, that even if the court were to apply the test provided by Anderson v. Celebrezze, 460 U.S. 780 (1983) and Burdick v. Takushi, 504 U.S. 428 (1992), commonly called "Anderson-Burdick," they should prevail anyway. (DNC Doc. 58 at 5-6; VL Doc. 59 at 24-29.)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000086

To prevail on a claim for a procedural due process deprivation under Eldridge, a plaintiff must demonstrate: "(1) a cognizable liberty or property interest; (2) the deprivation of that interest by some form of state action; and (3) that the procedures employed were constitutionally inadequate." Accident, Injury & Rehab., PC v. Azar, 943 F.3d 195, 203 (4th Cir. 2019) (internal quotation marks omitted). "To assess the constitutional adequacy of an opportunity to be heard, courts consider (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of that interest given the procedures used, as well as the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest," id., "including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail," Eldridge, 424 U.S. at 335.

State Board Defendants concede that if Eldridge were the proper test, the undeliverable mail provision would be unconstitutional. (DNC Doc. 53 at 10-11; VL Doc. 54 at 9-10.) They, along with Intervenors, contend, however, that the Anderson-Burdick test is the proper framework for analyzing the law. (DNC Doc. 53 at 11; VL Doc. 54 at 10; VL Doc. 52 at 16 n. 12; VL Doc. 51 at 9-10.) Under this test, regulations that impose a severe burden on the right to vote must be "narrowly drawn to advance a state interest of compelling importance." Burdick, 504 U.S. at

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000087
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 46 of 94

434 (quoting Norman v. Reed, 502 U.S. 279, 289 (1992)). Non-severe burdens, by contrast, are subject to Anderson-Burdick's more flexible balancing standard, under which this court must

> weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights."

Id. (quoting Anderson, 460 U.S. at 789). Within Anderson-Burdick's balancing standard, the "rigorousness of [the court's] inquiry into the propriety of a state election law depends" upon the severity of the burden imposed. Id. Accordingly, Anderson-Burdick balancing operates on a sliding scale: the greater the burden imposed, the more important a state's justification must be. Id.

Voto Latino contends that applying Anderson-Burdick to this case would improperly extend a test fashioned for equal protection claims to procedural due process claims. (VL Doc. 59 at 19.) To be sure, Anderson was an equal protection-based right-to-vote case. 460 U.S. at 783, 786 n.7 (reviewing finding of equal protection violation and relying on cases that apply the "'fundamental rights' strand of equal protection analysis"). Crawford v. Marion County Election Board, 553 U.S. 181 (2008), too, which involved a challenge to Indiana's photo ID requirement, was an equal protection challenge, at least at the district court

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000088
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 47 of 94

level. See Rokita, 458 F. Supp. 2d at 830-31. While the Supreme Court has never formally foreclosed the application of Eldridge in the voting rights context, its cases have not cabined the Anderson-Burdick analysis to equal protection rights under the Fourteenth Amendment. See, e.g., Burdick, 504 U.S. 428 (repeatedly referring to rights under the "First and Fourteenth Amendments"); Crawford, 553 U.S. at 204 (Scalia, J., concurring) ("To evaluate a law respecting the right to vote — whether it governs voter qualifications, candidate selection, or the voting process — we use the approach set out in Burdick v. Takushi[.]" (emphasis added)); see also McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 345 (1995) (not applying Anderson-Burdick where the statute at issue "[did] not control the mechanics of the electoral process"). Indeed, circuit courts have applied Anderson-Burdick to cases across the election litigation spectrum. See, e.g., Fusaro v. Howard, 19 F.4th 357, 364 (4th Cir. 2021) (applying Anderson-Burdick to Free Speech Clause claim where resident sought access to list of registered voters); Weber v. Shelley, 347 F.3d 1101, 1105-07 (9th Cir. 2003) (analyzing a due process challenge to a county's use of touch screen voting systems under the Anderson-Burdick framework); Obama for Am. v. Husted, 697 F.3d 423, 430 (6th Cir. 2012) (concluding that Anderson-Burdick serves as "a single standard for evaluating challenges to voting restrictions"); Acevedo v. Cook Cnty. Officers Electoral Bd., 925

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000089
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 48 of 94

F.3d 944, 948 (7th Cir. 2019) (concluding that Anderson-Burdick applies "to all First and Fourteenth Amendment challenges to state election laws").

The right to vote is fundamental. See, e.g., Burdick, 504 U.S. at 433. "Other rights, even the most basic, are illusory if the right to vote is undermined." Wesberry v. Sanders, 376 U.S. 1, 17 (1964). The Constitution delegates to the states the manner of conducting elections, U.S. Const. art. I, § 4, cl. 1, and the Supreme Court has recognized that "[t]here must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." Storer v. Brown, 415 U.S. 724, 730 (1974). Acknowledging the importance of both sides of this balance, three circuit courts have recently stated that Anderson-Burdick is the proper framework even where a plaintiff in a voting rights case alleges a procedural due process violation under Eldridge. Richardson v. Tex. Sec'y of State, 978 F.3d 220, 233 (5th Cir. 2020) (on motion to stay preliminary injunction); Ariz. Democratic Party v. Hobbs, 18 F.4th 1179, 1195 (9th Cir. 2021) (on review of entry of preliminary injunction); New Ga. Project v. Raffensperger, 976 F.3d 1278, 1282 (11th Cir. 2020) (on motion to stay preliminary injunction). Moreover, the Ninth and Eleventh Circuits have suggested that Anderson-Burdick may "conceptually duplicat[e]" Eldridge to some extent. Raffensperger, 976 F.3d at

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000090
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 49 of 94

1282; Hobbs, 18 F.4th at 1195 ("To the extent that the Eldridge test would strike a different balance, we do not think that the Supreme Court's extensive jurisprudence on challenges to voting restrictions may be discarded merely by raising the same challenge under the banner of procedural due process."); see also Rivera-Powell v. N.Y.C. Bd. of Elections, 470 F.3d 458, 468-69 (2d Cir. 2006) (Sotomayor, J.) (denying Anderson-Burdick claim after finding that state had provided adequate notice and opportunity to be heard under Due Process Clause). But see Richardson, 978 F.3d at 235 (suggesting that Eldridge would "inevitably result in courts' 'weigh[ing] the pros and cons of various balloting systems,' thereby 't[ying] the hands of States seeking to assure that elections are operated equitably and efficiently'" (internal citations omitted)).

The court finds the reasoning of these cases as to the application of Anderson-Burdick persuasive. See also Democratic Nat'l Comm. v. Wisconsin State Legislature, 141 S. Ct. 28 (Mem) (2020) (Gorsuch, J., concurring) (expressing skepticism in judicial intervention in election regulations because "[l]egislatures enjoy far greater resources for research and factfinding . . . than usually can be mustered in litigation between discrete parties before a single judge"); Crawford, 553 U.S. at 210 (Souter, J., dissenting) (endorsing Anderson-Burdick for its consideration of "the legitimacy of interests" in voting

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000091

rights and in election regulation).

To the extent district courts in this circuit have applied Eldridge in the election regulation context, this court is cognizant that some of those district courts did not benefit from the development of the circuit guidance that this court now enjoys, and those decisions were also at a preliminary stage. See Democracy N.C., 476 F. Supp. 3d at 226 (applying Eldridge to preliminarily enjoin absentee voting regulation and refraining from applying Anderson-Burdick); Andino, 497 F. Supp. 3d at 76–77 (applying both Eldridge and Anderson-Burdick on preliminary injunction); Brink, 599 F. Supp. 3d at 361 (applying Anderson-Burdick on preliminary injunction and rejecting application of Eldridge after analyzing Richardson, Raffensperger, and Hobbs).

Voto Latino Plaintiffs rely on three Fourth Circuit cases to support its argument for applying Eldridge, (VL Doc. 59 at 18), but none is on point. Barefoot v. City of Wilmington, 306 F.3d 113 (4th Cir. 2002), involved a land annexation dispute, not an election regulation. Id. at 124 ("Appellants do not have the right to vote on annexation."). The Fourth Circuit's observation that the Due Process Clause "requires fair and adequate procedures" for voting was set out in a footnote and was in reference to voting on annexation, not political elections. Id. at 124 n.5. In any event, the court did not discuss the appropriate test to apply. Id. Voto Latino Plaintiffs' other cases fare no better, as Kirk

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000092
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 51 of 94

v. Comm'r of Soc. Sec. Admin., 987 F.3d 314 (4th Cir. 2021), was an Eldridge case regarding the Social Security Administration's redetermination procedures for benefits, and Halcomb v. Ravenell, 992 F.3d 316 (4th Cir. 2021), was an Eldridge challenge to the procedural protections applicable to a prisoner's security detention hearing. Neither was an election case.

Consequently, the court will apply Anderson-Burdick to Plaintiffs' due process claims.[25]

2. Undeliverable Mail Provision

a. Likelihood of Success on the Merits

First, the court considers Plaintiffs' challenge to the undeliverable mail provision. Voto Latino Plaintiffs contend that a single address verification card is "inherently error-prone and not a reliable indicator of non-residency or ineligibility." (VL Doc. 45 at 20.) In particular, Voto Latino Plaintiffs note that errors beyond the fault of the voter, namely poll worker and U.S. Postal Service error, will result in erroneous disenfranchisement. (Id. at 21-26.) Voto Latino Plaintiffs also note that voters who move after casting a same-day ballot may risk erroneous disenfranchisement because that voter is entitled under § 163-55(a) to vote at a prior residence if relocation occurs within 30

[25] Though Anderson-Burdick is the test applied here, for the reasons stated below, the outcome of Plaintiffs' constitutional claims would not differ under Eldridge.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000093

days of an election, but would not be reachable with a non-forwardable address verification card. (Id. at 25.)

Party Plaintiffs similarly argue that the single-card address verification process creates a substantial risk that an eligible SDR voter's ballot will be erroneously not counted. (DNC Doc. 7 at 17.) In particular, they argue that there is no notice or opportunity to be heard before a same-day registrant's ballot is removed from the count because, by definition, the card is not delivered to the voter. (Id. at 17-18.)

State Board Defendants acknowledge that it is a "close question" but maintain that the provision "passes muster" under Anderson-Burdick. (DNC Doc. 53 at 12; VL Doc. 54 at 11.) They argue that the burdens imposed by the undeliverable mail provision should be considered "holistically in light of other means by which voters may register." (DNC Doc. 53 at 13-14; VL Doc. 54 at 12.) The State's interest in the undeliverable mail provision, they argue, is "in ensuring only eligible ballots are counted in an election." (DNC Doc. 53 at 13.)

Legislative Intervenors argue that S. 747's use of a single card on which to preclude a ballot is justified because the limitation on time between SDR and the canvass precludes effective administration of a two-card system. (DNC Doc. 52 at 13.) Moreover, they argue that S. 747 "(1) preserv[es] the integrity of the election process; and (2) instill[s] confidence in the fairness

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000094
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 53 of 94

of the election." (DNC Doc. 52 at 17.) In this respect, they contend that the law "ensure[s] that registrant[s] live in the precinct within which they seek to vote." (Id. at 18.) They also argue that North Carolina has a "legitimate interest" in ensuring "that the card is returned before the end of the canvass" and that the undeliverable mail provision is designed to bring SDR voters into parity with other voters. (VL Doc. 52 at 14; VL Doc. 61 at 66:13-15.)

Party Intervenors argue that Plaintiffs have not shown a constitutional injury because, in their view, the alleged error of approximately 1 percent is not by design and thus "carries no constitutional significance." (VL Doc. 51 at 12-13.) Party Intervenors contend that the State's "compelling interest" is in "ensuring verification of each applicant's address, which is fundamental to determining a voter's eligibility," (DNC Doc. 51 at 7-8), and in "discouraging and preventing fraud," (VL Doc. 51 at 11).[26]

[26] Plaintiffs have not argued that the undeliverable mail provision burdens voters by erroneously rejecting SDR voters' registrations. Voto Latino Plaintiffs seek an order "enjoining enforcement of the portion of § 163-82.6B(d) (the 'Undeliverable Mail Provision')" which provides that if an SDR voter fails address verification with a single card, "the county board shall not register the applicant and shall retrieve the applicant's ballot and remove that ballot's votes from the official count.'" (VL Doc. 44.) Whether "not register[ing] the applicant" creates an unconstitutional burden has not been briefed and is consequently not considered on these motions.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000095

i. Burden on the Right to Vote

The court must first determine whether Plaintiffs are likely to show that the alleged burdens are severe, minimal, or "in between these two extremes." Obama for Am., 697 F.3d at 429. Election regulations that impose a "severe" burden are subject to strict scrutiny. Pisano v. Strach, 743 F.3d 927, 933 (4th Cir. 2014). Such "severe" burdens are generally "invidiously" discriminatory and may be "irrelevant to the voter's qualifications." Crawford, 553 U.S. at 189 (Stevens, J.) (citing Harper v. Va. Bd. of Elections, 383 U.S. 663, 666-67 (1966)). By contrast, "'evenhanded restrictions that protect the integrity and reliability of the electoral process itself' are not invidious and satisfy the standard set forth in Harper." Id. at 189-90 (quoting Anderson, 460 U.S. at 788 n.9). There is no "litmus test for measuring the severity of a burden that state law imposes on . . . an individual voter, or a discrete class of voters." Id. at 191. The court must consider both the "character and magnitude" of the alleged burden on voting, Burdick, 504 U.S. at 434 (quoting Anderson, 460 U.S. at 789), and then "make the 'hard judgment' that our adversary system demands," Crawford, 553 U.S. at 190 (Stevens, J.). Courts generally evaluate the burden from the perspective of all affected voters, "within the landscape of all opportunities that [the State] provides to vote." Mays v. LaRose, 951 F.3d 775, 784-85 (6th Cir. 2020); see also Crawford, 553 U.S.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000096

at 198-99 (Stevens, J.) (reviewing burden on "most voters" where photo ID law applied to in-person voters); Tully v. Okeson, 977 F.3d 608, 617 (7th Cir. 2020) (reviewing burden on voters who could not vote absentee in light of "Indiana's electoral scheme as a whole").

In Northeast Ohio Coalition for the Homeless v. Husted, 696 F.3d 580 (6th Cir. 2012) (per curiam), voters who went to the correct polling location and were sent — in error — to a different location by a poll worker, and consequently voted a provisional ballot that would go uncounted, suffered "systemic disqualification" without any notice. Id. at 593 (stating that Ohio rejected more than 14,000 ballots in 2008, 11,000 in 2010, and 1,800 in 2011). The district court found, and the Sixth Circuit affirmed, that this burden was "substantial" and held that the defendants had likely violated the Equal Protection and Due Process Clauses. Id. at 593-95, 598. In affirming the district court, the Sixth Circuit expressed reservations that "[t]he State would disqualify thousands of [] provisional ballots, where the voter's only mistake was relying on the poll-worker's precinct guidance." Id. at 599; see also Stewart v. Blackwell, 444 F.3d 843, 872 (6th Cir. 2006), superseded by 473 F.3d 692 (6th Cir. 2007)[27] (applying strict scrutiny where evidence showed voters in

[27] The Sixth Circuit subsequently granted *en banc* review, thus vacating

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000097
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 56 of 94

counties using punch-card system rather than optical scan equipment were four times as likely not to have their votes counted due to factors out of voter's control).

In Democratic Executive Committee of Florida v. Lee, 915 F.3d 1312 (11th Cir. 2019), challengers argued that Florida's signature match regime for vote-by-mail and provisional ballots violated the First and Fourteenth Amendment. The district court preliminarily ordered the State to provide 48 hours for voters to cure their signature mismatch. Id. at 1315. The defendants moved to stay the injunction, but the Eleventh Circuit denied the request. The court agreed with the district court that Florida lacked "uniform standards for matching signatures" and "qualifications or training for those who engage in the job." Id. at 1319. Observing a "crazy quilt of enforcement," the court noted that errors by election officials and "innocent factors like the writer's body position, writing surface, [and] type of pen" could result in disqualification. Id. at 1320. Even after the State instituted a notice-and-cure process in response to a court order, many voters did not learn that their vote would not be counted "until it was too late to do anything about it." Id. at 1321. Focusing on the burden on vote-by-mail and provisional voters specifically, the

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the panel decision, and then vacated the judgment of the district court as moot after the defendants replaced the challenged voting equipment. 473 F.3d at 693-94.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000098
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 57 of 94

court had "no trouble" finding that the burden was "at least [] serious." Id. (citing League of Women Voters of N.C. v. North Carolina, 769 F.3d 224, 244 (4th Cir. 2014)).[28] Critically, before the Eleventh Circuit heard an appeal of the injunction on the merits, the State "significantly amended the signature-match provisions at issue in th[e] case," after which the plaintiffs voluntarily dismissed the lawsuit and appellants agreed the appeal was moot. Democratic Exec. Comm. of Florida v. Nat'l Republican Senatorial Comm., 950 F.3d 790, 793 (11th Cir. 2020) (per curiam). The Eleventh Circuit did not vacate the motions panel opinion because its "preliminary nature" precluded it "from having an effect outside that case." Id. at 795.

In Andino, 497 F. Supp. 3d 59 (D.S.C. 2020), challengers argued that South Carolina's signature matching regime violated voters' procedural due process rights. The court granted the motion for preliminary injunction in part and denied it in part. On the one hand, voters who failed to sign the ballot altogether had no right to notice and cure. Id. at 71 ("[T]he error of a missing signature is the fault of the voter, not the government." (citing Hobbs, 976 F.3d at 1086)). The court observed that there was little risk of error where a signature was missing because a

[28] There was an extensive dissent, but its criticisms of the panel opinion relate to the distinguishable factual record in that case and do not suggest a different result under the facts of the present case.

AMERICAN OVERSIGHT

blank line can be "observed objectively." Id. On the other hand, the court found that the burden was "significant" for voters who were disqualified by signature matching — i.e., where election officials compared a provided signature against one on file. Id. at 76. In that court's estimation, the burden was significant because voters would be disqualified, without notice, on the basis of a "subjective judgment that the voter's signature does not match some sample relied upon by county election officials." Id.

State Board Defendants and Intervenors cite one case that could support the proposition that fault-free errors that lead to disenfranchisement without notice and opportunity to be heard create a mere minimal burden.[29] In Richardson, 978 F.3d 220 (5th Cir. 2020), challengers won a preliminary injunction in the district court that required Texas to provide notice and an

[29] Party Intervenors also cite Hutchinson v. Miller, 797 F.2d 1279 (4th Cir. 1986), and several out-of-circuit cases cited in Hutchinson, for the proposition that "courts have 'uniformly declined' to find constitutional violations 'with respect to garden variety election irregularities.'" (VL Doc. 51 at 13 (quoting Hutchinson, 797 F.2d at 1283).) In Hutchinson, three unsuccessful candidates for public office sued under 42 U.S.C. § 1983 and the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1964, for approximately $9 million in damages based on alleged election irregularities. Party Intervenors' quotation omits a critical phrase, wherein the Fourth Circuit observed that courts have "uniformly declined to endorse action under § 1983 with respect to garden variety election irregularities." Id. at 1283 (emphasis added). The court thus held that "federal courts do not sit to award post-election damages to defeated candidates," but observed that courts retain a role in providing equitable relief post-election in "rare and extraordinary circumstances," id. at 1287, and in "striking down state laws or rules of general application which improperly restrict or constrict the franchise or otherwise burden the exercise of political rights," id. at 1283 (citing Anderson, 460 U.S. 780 (1983)) (internal quotation marks omitted).

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000100

opportunity to be heard before a voter's absentee ballot could be rejected by an election official on the basis of a mismatched signature. The district court found that Texas's signature matching scheme imposed a severe burden on the right to vote because, in part, voters were notified that their absentee ballot was rejected only after the election and thus had no opportunity to contest the decision. Id. at 235-36. In an opinion staying the injunction pending appeal, the court found the burden imposed on voters to be only "minimal." Id. at 238. However, the court stayed the injunction on the alternative ground that the defendant was likely to prevail on her defense of sovereign immunity. Id. at 241. Concurring in the stay, Judge Patrick E. Higginbotham wrote that "this motions panel granting a stay settles no law" and "has no precedential force and is not binding on the merits panel, leaving it as a writing in water — made the more empty by pretermitting the jurisdictional requisites of sovereignty and the reach of Ex parte Young." Id. at 244 (Higginbotham, J., concurring in the stay). Indeed, the merits panel later vacated the preliminary injunction solely on the ground that the district court erred in finding that the defendant was the "proper defendant under Ex parte Young" — not because of the district court's Anderson-Burdick analysis. Richardson v. Flores, 28 F.4th 649, 655 (5th Cir. 2022); see also Andino, 497 F. Supp. 3d at 77 (rejecting Richardson at the preliminary injunction stage as an "outlier"

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000101
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 60 of 94

case reflecting an "extremely constricted view of liberty that does not include voting rights").

Though these cases are not binding on this court, one throughline of them is that election regulations that disenfranchise voters based on errors by governmental officials implementing them and over which the voter has no control, and which provide for no notice or opportunity to be heard to correct the error, may warrant closer inquiry under Anderson-Burdick. Put another way, "the precise interests put forward by the State as justifications for the burden imposed by its rule," Burdick, 504 U.S. at 434, must address why discarding an eligible voter's ballot due solely to government employee error and without an opportunity to correct it should be sustained.

Here, Plaintiffs are likely to show that the undeliverable mail provision of S. 747 imposes a substantial burden on SDR voters because it lacks notice and opportunity to be heard before removing the votes of a cast ballot from the count.

Voto Latino Plaintiffs provide several examples of 2022 SDR voters whose address verification cards were returned as undeliverable due to governmental errors wholly out of the control of the voter. For example, Plaintiff Mead's November 2022 address verification card was returned as undeliverable after a county board of elections official allegedly wrote "SAME" for her mailing address instead of writing out the actual address (which happened

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000102
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 61 of 94

to be the same as her residential address). (VL Doc. 44-5 ¶ 7.)


Director Of Elections
WATAUGA COUNTY BOARD OF ELECTIONS
PO BOX 528
BOONE NC 28607
RETURN SERVICE REQUESTED

VOTED ABS 1 STOP 10/24

RECEIVED
NOV 04 2022
WATAUGA COUNTY BOARD OF ELECTIONS

FIRST-CLASS MAIL
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RETURN TO SENDER
UNDELIVERABLE AS ADDRESSED
UNABLE TO FORWARD
SC: 28607*0532828 *0948-04599-28-47

SOPHIE JAE MEAD
SAME
BOONE NC 28607

(Id. at 8.) After the address verification card was returned, another voter challenged Mead's registration under section 163-89 based only on the returned card. (Id. ¶ 7.) Ultimately, Mead's ballot was counted after Defendant Bell wrote a letter to the Watauga County Board of Elections ordering them to halt the challenges. (VL Doc. 44-4 at 9-10.) Voto Latino Plaintiffs contend, with some merit, that had the current system been in place, Mead's vote likely would not have counted. (VL Doc. 45 at 22.)

Voto Latino Plaintiffs also point to other poll worker errors that resulted in address verification cards returned as undeliverable in 2022, including another voter whose address was

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000103

listed as "SAME," voters for whom the county board of elections appears to have written incorrect street numbers (e.g., "199 Wood Circle Dr.," rather than "190 Wood Circle Dr."), cards sent to an old address rather than an address updated at same-day registration, cards with missing apartment numbers, and cards sent to residential addresses rather than to different mailing addresses that were provided. (Id. at 22-23 (citing VL Doc. 44-4 ¶¶ 11-20).)

Voto Latino Plaintiffs also provided a declaration by a postman with forty years of experience that enumerates several reasons why mail may be returned as undeliverable, including faulty barcodes, illegible address information, lack of or damage to a mailbox or receptacle, sorting error, assignment to the wrong carrier for delivery, and temporary absence of the residence, none of which is pertinent to a voter's qualification to vote in the precinct. (VL Doc. 44-7 (Decl. Timothy Green).) Plaintiffs also cite a U.S. Postal Service Office of the Inspector General report from May 2015 that found that 4.3 percent of all mail was undeliverable as addressed, 23 percent of which was due to Postal Service error. (DNC Doc. 7 at 12 (citing Office of Inspector General, U.S. Postal Service, Strategies for Reducing Undeliverable as Addressed Mail, at 5 (May 1, 2015), at https://www.uspsoig.gov/sites/default/files/reports/2023-01/ms-ma-15-006.pdf (last accessed Jan. 3, 2024)); VL Doc. 45 at 24

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000104

(same).) While these figures are nearly a decade old and possibly overstate the case in this context to some extent, they nevertheless are consistent with the limited record provided so far.

In the last four even-year elections, 1,799 out of 100,578; 696 out of 45,666; 2,151 out of 116,326; and 391 out of 34,289 same-day registrants have failed address verification. NCSBE, Presentation to House Oversight and Reform Committee, supra, at 6. These numbers are based on the State's prior two-card system, however, and the court can reasonably infer that there would not be any fewer failures if State Board Defendants send only one mail card, as required by section 163-82.6B(d). State Board Defendants and Intervenors, meanwhile, have provided no evidence at this stage that any of the several thousand same-day registrants who have failed address verification since its inception in 2008 was ineligible to vote on the ground of improper residency. In fact, State Board Defendants represented at oral argument that they have "no way to know" if any voter who fails address verification does so because of ineligibility or because of error. (VL Doc. 61 at 60:21.)

Plaintiffs are also likely to show that section 163-82.6B(d) deprives same-day registrants of notice and opportunity to be heard before their ballots are rejected through no fault of their own. State Board Defendants and Party Intervenors agree. (VL Doc. 54

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000105

at 9-10 ("The State Board Defendants concede that the notice mailing process set forth under the new same-day registration regime does not provide for either of these protections [i.e., notice and opportunity to be heard]."); VL Doc. 51 at 19-20 (Party Intervenors: "To demand notice and a hearing based on postal error in these circumstances would be to expect too much from state officials[.]").) Legislative Intervenors, on the other hand, acknowledged in their brief that the undeliverable mail provision itself does not provide SDR voters with notice. (VL Doc. 52 at 18 ("Plaintiffs make much ado about the fact that voters who fail address verification do not receive notice[.]" (emphasis added).) At oral argument, counsel for Legislative Intervenors suggested, albeit without any legislative history in support, that "everybody assumed that the State Board would treat [the ballots of SDR voters who fail address verification] like the way they had treated one-stop absentee ballots and that 163-89 would continue to apply." (Id. at 108:21-25.)

Section 163-89 outlines a challenge procedure for absentee ballots that includes the right of the challenged voter to be heard. See N.C. Gen. Stat. § 163-89(e). In light of S. 747's reclassification of SDR ballots as "retrievable," rather than "retrievable absentee,"[30] State Board Defendants and Party

[30] Section 163-82.6B(c) states that a same-day registrant votes a

AMERICAN OVERSIGHT

Plaintiffs disagree with Legislative Intervenors that section 163-89 applies to SDR voters. (VL Doc. 61 at 110:12-15; id. at 111:14-19; see also VL Doc. 55-5 at 6 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) (showing State Board's current understanding, and intent to enforce S. 747 accordingly, that if an SDR voter fails address verification, "[t]he county board shall not issue a challenge").)

Even if section 163-89 applied to SDR voters, however, neither it nor section 163-82.7 appears to require that notice be given to voters before the challenge hearing. N.C. Gen. Stat. § 163-82.7(g)(2) (authorizing challenges for absentee ballots under section 163-89, but not requiring notice); id. § 163-89 (outlining challenge procedure process for absentee ballots, but not requiring notice).

In summary, the express terms of section 163-82.6B(d) do not provide for notice and an opportunity to be heard; instead, they direct the retrieval and removal of a ballot upon failure of address verification. By all accounts, all parties agree — correctly it appears — that section 163-82.6B(d) at a minimum does

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"retrievable ballot as provided in G.S. 163-166.45," while prior law considered SDR ballots to be "retrievable absentee ballot[s]," N.C. Gen. Stat. § 163-82.6A(c) (2012). There are at least eight instances where S. 747 replaces the phrase "one-stop absentee voting" with "early voting." Moreover, section 163-166.45 — which is cross-referenced in section 163-82.6B — now governs "Retrievable ballots," instead of its prior heading of "Alternate procedures for requesting application for absentee ballot; 'one stop' voting procedure in board office." See N.C. Gen. Stat. § 163-166.45 (previously codified as N.C. Gen. Stat. § 163-227.5) (emphasis added).

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000107

not provide for notice before a ballot of an SDR voter who fails address verification is removed from the count. Moreover, State Board Defendants, i.e., those responsible for the enforcement of the undeliverable mail provision, have represented that they do not intend to offer any notice or opportunity to be heard via 163-89 or any other provision, absent a court order or statutory change. (VL Doc. 61 at 49:5-11 (State Board Defendants stating, "given the way [S. 747] is written and the limitations of it, [] we would need a court order or some sort of legislative change" in order to provide notice and an opportunity to be heard); VL Doc. 55-5 at 6 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) (stating that if an SDR voter fails address verification, the county board must remove the ballot and "not issue a challenge").) Consequently, Plaintiffs have established a likelihood of success in showing that the undeliverable mail provision does not provide for notice and an opportunity to be heard.

Finally, State Board Defendants argue that the burden imposed by the undeliverable mail provision is nevertheless "reasonable" when viewed "holistically in light of the others means by which voters may register." (DNC Doc. 53 at 13-14 (emphasis added).) It is true that voters in North Carolina have various other ways to register before the early voting period and to cast a ballot. Compared to non-SDR voters, SDR voters are subject to additional burdens at registration (e.g., a HAVA-compliant document). But

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000108

the State, having offered SDR, must offer a process that is not unconstitutional. The undeliverable mail provision burdens SDR voters by directing the removal of a cast ballot without any notice or possibility of cure, not merely by cancelling registration, and the burden demonstrated here would likely be imposed by governmental error unknown to the voter. See Husted, 696 F.3d at 595 (requiring notice and opportunity to be heard where the law required voters to have "omniscience" of poll worker error and "have a greater knowledge of their precinct, precinct ballot, and polling place than poll workers").[31]

Based on recent elections, approximately 100,000 North Carolinians are projected to utilize same-day registration in 2024, starting with the primary. NCSBE, Presentation to House Oversight and Reform Committee, supra, at 6 (showing over 100,000 SDR voters in both 2016 and 2020).[32] Each of these voters' addresses will be tested by S. 747's address verification procedure, and Plaintiffs are likely to show that some number of

[31] Party Intervenors liken an SDR voter's retrieved ballot due to failed address verification to a vote-by-mail ballot that gets lost in the mail, which they contend Plaintiffs view as unproblematic. (VL Doc. 51 at 14.) While the court has no record upon which to compare vote-by-mail to address verification, it is distinguishable at least because North Carolina provides a tracking system for mail ballots. See NCSBE, Ballot Tracking Available Again for Absentee-By-Mail Voters, supra.

[32] Neither State Board Defendants nor Intervenors argue that the presumably reduced number of voters anticipated for the upcoming primary election is a ground to not enter preliminary relief at this time.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000109

first cards will be returned before the canvass deadline as undeliverable due to governmental error, rather than factors related to voter eligibility. By failing to provide voters with notice and opportunity to be heard, section 163-82.6B(d) creates an unacceptable risk that eligible voters' ballots will be erroneously removed and not counted. As shown by Husted, Lee, and Andino, as well as the record evidence before this court, Plaintiffs are therefore likely to succeed in showing that the undeliverable mail provision — because it fails to provide for notice and opportunity to be heard — will impose a substantial burden on SDR voters.[33]

ii. Balancing the State's Interests

The court turns next to the justifications for the law put forth by State Board Defendants and Intervenors.

States may prescribe "[t]he Times, Places and Manner of holding Elections for Senators and Representatives." U.S. Const. art. I, § 4, cl. 1. The Supreme Court has therefore "recognized that States retain the power to regulate their own elections." Burdick, 504 U.S. at 433 (citing Sugarman v. Dougall, 413 U.S.

[33] Voto Latino Plaintiffs also point out that an SDR voter could vote and then move elsewhere in North Carolina under section 163-55(a), which permits a voter to vote at a prior residence within 30 days of relocation. (VL Doc. 45 at 25.) They contend that these voters could have their vote removed without any error occurring if they provide the Postal Service a forwarding address. (Id.) The court has no record of the magnitude of this issue and, given the court's ruling, need not consider it further at this stage.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000110

634, 647 (1973); Tashjian v. Republican Party of Conn., 479 U.S. 208, 217 (1986)). "The Constitution provides that state legislatures — not federal judges, not state judges, not state governors, not other state officials — bear primary responsibility for setting election rules." Democratic Nat'l Comm., 141 S. Ct. 28 (Mem.) (Gorsuch, J., concurring). Indeed, to require a state to "halt the ongoing implementation of one of its duly-enacted statutes — a statute that, for now at least, has not been rendered invalid" is "a form of irreparable injury" the court must consider. League of Women Voters of N.C., 769 F.3d at 249 (Motz, J., dissenting) (quoting Maryland v. King, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)).

Under Anderson-Burdick, the court must identify "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiffs' rights." Burdick, 504 U.S. at 434 (internal quotation marks omitted). The "rigorousness" of the inquiry into the State's interests will be informed by the substantial burden imposed by the undeliverable mail provision. Id. (requiring courts to employ a sliding scale approach whereby the greater the burden imposed, the more important the state's justification must be).

State Board Defendants and Intervenors principally assert that the undeliverable mail provision is justified by the need to

AMERICAN OVERSIGHT

preserve the integrity of the election process by ensuring that only eligible ballots are counted and that a registrant lives in the precinct within which he seeks to vote. (DNC Doc. 53 at 13 (State Board Defendants, "ensuring only eligible ballots are counted in an election"); DNC Doc. 52 at 17-18 (Legislative Intervenors, "preserving the integrity of the election process" and "ensure that a registrant lives in the precinct within which they seek to vote"); DNC Doc. 51 at 7-8 (Party Intervenors, "ensuring verification of each applicant's address, which is fundamental to determining a voter's eligibility"); VL Doc. 51 at 11 (Party Intervenors, "discouraging and preventing fraud").) They also assert the need to "level the playing field" between SDR and non-SDR voters, to ensure address verification cards return before the canvass, and to instill confidence in elections. (DNC Doc. 66:13-15; DNC Doc. 53 at 16; VL Doc. 52 at 19.)

North Carolina unquestionably has a legitimate and strong interest in ensuring the integrity of its elections, ensuring that only legitimate ballots are counted, and in preventing voter fraud. Purcell v. Gonzalez, 549 U.S. 1, 4 (2006). As to these interests, State Board Defendants and Intervenors need not present "elaborate, empirical verification of the weightiness of the State's asserted justifications." Timmons v. Twin Cities Area New Party, 520 U.S. 351, 364 (1997). Instead, the State may "respond to potential deficiencies in the electoral process with foresight

AMERICAN OVERSIGHT

rather than reactively, provided that the response is reasonable and does not significantly impinge on constitutionally protected rights." Munro v. Socialist Workers Party, 479 U.S. 189, 195-96 (1986). Indeed, the Crawford court found that deterrence of voter fraud was a "neutral and nondiscriminatory reason" to require photo ID, even though the record contained no evidence of actual in-person fraud. Crawford, 553 U.S. at 195-97 (Stevens, J.) (citing Building Confidence in U.S. Elections § 2.5 (Sept. 2005), a report of the Commission on Federal Election Reform, chaired by former President Jimmy Carter and Secretary of State James A. Baker, III); see also id. at 209 (Scalia, J., concurring) ("The universally applicable requirements of Indiana's voter-identification law are eminently reasonable."); cf. Brnovich v. Democratic Nat'l Comm., 141 S. Ct. 2321, 2346, 2348 (2021) (on a Voting Rights Act challenge to a law that imposed a "usual burden[] of voting," "a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders").

Here, State Board Defendants contend that address verification ensures election integrity by acting as a "fail-safe" to test a voter's residency. (VL Doc. 61 at 45:16; see also id. at 88:25 (Party Intervenors likening address verification to "two-factor authentication").) The court accepts this; address verification may serve to disincentivize a registrant from providing a false address, to identify a registrant who erroneously

AMERICAN OVERSIGHT

provides an improper address, and especially in the case of traditional registration before SDR, which can occur online or by mail and does not require a HAVA document, to deny the registration of someone who might claim to register as someone else. Indeed, that an SDR voter must present a current HAVA document that shows his residence address, along with a photo ID, and attest in-person under penalty of perjury that he is an eligible voter, may explain the 98-to-99 percent rate of confirmation of SDR registrants under the State's prior two-card system. NCSBE, Presentation to House Oversight and Reform Committee, supra, at 6. While these State interests justify the use of address verification generally, the question, however, is whether the undeliverable mail provision for SDR voters meets its justifications as a "fail-safe" as to residency sufficient to exclude a ballot without notice and opportunity to be heard where failure is based on reasons entirely outside the control of the voter.

By Legislative Intervenors' own concession, address verification is not a precise instrument for enforcing the interests they assert.[34] (DNC Doc. 62 at 63:13-24).) That is,

[34] To the extent Plaintiffs more broadly criticize the State's address verification process, the court declines to consider that question. Address verification predated the adoption of SDR in North Carolina, 1994 N.C. Sess. Laws, ch. 762, § 2, and appears to be used by other states as a legitimate component of the voter registration process. See, e.g., Common Cause of Colo. v. Buescher, 750 F. Supp. 2d 1259 (D. Colo. 2010). Legislative Intervenors argue that the State has no other effective means to verify addresses short of sending personnel to make

AMERICAN OVERSIGHT

in part, because the statute provides that the card need not be sent to the registrant's residential address. Rather, it must be sent to the mailing address the same-day registrant provides on his application, even if that address is outside the county of registration, (id. at 59:8-13), if the registrant does not receive mail at the residential address. N.C. Gen. Stat. § 163-57(1)(c) ("Residence shall be broadly construed to provide all persons with the opportunity to register and to vote, including stating a mailing address different from residence address."). The parties have presented no record as to how often same-day registrants' mailing addresses differ from their residential addresses — whether for students on campuses, individuals utilizing post office boxes, etc. (DNC Doc. 62 at 45:11-14 (State Board Defendants stating that they do not have "statistics to back it up," but upon belief, "most people's residential address will be their mailing address").) Address verification appears to work as intended for the vast majority of voters who receive mail at their residential address. But State Board Defendants and Intervenors have presented no evidence that address verification has ever filtered out a single ineligible same-day registrant. In fact, State Board Defendants concede that they have "no way" of knowing if an unreturned card truly demonstrates ineligibility because

home visits (DNC Doc. 62 at 63:13-21), and it is the province of the General Assembly to choose the process for verification.

AMERICAN OVERSIGHT

they only know the card was returned as undeliverable, not why. (VL Doc. 61 at 60:20-21.)

Only Party Intervenors directly contend that the provision serves to deter SDR voter fraud. (VL Doc. 51 at 15-18.) Voto Latino Plaintiffs offer an expert, Dr. Martha Kropf, a political science professor, who concluded that the undeliverable mail provision for SDR registrants "has no discernible benefit in terms of preventing voter fraud." (Doc. 49-1 at 6.)[35] While Legislative Intervenors dispute her definition of fraud as "prohibitively narrow," (VL Doc. 52 at 9), their own expert, Dr. Andrew Taylor, also a political science professor, conceded that he had "no reason to question the methods or results" of Dr. Kropf. (VL Doc. 52-1 at 13; VL Doc. 59-2 at 67:7-11 (confirming Dr. Taylor's conclusion at deposition).)

The State's proffered justifications, in light of the lack of notice and opportunity to be heard for SDR voters, are inconsistent with its interest in counting eligible ballots to the extent ballots are rejected for errors unrelated to the voter's actual eligibility. See Lee, 915 F.3d at 1322. Such SDR voters' ballots would be removed, not because voters do not live where they claimed, but rather because a postal worker or county board of

[35] As Party Plaintiffs argued, someone who "falsely swears out an application [and] forges a HAVA document" may likely be clever enough to provide a mailing address where he can receive mail. (DNC Doc. 62 at 94:9-11.)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000116

elections worker made an error that resulted in the return of a non-forwardable mail card. In fact, providing a chance to correct that error would appear to be consistent with section 163-57's call for "[r]esidence [to] be broadly construed to provide all persons with the opportunity to register and vote[.]" N.C. Gen. Stat. § 163-57(1)(c). Moreover, the State's interest in counting only eligible ballots is also mitigated to some extent by the fact that State Board Defendants concede they will continue to count the SDR ballots of voters whose single card returns as undeliverable after the canvass. (VL Doc. 61 at 54:1-6.)

Legislative Intervenors rely on the opinions of Dr. Taylor to support their view that the undeliverable mail provision ensures election integrity and instills confidence in the fairness of elections. (See VL Doc. 52 at 13, 17.) Dr. Taylor opines that the undeliverable mail provision will help ensure that the single card returns as undeliverable before the canvass. (VL Doc. 52-1 at 12.) While he opines that this "may increase North Carolinians' confidence" in elections, (id. at 17 (emphasis added)), he does not opine on whether the undeliverable card is probative of a voter's residence, and thus a voter's eligibility to vote. Instead, he states, "If the 23% of undelivered mail that is the result of USPS error represents an intolerable risk for SDR voters under S 747, it seems to me it should have represented an intolerable risk under the rules prior to S 747." (Id. at 11.)

AMERICAN OVERSIGHT

Moreover, Dr. Taylor states that voter fraud can go undetected, that address verification is important, and that voters have reduced confidence in elections. (Id. at 13-15.) On this record, there is no reason to doubt these principles. But Dr. Taylor does not discuss how enforcing the undeliverable mail provision without notice and hearing addresses them. Additionally, Dr. Taylor opines that a voter who "cannot tolerate the possibility of their registration being canceled" can "register and later vote in-person or absentee as do around 97 percent of others" in North Carolina. (Id. at 16.) Whatever merit this argument might have if SDR voters' registrations alone were at issue, the State, having offered the option of voting during SDR, cannot discard their ballots due to governmental error and without notice and an opportunity to be heard simply on the ground that the voters should have known not to take such a risk. Cf. Common Cause of Colo. v. Buescher, 750 F. Supp. 2d 1259, 1264 (D. Colo. 2010) (noting that Colorado law allows voters who are informed on election day they failed mail verification to cure by voting a provisional ballot with an ID).

Legislative Intervenors also assert that the undeliverable mail provision was intended to "level the playing field" between SDR and non-SDR voters because SDR voters prior to S. 747 had a "whole panoply of protections" that "regular registrants" did not. (DNC Doc. 66:13-15.) But the statutory scheme does not bear this

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000118

out. Chapter 163 appears to provide more favorable treatment to many non-SDR voters vis-à-vis SDR voters, particularly non-SDR voters who register just before the 25-day cut off for traditional registration. First, unlike an SDR voter under S. 747, the statute directs county boards to treat "as a registered voter" any non-SDR voter who fails address verification after voting — e.g., someone who registers before the 25-day cutoff, votes early or on election day, and then fails address verification. N.C. Gen. Stat. § 163-82.7(g)(3); cf. id. § 163-82.6B(d) (stating that a county board "shall not register" an SDR voter who fails address verification). Second, a non-SDR voter may still vote in person, with some procedures for verifying address, if his registration was so close to the 25-day cutoff for traditional registration that his first address verification card is sent within 25 days of the election and returns as undeliverable — e.g., he votes after the first card is returned as undeliverable but before return of a second card. Id. § 163-82.7(g)(2); cf. id. § 163-82.6B(d) (directing county board to remove SDR ballot from the official count upon failure of SDR voter's address verification based on a single card received by the day before the canvass). Third, non-SDR voters cannot be denied the right to vote in person unless two cards are returned as undeliverable, and the statute only states that a challenge is "not preclude[d]" if that occurs after a non-SDR voter votes. Id. § 163-82.7(g)(1); cf. id. § 163-82.6B(d)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000119
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 78 of 94

(directing removal of ballot based on only one card for SDR voters). And fourth, a voter who casts an absentee ballot and whose address verification card is returned as undeliverable "after [the] person has already voted by absentee ballot" may have his ballot challenged, will be given notice of the challenge, and has a right to "appear before the board at the hearing on the challenge and present evidence as to the validity of the ballot." Id. § 163-82.7(g)(2); § 163-89(e); NCSBE Numbered Memo 2022-05 (Dec. 15, 2023 update), supra, at 3, 11 (requiring county board to provide notice and providing sample notice letter). Thus, while the court acknowledges the State's legitimate interest in verifying addresses for all registrants, S. 747 does not appear to level the playing field between SDR and non-SDR voters. Rather, as to address verification, it appears to tilt it against SDR voters by requiring that the ballot be removed from the count without notice and opportunity to be heard.

In addition, State Board Defendants assert an interest in ensuring that the address verification card returns before the canvass. As the Fourth Circuit has acknowledged, "these concerns are real." McCrory, 831 F.3d at 237. Indeed, when the repeal of SDR was previously challenged before this court, the plaintiffs in that case "d[id] not seriously dispute" the issues SDR caused for the implementation of the State's address verification system, including in cases where the second address verification card was

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000120
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 79 of 94

returned after the canvass and the SDR voter's ballot was nevertheless counted. N.C. State Conf. of the NAACP v. McCrory, 182 F. Supp. 3d 320, 447 (M.D.N.C. 2016).[36] However, while State Board Defendants and Intervenors here are likely to show that a card mailed to an SDR voter would be more likely to return before the canvass, they have not shown why the substantial burden of exclusion without notice and an opportunity to be heard is justified when the failure — at least on the present record — is likely caused in significant respect by the government's own errors.

To the extent State Board Defendants and Intervenors argue that providing notice and an opportunity to be heard would impose an administrative burden, this argument is not adequately supported on this record. County boards of elections plainly have an interest in "protecting the integrity, fairness, and efficiency of their ballots and election processes as means for electing public officials." Timmons, 520 U.S. at 364. But the administrative burden of providing notice and an opportunity to be heard is limited in this context for at least three reasons.

First, prior to January 1, 2024, Chapter 163 already provided for a challenge procedure for SDR ballots. Until this year, SDR

[36] In precluding the elimination of SDR, the Fourth Circuit based its decision on a finding of discriminatory racial intent, not because the State was without power to eliminate SDR. McCrory, 831 F.3d at 233.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000121

ballots were treated as absentee ballots, and the statutory scheme provided a hearing for a challenge to the ballots of voters who failed address verification to be held by the county board of elections on the day set for the canvass. See N.C. Gen. Stat. §§ 163-82.6A (2012), 163-82.7(g)(2), 163-89.

Second, while S. 747 has reclassified SDR ballots as "retrievable," rather than "retrievable absentee," section 163-89 continues to apply to absentee ballots. See id. § 163-89 (as amended by 2023 N.C. Sess. Laws 140, § 15). Neither State Board Defendants nor Intervenors has provided any evidence that this challenge procedure generates any administrative burden. Given the number of projected address verification failures across North Carolina's 100 counties, State Board Defendants and Intervenors have not demonstrated that providing due process for those SDR voters who fail address verification would tally to an additional burdensome level for any county board of elections.

Third, State Board Defendants concede that they "stand ready to incorporate whatever additional procedural protections this Court deems necessary for such voters." (DNC Doc. 53 at 11; VL Doc. 54 at 10.) In fact, State Board Defendants appear to have already taken steps that begin to address Plaintiffs' concerns, including encouraging county boards to collect contact information from SDR voters. (VL Doc. 55-5 at 7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) (recommending that county boards contact voters

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000122
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 81 of 94

before sending verification card if staff have "questions regarding the address"); VL Doc. 55-6 (demonstrating blanket notice county boards will display at early voting sites); see also VL Doc. 61 at 76:16-19 (expressing General Assembly's view that section 163-89 would provide an "appropriate mechanism" to administer notice and opportunity to be heard, if needed).) Accordingly, providing notice would not impose some new duty to affirmatively investigate voters' contact information; voters currently have the option to provide contact information on their voter registration application, and county boards are already being directed to recommend applicants do so. See North Carolina Voter Registration Application, Form 06W, supra (Question 10); (VL Doc. 55-5 at 7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) ("[T]he election official assisting a same-day registrant must recommend that the voter provide their phone number and/or email address on the registration form.").)

In sum, Defendants and Intervenors are likely to show that they have strong and legitimate interests in protecting election integrity by ensuring that eligible voters vote in the proper precinct and that address verification supports that interest. However, after considering the extent to which those interests make it necessary to substantially burden same-day registrants' right to have a ballot counted once it is cast, the court finds Plaintiffs are likely to succeed on the merits of their

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000123

constitutional claim against the undeliverable mail provision because it does not provide notice and an opportunity to be heard.

b. Irreparable Injury

An infringement or abridgment of a constitutional right is an irreparable harm where monetary damages are inadequate or difficult to ascertain. Democracy N.C., 476 F. Supp. 3d at 236. "Courts routinely deem restrictions on fundamental voting rights irreparable injury." League of Women Voters of N.C., 769 F.3d at 247; see also Obama for Am., 697 F.3d at 436 ("A restriction on the fundamental right to vote . . . constitutes irreparable injury."); Williams v. Salerno, 792 F.2d 323, 326 (2d Cir. 1986) (holding that plaintiffs "would certainly suffer irreparable harm if their right to vote were impinged upon").

Here, the threatened injury of discounting an eligible SDR voter's ballot without notice and opportunity to be heard would constitute irreparable injury. Any court's intervention in the State's constitutional prerogative to set the manner of conducting elections, however, can constitute an irreparable injury to the State, especially in consideration of the preliminary nature of the motions before this court. Abbott v. Perez, 138 S. Ct. 2305, 2324 (2018) (emphasizing on motion to stay injunction that "[u]nless [a] statute is unconstitutional," enjoining a statute enacted by the legislature "would seriously and irreparably harm the State"). Legislative Intervenors argue that counting

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000124

"unverified applications where the mail verification fails" would create a "fraudulent result." (VL Doc. 52 at 21.) Accepting the legitimacy of the prophylactic purposes of address verification, however, giving notice and opportunity to be heard to SDR voters who fail address verification would not increase any potential for such an outcome; indeed, quite the opposite.

c. Balance of the Equities and Public Interest

The balance of the equities and the public interest "merge when the Government is the opposing party." Miranda v. Garland, 34 F.4th 338, 365 (4th Cir. 2022) (quoting Nken v. Holder, 556 U.S. 418, 435 (2009)).[37] "By definition, '[t]he public interest . . . favors permitting as many qualified voters to vote as possible.'" Democracy N.C., 476 F. Supp. 3d at 237 (quoting League of Women Voters of N.C., 769 F.3d at 247–48).

As discussed above under consideration of the State's interest, the State's potential harm is outweighed by the equities in Plaintiffs' favor at this stage. In balancing the equities, the court notes that Chapter 163 authorizes challenge procedures already, and that State Board Defendants and Intervenors have not forecast any evidence of its administrative burden. See N.C. Gen. Stat. §§ 163-82.6A (2012), 163-82.7(g)(2), 163-89. Moreover,

[37] Though Party Intervenors are non-governmental, they, too, combine the balance of the equities and the public interest in their analysis. (DNC Doc. 51 at 18–19; VL Doc. 51 at 22–23 (arguing harm to the State militates against injunction).)

AMERICAN OVERSIGHT

State Board Defendants concede that they "stand ready to incorporate whatever additional procedural protections this Court deems necessary for such voters" and have begun to do so already. (DNC Doc. 53 at 11; VL Doc. 54 at 10; VL Doc. 55-5 at 7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) (recommending that county boards contact voters before sending mail card if staff have "questions regarding the address"); VL Doc. 55-6 (demonstrating blanket notice county boards will display at early voting sites); see also VL Doc. 61 at 76:16-19 (expressing General Assembly's view that section 163-89 would provide an "appropriate mechanism" to administer notice and opportunity to be heard, if needed).) The court thus finds that the balance of the equities and the public interest tip in Plaintiffs' favor.

* * *

In sum, the Winter factors weigh in favor of Plaintiffs as to the undeliverable mail provision. "Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents." Trump v. Int'l Refugee Assistance Project, 582 U.S. 571, 579-80 (2017). "The purpose of such interim equitable relief is not to conclusively determine the rights of the parties, but to balance the equities as the litigation moves forward." Id. at 580 (internal citation omitted). "In the course of doing so, a court need not grant the total relief

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NC-DURHAM-24-0352-A-000126

sought by the applicant but may mold its decree to meet the exigencies of the particular case." Id. (internal quotation marks omitted). Generally, a preliminary injunction is "intended to protect the status quo," Di Biase v. SPX Corp., 872 F.3d 224, 230 (4th Cir. 2017), which may "require a party who has recently disturbed the status quo to reverse its actions." League of Women Voters of N.C., 769 F.3d at 236 (internal quotation marks and citation omitted); see also Lee, 915 F.3d at 1328 (noting district court's "Goldilocks solution" of preliminarily requiring notice and opportunity to cure rather than striking down entirety of signature matching scheme).

A court considering an injunction close to an election should consider the risk of "voter confusion." Purcell, 549 U.S. at 4-5; Wise v. Circosta, 978 F.3d 93, 99 n.6 (4th Cir. 2020) (focusing Purcell inquiry on the extent to which "[v]oter behavior" would be "impacted by [the court's] decision"). Neither Defendants nor Legislative Intervenors have argued that proximity to the primary election counsels against an injunction. Party Intervenors claim that "[e]lection officials, candidates, campaigns, and voters will struggle to understand how [an] injunction interplays with S.B. 747, and with the broader election code, to the result of inconsistent rules across the state, [] and the potential denial of voting opportunities." (DNC Doc. 51 at 19 (internal citation omitted).) The court does not discern any risk that voters will

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000127
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 86 of 94

be confused, especially because S. 747 seeks to alter prior law, and State Board Defendants have assured the court that they "stand ready" to implement changes as required by this court. (DNC Doc. 53 at 11; VL Doc. 54 at 10.) At a status conference to set out a briefing schedule, moreover, State Board Defendants represented that they could administer a remedy for the primary election, so long as the order was entered around the start of early voting on February 15, 2024.

As to the scope of the injunction, Plaintiffs have agreed that they would accept notice and an opportunity to be heard as a remedy narrower than the broadest they have requested. (Compare DNC Doc. 62 at 98:18-22 ("[T]he remedy [Party Plaintiffs] respectfully suggest is for the Court to . . . direct the State Board for purposes of the primary election to, in fact, apply the notice and opportunity to be heard provision in [] 82.7(g)(2)[.]"), with DNC Doc. 7 at 19 (implying that the court should require two cards be returned before vote is discarded); compare VL Doc. 61 at 26:1-9 (Voto Latino Plaintiffs accepting "as an alternative remedy" ordering county boards to contact voters and "provide a mechanism by which they may further demonstrate that they are eligible voters and are properly residents"), with VL Doc. 44 (seeking to enjoin section 163-82.6B(d)).) (See also VL Doc. 1 (repeatedly alleging in the complaint the undeliverable mail provision's lack of notice and opportunity to be heard as a

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000128
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 87 of 94

defect); DNC Doc. 1 (same).)

As discussed above, the parties disagree as to whether section 163-89, the provision previously used to challenge SDR ballots for voters who failed address verification, applies in light of S. 747's reclassification of SDR ballots as "retrievable," rather than "retrievable absentee."

It is not the court's role to draft a precise remedy. That State Board Defendants construe — correctly it appears — the undeliverable mail provision to not contemplate notice and opportunity to be heard and intend to enforce it accordingly absent a court order, is sufficient to justify the injunction set out below. Though the parties offered proposed provisions at the hearing,[38] the court expresses no opinion on whether the State Board may exercise its authority under section 163-22.2 to "make reasonable interim rules and regulations with respect to the pending primary or election as it deems advisable" in light of the court's preliminary holding that Plaintiffs are likely to show

[38] Legislative Intervenors' counsel offered his belief that State Board Defendants could "graft into [§ 163-82.6B(d)] a notice and procedure" for voters to be heard without violating the statute (DNC Doc. 62 at 76:9-14), stating, without conceding the constitutional issue, that:

> We think that [State Board Defendants] can use the challenge process under 163-89 to accommodate this. We think between 747 and the existing statutes — my client believes, and I'm authorized to state, that we think that that's an appropriate mechanism, if one is even needed.

(DNC Doc. 62 at 76:15-19.)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000129

that the undeliverable mail provision, as written, is unconstitutional. N.C. Gen. Stat. § 163-22.2. Any such interim rules and regulations, if promulgated, must not otherwise conflict with the provisions of Chapter 163. Id.; see Moore v. Circosta, 494 F. Supp. 3d 289, 326 (M.D.N.C. 2020) (finding NCSBE had "implemented a rule that conflicted directly with the statutes enacted by the North Carolina legislature" through invocation of section 22.2).

In sum, the "exigencies of the particular case" warrant the injunction as set out below, and nothing more. Int'l Refugee, 582 U.S. at 579-80.

3. Ineligible Voter Notice

Party Plaintiffs alone challenge another aspect of S. 747. Focusing on the county board of elections' statutory duty to tentatively determine voter eligibility (by checking driver's license number, social security number, etc.) before embarking on address verification, N.C. Gen. Stat. 163-82.6B(d), they claim that the law unconstitutionally fails to prescribe a mechanism for notifying same-day registrants of an adverse eligibility determination or the ground(s) of rejection, or provide an opportunity to contest the adverse eligibility determination. (DNC Doc. 7 at 16.) Party Plaintiffs contend that the silence in the statute allows "any election official [to] unilaterally deny a person his or her right to vote without due process." (Id.)

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NC-DURHAM-24-0352-A-000130

State Board Defendants agree that S. 747 does not explicitly state the process for rejecting a same-day registration based on an ineligibility determination. (DNC Doc. 53 at 8.) However, they read the statute to require a same-day registrant whose application is rejected due to ineligibility to receive the same challenge process under section 163-89 as a same-day registrant currently would receive, even though SDR ballots are no longer considered "absentee ballots." (Id. at 7-8.) Indeed, NCSBE Numbered Memo 2023-05 further demonstrates the State Board plans to utilize the challenge provision of section 163-89 "because the county board is authorized to 'pass upon the legality of disputed ballots' during canvass.'" (DNC Doc. 60-1 at 6 n.9 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).)

Legislative Intervenors and Party Intervenors argue that Party Plaintiffs misread the statute to find that there is no process for same-day registrants who are found ineligible. (DNC Doc. 52 at 12; DNC Doc. 51 at 3-6.) They do not agree with State Board Defendants that there should be a challenge procedure under 163-89. Instead, they contend that section 163-82.7 applies, which is the same notice and opportunity to be heard afforded non-SDR applicants whom a county board determines to be ineligible. Under this provision, the SDR voter would receive a notice in the mail that informs him that his registration has been denied and outlines the method of appeal under 163-82.18, which provides for a public

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000131
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 90 of 94

hearing and appeal to a North Carolina Superior Court. Intervenors contend that this process suffices because this is the same process that non-SDR applicants receive. (DNC Doc. 52 at 12-13; DNC Doc. 51 at 4.)

Whether Defendants' or Intervenors' interpretation of the statute is correct, Party Plaintiffs have not demonstrated that they are likely to "suffer irreparable harm in the absence of preliminary relief." Winter, 555 U.S. at 20. Party Plaintiffs conceded as much, stating that they are not irreparably harmed if State Board Defendants are entitled under the law to apply its interpretation. (DNC Doc. 62 at 19:4-23 ("For purposes of a preliminary injunction, I don't think we need anything more from this Court other than the acknowledgement.").) By all accounts, State Board Defendants have represented in their briefing and in a public memorandum that they intend to fill any perceived silence in the statute with the notice and opportunity to be heard that Party Plaintiffs seek. (DNC Doc. 53 at 8; DNC Doc. 60-1 at 6-7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).) And even if Intervenors' reading controlled, Party Plaintiffs have not shown that the notice provided under sections 163-82.7 and 163-82.18 would be constitutionally inadequate process. Wolf v. Fauquier Cnty. Bd. of Supervisors, 555 F.3d 311, 323 (4th Cir. 2009) ("Procedural due process provides merely 'a guarantee of fair procedures — typically notice and an opportunity to be heard.'"

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NC-DURHAM-24-0352-A-000132

(citation omitted)); N.C. Gen. Stat. §§ 163-82.7, 163-82.18 (providing for notice and hearing before county board of elections with appeal to superior court). Accordingly, Party Plaintiffs' motion to preliminarily enjoin the enforcement S. 747's notice procedure as to SDR voters determined ineligible following the verification process to be conducted within two business days of registration will be denied.

III. CONCLUSION

For the reasons stated, State Board Defendants and Intervenors have shown valid State interests in the use of address verification by non-forwardable mail for confirming a voter's eligibility to vote — a process that has been in place for several decades, albeit employing two cards. These include undeniably legitimate interests in ensuring the integrity of elections, ensuring that only ballots of eligible voters are counted, preventing voter fraud, and instilling confidence in elections. Nevertheless, Plaintiffs have demonstrated a likelihood that the undeliverable mail provision in S. 747, codified as N.C. Gen. Stat. § 163-82.6B(d), will impose a substantial burden on same-day registrants who cast a ballot because, under the law's express terms, they will face a non-trivial risk of being erroneously disenfranchised by failing address verification due to governmental error, rather than factors related to their eligibility to vote, without any notice and opportunity to be

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heard.

Plaintiffs have shown that the State's precise interests asserted in this case likely do not outweigh the substantial burden on the rights of same-day registrants who cast a ballot. Burdick, 504 U.S. at 434 (requiring courts weigh "the character and magnitude of the asserted injury" against "the precise interests put forward by the State," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights"). On this record, State Board Defendants and Intervenors have presented no evidence that any of the several thousand same-day registrants who have failed address verification since its inception in 2008 was in reality ineligible to vote on the ground of improper residency. For SDR voters, the lack of notice and opportunity to be heard is inconsistent with the State's interest in counting all eligible voters' ballots. Moreover, given the lack of showing of an administrative burden on county boards of elections, the risk of irreparable injury, the balance of equities, and the public interest all weigh in favor of requiring notice and an opportunity to be heard.

IT IS THEREFORE ORDERED that Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, are HEREBY ENJOINED from utilizing the procedures of N.C. Gen. Stat. § 163-82.6B(d) to remove from the official count the votes of the ballot of any voter

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NC-DURHAM-24-0352-A-000134

who has provided contact information in the registration process and whose first notice required under N.C. Gen. Stat. § 163-82.7(c) is returned by the Postal Service as undeliverable before the close of business on the business day before the canvass, without first providing such voter notice and an opportunity to be heard, and, only to this extent, Voto Latino Plaintiff's motion (VL Doc. 44) and Party Plaintiff's motion (DNC Doc. 6) are GRANTED. This injunction shall remain in force until such time as a procedure for notice and opportunity to be heard is implemented in accordance therewith.

IT IS FURTHER ORDERED that Voto Latino Plaintiff's motion (VL Doc. 44) and Party Plaintiff's motion (DNC Doc. 6) are, in all other respects, DENIED.

/s/ Thomas D. Schroeder
United States District Judge

January 21, 2024

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NC-DURHAM-24-0352-A-000135

Lassiter, Daniel

Sent: Tuesday, February 6, 2024 8:31 AM
Subject: FW:
Attachments: 2024.01.21 - VL v. Hirsch - Order granting PI.pdf

Derek L. Bowens
Director of Elections

DURHAM COUNTY
Board of Elections

Durham County Board of Elections
Physical address: 201 N. Roxboro Street, Durham, NC 27701
Mailing address: PO Box 868, Durham, NC 27702
Phone: (919) 560-7072
Fax: (919) 560-0688
www.dcovotes.com

From: Donald H Beskind <beskind@law.duke.edu>
Sent: Sunday, January 21, 2024 8:52 PM
To: Bowens, Derek <dbowens@dconc.gov>
Subject:

FYI

This message was probably dictated; errors should not be a surprise. Phone: 919 612-3955

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Lassiter, Daniel

From: Craig-Ray, Deborah
Sent: Thursday, February 1, 2024 12:30 PM
To: Bowens, Derek; Doyle, Keyar J.
Subject: FW: Doyle, Bowens Guests on "In Touch with Durham County"

Good afternoon!! Your show is now public!

Thanks again and Happy Thursday!

Deborah

From: Durham County Manager's Office Public Information Division <publicinformationoffice-dconc.gov@shared1.ccsend.com>
Sent: Thursday, February 1, 2024 8:05 AM
To: Craig-Ray, Deborah <dcraig-r@dconc.gov>
Subject: Doyle, Bowens Guests on "In Touch with Durham County"

Doyle, Bowens Guests on "In Touch with Durham County"



February's show discusses Durham County Tax Administration and upcoming March 5 Primary and Election

Durham, N.C. – The latest edition of the "In Touch with Durham County" show from the Durham County Public Information Office continues to bring residents of our community important information on our programs and services with the February 2024 show. Our goal is to have great conversations with our Durham County department heads, our staff, and community partners so that we can share valuable information about our programs and services.

On this month's episode, our host Durham County Chief Communications Officer Deborah Craig-Ray welcomes Durham County Tax Administrator Keyar Doyle and Durham County Elections Director Derek Bowens to our TV studio.

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The show is available to watch on the DCo YouTube channel (subscribe here); as well as on the Durham County Government website and the Durham Television Network.

In segment one, Doyle visits In Touch for the first time since his appointment by the Board of County Commissioners in the fall of 2023. He chats a little bit about his background and career prior to becoming the leader of our Tax Administration as well as discussing some of the responsibilities of the job. Doyle and Craig-Ray also talk about tax bills, payment plans, and the upcoming Durham County property tax reappraisal process that will occur in 2025.

In segment two, Bowens returns to the show with lots of information regarding the Durham County Board of Elections. He immediately jumps into discussion about the upcoming 2024 Primary and Election, the early voting period, and Election Day of Tuesday, March 5, 2024. Bowens will then reflect a little on the 2020 election year, which features much of the same races as the 2024 ballot – the Board of Durham County Commissioners, state races, the Register of Deeds, and of course, the Presidential election. Bowens will also touch upon the NC Voter Photo ID requirements, absentee voting, sample ballots, key dates, and more! Lastly, he talks about Durham County's involvement in the State Board of Elections' mailed ballot signature-matching pilot program.

We hope you enjoy the show!

About "In Touch with Durham County"

The "In Touch with Durham County" show is a monthly program that provides governmental programming and access to your local government and provides timely, ongoing coverage of Durham County Government. The show airs daily on the Durham Television Network (DTN). DTN is available on Spectrum channel 8, Frontier channel 70 and AT&T U-verse channel 99. To view past editions of the "In Touch with Durham County" show, visit the DCo YouTube Channel here.

For more information on the Durham County Public Information Office, visit the PIO website, call 919-560-0000 or email publicinformationoffice@dconc.gov.

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Durham County Government | 200 East Main Street, Durham, NC 27701

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Lassiter, Daniel

From: Bowens, Derek
Sent: Tuesday, January 23, 2024 8:39 AM
To: E Reckhow
Subject: FW: Durham County Board of Elections Selected for Absentee By-Mail Signature Verification Pilot Program

FYI

Derek L. Bowens
Director of Elections

DURHAM COUNTY
Board of Elections

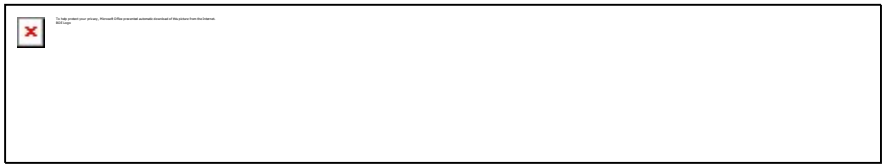
Durham County Board of Elections
Physical address: 201 N. Roxboro Street, Durham, NC 27701
Mailing address: PO Box 868, Durham, NC 27702
Phone: (919) 560-7072
Fax: (919) 560-0688
www.dcovotes.com

From: Durham County Webmaster <durhamcounty@enotify.visioninternet.com>
Sent: Monday, January 22, 2024 8:01 PM
To: Pollworkers <pollworkers@dconc.gov>
Subject: Durham County Board of Elections Selected for Absentee By-Mail Signature Verification Pilot Program

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Durham County Board of Elections Selected for Absentee By-Mail Signature Verification Pilot Program

Post Date: 01/22/2024 8:00 PM



NEWS RELEASE

Durham, N.C. - The Durham County Board of Elections was one of ten counties selected to participate in an absentee by-mail signature verification pilot program for the 2024 Statewide Primary and Election. This pilot program is required in accordance with Section 48 of Session Law 2023-140, better known as Senate Bill 747. As required by this law, the State Board of Elections will be providing all ten participating counties with signature verification software and training needed to execute the pilot program. The data collected from this pilot program will be reported to the State Board of Elections and the General Assembly.

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The Board wants all residents to be aware that Section 48.(c) of Senate Bill 747 prevents properly executed by-mail ballots from being rejected due to failing signature verification. Section 48.(c) states the following:

"In implementing the pilot program established in this section, no executed mail-in absentee ballot shall be rejected by the county board of elections for failing any signature verification. All executed mail-in absentee ballots that are otherwise eligible to be counted in accordance with Chapter 163 of the General Statutes shall be counted."

For more information on the absentee by-mail signature verification pilot program, please contact the Board of Elections by phone at 919-560-0700 or email us at elections@dconc.gov.

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Lassiter, Daniel

Sent: Friday, January 19, 2024 11:40 AM
Subject: FW: REVISED Numbered Memo 2021-03 - Absentee Envelope Deficiencies
Attachments: Numbered Memo 2021-03_Absentee Deficiencies (updated 1.2024) .pdf; CHANGES - Numbered Memo 2021-03_Absentee Deficiencies (updated 1.2024).pdf

Derek L. Bowens
Director of Elections

DURHAM COUNTY
Board of Elections

Durham County Board of Elections
Physical address: 201 N. Roxboro Street, Durham, NC 27701
Mailing address: PO Box 868, Durham, NC 27702
Phone: (919) 560-7072
Fax: (919) 560-0688
www.dcovotes.com

From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Friday, January 19, 2024 11:08 AM
To: SBOE_Grp - Legal <Legal@ncsbe.gov>
Subject: REVISED Numbered Memo 2021-03 - Absentee Envelope Deficiencies

Directors (via BCC):

Please find attached and at this link a revised numbered memo issued by Executive Director Karen Brinson Bell, concerning absentee envelope deficiencies and the procedures for addressing those deficiencies (i.e., "curing," spoiling and reissuing, etc.).

This memo has been updated to reflect the changes in the law from Session Law 2023-140 (SB 747). The law codified in statute many of the processes we already had in place for addressing absentee envelope deficiencies. But the law made some important revisions, as reflected in this memo. The updated memo also addresses a number of questions that have been raised by county boards and members of the public since the last update of the memo. For your reference, I've also included a PDF showing the changes in this memo from the prior version.

Please read this memo carefully, since absentee voting is officially starting today, and you and your staff will need to address deficiencies in returned absentee ballots in accordance with this revised guidance on the requirements of the law.

With best regards,

Paul Cox
General Counsel
NORTH CAROLINA STATE BOARD OF ELECTIONS
RALEIGH, NC 27611

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919.814.0700
www.ncsbe.gov

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NORTH CAROLINA
STATE BOARD OF ELECTIONS

Mailing Address:
P.O. Box 27255
Raleigh, NC 27611

(919) 814-0700 or
(866) 522-4723

Fax: (919) 715-0135

Numbered Memo 2021-03

TO: County Boards of Elections

FROM: Karen Brinson Bell, Executive Director[1]

RE: Absentee Container-Return Envelope Deficiencies

DATE: June 11, 2021 (updated September 25, 2023; January 19, 2024)[2]

The State Board is required to provide a cure process for voters whose absentee ballot envelopes contain certain deficiencies.[3] In general, the cure process for absentee-by-mail deficiencies is guided by G.S. § 163-230.1(e), as amended by Session Law 2023-140 (SB 747), and this numbered memo. ~~A~~ The cure process for photo ID documentation containing deficiencies, when that documentation is submitted with an absentee ballot, is provided through G.S. § 163-230.1(e), as amended by Session Law 2023-140, ~~and~~ an administrative rule adopted by the State Board[4], and is guided by this numbered memo. ~~The cure process for all other absentee-by-mail deficiencies is guided by this numbered memo.~~ County boards of elections must ensure that the votes of all eligible voters are counted using the same standards, regardless of the county in which the voter resides.

The ballot container-return envelope (ballot envelope) and the accompanying photocopy of the voter's photo ID or completed Photo ID Exception Form (photo ID documentation) are transmitted to the county board in an outer return envelope. This numbered memo directs the

[1] This memo is issued under the authority delegated by the State Board to the executive director pursuant to G.S. § 163-22(p).

[2] This numbered memo replaces Numbered Memo 2020-19, which was first issued on August 21, 2020 and subsequently revised and reissued on September 22, 2020, and October 17, 2020. This numbered memo was updated on September 25, 2023, and again on January 19, 2024, to include processes related to photo ID requirements for absentee-by-mail voting.

[3] See G.S. § 163-230.1(e), revised by N.C. Session Law 2023-140 § 35, to provide a cure process for deficiencies associated with returned absentee-by-mail ballots. *See also* *Democracy NC v. State Board of Elections*, 476 F.Supp.3d 158 (M.D.N.C. Aug. 4, 2020) (explaining that due process requires such a cure opportunity).

[4] 08 NCAC 17 .0109(b).

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procedure county boards must use to address deficiencies in the envelopes and photo ID documentation, to ensure that a voter is provided every opportunity to correct certain deficiencies, while also recognizing that processes must be manageable for county boards to timely complete required tasks.

No Signature Verification[5]

Verification of the voter's identity is completed through the witness requirement. The voter's signature on the envelope shall not be compared with the voter's signature in their registration record, on their request form, or ~~the voter's signature~~ on their photocopy of photo ID or Photo ID Exception Form submitted with their ballot, because this is not a requirement for the approval of an absentee ballot under North Carolina law.[6] County boards shall accept the voter's signature on the ballot envelope if it appears to be made by the voter, meaning the signature on the envelope appears to be the name of the voter and not some other person. Absent clear evidence to the contrary, the county board shall presume that the voter's signature is that of the voter, even if the signature is illegible. A voter may sign their signature or make their mark.

Types of Deficiencies

Trained county board staff shall review each return envelope, executed ballot envelope, and photo ID documentation the office receives to determine if there are any deficiencies. County board staff shall, to the extent possible, regularly review these absentee ballot materials on each business day, to ensure that voters have every opportunity to timely correct deficiencies.[7] Review for deficiencies occurs *after* intake. The initial review is conducted by staff to expedite processing of the envelopes in advance of a county board absentee meeting.[8]

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[5] Session Law 2023-140 § 48 provides for a signature verification pilot program to be conducted during the 2024 primary election. As stated in Section 48.(c), however, "[i]n implementing the pilot program established in this section, no executed mail-in absentee ballot shall be rejected by the county board of elections for failing any signature verification. All executed mail-in absentee ballots that are otherwise eligible to be counted in accordance with Chapter 163 of the General Statutes shall be counted."

[6] See *In re: Request for Declaratory Ruling on Signature Matching for Absentee Ballot Requests and Ballot Envelopes*, N.C. State Bd. of Elections (July 22, 2022). See also Numbered Memo 2020-15, which explains that signature comparison is not permissible for absentee request forms.

[7] Specifically for ballot application deficiencies and photo ID documentation deficiencies, discussed below, G.S. § 163-230.1(e) requires that the county board "promptly notify the voter of the deficiency and the manner in which the voter may cure the deficiency."

[8] See Numbered Memo 2020-25 regarding preparatory steps for absentee meetings.

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There are three categories of deficiencies: 1) return deficiencies, 2) ballot application deficiencies, and 3) photo ID documentation deficiencies.

1. Return Deficiencies

Previously, a voter transmitted their absentee-by-mail ballot to the county board in a single ballot container-return envelope. However, with the implementation of photo ID requirements starting with the 2023 municipal elections, the ballot envelope is now transmitted to the county board in an outer return envelope to ensure the privacy of the accompanying photo ID documentation. As a result, there may be certain instances where the return of the absentee ballot requires the ballot to be spoiled and the absentee package reissued to the voter.

Deficiencies that Require the Ballot to Be Spoiled (Civilian)

- Ballot is inside the ballot envelope, which is not sealed or which appears to have been opened and re-sealed, and the ballot envelope is received in a return envelope which is not sealed or which appears to have been opened and re-sealed.[9]
- Ballot is inside the executed ballot envelope, which is not sealed, and someone other than the voter hand delivers the ballot envelope to an early voting site or the county board office, and the return envelope is also unsealed or there is no return envelope. Even if the person is authorized to return this ballot, they cannot seal the ballot without the voter being present. The voter must direct that the ballot be sealed "in the voter's presence."[10]
- The return or ballot envelope indicates the voter is requesting a replacement ballot.

If a county board identifies one of these deficiencies, county board staff shall spoil the returned ballot and reissue a ballot, as long as the new ballot is issued before Election Day, along with a notice explaining the county board office's action, in accordance with this numbered memo.

Anomalies that Are Not Deficiencies (Civilian)[11]

- Ballot is inside the executed ballot envelope, which is not sealed or which appears to have been opened and re-sealed, but the ballot envelope is received in a sealed return

---

[9] Ballots must be "sealed in the container-return envelope." G.S. § 163-230.1(d); see also G.S. § 163-231(a)(3).

[10] G.S. § 163-231(a)(3).

[11] With all ballot mistakes or anomalies, elections officials must be guided by the clear instruction in the federal Civil Rights Act of 1964 to not allow an error on ballot materials to lead to a ballot's rejection when that error is immaterial to determining a voter's eligibility to cast the ballot: "No person acting under color of law shall . . . deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election." 52 U.S.C. § 10101(a)(2)(B).

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envelope. Immediately upon opening the return envelope and noticing this situation, staff should re-seal the return envelope with a notation of "sealed in return envelope." The county board should open the return envelope and address that ballot at its next absentee meeting.[12]

- Ballot is not inside the ballot envelope or has been placed inside the clear sleeve on the ballot envelope used for including the photo ID documentation, but the return envelope is sealed. Immediately upon opening the return envelope and noticing this situation, staff should re-seal the return envelope with a notation of "sealed in return envelope." The county board should open the return envelope and address that ballot at its next absentee meeting.[13]
- Ballot is received in a return envelope that is not sealed or appears to have been opened and re-sealed, but the ballot is inside the executed ballot envelope that is sealed. This situation does not require any special action to document the anomaly before presenting the ballot envelope to the county board.
- Ballot is inside the executed ballot envelope, which is not sealed, and the voter hand delivers the ballot envelope to an early voting site or the county board office. Before taking receipt of the envelope, staff should request that the voter first seal the ballot envelope.

In all of the above situations, the ballot was received in a sealed envelope and is therefore not deficient.[14]

A person hand-delivering the absentee ballot, whether it is the voter or someone authorized to return the voter's ballot, is not required to deliver the ballot envelope inside the return envelope for the absentee application to be approved. The return envelope is designed to protect the voter's confidential identifying information during mail transit. If the person hand-delivers only the sealed ballot envelope, staff should follow their usual storage practices and keep the ballot envelope in a secure location, which may include placing the ballot envelope in a new return envelope for storage purposes.

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[12] In this situation, for the purposes of staff's initial review of photo ID documentation pursuant to 08 NCAC 17 .0109(b), the ballot application is not "received" until the return envelope is opened at the absentee meeting.

[13] In this situation, for the purposes of staff's initial review of photo ID documentation pursuant to 08 NCAC 17 .0109(b), the ballot application is not "received" until the return envelope is opened at the absentee meeting.

[14] G.S. §§ 163-230.1(d), 163-231(a)(3).

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2. Ballot Application Deficiencies

The ballot application is the form on the ballot envelope that is completed by the voter, their witnesses or notary, and assistant (if applicable).[15] Ballot application deficiencies fall into two main categories: those that can be cured with a cure certification (*i.e.*, an attestation) by the voter, and those that cannot be cured. If a deficiency cannot be cured, the ballot must be spoiled and a new ballot must be issued, as long as the new ballot is issued before Election Day. See the Voter Notification Section below.

Deficiencies Curable with Cure Certification (Civilian and UOCAVA)

The following deficiencies can be cured by sending the voter a cure certification:

- Voter did not sign the Voter Certification.[16]
- Voter signed in the wrong place.[17]

The cure certification process applies to civilian and UOCAVA voters.

Deficiencies that Require the Ballot to Be Spoiled (Civilian)

The following deficiencies cannot be cured by certification, because the missing information comes from someone other than the voter:

- The name of the witness or assistant is not printed,[18] unless the witness's or assistant's signature is legible such that the name can be determined, in which case the ballot envelope is not deficient and the ballot shall not be spoiled for this reason.[19]
- A witness or assistant did not print their address.[20]

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[15] G.S. § 163-229(b).

[16] G.S. § 163-230.1(e)(1).

[17] G.S. § 163-230.1(e)(2).

[18] G.S. § 163-230.1(e) provides that "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." However, if~~If~~ the printed name is readable and on the correct line, even if it is written in cursive script, for example, it does not invalidate the ballot envelope.

[19] G.S. § 163-231(a)(5) ("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.").

[20] Failure to list a witness's ZIP code does not invalidate the ballot envelope. G.S. § 163-231(a)(5). A witness's or assistant's address does not have to be a residential address; it may be a post office box or other mailing address. Additionally, if the address is missing a city or state, but the county board of elections can determine the correct address, the failure to list that information does not invalidate the ballot envelope. For example, if a witness lists "Raleigh 27603," you can determine the state is NC, or if a

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- A witness or assistant did not sign.
- A witness or assistant signed on the wrong line. Where the witness or assistant signed in place of the voter's signature, that deficiency cannot be cured and requires the ballot to be spoiled. ~~Otherwise, h~~However, if all required information from the witness or assistant is present but not on the designated line for each (for example, the witness or assistant printed their name on the address line, printed their address on the name line, and signed), the ballot envelope is not deficient and the ballot shall not be spoiled for this reason.

Additionally, when a voter's witness is a notary, two errors in the notarial certificate ~~cannot be cured by certification and~~ will result in the ballot being spoiled: 1) the notary's signature is missing, or 2) the notarial seal is missing altogether or contains missing information. As discussed in Numbered Memo 2021-07, other technical errors with the notarial certificate will not affect the sufficiency, validity, or enforceability of the notarial certificate itself or the underlying document and are not considered deficiencies.

3. Photo ID Documentation Deficiencies

When a voter includes photo ID documentation with their absentee ballot envelope, there may be deficiencies in that documentation that require a cure notice to be sent to the voter. All deficiencies with a voter's photo ID documentation are curable, because the cure documentation comes from the voter.[21]

Photocopy of Photo ID Deficiencies

Deficiencies in a photocopy of a voter's photo ID include:

- The ID is not a type of ID that is acceptable for voting purposes under 08 NCAC 17 .0101(a)(1).
- The ID does not meet expiration requirements, if applicable.
- The photocopy is not readable, which means that the name on the ID cannot be read, the photograph on the ID does not depict a person (e.g., it only depicts a shadow or outline of a person), or both.

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witness lists "333 North Main Street, 27701," you can determine that the city/state is Durham, NC. If both the city and ZIP code are missing, staff will need to determine whether the correct address can be identified. If the correct address cannot be identified, the envelope shall be considered deficient and the ballot spoiled and a new ballot reissued. See Numbered Memo 2020-29 for additional information regarding address issues.

[21] G.S. § 163-230.1(e) ("Curable deficiencies are deficiencies that can be cured with supplemental documentation or attestation provided by the voter[.]").

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- The name on the ID is not the same as or substantially equivalent to the voter's name in their voter record.

Any difference between the voter's address on their ID and the address in their registration record is not a deficiency.

Photo ID Exception Form Deficiencies

Deficiencies in a Photo ID Exception Form include:

- The voter did not print their name on the Form, unless the voter's signature on the Form appears to be made by the voter, meaning the signature on the Form appears to be the name of the voter and not some other person. The county board shall presume that the voter's signature is that of the voter, even if the signature is illegible, unless there is clear evidence to rebut this presumption.
- The voter did not check a box for at least one claimed exception from the photo ID requirements, or if the exception is a reasonable impediment, the voter failed to identify their specific reasonable impediment (including by writing their reason if they chose "Other"[22]).
- If the reasonable impediment chosen is that the voter is unable to make a photocopy of their ID to include with their ballot, the voter did not include their North Carolina driver's license number, DMV ID number, or last 4 digits of their social security number.[23] However, if the voter has additionally checked a box indicating another reasonable impediment that prevents them from including a copy of a photo ID, the Form cannot be found deficient for the missing identification number alone.
- The voter did not sign the Form.[24]

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[22] If the voter writes a reason for "Other" but does not check the "Other" box, the Form is not deficient for that reason alone. Similarly, if the voter writes their North Carolina driver's license number, DMV ID number, or last 4 digits of their social security number but does not check the "I am unable to include a photocopy of my photo ID with this absentee ballot envelope" box, the Form is not deficient for that reason alone provided that the voter did check the first box indicating that they suffer from a reasonable impediment that prevents them from including a copy of photo ID.

[23] G.S. § 163-230.1(g)(2).

[24] If a voter is unable to sign the Photo ID Exception Form due to a disability, the person of the voter's choice who is assisting them can sign the Form on the voter's behalf and must complete the assistant certification on the envelope. See Numbered Memo 2022-11, p. 3 (Court Order Regarding Assistance for Absentee Voters with Disabilities).

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Additionally, a voter's failure to include *any* photo ID documentation—either a photocopy of their ID or an Exception Form—is a deficiency that may be cured.[25]

A voter may respond to a notification that their ballot is missing photo ID documentation by stating that it is in the ballot envelope. If this occurs, and staff have not otherwise identified any return or ballot application deficiencies that would require the ballot to be spoiled and reissued, staff must defer the review of the photo ID documentation to the next absentee board meeting, when the county board can review the application and, if approved, open the ballot envelope and confirm photo ID compliance.[26] If the board identifies a photo ID deficiency at that point, staff should be instructed to notify the voter of the opportunity to cure as explained further in this memo.

County Board Review of Photo ID Exception Forms for Falsity

Although a county board's finding that a Photo ID Exception Form is false will result in the absentee ballot being rejected, this is not a "deficiency" in the same sense as the ones listed above—where staff will take action to notify the voter to address a deficiency. Staff deficiency review of Photo ID Exception Forms is for completeness—not falsity.[27] A board's finding of falsity can only come after the board ~~considers other information and~~ gives the voter notice and an opportunity to be heard on the matter. See Numbered Memo 2020-25, p 8 ("Review of Photo ID Exception Forms"). County boards shall follow the applicable administrative code provisions[28] and Numbered Memo 2023-03, pp. 11–13, when considering whether a Photo ID Exception Form is false.

4. Deficiencies that ~~require board action~~are first discovered at a board meeting

Some deficiencies ~~cannot be resolved by staff and require action by the county board. These include situations where the deficiency is~~will not be ~~first noticed at a board meeting or if it becomes~~ apparent ~~during~~ until a board meeting and, when discovered, will require board action at that time. These deficiencies can include the following:

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[25] G.S. § 163-230.1(e)(3).

[26] This does not prevent the voter from also choosing to send photo ID cure documentation to the county board while its review of the application is pending, and staff may encourage the voter to do so when time is of the essence.

[27] Of course, staff may flag an Exception Form for the board's review at a meeting if staff has specific information suggesting the form is false.

[28] See 08 NCAC 17 .0109(c).

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- There is ~~that~~ no ballot ~~is~~ in the ballot envelope. In this situation, although there is no ballot to spoil, the entire absentee package must be reissued to the voter so that the statutory requirements for voting and transmitting an absentee ballot can be met.
- There is more than one ballot ~~is~~ in the ballot envelope. In this situation, both ballots will need to be spoiled and new absentee ballot packages issued to both voters, because it will not be possible to determine which of the two ballots were voted by the voter who completed the application.
- T~~, or t~~wo voters' ballots and ballot envelopes were switched, based on the county board's review of the CIV numbers (ballot identifying numbers). In this situation, the county board will need to consider the circumstances of the ballots and ballot envelopes together to decide whether to approve the ballots. **If the two voters had their absentee ballots sent to the same address and there are no issues with the applications, then the county board should not spoil the ballots**, because under those circumstances, each voter has properly attested to voting the ballot enclosed with their application. The ballot identifying numbers associated with the enclosed ballots are used for official tracking purposes, and voters in the same household should not have their ballots rejected for failing to ensure these numbers match between their ballots and applications, which is neither a requirement for approval of the ballot under state law nor material to determining a voter's eligibility to cast the ballot under federal law.[29] The board staff should make a note of the ballot number that now corresponds with the voter in the SEIMS record.

If the county board disapproves a ballot envelope by majority vote in a board meeting, it shall proceed according to the notification process in G.S. § 163-230.1(e) and as outlined below. If the county board disapproves a ballot for a reason based on the voter's photo ID documentation, it shall proceed according to the notification process in 08 NCAC 17 .0109 and as outlined below.

Voter Notification

~~Issuance of~~Sending an Absentee Ballot Deficiency Notification or New Ballot

If there are any **return deficiencies** or **ballot application deficiencies**, the county board of elections shall ~~contact the voter in writing by~~ mail a notice to the voter within one business day of identifying the deficiency to inform the voter there is an issue with their absentee ballot, enclosing an absentee ballot deficiency notification, which contains the cure certification, or a new ballot.[30] The written notice shall also include information on how to vote in-person during

[29] See 52 U.S.C. § 10101(a)(2)(B).

[30] When there is a curable deficiency, G.S. § 163-230.1(e) specifically provides that the county board must "promptly notify the voter of the deficiency and the manner in which the voter may cure the deficiency." If a ballot must be spoiled and reissued, the same need to act promptly exists.

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the early voting period and on Election Day. When the voter is issued a new ballot, they must include new photo ID documentation with their ballot when transmitting it back to the county board, because each absentee ballot envelope "returned to the county board . . . shall be accompanied by" a photocopy of the voter's photo ID or Photo ID Exception Form.[31]

The written notice shall be sent to the address to which the voter requested their ballot be sent. The outside of the envelope containing the new ballot or absentee ballot deficiency notification should be in an official envelope so that it indicates that it contains official election mail, unless it is not possible due to the use of a specialized USPS or commercial carrier service envelope.

If the deficiency can be cured and the voter provided their phone number or email address on the absentee ballot request form, then the county board shall additionally notify the voter of the curable deficiency by phone or email.[32] Like with the mail notice, this shall be done within one business day of identifying the deficiency, and the same information shall be provided as in the mail notice. If a voter did not provide their phone number or email address on the absentee ballot request form, then staff shall additionally notify the voter by phone or email if the voter has a phone number oran email address on filecontained in the voter's registration record. If both phone and email are available, notify the voter by email.. If notifying the voter by email, the county board shall also sendinclude the absentee ballot deficiency notification document that is also mailed to the voter by email. If the county board sends the notification by email and by mail, the county board should encourage the voter to only return *one* of the notifications with the certification. If the voter did not provide anvoter's email address is not on file but did providethe voter has provided a phone number, the county board shall contact the voter by phone to inform the voter that the county board has mailed the voter an absentee ballot deficiency notification.

If the deficiency cannot be cured, and the voter has an email address on file, the county board shall notify the voter by email that a new ballot has been issued by mail to the voter. If the voter did not provide an email address but did provide a phone number, the county board shall contact the voter by phone to inform the voter that the county board has issued a new ballot by mail.

A county board shall not reissue a ballot on or after Election Day. If there is a curable deficiency, the county board shall contact voters up until the day before county canvass.

If there is a **photo ID documentation deficiency**, the county board must follow the cure process in 08 NCAC 17 .0109(b). The county board must mail notice to contact the voter in writing by mail within one business day of identifying the deficiency to inform the voter there is an issue with their absentee ballot, enclosing an absentee ballot deficiency notification that identifies the

[31] N.C.G.S. § 163-230.1(f1).

[32] G.S. § 163-230.1(e).

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specific deficiencies with the photo ID documentation.[33] The notification must also inform 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 the photo ID cure documentation to the county board.[34] If the voter provided their phone number or email address on the absentee ballot request form, then the county board shall additionally notify the voter of the photo ID documentation deficiency by phone or email using the phone number or email address listed on the request form~~.~~.[35] Like with the mail notice, this shall be done within one business day of identifying the deficiency, and the same information shall be provided as in the mail notice. If a voter did not provide their phone number or email address on the absentee ballot request form, then staff shall~~Staff must~~ additionally notify the voter by ~~tele~~phone or email, using any ~~tele~~phone number or email address contained in the voter's registration record ~~or provided by the voter when requesting an absentee ballot~~.[36] If both phone and email are available, notify the voter by email. If notifying the voter by email, the county board shall include the absentee ballot deficiency notification document that is also mailed to the voter.

The photo ID cure documentation can be either a new photocopy of the voter's photo ID or a new Absentee Photo ID Exception Form. A voter who submitted a deficient photocopy of their photo ID may also submit a Photo ID Exception Form for the first time. A voter may choose to do so, for example, because~~,~~ in this instance~~, it is now likely that~~ they may no longer be ~~are un~~able to make a photocopy of their ID to include with their ballot. Likewise, a voter who submitted a deficient Photo ID Exception Form may also submit a photocopy of a photo ID for the first time. A voter may choose to do so, for example, because they may have obtained a photo ID, or the means to make a photocopy, since the time at which they transmitted their absentee ballot to the county board. Accordingly, **when sending an absentee ballot deficiency notification for a photo ID documentation deficiency, the county board must include a blank Absentee Photo ID Exception Form**.

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[33] As explained above, all photo ID documentation deficiencies are curable, and when there is a curable deficiency, G.S. § 163-230.1(e) specifically provides that the county board must "promptly notify the voter of the deficiency and the manner in which the voter may cure the deficiency." See also 08 NCAC 17 .0109(b).

[34] 08 NCAC 17 .0109(b).

[35] G.S. § 163-230.1(e).

[36] 08 NCAC 17 .0109(b).

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Receipt of a Cure Certification or Photo ID Cure Documentation

The cure certification or photo ID cure documentation must be received by the county board of elections by 5 p.m. the day before county canvass.[37]

The cure documents may only be returned by the voter, the voter's near relative or legal guardian, a multipartisan assistance team (MAT), or a person of the voter's choice if the voter needs assistance due to the voter's disability.[38] A cure document returned by any other person is invalid.

The cure documents may be submitted to the county board office by email, by mail or commercial carrier, in person, or by fax.[39] When submitting cure documents by email, the voter may attach an image of their cure documentation (*e.g.*, emailing a photo of their photo ID or executed Exception Form). ~~There is not a postmark requirement for cure documents returned by mail. t~~The documents must be *received* by the deadline~~,~~ (not postmarked by the deadline).

If a voter appears in person at the county board office to cure their ballot, they may also be given, and can complete, a cure certification. Similarly, a voter may appear in person and

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[37] G.S. § 163-230.1(e) ("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.").

[38] Voters who require assistance in returning their ballot due to the voter's disability, can direct the person of their choice to return the ballot according to the voter's instruction (*i.e.*, by mail or in person to the county board). See Numbered Memo 2022-11.

[39] Although G.S. 163-230.1(e) now provides that photo ID cure documentation "may be transmitted via e-mail to the county board of elections," this does not preclude the use of email to transmit a cure certification for ballot application deficiencies, because the statute is otherwise silent on the manner of transmittal and form of receipt of cure documentation for those deficiencies, and the statute's instruction to notify a voter of a curable deficiency by email indicates transmission of cure documentation by email is permissible.

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complete a Photo ID Exception Form to accompany the ballot envelope[40],[41] or request that staff make a photocopy of the voter's photo ID to accompany the ballot envelope.[42]

It is not permissible for a cure certification to be submitted through a portal or form created or maintained by a third party. A cure certification may not be submitted simultaneously with the ballot.

Any person who is permitted to assist a voter with their ballot may assist a voter in filling out the cure certification, making a photocopy of the voter's photo ID, or filling out the Photo ID Exception Form, but the certification and Photo ID Exception Form must be signed by the voter.[43] A wet ink signature is not required for cure documents, but the signature used must be unique to the individual. A typed signature is not acceptable, even if it is cursive or italics such as is commonly seen with an electronic signature program, such as DocuSign.

County Board Review of Cure Documentation

At each absentee board meeting, the county board of elections may consider deficient ballot return envelopes for which cure documentation has been returned, whether a cure certification or photo ID documentation. The county board shall consider together the executed absentee ballot envelope and the cure documentation. If the cure documentation was timely received, includes the required documentation or attestations, and was returned by an authorized person, the county board of elections shall approve the absentee ballot. See Numbered Memo 2020-25.

Data Entry in SEIMS

County board staff shall follow the instructions provided by the State Board in the most recent guide for the proper entry of data in SEIMS when processing absentee ballots and addressing deficiencies. Data shall be promptly entered as ballots are processed. This will ensure that the

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[40] ~~The option to complete a Photo ID Exception Form in the county board office is only available for voters who are voting absentee-by-mail. Voters who vote in person at an early voting site or on Election Day must complete the Photo ID Exception Form at the voting site. See Numbered Memo 2023-03.~~

[41] The option to complete a Photo ID Exception Form in the county board office is only available for voters who are voting absentee-by-mail. Voters who vote in person at an early voting site or on Election Day must complete the Photo ID Exception Form at the voting site. See Numbered Memo 2023-03.

[42] See Numbered Memo 2020-23 regarding staff making photocopies of photo IDs for inclusion with an absentee ballot envelope.

[43] If a voter is physically unable to sign or make their mark on the Photo ID Exception Form due to disability, any person of that voter's choice can write in the signature line, "Disabled - cannot sign." See Numbered Memo 2022-11.

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data maintained by the county boards and State Board follows uniform conventions and is up to date. This will help ensure the processing of absentee ballots is transparent to the public.

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NORTH CAROLINA
STATE BOARD OF ELECTIONS

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Numbered Memo 2021-03

TO: County Boards of Elections

FROM: Karen Brinson Bell, Executive Director[1]

RE: Absentee Container-Return Envelope Deficiencies

DATE: June 11, 2021 (updated September 25, 2023; January 19, 2024)[2]

The State Board is required to provide a cure process for voters whose absentee ballot envelopes contain certain deficiencies.[3] In general, the cure process for absentee-by-mail deficiencies is guided by G.S. § 163-230.1(e), as amended by Session Law 2023-140 (SB 747), and this numbered memo. The cure process for photo ID documentation containing deficiencies, when that documentation is submitted with an absentee ballot, is provided through G.S. § 163-230.1(e), as amended by Session Law 2023-140, an administrative rule adopted by the State Board[4], and is guided by this numbered memo. County boards of elections must ensure that the votes of all eligible voters are counted using the same standards, regardless of the county in which the voter resides.

The ballot container-return envelope (ballot envelope) and the accompanying photocopy of the voter's photo ID or completed Photo ID Exception Form (photo ID documentation) are transmitted to the county board in an outer return envelope. This numbered memo directs the procedure county boards must use to address deficiencies in the envelopes and photo ID

[1] This memo is issued under the authority delegated by the State Board to the executive director pursuant to G.S. § 163-22(p).

[2] This numbered memo replaces Numbered Memo 2020-19, which was first issued on August 21, 2020 and subsequently revised and reissued on September 22, 2020, and October 17, 2020. This numbered memo was updated on September 25, 2023, and again on January 19, 2024, to include processes related to photo ID requirements for absentee-by-mail voting.

[3] See G.S. § 163-230.1(e), revised by N.C. Session Law 2023-140 § 35, to provide a cure process for deficiencies associated with returned absentee-by-mail ballots. *See also Democracy NC v. State Board of Elections*, 476 F.Supp.3d 158 (M.D.N.C. Aug. 4, 2020) (explaining that due process requires such a cure opportunity).

[4] 08 NCAC 17 .0109(b).

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documentation, to ensure that a voter is provided every opportunity to correct certain deficiencies, while also recognizing that processes must be manageable for county boards to timely complete required tasks.

No Signature Verification[5]

Verification of the voter's identity is completed through the witness requirement. The voter's signature on the envelope shall not be compared with the voter's signature in their registration record, on their request form, or on their photocopy of photo ID or Photo ID Exception Form submitted with their ballot, because this is not a requirement for the approval of an absentee ballot under North Carolina law.[6] County boards shall accept the voter's signature on the ballot envelope if it appears to be made by the voter, meaning the signature on the envelope appears to be the name of the voter and not some other person. Absent clear evidence to the contrary, the county board shall presume that the voter's signature is that of the voter, even if the signature is illegible. A voter may sign their signature or make their mark.

Types of Deficiencies

Trained county board staff shall review each return envelope, executed ballot envelope, and photo ID documentation the office receives to determine if there are any deficiencies. County board staff shall, to the extent possible, regularly review these absentee ballot materials on each business day, to ensure that voters have every opportunity to timely correct deficiencies.[7] Review for deficiencies occurs *after* intake. The initial review is conducted by staff to expedite processing of the envelopes in advance of a county board absentee meeting.[8]

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[5] Session Law 2023-140 § 48 provides for a signature verification pilot program to be conducted during the 2024 primary election. As stated in Section 48.(c), however, "[i]n implementing the pilot program established in this section, no executed mail-in absentee ballot shall be rejected by the county board of elections for failing any signature verification. All executed mail-in absentee ballots that are otherwise eligible to be counted in accordance with Chapter 163 of the General Statutes shall be counted."

[6] See *In re: Request for Declaratory Ruling on Signature Matching for Absentee Ballot Requests and Ballot Envelopes*, N.C. State Bd. of Elections (July 22, 2022). See also Numbered Memo 2020-15, which explains that signature comparison is not permissible for absentee request forms.

[7] Specifically for ballot application deficiencies and photo ID documentation deficiencies, discussed below, G.S. § 163-230.1(e) requires that the county board "promptly notify the voter of the deficiency and the manner in which the voter may cure the deficiency."

[8] See Numbered Memo 2020-25 regarding preparatory steps for absentee meetings.

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There are three categories of deficiencies: 1) return deficiencies, 2) ballot application deficiencies, and 3) photo ID documentation deficiencies.

1. Return Deficiencies

Previously, a voter transmitted their absentee-by-mail ballot to the county board in a single ballot container-return envelope. However, with the implementation of photo ID requirements starting with the 2023 municipal elections, the ballot envelope is now transmitted to the county board in an outer return envelope to ensure the privacy of the accompanying photo ID documentation. As a result, there may be certain instances where the return of the absentee ballot requires the ballot to be spoiled and the absentee package reissued to the voter.

Deficiencies that Require the Ballot to Be Spoiled (Civilian)

- Ballot is inside the ballot envelope, which is not sealed or which appears to have been opened and re-sealed, and the ballot envelope is received in a return envelope which is not sealed or which appears to have been opened and re-sealed.[9]
- Ballot is inside the executed ballot envelope, which is not sealed, and someone other than the voter hand delivers the ballot envelope to an early voting site or the county board office, and the return envelope is also unsealed or there is no return envelope. Even if the person is authorized to return this ballot, they cannot seal the ballot without the voter being present. The voter must direct that the ballot be sealed "in the voter's presence."[10]
- The return or ballot envelope indicates the voter is requesting a replacement ballot.

If a county board identifies one of these deficiencies, county board staff shall spoil the returned ballot and reissue a ballot, as long as the new ballot is issued before Election Day, along with a notice explaining the county board office's action, in accordance with this numbered memo.

Anomalies that Are Not Deficiencies (Civilian)[11]

- Ballot is inside the executed ballot envelope, which is not sealed or which appears to have been opened and re-sealed, but the ballot envelope is received in a sealed return

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[9] Ballots must be "sealed in the container-return envelope." G.S. § 163-230.1(d); see also G.S. § 163-231(a)(3).

[10] G.S. § 163-231(a)(3).

[11] With all ballot mistakes or anomalies, elections officials must be guided by the clear instruction in the federal Civil Rights Act of 1964 to not allow an error on ballot materials to lead to a ballot's rejection when that error is immaterial to determining a voter's eligibility to cast the ballot: "No person acting under color of law shall . . . deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if

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envelope. Immediately upon opening the return envelope and noticing this situation, staff should re-seal the return envelope with a notation of "sealed in return envelope." The county board should open the return envelope and address that ballot at its next absentee meeting.[12]

- Ballot is not inside the ballot envelope or has been placed inside the clear sleeve on the ballot envelope used for including the photo ID documentation, but the return envelope is sealed. Immediately upon opening the return envelope and noticing this situation, staff should re-seal the return envelope with a notation of "sealed in return envelope." The county board should open the return envelope and address that ballot at its next absentee meeting.[13]
- Ballot is received in a return envelope that is not sealed or appears to have been opened and re-sealed, but the ballot is inside the executed ballot envelope that is sealed. This situation does not require any special action to document the anomaly before presenting the ballot envelope to the county board.
- Ballot is inside the executed ballot envelope, which is not sealed, and the voter hand delivers the ballot envelope to an early voting site or the county board office. Before taking receipt of the envelope, staff should request that the voter first seal the ballot envelope.

In all of the above situations, the ballot was received in a sealed envelope and is therefore not deficient.[14]

A person hand-delivering the absentee ballot, whether it is the voter or someone authorized to return the voter's ballot, is not required to deliver the ballot envelope inside the return envelope for the absentee application to be approved. The return envelope is designed to protect the voter's confidential identifying information during mail transit. If the person hand-delivers only the sealed ballot envelope, staff should follow their usual storage practices and keep the ballot

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such error or omission is not material in determining whether such individual is qualified under State law to vote in such election." 52 U.S.C. § 10101(a)(2)(B).

[12] In this situation, for the purposes of staff's initial review of photo ID documentation pursuant to 08 NCAC 17 .0109(b), the ballot application is not "received" until the return envelope is opened at the absentee meeting.

[13] In this situation, for the purposes of staff's initial review of photo ID documentation pursuant to 08 NCAC 17 .0109(b), the ballot application is not "received" until the return envelope is opened at the absentee meeting.

[14] G.S. §§ 163-230.1(d), 163-231(a)(3).

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envelope in a secure location, which may include placing the ballot envelope in a new return envelope for storage purposes.

2. Ballot Application Deficiencies

The ballot application is the form on the ballot envelope that is completed by the voter, their witnesses or notary, and assistant (if applicable).[15] Ballot application deficiencies fall into two main categories: those that can be cured with a cure certification (*i.e.*, an attestation) by the voter, and those that cannot be cured. If a deficiency cannot be cured, the ballot must be spoiled and a new ballot must be issued, as long as the new ballot is issued before Election Day. See the Voter Notification Section below.

Deficiencies Curable with Cure Certification (Civilian and UOCAVA)

The following deficiencies can be cured by sending the voter a cure certification:

- Voter did not sign the Voter Certification.[16]
- Voter signed in the wrong place.[17]

The cure certification process applies to civilian and UOCAVA voters.

Deficiencies that Require the Ballot to Be Spoiled (Civilian)

The following deficiencies cannot be cured by certification, because the missing information comes from someone other than the voter:

- The name of the witness or assistant is not printed,[18] unless the witness's or assistant's signature is legible such that the name can be determined, in which case the ballot envelope is not deficient and the ballot shall not be spoiled for this reason.[19]
- A witness or assistant did not print their address.[20]

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[15] G.S. § 163-229(b).

[16] G.S. § 163-230.1(e)(1).

[17] G.S. § 163-230.1(e)(2).

[18] G.S. § 163-230.1(e) provides that "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." However, if the printed name is readable and on the correct line, even if it is written in cursive script, for example, it does not invalidate the ballot envelope.

[19] G.S. § 163-231(a)(5) ("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.").

[20] Failure to list a witness's ZIP code does not invalidate the ballot envelope. G.S. § 163-231(a)(5). A witness's or assistant's address does not have to be a residential address; it may be a post office box or

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- A witness or assistant did not sign.
- A witness or assistant signed on the wrong line. Where the witness or assistant signed in place of the voter's signature, that deficiency cannot be cured and requires the ballot to be spoiled. However, if all required information from the witness or assistant is present but not on the designated line for each (for example, the witness or assistant printed their name on the address line, printed their address on the name line, and signed), the ballot envelope is not deficient and the ballot shall not be spoiled for this reason.

Additionally, when a voter's witness is a notary, two errors in the notarial certificate will result in the ballot being spoiled: 1) the notary's signature is missing, or 2) the notarial seal is missing altogether or contains missing information. As discussed in Numbered Memo 2021-07, other technical errors with the notarial certificate will not affect the sufficiency, validity, or enforceability of the notarial certificate itself or the underlying document and are not considered deficiencies.

3. Photo ID Documentation Deficiencies

When a voter includes photo ID documentation with their absentee ballot envelope, there may be deficiencies in that documentation that require a cure notice to be sent to the voter. All deficiencies with a voter's photo ID documentation are curable, because the cure documentation comes from the voter. [21]

Photocopy of Photo ID Deficiencies

Deficiencies in a photocopy of a voter's photo ID include:

- The ID is not a type of ID that is acceptable for voting purposes under 08 NCAC 17 .0101(a)(1).
- The ID does not meet expiration requirements, if applicable.

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other mailing address. Additionally, if the address is missing a city or state, but the county board of elections can determine the correct address, the failure to list that information does not invalidate the ballot envelope. For example, if a witness lists "Raleigh 27603," you can determine the state is NC, or if a witness lists "333 North Main Street, 27701," you can determine that the city/state is Durham, NC. If both the city and ZIP code are missing, staff will need to determine whether the correct address can be identified. If the correct address cannot be identified, the envelope shall be considered deficient and the ballot spoiled and a new ballot reissued. See Numbered Memo 2020-29 for additional information regarding address issues.

[21] G.S. § 163-230.1(e) ("Curable deficiencies are deficiencies that can be cured with supplemental documentation or attestation provided by the voter[.]").

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- The photocopy is not readable, which means that the name on the ID cannot be read, the photograph on the ID does not depict a person (e.g., it only depicts a shadow or outline of a person), or both.
- The name on the ID is not the same as or substantially equivalent to the voter's name in their voter record.

Any difference between the voter's address on their ID and the address in their registration record is not a deficiency.

Photo ID Exception Form Deficiencies

Deficiencies in a Photo ID Exception Form include:

- The voter did not print their name on the Form, unless the voter's signature on the Form appears to be made by the voter, meaning the signature on the Form appears to be the name of the voter and not some other person. The county board shall presume that the voter's signature is that of the voter, even if the signature is illegible, unless there is clear evidence to rebut this presumption.
- The voter did not check a box for at least one claimed exception from the photo ID requirements, or if the exception is a reasonable impediment, the voter failed to identify their specific reasonable impediment (including by writing their reason if they chose "Other"[22]).
- If the reasonable impediment chosen is that the voter is unable to make a photocopy of their ID to include with their ballot, the voter did not include their North Carolina driver's license number, DMV ID number, or last 4 digits of their social security number.[23] However, if the voter has additionally checked a box indicating another reasonable impediment that prevents them from including a copy of a photo ID, the Form cannot be found deficient for the missing identification number alone.

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[22] If the voter writes a reason for "Other" but does not check the "Other" box, the Form is not deficient for that reason alone. Similarly, if the voter writes their North Carolina driver's license number, DMV ID number, or last 4 digits of their social security number but does not check the "I am unable to include a photocopy of my photo ID with this absentee ballot envelope" box, the Form is not deficient for that reason alone provided that the voter did check the first box indicating that they suffer from a reasonable impediment that prevents them from including a copy of photo ID.

[23] G.S. § 163-230.1(g)(2).

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- The voter did not sign the Form.[24]

Additionally, a voter's failure to include *any* photo ID documentation—either a photocopy of their ID or an Exception Form—is a deficiency that may be cured.[25]

A voter may respond to a notification that their ballot is missing photo ID documentation by stating that it is in the ballot envelope. If this occurs, and staff have not otherwise identified any return or ballot application deficiencies that would require the ballot to be spoiled and reissued, staff must defer the review of the photo ID documentation to the next absentee board meeting, when the county board can review the application and, if approved, open the ballot envelope and confirm photo ID compliance.[26] If the board identifies a photo ID deficiency at that point, staff should be instructed to notify the voter of the opportunity to cure as explained further in this memo.

County Board Review of Photo ID Exception Forms for Falsity

Although a county board's finding that a Photo ID Exception Form is false will result in the absentee ballot being rejected, this is not a "deficiency" in the same sense as the ones listed above—where staff will take action to notify the voter to address a deficiency. Staff deficiency review of Photo ID Exception Forms is for completeness—not falsity.[27] A board's finding of falsity can only come after the board gives the voter notice and an opportunity to be heard on the matter. See Numbered Memo 2020-25, p 8 ("Review of Photo ID Exception Forms"). County boards shall follow the applicable administrative code provisions[28] and Numbered Memo 2023-03, pp. 11–13, when considering whether a Photo ID Exception Form is false.

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[24] If a voter is unable to sign the Photo ID Exception Form due to a disability, the person of the voter's choice who is assisting them can sign the Form on the voter's behalf and must complete the assistant certification on the envelope. See Numbered Memo 2022-11, p. 3 (Court Order Regarding Assistance for Absentee Voters with Disabilities).

[25] G.S. § 163-230.1(e)(3).

[26] This does not prevent the voter from also choosing to send photo ID cure documentation to the county board while its review of the application is pending, and staff may encourage the voter to do so when time is of the essence.

[27] Of course, staff may flag an Exception Form for the board's review at a meeting if staff has specific information suggesting the form is false.

[28] See 08 NCAC 17 .0109(c).

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4. Deficiencies that are first discovered at a board meeting

Some deficiencies will not be apparent until a board meeting and, when discovered, will require board action at that time. These deficiencies can include the following:

- There is no ballot in the ballot envelope. In this situation, although there is no ballot to spoil, the entire absentee package must be reissued to the voter so that the statutory requirements for voting and transmitting an absentee ballot can be met.
- There is more than one ballot in the ballot envelope. In this situation, both ballots will need to be spoiled and new absentee ballot packages issued to both voters, because it will not be possible to determine which of the two ballots were voted by the voter who completed the application.
- Two voters' ballots and ballot envelopes were switched, based on the county board's review of the CIV numbers (ballot identifying numbers). In this situation, the county board will need to consider the circumstances of the ballots and ballot envelopes together to decide whether to approve the ballots. **If the two voters had their absentee ballots sent to the same address and there are no issues with the applications, then the county board should not spoil the ballots**, because under those circumstances, each voter has properly attested to voting the ballot enclosed with their application. The ballot identifying numbers associated with the enclosed ballots are used for official tracking purposes, and voters in the same household should not have their ballots rejected for failing to ensure these numbers match between their ballots and applications, which is neither a requirement for approval of the ballot under state law nor material to determining a voter's eligibility to cast the ballot under federal law.[29] The board staff should make a note of the ballot number that now corresponds with the voter in the SEIMS record.

If the county board disapproves a ballot envelope by majority vote in a board meeting, it shall proceed according to the notification process in G.S. § 163-230.1(e) and as outlined below. If the county board disapproves a ballot for a reason based on the voter's photo ID documentation, it shall proceed according to the notification process in 08 NCAC 17 .0109 and as outlined below.

Voter Notification

Sending an Absentee Ballot Deficiency Notification or New Ballot

If there are any **return deficiencies** or **ballot application deficiencies**, the county board of elections shall mail a notice to the voter within one business day of identifying the deficiency to inform the voter there is an issue with their absentee ballot, enclosing an absentee ballot

[29] See 52 U.S.C. § 10101(a)(2)(B).

AMERICAN OVERSIGHT

deficiency notification, which contains the cure certification, or a new ballot.[30] The written notice shall also include information on how to vote in-person during the early voting period and on Election Day. When the voter is issued a new ballot, they must include new photo ID documentation with their ballot when transmitting it back to the county board, because each absentee ballot envelope "returned to the county board . . . shall be accompanied by" a photocopy of the voter's photo ID or Photo ID Exception Form.[31]

The written notice shall be sent to the address to which the voter requested their ballot be sent. The outside of the envelope containing the new ballot or absentee ballot deficiency notification should be in an official envelope so that it indicates that it contains official election mail, unless it is not possible due to the use of a specialized USPS or commercial carrier service envelope.

If the deficiency can be cured and the voter provided their phone number or email address on the absentee ballot request form, then the county board shall additionally notify the voter of the curable deficiency by phone or email.[32] Like with the mail notice, this shall be done within one business day of identifying the deficiency, and the same information shall be provided as in the mail notice. If a voter did not provide their phone number or email address on the absentee ballot request form, then staff shall additionally notify the voter by phone or email if the voter has a phone number or email address contained in the voter's registration record. If both phone and email are available, notify the voter by email. If notifying the voter by email, the county board shall include the absentee ballot deficiency notification document that is also mailed to the voter. If the county board sends the notification by email and by mail, the county board should encourage the voter to only return *one* of the notifications with the certification.

If the deficiency cannot be cured, and the voter has an email address on file, the county board shall notify the voter by email that a new ballot has been issued by mail to the voter. If the voter did not provide an email address but did provide a phone number, the county board shall contact the voter by phone to inform the voter that the county board has issued a new ballot by mail.

A county board shall not reissue a ballot on or after Election Day. If there is a curable deficiency, the county board shall contact voters up until the day before county canvass.

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[30] When there is a curable deficiency, G.S. § 163-230.1(e) specifically provides that the county board must "promptly notify the voter of the deficiency and the manner in which the voter may cure the deficiency." If a ballot must be spoiled and reissued, the same need to act promptly exists.

[31] G.S. § 163-230.1(f1).

[32] G.S. § 163-230.1(e).

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If there is a **photo ID documentation deficiency**, the county board must mail notice to the voter within one business day of identifying the deficiency to inform the voter there is an issue with their absentee ballot, enclosing an absentee ballot deficiency notification that identifies the specific deficiencies with the photo ID documentation.[33] The notification must also inform 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 the photo ID cure documentation to the county board.[34] If the voter provided their phone number or email address on the absentee ballot request form, then the county board shall additionally notify the voter of the photo ID documentation deficiency by phone or email using the phone number or email address listed on the request form.[35] Like with the mail notice, this shall be done within one business day of identifying the deficiency, and the same information shall be provided as in the mail notice. If a voter did not provide their phone number or email address on the absentee ballot request form, then staff shall additionally notify the voter by phone or email, using any phone number or email address contained in the voter's registration record.[36] If both phone and email are available, notify the voter by email. If notifying the voter by email, the county board shall include the absentee ballot deficiency notification document that is also mailed to the voter.

The photo ID cure documentation can be either a new photocopy of the voter's photo ID or a new Absentee Photo ID Exception Form. A voter who submitted a deficient photocopy of their photo ID may also submit a Photo ID Exception Form for the first time. A voter may choose to do so, for example, because in this instance they may no longer be able to make a photocopy of their ID to include with their ballot. Likewise, a voter who submitted a deficient Photo ID Exception Form may also submit a photocopy of a photo ID for the first time. A voter may choose to do so, for example, because they may have obtained a photo ID, or the means to make a photocopy, since the time at which they transmitted their absentee ballot to the county board. Accordingly, **when sending an absentee ballot deficiency notification for a photo ID documentation deficiency, the county board must include a blank Absentee Photo ID Exception Form**.

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[33] As explained above, all photo ID documentation deficiencies are curable, and when there is a curable deficiency, G.S. § 163-230.1(e) specifically provides that the county board must "promptly notify the voter of the deficiency and the manner in which the voter may cure the deficiency." See also 08 NCAC 17 .0109(b).

[34] 08 NCAC 17 .0109(b).

[35] G.S. § 163-230.1(e).

[36] 08 NCAC 17 .0109(b).

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Receipt of a Cure Certification or Photo ID Cure Documentation

The cure certification or photo ID cure documentation must be received by the county board of elections by 5 p.m. the day before county canvass.[37]

The cure documents may only be returned by the voter, the voter's near relative or legal guardian, a multipartisan assistance team (MAT), or a person of the voter's choice if the voter needs assistance due to the voter's disability.[38] A cure document returned by any other person is invalid.

The cure documents may be submitted to the county board office by email, by mail or commercial carrier, in person, or by fax.[39] When submitting cure documents by email, the voter may attach an image of their cure documentation (*e.g.*, emailing a photo of their photo ID or executed Exception Form).The documents must be *received* by the deadline (not postmarked by the deadline).

If a voter appears in person at the county board office to cure their ballot, they may also be given, and can complete, a cure certification. Similarly, a voter may appear in person and

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[37] G.S. § 163-230.1(e) ("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.").

[38] Voters who require assistance in returning their ballot due to the voter's disability, can direct the person of their choice to return the ballot according to the voter's instruction (*i.e.*, by mail or in person to the county board). See Numbered Memo 2022-11.

[39] Although G.S. 163-230.1(e) now provides that photo ID cure documentation "may be transmitted via e-mail to the county board of elections," this does not preclude the use of email to transmit a cure certification for ballot application deficiencies, because the statute is otherwise silent on the manner of transmittal and form of receipt of cure documentation for those deficiencies, and the statute's instruction to notify a voter of a curable deficiency by email indicates transmission of cure documentation by email is permissible.

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complete a Photo ID Exception Form to accompany the ballot envelope,[40] or request that staff make a photocopy of the voter's photo ID to accompany the ballot envelope.[41]

It is not permissible for a cure certification to be submitted through a portal or form created or maintained by a third party. A cure certification may not be submitted simultaneously with the ballot.

Any person who is permitted to assist a voter with their ballot may assist a voter in filling out the cure certification, making a photocopy of the voter's photo ID, or filling out the Photo ID Exception Form, but the certification and Photo ID Exception Form must be signed by the voter.[42] A wet ink signature is not required for cure documents, but the signature used must be unique to the individual. A typed signature is not acceptable, even if it is cursive or italics such as is commonly seen with an electronic signature program, such as DocuSign.

County Board Review of Cure Documentation

At each absentee board meeting, the county board of elections may consider deficient ballot return envelopes for which cure documentation has been returned, whether a cure certification or photo ID documentation. The county board shall consider together the executed absentee ballot envelope and the cure documentation. If the cure documentation was timely received, includes the required documentation or attestations, and was returned by an authorized person, the county board of elections shall approve the absentee ballot. See Numbered Memo 2020-25.

Data Entry in SEIMS

County board staff shall follow the instructions provided by the State Board in the most recent guide for the proper entry of data in SEIMS when processing absentee ballots and addressing deficiencies. Data shall be promptly entered as ballots are processed. This will ensure that the data maintained by the county boards and State Board follows uniform conventions and is up to date. This will help ensure the processing of absentee ballots is transparent to the public.

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[40] The option to complete a Photo ID Exception Form in the county board office is only available for voters who are voting absentee-by-mail. Voters who vote in person at an early voting site or on Election Day must complete the Photo ID Exception Form at the voting site. See Numbered Memo 2023-03.

[41] See Numbered Memo 2020-23 regarding staff making photocopies of photo IDs for inclusion with an absentee ballot envelope.

[42] If a voter is physically unable to sign or make their mark on the Photo ID Exception Form due to disability, any person of that voter's choice can write in the signature line, "Disabled - cannot sign." See Numbered Memo 2022-11.

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Lassiter, Daniel

From: Bowens, Derek
Sent: Friday, January 19, 2024 11:41 AM
To: Lassiter, Daniel; Resley, Warren
Subject: FW: REVISED Numbered Memo 2021-03 - Absentee Envelope Deficiencies
Attachments: Numbered Memo 2021-03_Absentee Deficiencies (updated 1.2024) .pdf; CHANGES - Numbered Memo 2021-03_Absentee Deficiencies (updated 1.2024).pdf

Please print the changes version so that we can discuss.

Derek L. Bowens
Director of Elections

DURHAM COUNTY
Board of Elections

Durham County Board of Elections
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Mailing address: PO Box 868, Durham, NC 27702
Phone: (919) 560-7072
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From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Friday, January 19, 2024 11:08 AM
To: SBOE_Grp - Legal <Legal@ncsbe.gov>
Subject: REVISED Numbered Memo 2021-03 - Absentee Envelope Deficiencies

Directors (via BCC):

Please find attached and at this link a revised numbered memo issued by Executive Director Karen Brinson Bell, concerning absentee envelope deficiencies and the procedures for addressing those deficiencies (i.e., "curing," spoiling and reissuing, etc.).

This memo has been updated to reflect the changes in the law from Session Law 2023-140 (SB 747). The law codified in statute many of the processes we already had in place for addressing absentee envelope deficiencies. But the law made some important revisions, as reflected in this memo. The updated memo also addresses a number of questions that have been raised by county boards and members of the public since the last update of the memo. For your reference, I've also included a PDF showing the changes in this memo from the prior version.

Please read this memo carefully, since absentee voting is officially starting today, and you and your staff will need to address deficiencies in returned absentee ballots in accordance with this revised guidance on the requirements of the law.

With best regards,

Paul Cox
General Counsel

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NORTH CAROLINA STATE BOARD OF ELECTIONS
RALEIGH, NC 27611
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NORTH CAROLINA
STATE BOARD OF ELECTIONS

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Numbered Memo 2021-03

TO: County Boards of Elections

FROM: Karen Brinson Bell, Executive Director[1]

RE: Absentee Container-Return Envelope Deficiencies

DATE: June 11, 2021 (updated September 25, 2023; January 19, 2024)[2]

The State Board is required to provide a cure process for voters whose absentee ballot envelopes contain certain deficiencies.[3] In general, the cure process for absentee-by-mail deficiencies is guided by G.S. § 163-230.1(e), as amended by Session Law 2023-140 (SB 747), and this numbered memo. ~~A~~ The cure process for photo ID documentation containing deficiencies, when that documentation is submitted with an absentee ballot, is provided through G.S. § 163-230.1(e), as amended by Session Law 2023-140, ~~and~~ an administrative rule adopted by the State Board[4], and is guided by this numbered memo. ~~The cure process for all other absentee-by-mail deficiencies is guided by this numbered memo.~~ County boards of elections must ensure that the votes of all eligible voters are counted using the same standards, regardless of the county in which the voter resides.

The ballot container-return envelope (ballot envelope) and the accompanying photocopy of the voter's photo ID or completed Photo ID Exception Form (photo ID documentation) are transmitted to the county board in an outer return envelope. This numbered memo directs the

[1] This memo is issued under the authority delegated by the State Board to the executive director pursuant to G.S. § 163-22(p).

[2] This numbered memo replaces Numbered Memo 2020-19, which was first issued on August 21, 2020 and subsequently revised and reissued on September 22, 2020, and October 17, 2020. This numbered memo was updated on September 25, 2023, and again on January 19, 2024, to include processes related to photo ID requirements for absentee-by-mail voting.

[3] See G.S. § 163-230.1(e), revised by N.C. Session Law 2023-140 § 35, to provide a cure process for deficiencies associated with returned absentee-by-mail ballots. *See also* *Democracy NC v. State Board of Elections*, 476 F.Supp.3d 158 (M.D.N.C. Aug. 4, 2020) (explaining that due process requires such a cure opportunity).

[4] 08 NCAC 17 .0109(b).

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procedure county boards must use to address deficiencies in the envelopes and photo ID documentation, to ensure that a voter is provided every opportunity to correct certain deficiencies, while also recognizing that processes must be manageable for county boards to timely complete required tasks.

No Signature Verification[5]

Verification of the voter's identity is completed through the witness requirement. The voter's signature on the envelope shall not be compared with the voter's signature in their registration record, on their request form, or ~~the voter's signature~~ on their photocopy of photo ID or Photo ID Exception Form submitted with their ballot, because this is not a requirement for the approval of an absentee ballot under North Carolina law.[6] County boards shall accept the voter's signature on the ballot envelope if it appears to be made by the voter, meaning the signature on the envelope appears to be the name of the voter and not some other person. Absent clear evidence to the contrary, the county board shall presume that the voter's signature is that of the voter, even if the signature is illegible. A voter may sign their signature or make their mark.

Types of Deficiencies

Trained county board staff shall review each return envelope, executed ballot envelope, and photo ID documentation the office receives to determine if there are any deficiencies. County board staff shall, to the extent possible, regularly review these absentee ballot materials on each business day, to ensure that voters have every opportunity to timely correct deficiencies.[7] Review for deficiencies occurs *after* intake. The initial review is conducted by staff to expedite processing of the envelopes in advance of a county board absentee meeting.[8]

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[5] Session Law 2023-140 § 48 provides for a signature verification pilot program to be conducted during the 2024 primary election. As stated in Section 48.(c), however, "[i]n implementing the pilot program established in this section, no executed mail-in absentee ballot shall be rejected by the county board of elections for failing any signature verification. All executed mail-in absentee ballots that are otherwise eligible to be counted in accordance with Chapter 163 of the General Statutes shall be counted."

[6] See *In re: Request for Declaratory Ruling on Signature Matching for Absentee Ballot Requests and Ballot Envelopes*, N.C. State Bd. of Elections (July 22, 2022). See also Numbered Memo 2020-15, which explains that signature comparison is not permissible for absentee request forms.

[7] Specifically for ballot application deficiencies and photo ID documentation deficiencies, discussed below, G.S. § 163-230.1(e) requires that the county board "promptly notify the voter of the deficiency and the manner in which the voter may cure the deficiency."

[8] See Numbered Memo 2020-25 regarding preparatory steps for absentee meetings.

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There are three categories of deficiencies: 1) return deficiencies, 2) ballot application deficiencies, and 3) photo ID documentation deficiencies.

1. Return Deficiencies

Previously, a voter transmitted their absentee-by-mail ballot to the county board in a single ballot container-return envelope. However, with the implementation of photo ID requirements starting with the 2023 municipal elections, the ballot envelope is now transmitted to the county board in an outer return envelope to ensure the privacy of the accompanying photo ID documentation. As a result, there may be certain instances where the return of the absentee ballot requires the ballot to be spoiled and the absentee package reissued to the voter.

Deficiencies that Require the Ballot to Be Spoiled (Civilian)

- Ballot is inside the ballot envelope, which is not sealed or which appears to have been opened and re-sealed, and the ballot envelope is received in a return envelope which is not sealed or which appears to have been opened and re-sealed.[9]
- Ballot is inside the executed ballot envelope, which is not sealed, and someone other than the voter hand delivers the ballot envelope to an early voting site or the county board office, and the return envelope is also unsealed or there is no return envelope. Even if the person is authorized to return this ballot, they cannot seal the ballot without the voter being present. The voter must direct that the ballot be sealed "in the voter's presence."[10]
- The return or ballot envelope indicates the voter is requesting a replacement ballot.

If a county board identifies one of these deficiencies, county board staff shall spoil the returned ballot and reissue a ballot, as long as the new ballot is issued before Election Day, along with a notice explaining the county board office's action, in accordance with this numbered memo.

Anomalies that Are Not Deficiencies (Civilian)[11]

- Ballot is inside the executed ballot envelope, which is not sealed or which appears to have been opened and re-sealed, but the ballot envelope is received in a sealed return

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[9] Ballots must be "sealed in the container-return envelope." G.S. § 163-230.1(d); see also G.S. § 163-231(a)(3).

[10] G.S. § 163-231(a)(3).

[11] With all ballot mistakes or anomalies, elections officials must be guided by the clear instruction in the federal Civil Rights Act of 1964 to not allow an error on ballot materials to lead to a ballot's rejection when that error is immaterial to determining a voter's eligibility to cast the ballot: "No person acting under color of law shall . . . deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election." 52 U.S.C. § 10101(a)(2)(B).

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envelope. Immediately upon opening the return envelope and noticing this situation, staff should re-seal the return envelope with a notation of "sealed in return envelope." The county board should open the return envelope and address that ballot at its next absentee meeting.[12]

- Ballot is not inside the ballot envelope or has been placed inside the clear sleeve on the ballot envelope used for including the photo ID documentation, but the return envelope is sealed. Immediately upon opening the return envelope and noticing this situation, staff should re-seal the return envelope with a notation of "sealed in return envelope." The county board should open the return envelope and address that ballot at its next absentee meeting.[13]
- Ballot is received in a return envelope that is not sealed or appears to have been opened and re-sealed, but the ballot is inside the executed ballot envelope that is sealed. This situation does not require any special action to document the anomaly before presenting the ballot envelope to the county board.
- Ballot is inside the executed ballot envelope, which is not sealed, and the voter hand delivers the ballot envelope to an early voting site or the county board office. Before taking receipt of the envelope, staff should request that the voter first seal the ballot envelope.

In all of the above situations, the ballot was received in a sealed envelope and is therefore not deficient.[14]

A person hand-delivering the absentee ballot, whether it is the voter or someone authorized to return the voter's ballot, is not required to deliver the ballot envelope inside the return envelope for the absentee application to be approved. The return envelope is designed to protect the voter's confidential identifying information during mail transit. If the person hand-delivers only the sealed ballot envelope, staff should follow their usual storage practices and keep the ballot envelope in a secure location, which may include placing the ballot envelope in a new return envelope for storage purposes.

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[12] In this situation, for the purposes of staff's initial review of photo ID documentation pursuant to 08 NCAC 17 .0109(b), the ballot application is not "received" until the return envelope is opened at the absentee meeting.

[13] In this situation, for the purposes of staff's initial review of photo ID documentation pursuant to 08 NCAC 17 .0109(b), the ballot application is not "received" until the return envelope is opened at the absentee meeting.

[14] G.S. §§ 163-230.1(d), 163-231(a)(3).

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2. Ballot Application Deficiencies

The ballot application is the form on the ballot envelope that is completed by the voter, their witnesses or notary, and assistant (if applicable).[15] Ballot application deficiencies fall into two main categories: those that can be cured with a cure certification (*i.e.*, an attestation) by the voter, and those that cannot be cured. If a deficiency cannot be cured, the ballot must be spoiled and a new ballot must be issued, as long as the new ballot is issued before Election Day. See the Voter Notification Section below.

Deficiencies Curable with Cure Certification (Civilian and UOCAVA)

The following deficiencies can be cured by sending the voter a cure certification:

- Voter did not sign the Voter Certification.[16]
- Voter signed in the wrong place.[17]

The cure certification process applies to civilian and UOCAVA voters.

Deficiencies that Require the Ballot to Be Spoiled (Civilian)

The following deficiencies cannot be cured by certification, because the missing information comes from someone other than the voter:

- The name of the witness or assistant is not printed,[18] unless the witness's or assistant's signature is legible such that the name can be determined, in which case the ballot envelope is not deficient and the ballot shall not be spoiled for this reason.[19]
- A witness or assistant did not print their address.[20]

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[15] G.S. § 163-229(b).

[16] G.S. § 163-230.1(e)(1).

[17] G.S. § 163-230.1(e)(2).

[18] G.S. § 163-230.1(e) provides that "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." However, if~~If~~ the printed name is readable and on the correct line, even if it is written in cursive script, for example, it does not invalidate the ballot envelope.

[19] G.S. § 163-231(a)(5) ("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.").

[20] Failure to list a witness's ZIP code does not invalidate the ballot envelope. G.S. § 163-231(a)(5). A witness's or assistant's address does not have to be a residential address; it may be a post office box or other mailing address. Additionally, if the address is missing a city or state, but the county board of elections can determine the correct address, the failure to list that information does not invalidate the ballot envelope. For example, if a witness lists "Raleigh 27603," you can determine the state is NC, or if a

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- A witness or assistant did not sign.
- A witness or assistant signed on the wrong line. Where the witness or assistant signed in place of the voter's signature, that deficiency cannot be cured and requires the ballot to be spoiled. ~~Otherwise, h~~However, if all required information from the witness or assistant is present but not on the designated line for each (for example, the witness or assistant printed their name on the address line, printed their address on the name line, and signed), the ballot envelope is not deficient and the ballot shall not be spoiled for this reason.

Additionally, when a voter's witness is a notary, two errors in the notarial certificate ~~cannot be cured by certification and~~ will result in the ballot being spoiled: 1) the notary's signature is missing, or 2) the notarial seal is missing altogether or contains missing information. As discussed in Numbered Memo 2021-07, other technical errors with the notarial certificate will not affect the sufficiency, validity, or enforceability of the notarial certificate itself or the underlying document and are not considered deficiencies.

3. Photo ID Documentation Deficiencies

When a voter includes photo ID documentation with their absentee ballot envelope, there may be deficiencies in that documentation that require a cure notice to be sent to the voter. All deficiencies with a voter's photo ID documentation are curable, because the cure documentation comes from the voter.[21]

Photocopy of Photo ID Deficiencies

Deficiencies in a photocopy of a voter's photo ID include:

- The ID is not a type of ID that is acceptable for voting purposes under 08 NCAC 17 .0101(a)(1).
- The ID does not meet expiration requirements, if applicable.
- The photocopy is not readable, which means that the name on the ID cannot be read, the photograph on the ID does not depict a person (e.g., it only depicts a shadow or outline of a person), or both.

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witness lists "333 North Main Street, 27701," you can determine that the city/state is Durham, NC. If both the city and ZIP code are missing, staff will need to determine whether the correct address can be identified. If the correct address cannot be identified, the envelope shall be considered deficient and the ballot spoiled and a new ballot reissued. See Numbered Memo 2020-29 for additional information regarding address issues.

[21] G.S. § 163-230.1(e) ("Curable deficiencies are deficiencies that can be cured with supplemental documentation or attestation provided by the voter[.]").

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- The name on the ID is not the same as or substantially equivalent to the voter's name in their voter record.

Any difference between the voter's address on their ID and the address in their registration record is not a deficiency.

Photo ID Exception Form Deficiencies

Deficiencies in a Photo ID Exception Form include:

- The voter did not print their name on the Form, unless the voter's signature on the Form appears to be made by the voter, meaning the signature on the Form appears to be the name of the voter and not some other person. The county board shall presume that the voter's signature is that of the voter, even if the signature is illegible, unless there is clear evidence to rebut this presumption.
- The voter did not check a box for at least one claimed exception from the photo ID requirements, or if the exception is a reasonable impediment, the voter failed to identify their specific reasonable impediment (including by writing their reason if they chose "Other"[22]).
- If the reasonable impediment chosen is that the voter is unable to make a photocopy of their ID to include with their ballot, the voter did not include their North Carolina driver's license number, DMV ID number, or last 4 digits of their social security number.[23] However, if the voter has additionally checked a box indicating another reasonable impediment that prevents them from including a copy of a photo ID, the Form cannot be found deficient for the missing identification number alone.
- The voter did not sign the Form.[24]

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[22] If the voter writes a reason for "Other" but does not check the "Other" box, the Form is not deficient for that reason alone. Similarly, if the voter writes their North Carolina driver's license number, DMV ID number, or last 4 digits of their social security number but does not check the "I am unable to include a photocopy of my photo ID with this absentee ballot envelope" box, the Form is not deficient for that reason alone provided that the voter did check the first box indicating that they suffer from a reasonable impediment that prevents them from including a copy of photo ID.

[23] G.S. § 163-230.1(g)(2).

[24] If a voter is unable to sign the Photo ID Exception Form due to a disability, the person of the voter's choice who is assisting them can sign the Form on the voter's behalf and must complete the assistant certification on the envelope. See Numbered Memo 2022-11, p. 3 (Court Order Regarding Assistance for Absentee Voters with Disabilities).

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Additionally, a voter's failure to include *any* photo ID documentation—either a photocopy of their ID or an Exception Form—is a deficiency that may be cured.[25]

A voter may respond to a notification that their ballot is missing photo ID documentation by stating that it is in the ballot envelope. If this occurs, and staff have not otherwise identified any return or ballot application deficiencies that would require the ballot to be spoiled and reissued, staff must defer the review of the photo ID documentation to the next absentee board meeting, when the county board can review the application and, if approved, open the ballot envelope and confirm photo ID compliance.[26] If the board identifies a photo ID deficiency at that point, staff should be instructed to notify the voter of the opportunity to cure as explained further in this memo.

County Board Review of Photo ID Exception Forms for Falsity

Although a county board's finding that a Photo ID Exception Form is false will result in the absentee ballot being rejected, this is not a "deficiency" in the same sense as the ones listed above—where staff will take action to notify the voter to address a deficiency. Staff deficiency review of Photo ID Exception Forms is for completeness—not falsity.[27] A board's finding of falsity can only come after the board ~~considers other information and~~ gives the voter notice and an opportunity to be heard on the matter. See Numbered Memo 2020-25, p 8 ("Review of Photo ID Exception Forms"). County boards shall follow the applicable administrative code provisions[28] and Numbered Memo 2023-03, pp. 11–13, when considering whether a Photo ID Exception Form is false.

4. Deficiencies that ~~require board action~~are first discovered at a board meeting

Some deficiencies ~~cannot be resolved by staff and require action by the county board. These include situations where the deficiency is~~will not be ~~first noticed at a board meeting or if it becomes~~ apparent ~~during~~ until a board meeting and, when discovered, will require board action at that time. These deficiencies can include the following:

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[25] G.S. § 163-230.1(e)(3).

[26] This does not prevent the voter from also choosing to send photo ID cure documentation to the county board while its review of the application is pending, and staff may encourage the voter to do so when time is of the essence.

[27] Of course, staff may flag an Exception Form for the board's review at a meeting if staff has specific information suggesting the form is false.

[28] See 08 NCAC 17 .0109(c).

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- There is ~~that~~ no ballot ~~is~~ in the ballot envelope. In this situation, although there is no ballot to spoil, the entire absentee package must be reissued to the voter so that the statutory requirements for voting and transmitting an absentee ballot can be met.
- There is more than one ballot ~~is~~ in the ballot envelope. In this situation, both ballots will need to be spoiled and new absentee ballot packages issued to both voters, because it will not be possible to determine which of the two ballots were voted by the voter who completed the application.
- T~~, or t~~wo voters' ballots and ballot envelopes were switched, based on the county board's review of the CIV numbers (ballot identifying numbers). In this situation, the county board will need to consider the circumstances of the ballots and ballot envelopes together to decide whether to approve the ballots. **If the two voters had their absentee ballots sent to the same address and there are no issues with the applications, then the county board should not spoil the ballots**, because under those circumstances, each voter has properly attested to voting the ballot enclosed with their application. The ballot identifying numbers associated with the enclosed ballots are used for official tracking purposes, and voters in the same household should not have their ballots rejected for failing to ensure these numbers match between their ballots and applications, which is neither a requirement for approval of the ballot under state law nor material to determining a voter's eligibility to cast the ballot under federal law.[29] The board staff should make a note of the ballot number that now corresponds with the voter in the SEIMS record.

If the county board disapproves a ballot envelope by majority vote in a board meeting, it shall proceed according to the notification process in G.S. § 163-230.1(e) and as outlined below. If the county board disapproves a ballot for a reason based on the voter's photo ID documentation, it shall proceed according to the notification process in 08 NCAC 17 .0109 and as outlined below.

Voter Notification

~~Issuance of~~Sending an Absentee Ballot Deficiency Notification or New Ballot

If there are any **return deficiencies** or **ballot application deficiencies**, the county board of elections shall ~~contact the voter in writing by~~ mail a notice to the voter within one business day of identifying the deficiency to inform the voter there is an issue with their absentee ballot, enclosing an absentee ballot deficiency notification, which contains the cure certification, or a new ballot.[30] The written notice shall also include information on how to vote in-person during

[29] See 52 U.S.C. § 10101(a)(2)(B).

[30] When there is a curable deficiency, G.S. § 163-230.1(e) specifically provides that the county board must "promptly notify the voter of the deficiency and the manner in which the voter may cure the deficiency." If a ballot must be spoiled and reissued, the same need to act promptly exists.

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the early voting period and on Election Day. When the voter is issued a new ballot, they must include new photo ID documentation with their ballot when transmitting it back to the county board, because each absentee ballot envelope "returned to the county board . . . shall be accompanied by" a photocopy of the voter's photo ID or Photo ID Exception Form.[31]

The written notice shall be sent to the address to which the voter requested their ballot be sent. The outside of the envelope containing the new ballot or absentee ballot deficiency notification should be in an official envelope so that it indicates that it contains official election mail, unless it is not possible due to the use of a specialized USPS or commercial carrier service envelope.

If the deficiency can be cured and the voter provided their phone number or email address on the absentee ballot request form, then the county board shall additionally notify the voter of the curable deficiency by phone or email.[32] Like with the mail notice, this shall be done within one business day of identifying the deficiency, and the same information shall be provided as in the mail notice. If a voter did not provide their phone number or email address on the absentee ballot request form, then staff shall additionally notify the voter by phone or email if the voter has a phone number oran email address on filecontained in the voter's registration record. If both phone and email are available, notify the voter by email.. If notifying the voter by email, the county board shall also sendinclude the absentee ballot deficiency notification document that is also mailed to the voter by email. If the county board sends the notification by email and by mail, the county board should encourage the voter to only return *one* of the notifications with the certification. If the voter did not provide anvoter's email address is not on file but did providethe voter has provided a phone number, the county board shall contact the voter by phone to inform the voter that the county board has mailed the voter an absentee ballot deficiency notification.

If the deficiency cannot be cured, and the voter has an email address on file, the county board shall notify the voter by email that a new ballot has been issued by mail to the voter. If the voter did not provide an email address but did provide a phone number, the county board shall contact the voter by phone to inform the voter that the county board has issued a new ballot by mail.

A county board shall not reissue a ballot on or after Election Day. If there is a curable deficiency, the county board shall contact voters up until the day before county canvass.

If there is a **photo ID documentation deficiency**, the county board must follow the cure process in 08 NCAC 17 .0109(b). The county board must mail notice to contact the voter in writing by mail within one business day of identifying the deficiency to inform the voter there is an issue with their absentee ballot, enclosing an absentee ballot deficiency notification that identifies the

[31] N.C.G.S. § 163-230.1(f1).

[32] G.S. § 163-230.1(e).

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specific deficiencies with the photo ID documentation.[33] The notification must also inform 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 the photo ID cure documentation to the county board.[34] If the voter provided their phone number or email address on the absentee ballot request form, then the county board shall additionally notify the voter of the photo ID documentation deficiency by phone or email using the phone number or email address listed on the request form~~.~~.[35] Like with the mail notice, this shall be done within one business day of identifying the deficiency, and the same information shall be provided as in the mail notice. If a voter did not provide their phone number or email address on the absentee ballot request form, then staff shall~~Staff must~~ additionally notify the voter by ~~tele~~phone or email, using any ~~tele~~phone number or email address contained in the voter's registration record ~~or provided by the voter when requesting an absentee ballot~~.[36] If both phone and email are available, notify the voter by email. If notifying the voter by email, the county board shall include the absentee ballot deficiency notification document that is also mailed to the voter.

The photo ID cure documentation can be either a new photocopy of the voter's photo ID or a new Absentee Photo ID Exception Form. A voter who submitted a deficient photocopy of their photo ID may also submit a Photo ID Exception Form for the first time. A voter may choose to do so, for example, because~~,~~ in this instance~~, it is now likely that~~ they may no longer be ~~are un~~able to make a photocopy of their ID to include with their ballot. Likewise, a voter who submitted a deficient Photo ID Exception Form may also submit a photocopy of a photo ID for the first time. A voter may choose to do so, for example, because they may have obtained a photo ID, or the means to make a photocopy, since the time at which they transmitted their absentee ballot to the county board. Accordingly, **when sending an absentee ballot deficiency notification for a photo ID documentation deficiency, the county board must include a blank Absentee Photo ID Exception Form**.

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[33] As explained above, all photo ID documentation deficiencies are curable, and when there is a curable deficiency, G.S. § 163-230.1(e) specifically provides that the county board must "promptly notify the voter of the deficiency and the manner in which the voter may cure the deficiency." See also 08 NCAC 17 .0109(b).

[34] 08 NCAC 17 .0109(b).

[35] G.S. § 163-230.1(e).

[36] 08 NCAC 17 .0109(b).

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Receipt of a Cure Certification or Photo ID Cure Documentation

The cure certification or photo ID cure documentation must be received by the county board of elections by 5 p.m. the day before county canvass.[37]

The cure documents may only be returned by the voter, the voter's near relative or legal guardian, a multipartisan assistance team (MAT), or a person of the voter's choice if the voter needs assistance due to the voter's disability.[38] A cure document returned by any other person is invalid.

The cure documents may be submitted to the county board office by email, by mail or commercial carrier, in person, or by fax.[39] When submitting cure documents by email, the voter may attach an image of their cure documentation (*e.g.*, emailing a photo of their photo ID or executed Exception Form). ~~There is not a postmark requirement for cure documents returned by mail.~~ tThe documents must be *received* by the deadline~~,~~ (not postmarked by the deadline).

If a voter appears in person at the county board office to cure their ballot, they may also be given, and can complete, a cure certification. Similarly, a voter may appear in person and

[37] G.S. § 163-230.1(e) ("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.").

[38] Voters who require assistance in returning their ballot due to the voter's disability, can direct the person of their choice to return the ballot according to the voter's instruction (*i.e.*, by mail or in person to the county board). See Numbered Memo 2022-11.

[39] Although G.S. 163-230.1(e) now provides that photo ID cure documentation "may be transmitted via e-mail to the county board of elections," this does not preclude the use of email to transmit a cure certification for ballot application deficiencies, because the statute is otherwise silent on the manner of transmittal and form of receipt of cure documentation for those deficiencies, and the statute's instruction to notify a voter of a curable deficiency by email indicates transmission of cure documentation by email is permissible.

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complete a Photo ID Exception Form to accompany the ballot envelope[40],[41] or request that staff make a photocopy of the voter's photo ID to accompany the ballot envelope.[42]

It is not permissible for a cure certification to be submitted through a portal or form created or maintained by a third party. A cure certification may not be submitted simultaneously with the ballot.

Any person who is permitted to assist a voter with their ballot may assist a voter in filling out the cure certification, making a photocopy of the voter's photo ID, or filling out the Photo ID Exception Form, but the certification and Photo ID Exception Form must be signed by the voter.[43] A wet ink signature is not required for cure documents, but the signature used must be unique to the individual. A typed signature is not acceptable, even if it is cursive or italics such as is commonly seen with an electronic signature program, such as DocuSign.

County Board Review of Cure Documentation

At each absentee board meeting, the county board of elections may consider deficient ballot return envelopes for which cure documentation has been returned, whether a cure certification or photo ID documentation. The county board shall consider together the executed absentee ballot envelope and the cure documentation. If the cure documentation was timely received, includes the required documentation or attestations, and was returned by an authorized person, the county board of elections shall approve the absentee ballot. See Numbered Memo 2020-25.

Data Entry in SEIMS

County board staff shall follow the instructions provided by the State Board in the most recent guide for the proper entry of data in SEIMS when processing absentee ballots and addressing deficiencies. Data shall be promptly entered as ballots are processed. This will ensure that the

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[40] ~~The option to complete a Photo ID Exception Form in the county board office is only available for voters who are voting absentee-by-mail. Voters who vote in person at an early voting site or on Election Day must complete the Photo ID Exception Form at the voting site. See Numbered Memo 2023-03.~~

[41] The option to complete a Photo ID Exception Form in the county board office is only available for voters who are voting absentee-by-mail. Voters who vote in person at an early voting site or on Election Day must complete the Photo ID Exception Form at the voting site. See Numbered Memo 2023-03.

[42] See Numbered Memo 2020-23 regarding staff making photocopies of photo IDs for inclusion with an absentee ballot envelope.

[43] If a voter is physically unable to sign or make their mark on the Photo ID Exception Form due to disability, any person of that voter's choice can write in the signature line, "Disabled - cannot sign." See Numbered Memo 2022-11.

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data maintained by the county boards and State Board follows uniform conventions and is up to date. This will help ensure the processing of absentee ballots is transparent to the public.

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NORTH CAROLINA
STATE BOARD OF ELECTIONS

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Numbered Memo 2021-03

TO: County Boards of Elections

FROM: Karen Brinson Bell, Executive Director[1]

RE: Absentee Container-Return Envelope Deficiencies

DATE: June 11, 2021 (updated September 25, 2023; January 19, 2024)[2]

The State Board is required to provide a cure process for voters whose absentee ballot envelopes contain certain deficiencies.[3] In general, the cure process for absentee-by-mail deficiencies is guided by G.S. § 163-230.1(e), as amended by Session Law 2023-140 (SB 747), and this numbered memo. The cure process for photo ID documentation containing deficiencies, when that documentation is submitted with an absentee ballot, is provided through G.S. § 163-230.1(e), as amended by Session Law 2023-140, an administrative rule adopted by the State Board[4], and is guided by this numbered memo. County boards of elections must ensure that the votes of all eligible voters are counted using the same standards, regardless of the county in which the voter resides.

The ballot container-return envelope (ballot envelope) and the accompanying photocopy of the voter's photo ID or completed Photo ID Exception Form (photo ID documentation) are transmitted to the county board in an outer return envelope. This numbered memo directs the procedure county boards must use to address deficiencies in the envelopes and photo ID

[1] This memo is issued under the authority delegated by the State Board to the executive director pursuant to G.S. § 163-22(p).

[2] This numbered memo replaces Numbered Memo 2020-19, which was first issued on August 21, 2020 and subsequently revised and reissued on September 22, 2020, and October 17, 2020. This numbered memo was updated on September 25, 2023, and again on January 19, 2024, to include processes related to photo ID requirements for absentee-by-mail voting.

[3] See G.S. § 163-230.1(e), revised by N.C. Session Law 2023-140 § 35, to provide a cure process for deficiencies associated with returned absentee-by-mail ballots. *See also Democracy NC v. State Board of Elections*, 476 F.Supp.3d 158 (M.D.N.C. Aug. 4, 2020) (explaining that due process requires such a cure opportunity).

[4] 08 NCAC 17 .0109(b).

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documentation, to ensure that a voter is provided every opportunity to correct certain deficiencies, while also recognizing that processes must be manageable for county boards to timely complete required tasks.

No Signature Verification[5]

Verification of the voter's identity is completed through the witness requirement. The voter's signature on the envelope shall not be compared with the voter's signature in their registration record, on their request form, or on their photocopy of photo ID or Photo ID Exception Form submitted with their ballot, because this is not a requirement for the approval of an absentee ballot under North Carolina law.[6] County boards shall accept the voter's signature on the ballot envelope if it appears to be made by the voter, meaning the signature on the envelope appears to be the name of the voter and not some other person. Absent clear evidence to the contrary, the county board shall presume that the voter's signature is that of the voter, even if the signature is illegible. A voter may sign their signature or make their mark.

Types of Deficiencies

Trained county board staff shall review each return envelope, executed ballot envelope, and photo ID documentation the office receives to determine if there are any deficiencies. County board staff shall, to the extent possible, regularly review these absentee ballot materials on each business day, to ensure that voters have every opportunity to timely correct deficiencies.[7] Review for deficiencies occurs *after* intake. The initial review is conducted by staff to expedite processing of the envelopes in advance of a county board absentee meeting.[8]

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[5] Session Law 2023-140 § 48 provides for a signature verification pilot program to be conducted during the 2024 primary election. As stated in Section 48.(c), however, "[i]n implementing the pilot program established in this section, no executed mail-in absentee ballot shall be rejected by the county board of elections for failing any signature verification. All executed mail-in absentee ballots that are otherwise eligible to be counted in accordance with Chapter 163 of the General Statutes shall be counted."

[6] See *In re: Request for Declaratory Ruling on Signature Matching for Absentee Ballot Requests and Ballot Envelopes*, N.C. State Bd. of Elections (July 22, 2022). See also Numbered Memo 2020-15, which explains that signature comparison is not permissible for absentee request forms.

[7] Specifically for ballot application deficiencies and photo ID documentation deficiencies, discussed below, G.S. § 163-230.1(e) requires that the county board "promptly notify the voter of the deficiency and the manner in which the voter may cure the deficiency."

[8] See Numbered Memo 2020-25 regarding preparatory steps for absentee meetings.

AMERICAN OVERSIGHT

There are three categories of deficiencies: 1) return deficiencies, 2) ballot application deficiencies, and 3) photo ID documentation deficiencies.

1. Return Deficiencies

Previously, a voter transmitted their absentee-by-mail ballot to the county board in a single ballot container-return envelope. However, with the implementation of photo ID requirements starting with the 2023 municipal elections, the ballot envelope is now transmitted to the county board in an outer return envelope to ensure the privacy of the accompanying photo ID documentation. As a result, there may be certain instances where the return of the absentee ballot requires the ballot to be spoiled and the absentee package reissued to the voter.

Deficiencies that Require the Ballot to Be Spoiled (Civilian)

- Ballot is inside the ballot envelope, which is not sealed or which appears to have been opened and re-sealed, and the ballot envelope is received in a return envelope which is not sealed or which appears to have been opened and re-sealed.[9]
- Ballot is inside the executed ballot envelope, which is not sealed, and someone other than the voter hand delivers the ballot envelope to an early voting site or the county board office, and the return envelope is also unsealed or there is no return envelope. Even if the person is authorized to return this ballot, they cannot seal the ballot without the voter being present. The voter must direct that the ballot be sealed "in the voter's presence."[10]
- The return or ballot envelope indicates the voter is requesting a replacement ballot.

If a county board identifies one of these deficiencies, county board staff shall spoil the returned ballot and reissue a ballot, as long as the new ballot is issued before Election Day, along with a notice explaining the county board office's action, in accordance with this numbered memo.

Anomalies that Are Not Deficiencies (Civilian)[11]

- Ballot is inside the executed ballot envelope, which is not sealed or which appears to have been opened and re-sealed, but the ballot envelope is received in a sealed return

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[9] Ballots must be "sealed in the container-return envelope." G.S. § 163-230.1(d); see also G.S. § 163-231(a)(3).

[10] G.S. § 163-231(a)(3).

[11] With all ballot mistakes or anomalies, elections officials must be guided by the clear instruction in the federal Civil Rights Act of 1964 to not allow an error on ballot materials to lead to a ballot's rejection when that error is immaterial to determining a voter's eligibility to cast the ballot: "No person acting under color of law shall . . . deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if

AMERICAN OVERSIGHT

envelope. Immediately upon opening the return envelope and noticing this situation, staff should re-seal the return envelope with a notation of "sealed in return envelope." The county board should open the return envelope and address that ballot at its next absentee meeting.[12]

- Ballot is not inside the ballot envelope or has been placed inside the clear sleeve on the ballot envelope used for including the photo ID documentation, but the return envelope is sealed. Immediately upon opening the return envelope and noticing this situation, staff should re-seal the return envelope with a notation of "sealed in return envelope." The county board should open the return envelope and address that ballot at its next absentee meeting.[13]
- Ballot is received in a return envelope that is not sealed or appears to have been opened and re-sealed, but the ballot is inside the executed ballot envelope that is sealed. This situation does not require any special action to document the anomaly before presenting the ballot envelope to the county board.
- Ballot is inside the executed ballot envelope, which is not sealed, and the voter hand delivers the ballot envelope to an early voting site or the county board office. Before taking receipt of the envelope, staff should request that the voter first seal the ballot envelope.

In all of the above situations, the ballot was received in a sealed envelope and is therefore not deficient.[14]

A person hand-delivering the absentee ballot, whether it is the voter or someone authorized to return the voter's ballot, is not required to deliver the ballot envelope inside the return envelope for the absentee application to be approved. The return envelope is designed to protect the voter's confidential identifying information during mail transit. If the person hand-delivers only the sealed ballot envelope, staff should follow their usual storage practices and keep the ballot

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such error or omission is not material in determining whether such individual is qualified under State law to vote in such election." 52 U.S.C. § 10101(a)(2)(B).

[12] In this situation, for the purposes of staff's initial review of photo ID documentation pursuant to 08 NCAC 17 .0109(b), the ballot application is not "received" until the return envelope is opened at the absentee meeting.

[13] In this situation, for the purposes of staff's initial review of photo ID documentation pursuant to 08 NCAC 17 .0109(b), the ballot application is not "received" until the return envelope is opened at the absentee meeting.

[14] G.S. §§ 163-230.1(d), 163-231(a)(3).

AMERICAN OVERSIGHT

envelope in a secure location, which may include placing the ballot envelope in a new return envelope for storage purposes.

2. Ballot Application Deficiencies

The ballot application is the form on the ballot envelope that is completed by the voter, their witnesses or notary, and assistant (if applicable).[15] Ballot application deficiencies fall into two main categories: those that can be cured with a cure certification (*i.e.*, an attestation) by the voter, and those that cannot be cured. If a deficiency cannot be cured, the ballot must be spoiled and a new ballot must be issued, as long as the new ballot is issued before Election Day. See the Voter Notification Section below.

Deficiencies Curable with Cure Certification (Civilian and UOCAVA)

The following deficiencies can be cured by sending the voter a cure certification:

- Voter did not sign the Voter Certification.[16]
- Voter signed in the wrong place.[17]

The cure certification process applies to civilian and UOCAVA voters.

Deficiencies that Require the Ballot to Be Spoiled (Civilian)

The following deficiencies cannot be cured by certification, because the missing information comes from someone other than the voter:

- The name of the witness or assistant is not printed,[18] unless the witness's or assistant's signature is legible such that the name can be determined, in which case the ballot envelope is not deficient and the ballot shall not be spoiled for this reason.[19]
- A witness or assistant did not print their address.[20]

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[15] G.S. § 163-229(b).

[16] G.S. § 163-230.1(e)(1).

[17] G.S. § 163-230.1(e)(2).

[18] G.S. § 163-230.1(e) provides that "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." However, if the printed name is readable and on the correct line, even if it is written in cursive script, for example, it does not invalidate the ballot envelope.

[19] G.S. § 163-231(a)(5) ("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.").

[20] Failure to list a witness's ZIP code does not invalidate the ballot envelope. G.S. § 163-231(a)(5). A witness's or assistant's address does not have to be a residential address; it may be a post office box or

AMERICAN OVERSIGHT

- A witness or assistant did not sign.
- A witness or assistant signed on the wrong line. Where the witness or assistant signed in place of the voter's signature, that deficiency cannot be cured and requires the ballot to be spoiled. However, if all required information from the witness or assistant is present but not on the designated line for each (for example, the witness or assistant printed their name on the address line, printed their address on the name line, and signed), the ballot envelope is not deficient and the ballot shall not be spoiled for this reason.

Additionally, when a voter's witness is a notary, two errors in the notarial certificate will result in the ballot being spoiled: 1) the notary's signature is missing, or 2) the notarial seal is missing altogether or contains missing information. As discussed in Numbered Memo 2021-07, other technical errors with the notarial certificate will not affect the sufficiency, validity, or enforceability of the notarial certificate itself or the underlying document and are not considered deficiencies.

3. Photo ID Documentation Deficiencies

When a voter includes photo ID documentation with their absentee ballot envelope, there may be deficiencies in that documentation that require a cure notice to be sent to the voter. All deficiencies with a voter's photo ID documentation are curable, because the cure documentation comes from the voter. [21]

Photocopy of Photo ID Deficiencies

Deficiencies in a photocopy of a voter's photo ID include:

- The ID is not a type of ID that is acceptable for voting purposes under 08 NCAC 17 .0101(a)(1).
- The ID does not meet expiration requirements, if applicable.

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other mailing address. Additionally, if the address is missing a city or state, but the county board of elections can determine the correct address, the failure to list that information does not invalidate the ballot envelope. For example, if a witness lists "Raleigh 27603," you can determine the state is NC, or if a witness lists "333 North Main Street, 27701," you can determine that the city/state is Durham, NC. If both the city and ZIP code are missing, staff will need to determine whether the correct address can be identified. If the correct address cannot be identified, the envelope shall be considered deficient and the ballot spoiled and a new ballot reissued. See Numbered Memo 2020-29 for additional information regarding address issues.

[21] G.S. § 163-230.1(e) ("Curable deficiencies are deficiencies that can be cured with supplemental documentation or attestation provided by the voter[.]").

AMERICAN OVERSIGHT

- The photocopy is not readable, which means that the name on the ID cannot be read, the photograph on the ID does not depict a person (e.g., it only depicts a shadow or outline of a person), or both.
- The name on the ID is not the same as or substantially equivalent to the voter's name in their voter record.

Any difference between the voter's address on their ID and the address in their registration record is not a deficiency.

Photo ID Exception Form Deficiencies

Deficiencies in a Photo ID Exception Form include:

- The voter did not print their name on the Form, unless the voter's signature on the Form appears to be made by the voter, meaning the signature on the Form appears to be the name of the voter and not some other person. The county board shall presume that the voter's signature is that of the voter, even if the signature is illegible, unless there is clear evidence to rebut this presumption.
- The voter did not check a box for at least one claimed exception from the photo ID requirements, or if the exception is a reasonable impediment, the voter failed to identify their specific reasonable impediment (including by writing their reason if they chose "Other"[22]).
- If the reasonable impediment chosen is that the voter is unable to make a photocopy of their ID to include with their ballot, the voter did not include their North Carolina driver's license number, DMV ID number, or last 4 digits of their social security number.[23] However, if the voter has additionally checked a box indicating another reasonable impediment that prevents them from including a copy of a photo ID, the Form cannot be found deficient for the missing identification number alone.

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[22] If the voter writes a reason for "Other" but does not check the "Other" box, the Form is not deficient for that reason alone. Similarly, if the voter writes their North Carolina driver's license number, DMV ID number, or last 4 digits of their social security number but does not check the "I am unable to include a photocopy of my photo ID with this absentee ballot envelope" box, the Form is not deficient for that reason alone provided that the voter did check the first box indicating that they suffer from a reasonable impediment that prevents them from including a copy of photo ID.

[23] G.S. § 163-230.1(g)(2).

AMERICAN OVERSIGHT

- The voter did not sign the Form.[24]

Additionally, a voter's failure to include *any* photo ID documentation—either a photocopy of their ID or an Exception Form—is a deficiency that may be cured.[25]

A voter may respond to a notification that their ballot is missing photo ID documentation by stating that it is in the ballot envelope. If this occurs, and staff have not otherwise identified any return or ballot application deficiencies that would require the ballot to be spoiled and reissued, staff must defer the review of the photo ID documentation to the next absentee board meeting, when the county board can review the application and, if approved, open the ballot envelope and confirm photo ID compliance.[26] If the board identifies a photo ID deficiency at that point, staff should be instructed to notify the voter of the opportunity to cure as explained further in this memo.

County Board Review of Photo ID Exception Forms for Falsity

Although a county board's finding that a Photo ID Exception Form is false will result in the absentee ballot being rejected, this is not a "deficiency" in the same sense as the ones listed above—where staff will take action to notify the voter to address a deficiency. Staff deficiency review of Photo ID Exception Forms is for completeness—not falsity.[27] A board's finding of falsity can only come after the board gives the voter notice and an opportunity to be heard on the matter. See Numbered Memo 2020-25, p 8 ("Review of Photo ID Exception Forms"). County boards shall follow the applicable administrative code provisions[28] and Numbered Memo 2023-03, pp. 11–13, when considering whether a Photo ID Exception Form is false.

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[24] If a voter is unable to sign the Photo ID Exception Form due to a disability, the person of the voter's choice who is assisting them can sign the Form on the voter's behalf and must complete the assistant certification on the envelope. See Numbered Memo 2022-11, p. 3 (Court Order Regarding Assistance for Absentee Voters with Disabilities).

[25] G.S. § 163-230.1(e)(3).

[26] This does not prevent the voter from also choosing to send photo ID cure documentation to the county board while its review of the application is pending, and staff may encourage the voter to do so when time is of the essence.

[27] Of course, staff may flag an Exception Form for the board's review at a meeting if staff has specific information suggesting the form is false.

[28] See 08 NCAC 17 .0109(c).

AMERICAN OVERSIGHT

4. Deficiencies that are first discovered at a board meeting

Some deficiencies will not be apparent until a board meeting and, when discovered, will require board action at that time. These deficiencies can include the following:

- There is no ballot in the ballot envelope. In this situation, although there is no ballot to spoil, the entire absentee package must be reissued to the voter so that the statutory requirements for voting and transmitting an absentee ballot can be met.
- There is more than one ballot in the ballot envelope. In this situation, both ballots will need to be spoiled and new absentee ballot packages issued to both voters, because it will not be possible to determine which of the two ballots were voted by the voter who completed the application.
- Two voters' ballots and ballot envelopes were switched, based on the county board's review of the CIV numbers (ballot identifying numbers). In this situation, the county board will need to consider the circumstances of the ballots and ballot envelopes together to decide whether to approve the ballots. **If the two voters had their absentee ballots sent to the same address and there are no issues with the applications, then the county board should not spoil the ballots**, because under those circumstances, each voter has properly attested to voting the ballot enclosed with their application. The ballot identifying numbers associated with the enclosed ballots are used for official tracking purposes, and voters in the same household should not have their ballots rejected for failing to ensure these numbers match between their ballots and applications, which is neither a requirement for approval of the ballot under state law nor material to determining a voter's eligibility to cast the ballot under federal law.[29] The board staff should make a note of the ballot number that now corresponds with the voter in the SEIMS record.

If the county board disapproves a ballot envelope by majority vote in a board meeting, it shall proceed according to the notification process in G.S. § 163-230.1(e) and as outlined below. If the county board disapproves a ballot for a reason based on the voter's photo ID documentation, it shall proceed according to the notification process in 08 NCAC 17 .0109 and as outlined below.

Voter Notification

Sending an Absentee Ballot Deficiency Notification or New Ballot

If there are any **return deficiencies** or **ballot application deficiencies**, the county board of elections shall mail a notice to the voter within one business day of identifying the deficiency to inform the voter there is an issue with their absentee ballot, enclosing an absentee ballot

[29] See 52 U.S.C. § 10101(a)(2)(B).

AMERICAN OVERSIGHT

deficiency notification, which contains the cure certification, or a new ballot.[30] The written notice shall also include information on how to vote in-person during the early voting period and on Election Day. When the voter is issued a new ballot, they must include new photo ID documentation with their ballot when transmitting it back to the county board, because each absentee ballot envelope "returned to the county board . . . shall be accompanied by" a photocopy of the voter's photo ID or Photo ID Exception Form.[31]

The written notice shall be sent to the address to which the voter requested their ballot be sent. The outside of the envelope containing the new ballot or absentee ballot deficiency notification should be in an official envelope so that it indicates that it contains official election mail, unless it is not possible due to the use of a specialized USPS or commercial carrier service envelope.

If the deficiency can be cured and the voter provided their phone number or email address on the absentee ballot request form, then the county board shall additionally notify the voter of the curable deficiency by phone or email.[32] Like with the mail notice, this shall be done within one business day of identifying the deficiency, and the same information shall be provided as in the mail notice. If a voter did not provide their phone number or email address on the absentee ballot request form, then staff shall additionally notify the voter by phone or email if the voter has a phone number or email address contained in the voter's registration record. If both phone and email are available, notify the voter by email. If notifying the voter by email, the county board shall include the absentee ballot deficiency notification document that is also mailed to the voter. If the county board sends the notification by email and by mail, the county board should encourage the voter to only return *one* of the notifications with the certification.

If the deficiency cannot be cured, and the voter has an email address on file, the county board shall notify the voter by email that a new ballot has been issued by mail to the voter. If the voter did not provide an email address but did provide a phone number, the county board shall contact the voter by phone to inform the voter that the county board has issued a new ballot by mail.

A county board shall not reissue a ballot on or after Election Day. If there is a curable deficiency, the county board shall contact voters up until the day before county canvass.

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[30] When there is a curable deficiency, G.S. § 163-230.1(e) specifically provides that the county board must "promptly notify the voter of the deficiency and the manner in which the voter may cure the deficiency." If a ballot must be spoiled and reissued, the same need to act promptly exists.

[31] G.S. § 163-230.1(f1).

[32] G.S. § 163-230.1(e).

AMERICAN OVERSIGHT

If there is a **photo ID documentation deficiency**, the county board must mail notice to the voter within one business day of identifying the deficiency to inform the voter there is an issue with their absentee ballot, enclosing an absentee ballot deficiency notification that identifies the specific deficiencies with the photo ID documentation.[33] The notification must also inform 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 the photo ID cure documentation to the county board.[34] If the voter provided their phone number or email address on the absentee ballot request form, then the county board shall additionally notify the voter of the photo ID documentation deficiency by phone or email using the phone number or email address listed on the request form.[35] Like with the mail notice, this shall be done within one business day of identifying the deficiency, and the same information shall be provided as in the mail notice. If a voter did not provide their phone number or email address on the absentee ballot request form, then staff shall additionally notify the voter by phone or email, using any phone number or email address contained in the voter's registration record.[36] If both phone and email are available, notify the voter by email. If notifying the voter by email, the county board shall include the absentee ballot deficiency notification document that is also mailed to the voter.

The photo ID cure documentation can be either a new photocopy of the voter's photo ID or a new Absentee Photo ID Exception Form. A voter who submitted a deficient photocopy of their photo ID may also submit a Photo ID Exception Form for the first time. A voter may choose to do so, for example, because in this instance they may no longer be able to make a photocopy of their ID to include with their ballot. Likewise, a voter who submitted a deficient Photo ID Exception Form may also submit a photocopy of a photo ID for the first time. A voter may choose to do so, for example, because they may have obtained a photo ID, or the means to make a photocopy, since the time at which they transmitted their absentee ballot to the county board. Accordingly, **when sending an absentee ballot deficiency notification for a photo ID documentation deficiency, the county board must include a blank Absentee Photo ID Exception Form**.

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[33] As explained above, all photo ID documentation deficiencies are curable, and when there is a curable deficiency, G.S. § 163-230.1(e) specifically provides that the county board must "promptly notify the voter of the deficiency and the manner in which the voter may cure the deficiency." See also 08 NCAC 17 .0109(b).

[34] 08 NCAC 17 .0109(b).

[35] G.S. § 163-230.1(e).

[36] 08 NCAC 17 .0109(b).

AMERICAN OVERSIGHT

Receipt of a Cure Certification or Photo ID Cure Documentation

The cure certification or photo ID cure documentation must be received by the county board of elections by 5 p.m. the day before county canvass.[37]

The cure documents may only be returned by the voter, the voter's near relative or legal guardian, a multipartisan assistance team (MAT), or a person of the voter's choice if the voter needs assistance due to the voter's disability.[38] A cure document returned by any other person is invalid.

The cure documents may be submitted to the county board office by email, by mail or commercial carrier, in person, or by fax.[39] When submitting cure documents by email, the voter may attach an image of their cure documentation (*e.g.*, emailing a photo of their photo ID or executed Exception Form).The documents must be *received* by the deadline (not postmarked by the deadline).

If a voter appears in person at the county board office to cure their ballot, they may also be given, and can complete, a cure certification. Similarly, a voter may appear in person and

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[37] G.S. § 163-230.1(e) ("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.").

[38] Voters who require assistance in returning their ballot due to the voter's disability, can direct the person of their choice to return the ballot according to the voter's instruction (*i.e.*, by mail or in person to the county board). See Numbered Memo 2022-11.

[39] Although G.S. 163-230.1(e) now provides that photo ID cure documentation "may be transmitted via e-mail to the county board of elections," this does not preclude the use of email to transmit a cure certification for ballot application deficiencies, because the statute is otherwise silent on the manner of transmittal and form of receipt of cure documentation for those deficiencies, and the statute's instruction to notify a voter of a curable deficiency by email indicates transmission of cure documentation by email is permissible.

AMERICAN OVERSIGHT

complete a Photo ID Exception Form to accompany the ballot envelope,[40] or request that staff make a photocopy of the voter's photo ID to accompany the ballot envelope.[41]

It is not permissible for a cure certification to be submitted through a portal or form created or maintained by a third party. A cure certification may not be submitted simultaneously with the ballot.

Any person who is permitted to assist a voter with their ballot may assist a voter in filling out the cure certification, making a photocopy of the voter's photo ID, or filling out the Photo ID Exception Form, but the certification and Photo ID Exception Form must be signed by the voter.[42] A wet ink signature is not required for cure documents, but the signature used must be unique to the individual. A typed signature is not acceptable, even if it is cursive or italics such as is commonly seen with an electronic signature program, such as DocuSign.

County Board Review of Cure Documentation

At each absentee board meeting, the county board of elections may consider deficient ballot return envelopes for which cure documentation has been returned, whether a cure certification or photo ID documentation. The county board shall consider together the executed absentee ballot envelope and the cure documentation. If the cure documentation was timely received, includes the required documentation or attestations, and was returned by an authorized person, the county board of elections shall approve the absentee ballot. See Numbered Memo 2020-25.

Data Entry in SEIMS

County board staff shall follow the instructions provided by the State Board in the most recent guide for the proper entry of data in SEIMS when processing absentee ballots and addressing deficiencies. Data shall be promptly entered as ballots are processed. This will ensure that the data maintained by the county boards and State Board follows uniform conventions and is up to date. This will help ensure the processing of absentee ballots is transparent to the public.

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[40] The option to complete a Photo ID Exception Form in the county board office is only available for voters who are voting absentee-by-mail. Voters who vote in person at an early voting site or on Election Day must complete the Photo ID Exception Form at the voting site. See Numbered Memo 2023-03.

[41] See Numbered Memo 2020-23 regarding staff making photocopies of photo IDs for inclusion with an absentee ballot envelope.

[42] If a voter is physically unable to sign or make their mark on the Photo ID Exception Form due to disability, any person of that voter's choice can write in the signature line, "Disabled - cannot sign." See Numbered Memo 2022-11.

AMERICAN OVERSIGHT

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

VOTO LATINO, WATAUGA COUNTY VOTING RIGHTS TASK FORCE, DOWN HOME NORTH CAROLINA, and SOPHIE JAE MEAD, Plaintiffs, v. ALAN HIRSCH, in his official capacity as Chair of the State Board of Elections, JEFF CARMON, in his official capacity as Secretary of the State Board of Elections, STACEY EGGERS IV, in his official capacity as Member of the State Board of Elections, KEVIN N. LEWIS, in his official capacity as Member of the State Board of Elections, SIOBHAN O'DUFFY MILLEN, in her official capacity as Member of the State Board of Elections, KAREN BRINSON BELL, in her official capacity as Executive Director of the State Board of Elections, MICHAEL BEHRENT, in his official capacity as Chair of the Watauga County Board of Elections, ERIC ELLER, in his official capacity as Member of the Watauga County Board of Elections, MATT WALPOLE, in his official capacity as Member of the Watauga County Board of Elections, LETA COUNCILL, in her official capacity as Member of the Watauga County Board of Election, and ELAINE ROTHENBERG, in her official capacity as Member of the	1:23-CV-861

AMERICAN OVERSIGHT

Watauga County Board of Elections,

Defendants,

and

PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate, and TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives,

Defendant-Intervenors,

and

REPUBLICAN NATIONAL COMMITTEE, NORTH CAROLINA REPUBLICAN PARTY, VIRGINIA A. WASSERBERG, and BRENDA M. ELDRIDGE,

Defendant-Intervenors.

DEMOCRATIC NATIONAL COMMITTEE and NORTH CAROLINA DEMOCRATIC PARTY,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS, KAREN BRINSON BELL, in her official capacity as Executive Director of the State Board of Elections, ALAN HIRSCH, in his official capacity as Chair of the State Board of Elections, JEFF CARMON, in his official

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000201

capacity as Secretary of the State Board of Elections, STACEY EGGERS IV, in his official capacity as Member of the State Board of Elections, KEVIN N. LEWIS, in his official capacity as Member of the State Board of Elections, SIOBHAN O'DUFFY MILLEN, in her official capacity as Member of the State Board of Elections, Defendants, and PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate, and TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives, Defendant-Intervenors, and REPUBLICAN NATIONAL COMMITTEE, NORTH CAROLINA REPUBLICAN PARTY, VIRGINIA A. WASSERBERG, and BRENDA M. ELDRIDGE, Defendant-Intervenors.	)	1:23-CV-862

MEMORANDUM OPINION AND ORDER

THOMAS D. SCHROEDER, District Judge.

In these two actions,[1] Plaintiffs contest recent changes to

[1] The actions are not consolidated but are addressed jointly here because

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000202

North Carolina's rules for voters who register and cast a ballot during the State's seventeen-day same-day registration ("SDR") period that ends the Saturday before election day. Pursuant to the State's address verification process, the county board of elections sends all same-day registrants a card by non-forwardable mail. Under Senate Bill 747 ("S. 747"), which became law on October 10, 2023, as 2023 N.C. Sess. Laws 140, if, before the close of business on the day before the canvass, the United States Postal Service returns the verification card to the county board as undeliverable — even through no fault of the voter — the county board "shall not register the applicant and shall retrieve the applicant's ballot and remove that ballot's votes from the official count." 2023 N.C. Sess. Laws 140, § 10.(a) (codified as N.C. Gen. Stat. § 163-82.6B (2024)).

Before the court are motions for preliminary injunction by Plaintiffs Voto Latino, Watauga County Voting Rights Task Force, Down Home North Carolina, and Sophie Jae Mead ("Voto Latino Plaintiffs") (VL Doc. 44), and Plaintiffs Democratic National Committee and North Carolina Democratic Party ("Party Plaintiffs") (DNC Doc. 6) (collectively, "Plaintiffs").[2] Defendants Karen

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they raise identical issues. A third case raising similar issues is also pending before this court, 1:23-cv-878. The plaintiffs there have not moved for preliminary relief.

[2] Docket entry references for case number 1:23-CV-861 are "VL Doc. XX," and for case number 1:23-CV-862 are "DNC Doc. XX."

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000203

Brinson Bell, Alan Hirsch, Jeff Carmon, Stacy Eggers IV, Kevin N. Lewis, Siobhan O'Duffy Millen, and as to 1:23-cv-862, North Carolina State Board of Elections ("NCSBE") ("State Board Defendants"), Defendant-Intervenors Senator Philip E. Berger and Speaker Timothy K. Moore ("Legislative Intervenors"), and Defendant-Intervenors Republican National Committee, North Carolina Republican Party, Virginia Ann Wasserberg, and Brenda M. Eldridge ("Party Intervenors") (collectively, "Intervenors") have responded in opposition. (VL Docs. 51, 52, 54, 60; DNC Docs. 51, 52, 53.)[3] Plaintiffs have replied. (VL Doc. 59; DNC Doc. 58.)

Voto Latino Plaintiffs seek injunctive relief, claiming violations of the First and Fourteenth Amendments to the United States Constitution, pursuant to 42 U.S.C. § 1983. (VL Doc. 1 ¶¶ 83-98.) Party Plaintiffs allege violations of the First and Fourteenth Amendments to the United States Constitution, Article I, sections 10 and 19 of the North Carolina Constitution, the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(A), the Help America Vote Act ("HAVA"), 52 U.S.C. § 21082, and the Voting Rights Act, 52 U.S.C. § 10307(b). (DNC Doc. 1 ¶¶ 52-100.) Legislative Intervenors and

[3] Voto Latino Plaintiffs named Michael Behrent, Eric Eller, Matt Walpole, Leta Councill, and Elaine Rothenberg, all of whom are members of the Watauga County Board of Elections, as Defendants. In response to Plaintiffs' motion, these Defendants state they take no position and are "obligated to faithfully administer the election laws of the State of North Carolina, whatever they may be." (VL Doc. 50 at 2-3.) Both actions otherwise share the same named Defendants and Intervenors, except that Party Plaintiffs also sue NCSBE.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000204

Party Intervenors have intervened in both cases to oppose Plaintiffs' claims and to represent the interests of the North Carolina General Assembly and their political party, respectively. (VL minute entry Nov. 15, 2023; DNC Docs. 47, 48.)

Beyond the briefs, the parties to the suit brought by Voto Latino Plaintiffs have filed declarations concerning the backgrounds and allegations of the organizational and individual Plaintiffs, depositions from leaders of the organizational Plaintiffs and Plaintiff Mead, two preliminary expert opinions and corresponding depositions, and several NCSBE "Numbered Memos," which provide guidance to county election boards. The parties to the suit brought by Party Plaintiffs likewise rely on NCSBE Numbered Memos.

The parties have requested resolution of these motions ahead of the 2024 primary election, for which same-day registration begins on February 15, 2024. The court heard argument on the motions on December 28, 2023. For the reasons set forth below, the motions will be granted in part and denied in part.

I. BACKGROUND

The North Carolina General Assembly passed S. 747 over Governor Roy Cooper's veto on October 10, 2023. 2023 N.C. Sess. Laws 140, available at https://ncleg.gov/Sessions/2023/Bills/Senate/PDF/S747v6.pdf. The relevant provisions of S. 747, "[a]n act to make various changes regarding elections law,"

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000205

became effective January 1, 2024. Id. § 50. While the bill amends several provisions of the election laws in Chapter 163 of the North Carolina General Statutes, the present motions specifically seek to enjoin the enforcement of portions of section 10.(a), codified as N.C. Gen. Stat. § 163-82.6B, which makes changes to North Carolina's SDR procedures.

A. Voter Registration

All adult citizens, except felons, are entitled to vote in North Carolina. N.C. Const. art VI, §§ 1-2; N.C. Gen. Stat. § 163-55(a). To be eligible to vote in a given county, a voter must have resided in that county for at least 30 days prior to election day, N.C. Gen. Stat. § 163-55(a), and register there, id. § 163-54.

North Carolina offers two general methods of registration. Under the first method used by nearly all North Carolinians, called "traditional registration" or "non-SDR" herein, an eligible voter may register 25 days or more before an election day. Id. § 163-82.6(d). These registrants must complete a registration application that requires name, date of birth, residential address, and mailing address, if different. Id. § 163-82.4(a); see also North Carolina Voter Registration Application, Form 06W, at https://dl.ncsbe.gov/Voter_Registration/NCVoterRegForm_06W.pdf (last accessed Jan. 18, 2024). The mailing address need not be in the same precinct or even county as the residential address. (DNC

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000206
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 7 of 94

Doc. 62 at 59:8-13.) The application also requests identifying information, such as a driver's license number, last four digits of a social security number, and gender and ethnicity, and allows an applicant to select a political party affiliation. N.C. Gen. Stat. § 163-82.4(a). The applicant must attest that he is a citizen, is 18 years old or will be on election day, and that the contents of the application are true under penalty of perjury. Id. § 163-82.4(c), (e). The non-SDR applicant need not provide any document that proves residency.

When a county board of elections receives the application, it must make a "tentative determination that the applicant is qualified to vote at the address given." Id. § 163-82.7(a).[4] If the applicant is found not qualified, the county board of elections will mail him a notice within two days of the denial which informs him of alternatives to exercise the franchise and of the opportunity to appeal under section 163-82.18.[5] Id. § 163-82.7(b).

[4] Section 163-82.7(a) does not expressly state, and the parties have not represented, what the county board's initial determination for traditional registration entails. Presumably, it involves checking the applicant's age, citizenship status, felon status, driver's license or last four digits of the social security number, if provided, etc. to determine if the applicant is qualified to vote or is already registered. See N.C. Gen. Stat. § 163-82.6B(d).

[5] An applicant who receives a denial notice may appeal within five days of receiving the notice. N.C. Gen. Stat. § 163-82.18(a). The appeal is first heard before the county board of elections, which must provide notice of its decision within five days of the hearing. Id. § 163-82.18(b). If the denial is sustained, the applicant may appeal to a superior court of the county in which the board is located within ten

AMERICAN OVERSIGHT

If the applicant is "tentantive[ly] determin[ed]" to be qualified, the county board will implement the statutory procedures for "Verification of Address by Mail," or "address verification." Id. § 163-82.7(c). First, the county board will mail a "notice" (commonly referred to as "voter registration card"; hereinafter, "card") confirming the precinct and voting place of the voter by non-forwardable mail to the address provided on the application. Id. If the mailing address differs from the residence address, the county board will mail the verification card to the mailing address. (DNC Doc. 62 at 59:8-13); see also N.C. Gen. Stat. § 163-57(1)(c) ("Residence shall be broadly construed to provide all persons with the opportunity to register and to vote, including stating a mailing address different from residence address.").

If the Postal Service does not return the card to the county board as undeliverable, "the county board shall register the applicant to vote."[6] Id. § 163-82.7(d). If the card is returned, however, the county board will send a second card. Id. § 163-82.7(e). As with the first, if the Postal Service does not return the second card as undeliverable, "the county board shall register the applicant to vote." Id. But if the second card is returned

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days of receiving notice of the county board's final decision. Id. § 163-82.18(c).

[6] Neither the statute nor the NCSBE provides any time deadline for return of the address verification card. Thus, there is no specific time when an applicant is deemed "registered" — only the opposite.

AMERICAN OVERSIGHT

as undeliverable, the county board will deny the application and "need not try to notify the applicant further." Id. § 163-82.7(f). Voters may nevertheless check their registration status online via NCSBE's "Voter Search" tool. See NCSBE, View Your Voter Registration Status, at https://www.ncsbe.gov/registering/checking-your-registration (last accessed Jan. 9, 2024).[7]

Under the second method of registration, implemented in 2007, an individual who is qualified to register to vote may register in person and simultaneously cast a ballot at an early voting site in the individual's county of residence during the period of early voting. N.C. Gen. Stat. § 163-82.6B(a).[8] This is commonly called "same-day registration," or "SDR." To same-day register and vote, an individual must (1) complete a voter registration application; (2) provide proof of residence by presenting a HAVA[9]-compliant

[7] Section 163-82.7(g)(3) requires non-SDR voters who vote prior to failing two-card address verification to be treated "as a registered voter."

[8] Same-day registration was enacted in North Carolina in 2007. 2007 N.C. Sess. Laws 253, § 1 (codified as N.C. Gen. Stat. § 163-82.6A). Though section 163-82.6A once contained North Carolina's same-day registration rules, it was largely repealed by North Carolina Session Laws 2013-381, § 16.1. After the Fourth Circuit held this repeal unlawful, N.C. State Conf. of the NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016), section 163-82.6A was given legal effect again. However, Numbered Memo 2016-15 has effectively housed North Carolina's same-day registration laws from September 22, 2016, until January 1, 2024, because Chapter 163 was never amended to codify the holding in McCrory. (See VL Doc. 55-2 at 4 (NCSBE Numbered Memo 2016-15, Appendix A).) Section 163-82.6B now appears to abrogate the legal effect of Numbered Memo 2016-15's Appendix A. N.C. Gen. Stat. § 163-82.6B(a) ("Notwithstanding any provision of law to the contrary . . . .").

[9] Help America Vote Act, 52 U.S.C. § 20901 et seq.

AMERICAN OVERSIGHT

document listing the individual's current name and residence address; and (3) present photo identification pursuant to section 163-166.16.[10] Id. § 163-82.6B(b). A HAVA-compliant document is one of the following:

> (1) A current utility bill
> (2) A current bank statement
> (3) A current government check
> (4) A current paycheck
> (5) Another current government document
> (6) A current document issued from the institution who issued the photo identification shown by the voter pursuant to G.S. 163-166.16.

Id. § 163-82.6B(e).[11] A "current" HAVA document must be unexpired or have an issuance date within six months of presentation to an election official. (VL Doc. 55-5 at 3 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).) As with traditional registration, the mailing address on the application may be different from that on the HAVA document and can even be in a different county. (DNC Doc. 62 at 59:8-13.) Upon completing these steps, an individual then "vote[s] a retrievable ballot." N.C. Gen. Stat. § 163-82.6B(c).

Prior to S. 747, the procedures up until address verification

[10] As a technical matter, the same-day registration law prior to S. 747 did not expressly require a same-day registrant to show a photo identification to vote. However, in light of the North Carolina Supreme Court's April 2023 opinion upholding section 163-166.16, SDR voters would appear to be required to present a photo identification even without S. 747. See Holmes v. Moore, 384 N.C. 326, 460 (2023).

[11] NCSBE Numbered Memo 2023-05 provides further guidance to county boards on government documents allowable under (5) and (6). (VL Doc. 55-5 at 3-5 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).)

AMERICAN OVERSIGHT

were the same, except that the proof-of-residency documents required to be produced in person at registration were: "North Carolina drivers license, a photo identification from a government agency, or ['a current utility bill, bank statement, government check, paycheck, or other government document']." See N.C. Gen. Stat § 163-82.6A (2012), available at VL Doc. 55-2 at 4 (NCSBE Numbered Memo 2016-15, Appendix A). Additionally, rather than vote a "retrievable ballot" as S. 747 requires, the same-day registrant would previously vote a "retrievable absentee ballot as provided in G.S. 163-227.2." Id. § 163-82.6A(c) (2012) (emphasis added).

Under S. 747, after a same-day registrant casts a ballot, the county board must, within two business days of registration, "determine[]" if he is qualified to vote by verifying the North Carolina driver's license or social security number in accordance with section 163-82.12, updating the statewide registration database, and searching for possible duplicate registrations. N.C. Gen. Stat. § 163-82.6B(d). A same-day registrant's vote will be counted "unless the county board determines that the applicant is not qualified to vote in accordance with the provisions of this Chapter." Id.[12]

[12] As discussed below, the parties to civil action number 1:23-CV-862 disagree on the practical effect of this clause in terms of its provision of notice and opportunity to be heard for voters found "not qualified."

AMERICAN OVERSIGHT

B. Address Verification for SDR

If the county board of elections tentatively determines that a same-day registrant is eligible to vote (i.e., passes check of driver's license number, social security number, etc.), the county board of elections proceeds to conduct address verification by mail. The core dispute on these motions concerns S. 747's changes to the State's process for doing so for SDR voters, which the parties refer to as the "undeliverable mail provision."

Prior to S. 747, if a same-day registrant was determined eligible, the county board would conduct address verification. N.C. Gen. Stat. § 163-82.6A(d) (2012); N.C. Gen. Stat. § 163-82.7(c)-(f). Just as for non-SDR voters, if the first non-forwardable card was returned as undeliverable, the county board would send a second one. However, given the short window between early voting and the county canvass, in some instances the second card was returned as undeliverable after the county canvass. In those instances, although those SDR voters failed address verification, their votes were counted. N.C. Gen. Stat. § 163-82.7(g); (VL Doc. 55-2 at 3 (NCSBE Numbered Memo 2016-15 (Sept. 22, 2016)).)

When the Postal Service returned the second card as undeliverable before the county canvass, however, the law before S. 747 provided that the ballot (then considered a "retrievable absentee" ballot) could be challenged pursuant to section 163-89,

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000212
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 13 of 94

which authorizes a challenge procedure for absentee ballots to occur ten days after the election. Id. §§ 163-82.7(g)(2), 163-182.5. If this occurred, the county board would "need not try to notify the applicant further." Id. § 163-82.7(f).[13] However, the voter is entitled to appear and present evidence as to the validity of the ballot, provided he is notified of the challenge, for example, by another voter or organization. Id. § 163-89(e). Under this challenge system, "[n]o challenge shall be sustained unless the challenge is substantiated by affirmative proof," and "[i]n the absence of such proof, the presumption shall be that the voter is properly registered or affiliated." Id. § 163-90.1(b). In the last four even-year elections, 1,799 out of 100,578; 696 out of 45,666; 2,151 out of 116,326; and 391 out of 34,289 same-day registrants failed address verification. NCSBE, Presentation to House Oversight and Reform Committee, at 6 (June 22, 2023), at https://webservices.ncleg.gov/ViewDocSiteFile/80406 (last

[13] SDR voters may utilize NCSBE's "Voter Search" to track the status of their ballot, but NCSBE's website indicates that a voter's history "may take up to a few weeks after Election Day" to update. NCSBE, Vote Early in Person, at https://www.ncsbe.gov/voting/vote-early-person (last accessed Jan. 9, 2024). Moreover, even though SDR ballots were technically considered "absentee" ballots prior to S. 747, the court has no record that NCSBE's vote-by-mail tracking system, BallotTrax, was or is now available to SDR voters. See NCSBE, Ballot Tracking Available Again for Absentee-By-Mail Voters, at https://www.ncsbe.gov/news/press-releases/2022/03/14/ballot-tracking-available-again-absentee-mail-voters (Mar. 14, 2022) (last accessed Jan. 9, 2024).

AMERICAN OVERSIGHT

accessed Jan. 3, 2023).[14]

In reality, however, no challenges based on failed address verification have been held since August 2018. (VL Doc. 61 at 53:13-16 (State Board stating so at oral argument); VL Doc. 55-4 at 1-2 (NCSBE Numbered Memo 2018-07 (Aug. 8, 2018)); see also VL Doc. 55-3 at 8 (NCSBE Numbered Memo 2022-05 (May 12, 2022)).)[15] This results from the NCSBE's interpretation of an injunction entered in North Carolina State Conference of the NAACP v. Bipartisan Board of Elections & Ethics Enforcement, No. 1:16CV1274, 2018 WL 3748172 (M.D.N.C. Aug. 7, 2018). (See VL Doc. 55-3 at 8 (NCSBE Numbered Memo 2022-05 (May 12, 2022)) (explaining that "a 2018 federal court order [i.e., the Bipartisan Board order] prohibits any voter challenges from being brought without individualized knowledge within 90 days of a federal election"); VL Doc. 44-4 at 9-10 (Letter from State Board to Watauga County Board ordering the county board, pursuant to Bipartisan Board injunction, to halt its section 163-89 challenges based on same-day registrants' failure to complete address verification)).)

[14] The court may take judicial notice of facts that are "matters of public record." Justice 360 v. Stirling, 42 F.4th 450, 455 (4th Cir. 2022); Fed. R. Evid. 201.

[15] NCSBE updated the version of Numbered Memo 2022-05 available online on December 15, 2023, in light of S. 747. See NCSBE Numbered Memo 2022-05 (Dec. 15, 2023 update), at https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2022/Numbered%20Memo%202022-05_Absentee%20Voter%20Challenges%20by%20County%20Board.pdf. The memo before the updates is memorialized at VL Doc. 55-3 and DNC Doc. 54-3.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000214

In Bipartisan Board, individual voters in Beaufort, Cumberland, and Moore counties sent a single mailing to thousands of registered voters. Bipartisan Board, 2018 WL 3748172, at *4-9. These individuals together received thousands of pieces of mail returned as undeliverable, after which they brought challenges pursuant to N.C. Gen. Stat. §§ 163-85 and 163-86, which permit third-party challenges to a voter's right to register in a county due to, among other reasons, change in residency.[16] Id. When presented to the county boards, the single unreturned mailings constituted prima facie evidence that the corresponding voters did not reside at the address listed. Id.; N.C. Gen. Stat. § 163-85(e). The county boards thus struck the registrations of scores of registered voters, and plaintiffs sued to restore the registrations and receive prospective relief pursuant to the National Voter Registration Act ("NVRA," also known as the "Motor Voter Act"), 52 U.S.C. § 20507. Id. at *1. Finding that these third-party challenges violated 52 U.S.C §§ 20507(d)[17] and

[16] The Bipartisan Board order refers to these provisions as N.C. Gen. Stat. §§ 163A-911 and 163A-912. The provisions were re-codified by North Carolina Session Laws 2018-146, § 3.1(a), effective January 31, 2019, as N.C. Gen. Stat. §§ 163-85 and 163-86. This order will refer to the provisions as presently codified.

[17] Section 20507(d)(1) prohibits "remov[ing] 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": (1) confirms in writing that he has moved outside the registrar's jurisdiction; or (2) fails to respond to a notice as outlined under subsection (d)(2), and (3) has not voted or appeared to vote in

AMERICAN OVERSIGHT

(c)(2)(A),[18] the court permanently enjoined the NCSBE from

> (1) removing the registration of voters from the official list of eligible voters in elections for federal office through the challenge procedures set forth in N.C. Gen. Stat. §§ 163A-911 et seq.,[19] when those challenges are based on change of residency and the State has neither received written confirmation from the voter of a change of residency outside of the county, nor complied with the NVRA's prior notice requirement and two-election cycle waiting period;
>
> (2) using the challenge procedure set forth in N.C. Gen. Stat. §§ 163A-911[20] et seq. to remove voters from the rolls without individualized inquiry as to the circumstances of each voter in the 90 days preceding a federal election in the absence of a request of the registrant, necessity under State law by reason of criminal conviction or mental incapacity, or the death of the registrant; and
>
> (3) holding hearings or taking any other action(s) to process challenges filed under those provisions in the circumstances identified above.

Bipartisan Board, 2018 WL 3748172, at *12. The court found that the challenges, which occurred within 90 days of a federal election based on a single mailing, violated the NVRA because the process did not rely upon "individualized information" as to the voters sought to be removed. Id. at *6-10 (citing Arcia v. Fla. Sec'y of

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two federal election cycles following receipt of notice. Section 20507(d)(2) prescribes the content for a NVRA-compliant notice.

[18] Section 20507(c)(2)(A) provides that "[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."

[19] Now codified as N.C. Gen. Stat. §§ 163-85 et seq.

[20] Now codified as N.C. Gen. Stat. §§ 163-85 et seq.

AMERICAN OVERSIGHT

State, 772 F.3d 1335, 1346 (11th Cir. 2014)). Although Bipartisan Board dealt with challenges pursuant to section 163-85, State Board Defendants have construed the injunction to also prohibit challenges under section 163-89 for same-day registrants under the belief that the challenge procedures "bear a close resemblance" to one another. (VL Doc. 44-4 at 9-10 (pointing to the Bipartisan Board court's finding that the mailings constituted "generic evidence [that] conveyed no information about each challenged voter's specific circumstances").) As a result of Bipartisan Board and State Board Defendants' interpretation of it, failed address verifications for same-day registrants have not resulted in challenges since 2018.

S. 747 amends the address verification system for SDR voters to, as State Board Defendants contend, address the State's inability to conduct address verification before the canvass and to avoid counting ballots of SDR voters who fail address verification. (DNC Doc. 53 at 13; VL Doc. 54 at 11.) In pertinent part, the "undeliverable mail provision" now provides:

> Notwithstanding any other provision of this Chapter, if the Postal Service returns the first notice required under G.S. 163-82.7(c) as undeliverable before the close of business on the business day before canvass, the county board shall not register the applicant and shall retrieve the applicant's ballot and remove that ballot's votes from the official count.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000217

N.C. Gen. Stat. § 163-82.6B(d).[21] State Board Defendants state that all SDR voters will be given a notice at the polling place that their vote may not be counted if address verification fails, but there is no individualized notice and opportunity to be heard after the card is returned as undeliverable and before the ballot is removed from the official count. (See VL Doc. 55-6 (Notice to Same Day Registrants); VL Doc. 54 at 13 n.8 ("The State Board has also created a written notice that poll workers are required to give to all same-day registrants informing them" that, if address verification fails, their "voter registration will be denied and [their] vote will not be counted").)

State Board Defendants contend that North Carolina's interest in the undeliverable mail provision is "in ensuring only eligible ballots are counted in an election." (DNC Doc. 53 at 13.) Legislative Intervenors argue that S. 747 "(1) preserv[es] the integrity of the election process; and (2) instill[s] confidence in the fairness of the election." (DNC Doc. 52 at 17.) With respect to election integrity, Legislative Intervenors contend that the law "ensure[s] that registrant[s] live in the precinct within which they seek to vote." (Id. at 18.) They argue that

[21] It is unclear whether the provision referencing the "first notice" indicates that no second card will be sent, especially in light of the provision that the county board "shall not register" the SDR voter. State Board Defendants take the view that a second card is sent only if the first card returns after the canvass. (VL Doc. 55-5 at 7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000218
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 19 of 94

North Carolina has a "legitimate interest" in ensuring "that the card is returned before the end of the canvass," and that S. 747 is designed to bring SDR voters into parity with other voters. (VL Doc. 52 at 14; VL Doc. 61 at 66:13-15.) Legislative Intervenors also rely on the expert report and testimony of Dr. Andrew Taylor which, as discussed in more detail below, they urge shows that the undeliverable mail provision supports the State's interests. (See VL Doc. 52-1.) Party Intervenors contend that the State's "compelling interest" is in "ensuring verification of each applicant's address, which is fundamental to determining a voter's eligibility" (DNC Doc. 51 at 7-8), and in "discouraging and preventing fraud," (VL Doc. 51 at 11).

Neither State Board Defendants nor Intervenors point to any portion of the legislative history to demonstrate the General Assembly's purpose in enacting this change.[22] Legislative

[22] State Board Defendants and Intervenors have cited just one source of legislative history, a transcript of testimony by Defendant Bell before the House Committee on Oversight and Reform, available at https://webservices.ncleg.gov/ViewDocSiteFile/80708 (last accessed Jan. 17, 2024). However, neither this source nor other documents available online through the Senate Committee on Redistricting and Elections or the House Committee on Election Law and Campaign Finance Reform reveals the General Assembly's rationale for the undeliverable mail provision. This may be explained by the fact that the undeliverable mail provision appears to have been added to S. 747 by the House Committee on Election Law and Campaign Finance Reform one day before it passed the full chamber. See North Carolina General Assembly, Senate Bill 747 House Committee Substitute (Aug. 15, 2023), https://www.ncleg.gov/Sessions/2023/Bills/Senate/PDF/S747v4.pdf; see also North Carolina General Assembly, Senate Bill 747 / SL 2023-140, https://www.ncleg.gov/BillLookUp/2023/s%20747 (last accessed Jan. 17, 2024).

AMERICAN OVERSIGHT

Intervenors represent that State Board Defendants requested the change, the evidentiary support for which is a former State and Watauga County election board member's understanding. (VL Doc. 52 at 4; Doc. 52-2 at 9.) There is no record that address verification has ever revealed a same-day registrant who was in fact ineligible to vote because he did not reside at the residence provided. In fact, State Board Defendants state that they would have "no way to know" from the card itself. (VL Doc. 61 at 60:21.)

C. Parties

Plaintiff Voto Latino is a section 501(c)(4) nonprofit that encourages voting and assists with voter registration, particularly among eligible Latino voters. (VL Doc. 1 ¶¶ 17, 18.) Plaintiff Watauga County Voting Rights Taskforce is a volunteer, nonpartisan organization that conducts voter registration drives, voter education sessions, volunteer training, community outreach, among other functions. (Id. ¶¶ 22-24.) Relevant here, the Taskforce has defended voters whose ballots have been challenged. (Id. ¶ 25.) Plaintiff Down Home North Carolina is a section 501(c)(4) nonprofit that works, in part, to ensure that rural, working-class people in North Carolina have access to the franchise. (Id. ¶ 28.) Plaintiff Sophie Jae Mead is a senior at Appalachian State University and a member of the Watauga County Voting Rights Taskforce. (Id. ¶ 31.) Her ballot was allegedly challenged under section 163-89 due to an undeliverable address

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000220
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 21 of 94

verification card in 2022. (Id. ¶ 31.) Plaintiff Democratic National Committee ("DNC") is the national committee of the Democratic Party. (DNC Doc. 1 ¶¶ 22-23.) Plaintiff North Carolina Democratic Party ("NCDP") is a state committee of the Democratic Party. (Id. ¶ 25.)

Party Plaintiffs have sued the NCSBE, which is the executive agency responsible for administering election laws in North Carolina. (Id. ¶ 28.) All Plaintiffs also have sued NCSBE's executive director, Defendant Karen Brinson Bell, NCSBE's chair, Defendant Alan Hirsch, NCSBE's secretary, Defendant Jeff Carmon, and NCSBE members, Defendants Stacy Eggers IV, Kevin N. Lewis, and Siobhan O'Duffy Millen. (Id. ¶¶ 29-34; VL Doc. 1 ¶¶ 34-35.) All these individuals are sued in their respective official capacities. (DNC Doc. 1 ¶¶ 29-34; VL Doc. 1 ¶ 34.) Voto Latino has also sued Defendant Michael Behrent, the chair of the Watauga County Board of Elections, and Defendants Leta Councill, Eric Eller, Matt Walpole, and Elaine Rothenberg, who are members of the Watauga County Board of Elections, in their respective official capacities. (VL Doc. 1 ¶ 37.)

Legislative Intervenors are Philip E. Berger, President Pro Tempore of the North Carolina Senate, and Timothy K. Moore, Speaker of the North Carolina House of Representatives. They have intervened in their respective official capacities. Party Intervenors are the North Carolina Republican Party, the

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000221

Republican National Committee, Brenda M. Eldridge, and Virginia Ann Wasserberg. Eldridge and Wasserberg are registered Republican voters who "typically vote for Republican candidates, have served as poll observers in the past, and intend to do so in the future. (DNC Doc. 48 at 3.)

D. Procedural Background

Voto Latino Plaintiffs filed their motion for preliminary injunction on November 15, 2023 (VL Doc. 44), to which State Board Defendants and Intervenors responded on December 13, 2023 (VL Docs. 50-54). In the period between the motion and responses, the parties engaged in limited discovery by mutual agreement, the result of which are filings attached to State Board Defendants' and Intervenors' responses and Voto Latino Plaintiffs' reply brief. Voto Latino Plaintiffs' motion seeks preliminary injunctive relief solely against the enforcement of the undeliverable mail provision.

In the other case, Party Plaintiffs filed their motion for preliminary injunction on October 10, 2023 (DNC Doc. 6), to which State Board Defendants and Intervenors responded on November 20, 2023 (DNC Docs. 51-53). Party Plaintiffs replied on December 4, 2023. (DNC Doc. 58.) Party Plaintiffs seek preliminary injunctive relief precluding the following:

> (1) requiring same-day registrants (i.e., voters who seek to register and vote on the same day, prior to election day) to produce documentation that other

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000222

registrants need not produce;

(2) denying a same-day registrant's application to register without providing that individual with sufficient notice and a meaningful opportunity to be heard;

(3) rejecting a same-day registrant's application to register based on the return of a single notice as undeliverable by the U.S. Postal Service;

(4) applying different voting-registration standards, practices, or procedures to different individuals in the same county; and

(5) failing to provide a free-access system by which same-day registrants can track their retrievable ballots.

(DNC Doc. 6.)

Before proceeding, it bears noting what is not presently before the court. As described above, State Board Defendants have not enforced North Carolina's two-card address verification requirement for same-day registrants since the 2018 Bipartisan Board injunction against using challenges under N.C. Gen. Stat. §§ 163-85 et seq. to remove voters from the rolls in violation of the NVRA. At present, Plaintiffs have not brought suit under the NVRA, which requires 90 days' notice before an "aggrieved person may bring a civil action." 52 U.S.C. § 20510(b). At the hearing on the present motions, Party Plaintiffs represented that they have given notice to State Board Defendants of their intent to sue and that the 90-day notice period will expire sometime this month. (DNC Doc. 62 at 78 ("Nowhere near 90 days has gone past. We didn't

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000223
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 24 of 94

think when we filed our preliminary injunction motion asking that the Court rule by January, which will be 90 days, that there would be time to get effective relief under the NVRA.").)

The parties have studiously avoided any argument as to whether the undeliverable mail provision of S. 747 complies with the NVRA and/or the Bipartisan Board injunction. Despite figuring prominently in the history of SDR, the injunction is raised only in passing in the briefs. (VL Doc. 59 at 22 n. 6; VL Doc. 54 at 6; DNC Doc. 53 at 6-7.) Though during the hearing the court probed the parties about the effect, if any, of the Bipartisan Board injunction and the NVRA on Plaintiffs' requested relief, the parties demurred (DNC Doc. 61 at 78:9-18 (Party Plaintiffs expressing that "we have not yet looked at this issue"); id. at 35:11-12 (Voto Latino Plaintiffs expressing view that "it is certainly possible that the law does violate the injunction . . . and the NVRA"); id. at 43:11-22 (State Board Defendants expressing that they "haven't completely looked at whether the new law as a whole" violates Bipartisan Board but expressing belief that challenge procedures would); id. at 77:4-11 (Legislative Intervenors expressing belief that Bipartisan Board is "distinguishable")), such that it is assuredly not raised before the court at this time. Thus, the court expresses no opinion on the effect, if any, of the injunction or the NVRA, and turns to consideration of the statutory and constitutional claims actually

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000224
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 25 of 94

raised.

II. ANALYSIS

A. Standing

Legislative Intervenors and Party Intervenors challenge the Article III standing of all Voto Latino Plaintiffs. (VL Doc. 51 at 4-7; VL Doc. 52 at 15-16.) Plaintiff Mead contends that she has standing as an individual, Plaintiff Voto Latino contends that it has standing in its own right as an organization, and Plaintiffs Task Force and Down Home NC contend that they satisfy either standing in their own right or representational standing. (VL Doc. 45 at 16-17.) Intervenors argue that the organizational Voto Latino Plaintiffs' claims are generalized grievances and that the organizations have not demonstrated that a diversion of resources "has yet to occur," and that they "may never occur." (VL Doc. 51 at 7, Doc. 52 at 15, Doc. 60 at 2-3.) Moreover, Legislative Intervenors maintain that Plaintiff Mead's injury is speculative because it involves "some *potential* SDR issue in a *future* election where she *might* utilize SDR." (VL Doc. 52 at 16 (emphasis in original).)

Legislative Intervenors also challenge the Article III standing of Party Plaintiffs. (DNC Doc. 52 at 7-8.) Party Plaintiffs argue that they have standing in their own right and representational standing. (DNC Doc. 58 at 14 n.5.) Legislative Intervenors argue that Party Plaintiffs "utterly failed to allege

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000225

that any of the same-day registration provisions challenged in S.B. 747 create[s] specific harm to their organizations or Democratic voters," such that the claims are speculative, generalized grievances. (DNC Doc. 52 at 8.)

"No lawsuit may proceed in federal court unless the party seeking relief has Article III standing." Carolina Youth Action Project v. Wilson, 60 F.4th 770, 778 (4th Cir. 2023). The basic standing requirements are that a plaintiff must show: (1) he has suffered an "injury in fact," (2) the injury is "fairly . . . trace[able] to the challenged action of the defendant," and (3) it is "likely" that "the injury will be redressed by a favorable decision." Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992) (citations and internal quotation marks omitted) (alteration and omission in original). In multi-plaintiff cases, "[a]t least one plaintiff must have standing to seek each form of relief requested in the complaint." Town of Chester v. Laroe Estates, Inc., 137 S. Ct. 1645, 1651 (2017). If there is one such plaintiff, the court need not consider whether other plaintiffs have standing to seek that same form of relief. Carolina Youth Action, 60 F.4th at 778.

The injury in fact "requirement ensures that plaintiffs have a 'personal stake in the outcome of the controversy.'" Kenny v. Wilson, 885 F.3d 280, 287 (4th Cir. 2018) (quoting Warth v. Seldin, 422 U.S. 490, 498 (1975)). An injury in fact is "'an invasion of a legally protected interest' that is 'concrete and

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000226
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 27 of 94

particularized' and 'actual or imminent, not conjectural or hypothetical.'" Spokeo, Inc. v. Robins, 578 U.S. 330, 339 (2016) (quoting Lujan, 504 U.S. at 560). "An allegation of future injury may suffice if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur." Susan B. Anthony List v. Driehaus, 573 U.S. 149, 158 (2014) (citation and internal quotation marks omitted). When plaintiffs seek prospective relief, they must establish an ongoing or imminent injury in fact. O'Shea v. Littleton, 414 U.S. 488, 495–96 (1974).

An organizational plaintiff can satisfy the standing requirements in two ways: either injury in its own right, or injury as a representative of its members. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181, 199 (2023). To have standing in its own right, the organization may show that an alleged illegal action "perceptibly impair[s]" its ability to carry out its mission, including by draining the organization's resources. Havens Realty Corp. v. Coleman, 455 U.S. 363, 379 (1982). An organization does not have standing, however, where injury results "not from any actions taken by [the defendant], but rather from the [organization's] own budgetary choices," such as "educating members, responding to member inquiries, or undertaking litigation in response to legislation." Lane v. Holder, 703 F.3d 668, 674–75 (4th Cir. 2012) (internal quotation marks and citation omitted) (finding lack of standing

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000227
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 28 of 94

where resource drain resulted from "inquiries [from members] into the operation and consequences of interstate handgun transfer provisions").

Some voter advocacy groups in this district have established standing on their own behalf under Havens Realty and Lane where they allege a link between their mission and the alleged illegal act, as well as resource expenditures beyond merely educating voters and responding to inquiries. Democracy N.C. v. N.C. State Bd. of Elections, 476 F. Supp. 3d 158, 182-83 (M.D.N.C. 2020) (finding standing where organization would divert resources to assist voters with registering to vote before 25-day deadline); Action NC v. Strach, 216 F. Supp. 3d 597, 617-18 (M.D.N.C. 2016) (finding standing where organization would divert limited time and resources to assist voters with registration after DMV allegedly failed to transmit voter registration information to NCSBE); N.C. State Conf. of the NAACP v. N.C. State Bd. of Elections, 283 F. Supp. 3d 393, 402-03 (M.D.N.C. 2017) (finding standing where organization would divert resources to combat "*en masse* voter challenges"). Moreover, a political party may have standing in its own right where a law "threatens and inhibits" the party's efforts to register eligible voters and requires diverting resources to cure ballot defects. Democratic Party of Va. v. Brink, 599 F. Supp. 3d 346, 355 (E.D. Va. 2022) (citing Crawford v. Marion Cnty. Election Bd., 472 F.3d 949, 951 (7th Cir. 2007)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000228

(Posner, J.), aff'd, 553 U.S. 181 (2008)).

To represent its members, rather than have injury in its own right, the organization must demonstrate that "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." Students for Fair Admissions, 600 U.S. at 199 (quoting Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 343 (1977)).

Standing is not "dispensed in gross"; instead, the court must consider standing with respect to the requested relief. Town of Chester, 581 U.S. at 439. The court will first consider Plaintiffs' request to enjoin the enforcement of the undeliverable mail provision — i.e., relief that all Plaintiffs join in seeking. It will then turn to Party Plaintiffs' other requested relief.

Plaintiff Voto Latino alleges that its mission is "engag[ing], empower[ing], and educat[ing] its core constituency of Latinx communities throughout the country to ensure that they are enfranchised and included in the democratic process." (VL Doc. 1 ¶ 17.) Voto Latino anticipates spending approximately $1 million during the 2024 election cycle in North Carolina, including on registering new voters through same-day registration. (Id. ¶ 18.) It contends that its mission will be frustrated because it

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000229
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 30 of 94

will divert resources ordinarily spent on issue advocacy toward encouraging eligible voters to register prior to early voting to avoid the risk of failing address verification. (Id. ¶ 19.) Further, Voto Latino contends that it will spend more resources (1) reaching out to voters to encourage them to provide a mailing address where they can receive mail as a second address, (2) registering more voters to account for those who will be erroneously not counted, and (3) contacting voters whose registrations were ultimately denied to get them registered again. (VL Doc. 51-4 at 53:24-55:1.) Moreover, Voto Latino contends that "thousands of eligible voter constituents that Voto Latino plans to assist in 2024" face an "extremely high risk" that they will be disenfranchised because of the undeliverable mail provision. (VL Doc. 1 ¶ 21.)

Plaintiff Voto Latino's allegations are sufficient to establish standing in its own right at this stage. As alleged, erroneous disenfranchisement of SDR voters would hinder Voto Latino's mission of registering eligible voters and engaging in voter advocacy. See League of Women Voters of S.C. v. Andino, 497 F. Supp. 3d 59, 75-76 (D.S.C. 2020) (finding organizational standing where state removed notice-and-cure procedure for absentee ballots and thus impaired the organization's mission to register voters). Moreover, Voto Latino sufficiently alleges resource expenditures required to address the change in law with

AMERICAN OVERSIGHT

prospective same-day registrants. See Democracy N.C., 476 F. Supp. 3d at 182 (finding organizational standing where an organization would have to divert resources to warn voters about the risks of absentee voting and where efforts spent encouraging voter participation would be obviated by inadvertent disenfranchisement). The court further finds that Voto Latino's alleged injury is traceable to the undeliverable mail provision and would be redressable by the requested relief. Lujan, 504 U.S. at 560–61. As a result, Voto Latino has standing as an organization.

Because Plaintiff Voto Latino has standing to pursue this relief, the court need not determine the standing of the other Voto Latino Plaintiffs. Carolina Youth Action, 60 F.4th at 778. Nevertheless, it is likely that Down Home NC would have representational standing as well. Down Home NC has identified at least one member who would have standing. Summers v. Earth Island Inst., 555 U.S. 488, 498–99 (2009) (requiring an organization to name affected members, unless all members of the organization are harmed). This individual has allegedly resided in a hotel in Alamance County since a fire destroyed her home. (VL Doc. 60-3 at 67:6-8.) Down Home NC contends that she is unable to stay in the same room to establish residency, (id. at 67:6-10), and that she intends to use same-day registration in 2024, (id. at 76:4). Because a person's right to vote is "individual and personal in

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000231

nature," Reynolds v. Sims, 377 U.S. 533, 561 (1964), "'voters who allege facts showing disadvantage to themselves as individuals have standing to sue' to remedy that disadvantage." Gill v. Whitford, 138 S. Ct. 1916, 1920 (2018) (quoting Baker v. Carr, 369 U.S. 186, 206 (1962)). This individual identified by Down Home NC would have standing, as she faces a concrete and imminent risk of harm because she is unlikely to have a stable address where she can receive mail at least by early voting in February 2024. See Lujan, 504 U.S. at 564 (finding no standing upon mere "some day" intentions without "any description" of concrete plans); N.C. State Conf. of the NAACP, 283 F. Supp. 3d at 404 (finding standing where individual faced "real and imminent risk" of being unlawfully removed from voter rolls by "systematic, *en masse*" voter challenges). This individual thus has a concrete risk of having her vote not counted after she same-day registers. Moreover, the interests Down Home NC seeks to protect are germane to its stated purpose of "ensur[ing] that working-class North Carolinians . . . have access to the franchise." (VL Doc. 44-3 ¶ 5.) Finally, this individual's participation is not required in this lawsuit. Students for Fair Admissions, 600 U.S. at 199 (quoting Hunt, 432 U.S. at 343)). Accordingly, Down Home NC has satisfied the requirements of representational standing. Id.

In the other lawsuit, North Carolina Democratic Party's mission is to "elect Democratic candidates to public office

AMERICAN OVERSIGHT

throughout North Carolina." (DNC Doc. 1 ¶ 25.) The Democratic National Committee's organizational purpose is to "communicate the Democratic Party's position and messages on issues; protect the legal rights of voters; and aid and encourage the election of Democratic candidates at the national, state, and local levels, including by persuading and organizing citizens not only to register to vote as Democrats, but also to cast their votes for Democratic candidates." (Id. ¶ 23.) Party Plaintiffs contend that it is "exceedingly likely" that one or more of the 2.4 million registered Democratic Party members in North Carolina will be removed from the voting rolls. (DNC Doc. 1 ¶ 26.) Of note, however, Party Plaintiffs do not name any specific members. Party Plaintiffs also contend they are harmed as organizations because the law will "require each organization to expend and divert funds and resources that they would otherwise spend on voter outreach and mobilization efforts . . . in order to ensure that those voters are not erroneously prevented from voting." (Id. ¶ 27.) Moreover, they allege that the "likely erroneous denial of Democratic voters' right to cast a ballot and have it counted . . . undermin[es] the two organizations' abilities to succeed in getting Democrats elected." (Id.) Party Plaintiffs represented that 880 of the 2,000 voters who required a second address verification card in 2020 were registered Democrats. (DNC Doc. 62 at 13:11-12.)

For much of the same reasons as for Plaintiff Voto Latino,

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000233

Party Plaintiffs have standing on their own behalf to seek relief as to the undeliverable mail provision because they have adequately alleged a frustration of their mission of registering voters and a diversion of resources as a result of the undeliverable mail provision. See Brink, 599 F. Supp. 3d at 355; Andino, 49 F. Supp. 3d at 75-76; Democracy N.C., 476 F. Supp. 3d at 182.

Party Plaintiffs seek additional relief that Voto Latino does not. This includes "requiring same-day registrants . . . to produce documentation that other registrants need not produce; [] denying a same-day registrant's application to register without providing that individual with sufficient notice and a meaningful opportunity to be heard; [] applying different voting-registration standards, practices, or procedures to different individuals in the same county; and [] failing to provide a free-access system by which same-day registrants can track their retrievable ballots." (DNC Doc. 6.) The parties have not made any particularized arguments as to Party Plaintiffs' Article III standing for these forms of relief. The court nevertheless finds at this stage that Party Plaintiffs' standing to seek these forms of relief is no different than it is for the undeliverable mail provision, as each would redress the injuries to the missions and the resource diversions alleged above. The court will address State Board Defendants' and Intervenors' positions on statutory standing under the Civil Rights Act and the Help America Vote Act below.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000234

Having found the requisite Article III standing, the court will turn to the merits of the motions.

B. Preliminary Injunction Standard

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). Such an injunction "is an extraordinary remedy intended to protect the status quo and prevent irreparable harm during the pendency of a lawsuit." Di Biase v. SPX Corp., 872 F.3d 224, 230 (4th Cir. 2017). To demonstrate a likelihood of success on the merits, "[a] plaintiff need not establish a certainty of success, but must make a clear showing that he is likely to succeed at trial." Id.

Party Plaintiffs alone raise two statutory claims that reach S. 747's undeliverable mail provision as well as other provisions of state election law. Before the court "can address the constitutional arguments," it must "attempt to resolve" the motions "on non-constitutional grounds first, if possible." Nat'l Lab. Rels. Bd. v. Enter. Leasing Co. Se., LLC, 722 F.3d 609, 613 (4th Cir. 2013); Ashwander v. Tenn. Valley Auth., 297 U.S. 288, 347 (1936) (Brandeis, J., concurring). The court thus turns to these statutory claims first.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000235
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 36 of 94

C. Civil Rights Act

Party Plaintiffs alone argue that S. 747 violates the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(A), by applying different registration standards, practices, or procedures to different groups of individuals in the same county. (DNC Doc. 7 at 21.) Party Plaintiffs contend that S. 747 treats SDR and non-SDR voters disparately by requiring SDR voters to provide documentary proof of residency; by providing SDR voters only one mail card for address verification, instead of two; and by not providing notice and opportunity to be heard to SDR voters who are found ineligible to vote by the State Board. (Id. at 22-23.) Party Plaintiffs seek an order enjoining these differences in treatment. (DNC Doc. 6.)

In response, State Board Defendants argue that the CRA is only enforceable through 42 U.S.C. § 1983 and that Party Plaintiffs must, but did not, bring their CRA claim pursuant to that statute. (DNC Doc. 53 at 15.) Intervenors contend that Party Plaintiffs are unlikely to show that they have a private right of action to enforce their claims under 52 U.S.C. § 10101. (DNC Doc. 52 at 8-9; DNC Doc. 51 at 12-13.) Moreover, State Board Defendants and Intervenors contend that SDR and non-SDR are "inherently different" types of registration and thus require different procedures for each. (Id.; DNC Doc. 51 at 13-14 ("[T]his is not a case where different standards are applied to individuals based

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000236
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 37 of 94

on race, age, gender, neighborhood of residence, profession, etc."); DNC Doc. 52 at 10.) They argue, in addition, that Party Plaintiffs' interpretation of the CRA would put in jeopardy all requirements which apply to a set of voters, including differences between procedures for vote-by-mail and in-person voting. (DNC Doc. 53 at 16; DNC Doc. 52 at 10; DNC Doc. 51 at 14-16.)

Whether the CRA creates a private right of action is a question of "statutory standing." CGM, LLC v. BellSouth Telecommc'ns, Inc., 664 F.3d 46, 51-52 (4th Cir. 2011). Statutory standing "applies only to legislatively-created causes of action" and concerns "whether a statute creating a private right of action authorizes a particular plaintiff to avail herself of that right of action." Id. (internal quotation marks omitted).

Courts have disagreed as to whether the CRA provides a private right of action. McKay v. Thompson, 226 F.3d 752, 756 (6th Cir. 2000) (no private right of action, but decided before Gonzaga Univ. v. Doe, 536 U.S. 273 (2002)); Schwier v. Cox, 340 F.3d 1284, 1297 (11th Cir. 2003) (private right of action); Vote.org v. Callanen, 89 F.4th 459, 474-78 (5th Cir. 2023) (private right of action). The Fourth Circuit has assumed without deciding that a private right of action existed. Washington v. Finlay, 664 F.2d 913, 926 (4th Cir. 1981). And the Third Circuit reversed a district court that had found no private right of action, but the Supreme Court subsequently vacated the decision and ordered that the case be

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000237

dismissed as moot. Migliori v. Cohen, 36 F.4th 153 (3d Cir. 2022), cert. granted, judgment vacated sub nom. Ritter v. Migliori, 143 S. Ct. 297 (2022).

This statutory standing question would be properly considered on a motion to dismiss for failure to state a claim upon which relief can be granted. CGM, LLC, 664 F.3d at 51-52. Unlike a jurisdictional question that the court must answer, the statutory standing question here may be avoided where there are alternative grounds upon which to resolve the motion. Willner v. Dimon, 849 F.3d 93, 102 n.1 (4th Cir. 2017) (avoiding alternative bases to dismiss "in view of the resolution of th[e] case on other bases"). Such alternative grounds exist here to find that Party Plaintiffs are unlikely to succeed on the merits.[23]

The CRA states in part:

> No person acting under color of law shall . . . in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar subdivision who have been found by State officials to be qualified to vote[.]

52 U.S.C. § 10101(a)(2)(A) (previously codified as 42 U.S.C. § 1971). In Rokita, the plaintiffs argued that the photo ID requirement violated the CRA because all voters, namely absentee

[23] For similar reasons, the court need not address Party Plaintiffs' lack of citation to 42 U.S.C. § 1983, as raised by State Board Defendants. (DNC Doc. 53 at 15.)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000238

voters, did not need to present a photo ID. Ind. Democratic Party v. Rokita, 458 F. Supp. 2d 775, 839 (S.D. Ind. 2006), aff'd sub nom. Crawford v. Marion Cnty. Election Bd., 472 F.3d 949 (7th Cir. 2007) (Posner. J.), aff'd, 553 U.S. 181 (2008). The court rejected the plaintiffs' argument, in part, because the CRA is not intended to prevent states from providing different procedures for different methods of voting. Id. at 839-40. The court reasoned that because "absentee voting is an *inherently* different procedure from voting in person," the State must apply different "standards, practices, or procedures" to these two groups of voters. Id. at 840 (emphasis in original). The court further observed that prohibiting such differences would be a "radical departure from settled law." Id.

Here, Party Plaintiffs cite no case in support of their construction and no persuasive limiting principle that would avoid the unintended consequences identified in Rokita and by State Board Defendants and Intervenors. Party Plaintiffs urge that the CRA under their theory would only stop differential treatment "in determining whether any individual is qualified under State law or laws to vote," rather than different methods of registration or voting. (DNC Doc. 58 at 12 (quoting § 10101(a)(2)(A).) Even if this were a meaningful distinction, Party Plaintiffs have not shown that the CRA nevertheless undercuts North Carolina's ability to employ different procedures for determining one's qualifications

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000239
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 40 of 94

to vote depending on how one registers, without due regard to the practical reality that offering various methods of registration — many of which may be less burdensome on voters — may require different procedures.

Moreover, Party Plaintiffs have not established a likelihood of success in demonstrating that a court may properly consider SDR registrants as a class under the CRA when comparing standards, practices, and procedures applied between "any individual" and "other individuals." See 52 U.S.C. § 10101(a)(2)(A). While the parties have not argued, and this court thus does not hold, that the CRA applies only to certain protected classes, Party Plaintiffs have not fairly raised any allegation of discrimination against a protected class, stating only in a footnote that "[h]olding same-day registrants to a higher standard is [] likely to disproportionately disenfranchise African American voters." (DNC Doc. 7 at 23 n.8; see also DNC Doc. 52 at 10 n.8 (demonstrating Legislative Intervenors' intent to move to dismiss CRA claim for failure to allege or prove race discrimination).) Party Plaintiffs' lack of authority raises considerable doubt as to their likelihood of success in showing that the CRA protects SDR voters. Consequently, the court will deny Party Plaintiffs' motion for injunctive relief under the CRA.

D. Help America Vote Act

Party Plaintiffs argue, pursuant to the Help America Vote

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000240

Act, 52 U.S.C. § 21082(a)(5), that S. 747 does not provide an individual who casts a provisional ballot with a "free access system" to track if a provisional ballot is counted and "written information" about a tracking system. (DNC Doc. 7 at 24.) Party Plaintiffs contend that the retrievable ballot under S. 747 is a "provisional ballot" under HAVA. (Id.) They thus seek an order requiring that State Board Defendants "provide a free-access system by which same-day registrants can track their retrievable ballots." (DNC Doc. 6.)

In response, State Board Defendants argue that HAVA is only enforceable through 42 U.S.C. § 1983 and that that Party Plaintiffs must, but did not, bring their HAVA claim pursuant to that statute. (DNC Doc. 53 at 17.) Legislative Intervenors contend that Party Plaintiffs are unlikely to show that they have a private right of action to enforce their claims under 52 U.S.C. § 21082. (DNC Doc. 52 at 8-9.) Moreover, State Board Defendants and Intervenors argue that a retrievable ballot under S. 747 is not a provisional ballot that triggers HAVA's requirements, and that North Carolina is otherwise in compliance with HAVA. (DNC Doc. 53 at 18-20; DNC Doc. 52 at 9; DNC Doc. 51 at 10-11.)

As with the CRA, courts have disagreed as to whether HAVA provides a private right of action. Am. Civil Rights Union v. Phila. City Comm'rs, 872 F.3d 175, 181 (3d Cir. 2017) ("HAVA does not include a private right of action that allows aggrieved parties

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000241

to sue nonconforming states."); Crowley v. Nevada ex rel. Nev. Sec'y of State, 678 F.3d 730, 735 (9th Cir. 2012) (recognizing there is no private right of action under the HAVA, and foreclosing a section 1983 suit)); Colon-Marrero v. Velez, 813 F.3d 1, 22 (1st Cir. 2016) (permitting private right of action through section 1983); Sandusky Cnty. Democratic Party v. Blackwell, 387 F.3d 565, 572 (6th Cir. 2004) (same). For the same reasons stated above for the CRA, the court need not address this statutory standing question because Party Plaintiffs' HAVA claim can be resolved on alternative grounds. See CGM, LLC, 664 F.3d at 51-52; Willner, 849 F.3d at 102 n.1 (avoiding alternative bases to dismiss "in view of the resolution of th[e] case on other bases").[24]

In relevant part, HAVA provides:

> The appropriate State or local election official shall establish a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.

52 U.S.C. § 21082(a)(5)(B). HAVA also provides that when an individual casts a provisional ballot, the "election official shall give the individual written information" about the tracking system. Id. § 21082(a)(5)(A). The provisions Party Plaintiffs

[24] Similarly, the court need not address State Board Defendants' argument regarding Party Plaintiffs' lack of citation to 42 U.S.C. § 1983. (DNC Doc. 53 at 17.)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000242

rely upon apply to an individual who "declares" that he is a "registered voter" but whose name does not appear on the official list of eligible voters. 52 U.S.C. § 21082(a).

In North Carolina, a "'[p]rovisional official ballot' means an official ballot that is voted and then placed in an envelope that contains an affidavit signed by the voter certifying identity and eligibility to vote." N.C. Gen. Stat. § 163-165(6). By contrast, a retrievable ballot is one that a voter "shall cast . . . and then shall deposit [] in the ballot box or voting system in the same manner as if such box or system was in use in a precinct on election day." N.C. Gen. Stat. § 166.45 (as amended by section 27.(c) and recodified by section 1.(b) of 2023 N.C. Sess. Laws 140). According to NCSBE Numbered Memo 2023-04, a same-day registrant who does not have a HAVA document — i.e., one who does not complete an SDR registration — may vote a provisional ballot instead of a retrievable ballot. NCSBE Numbered Memo 2023-04, at 9 (Oct. 12, 2023), https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2023/Numbered%20Memo%202023-04%20Provisional%20Ballots%20and%20Canvass%20Procedures.pdf (last accessed Jan. 2, 2023).

Here, Party Plaintiffs have not demonstrated that they are likely to succeed in showing that this provision applies to SDR voters. In their reply, Party Plaintiffs argue that SDR voters are provisional voters because they "declare they are registered

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000243
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 44 of 94

upon turning in a completed registration form" and "will not immediately appear on the list of eligible voters." (DNC Doc. 58 at 12.) While that may be one technical, if not strained, similarity between provisional voters and SDR voters, North Carolina law otherwise treats these voters differently. See, e.g., N.C. Gen. Stat. § 166.45 (requiring retrievable ballots be placed in ballot box); NCSBE Numbered Memo 2023-04, supra (outlining procedures applicable to provisional ballots to determine eligibility and to count the ballot). Moreover, Party Plaintiffs do not argue that North Carolina is otherwise out of compliance with HAVA. As a consequence, Party Plaintiffs' motion for preliminary injunction pursuant to HAVA will be denied.

E. Fourteenth Amendment Claims

1. Due Process and Anderson-Burdick

All Plaintiffs challenge portions of section 10.(a) of S. 747 (codified as N.C. Gen. Stat. § 163-82.6B) on procedural due process grounds. The parties dispute which test should apply. Plaintiffs argue that the court should apply the test set out in Mathews v. Eldridge, 424 U.S. 319 (1976). (DNC Doc. 7 at 15; VL Doc. 45 at 19.) They argue, alternatively, that even if the court were to apply the test provided by Anderson v. Celebrezze, 460 U.S. 780 (1983) and Burdick v. Takushi, 504 U.S. 428 (1992), commonly called "Anderson-Burdick," they should prevail anyway. (DNC Doc. 58 at 5-6; VL Doc. 59 at 24-29.)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000244

To prevail on a claim for a procedural due process deprivation under Eldridge, a plaintiff must demonstrate: "(1) a cognizable liberty or property interest; (2) the deprivation of that interest by some form of state action; and (3) that the procedures employed were constitutionally inadequate." Accident, Injury & Rehab., PC v. Azar, 943 F.3d 195, 203 (4th Cir. 2019) (internal quotation marks omitted). "To assess the constitutional adequacy of an opportunity to be heard, courts consider (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of that interest given the procedures used, as well as the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest," id., "including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail," Eldridge, 424 U.S. at 335.

State Board Defendants concede that if Eldridge were the proper test, the undeliverable mail provision would be unconstitutional. (DNC Doc. 53 at 10-11; VL Doc. 54 at 9-10.) They, along with Intervenors, contend, however, that the Anderson-Burdick test is the proper framework for analyzing the law. (DNC Doc. 53 at 11; VL Doc. 54 at 10; VL Doc. 52 at 16 n. 12; VL Doc. 51 at 9-10.) Under this test, regulations that impose a severe burden on the right to vote must be "narrowly drawn to advance a state interest of compelling importance." Burdick, 504 U.S. at

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000245

434 (quoting Norman v. Reed, 502 U.S. 279, 289 (1992)). Non-severe burdens, by contrast, are subject to Anderson-Burdick's more flexible balancing standard, under which this court must

> weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights."

Id. (quoting Anderson, 460 U.S. at 789). Within Anderson-Burdick's balancing standard, the "rigorousness of [the court's] inquiry into the propriety of a state election law depends" upon the severity of the burden imposed. Id. Accordingly, Anderson-Burdick balancing operates on a sliding scale: the greater the burden imposed, the more important a state's justification must be. Id.

Voto Latino contends that applying Anderson-Burdick to this case would improperly extend a test fashioned for equal protection claims to procedural due process claims. (VL Doc. 59 at 19.) To be sure, Anderson was an equal protection-based right-to-vote case. 460 U.S. at 783, 786 n.7 (reviewing finding of equal protection violation and relying on cases that apply the "'fundamental rights' strand of equal protection analysis"). Crawford v. Marion County Election Board, 553 U.S. 181 (2008), too, which involved a challenge to Indiana's photo ID requirement, was an equal protection challenge, at least at the district court

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000246
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 47 of 94

level. See Rokita, 458 F. Supp. 2d at 830-31. While the Supreme Court has never formally foreclosed the application of Eldridge in the voting rights context, its cases have not cabined the Anderson-Burdick analysis to equal protection rights under the Fourteenth Amendment. See, e.g., Burdick, 504 U.S. 428 (repeatedly referring to rights under the "First and Fourteenth Amendments"); Crawford, 553 U.S. at 204 (Scalia, J., concurring) ("To evaluate a law respecting the right to vote — whether it governs voter qualifications, candidate selection, or the voting process — we use the approach set out in Burdick v. Takushi[.]" (emphasis added)); see also McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 345 (1995) (not applying Anderson-Burdick where the statute at issue "[did] not control the mechanics of the electoral process"). Indeed, circuit courts have applied Anderson-Burdick to cases across the election litigation spectrum. See, e.g., Fusaro v. Howard, 19 F.4th 357, 364 (4th Cir. 2021) (applying Anderson-Burdick to Free Speech Clause claim where resident sought access to list of registered voters); Weber v. Shelley, 347 F.3d 1101, 1105-07 (9th Cir. 2003) (analyzing a due process challenge to a county's use of touch screen voting systems under the Anderson-Burdick framework); Obama for Am. v. Husted, 697 F.3d 423, 430 (6th Cir. 2012) (concluding that Anderson-Burdick serves as "a single standard for evaluating challenges to voting restrictions"); Acevedo v. Cook Cnty. Officers Electoral Bd., 925

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000247
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 48 of 94

F.3d 944, 948 (7th Cir. 2019) (concluding that Anderson-Burdick applies "to all First and Fourteenth Amendment challenges to state election laws").

The right to vote is fundamental. See, e.g., Burdick, 504 U.S. at 433. "Other rights, even the most basic, are illusory if the right to vote is undermined." Wesberry v. Sanders, 376 U.S. 1, 17 (1964). The Constitution delegates to the states the manner of conducting elections, U.S. Const. art. I, § 4, cl. 1, and the Supreme Court has recognized that "[t]here must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." Storer v. Brown, 415 U.S. 724, 730 (1974). Acknowledging the importance of both sides of this balance, three circuit courts have recently stated that Anderson-Burdick is the proper framework even where a plaintiff in a voting rights case alleges a procedural due process violation under Eldridge. Richardson v. Tex. Sec'y of State, 978 F.3d 220, 233 (5th Cir. 2020) (on motion to stay preliminary injunction); Ariz. Democratic Party v. Hobbs, 18 F.4th 1179, 1195 (9th Cir. 2021) (on review of entry of preliminary injunction); New Ga. Project v. Raffensperger, 976 F.3d 1278, 1282 (11th Cir. 2020) (on motion to stay preliminary injunction). Moreover, the Ninth and Eleventh Circuits have suggested that Anderson-Burdick may "conceptually duplicat[e]" Eldridge to some extent. Raffensperger, 976 F.3d at

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000248

1282; Hobbs, 18 F.4th at 1195 ("To the extent that the Eldridge test would strike a different balance, we do not think that the Supreme Court's extensive jurisprudence on challenges to voting restrictions may be discarded merely by raising the same challenge under the banner of procedural due process."); see also Rivera-Powell v. N.Y.C. Bd. of Elections, 470 F.3d 458, 468-69 (2d Cir. 2006) (Sotomayor, J.) (denying Anderson-Burdick claim after finding that state had provided adequate notice and opportunity to be heard under Due Process Clause). But see Richardson, 978 F.3d at 235 (suggesting that Eldridge would "inevitably result in courts' 'weigh[ing] the pros and cons of various balloting systems,' thereby 't[ying] the hands of States seeking to assure that elections are operated equitably and efficiently'" (internal citations omitted)).

The court finds the reasoning of these cases as to the application of Anderson-Burdick persuasive. See also Democratic Nat'l Comm. v. Wisconsin State Legislature, 141 S. Ct. 28 (Mem) (2020) (Gorsuch, J., concurring) (expressing skepticism in judicial intervention in election regulations because "[l]egislatures enjoy far greater resources for research and factfinding . . . than usually can be mustered in litigation between discrete parties before a single judge"); Crawford, 553 U.S. at 210 (Souter, J., dissenting) (endorsing Anderson-Burdick for its consideration of "the legitimacy of interests" in voting

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000249

rights and in election regulation).

To the extent district courts in this circuit have applied Eldridge in the election regulation context, this court is cognizant that some of those district courts did not benefit from the development of the circuit guidance that this court now enjoys, and those decisions were also at a preliminary stage. See Democracy N.C., 476 F. Supp. 3d at 226 (applying Eldridge to preliminarily enjoin absentee voting regulation and refraining from applying Anderson-Burdick); Andino, 497 F. Supp. 3d at 76–77 (applying both Eldridge and Anderson-Burdick on preliminary injunction); Brink, 599 F. Supp. 3d at 361 (applying Anderson-Burdick on preliminary injunction and rejecting application of Eldridge after analyzing Richardson, Raffensperger, and Hobbs).

Voto Latino Plaintiffs rely on three Fourth Circuit cases to support its argument for applying Eldridge, (VL Doc. 59 at 18), but none is on point. Barefoot v. City of Wilmington, 306 F.3d 113 (4th Cir. 2002), involved a land annexation dispute, not an election regulation. Id. at 124 ("Appellants do not have the right to vote on annexation."). The Fourth Circuit's observation that the Due Process Clause "requires fair and adequate procedures" for voting was set out in a footnote and was in reference to voting on annexation, not political elections. Id. at 124 n.5. In any event, the court did not discuss the appropriate test to apply. Id. Voto Latino Plaintiffs' other cases fare no better, as Kirk

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000250
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 51 of 94

v. Comm'r of Soc. Sec. Admin., 987 F.3d 314 (4th Cir. 2021), was an Eldridge case regarding the Social Security Administration's redetermination procedures for benefits, and Halcomb v. Ravenell, 992 F.3d 316 (4th Cir. 2021), was an Eldridge challenge to the procedural protections applicable to a prisoner's security detention hearing. Neither was an election case.

Consequently, the court will apply Anderson-Burdick to Plaintiffs' due process claims.[25]

2. Undeliverable Mail Provision

a. Likelihood of Success on the Merits

First, the court considers Plaintiffs' challenge to the undeliverable mail provision. Voto Latino Plaintiffs contend that a single address verification card is "inherently error-prone and not a reliable indicator of non-residency or ineligibility." (VL Doc. 45 at 20.) In particular, Voto Latino Plaintiffs note that errors beyond the fault of the voter, namely poll worker and U.S. Postal Service error, will result in erroneous disenfranchisement. (Id. at 21-26.) Voto Latino Plaintiffs also note that voters who move after casting a same-day ballot may risk erroneous disenfranchisement because that voter is entitled under § 163-55(a) to vote at a prior residence if relocation occurs within 30

[25] Though Anderson-Burdick is the test applied here, for the reasons stated below, the outcome of Plaintiffs' constitutional claims would not differ under Eldridge.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000251

days of an election, but would not be reachable with a non-forwardable address verification card. (Id. at 25.)

Party Plaintiffs similarly argue that the single-card address verification process creates a substantial risk that an eligible SDR voter's ballot will be erroneously not counted. (DNC Doc. 7 at 17.) In particular, they argue that there is no notice or opportunity to be heard before a same-day registrant's ballot is removed from the count because, by definition, the card is not delivered to the voter. (Id. at 17-18.)

State Board Defendants acknowledge that it is a "close question" but maintain that the provision "passes muster" under Anderson-Burdick. (DNC Doc. 53 at 12; VL Doc. 54 at 11.) They argue that the burdens imposed by the undeliverable mail provision should be considered "holistically in light of other means by which voters may register." (DNC Doc. 53 at 13-14; VL Doc. 54 at 12.) The State's interest in the undeliverable mail provision, they argue, is "in ensuring only eligible ballots are counted in an election." (DNC Doc. 53 at 13.)

Legislative Intervenors argue that S. 747's use of a single card on which to preclude a ballot is justified because the limitation on time between SDR and the canvass precludes effective administration of a two-card system. (DNC Doc. 52 at 13.) Moreover, they argue that S. 747 "(1) preserv[es] the integrity of the election process; and (2) instill[s] confidence in the fairness

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000252
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 53 of 94

of the election." (DNC Doc. 52 at 17.) In this respect, they contend that the law "ensure[s] that registrant[s] live in the precinct within which they seek to vote." (Id. at 18.) They also argue that North Carolina has a "legitimate interest" in ensuring "that the card is returned before the end of the canvass" and that the undeliverable mail provision is designed to bring SDR voters into parity with other voters. (VL Doc. 52 at 14; VL Doc. 61 at 66:13-15.)

Party Intervenors argue that Plaintiffs have not shown a constitutional injury because, in their view, the alleged error of approximately 1 percent is not by design and thus "carries no constitutional significance." (VL Doc. 51 at 12-13.) Party Intervenors contend that the State's "compelling interest" is in "ensuring verification of each applicant's address, which is fundamental to determining a voter's eligibility," (DNC Doc. 51 at 7-8), and in "discouraging and preventing fraud," (VL Doc. 51 at 11).[26]

[26] Plaintiffs have not argued that the undeliverable mail provision burdens voters by erroneously rejecting SDR voters' registrations. Voto Latino Plaintiffs seek an order "enjoining enforcement of the portion of § 163-82.6B(d) (the 'Undeliverable Mail Provision')" which provides that if an SDR voter fails address verification with a single card, "the county board shall not register the applicant and shall retrieve the applicant's ballot and remove that ballot's votes from the official count.'" (VL Doc. 44.) Whether "not register[ing] the applicant" creates an unconstitutional burden has not been briefed and is consequently not considered on these motions.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000253

i. Burden on the Right to Vote

The court must first determine whether Plaintiffs are likely to show that the alleged burdens are severe, minimal, or "in between these two extremes." Obama for Am., 697 F.3d at 429. Election regulations that impose a "severe" burden are subject to strict scrutiny. Pisano v. Strach, 743 F.3d 927, 933 (4th Cir. 2014). Such "severe" burdens are generally "invidiously" discriminatory and may be "irrelevant to the voter's qualifications." Crawford, 553 U.S. at 189 (Stevens, J.) (citing Harper v. Va. Bd. of Elections, 383 U.S. 663, 666-67 (1966)). By contrast, "'evenhanded restrictions that protect the integrity and reliability of the electoral process itself' are not invidious and satisfy the standard set forth in Harper." Id. at 189-90 (quoting Anderson, 460 U.S. at 788 n.9). There is no "litmus test for measuring the severity of a burden that state law imposes on . . . an individual voter, or a discrete class of voters." Id. at 191. The court must consider both the "character and magnitude" of the alleged burden on voting, Burdick, 504 U.S. at 434 (quoting Anderson, 460 U.S. at 789), and then "make the 'hard judgment' that our adversary system demands," Crawford, 553 U.S. at 190 (Stevens, J.). Courts generally evaluate the burden from the perspective of all affected voters, "within the landscape of all opportunities that [the State] provides to vote." Mays v. LaRose, 951 F.3d 775, 784-85 (6th Cir. 2020); see also Crawford, 553 U.S.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000254

at 198-99 (Stevens, J.) (reviewing burden on "most voters" where photo ID law applied to in-person voters); Tully v. Okeson, 977 F.3d 608, 617 (7th Cir. 2020) (reviewing burden on voters who could not vote absentee in light of "Indiana's electoral scheme as a whole").

In Northeast Ohio Coalition for the Homeless v. Husted, 696 F.3d 580 (6th Cir. 2012) (per curiam), voters who went to the correct polling location and were sent — in error — to a different location by a poll worker, and consequently voted a provisional ballot that would go uncounted, suffered "systemic disqualification" without any notice. Id. at 593 (stating that Ohio rejected more than 14,000 ballots in 2008, 11,000 in 2010, and 1,800 in 2011). The district court found, and the Sixth Circuit affirmed, that this burden was "substantial" and held that the defendants had likely violated the Equal Protection and Due Process Clauses. Id. at 593-95, 598. In affirming the district court, the Sixth Circuit expressed reservations that "[t]he State would disqualify thousands of [] provisional ballots, where the voter's only mistake was relying on the poll-worker's precinct guidance." Id. at 599; see also Stewart v. Blackwell, 444 F.3d 843, 872 (6th Cir. 2006), superseded by 473 F.3d 692 (6th Cir. 2007)[27] (applying strict scrutiny where evidence showed voters in

[27] The Sixth Circuit subsequently granted *en banc* review, thus vacating

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000255

counties using punch-card system rather than optical scan equipment were four times as likely not to have their votes counted due to factors out of voter's control).

In Democratic Executive Committee of Florida v. Lee, 915 F.3d 1312 (11th Cir. 2019), challengers argued that Florida's signature match regime for vote-by-mail and provisional ballots violated the First and Fourteenth Amendment. The district court preliminarily ordered the State to provide 48 hours for voters to cure their signature mismatch. Id. at 1315. The defendants moved to stay the injunction, but the Eleventh Circuit denied the request. The court agreed with the district court that Florida lacked "uniform standards for matching signatures" and "qualifications or training for those who engage in the job." Id. at 1319. Observing a "crazy quilt of enforcement," the court noted that errors by election officials and "innocent factors like the writer's body position, writing surface, [and] type of pen" could result in disqualification. Id. at 1320. Even after the State instituted a notice-and-cure process in response to a court order, many voters did not learn that their vote would not be counted "until it was too late to do anything about it." Id. at 1321. Focusing on the burden on vote-by-mail and provisional voters specifically, the

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the panel decision, and then vacated the judgment of the district court as moot after the defendants replaced the challenged voting equipment. 473 F.3d at 693-94.

AMERICAN OVERSIGHT

court had "no trouble" finding that the burden was "at least [] serious." Id. (citing League of Women Voters of N.C. v. North Carolina, 769 F.3d 224, 244 (4th Cir. 2014)).[28] Critically, before the Eleventh Circuit heard an appeal of the injunction on the merits, the State "significantly amended the signature-match provisions at issue in th[e] case," after which the plaintiffs voluntarily dismissed the lawsuit and appellants agreed the appeal was moot. Democratic Exec. Comm. of Florida v. Nat'l Republican Senatorial Comm., 950 F.3d 790, 793 (11th Cir. 2020) (per curiam). The Eleventh Circuit did not vacate the motions panel opinion because its "preliminary nature" precluded it "from having an effect outside that case." Id. at 795.

In Andino, 497 F. Supp. 3d 59 (D.S.C. 2020), challengers argued that South Carolina's signature matching regime violated voters' procedural due process rights. The court granted the motion for preliminary injunction in part and denied it in part. On the one hand, voters who failed to sign the ballot altogether had no right to notice and cure. Id. at 71 ("[T]he error of a missing signature is the fault of the voter, not the government." (citing Hobbs, 976 F.3d at 1086)). The court observed that there was little risk of error where a signature was missing because a

[28] There was an extensive dissent, but its criticisms of the panel opinion relate to the distinguishable factual record in that case and do not suggest a different result under the facts of the present case.

AMERICAN OVERSIGHT

blank line can be "observed objectively." Id. On the other hand, the court found that the burden was "significant" for voters who were disqualified by signature matching — i.e., where election officials compared a provided signature against one on file. Id. at 76. In that court's estimation, the burden was significant because voters would be disqualified, without notice, on the basis of a "subjective judgment that the voter's signature does not match some sample relied upon by county election officials." Id.

State Board Defendants and Intervenors cite one case that could support the proposition that fault-free errors that lead to disenfranchisement without notice and opportunity to be heard create a mere minimal burden.[29] In Richardson, 978 F.3d 220 (5th Cir. 2020), challengers won a preliminary injunction in the district court that required Texas to provide notice and an

[29] Party Intervenors also cite Hutchinson v. Miller, 797 F.2d 1279 (4th Cir. 1986), and several out-of-circuit cases cited in Hutchinson, for the proposition that "courts have 'uniformly declined' to find constitutional violations 'with respect to garden variety election irregularities.'" (VL Doc. 51 at 13 (quoting Hutchinson, 797 F.2d at 1283).) In Hutchinson, three unsuccessful candidates for public office sued under 42 U.S.C. § 1983 and the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1964, for approximately $9 million in damages based on alleged election irregularities. Party Intervenors' quotation omits a critical phrase, wherein the Fourth Circuit observed that courts have "uniformly declined to endorse action under § 1983 with respect to garden variety election irregularities." Id. at 1283 (emphasis added). The court thus held that "federal courts do not sit to award post-election damages to defeated candidates," but observed that courts retain a role in providing equitable relief post-election in "rare and extraordinary circumstances," id. at 1287, and in "striking down state laws or rules of general application which improperly restrict or constrict the franchise or otherwise burden the exercise of political rights," id. at 1283 (citing Anderson, 460 U.S. 780 (1983)) (internal quotation marks omitted).

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000258

opportunity to be heard before a voter's absentee ballot could be rejected by an election official on the basis of a mismatched signature. The district court found that Texas's signature matching scheme imposed a severe burden on the right to vote because, in part, voters were notified that their absentee ballot was rejected only after the election and thus had no opportunity to contest the decision. Id. at 235-36. In an opinion staying the injunction pending appeal, the court found the burden imposed on voters to be only "minimal." Id. at 238. However, the court stayed the injunction on the alternative ground that the defendant was likely to prevail on her defense of sovereign immunity. Id. at 241. Concurring in the stay, Judge Patrick E. Higginbotham wrote that "this motions panel granting a stay settles no law" and "has no precedential force and is not binding on the merits panel, leaving it as a writing in water — made the more empty by pretermitting the jurisdictional requisites of sovereignty and the reach of Ex parte Young." Id. at 244 (Higginbotham, J., concurring in the stay). Indeed, the merits panel later vacated the preliminary injunction solely on the ground that the district court erred in finding that the defendant was the "proper defendant under Ex parte Young" — not because of the district court's Anderson-Burdick analysis. Richardson v. Flores, 28 F.4th 649, 655 (5th Cir. 2022); see also Andino, 497 F. Supp. 3d at 77 (rejecting Richardson at the preliminary injunction stage as an "outlier"

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000259
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 60 of 94

case reflecting an "extremely constricted view of liberty that does not include voting rights").

Though these cases are not binding on this court, one throughline of them is that election regulations that disenfranchise voters based on errors by governmental officials implementing them and over which the voter has no control, and which provide for no notice or opportunity to be heard to correct the error, may warrant closer inquiry under Anderson-Burdick. Put another way, "the precise interests put forward by the State as justifications for the burden imposed by its rule," Burdick, 504 U.S. at 434, must address why discarding an eligible voter's ballot due solely to government employee error and without an opportunity to correct it should be sustained.

Here, Plaintiffs are likely to show that the undeliverable mail provision of S. 747 imposes a substantial burden on SDR voters because it lacks notice and opportunity to be heard before removing the votes of a cast ballot from the count.

Voto Latino Plaintiffs provide several examples of 2022 SDR voters whose address verification cards were returned as undeliverable due to governmental errors wholly out of the control of the voter. For example, Plaintiff Mead's November 2022 address verification card was returned as undeliverable after a county board of elections official allegedly wrote "SAME" for her mailing address instead of writing out the actual address (which happened

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000260

to be the same as her residential address). (VL Doc. 44-5 ¶ 7.)


Director Of Elections
WATAUGA COUNTY BOARD OF ELECTIONS
PO BOX 528
BOONE NC 28607
RETURN SERVICE REQUESTED

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WATAUGA COUNTY BOARD OF ELECTIONS

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SOPHIE JAE MEAD
SAME
BOONE NC 28607

(Id. at 8.) After the address verification card was returned, another voter challenged Mead's registration under section 163-89 based only on the returned card. (Id. ¶ 7.) Ultimately, Mead's ballot was counted after Defendant Bell wrote a letter to the Watauga County Board of Elections ordering them to halt the challenges. (VL Doc. 44-4 at 9-10.) Voto Latino Plaintiffs contend, with some merit, that had the current system been in place, Mead's vote likely would not have counted. (VL Doc. 45 at 22.)

Voto Latino Plaintiffs also point to other poll worker errors that resulted in address verification cards returned as undeliverable in 2022, including another voter whose address was

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000261

listed as "SAME," voters for whom the county board of elections appears to have written incorrect street numbers (e.g., "199 Wood Circle Dr.," rather than "190 Wood Circle Dr."), cards sent to an old address rather than an address updated at same-day registration, cards with missing apartment numbers, and cards sent to residential addresses rather than to different mailing addresses that were provided. (Id. at 22-23 (citing VL Doc. 44-4 ¶¶ 11-20).)

Voto Latino Plaintiffs also provided a declaration by a postman with forty years of experience that enumerates several reasons why mail may be returned as undeliverable, including faulty barcodes, illegible address information, lack of or damage to a mailbox or receptacle, sorting error, assignment to the wrong carrier for delivery, and temporary absence of the residence, none of which is pertinent to a voter's qualification to vote in the precinct. (VL Doc. 44-7 (Decl. Timothy Green).) Plaintiffs also cite a U.S. Postal Service Office of the Inspector General report from May 2015 that found that 4.3 percent of all mail was undeliverable as addressed, 23 percent of which was due to Postal Service error. (DNC Doc. 7 at 12 (citing Office of Inspector General, U.S. Postal Service, Strategies for Reducing Undeliverable as Addressed Mail, at 5 (May 1, 2015), at https://www.uspsoig.gov/sites/default/files/reports/2023-01/ms-ma-15-006.pdf (last accessed Jan. 3, 2024)); VL Doc. 45 at 24

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000262

(same).) While these figures are nearly a decade old and possibly overstate the case in this context to some extent, they nevertheless are consistent with the limited record provided so far.

In the last four even-year elections, 1,799 out of 100,578; 696 out of 45,666; 2,151 out of 116,326; and 391 out of 34,289 same-day registrants have failed address verification. NCSBE, Presentation to House Oversight and Reform Committee, supra, at 6. These numbers are based on the State's prior two-card system, however, and the court can reasonably infer that there would not be any fewer failures if State Board Defendants send only one mail card, as required by section 163-82.6B(d). State Board Defendants and Intervenors, meanwhile, have provided no evidence at this stage that any of the several thousand same-day registrants who have failed address verification since its inception in 2008 was ineligible to vote on the ground of improper residency. In fact, State Board Defendants represented at oral argument that they have "no way to know" if any voter who fails address verification does so because of ineligibility or because of error. (VL Doc. 61 at 60:21.)

Plaintiffs are also likely to show that section 163-82.6B(d) deprives same-day registrants of notice and opportunity to be heard before their ballots are rejected through no fault of their own. State Board Defendants and Party Intervenors agree. (VL Doc. 54

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000263
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 64 of 94

at 9-10 ("The State Board Defendants concede that the notice mailing process set forth under the new same-day registration regime does not provide for either of these protections [i.e., notice and opportunity to be heard]."); VL Doc. 51 at 19-20 (Party Intervenors: "To demand notice and a hearing based on postal error in these circumstances would be to expect too much from state officials[.]").) Legislative Intervenors, on the other hand, acknowledged in their brief that the undeliverable mail provision itself does not provide SDR voters with notice. (VL Doc. 52 at 18 ("Plaintiffs make much ado about the fact that voters who fail address verification do not receive notice[.]" (emphasis added).) At oral argument, counsel for Legislative Intervenors suggested, albeit without any legislative history in support, that "everybody assumed that the State Board would treat [the ballots of SDR voters who fail address verification] like the way they had treated one-stop absentee ballots and that 163-89 would continue to apply." (Id. at 108:21-25.)

Section 163-89 outlines a challenge procedure for absentee ballots that includes the right of the challenged voter to be heard. See N.C. Gen. Stat. § 163-89(e). In light of S. 747's reclassification of SDR ballots as "retrievable," rather than "retrievable absentee,"[30] State Board Defendants and Party

[30] Section 163-82.6B(c) states that a same-day registrant votes a

AMERICAN OVERSIGHT

Plaintiffs disagree with Legislative Intervenors that section 163-89 applies to SDR voters. (VL Doc. 61 at 110:12-15; id. at 111:14-19; see also VL Doc. 55-5 at 6 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) (showing State Board's current understanding, and intent to enforce S. 747 accordingly, that if an SDR voter fails address verification, "[t]he county board shall not issue a challenge").)

Even if section 163-89 applied to SDR voters, however, neither it nor section 163-82.7 appears to require that notice be given to voters before the challenge hearing. N.C. Gen. Stat. § 163-82.7(g)(2) (authorizing challenges for absentee ballots under section 163-89, but not requiring notice); id. § 163-89 (outlining challenge procedure process for absentee ballots, but not requiring notice).

In summary, the express terms of section 163-82.6B(d) do not provide for notice and an opportunity to be heard; instead, they direct the retrieval and removal of a ballot upon failure of address verification. By all accounts, all parties agree — correctly it appears — that section 163-82.6B(d) at a minimum does

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"retrievable ballot as provided in G.S. 163-166.45," while prior law considered SDR ballots to be "retrievable absentee ballot[s]," N.C. Gen. Stat. § 163-82.6A(c) (2012). There are at least eight instances where S. 747 replaces the phrase "one-stop absentee voting" with "early voting." Moreover, section 163-166.45 — which is cross-referenced in section 163-82.6B — now governs "Retrievable ballots," instead of its prior heading of "Alternate procedures for requesting application for absentee ballot; 'one stop' voting procedure in board office." See N.C. Gen. Stat. § 163-166.45 (previously codified as N.C. Gen. Stat. § 163-227.5) (emphasis added).

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000265

not provide for notice before a ballot of an SDR voter who fails address verification is removed from the count. Moreover, State Board Defendants, i.e., those responsible for the enforcement of the undeliverable mail provision, have represented that they do not intend to offer any notice or opportunity to be heard via 163-89 or any other provision, absent a court order or statutory change. (VL Doc. 61 at 49:5-11 (State Board Defendants stating, "given the way [S. 747] is written and the limitations of it, [] we would need a court order or some sort of legislative change" in order to provide notice and an opportunity to be heard); VL Doc. 55-5 at 6 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) (stating that if an SDR voter fails address verification, the county board must remove the ballot and "not issue a challenge").) Consequently, Plaintiffs have established a likelihood of success in showing that the undeliverable mail provision does not provide for notice and an opportunity to be heard.

Finally, State Board Defendants argue that the burden imposed by the undeliverable mail provision is nevertheless "reasonable" when viewed "holistically in light of the others means by which voters may register." (DNC Doc. 53 at 13-14 (emphasis added).) It is true that voters in North Carolina have various other ways to register before the early voting period and to cast a ballot. Compared to non-SDR voters, SDR voters are subject to additional burdens at registration (e.g., a HAVA-compliant document). But

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000266

the State, having offered SDR, must offer a process that is not unconstitutional. The undeliverable mail provision burdens SDR voters by directing the removal of a cast ballot without any notice or possibility of cure, not merely by cancelling registration, and the burden demonstrated here would likely be imposed by governmental error unknown to the voter. See Husted, 696 F.3d at 595 (requiring notice and opportunity to be heard where the law required voters to have "omniscience" of poll worker error and "have a greater knowledge of their precinct, precinct ballot, and polling place than poll workers").[31]

Based on recent elections, approximately 100,000 North Carolinians are projected to utilize same-day registration in 2024, starting with the primary. NCSBE, Presentation to House Oversight and Reform Committee, supra, at 6 (showing over 100,000 SDR voters in both 2016 and 2020).[32] Each of these voters' addresses will be tested by S. 747's address verification procedure, and Plaintiffs are likely to show that some number of

[31] Party Intervenors liken an SDR voter's retrieved ballot due to failed address verification to a vote-by-mail ballot that gets lost in the mail, which they contend Plaintiffs view as unproblematic. (VL Doc. 51 at 14.) While the court has no record upon which to compare vote-by-mail to address verification, it is distinguishable at least because North Carolina provides a tracking system for mail ballots. See NCSBE, Ballot Tracking Available Again for Absentee-By-Mail Voters, supra.

[32] Neither State Board Defendants nor Intervenors argue that the presumably reduced number of voters anticipated for the upcoming primary election is a ground to not enter preliminary relief at this time.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000267

first cards will be returned before the canvass deadline as undeliverable due to governmental error, rather than factors related to voter eligibility. By failing to provide voters with notice and opportunity to be heard, section 163-82.6B(d) creates an unacceptable risk that eligible voters' ballots will be erroneously removed and not counted. As shown by Husted, Lee, and Andino, as well as the record evidence before this court, Plaintiffs are therefore likely to succeed in showing that the undeliverable mail provision — because it fails to provide for notice and opportunity to be heard — will impose a substantial burden on SDR voters.[33]

ii. Balancing the State's Interests

The court turns next to the justifications for the law put forth by State Board Defendants and Intervenors.

States may prescribe "[t]he Times, Places and Manner of holding Elections for Senators and Representatives." U.S. Const. art. I, § 4, cl. 1. The Supreme Court has therefore "recognized that States retain the power to regulate their own elections." Burdick, 504 U.S. at 433 (citing Sugarman v. Dougall, 413 U.S.

[33] Voto Latino Plaintiffs also point out that an SDR voter could vote and then move elsewhere in North Carolina under section 163-55(a), which permits a voter to vote at a prior residence within 30 days of relocation. (VL Doc. 45 at 25.) They contend that these voters could have their vote removed without any error occurring if they provide the Postal Service a forwarding address. (Id.) The court has no record of the magnitude of this issue and, given the court's ruling, need not consider it further at this stage.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000268

634, 647 (1973); Tashjian v. Republican Party of Conn., 479 U.S. 208, 217 (1986)). "The Constitution provides that state legislatures — not federal judges, not state judges, not state governors, not other state officials — bear primary responsibility for setting election rules." Democratic Nat'l Comm., 141 S. Ct. 28 (Mem.) (Gorsuch, J., concurring). Indeed, to require a state to "halt the ongoing implementation of one of its duly-enacted statutes — a statute that, for now at least, has not been rendered invalid" is "a form of irreparable injury" the court must consider. League of Women Voters of N.C., 769 F.3d at 249 (Motz, J., dissenting) (quoting Maryland v. King, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)).

Under Anderson-Burdick, the court must identify "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiffs' rights." Burdick, 504 U.S. at 434 (internal quotation marks omitted). The "rigorousness" of the inquiry into the State's interests will be informed by the substantial burden imposed by the undeliverable mail provision. Id. (requiring courts to employ a sliding scale approach whereby the greater the burden imposed, the more important the state's justification must be).

State Board Defendants and Intervenors principally assert that the undeliverable mail provision is justified by the need to

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000269

preserve the integrity of the election process by ensuring that only eligible ballots are counted and that a registrant lives in the precinct within which he seeks to vote. (DNC Doc. 53 at 13 (State Board Defendants, "ensuring only eligible ballots are counted in an election"); DNC Doc. 52 at 17-18 (Legislative Intervenors, "preserving the integrity of the election process" and "ensure that a registrant lives in the precinct within which they seek to vote"); DNC Doc. 51 at 7-8 (Party Intervenors, "ensuring verification of each applicant's address, which is fundamental to determining a voter's eligibility"); VL Doc. 51 at 11 (Party Intervenors, "discouraging and preventing fraud").) They also assert the need to "level the playing field" between SDR and non-SDR voters, to ensure address verification cards return before the canvass, and to instill confidence in elections. (DNC Doc. 66:13-15; DNC Doc. 53 at 16; VL Doc. 52 at 19.)

North Carolina unquestionably has a legitimate and strong interest in ensuring the integrity of its elections, ensuring that only legitimate ballots are counted, and in preventing voter fraud. Purcell v. Gonzalez, 549 U.S. 1, 4 (2006). As to these interests, State Board Defendants and Intervenors need not present "elaborate, empirical verification of the weightiness of the State's asserted justifications." Timmons v. Twin Cities Area New Party, 520 U.S. 351, 364 (1997). Instead, the State may "respond to potential deficiencies in the electoral process with foresight

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000270

rather than reactively, provided that the response is reasonable and does not significantly impinge on constitutionally protected rights." Munro v. Socialist Workers Party, 479 U.S. 189, 195-96 (1986). Indeed, the Crawford court found that deterrence of voter fraud was a "neutral and nondiscriminatory reason" to require photo ID, even though the record contained no evidence of actual in-person fraud. Crawford, 553 U.S. at 195-97 (Stevens, J.) (citing Building Confidence in U.S. Elections § 2.5 (Sept. 2005), a report of the Commission on Federal Election Reform, chaired by former President Jimmy Carter and Secretary of State James A. Baker, III); see also id. at 209 (Scalia, J., concurring) ("The universally applicable requirements of Indiana's voter-identification law are eminently reasonable."); cf. Brnovich v. Democratic Nat'l Comm., 141 S. Ct. 2321, 2346, 2348 (2021) (on a Voting Rights Act challenge to a law that imposed a "usual burden[] of voting," "a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders").

Here, State Board Defendants contend that address verification ensures election integrity by acting as a "fail-safe" to test a voter's residency. (VL Doc. 61 at 45:16; see also id. at 88:25 (Party Intervenors likening address verification to "two-factor authentication").) The court accepts this; address verification may serve to disincentivize a registrant from providing a false address, to identify a registrant who erroneously

AMERICAN OVERSIGHT

provides an improper address, and especially in the case of traditional registration before SDR, which can occur online or by mail and does not require a HAVA document, to deny the registration of someone who might claim to register as someone else. Indeed, that an SDR voter must present a current HAVA document that shows his residence address, along with a photo ID, and attest in-person under penalty of perjury that he is an eligible voter, may explain the 98-to-99 percent rate of confirmation of SDR registrants under the State's prior two-card system. NCSBE, Presentation to House Oversight and Reform Committee, supra, at 6. While these State interests justify the use of address verification generally, the question, however, is whether the undeliverable mail provision for SDR voters meets its justifications as a "fail-safe" as to residency sufficient to exclude a ballot without notice and opportunity to be heard where failure is based on reasons entirely outside the control of the voter.

By Legislative Intervenors' own concession, address verification is not a precise instrument for enforcing the interests they assert.[34] (DNC Doc. 62 at 63:13-24).) That is,

[34] To the extent Plaintiffs more broadly criticize the State's address verification process, the court declines to consider that question. Address verification predated the adoption of SDR in North Carolina, 1994 N.C. Sess. Laws, ch. 762, § 2, and appears to be used by other states as a legitimate component of the voter registration process. See, e.g., Common Cause of Colo. v. Buescher, 750 F. Supp. 2d 1259 (D. Colo. 2010). Legislative Intervenors argue that the State has no other effective means to verify addresses short of sending personnel to make

AMERICAN OVERSIGHT

in part, because the statute provides that the card need not be sent to the registrant's residential address. Rather, it must be sent to the mailing address the same-day registrant provides on his application, even if that address is outside the county of registration, (id. at 59:8-13), if the registrant does not receive mail at the residential address. N.C. Gen. Stat. § 163-57(1)(c) ("Residence shall be broadly construed to provide all persons with the opportunity to register and to vote, including stating a mailing address different from residence address."). The parties have presented no record as to how often same-day registrants' mailing addresses differ from their residential addresses — whether for students on campuses, individuals utilizing post office boxes, etc. (DNC Doc. 62 at 45:11-14 (State Board Defendants stating that they do not have "statistics to back it up," but upon belief, "most people's residential address will be their mailing address").) Address verification appears to work as intended for the vast majority of voters who receive mail at their residential address. But State Board Defendants and Intervenors have presented no evidence that address verification has ever filtered out a single ineligible same-day registrant. In fact, State Board Defendants concede that they have "no way" of knowing if an unreturned card truly demonstrates ineligibility because

home visits (DNC Doc. 62 at 63:13-21), and it is the province of the General Assembly to choose the process for verification.

AMERICAN OVERSIGHT

they only know the card was returned as undeliverable, not why. (VL Doc. 61 at 60:20-21.)

Only Party Intervenors directly contend that the provision serves to deter SDR voter fraud. (VL Doc. 51 at 15-18.) Voto Latino Plaintiffs offer an expert, Dr. Martha Kropf, a political science professor, who concluded that the undeliverable mail provision for SDR registrants "has no discernible benefit in terms of preventing voter fraud." (Doc. 49-1 at 6.)[35] While Legislative Intervenors dispute her definition of fraud as "prohibitively narrow," (VL Doc. 52 at 9), their own expert, Dr. Andrew Taylor, also a political science professor, conceded that he had "no reason to question the methods or results" of Dr. Kropf. (VL Doc. 52-1 at 13; VL Doc. 59-2 at 67:7-11 (confirming Dr. Taylor's conclusion at deposition).)

The State's proffered justifications, in light of the lack of notice and opportunity to be heard for SDR voters, are inconsistent with its interest in counting eligible ballots to the extent ballots are rejected for errors unrelated to the voter's actual eligibility. See Lee, 915 F.3d at 1322. Such SDR voters' ballots would be removed, not because voters do not live where they claimed, but rather because a postal worker or county board of

[35] As Party Plaintiffs argued, someone who "falsely swears out an application [and] forges a HAVA document" may likely be clever enough to provide a mailing address where he can receive mail. (DNC Doc. 62 at 94:9-11.)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000274

elections worker made an error that resulted in the return of a non-forwardable mail card. In fact, providing a chance to correct that error would appear to be consistent with section 163-57's call for "[r]esidence [to] be broadly construed to provide all persons with the opportunity to register and vote[.]" N.C. Gen. Stat. § 163-57(1)(c). Moreover, the State's interest in counting only eligible ballots is also mitigated to some extent by the fact that State Board Defendants concede they will continue to count the SDR ballots of voters whose single card returns as undeliverable after the canvass. (VL Doc. 61 at 54:1-6.)

Legislative Intervenors rely on the opinions of Dr. Taylor to support their view that the undeliverable mail provision ensures election integrity and instills confidence in the fairness of elections. (See VL Doc. 52 at 13, 17.) Dr. Taylor opines that the undeliverable mail provision will help ensure that the single card returns as undeliverable before the canvass. (VL Doc. 52-1 at 12.) While he opines that this "may increase North Carolinians' confidence" in elections, (id. at 17 (emphasis added)), he does not opine on whether the undeliverable card is probative of a voter's residence, and thus a voter's eligibility to vote. Instead, he states, "If the 23% of undelivered mail that is the result of USPS error represents an intolerable risk for SDR voters under S 747, it seems to me it should have represented an intolerable risk under the rules prior to S 747." (Id. at 11.)

AMERICAN OVERSIGHT

Moreover, Dr. Taylor states that voter fraud can go undetected, that address verification is important, and that voters have reduced confidence in elections. (Id. at 13-15.) On this record, there is no reason to doubt these principles. But Dr. Taylor does not discuss how enforcing the undeliverable mail provision without notice and hearing addresses them. Additionally, Dr. Taylor opines that a voter who "cannot tolerate the possibility of their registration being canceled" can "register and later vote in-person or absentee as do around 97 percent of others" in North Carolina. (Id. at 16.) Whatever merit this argument might have if SDR voters' registrations alone were at issue, the State, having offered the option of voting during SDR, cannot discard their ballots due to governmental error and without notice and an opportunity to be heard simply on the ground that the voters should have known not to take such a risk. Cf. Common Cause of Colo. v. Buescher, 750 F. Supp. 2d 1259, 1264 (D. Colo. 2010) (noting that Colorado law allows voters who are informed on election day they failed mail verification to cure by voting a provisional ballot with an ID).

Legislative Intervenors also assert that the undeliverable mail provision was intended to "level the playing field" between SDR and non-SDR voters because SDR voters prior to S. 747 had a "whole panoply of protections" that "regular registrants" did not. (DNC Doc. 66:13-15.) But the statutory scheme does not bear this

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000276

out. Chapter 163 appears to provide more favorable treatment to many non-SDR voters vis-à-vis SDR voters, particularly non-SDR voters who register just before the 25-day cut off for traditional registration. First, unlike an SDR voter under S. 747, the statute directs county boards to treat "as a registered voter" any non-SDR voter who fails address verification after voting — e.g., someone who registers before the 25-day cutoff, votes early or on election day, and then fails address verification. N.C. Gen. Stat. § 163-82.7(g)(3); cf. id. § 163-82.6B(d) (stating that a county board "shall not register" an SDR voter who fails address verification). Second, a non-SDR voter may still vote in person, with some procedures for verifying address, if his registration was so close to the 25-day cutoff for traditional registration that his first address verification card is sent within 25 days of the election and returns as undeliverable — e.g., he votes after the first card is returned as undeliverable but before return of a second card. Id. § 163-82.7(g)(2); cf. id. § 163-82.6B(d) (directing county board to remove SDR ballot from the official count upon failure of SDR voter's address verification based on a single card received by the day before the canvass). Third, non-SDR voters cannot be denied the right to vote in person unless two cards are returned as undeliverable, and the statute only states that a challenge is "not preclude[d]" if that occurs after a non-SDR voter votes. Id. § 163-82.7(g)(1); cf. id. § 163-82.6B(d)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000277
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 78 of 94

(directing removal of ballot based on only one card for SDR voters). And fourth, a voter who casts an absentee ballot and whose address verification card is returned as undeliverable "after [the] person has already voted by absentee ballot" may have his ballot challenged, will be given notice of the challenge, and has a right to "appear before the board at the hearing on the challenge and present evidence as to the validity of the ballot." Id. § 163-82.7(g)(2); § 163-89(e); NCSBE Numbered Memo 2022-05 (Dec. 15, 2023 update), supra, at 3, 11 (requiring county board to provide notice and providing sample notice letter). Thus, while the court acknowledges the State's legitimate interest in verifying addresses for all registrants, S. 747 does not appear to level the playing field between SDR and non-SDR voters. Rather, as to address verification, it appears to tilt it against SDR voters by requiring that the ballot be removed from the count without notice and opportunity to be heard.

In addition, State Board Defendants assert an interest in ensuring that the address verification card returns before the canvass. As the Fourth Circuit has acknowledged, "these concerns are real." McCrory, 831 F.3d at 237. Indeed, when the repeal of SDR was previously challenged before this court, the plaintiffs in that case "d[id] not seriously dispute" the issues SDR caused for the implementation of the State's address verification system, including in cases where the second address verification card was

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000278

returned after the canvass and the SDR voter's ballot was nevertheless counted. N.C. State Conf. of the NAACP v. McCrory, 182 F. Supp. 3d 320, 447 (M.D.N.C. 2016).[36] However, while State Board Defendants and Intervenors here are likely to show that a card mailed to an SDR voter would be more likely to return before the canvass, they have not shown why the substantial burden of exclusion without notice and an opportunity to be heard is justified when the failure — at least on the present record — is likely caused in significant respect by the government's own errors.

To the extent State Board Defendants and Intervenors argue that providing notice and an opportunity to be heard would impose an administrative burden, this argument is not adequately supported on this record. County boards of elections plainly have an interest in "protecting the integrity, fairness, and efficiency of their ballots and election processes as means for electing public officials." Timmons, 520 U.S. at 364. But the administrative burden of providing notice and an opportunity to be heard is limited in this context for at least three reasons.

First, prior to January 1, 2024, Chapter 163 already provided for a challenge procedure for SDR ballots. Until this year, SDR

[36] In precluding the elimination of SDR, the Fourth Circuit based its decision on a finding of discriminatory racial intent, not because the State was without power to eliminate SDR. McCrory, 831 F.3d at 233.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000279

ballots were treated as absentee ballots, and the statutory scheme provided a hearing for a challenge to the ballots of voters who failed address verification to be held by the county board of elections on the day set for the canvass. See N.C. Gen. Stat. §§ 163-82.6A (2012), 163-82.7(g)(2), 163-89.

Second, while S. 747 has reclassified SDR ballots as "retrievable," rather than "retrievable absentee," section 163-89 continues to apply to absentee ballots. See id. § 163-89 (as amended by 2023 N.C. Sess. Laws 140, § 15). Neither State Board Defendants nor Intervenors has provided any evidence that this challenge procedure generates any administrative burden. Given the number of projected address verification failures across North Carolina's 100 counties, State Board Defendants and Intervenors have not demonstrated that providing due process for those SDR voters who fail address verification would tally to an additional burdensome level for any county board of elections.

Third, State Board Defendants concede that they "stand ready to incorporate whatever additional procedural protections this Court deems necessary for such voters." (DNC Doc. 53 at 11; VL Doc. 54 at 10.) In fact, State Board Defendants appear to have already taken steps that begin to address Plaintiffs' concerns, including encouraging county boards to collect contact information from SDR voters. (VL Doc. 55-5 at 7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) (recommending that county boards contact voters

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000280
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 81 of 94

before sending verification card if staff have "questions regarding the address"); VL Doc. 55-6 (demonstrating blanket notice county boards will display at early voting sites); see also VL Doc. 61 at 76:16-19 (expressing General Assembly's view that section 163-89 would provide an "appropriate mechanism" to administer notice and opportunity to be heard, if needed).) Accordingly, providing notice would not impose some new duty to affirmatively investigate voters' contact information; voters currently have the option to provide contact information on their voter registration application, and county boards are already being directed to recommend applicants do so. See North Carolina Voter Registration Application, Form 06W, supra (Question 10); (VL Doc. 55-5 at 7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) ("[T]he election official assisting a same-day registrant must recommend that the voter provide their phone number and/or email address on the registration form.").)

In sum, Defendants and Intervenors are likely to show that they have strong and legitimate interests in protecting election integrity by ensuring that eligible voters vote in the proper precinct and that address verification supports that interest. However, after considering the extent to which those interests make it necessary to substantially burden same-day registrants' right to have a ballot counted once it is cast, the court finds Plaintiffs are likely to succeed on the merits of their

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000281

constitutional claim against the undeliverable mail provision because it does not provide notice and an opportunity to be heard.

b. Irreparable Injury

An infringement or abridgment of a constitutional right is an irreparable harm where monetary damages are inadequate or difficult to ascertain. Democracy N.C., 476 F. Supp. 3d at 236. "Courts routinely deem restrictions on fundamental voting rights irreparable injury." League of Women Voters of N.C., 769 F.3d at 247; see also Obama for Am., 697 F.3d at 436 ("A restriction on the fundamental right to vote . . . constitutes irreparable injury."); Williams v. Salerno, 792 F.2d 323, 326 (2d Cir. 1986) (holding that plaintiffs "would certainly suffer irreparable harm if their right to vote were impinged upon").

Here, the threatened injury of discounting an eligible SDR voter's ballot without notice and opportunity to be heard would constitute irreparable injury. Any court's intervention in the State's constitutional prerogative to set the manner of conducting elections, however, can constitute an irreparable injury to the State, especially in consideration of the preliminary nature of the motions before this court. Abbott v. Perez, 138 S. Ct. 2305, 2324 (2018) (emphasizing on motion to stay injunction that "[u]nless [a] statute is unconstitutional," enjoining a statute enacted by the legislature "would seriously and irreparably harm the State"). Legislative Intervenors argue that counting

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000282
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 83 of 94

"unverified applications where the mail verification fails" would create a "fraudulent result." (VL Doc. 52 at 21.) Accepting the legitimacy of the prophylactic purposes of address verification, however, giving notice and opportunity to be heard to SDR voters who fail address verification would not increase any potential for such an outcome; indeed, quite the opposite.

c. Balance of the Equities and Public Interest

The balance of the equities and the public interest "merge when the Government is the opposing party." Miranda v. Garland, 34 F.4th 338, 365 (4th Cir. 2022) (quoting Nken v. Holder, 556 U.S. 418, 435 (2009)).[37] "By definition, '[t]he public interest . . . favors permitting as many qualified voters to vote as possible.'" Democracy N.C., 476 F. Supp. 3d at 237 (quoting League of Women Voters of N.C., 769 F.3d at 247–48).

As discussed above under consideration of the State's interest, the State's potential harm is outweighed by the equities in Plaintiffs' favor at this stage. In balancing the equities, the court notes that Chapter 163 authorizes challenge procedures already, and that State Board Defendants and Intervenors have not forecast any evidence of its administrative burden. See N.C. Gen. Stat. §§ 163-82.6A (2012), 163-82.7(g)(2), 163-89. Moreover,

[37] Though Party Intervenors are non-governmental, they, too, combine the balance of the equities and the public interest in their analysis. (DNC Doc. 51 at 18–19; VL Doc. 51 at 22–23 (arguing harm to the State militates against injunction).)

AMERICAN OVERSIGHT

State Board Defendants concede that they "stand ready to incorporate whatever additional procedural protections this Court deems necessary for such voters" and have begun to do so already. (DNC Doc. 53 at 11; VL Doc. 54 at 10; VL Doc. 55-5 at 7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) (recommending that county boards contact voters before sending mail card if staff have "questions regarding the address"); VL Doc. 55-6 (demonstrating blanket notice county boards will display at early voting sites); see also VL Doc. 61 at 76:16-19 (expressing General Assembly's view that section 163-89 would provide an "appropriate mechanism" to administer notice and opportunity to be heard, if needed).) The court thus finds that the balance of the equities and the public interest tip in Plaintiffs' favor.

* * *

In sum, the Winter factors weigh in favor of Plaintiffs as to the undeliverable mail provision. "Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents." Trump v. Int'l Refugee Assistance Project, 582 U.S. 571, 579-80 (2017). "The purpose of such interim equitable relief is not to conclusively determine the rights of the parties, but to balance the equities as the litigation moves forward." Id. at 580 (internal citation omitted). "In the course of doing so, a court need not grant the total relief

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NC-DURHAM-24-0352-A-000284

sought by the applicant but may mold its decree to meet the exigencies of the particular case." Id. (internal quotation marks omitted). Generally, a preliminary injunction is "intended to protect the status quo," Di Biase v. SPX Corp., 872 F.3d 224, 230 (4th Cir. 2017), which may "require a party who has recently disturbed the status quo to reverse its actions." League of Women Voters of N.C., 769 F.3d at 236 (internal quotation marks and citation omitted); see also Lee, 915 F.3d at 1328 (noting district court's "Goldilocks solution" of preliminarily requiring notice and opportunity to cure rather than striking down entirety of signature matching scheme).

A court considering an injunction close to an election should consider the risk of "voter confusion." Purcell, 549 U.S. at 4-5; Wise v. Circosta, 978 F.3d 93, 99 n.6 (4th Cir. 2020) (focusing Purcell inquiry on the extent to which "[v]oter behavior" would be "impacted by [the court's] decision"). Neither Defendants nor Legislative Intervenors have argued that proximity to the primary election counsels against an injunction. Party Intervenors claim that "[e]lection officials, candidates, campaigns, and voters will struggle to understand how [an] injunction interplays with S.B. 747, and with the broader election code, to the result of inconsistent rules across the state, [] and the potential denial of voting opportunities." (DNC Doc. 51 at 19 (internal citation omitted).) The court does not discern any risk that voters will

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NC-DURHAM-24-0352-A-000285

be confused, especially because S. 747 seeks to alter prior law, and State Board Defendants have assured the court that they "stand ready" to implement changes as required by this court. (DNC Doc. 53 at 11; VL Doc. 54 at 10.) At a status conference to set out a briefing schedule, moreover, State Board Defendants represented that they could administer a remedy for the primary election, so long as the order was entered around the start of early voting on February 15, 2024.

As to the scope of the injunction, Plaintiffs have agreed that they would accept notice and an opportunity to be heard as a remedy narrower than the broadest they have requested. (Compare DNC Doc. 62 at 98:18-22 ("[T]he remedy [Party Plaintiffs] respectfully suggest is for the Court to . . . direct the State Board for purposes of the primary election to, in fact, apply the notice and opportunity to be heard provision in [] 82.7(g)(2)[.]"), with DNC Doc. 7 at 19 (implying that the court should require two cards be returned before vote is discarded); compare VL Doc. 61 at 26:1-9 (Voto Latino Plaintiffs accepting "as an alternative remedy" ordering county boards to contact voters and "provide a mechanism by which they may further demonstrate that they are eligible voters and are properly residents"), with VL Doc. 44 (seeking to enjoin section 163-82.6B(d)).) (See also VL Doc. 1 (repeatedly alleging in the complaint the undeliverable mail provision's lack of notice and opportunity to be heard as a

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NC-DURHAM-24-0352-A-000286

defect); DNC Doc. 1 (same).)

As discussed above, the parties disagree as to whether section 163-89, the provision previously used to challenge SDR ballots for voters who failed address verification, applies in light of S. 747's reclassification of SDR ballots as "retrievable," rather than "retrievable absentee."

It is not the court's role to draft a precise remedy. That State Board Defendants construe — correctly it appears — the undeliverable mail provision to not contemplate notice and opportunity to be heard and intend to enforce it accordingly absent a court order, is sufficient to justify the injunction set out below. Though the parties offered proposed provisions at the hearing,[38] the court expresses no opinion on whether the State Board may exercise its authority under section 163-22.2 to "make reasonable interim rules and regulations with respect to the pending primary or election as it deems advisable" in light of the court's preliminary holding that Plaintiffs are likely to show

[38] Legislative Intervenors' counsel offered his belief that State Board Defendants could "graft into [§ 163-82.6B(d)] a notice and procedure" for voters to be heard without violating the statute (DNC Doc. 62 at 76:9-14), stating, without conceding the constitutional issue, that:

> We think that [State Board Defendants] can use the challenge process under 163-89 to accommodate this. We think between 747 and the existing statutes — my client believes, and I'm authorized to state, that we think that that's an appropriate mechanism, if one is even needed.

(DNC Doc. 62 at 76:15-19.)

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that the undeliverable mail provision, as written, is unconstitutional. N.C. Gen. Stat. § 163-22.2. Any such interim rules and regulations, if promulgated, must not otherwise conflict with the provisions of Chapter 163. Id.; see Moore v. Circosta, 494 F. Supp. 3d 289, 326 (M.D.N.C. 2020) (finding NCSBE had "implemented a rule that conflicted directly with the statutes enacted by the North Carolina legislature" through invocation of section 22.2).

In sum, the "exigencies of the particular case" warrant the injunction as set out below, and nothing more. Int'l Refugee, 582 U.S. at 579-80.

3. Ineligible Voter Notice

Party Plaintiffs alone challenge another aspect of S. 747. Focusing on the county board of elections' statutory duty to tentatively determine voter eligibility (by checking driver's license number, social security number, etc.) before embarking on address verification, N.C. Gen. Stat. 163-82.6B(d), they claim that the law unconstitutionally fails to prescribe a mechanism for notifying same-day registrants of an adverse eligibility determination or the ground(s) of rejection, or provide an opportunity to contest the adverse eligibility determination. (DNC Doc. 7 at 16.) Party Plaintiffs contend that the silence in the statute allows "any election official [to] unilaterally deny a person his or her right to vote without due process." (Id.)

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NC-DURHAM-24-0352-A-000288

State Board Defendants agree that S. 747 does not explicitly state the process for rejecting a same-day registration based on an ineligibility determination. (DNC Doc. 53 at 8.) However, they read the statute to require a same-day registrant whose application is rejected due to ineligibility to receive the same challenge process under section 163-89 as a same-day registrant currently would receive, even though SDR ballots are no longer considered "absentee ballots." (Id. at 7-8.) Indeed, NCSBE Numbered Memo 2023-05 further demonstrates the State Board plans to utilize the challenge provision of section 163-89 "because the county board is authorized to 'pass upon the legality of disputed ballots' during canvass.'" (DNC Doc. 60-1 at 6 n.9 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).)

Legislative Intervenors and Party Intervenors argue that Party Plaintiffs misread the statute to find that there is no process for same-day registrants who are found ineligible. (DNC Doc. 52 at 12; DNC Doc. 51 at 3-6.) They do not agree with State Board Defendants that there should be a challenge procedure under 163-89. Instead, they contend that section 163-82.7 applies, which is the same notice and opportunity to be heard afforded non-SDR applicants whom a county board determines to be ineligible. Under this provision, the SDR voter would receive a notice in the mail that informs him that his registration has been denied and outlines the method of appeal under 163-82.18, which provides for a public

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NC-DURHAM-24-0352-A-000289
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 90 of 94

hearing and appeal to a North Carolina Superior Court. Intervenors contend that this process suffices because this is the same process that non-SDR applicants receive. (DNC Doc. 52 at 12-13; DNC Doc. 51 at 4.)

Whether Defendants' or Intervenors' interpretation of the statute is correct, Party Plaintiffs have not demonstrated that they are likely to "suffer irreparable harm in the absence of preliminary relief." Winter, 555 U.S. at 20. Party Plaintiffs conceded as much, stating that they are not irreparably harmed if State Board Defendants are entitled under the law to apply its interpretation. (DNC Doc. 62 at 19:4-23 ("For purposes of a preliminary injunction, I don't think we need anything more from this Court other than the acknowledgement.").) By all accounts, State Board Defendants have represented in their briefing and in a public memorandum that they intend to fill any perceived silence in the statute with the notice and opportunity to be heard that Party Plaintiffs seek. (DNC Doc. 53 at 8; DNC Doc. 60-1 at 6-7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).) And even if Intervenors' reading controlled, Party Plaintiffs have not shown that the notice provided under sections 163-82.7 and 163-82.18 would be constitutionally inadequate process. Wolf v. Fauquier Cnty. Bd. of Supervisors, 555 F.3d 311, 323 (4th Cir. 2009) ("Procedural due process provides merely 'a guarantee of fair procedures — typically notice and an opportunity to be heard.'"

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NC-DURHAM-24-0352-A-000290

(citation omitted)); N.C. Gen. Stat. §§ 163-82.7, 163-82.18 (providing for notice and hearing before county board of elections with appeal to superior court). Accordingly, Party Plaintiffs' motion to preliminarily enjoin the enforcement S. 747's notice procedure as to SDR voters determined ineligible following the verification process to be conducted within two business days of registration will be denied.

III. CONCLUSION

For the reasons stated, State Board Defendants and Intervenors have shown valid State interests in the use of address verification by non-forwardable mail for confirming a voter's eligibility to vote — a process that has been in place for several decades, albeit employing two cards. These include undeniably legitimate interests in ensuring the integrity of elections, ensuring that only ballots of eligible voters are counted, preventing voter fraud, and instilling confidence in elections. Nevertheless, Plaintiffs have demonstrated a likelihood that the undeliverable mail provision in S. 747, codified as N.C. Gen. Stat. § 163-82.6B(d), will impose a substantial burden on same-day registrants who cast a ballot because, under the law's express terms, they will face a non-trivial risk of being erroneously disenfranchised by failing address verification due to governmental error, rather than factors related to their eligibility to vote, without any notice and opportunity to be

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NC-DURHAM-24-0352-A-000291

heard.

Plaintiffs have shown that the State's precise interests asserted in this case likely do not outweigh the substantial burden on the rights of same-day registrants who cast a ballot. Burdick, 504 U.S. at 434 (requiring courts weigh "the character and magnitude of the asserted injury" against "the precise interests put forward by the State," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights"). On this record, State Board Defendants and Intervenors have presented no evidence that any of the several thousand same-day registrants who have failed address verification since its inception in 2008 was in reality ineligible to vote on the ground of improper residency. For SDR voters, the lack of notice and opportunity to be heard is inconsistent with the State's interest in counting all eligible voters' ballots. Moreover, given the lack of showing of an administrative burden on county boards of elections, the risk of irreparable injury, the balance of equities, and the public interest all weigh in favor of requiring notice and an opportunity to be heard.

IT IS THEREFORE ORDERED that Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, are HEREBY ENJOINED from utilizing the procedures of N.C. Gen. Stat. § 163-82.6B(d) to remove from the official count the votes of the ballot of any voter

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NC-DURHAM-24-0352-A-000292

who has provided contact information in the registration process and whose first notice required under N.C. Gen. Stat. § 163-82.7(c) is returned by the Postal Service as undeliverable before the close of business on the business day before the canvass, without first providing such voter notice and an opportunity to be heard, and, only to this extent, Voto Latino Plaintiff's motion (VL Doc. 44) and Party Plaintiff's motion (DNC Doc. 6) are GRANTED. This injunction shall remain in force until such time as a procedure for notice and opportunity to be heard is implemented in accordance therewith.

IT IS FURTHER ORDERED that Voto Latino Plaintiff's motion (VL Doc. 44) and Party Plaintiff's motion (DNC Doc. 6) are, in all other respects, DENIED.

/s/ Thomas D. Schroeder
United States District Judge

January 21, 2024

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NC-DURHAM-24-0352-A-000293

Lassiter, Daniel

From: Bowens, Derek
Sent: Tuesday, February 6, 2024 8:32 AM
To: Veronica Degraffenreid
Subject: FW:
Attachments: 2024.01.21 - VL v. Hirsch - Order granting PI.pdf

FYI

Derek L. Bowens
Director of Elections

DURHAM COUNTY
Board of Elections

Durham County Board of Elections
Physical address: 201 N. Roxboro Street, Durham, NC 27701
Mailing address: PO Box 868, Durham, NC 27702
Phone: (919) 560-7072
Fax: (919) 560-0688
www.dcovotes.com

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Lassiter, Daniel

From: Jones, Henry R.
Sent: Thursday, January 18, 2024 3:06 PM
To: Bowens, Derek; Doyle, Keyar J.
Cc: Craig-Ray, Deborah
Subject: In Touch with Durham County
Attachments: What to wear on camera.pdf; In Touch Script Jan 2024.docx

Derek and Keyar,

Here is a reminder that you both are scheduled to be guests on the "In Touch with Durham County" show taping on Monday, January 22 from 11 a.m. to 12 p.m.

I have attached a "What to Wear" guide, as well as the script for the show.

Keyar, you will be the first guest, so please try to arrive by 10:55 so we can have the film crew put on your microphone and get you ready.

Derek, you are our second guest, so please arrive by 11:25 a.m. If we are still taping, I will be in the lobby waiting.

The TV Studio is located on the 4th floor of the Administration II Building.

If you have any questions, please feel free to reach out to myself or anyone else on the PIO team.

Thank you!

Randy

RANDY JONES | PUBLIC INFORMATION SPECIALIST

County Manager

hrjones@dconc.gov

Durham County Manager's Office
200 East Main Street, 2nd Floor
Durham, North Carolina 27701
Office (919) 560-0003 | Cell (919) 530-0036 | Fax (919) 560-0020

Caution: Do not click links or open attachments unless you recognize the sender and know the content is safe.

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What to Wear on Camera

DO

- Fabrics that are solid and cotton are best
- Stay classic- collar shirts and jackets for men and women always work.
- Stick to solids - pastels are great on camera and don't upstage you.
- Keep jewelry simple.
- If you wear makeup, keep it light and natural, and bring the materials with you in case a touch-up is required.

DON'T

- Avoid all white and all-black outfits
- Avoid bright red clothing
- Avoid shiny fabrics or fabrics with sequins or shiny embellishments
- Avoid rayon other synthetics because they make noise when you breathe and the mics pick it up.
- Avoid thin stripes, herringbone, seersucker or other thin tight patters
- Avoid flimsy, gauzy material shirts
- Avoid turtle necks collars
- Avoid t-shirts with brand logos
- Avoid t-shirts
- Avoid shiny or dangly jewelry Jewelry can create noise for the picture and sound.
- Avoid Large necklaces they are distracting and can cause sound problems.

Bring water with you and be prepared to enjoy this new experience.

We want you to look good and sound good. Our job is to make you shine as a professional.

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Velasquezmedia.com

In Touch with Durham County

TV Show Monday, January 22, 2024

11:00am

(Roll: Pre-produced show open)

Hello and welcome to "In Touch with Durham County". I'm Deborah Craig-Ray, Chief Communications Officer.

Our goal is to have great conversations with our Durham County department heads, our staff and community partners so that we can share valuable information about our programs and services.

I am excited to welcome leaders from two departments that residents should be quite familiar with...Tax Administration and Elections.

The **Tax Department** is responsible for listing, assessing, and collecting real and personal property **taxes**. Joining me today is Keyar Doyle, Durham County's Tax Administrator.

Hello Keyar and I am so glad to have you in the studio for this first segment.

And following our conversation, we will welcome Elections Director Derek Bowens in segment two to talk about Elections 2024. Mark your calendars…. The 2024 Statewide Primary and Election is on Tuesday, March 5th.

(Segment One: Durham Tax Administrator)

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Welcome to the show Keyar. I'm looking forward to a great conversation.

Let me again congratulate you on your appointment by the County Commissioners. Most people may not know this, but in our state, a Tax Administrator position is one that is hired by County Commissioners unlike most other department heads.

Please tell us a little about yourself, your career background and include when you joined Durham County.

Please share a bit about the key responsibilities of a Tax administrator.

How many staff members are in our tax office?

Let's remind residents of the schedule around tax bills. With budget approval, the County Commissioners set a tax rate. Following that, your office sends bills out in late summer. By NC state law, the deadline to pay without penalty is Jan 5th.

After that, what happens with bills that are not paid in a timely manner?

Does Durham County have programs to help taxpayers ensure their bills are paid timely?

Is there a payment plan available? How does that work?

One responsibility most taxpayers are familiar with is the process we call reappraisal or revaluation. What is revaluation? What is involved in the process?

How often are counties required to perform a reval?

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When was our last reval and when is our next one scheduled for?

What is your office doing now to prepare for our next Durham County reval?

How will you share education and information with residents about the process?

Durham County's Tax website allows residents to perform many functions online. Can you quickly mention a few of those functions?

As you embark on the Reappraisal process, do you have all the staff members that you need?

What are some of the areas where citizens can help the Tax Department?

We're about out of time. Is there something that we did not touch on that you would like to share at this time?

How can people contact our Tax Office if they have further questions? Is there a main phone number? Also, what is the web address? We will post that on the screen as well.

Keyar, I've enjoyed our conversation and I look forward to having you join us again. My thanks to you and your entire team for the great work that you do for Durham County.

We're going to take a break and when we return, we'll share everything you need to know about the upcoming 2024 Election

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season. We'll see you on the other side of this break! Stay with us!

(Segment Two: 2024 Durham County Elections)

Deborah: Welcome back to In Touch. In case you've missed it, 2024 is a Presidential Election year. But there are key races up and down the ballot ..local, state and federal.

We've invited Durham County Elections Director Derek Bowens to the show to help us learn about new laws impacting this year's election cycle, as well as details about the Primary election in March and the general election in November.

Welcome Derek to the show. Let's begin our conversation.

Please tell us a little about your career in Elections and how long you've directed elections in Durham County.

You are the CEO if you will but there is a Board of Elections that oversees this work. How many members are there, and how are they appointed?

What is the size of your staff overall? How does that change in a presidential election year such as we are in.

Seems like a good time to ask do you need staff? Has it been more challenging to get people interested in working with

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elections, given some fallout from 2020 where election workers were sadly threatened across the nation?

What types of jobs are available? Where do folks go to get more information?

Now, let's reflect on Election Year 2020 briefly. We were in the COVID pandemic trying to vote with masks and gloves. Trying to keep voters safe and our workers safe. It was again a Presidential year. How did your team pivot to ensure the process went as smoothly as it did?

Following a court ruling from last April I believe; North Carolina voters must provide an acceptable ID to cast a ballot. What are acceptable IDs according to our voting laws?

Last fall was the first Durham election with that provision. How did it go?

What is being done again this season to help ensure that folks needing an ID get a chance to obtain one? And can one get a free ID?

Voters who vote by mail now must include a photocopy of an acceptable ID when returning their ballot, or they may complete an ID Exception Form, which is included in their absentee materials. Can you explain that process for us?

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Speaking of absentee voting, our State Board of Elections approved 10 counties that will participate in the mailed ballot signature-matching pilot as required under a new law. This is known as **signature verification** for absentee ballots. Durham is the most populous county that will take part in this pilot program.

Can you talk about how that process will operate? Who are some of the other counties in that cohort?

Certainly, sample ballots are now available. How can residents' access and review those ballots in preparation for voting?

Let's not forget to mention early voting. I think we have 7 locations across the county. Where are they and how were they chosen for that purpose?

Key dates to remember: We will place them on the screen:

- **Feb. 9, 2024**: Voter registration deadline
- **Feb. 15, 2024**: In-person early voting begins, with same-day voter registration available.
- **Feb. 27, 2024**: Absentee ballot request deadline
- **March 2, 2024**: In-person early voting ends
- **March 5, 2024**: Primary Election Day.
- **March 5, 2024**: Absentee ballot return deadline

Derek, we've had a wonderful conversation, but we are about out of time. What didn't we cover, and how can voters help your department?

Again, we thank you and your elections employees for helping ensure we have a safe election process. We look forward to having you back later this year as get ready for the November election.

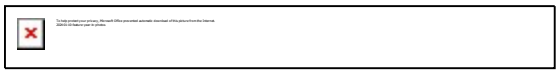
Thank you very much for watching our show today. We appreciate your support and attention. Please join us next time for “In Touch with Durham County”. Cheers!

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Lassiter, Daniel

From: INDY <editors@indyweek.com>
Sent: Wednesday, January 10, 2024 1:25 PM
To: Bowens, Derek
Subject: INDY's Weekly Insider • A Year in Pictures

The latest from INDY:



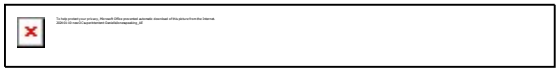
2023: The Year in Pictures

A look back at the INDY's photojournalism.



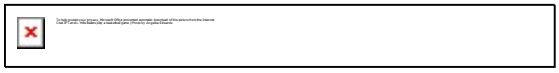
A Youth Program at Dame's Chicken & Waffles Offers a Primer on Running a Restaurant

Communiversity Youth Program (CYP) participants learn culinary, customer service, and management skills under the guidance of Michael Newell, co-owner of Dame's Chicken and Waffles.



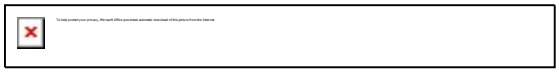
A Former Durham Public Schools Assistant Superintendent Will Lead Orange County Schools at a Troubled Time for the District

Danielle Jones was sworn in as superintendent of Orange County Schools this week. Her first day on the job is February 1.



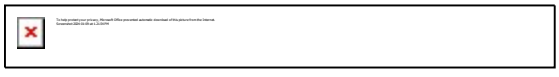
A Durham League of Their Own

Through an upstart recreational league, basketball players come together for the love of the game.



Backtalk: 'Every tool at our disposal to attack the gun violence plaguing Durham'

A letter from Durham Sheriff Clarence Birkhead



David Menconi on Rounder Records and the State of American Roots Music

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Incoming! High school drama, Tokyo utility workers, and Jesus

For those who still like to go out to the movies, Incoming! is a new monthly feature spotlighting interesting films coming to local theaters.



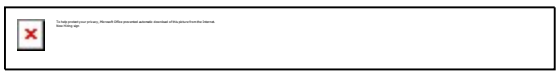
Chapel Hill Leaders Look to Future Plans for Growth, Connectivity, and Affordable Housing

Chapel Hill's new mayor and three newly elected council members took their oaths of office last month and laid out their visions for the future.



Coal Ash More Hazardous Than Previously Known, EPA Says, Could Alter Chapel Hill Cleanup Plan

Coal ash could increase a person's cancer risk significantly more than previously estimated, according to a recent EPA report, raising questions about the safety of places where ash has been used as structural fill.



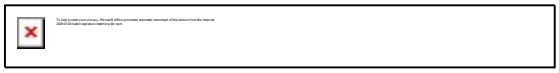
Durham City Council Selects Four Finalists for Ward Three Vacancy

The finalists include two practicing attorneys, a healthcare administrator, and a policy advisor.



Linda's Bar & Grill, Chapel Hill Watering Hole for Decades, Closes Its Doors

"Linda's means everything to me and I've given everything back to it that I can," Owner Christopher Carini says. "At this point, my only play is to take care of my people and try and find someone who might love it in the future."



Durham One of Ten Counties Selected in NC Elections Board's Ballot Signature-Matching Pilot Program

The signature verification test for mailed ballots was part of the massive package of election changes the Republican-led legislature enacted last year over Democratic Gov. Roy Cooper's veto.

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INDY · P.O. Box 1772 · Durham, NC 27702 · USA

Caution: Do not click links or open attachments unless you recognize the sender and know the content is safe.

Lassiter, Daniel

From: Bowens, Derek
Sent: Monday, January 22, 2024 10:38 AM
To: Abney, Bettyna B.; Baxton, Dawn; Beskind, Donald; David Boone; David K. Boone; Dawn Baxton; Don Beskind; James Weaver (jpweaver21@gmail.com); P. Oxendine; Pamela Oxendine; Weaver, James
Subject: Injunction - Same Day Registrations
Attachments: 2024.01.21 - VL v. Hirsch - Order granting PI.pdf

Good Morning, Members:

First, thanks to Mr. Beskind for providing the attached order in the case of Voto Latino v. Hirsch. As you may already be aware, Judge Schroder issued an injunction on the implementation of NCGS 163-82.6B(d) which would have required the votes for a same-day registrant during early voting to be removed from the count if they failed mail verification, without providing an opportunity for the registrant to be heard on the matter. This injunction makes it clear that for this provision to be in effect, the voter must have an opportunity to be heard.

I will provide more details when they are provided by the State Board of Elections.

Thanks.

Derek

Derek L. Bowens
Director of Elections

DURHAM COUNTY
Board of Elections

Durham County Board of Elections
Physical address: 201 N. Roxboro Street, Durham, NC 27701
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Lassiter, Daniel

From: Bowens, Derek
Sent: Monday, January 22, 2024 10:38 AM
To: Abney, Bettyna B.; Baxton, Dawn; Beskind, Donald; Boone, David; David K. Boone; Dawn Baxton; Don Beskind; James Weaver (jpweaver21@gmail.com); P. Oxendine; Oxendine, Pamela; Weaver, James
Subject: Injunction - Same Day Registrations
Attachments: 2024.01.21 - VL v. Hirsch - Order granting PI.pdf

Good Morning, Members:

First, thanks to Mr. Beskind for providing the attached order in the case of Voto Latino v. Hirsch. As you may already be aware, Judge Schroder issued an injunction on the implementation of NCGS 163-82.6B(d) which would have required the votes for a same-day registrant during early voting to be removed from the count if they failed mail verification, without providing an opportunity for the registrant to be heard on the matter. This injunction makes it clear that for this provision to be in effect, the voter must have an opportunity to be heard.

I will provide more details when they are provided by the State Board of Elections.

Thanks.

Derek

Derek L. Bowens
Director of Elections

DURHAM COUNTY
Board of Elections

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AMERICAN OVERSIGHT

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

VOTO LATINO, WATAUGA COUNTY VOTING RIGHTS TASK FORCE, DOWN HOME NORTH CAROLINA, and SOPHIE JAE MEAD, Plaintiffs, v. ALAN HIRSCH, in his official capacity as Chair of the State Board of Elections, JEFF CARMON, in his official capacity as Secretary of the State Board of Elections, STACEY EGGERS IV, in his official capacity as Member of the State Board of Elections, KEVIN N. LEWIS, in his official capacity as Member of the State Board of Elections, SIOBHAN O'DUFFY MILLEN, in her official capacity as Member of the State Board of Elections, KAREN BRINSON BELL, in her official capacity as Executive Director of the State Board of Elections, MICHAEL BEHRENT, in his official capacity as Chair of the Watauga County Board of Elections, ERIC ELLER, in his official capacity as Member of the Watauga County Board of Elections, MATT WALPOLE, in his official capacity as Member of the Watauga County Board of Elections, LETA COUNCILL, in her official capacity as Member of the Watauga County Board of Election, and ELAINE ROTHENBERG, in her official capacity as Member of the	)	1:23-CV-861

AMERICAN OVERSIGHT

Watauga County Board of Elections,

Defendants,

and

PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate, and TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives,

Defendant-Intervenors,

and

REPUBLICAN NATIONAL COMMITTEE, NORTH CAROLINA REPUBLICAN PARTY, VIRGINIA A. WASSERBERG, and BRENDA M. ELDRIDGE,

Defendant-Intervenors.

DEMOCRATIC NATIONAL COMMITTEE and NORTH CAROLINA DEMOCRATIC PARTY,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS, KAREN BRINSON BELL, in her official capacity as Executive Director of the State Board of Elections, ALAN HIRSCH, in his official capacity as Chair of the State Board of Elections, JEFF CARMON, in his official

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000310
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 2 of 94

capacity as Secretary of the State Board of Elections, STACEY EGGERS IV, in his official capacity as Member of the State Board of Elections, KEVIN N. LEWIS, in his official capacity as Member of the State Board of Elections, SIOBHAN O'DUFFY MILLEN, in her official capacity as Member of the State Board of Elections,	)	
Defendants,	)	
and	)	
PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate, and TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives,	)	
Defendant-Intervenors,	)	
and	)	
REPUBLICAN NATIONAL COMMITTEE, NORTH CAROLINA REPUBLICAN PARTY, VIRGINIA A. WASSERBERG, and BRENDA M. ELDRIDGE,	)	
Defendant-Intervenors.	)	1:23-CV-862

MEMORANDUM OPINION AND ORDER

THOMAS D. SCHROEDER, District Judge.

In these two actions,[1] Plaintiffs contest recent changes to

[1] The actions are not consolidated but are addressed jointly here because

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000311

North Carolina's rules for voters who register and cast a ballot during the State's seventeen-day same-day registration ("SDR") period that ends the Saturday before election day. Pursuant to the State's address verification process, the county board of elections sends all same-day registrants a card by non-forwardable mail. Under Senate Bill 747 ("S. 747"), which became law on October 10, 2023, as 2023 N.C. Sess. Laws 140, if, before the close of business on the day before the canvass, the United States Postal Service returns the verification card to the county board as undeliverable — even through no fault of the voter — the county board "shall not register the applicant and shall retrieve the applicant's ballot and remove that ballot's votes from the official count." 2023 N.C. Sess. Laws 140, § 10.(a) (codified as N.C. Gen. Stat. § 163-82.6B (2024)).

Before the court are motions for preliminary injunction by Plaintiffs Voto Latino, Watauga County Voting Rights Task Force, Down Home North Carolina, and Sophie Jae Mead ("Voto Latino Plaintiffs") (VL Doc. 44), and Plaintiffs Democratic National Committee and North Carolina Democratic Party ("Party Plaintiffs") (DNC Doc. 6) (collectively, "Plaintiffs").[2] Defendants Karen

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they raise identical issues. A third case raising similar issues is also pending before this court, 1:23-cv-878. The plaintiffs there have not moved for preliminary relief.

[2] Docket entry references for case number 1:23-CV-861 are "VL Doc. XX," and for case number 1:23-CV-862 are "DNC Doc. XX."

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000312

Brinson Bell, Alan Hirsch, Jeff Carmon, Stacy Eggers IV, Kevin N. Lewis, Siobhan O'Duffy Millen, and as to 1:23-cv-862, North Carolina State Board of Elections ("NCSBE") ("State Board Defendants"), Defendant-Intervenors Senator Philip E. Berger and Speaker Timothy K. Moore ("Legislative Intervenors"), and Defendant-Intervenors Republican National Committee, North Carolina Republican Party, Virginia Ann Wasserberg, and Brenda M. Eldridge ("Party Intervenors") (collectively, "Intervenors") have responded in opposition. (VL Docs. 51, 52, 54, 60; DNC Docs. 51, 52, 53.)[3] Plaintiffs have replied. (VL Doc. 59; DNC Doc. 58.)

Voto Latino Plaintiffs seek injunctive relief, claiming violations of the First and Fourteenth Amendments to the United States Constitution, pursuant to 42 U.S.C. § 1983. (VL Doc. 1 ¶¶ 83-98.) Party Plaintiffs allege violations of the First and Fourteenth Amendments to the United States Constitution, Article I, sections 10 and 19 of the North Carolina Constitution, the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(A), the Help America Vote Act ("HAVA"), 52 U.S.C. § 21082, and the Voting Rights Act, 52 U.S.C. § 10307(b). (DNC Doc. 1 ¶¶ 52-100.) Legislative Intervenors and

[3] Voto Latino Plaintiffs named Michael Behrent, Eric Eller, Matt Walpole, Leta Councill, and Elaine Rothenberg, all of whom are members of the Watauga County Board of Elections, as Defendants. In response to Plaintiffs' motion, these Defendants state they take no position and are "obligated to faithfully administer the election laws of the State of North Carolina, whatever they may be." (VL Doc. 50 at 2-3.) Both actions otherwise share the same named Defendants and Intervenors, except that Party Plaintiffs also sue NCSBE.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000313

Party Intervenors have intervened in both cases to oppose Plaintiffs' claims and to represent the interests of the North Carolina General Assembly and their political party, respectively. (VL minute entry Nov. 15, 2023; DNC Docs. 47, 48.)

Beyond the briefs, the parties to the suit brought by Voto Latino Plaintiffs have filed declarations concerning the backgrounds and allegations of the organizational and individual Plaintiffs, depositions from leaders of the organizational Plaintiffs and Plaintiff Mead, two preliminary expert opinions and corresponding depositions, and several NCSBE "Numbered Memos," which provide guidance to county election boards. The parties to the suit brought by Party Plaintiffs likewise rely on NCSBE Numbered Memos.

The parties have requested resolution of these motions ahead of the 2024 primary election, for which same-day registration begins on February 15, 2024. The court heard argument on the motions on December 28, 2023. For the reasons set forth below, the motions will be granted in part and denied in part.

I. BACKGROUND

The North Carolina General Assembly passed S. 747 over Governor Roy Cooper's veto on October 10, 2023. 2023 N.C. Sess. Laws 140, available at https://ncleg.gov/Sessions/2023/Bills/Senate/PDF/S747v6.pdf. The relevant provisions of S. 747, "[a]n act to make various changes regarding elections law,"

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000314

became effective January 1, 2024. Id. § 50. While the bill amends several provisions of the election laws in Chapter 163 of the North Carolina General Statutes, the present motions specifically seek to enjoin the enforcement of portions of section 10.(a), codified as N.C. Gen. Stat. § 163-82.6B, which makes changes to North Carolina's SDR procedures.

A. Voter Registration

All adult citizens, except felons, are entitled to vote in North Carolina. N.C. Const. art VI, §§ 1-2; N.C. Gen. Stat. § 163-55(a). To be eligible to vote in a given county, a voter must have resided in that county for at least 30 days prior to election day, N.C. Gen. Stat. § 163-55(a), and register there, id. § 163-54.

North Carolina offers two general methods of registration. Under the first method used by nearly all North Carolinians, called "traditional registration" or "non-SDR" herein, an eligible voter may register 25 days or more before an election day. Id. § 163-82.6(d). These registrants must complete a registration application that requires name, date of birth, residential address, and mailing address, if different. Id. § 163-82.4(a); see also North Carolina Voter Registration Application, Form 06W, at https://dl.ncsbe.gov/Voter_Registration/NCVoterRegForm_06W.pdf (last accessed Jan. 18, 2024). The mailing address need not be in the same precinct or even county as the residential address. (DNC

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000315
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 7 of 94

Doc. 62 at 59:8-13.) The application also requests identifying information, such as a driver's license number, last four digits of a social security number, and gender and ethnicity, and allows an applicant to select a political party affiliation. N.C. Gen. Stat. § 163-82.4(a). The applicant must attest that he is a citizen, is 18 years old or will be on election day, and that the contents of the application are true under penalty of perjury. Id. § 163-82.4(c), (e). The non-SDR applicant need not provide any document that proves residency.

When a county board of elections receives the application, it must make a "tentative determination that the applicant is qualified to vote at the address given." Id. § 163-82.7(a).[4] If the applicant is found not qualified, the county board of elections will mail him a notice within two days of the denial which informs him of alternatives to exercise the franchise and of the opportunity to appeal under section 163-82.18.[5] Id. § 163-82.7(b).

[4] Section 163-82.7(a) does not expressly state, and the parties have not represented, what the county board's initial determination for traditional registration entails. Presumably, it involves checking the applicant's age, citizenship status, felon status, driver's license or last four digits of the social security number, if provided, etc. to determine if the applicant is qualified to vote or is already registered. See N.C. Gen. Stat. § 163-82.6B(d).

[5] An applicant who receives a denial notice may appeal within five days of receiving the notice. N.C. Gen. Stat. § 163-82.18(a). The appeal is first heard before the county board of elections, which must provide notice of its decision within five days of the hearing. Id. § 163-82.18(b). If the denial is sustained, the applicant may appeal to a superior court of the county in which the board is located within ten

AMERICAN OVERSIGHT

If the applicant is "tentantive[ly] determin[ed]" to be qualified, the county board will implement the statutory procedures for "Verification of Address by Mail," or "address verification." Id. § 163-82.7(c). First, the county board will mail a "notice" (commonly referred to as "voter registration card"; hereinafter, "card") confirming the precinct and voting place of the voter by non-forwardable mail to the address provided on the application. Id. If the mailing address differs from the residence address, the county board will mail the verification card to the mailing address. (DNC Doc. 62 at 59:8-13); see also N.C. Gen. Stat. § 163-57(1)(c) ("Residence shall be broadly construed to provide all persons with the opportunity to register and to vote, including stating a mailing address different from residence address.").

If the Postal Service does not return the card to the county board as undeliverable, "the county board shall register the applicant to vote."[6] Id. § 163-82.7(d). If the card is returned, however, the county board will send a second card. Id. § 163-82.7(e). As with the first, if the Postal Service does not return the second card as undeliverable, "the county board shall register the applicant to vote." Id. But if the second card is returned

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days of receiving notice of the county board's final decision. Id. § 163-82.18(c).

[6] Neither the statute nor the NCSBE provides any time deadline for return of the address verification card. Thus, there is no specific time when an applicant is deemed "registered" — only the opposite.

AMERICAN OVERSIGHT

as undeliverable, the county board will deny the application and "need not try to notify the applicant further." Id. § 163-82.7(f). Voters may nevertheless check their registration status online via NCSBE's "Voter Search" tool. See NCSBE, View Your Voter Registration Status, at https://www.ncsbe.gov/registering/checking-your-registration (last accessed Jan. 9, 2024).[7]

Under the second method of registration, implemented in 2007, an individual who is qualified to register to vote may register in person and simultaneously cast a ballot at an early voting site in the individual's county of residence during the period of early voting. N.C. Gen. Stat. § 163-82.6B(a).[8] This is commonly called "same-day registration," or "SDR." To same-day register and vote, an individual must (1) complete a voter registration application; (2) provide proof of residence by presenting a HAVA[9]-compliant

[7] Section 163-82.7(g)(3) requires non-SDR voters who vote prior to failing two-card address verification to be treated "as a registered voter."

[8] Same-day registration was enacted in North Carolina in 2007. 2007 N.C. Sess. Laws 253, § 1 (codified as N.C. Gen. Stat. § 163-82.6A). Though section 163-82.6A once contained North Carolina's same-day registration rules, it was largely repealed by North Carolina Session Laws 2013-381, § 16.1. After the Fourth Circuit held this repeal unlawful, N.C. State Conf. of the NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016), section 163-82.6A was given legal effect again. However, Numbered Memo 2016-15 has effectively housed North Carolina's same-day registration laws from September 22, 2016, until January 1, 2024, because Chapter 163 was never amended to codify the holding in McCrory. (See VL Doc. 55-2 at 4 (NCSBE Numbered Memo 2016-15, Appendix A).) Section 163-82.6B now appears to abrogate the legal effect of Numbered Memo 2016-15's Appendix A. N.C. Gen. Stat. § 163-82.6B(a) ("Notwithstanding any provision of law to the contrary . . . .").

[9] Help America Vote Act, 52 U.S.C. § 20901 et seq.

AMERICAN OVERSIGHT

document listing the individual's current name and residence address; and (3) present photo identification pursuant to section 163-166.16.[10] Id. § 163-82.6B(b). A HAVA-compliant document is one of the following:

> (1) A current utility bill
> (2) A current bank statement
> (3) A current government check
> (4) A current paycheck
> (5) Another current government document
> (6) A current document issued from the institution who issued the photo identification shown by the voter pursuant to G.S. 163-166.16.

Id. § 163-82.6B(e).[11] A "current" HAVA document must be unexpired or have an issuance date within six months of presentation to an election official. (VL Doc. 55-5 at 3 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).) As with traditional registration, the mailing address on the application may be different from that on the HAVA document and can even be in a different county. (DNC Doc. 62 at 59:8-13.) Upon completing these steps, an individual then "vote[s] a retrievable ballot." N.C. Gen. Stat. § 163-82.6B(c).

Prior to S. 747, the procedures up until address verification

[10] As a technical matter, the same-day registration law prior to S. 747 did not expressly require a same-day registrant to show a photo identification to vote. However, in light of the North Carolina Supreme Court's April 2023 opinion upholding section 163-166.16, SDR voters would appear to be required to present a photo identification even without S. 747. See Holmes v. Moore, 384 N.C. 326, 460 (2023).

[11] NCSBE Numbered Memo 2023-05 provides further guidance to county boards on government documents allowable under (5) and (6). (VL Doc. 55-5 at 3-5 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).)

AMERICAN OVERSIGHT

were the same, except that the proof-of-residency documents required to be produced in person at registration were: "North Carolina drivers license, a photo identification from a government agency, or ['a current utility bill, bank statement, government check, paycheck, or other government document']." See N.C. Gen. Stat § 163-82.6A (2012), available at VL Doc. 55-2 at 4 (NCSBE Numbered Memo 2016-15, Appendix A). Additionally, rather than vote a "retrievable ballot" as S. 747 requires, the same-day registrant would previously vote a "retrievable absentee ballot as provided in G.S. 163-227.2." Id. § 163-82.6A(c) (2012) (emphasis added).

Under S. 747, after a same-day registrant casts a ballot, the county board must, within two business days of registration, "determine[]" if he is qualified to vote by verifying the North Carolina driver's license or social security number in accordance with section 163-82.12, updating the statewide registration database, and searching for possible duplicate registrations. N.C. Gen. Stat. § 163-82.6B(d). A same-day registrant's vote will be counted "unless the county board determines that the applicant is not qualified to vote in accordance with the provisions of this Chapter." Id.[12]

[12] As discussed below, the parties to civil action number 1:23-CV-862 disagree on the practical effect of this clause in terms of its provision of notice and opportunity to be heard for voters found "not qualified."

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000320
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 12 of 94

B. Address Verification for SDR

If the county board of elections tentatively determines that a same-day registrant is eligible to vote (i.e., passes check of driver's license number, social security number, etc.), the county board of elections proceeds to conduct address verification by mail. The core dispute on these motions concerns S. 747's changes to the State's process for doing so for SDR voters, which the parties refer to as the "undeliverable mail provision."

Prior to S. 747, if a same-day registrant was determined eligible, the county board would conduct address verification. N.C. Gen. Stat. § 163-82.6A(d) (2012); N.C. Gen. Stat. § 163-82.7(c)-(f). Just as for non-SDR voters, if the first non-forwardable card was returned as undeliverable, the county board would send a second one. However, given the short window between early voting and the county canvass, in some instances the second card was returned as undeliverable after the county canvass. In those instances, although those SDR voters failed address verification, their votes were counted. N.C. Gen. Stat. § 163-82.7(g); (VL Doc. 55-2 at 3 (NCSBE Numbered Memo 2016-15 (Sept. 22, 2016)).)

When the Postal Service returned the second card as undeliverable before the county canvass, however, the law before S. 747 provided that the ballot (then considered a "retrievable absentee" ballot) could be challenged pursuant to section 163-89,

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000321
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 13 of 94

which authorizes a challenge procedure for absentee ballots to occur ten days after the election. Id. §§ 163-82.7(g)(2), 163-182.5. If this occurred, the county board would "need not try to notify the applicant further." Id. § 163-82.7(f).[13] However, the voter is entitled to appear and present evidence as to the validity of the ballot, provided he is notified of the challenge, for example, by another voter or organization. Id. § 163-89(e). Under this challenge system, "[n]o challenge shall be sustained unless the challenge is substantiated by affirmative proof," and "[i]n the absence of such proof, the presumption shall be that the voter is properly registered or affiliated." Id. § 163-90.1(b). In the last four even-year elections, 1,799 out of 100,578; 696 out of 45,666; 2,151 out of 116,326; and 391 out of 34,289 same-day registrants failed address verification. NCSBE, Presentation to House Oversight and Reform Committee, at 6 (June 22, 2023), at https://webservices.ncleg.gov/ViewDocSiteFile/80406 (last

[13] SDR voters may utilize NCSBE's "Voter Search" to track the status of their ballot, but NCSBE's website indicates that a voter's history "may take up to a few weeks after Election Day" to update. NCSBE, Vote Early in Person, at https://www.ncsbe.gov/voting/vote-early-person (last accessed Jan. 9, 2024). Moreover, even though SDR ballots were technically considered "absentee" ballots prior to S. 747, the court has no record that NCSBE's vote-by-mail tracking system, BallotTrax, was or is now available to SDR voters. See NCSBE, Ballot Tracking Available Again for Absentee-By-Mail Voters, at https://www.ncsbe.gov/news/press-releases/2022/03/14/ballot-tracking-available-again-absentee-mail-voters (Mar. 14, 2022) (last accessed Jan. 9, 2024).

AMERICAN OVERSIGHT

accessed Jan. 3, 2023).[14]

In reality, however, no challenges based on failed address verification have been held since August 2018. (VL Doc. 61 at 53:13-16 (State Board stating so at oral argument); VL Doc. 55-4 at 1-2 (NCSBE Numbered Memo 2018-07 (Aug. 8, 2018)); see also VL Doc. 55-3 at 8 (NCSBE Numbered Memo 2022-05 (May 12, 2022)).)[15] This results from the NCSBE's interpretation of an injunction entered in North Carolina State Conference of the NAACP v. Bipartisan Board of Elections & Ethics Enforcement, No. 1:16CV1274, 2018 WL 3748172 (M.D.N.C. Aug. 7, 2018). (See VL Doc. 55-3 at 8 (NCSBE Numbered Memo 2022-05 (May 12, 2022)) (explaining that "a 2018 federal court order [i.e., the Bipartisan Board order] prohibits any voter challenges from being brought without individualized knowledge within 90 days of a federal election"); VL Doc. 44-4 at 9-10 (Letter from State Board to Watauga County Board ordering the county board, pursuant to Bipartisan Board injunction, to halt its section 163-89 challenges based on same-day registrants' failure to complete address verification)).)

[14] The court may take judicial notice of facts that are "matters of public record." Justice 360 v. Stirling, 42 F.4th 450, 455 (4th Cir. 2022); Fed. R. Evid. 201.

[15] NCSBE updated the version of Numbered Memo 2022-05 available online on December 15, 2023, in light of S. 747. See NCSBE Numbered Memo 2022-05 (Dec. 15, 2023 update), at https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2022/Numbered%20Memo%202022-05_Absentee%20Voter%20Challenges%20by%20County%20Board.pdf. The memo before the updates is memorialized at VL Doc. 55-3 and DNC Doc. 54-3.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000323

In Bipartisan Board, individual voters in Beaufort, Cumberland, and Moore counties sent a single mailing to thousands of registered voters. Bipartisan Board, 2018 WL 3748172, at *4-9. These individuals together received thousands of pieces of mail returned as undeliverable, after which they brought challenges pursuant to N.C. Gen. Stat. §§ 163-85 and 163-86, which permit third-party challenges to a voter's right to register in a county due to, among other reasons, change in residency.[16] Id. When presented to the county boards, the single unreturned mailings constituted prima facie evidence that the corresponding voters did not reside at the address listed. Id.; N.C. Gen. Stat. § 163-85(e). The county boards thus struck the registrations of scores of registered voters, and plaintiffs sued to restore the registrations and receive prospective relief pursuant to the National Voter Registration Act ("NVRA," also known as the "Motor Voter Act"), 52 U.S.C. § 20507. Id. at *1. Finding that these third-party challenges violated 52 U.S.C §§ 20507(d)[17] and

[16] The Bipartisan Board order refers to these provisions as N.C. Gen. Stat. §§ 163A-911 and 163A-912. The provisions were re-codified by North Carolina Session Laws 2018-146, § 3.1(a), effective January 31, 2019, as N.C. Gen. Stat. §§ 163-85 and 163-86. This order will refer to the provisions as presently codified.

[17] Section 20507(d)(1) prohibits "remov[ing] 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": (1) confirms in writing that he has moved outside the registrar's jurisdiction; or (2) fails to respond to a notice as outlined under subsection (d)(2), and (3) has not voted or appeared to vote in

AMERICAN OVERSIGHT

(c)(2)(A),[18] the court permanently enjoined the NCSBE from

> (1) removing the registration of voters from the official list of eligible voters in elections for federal office through the challenge procedures set forth in N.C. Gen. Stat. §§ 163A-911 et seq.,[19] when those challenges are based on change of residency and the State has neither received written confirmation from the voter of a change of residency outside of the county, nor complied with the NVRA's prior notice requirement and two-election cycle waiting period;
>
> (2) using the challenge procedure set forth in N.C. Gen. Stat. §§ 163A-911[20] et seq. to remove voters from the rolls without individualized inquiry as to the circumstances of each voter in the 90 days preceding a federal election in the absence of a request of the registrant, necessity under State law by reason of criminal conviction or mental incapacity, or the death of the registrant; and
>
> (3) holding hearings or taking any other action(s) to process challenges filed under those provisions in the circumstances identified above.

Bipartisan Board, 2018 WL 3748172, at *12. The court found that the challenges, which occurred within 90 days of a federal election based on a single mailing, violated the NVRA because the process did not rely upon "individualized information" as to the voters sought to be removed. Id. at *6-10 (citing Arcia v. Fla. Sec'y of

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two federal election cycles following receipt of notice. Section 20507(d)(2) prescribes the content for a NVRA-compliant notice.

[18] Section 20507(c)(2)(A) provides that "[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."

[19] Now codified as N.C. Gen. Stat. §§ 163-85 et seq.

[20] Now codified as N.C. Gen. Stat. §§ 163-85 et seq.

AMERICAN OVERSIGHT

State, 772 F.3d 1335, 1346 (11th Cir. 2014)). Although Bipartisan Board dealt with challenges pursuant to section 163-85, State Board Defendants have construed the injunction to also prohibit challenges under section 163-89 for same-day registrants under the belief that the challenge procedures "bear a close resemblance" to one another. (VL Doc. 44-4 at 9-10 (pointing to the Bipartisan Board court's finding that the mailings constituted "generic evidence [that] conveyed no information about each challenged voter's specific circumstances").) As a result of Bipartisan Board and State Board Defendants' interpretation of it, failed address verifications for same-day registrants have not resulted in challenges since 2018.

S. 747 amends the address verification system for SDR voters to, as State Board Defendants contend, address the State's inability to conduct address verification before the canvass and to avoid counting ballots of SDR voters who fail address verification. (DNC Doc. 53 at 13; VL Doc. 54 at 11.) In pertinent part, the "undeliverable mail provision" now provides:

> Notwithstanding any other provision of this Chapter, if the Postal Service returns the first notice required under G.S. 163-82.7(c) as undeliverable before the close of business on the business day before canvass, the county board shall not register the applicant and shall retrieve the applicant's ballot and remove that ballot's votes from the official count.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000326
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 18 of 94

N.C. Gen. Stat. § 163-82.6B(d).[21] State Board Defendants state that all SDR voters will be given a notice at the polling place that their vote may not be counted if address verification fails, but there is no individualized notice and opportunity to be heard after the card is returned as undeliverable and before the ballot is removed from the official count. (See VL Doc. 55-6 (Notice to Same Day Registrants); VL Doc. 54 at 13 n.8 ("The State Board has also created a written notice that poll workers are required to give to all same-day registrants informing them" that, if address verification fails, their "voter registration will be denied and [their] vote will not be counted").)

State Board Defendants contend that North Carolina's interest in the undeliverable mail provision is "in ensuring only eligible ballots are counted in an election." (DNC Doc. 53 at 13.) Legislative Intervenors argue that S. 747 "(1) preserv[es] the integrity of the election process; and (2) instill[s] confidence in the fairness of the election." (DNC Doc. 52 at 17.) With respect to election integrity, Legislative Intervenors contend that the law "ensure[s] that registrant[s] live in the precinct within which they seek to vote." (Id. at 18.) They argue that

[21] It is unclear whether the provision referencing the "first notice" indicates that no second card will be sent, especially in light of the provision that the county board "shall not register" the SDR voter. State Board Defendants take the view that a second card is sent only if the first card returns after the canvass. (VL Doc. 55-5 at 7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000327
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 19 of 94

North Carolina has a "legitimate interest" in ensuring "that the card is returned before the end of the canvass," and that S. 747 is designed to bring SDR voters into parity with other voters. (VL Doc. 52 at 14; VL Doc. 61 at 66:13-15.) Legislative Intervenors also rely on the expert report and testimony of Dr. Andrew Taylor which, as discussed in more detail below, they urge shows that the undeliverable mail provision supports the State's interests. (See VL Doc. 52-1.) Party Intervenors contend that the State's "compelling interest" is in "ensuring verification of each applicant's address, which is fundamental to determining a voter's eligibility" (DNC Doc. 51 at 7-8), and in "discouraging and preventing fraud," (VL Doc. 51 at 11).

Neither State Board Defendants nor Intervenors point to any portion of the legislative history to demonstrate the General Assembly's purpose in enacting this change.[22] Legislative

[22] State Board Defendants and Intervenors have cited just one source of legislative history, a transcript of testimony by Defendant Bell before the House Committee on Oversight and Reform, available at https://webservices.ncleg.gov/ViewDocSiteFile/80708 (last accessed Jan. 17, 2024). However, neither this source nor other documents available online through the Senate Committee on Redistricting and Elections or the House Committee on Election Law and Campaign Finance Reform reveals the General Assembly's rationale for the undeliverable mail provision. This may be explained by the fact that the undeliverable mail provision appears to have been added to S. 747 by the House Committee on Election Law and Campaign Finance Reform one day before it passed the full chamber. See North Carolina General Assembly, Senate Bill 747 House Committee Substitute (Aug. 15, 2023), https://www.ncleg.gov/Sessions/2023/Bills/Senate/PDF/S747v4.pdf; see also North Carolina General Assembly, Senate Bill 747 / SL 2023-140, https://www.ncleg.gov/BillLookUp/2023/s%20747 (last accessed Jan. 17, 2024).

AMERICAN OVERSIGHT

Intervenors represent that State Board Defendants requested the change, the evidentiary support for which is a former State and Watauga County election board member's understanding. (VL Doc. 52 at 4; Doc. 52-2 at 9.) There is no record that address verification has ever revealed a same-day registrant who was in fact ineligible to vote because he did not reside at the residence provided. In fact, State Board Defendants state that they would have "no way to know" from the card itself. (VL Doc. 61 at 60:21.)

C. Parties

Plaintiff Voto Latino is a section 501(c)(4) nonprofit that encourages voting and assists with voter registration, particularly among eligible Latino voters. (VL Doc. 1 ¶¶ 17, 18.) Plaintiff Watauga County Voting Rights Taskforce is a volunteer, nonpartisan organization that conducts voter registration drives, voter education sessions, volunteer training, community outreach, among other functions. (Id. ¶¶ 22-24.) Relevant here, the Taskforce has defended voters whose ballots have been challenged. (Id. ¶ 25.) Plaintiff Down Home North Carolina is a section 501(c)(4) nonprofit that works, in part, to ensure that rural, working-class people in North Carolina have access to the franchise. (Id. ¶ 28.) Plaintiff Sophie Jae Mead is a senior at Appalachian State University and a member of the Watauga County Voting Rights Taskforce. (Id. ¶ 31.) Her ballot was allegedly challenged under section 163-89 due to an undeliverable address

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000329
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 21 of 94

verification card in 2022. (Id. ¶ 31.) Plaintiff Democratic National Committee ("DNC") is the national committee of the Democratic Party. (DNC Doc. 1 ¶¶ 22-23.) Plaintiff North Carolina Democratic Party ("NCDP") is a state committee of the Democratic Party. (Id. ¶ 25.)

Party Plaintiffs have sued the NCSBE, which is the executive agency responsible for administering election laws in North Carolina. (Id. ¶ 28.) All Plaintiffs also have sued NCSBE's executive director, Defendant Karen Brinson Bell, NCSBE's chair, Defendant Alan Hirsch, NCSBE's secretary, Defendant Jeff Carmon, and NCSBE members, Defendants Stacy Eggers IV, Kevin N. Lewis, and Siobhan O'Duffy Millen. (Id. ¶¶ 29-34; VL Doc. 1 ¶¶ 34-35.) All these individuals are sued in their respective official capacities. (DNC Doc. 1 ¶¶ 29-34; VL Doc. 1 ¶ 34.) Voto Latino has also sued Defendant Michael Behrent, the chair of the Watauga County Board of Elections, and Defendants Leta Councill, Eric Eller, Matt Walpole, and Elaine Rothenberg, who are members of the Watauga County Board of Elections, in their respective official capacities. (VL Doc. 1 ¶ 37.)

Legislative Intervenors are Philip E. Berger, President Pro Tempore of the North Carolina Senate, and Timothy K. Moore, Speaker of the North Carolina House of Representatives. They have intervened in their respective official capacities. Party Intervenors are the North Carolina Republican Party, the

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000330

Republican National Committee, Brenda M. Eldridge, and Virginia Ann Wasserberg. Eldridge and Wasserberg are registered Republican voters who "typically vote for Republican candidates, have served as poll observers in the past, and intend to do so in the future. (DNC Doc. 48 at 3.)

D. Procedural Background

Voto Latino Plaintiffs filed their motion for preliminary injunction on November 15, 2023 (VL Doc. 44), to which State Board Defendants and Intervenors responded on December 13, 2023 (VL Docs. 50-54). In the period between the motion and responses, the parties engaged in limited discovery by mutual agreement, the result of which are filings attached to State Board Defendants' and Intervenors' responses and Voto Latino Plaintiffs' reply brief. Voto Latino Plaintiffs' motion seeks preliminary injunctive relief solely against the enforcement of the undeliverable mail provision.

In the other case, Party Plaintiffs filed their motion for preliminary injunction on October 10, 2023 (DNC Doc. 6), to which State Board Defendants and Intervenors responded on November 20, 2023 (DNC Docs. 51-53). Party Plaintiffs replied on December 4, 2023. (DNC Doc. 58.) Party Plaintiffs seek preliminary injunctive relief precluding the following:

> (1) requiring same-day registrants (i.e., voters who seek to register and vote on the same day, prior to election day) to produce documentation that other

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000331

registrants need not produce;

(2) denying a same-day registrant's application to register without providing that individual with sufficient notice and a meaningful opportunity to be heard;

(3) rejecting a same-day registrant's application to register based on the return of a single notice as undeliverable by the U.S. Postal Service;

(4) applying different voting-registration standards, practices, or procedures to different individuals in the same county; and

(5) failing to provide a free-access system by which same-day registrants can track their retrievable ballots.

(DNC Doc. 6.)

Before proceeding, it bears noting what is not presently before the court. As described above, State Board Defendants have not enforced North Carolina's two-card address verification requirement for same-day registrants since the 2018 Bipartisan Board injunction against using challenges under N.C. Gen. Stat. §§ 163-85 et seq. to remove voters from the rolls in violation of the NVRA. At present, Plaintiffs have not brought suit under the NVRA, which requires 90 days' notice before an "aggrieved person may bring a civil action." 52 U.S.C. § 20510(b). At the hearing on the present motions, Party Plaintiffs represented that they have given notice to State Board Defendants of their intent to sue and that the 90-day notice period will expire sometime this month. (DNC Doc. 62 at 78 ("Nowhere near 90 days has gone past. We didn't

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000332
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 24 of 94

think when we filed our preliminary injunction motion asking that the Court rule by January, which will be 90 days, that there would be time to get effective relief under the NVRA.").)

The parties have studiously avoided any argument as to whether the undeliverable mail provision of S. 747 complies with the NVRA and/or the Bipartisan Board injunction. Despite figuring prominently in the history of SDR, the injunction is raised only in passing in the briefs. (VL Doc. 59 at 22 n. 6; VL Doc. 54 at 6; DNC Doc. 53 at 6-7.) Though during the hearing the court probed the parties about the effect, if any, of the Bipartisan Board injunction and the NVRA on Plaintiffs' requested relief, the parties demurred (DNC Doc. 61 at 78:9-18 (Party Plaintiffs expressing that "we have not yet looked at this issue"); id. at 35:11-12 (Voto Latino Plaintiffs expressing view that "it is certainly possible that the law does violate the injunction . . . and the NVRA"); id. at 43:11-22 (State Board Defendants expressing that they "haven't completely looked at whether the new law as a whole" violates Bipartisan Board but expressing belief that challenge procedures would); id. at 77:4-11 (Legislative Intervenors expressing belief that Bipartisan Board is "distinguishable")), such that it is assuredly not raised before the court at this time. Thus, the court expresses no opinion on the effect, if any, of the injunction or the NVRA, and turns to consideration of the statutory and constitutional claims actually

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000333
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 25 of 94

raised.

II. ANALYSIS

A. Standing

Legislative Intervenors and Party Intervenors challenge the Article III standing of all Voto Latino Plaintiffs. (VL Doc. 51 at 4-7; VL Doc. 52 at 15-16.) Plaintiff Mead contends that she has standing as an individual, Plaintiff Voto Latino contends that it has standing in its own right as an organization, and Plaintiffs Task Force and Down Home NC contend that they satisfy either standing in their own right or representational standing. (VL Doc. 45 at 16-17.) Intervenors argue that the organizational Voto Latino Plaintiffs' claims are generalized grievances and that the organizations have not demonstrated that a diversion of resources "has yet to occur," and that they "may never occur." (VL Doc. 51 at 7, Doc. 52 at 15, Doc. 60 at 2-3.) Moreover, Legislative Intervenors maintain that Plaintiff Mead's injury is speculative because it involves "some *potential* SDR issue in a *future* election where she *might* utilize SDR." (VL Doc. 52 at 16 (emphasis in original).)

Legislative Intervenors also challenge the Article III standing of Party Plaintiffs. (DNC Doc. 52 at 7-8.) Party Plaintiffs argue that they have standing in their own right and representational standing. (DNC Doc. 58 at 14 n.5.) Legislative Intervenors argue that Party Plaintiffs "utterly failed to allege

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000334

that any of the same-day registration provisions challenged in S.B. 747 create[s] specific harm to their organizations or Democratic voters," such that the claims are speculative, generalized grievances. (DNC Doc. 52 at 8.)

"No lawsuit may proceed in federal court unless the party seeking relief has Article III standing." Carolina Youth Action Project v. Wilson, 60 F.4th 770, 778 (4th Cir. 2023). The basic standing requirements are that a plaintiff must show: (1) he has suffered an "injury in fact," (2) the injury is "fairly . . . trace[able] to the challenged action of the defendant," and (3) it is "likely" that "the injury will be redressed by a favorable decision." Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992) (citations and internal quotation marks omitted) (alteration and omission in original). In multi-plaintiff cases, "[a]t least one plaintiff must have standing to seek each form of relief requested in the complaint." Town of Chester v. Laroe Estates, Inc., 137 S. Ct. 1645, 1651 (2017). If there is one such plaintiff, the court need not consider whether other plaintiffs have standing to seek that same form of relief. Carolina Youth Action, 60 F.4th at 778.

The injury in fact "requirement ensures that plaintiffs have a 'personal stake in the outcome of the controversy.'" Kenny v. Wilson, 885 F.3d 280, 287 (4th Cir. 2018) (quoting Warth v. Seldin, 422 U.S. 490, 498 (1975)). An injury in fact is "'an invasion of a legally protected interest' that is 'concrete and

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000335

particularized' and 'actual or imminent, not conjectural or hypothetical.'" Spokeo, Inc. v. Robins, 578 U.S. 330, 339 (2016) (quoting Lujan, 504 U.S. at 560). "An allegation of future injury may suffice if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur." Susan B. Anthony List v. Driehaus, 573 U.S. 149, 158 (2014) (citation and internal quotation marks omitted). When plaintiffs seek prospective relief, they must establish an ongoing or imminent injury in fact. O'Shea v. Littleton, 414 U.S. 488, 495–96 (1974).

An organizational plaintiff can satisfy the standing requirements in two ways: either injury in its own right, or injury as a representative of its members. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181, 199 (2023). To have standing in its own right, the organization may show that an alleged illegal action "perceptibly impair[s]" its ability to carry out its mission, including by draining the organization's resources. Havens Realty Corp. v. Coleman, 455 U.S. 363, 379 (1982). An organization does not have standing, however, where injury results "not from any actions taken by [the defendant], but rather from the [organization's] own budgetary choices," such as "educating members, responding to member inquiries, or undertaking litigation in response to legislation." Lane v. Holder, 703 F.3d 668, 674–75 (4th Cir. 2012) (internal quotation marks and citation omitted) (finding lack of standing

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000336
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 28 of 94

where resource drain resulted from "inquiries [from members] into the operation and consequences of interstate handgun transfer provisions").

Some voter advocacy groups in this district have established standing on their own behalf under Havens Realty and Lane where they allege a link between their mission and the alleged illegal act, as well as resource expenditures beyond merely educating voters and responding to inquiries. Democracy N.C. v. N.C. State Bd. of Elections, 476 F. Supp. 3d 158, 182-83 (M.D.N.C. 2020) (finding standing where organization would divert resources to assist voters with registering to vote before 25-day deadline); Action NC v. Strach, 216 F. Supp. 3d 597, 617-18 (M.D.N.C. 2016) (finding standing where organization would divert limited time and resources to assist voters with registration after DMV allegedly failed to transmit voter registration information to NCSBE); N.C. State Conf. of the NAACP v. N.C. State Bd. of Elections, 283 F. Supp. 3d 393, 402-03 (M.D.N.C. 2017) (finding standing where organization would divert resources to combat "*en masse* voter challenges"). Moreover, a political party may have standing in its own right where a law "threatens and inhibits" the party's efforts to register eligible voters and requires diverting resources to cure ballot defects. Democratic Party of Va. v. Brink, 599 F. Supp. 3d 346, 355 (E.D. Va. 2022) (citing Crawford v. Marion Cnty. Election Bd., 472 F.3d 949, 951 (7th Cir. 2007)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000337
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 29 of 94

(Posner, J.), aff'd, 553 U.S. 181 (2008)).

To represent its members, rather than have injury in its own right, the organization must demonstrate that "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." Students for Fair Admissions, 600 U.S. at 199 (quoting Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 343 (1977)).

Standing is not "dispensed in gross"; instead, the court must consider standing with respect to the requested relief. Town of Chester, 581 U.S. at 439. The court will first consider Plaintiffs' request to enjoin the enforcement of the undeliverable mail provision — i.e., relief that all Plaintiffs join in seeking. It will then turn to Party Plaintiffs' other requested relief.

Plaintiff Voto Latino alleges that its mission is "engag[ing], empower[ing], and educat[ing] its core constituency of Latinx communities throughout the country to ensure that they are enfranchised and included in the democratic process." (VL Doc. 1 ¶ 17.) Voto Latino anticipates spending approximately $1 million during the 2024 election cycle in North Carolina, including on registering new voters through same-day registration. (Id. ¶ 18.) It contends that its mission will be frustrated because it

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000338

will divert resources ordinarily spent on issue advocacy toward encouraging eligible voters to register prior to early voting to avoid the risk of failing address verification. (Id. ¶ 19.) Further, Voto Latino contends that it will spend more resources (1) reaching out to voters to encourage them to provide a mailing address where they can receive mail as a second address, (2) registering more voters to account for those who will be erroneously not counted, and (3) contacting voters whose registrations were ultimately denied to get them registered again. (VL Doc. 51-4 at 53:24-55:1.) Moreover, Voto Latino contends that "thousands of eligible voter constituents that Voto Latino plans to assist in 2024" face an "extremely high risk" that they will be disenfranchised because of the undeliverable mail provision. (VL Doc. 1 ¶ 21.)

Plaintiff Voto Latino's allegations are sufficient to establish standing in its own right at this stage. As alleged, erroneous disenfranchisement of SDR voters would hinder Voto Latino's mission of registering eligible voters and engaging in voter advocacy. See League of Women Voters of S.C. v. Andino, 497 F. Supp. 3d 59, 75-76 (D.S.C. 2020) (finding organizational standing where state removed notice-and-cure procedure for absentee ballots and thus impaired the organization's mission to register voters). Moreover, Voto Latino sufficiently alleges resource expenditures required to address the change in law with

AMERICAN OVERSIGHT

prospective same-day registrants. See Democracy N.C., 476 F. Supp. 3d at 182 (finding organizational standing where an organization would have to divert resources to warn voters about the risks of absentee voting and where efforts spent encouraging voter participation would be obviated by inadvertent disenfranchisement). The court further finds that Voto Latino's alleged injury is traceable to the undeliverable mail provision and would be redressable by the requested relief. Lujan, 504 U.S. at 560–61. As a result, Voto Latino has standing as an organization.

Because Plaintiff Voto Latino has standing to pursue this relief, the court need not determine the standing of the other Voto Latino Plaintiffs. Carolina Youth Action, 60 F.4th at 778. Nevertheless, it is likely that Down Home NC would have representational standing as well. Down Home NC has identified at least one member who would have standing. Summers v. Earth Island Inst., 555 U.S. 488, 498–99 (2009) (requiring an organization to name affected members, unless all members of the organization are harmed). This individual has allegedly resided in a hotel in Alamance County since a fire destroyed her home. (VL Doc. 60-3 at 67:6-8.) Down Home NC contends that she is unable to stay in the same room to establish residency, (id. at 67:6-10), and that she intends to use same-day registration in 2024, (id. at 76:4). Because a person's right to vote is "individual and personal in

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000340

nature," Reynolds v. Sims, 377 U.S. 533, 561 (1964), "'voters who allege facts showing disadvantage to themselves as individuals have standing to sue' to remedy that disadvantage." Gill v. Whitford, 138 S. Ct. 1916, 1920 (2018) (quoting Baker v. Carr, 369 U.S. 186, 206 (1962)). This individual identified by Down Home NC would have standing, as she faces a concrete and imminent risk of harm because she is unlikely to have a stable address where she can receive mail at least by early voting in February 2024. See Lujan, 504 U.S. at 564 (finding no standing upon mere "some day" intentions without "any description" of concrete plans); N.C. State Conf. of the NAACP, 283 F. Supp. 3d at 404 (finding standing where individual faced "real and imminent risk" of being unlawfully removed from voter rolls by "systematic, *en masse*" voter challenges). This individual thus has a concrete risk of having her vote not counted after she same-day registers. Moreover, the interests Down Home NC seeks to protect are germane to its stated purpose of "ensur[ing] that working-class North Carolinians . . . have access to the franchise." (VL Doc. 44-3 ¶ 5.) Finally, this individual's participation is not required in this lawsuit. Students for Fair Admissions, 600 U.S. at 199 (quoting Hunt, 432 U.S. at 343)). Accordingly, Down Home NC has satisfied the requirements of representational standing. Id.

In the other lawsuit, North Carolina Democratic Party's mission is to "elect Democratic candidates to public office

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000341
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 33 of 94

throughout North Carolina." (DNC Doc. 1 ¶ 25.) The Democratic National Committee's organizational purpose is to "communicate the Democratic Party's position and messages on issues; protect the legal rights of voters; and aid and encourage the election of Democratic candidates at the national, state, and local levels, including by persuading and organizing citizens not only to register to vote as Democrats, but also to cast their votes for Democratic candidates." (Id. ¶ 23.) Party Plaintiffs contend that it is "exceedingly likely" that one or more of the 2.4 million registered Democratic Party members in North Carolina will be removed from the voting rolls. (DNC Doc. 1 ¶ 26.) Of note, however, Party Plaintiffs do not name any specific members. Party Plaintiffs also contend they are harmed as organizations because the law will "require each organization to expend and divert funds and resources that they would otherwise spend on voter outreach and mobilization efforts . . . in order to ensure that those voters are not erroneously prevented from voting." (Id. ¶ 27.) Moreover, they allege that the "likely erroneous denial of Democratic voters' right to cast a ballot and have it counted . . . undermin[es] the two organizations' abilities to succeed in getting Democrats elected." (Id.) Party Plaintiffs represented that 880 of the 2,000 voters who required a second address verification card in 2020 were registered Democrats. (DNC Doc. 62 at 13:11-12.)

For much of the same reasons as for Plaintiff Voto Latino,

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000342

Party Plaintiffs have standing on their own behalf to seek relief as to the undeliverable mail provision because they have adequately alleged a frustration of their mission of registering voters and a diversion of resources as a result of the undeliverable mail provision. See Brink, 599 F. Supp. 3d at 355; Andino, 49 F. Supp. 3d at 75-76; Democracy N.C., 476 F. Supp. 3d at 182.

Party Plaintiffs seek additional relief that Voto Latino does not. This includes "requiring same-day registrants . . . to produce documentation that other registrants need not produce; [] denying a same-day registrant's application to register without providing that individual with sufficient notice and a meaningful opportunity to be heard; [] applying different voting-registration standards, practices, or procedures to different individuals in the same county; and [] failing to provide a free-access system by which same-day registrants can track their retrievable ballots." (DNC Doc. 6.) The parties have not made any particularized arguments as to Party Plaintiffs' Article III standing for these forms of relief. The court nevertheless finds at this stage that Party Plaintiffs' standing to seek these forms of relief is no different than it is for the undeliverable mail provision, as each would redress the injuries to the missions and the resource diversions alleged above. The court will address State Board Defendants' and Intervenors' positions on statutory standing under the Civil Rights Act and the Help America Vote Act below.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000343
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 35 of 94

Having found the requisite Article III standing, the court will turn to the merits of the motions.

B. Preliminary Injunction Standard

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). Such an injunction "is an extraordinary remedy intended to protect the status quo and prevent irreparable harm during the pendency of a lawsuit." Di Biase v. SPX Corp., 872 F.3d 224, 230 (4th Cir. 2017). To demonstrate a likelihood of success on the merits, "[a] plaintiff need not establish a certainty of success, but must make a clear showing that he is likely to succeed at trial." Id.

Party Plaintiffs alone raise two statutory claims that reach S. 747's undeliverable mail provision as well as other provisions of state election law. Before the court "can address the constitutional arguments," it must "attempt to resolve" the motions "on non-constitutional grounds first, if possible." Nat'l Lab. Rels. Bd. v. Enter. Leasing Co. Se., LLC, 722 F.3d 609, 613 (4th Cir. 2013); Ashwander v. Tenn. Valley Auth., 297 U.S. 288, 347 (1936) (Brandeis, J., concurring). The court thus turns to these statutory claims first.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000344
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 36 of 94

C. Civil Rights Act

Party Plaintiffs alone argue that S. 747 violates the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(A), by applying different registration standards, practices, or procedures to different groups of individuals in the same county. (DNC Doc. 7 at 21.) Party Plaintiffs contend that S. 747 treats SDR and non-SDR voters disparately by requiring SDR voters to provide documentary proof of residency; by providing SDR voters only one mail card for address verification, instead of two; and by not providing notice and opportunity to be heard to SDR voters who are found ineligible to vote by the State Board. (Id. at 22-23.) Party Plaintiffs seek an order enjoining these differences in treatment. (DNC Doc. 6.)

In response, State Board Defendants argue that the CRA is only enforceable through 42 U.S.C. § 1983 and that Party Plaintiffs must, but did not, bring their CRA claim pursuant to that statute. (DNC Doc. 53 at 15.) Intervenors contend that Party Plaintiffs are unlikely to show that they have a private right of action to enforce their claims under 52 U.S.C. § 10101. (DNC Doc. 52 at 8-9; DNC Doc. 51 at 12-13.) Moreover, State Board Defendants and Intervenors contend that SDR and non-SDR are "inherently different" types of registration and thus require different procedures for each. (Id.; DNC Doc. 51 at 13-14 ("[T]his is not a case where different standards are applied to individuals based

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000345

on race, age, gender, neighborhood of residence, profession, etc."); DNC Doc. 52 at 10.) They argue, in addition, that Party Plaintiffs' interpretation of the CRA would put in jeopardy all requirements which apply to a set of voters, including differences between procedures for vote-by-mail and in-person voting. (DNC Doc. 53 at 16; DNC Doc. 52 at 10; DNC Doc. 51 at 14-16.)

Whether the CRA creates a private right of action is a question of "statutory standing." CGM, LLC v. BellSouth Telecommc'ns, Inc., 664 F.3d 46, 51-52 (4th Cir. 2011). Statutory standing "applies only to legislatively-created causes of action" and concerns "whether a statute creating a private right of action authorizes a particular plaintiff to avail herself of that right of action." Id. (internal quotation marks omitted).

Courts have disagreed as to whether the CRA provides a private right of action. McKay v. Thompson, 226 F.3d 752, 756 (6th Cir. 2000) (no private right of action, but decided before Gonzaga Univ. v. Doe, 536 U.S. 273 (2002)); Schwier v. Cox, 340 F.3d 1284, 1297 (11th Cir. 2003) (private right of action); Vote.org v. Callanen, 89 F.4th 459, 474-78 (5th Cir. 2023) (private right of action). The Fourth Circuit has assumed without deciding that a private right of action existed. Washington v. Finlay, 664 F.2d 913, 926 (4th Cir. 1981). And the Third Circuit reversed a district court that had found no private right of action, but the Supreme Court subsequently vacated the decision and ordered that the case be

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000346

dismissed as moot. Migliori v. Cohen, 36 F.4th 153 (3d Cir. 2022), cert. granted, judgment vacated sub nom. Ritter v. Migliori, 143 S. Ct. 297 (2022).

This statutory standing question would be properly considered on a motion to dismiss for failure to state a claim upon which relief can be granted. CGM, LLC, 664 F.3d at 51-52. Unlike a jurisdictional question that the court must answer, the statutory standing question here may be avoided where there are alternative grounds upon which to resolve the motion. Willner v. Dimon, 849 F.3d 93, 102 n.1 (4th Cir. 2017) (avoiding alternative bases to dismiss "in view of the resolution of th[e] case on other bases"). Such alternative grounds exist here to find that Party Plaintiffs are unlikely to succeed on the merits.[23]

The CRA states in part:

> No person acting under color of law shall . . . in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar subdivision who have been found by State officials to be qualified to vote[.]

52 U.S.C. § 10101(a)(2)(A) (previously codified as 42 U.S.C. § 1971). In Rokita, the plaintiffs argued that the photo ID requirement violated the CRA because all voters, namely absentee

[23] For similar reasons, the court need not address Party Plaintiffs' lack of citation to 42 U.S.C. § 1983, as raised by State Board Defendants. (DNC Doc. 53 at 15.)

AMERICAN OVERSIGHT

voters, did not need to present a photo ID. Ind. Democratic Party v. Rokita, 458 F. Supp. 2d 775, 839 (S.D. Ind. 2006), aff'd sub nom. Crawford v. Marion Cnty. Election Bd., 472 F.3d 949 (7th Cir. 2007) (Posner. J.), aff'd, 553 U.S. 181 (2008). The court rejected the plaintiffs' argument, in part, because the CRA is not intended to prevent states from providing different procedures for different methods of voting. Id. at 839-40. The court reasoned that because "absentee voting is an *inherently* different procedure from voting in person," the State must apply different "standards, practices, or procedures" to these two groups of voters. Id. at 840 (emphasis in original). The court further observed that prohibiting such differences would be a "radical departure from settled law." Id.

Here, Party Plaintiffs cite no case in support of their construction and no persuasive limiting principle that would avoid the unintended consequences identified in Rokita and by State Board Defendants and Intervenors. Party Plaintiffs urge that the CRA under their theory would only stop differential treatment "in determining whether any individual is qualified under State law or laws to vote," rather than different methods of registration or voting. (DNC Doc. 58 at 12 (quoting § 10101(a)(2)(A).) Even if this were a meaningful distinction, Party Plaintiffs have not shown that the CRA nevertheless undercuts North Carolina's ability to employ different procedures for determining one's qualifications

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000348
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 40 of 94

to vote depending on how one registers, without due regard to the practical reality that offering various methods of registration — many of which may be less burdensome on voters — may require different procedures.

Moreover, Party Plaintiffs have not established a likelihood of success in demonstrating that a court may properly consider SDR registrants as a class under the CRA when comparing standards, practices, and procedures applied between "any individual" and "other individuals." See 52 U.S.C. § 10101(a)(2)(A). While the parties have not argued, and this court thus does not hold, that the CRA applies only to certain protected classes, Party Plaintiffs have not fairly raised any allegation of discrimination against a protected class, stating only in a footnote that "[h]olding same-day registrants to a higher standard is [] likely to disproportionately disenfranchise African American voters." (DNC Doc. 7 at 23 n.8; see also DNC Doc. 52 at 10 n.8 (demonstrating Legislative Intervenors' intent to move to dismiss CRA claim for failure to allege or prove race discrimination).) Party Plaintiffs' lack of authority raises considerable doubt as to their likelihood of success in showing that the CRA protects SDR voters. Consequently, the court will deny Party Plaintiffs' motion for injunctive relief under the CRA.

D. Help America Vote Act

Party Plaintiffs argue, pursuant to the Help America Vote

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000349

Act, 52 U.S.C. § 21082(a)(5), that S. 747 does not provide an individual who casts a provisional ballot with a "free access system" to track if a provisional ballot is counted and "written information" about a tracking system. (DNC Doc. 7 at 24.) Party Plaintiffs contend that the retrievable ballot under S. 747 is a "provisional ballot" under HAVA. (Id.) They thus seek an order requiring that State Board Defendants "provide a free-access system by which same-day registrants can track their retrievable ballots." (DNC Doc. 6.)

In response, State Board Defendants argue that HAVA is only enforceable through 42 U.S.C. § 1983 and that that Party Plaintiffs must, but did not, bring their HAVA claim pursuant to that statute. (DNC Doc. 53 at 17.) Legislative Intervenors contend that Party Plaintiffs are unlikely to show that they have a private right of action to enforce their claims under 52 U.S.C. § 21082. (DNC Doc. 52 at 8-9.) Moreover, State Board Defendants and Intervenors argue that a retrievable ballot under S. 747 is not a provisional ballot that triggers HAVA's requirements, and that North Carolina is otherwise in compliance with HAVA. (DNC Doc. 53 at 18-20; DNC Doc. 52 at 9; DNC Doc. 51 at 10-11.)

As with the CRA, courts have disagreed as to whether HAVA provides a private right of action. Am. Civil Rights Union v. Phila. City Comm'rs, 872 F.3d 175, 181 (3d Cir. 2017) ("HAVA does not include a private right of action that allows aggrieved parties

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000350
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 42 of 94

to sue nonconforming states."); Crowley v. Nevada ex rel. Nev. Sec'y of State, 678 F.3d 730, 735 (9th Cir. 2012) (recognizing there is no private right of action under the HAVA, and foreclosing a section 1983 suit)); Colon-Marrero v. Velez, 813 F.3d 1, 22 (1st Cir. 2016) (permitting private right of action through section 1983); Sandusky Cnty. Democratic Party v. Blackwell, 387 F.3d 565, 572 (6th Cir. 2004) (same). For the same reasons stated above for the CRA, the court need not address this statutory standing question because Party Plaintiffs' HAVA claim can be resolved on alternative grounds. See CGM, LLC, 664 F.3d at 51-52; Willner, 849 F.3d at 102 n.1 (avoiding alternative bases to dismiss "in view of the resolution of th[e] case on other bases").[24]

In relevant part, HAVA provides:

> The appropriate State or local election official shall establish a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.

52 U.S.C. § 21082(a)(5)(B). HAVA also provides that when an individual casts a provisional ballot, the "election official shall give the individual written information" about the tracking system. Id. § 21082(a)(5)(A). The provisions Party Plaintiffs

[24] Similarly, the court need not address State Board Defendants' argument regarding Party Plaintiffs' lack of citation to 42 U.S.C. § 1983. (DNC Doc. 53 at 17.)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000351

rely upon apply to an individual who "declares" that he is a "registered voter" but whose name does not appear on the official list of eligible voters. 52 U.S.C. § 21082(a).

In North Carolina, a "'[p]rovisional official ballot' means an official ballot that is voted and then placed in an envelope that contains an affidavit signed by the voter certifying identity and eligibility to vote." N.C. Gen. Stat. § 163-165(6). By contrast, a retrievable ballot is one that a voter "shall cast . . . and then shall deposit [] in the ballot box or voting system in the same manner as if such box or system was in use in a precinct on election day." N.C. Gen. Stat. § 166.45 (as amended by section 27.(c) and recodified by section 1.(b) of 2023 N.C. Sess. Laws 140). According to NCSBE Numbered Memo 2023-04, a same-day registrant who does not have a HAVA document — i.e., one who does not complete an SDR registration — may vote a provisional ballot instead of a retrievable ballot. NCSBE Numbered Memo 2023-04, at 9 (Oct. 12, 2023), https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2023/Numbered%20Memo%202023-04%20Provisional%20Ballots%20and%20Canvass%20Procedures.pdf (last accessed Jan. 2, 2023).

Here, Party Plaintiffs have not demonstrated that they are likely to succeed in showing that this provision applies to SDR voters. In their reply, Party Plaintiffs argue that SDR voters are provisional voters because they "declare they are registered

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000352
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 44 of 94

upon turning in a completed registration form" and "will not immediately appear on the list of eligible voters." (DNC Doc. 58 at 12.) While that may be one technical, if not strained, similarity between provisional voters and SDR voters, North Carolina law otherwise treats these voters differently. See, e.g., N.C. Gen. Stat. § 166.45 (requiring retrievable ballots be placed in ballot box); NCSBE Numbered Memo 2023-04, supra (outlining procedures applicable to provisional ballots to determine eligibility and to count the ballot). Moreover, Party Plaintiffs do not argue that North Carolina is otherwise out of compliance with HAVA. As a consequence, Party Plaintiffs' motion for preliminary injunction pursuant to HAVA will be denied.

E. Fourteenth Amendment Claims

1. Due Process and Anderson-Burdick

All Plaintiffs challenge portions of section 10.(a) of S. 747 (codified as N.C. Gen. Stat. § 163-82.6B) on procedural due process grounds. The parties dispute which test should apply. Plaintiffs argue that the court should apply the test set out in Mathews v. Eldridge, 424 U.S. 319 (1976). (DNC Doc. 7 at 15; VL Doc. 45 at 19.) They argue, alternatively, that even if the court were to apply the test provided by Anderson v. Celebrezze, 460 U.S. 780 (1983) and Burdick v. Takushi, 504 U.S. 428 (1992), commonly called "Anderson-Burdick," they should prevail anyway. (DNC Doc. 58 at 5-6; VL Doc. 59 at 24-29.)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000353

To prevail on a claim for a procedural due process deprivation under Eldridge, a plaintiff must demonstrate: "(1) a cognizable liberty or property interest; (2) the deprivation of that interest by some form of state action; and (3) that the procedures employed were constitutionally inadequate." Accident, Injury & Rehab., PC v. Azar, 943 F.3d 195, 203 (4th Cir. 2019) (internal quotation marks omitted). "To assess the constitutional adequacy of an opportunity to be heard, courts consider (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of that interest given the procedures used, as well as the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest," id., "including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail," Eldridge, 424 U.S. at 335.

State Board Defendants concede that if Eldridge were the proper test, the undeliverable mail provision would be unconstitutional. (DNC Doc. 53 at 10-11; VL Doc. 54 at 9-10.) They, along with Intervenors, contend, however, that the Anderson-Burdick test is the proper framework for analyzing the law. (DNC Doc. 53 at 11; VL Doc. 54 at 10; VL Doc. 52 at 16 n. 12; VL Doc. 51 at 9-10.) Under this test, regulations that impose a severe burden on the right to vote must be "narrowly drawn to advance a state interest of compelling importance." Burdick, 504 U.S. at

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000354

434 (quoting Norman v. Reed, 502 U.S. 279, 289 (1992)). Non-severe burdens, by contrast, are subject to Anderson-Burdick's more flexible balancing standard, under which this court must

> weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights."

Id. (quoting Anderson, 460 U.S. at 789). Within Anderson-Burdick's balancing standard, the "rigorousness of [the court's] inquiry into the propriety of a state election law depends" upon the severity of the burden imposed. Id. Accordingly, Anderson-Burdick balancing operates on a sliding scale: the greater the burden imposed, the more important a state's justification must be. Id.

Voto Latino contends that applying Anderson-Burdick to this case would improperly extend a test fashioned for equal protection claims to procedural due process claims. (VL Doc. 59 at 19.) To be sure, Anderson was an equal protection-based right-to-vote case. 460 U.S. at 783, 786 n.7 (reviewing finding of equal protection violation and relying on cases that apply the "'fundamental rights' strand of equal protection analysis"). Crawford v. Marion County Election Board, 553 U.S. 181 (2008), too, which involved a challenge to Indiana's photo ID requirement, was an equal protection challenge, at least at the district court

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000355
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 47 of 94

level. See Rokita, 458 F. Supp. 2d at 830-31. While the Supreme Court has never formally foreclosed the application of Eldridge in the voting rights context, its cases have not cabined the Anderson-Burdick analysis to equal protection rights under the Fourteenth Amendment. See, e.g., Burdick, 504 U.S. 428 (repeatedly referring to rights under the "First and Fourteenth Amendments"); Crawford, 553 U.S. at 204 (Scalia, J., concurring) ("To evaluate a law respecting the right to vote — whether it governs voter qualifications, candidate selection, or the voting process — we use the approach set out in Burdick v. Takushi[.]" (emphasis added)); see also McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 345 (1995) (not applying Anderson-Burdick where the statute at issue "[did] not control the mechanics of the electoral process"). Indeed, circuit courts have applied Anderson-Burdick to cases across the election litigation spectrum. See, e.g., Fusaro v. Howard, 19 F.4th 357, 364 (4th Cir. 2021) (applying Anderson-Burdick to Free Speech Clause claim where resident sought access to list of registered voters); Weber v. Shelley, 347 F.3d 1101, 1105-07 (9th Cir. 2003) (analyzing a due process challenge to a county's use of touch screen voting systems under the Anderson-Burdick framework); Obama for Am. v. Husted, 697 F.3d 423, 430 (6th Cir. 2012) (concluding that Anderson-Burdick serves as "a single standard for evaluating challenges to voting restrictions"); Acevedo v. Cook Cnty. Officers Electoral Bd., 925

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000356
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 48 of 94

F.3d 944, 948 (7th Cir. 2019) (concluding that Anderson-Burdick applies "to all First and Fourteenth Amendment challenges to state election laws").

The right to vote is fundamental. See, e.g., Burdick, 504 U.S. at 433. "Other rights, even the most basic, are illusory if the right to vote is undermined." Wesberry v. Sanders, 376 U.S. 1, 17 (1964). The Constitution delegates to the states the manner of conducting elections, U.S. Const. art. I, § 4, cl. 1, and the Supreme Court has recognized that "[t]here must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." Storer v. Brown, 415 U.S. 724, 730 (1974). Acknowledging the importance of both sides of this balance, three circuit courts have recently stated that Anderson-Burdick is the proper framework even where a plaintiff in a voting rights case alleges a procedural due process violation under Eldridge. Richardson v. Tex. Sec'y of State, 978 F.3d 220, 233 (5th Cir. 2020) (on motion to stay preliminary injunction); Ariz. Democratic Party v. Hobbs, 18 F.4th 1179, 1195 (9th Cir. 2021) (on review of entry of preliminary injunction); New Ga. Project v. Raffensperger, 976 F.3d 1278, 1282 (11th Cir. 2020) (on motion to stay preliminary injunction). Moreover, the Ninth and Eleventh Circuits have suggested that Anderson-Burdick may "conceptually duplicat[e]" Eldridge to some extent. Raffensperger, 976 F.3d at

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000357
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 49 of 94

1282; Hobbs, 18 F.4th at 1195 ("To the extent that the Eldridge test would strike a different balance, we do not think that the Supreme Court's extensive jurisprudence on challenges to voting restrictions may be discarded merely by raising the same challenge under the banner of procedural due process."); see also Rivera-Powell v. N.Y.C. Bd. of Elections, 470 F.3d 458, 468-69 (2d Cir. 2006) (Sotomayor, J.) (denying Anderson-Burdick claim after finding that state had provided adequate notice and opportunity to be heard under Due Process Clause). But see Richardson, 978 F.3d at 235 (suggesting that Eldridge would "inevitably result in courts' 'weigh[ing] the pros and cons of various balloting systems,' thereby 't[ying] the hands of States seeking to assure that elections are operated equitably and efficiently'" (internal citations omitted)).

The court finds the reasoning of these cases as to the application of Anderson-Burdick persuasive. See also Democratic Nat'l Comm. v. Wisconsin State Legislature, 141 S. Ct. 28 (Mem) (2020) (Gorsuch, J., concurring) (expressing skepticism in judicial intervention in election regulations because "[l]egislatures enjoy far greater resources for research and factfinding . . . than usually can be mustered in litigation between discrete parties before a single judge"); Crawford, 553 U.S. at 210 (Souter, J., dissenting) (endorsing Anderson-Burdick for its consideration of "the legitimacy of interests" in voting

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000358

rights and in election regulation).

To the extent district courts in this circuit have applied Eldridge in the election regulation context, this court is cognizant that some of those district courts did not benefit from the development of the circuit guidance that this court now enjoys, and those decisions were also at a preliminary stage. See Democracy N.C., 476 F. Supp. 3d at 226 (applying Eldridge to preliminarily enjoin absentee voting regulation and refraining from applying Anderson-Burdick); Andino, 497 F. Supp. 3d at 76–77 (applying both Eldridge and Anderson-Burdick on preliminary injunction); Brink, 599 F. Supp. 3d at 361 (applying Anderson-Burdick on preliminary injunction and rejecting application of Eldridge after analyzing Richardson, Raffensperger, and Hobbs).

Voto Latino Plaintiffs rely on three Fourth Circuit cases to support its argument for applying Eldridge, (VL Doc. 59 at 18), but none is on point. Barefoot v. City of Wilmington, 306 F.3d 113 (4th Cir. 2002), involved a land annexation dispute, not an election regulation. Id. at 124 ("Appellants do not have the right to vote on annexation."). The Fourth Circuit's observation that the Due Process Clause "requires fair and adequate procedures" for voting was set out in a footnote and was in reference to voting on annexation, not political elections. Id. at 124 n.5. In any event, the court did not discuss the appropriate test to apply. Id. Voto Latino Plaintiffs' other cases fare no better, as Kirk

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000359
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 51 of 94

v. Comm'r of Soc. Sec. Admin., 987 F.3d 314 (4th Cir. 2021), was an Eldridge case regarding the Social Security Administration's redetermination procedures for benefits, and Halcomb v. Ravenell, 992 F.3d 316 (4th Cir. 2021), was an Eldridge challenge to the procedural protections applicable to a prisoner's security detention hearing. Neither was an election case.

Consequently, the court will apply Anderson-Burdick to Plaintiffs' due process claims.[25]

2. Undeliverable Mail Provision

a. Likelihood of Success on the Merits

First, the court considers Plaintiffs' challenge to the undeliverable mail provision. Voto Latino Plaintiffs contend that a single address verification card is "inherently error-prone and not a reliable indicator of non-residency or ineligibility." (VL Doc. 45 at 20.) In particular, Voto Latino Plaintiffs note that errors beyond the fault of the voter, namely poll worker and U.S. Postal Service error, will result in erroneous disenfranchisement. (Id. at 21-26.) Voto Latino Plaintiffs also note that voters who move after casting a same-day ballot may risk erroneous disenfranchisement because that voter is entitled under § 163-55(a) to vote at a prior residence if relocation occurs within 30

[25] Though Anderson-Burdick is the test applied here, for the reasons stated below, the outcome of Plaintiffs' constitutional claims would not differ under Eldridge.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000360

days of an election, but would not be reachable with a non-forwardable address verification card. (Id. at 25.)

Party Plaintiffs similarly argue that the single-card address verification process creates a substantial risk that an eligible SDR voter's ballot will be erroneously not counted. (DNC Doc. 7 at 17.) In particular, they argue that there is no notice or opportunity to be heard before a same-day registrant's ballot is removed from the count because, by definition, the card is not delivered to the voter. (Id. at 17-18.)

State Board Defendants acknowledge that it is a "close question" but maintain that the provision "passes muster" under Anderson-Burdick. (DNC Doc. 53 at 12; VL Doc. 54 at 11.) They argue that the burdens imposed by the undeliverable mail provision should be considered "holistically in light of other means by which voters may register." (DNC Doc. 53 at 13-14; VL Doc. 54 at 12.) The State's interest in the undeliverable mail provision, they argue, is "in ensuring only eligible ballots are counted in an election." (DNC Doc. 53 at 13.)

Legislative Intervenors argue that S. 747's use of a single card on which to preclude a ballot is justified because the limitation on time between SDR and the canvass precludes effective administration of a two-card system. (DNC Doc. 52 at 13.) Moreover, they argue that S. 747 "(1) preserv[es] the integrity of the election process; and (2) instill[s] confidence in the fairness

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000361
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 53 of 94

of the election." (DNC Doc. 52 at 17.) In this respect, they contend that the law "ensure[s] that registrant[s] live in the precinct within which they seek to vote." (Id. at 18.) They also argue that North Carolina has a "legitimate interest" in ensuring "that the card is returned before the end of the canvass" and that the undeliverable mail provision is designed to bring SDR voters into parity with other voters. (VL Doc. 52 at 14; VL Doc. 61 at 66:13-15.)

Party Intervenors argue that Plaintiffs have not shown a constitutional injury because, in their view, the alleged error of approximately 1 percent is not by design and thus "carries no constitutional significance." (VL Doc. 51 at 12-13.) Party Intervenors contend that the State's "compelling interest" is in "ensuring verification of each applicant's address, which is fundamental to determining a voter's eligibility," (DNC Doc. 51 at 7-8), and in "discouraging and preventing fraud," (VL Doc. 51 at 11).[26]

[26] Plaintiffs have not argued that the undeliverable mail provision burdens voters by erroneously rejecting SDR voters' registrations. Voto Latino Plaintiffs seek an order "enjoining enforcement of the portion of § 163-82.6B(d) (the 'Undeliverable Mail Provision')" which provides that if an SDR voter fails address verification with a single card, "the county board shall not register the applicant and shall retrieve the applicant's ballot and remove that ballot's votes from the official count.'" (VL Doc. 44.) Whether "not register[ing] the applicant" creates an unconstitutional burden has not been briefed and is consequently not considered on these motions.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000362

i. Burden on the Right to Vote

The court must first determine whether Plaintiffs are likely to show that the alleged burdens are severe, minimal, or "in between these two extremes." Obama for Am., 697 F.3d at 429. Election regulations that impose a "severe" burden are subject to strict scrutiny. Pisano v. Strach, 743 F.3d 927, 933 (4th Cir. 2014). Such "severe" burdens are generally "invidiously" discriminatory and may be "irrelevant to the voter's qualifications." Crawford, 553 U.S. at 189 (Stevens, J.) (citing Harper v. Va. Bd. of Elections, 383 U.S. 663, 666-67 (1966)). By contrast, "'evenhanded restrictions that protect the integrity and reliability of the electoral process itself' are not invidious and satisfy the standard set forth in Harper." Id. at 189-90 (quoting Anderson, 460 U.S. at 788 n.9). There is no "litmus test for measuring the severity of a burden that state law imposes on . . . an individual voter, or a discrete class of voters." Id. at 191. The court must consider both the "character and magnitude" of the alleged burden on voting, Burdick, 504 U.S. at 434 (quoting Anderson, 460 U.S. at 789), and then "make the 'hard judgment' that our adversary system demands," Crawford, 553 U.S. at 190 (Stevens, J.). Courts generally evaluate the burden from the perspective of all affected voters, "within the landscape of all opportunities that [the State] provides to vote." Mays v. LaRose, 951 F.3d 775, 784-85 (6th Cir. 2020); see also Crawford, 553 U.S.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000363

at 198-99 (Stevens, J.) (reviewing burden on "most voters" where photo ID law applied to in-person voters); Tully v. Okeson, 977 F.3d 608, 617 (7th Cir. 2020) (reviewing burden on voters who could not vote absentee in light of "Indiana's electoral scheme as a whole").

In Northeast Ohio Coalition for the Homeless v. Husted, 696 F.3d 580 (6th Cir. 2012) (per curiam), voters who went to the correct polling location and were sent — in error — to a different location by a poll worker, and consequently voted a provisional ballot that would go uncounted, suffered "systemic disqualification" without any notice. Id. at 593 (stating that Ohio rejected more than 14,000 ballots in 2008, 11,000 in 2010, and 1,800 in 2011). The district court found, and the Sixth Circuit affirmed, that this burden was "substantial" and held that the defendants had likely violated the Equal Protection and Due Process Clauses. Id. at 593-95, 598. In affirming the district court, the Sixth Circuit expressed reservations that "[t]he State would disqualify thousands of [] provisional ballots, where the voter's only mistake was relying on the poll-worker's precinct guidance." Id. at 599; see also Stewart v. Blackwell, 444 F.3d 843, 872 (6th Cir. 2006), superseded by 473 F.3d 692 (6th Cir. 2007)[27] (applying strict scrutiny where evidence showed voters in

[27] The Sixth Circuit subsequently granted *en banc* review, thus vacating

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000364
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 56 of 94

counties using punch-card system rather than optical scan equipment were four times as likely not to have their votes counted due to factors out of voter's control).

In Democratic Executive Committee of Florida v. Lee, 915 F.3d 1312 (11th Cir. 2019), challengers argued that Florida's signature match regime for vote-by-mail and provisional ballots violated the First and Fourteenth Amendment. The district court preliminarily ordered the State to provide 48 hours for voters to cure their signature mismatch. Id. at 1315. The defendants moved to stay the injunction, but the Eleventh Circuit denied the request. The court agreed with the district court that Florida lacked "uniform standards for matching signatures" and "qualifications or training for those who engage in the job." Id. at 1319. Observing a "crazy quilt of enforcement," the court noted that errors by election officials and "innocent factors like the writer's body position, writing surface, [and] type of pen" could result in disqualification. Id. at 1320. Even after the State instituted a notice-and-cure process in response to a court order, many voters did not learn that their vote would not be counted "until it was too late to do anything about it." Id. at 1321. Focusing on the burden on vote-by-mail and provisional voters specifically, the

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the panel decision, and then vacated the judgment of the district court as moot after the defendants replaced the challenged voting equipment. 473 F.3d at 693-94.

AMERICAN OVERSIGHT

court had "no trouble" finding that the burden was "at least [] serious." Id. (citing League of Women Voters of N.C. v. North Carolina, 769 F.3d 224, 244 (4th Cir. 2014)).[28] Critically, before the Eleventh Circuit heard an appeal of the injunction on the merits, the State "significantly amended the signature-match provisions at issue in th[e] case," after which the plaintiffs voluntarily dismissed the lawsuit and appellants agreed the appeal was moot. Democratic Exec. Comm. of Florida v. Nat'l Republican Senatorial Comm., 950 F.3d 790, 793 (11th Cir. 2020) (per curiam). The Eleventh Circuit did not vacate the motions panel opinion because its "preliminary nature" precluded it "from having an effect outside that case." Id. at 795.

In Andino, 497 F. Supp. 3d 59 (D.S.C. 2020), challengers argued that South Carolina's signature matching regime violated voters' procedural due process rights. The court granted the motion for preliminary injunction in part and denied it in part. On the one hand, voters who failed to sign the ballot altogether had no right to notice and cure. Id. at 71 ("[T]he error of a missing signature is the fault of the voter, not the government." (citing Hobbs, 976 F.3d at 1086)). The court observed that there was little risk of error where a signature was missing because a

[28] There was an extensive dissent, but its criticisms of the panel opinion relate to the distinguishable factual record in that case and do not suggest a different result under the facts of the present case.

AMERICAN OVERSIGHT

blank line can be "observed objectively." Id. On the other hand, the court found that the burden was "significant" for voters who were disqualified by signature matching — i.e., where election officials compared a provided signature against one on file. Id. at 76. In that court's estimation, the burden was significant because voters would be disqualified, without notice, on the basis of a "subjective judgment that the voter's signature does not match some sample relied upon by county election officials." Id.

State Board Defendants and Intervenors cite one case that could support the proposition that fault-free errors that lead to disenfranchisement without notice and opportunity to be heard create a mere minimal burden.[29] In Richardson, 978 F.3d 220 (5th Cir. 2020), challengers won a preliminary injunction in the district court that required Texas to provide notice and an

[29] Party Intervenors also cite Hutchinson v. Miller, 797 F.2d 1279 (4th Cir. 1986), and several out-of-circuit cases cited in Hutchinson, for the proposition that "courts have 'uniformly declined' to find constitutional violations 'with respect to garden variety election irregularities.'" (VL Doc. 51 at 13 (quoting Hutchinson, 797 F.2d at 1283).) In Hutchinson, three unsuccessful candidates for public office sued under 42 U.S.C. § 1983 and the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1964, for approximately $9 million in damages based on alleged election irregularities. Party Intervenors' quotation omits a critical phrase, wherein the Fourth Circuit observed that courts have "uniformly declined to endorse action under § 1983 with respect to garden variety election irregularities." Id. at 1283 (emphasis added). The court thus held that "federal courts do not sit to award post-election damages to defeated candidates," but observed that courts retain a role in providing equitable relief post-election in "rare and extraordinary circumstances," id. at 1287, and in "striking down state laws or rules of general application which improperly restrict or constrict the franchise or otherwise burden the exercise of political rights," id. at 1283 (citing Anderson, 460 U.S. 780 (1983)) (internal quotation marks omitted).

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000367

opportunity to be heard before a voter's absentee ballot could be rejected by an election official on the basis of a mismatched signature. The district court found that Texas's signature matching scheme imposed a severe burden on the right to vote because, in part, voters were notified that their absentee ballot was rejected only after the election and thus had no opportunity to contest the decision. Id. at 235-36. In an opinion staying the injunction pending appeal, the court found the burden imposed on voters to be only "minimal." Id. at 238. However, the court stayed the injunction on the alternative ground that the defendant was likely to prevail on her defense of sovereign immunity. Id. at 241. Concurring in the stay, Judge Patrick E. Higginbotham wrote that "this motions panel granting a stay settles no law" and "has no precedential force and is not binding on the merits panel, leaving it as a writing in water — made the more empty by pretermitting the jurisdictional requisites of sovereignty and the reach of Ex parte Young." Id. at 244 (Higginbotham, J., concurring in the stay). Indeed, the merits panel later vacated the preliminary injunction solely on the ground that the district court erred in finding that the defendant was the "proper defendant under Ex parte Young" — not because of the district court's Anderson-Burdick analysis. Richardson v. Flores, 28 F.4th 649, 655 (5th Cir. 2022); see also Andino, 497 F. Supp. 3d at 77 (rejecting Richardson at the preliminary injunction stage as an "outlier"

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000368
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 60 of 94

case reflecting an "extremely constricted view of liberty that does not include voting rights").

Though these cases are not binding on this court, one throughline of them is that election regulations that disenfranchise voters based on errors by governmental officials implementing them and over which the voter has no control, and which provide for no notice or opportunity to be heard to correct the error, may warrant closer inquiry under Anderson-Burdick. Put another way, "the precise interests put forward by the State as justifications for the burden imposed by its rule," Burdick, 504 U.S. at 434, must address why discarding an eligible voter's ballot due solely to government employee error and without an opportunity to correct it should be sustained.

Here, Plaintiffs are likely to show that the undeliverable mail provision of S. 747 imposes a substantial burden on SDR voters because it lacks notice and opportunity to be heard before removing the votes of a cast ballot from the count.

Voto Latino Plaintiffs provide several examples of 2022 SDR voters whose address verification cards were returned as undeliverable due to governmental errors wholly out of the control of the voter. For example, Plaintiff Mead's November 2022 address verification card was returned as undeliverable after a county board of elections official allegedly wrote "SAME" for her mailing address instead of writing out the actual address (which happened

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000369

to be the same as her residential address). (VL Doc. 44-5 ¶ 7.)


Director Of Elections
WATAUGA COUNTY BOARD OF ELECTIONS
PO BOX 528
BOONE NC 28607
RETURN SERVICE REQUESTED

VOTED ABS 1 STOP 10/24

FIRST-CLASS MAIL
U.S. POSTAGE PAID
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WATAUGA COUNTY BOARD OF ELECTIONS

NIXIE 274 DE 1810 0212/02/22
RETURN TO SENDER
UNABLE TO FORWARD

SOPHIE JAE MEAD
SAME
BOONE NC 28607

(Id. at 8.) After the address verification card was returned, another voter challenged Mead's registration under section 163-89 based only on the returned card. (Id. ¶ 7.) Ultimately, Mead's ballot was counted after Defendant Bell wrote a letter to the Watauga County Board of Elections ordering them to halt the challenges. (VL Doc. 44-4 at 9-10.) Voto Latino Plaintiffs contend, with some merit, that had the current system been in place, Mead's vote likely would not have counted. (VL Doc. 45 at 22.)

Voto Latino Plaintiffs also point to other poll worker errors that resulted in address verification cards returned as undeliverable in 2022, including another voter whose address was

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000370

listed as "SAME," voters for whom the county board of elections appears to have written incorrect street numbers (e.g., "199 Wood Circle Dr.," rather than "190 Wood Circle Dr."), cards sent to an old address rather than an address updated at same-day registration, cards with missing apartment numbers, and cards sent to residential addresses rather than to different mailing addresses that were provided. (Id. at 22-23 (citing VL Doc. 44-4 ¶¶ 11-20).)

Voto Latino Plaintiffs also provided a declaration by a postman with forty years of experience that enumerates several reasons why mail may be returned as undeliverable, including faulty barcodes, illegible address information, lack of or damage to a mailbox or receptacle, sorting error, assignment to the wrong carrier for delivery, and temporary absence of the residence, none of which is pertinent to a voter's qualification to vote in the precinct. (VL Doc. 44-7 (Decl. Timothy Green).) Plaintiffs also cite a U.S. Postal Service Office of the Inspector General report from May 2015 that found that 4.3 percent of all mail was undeliverable as addressed, 23 percent of which was due to Postal Service error. (DNC Doc. 7 at 12 (citing Office of Inspector General, U.S. Postal Service, Strategies for Reducing Undeliverable as Addressed Mail, at 5 (May 1, 2015), at https://www.uspsoig.gov/sites/default/files/reports/2023-01/ms-ma-15-006.pdf (last accessed Jan. 3, 2024)); VL Doc. 45 at 24

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000371

(same).) While these figures are nearly a decade old and possibly overstate the case in this context to some extent, they nevertheless are consistent with the limited record provided so far.

In the last four even-year elections, 1,799 out of 100,578; 696 out of 45,666; 2,151 out of 116,326; and 391 out of 34,289 same-day registrants have failed address verification. NCSBE, Presentation to House Oversight and Reform Committee, supra, at 6. These numbers are based on the State's prior two-card system, however, and the court can reasonably infer that there would not be any fewer failures if State Board Defendants send only one mail card, as required by section 163-82.6B(d). State Board Defendants and Intervenors, meanwhile, have provided no evidence at this stage that any of the several thousand same-day registrants who have failed address verification since its inception in 2008 was ineligible to vote on the ground of improper residency. In fact, State Board Defendants represented at oral argument that they have "no way to know" if any voter who fails address verification does so because of ineligibility or because of error. (VL Doc. 61 at 60:21.)

Plaintiffs are also likely to show that section 163-82.6B(d) deprives same-day registrants of notice and opportunity to be heard before their ballots are rejected through no fault of their own. State Board Defendants and Party Intervenors agree. (VL Doc. 54

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000372
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 64 of 94

at 9-10 ("The State Board Defendants concede that the notice mailing process set forth under the new same-day registration regime does not provide for either of these protections [i.e., notice and opportunity to be heard]."); VL Doc. 51 at 19-20 (Party Intervenors: "To demand notice and a hearing based on postal error in these circumstances would be to expect too much from state officials[.]").) Legislative Intervenors, on the other hand, acknowledged in their brief that the undeliverable mail provision itself does not provide SDR voters with notice. (VL Doc. 52 at 18 ("Plaintiffs make much ado about the fact that voters who fail address verification do not receive notice[.]" (emphasis added).) At oral argument, counsel for Legislative Intervenors suggested, albeit without any legislative history in support, that "everybody assumed that the State Board would treat [the ballots of SDR voters who fail address verification] like the way they had treated one-stop absentee ballots and that 163-89 would continue to apply." (Id. at 108:21-25.)

Section 163-89 outlines a challenge procedure for absentee ballots that includes the right of the challenged voter to be heard. See N.C. Gen. Stat. § 163-89(e). In light of S. 747's reclassification of SDR ballots as "retrievable," rather than "retrievable absentee,"[30] State Board Defendants and Party

[30] Section 163-82.6B(c) states that a same-day registrant votes a

AMERICAN OVERSIGHT

Plaintiffs disagree with Legislative Intervenors that section 163-89 applies to SDR voters. (VL Doc. 61 at 110:12-15; id. at 111:14-19; see also VL Doc. 55-5 at 6 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) (showing State Board's current understanding, and intent to enforce S. 747 accordingly, that if an SDR voter fails address verification, "[t]he county board shall not issue a challenge").)

Even if section 163-89 applied to SDR voters, however, neither it nor section 163-82.7 appears to require that notice be given to voters before the challenge hearing. N.C. Gen. Stat. § 163-82.7(g)(2) (authorizing challenges for absentee ballots under section 163-89, but not requiring notice); id. § 163-89 (outlining challenge procedure process for absentee ballots, but not requiring notice).

In summary, the express terms of section 163-82.6B(d) do not provide for notice and an opportunity to be heard; instead, they direct the retrieval and removal of a ballot upon failure of address verification. By all accounts, all parties agree — correctly it appears — that section 163-82.6B(d) at a minimum does

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"retrievable ballot as provided in G.S. 163-166.45," while prior law considered SDR ballots to be "retrievable absentee ballot[s]," N.C. Gen. Stat. § 163-82.6A(c) (2012). There are at least eight instances where S. 747 replaces the phrase "one-stop absentee voting" with "early voting." Moreover, section 163-166.45 — which is cross-referenced in section 163-82.6B — now governs "Retrievable ballots," instead of its prior heading of "Alternate procedures for requesting application for absentee ballot; 'one stop' voting procedure in board office." See N.C. Gen. Stat. § 163-166.45 (previously codified as N.C. Gen. Stat. § 163-227.5) (emphasis added).

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000374

not provide for notice before a ballot of an SDR voter who fails address verification is removed from the count. Moreover, State Board Defendants, i.e., those responsible for the enforcement of the undeliverable mail provision, have represented that they do not intend to offer any notice or opportunity to be heard via 163-89 or any other provision, absent a court order or statutory change. (VL Doc. 61 at 49:5-11 (State Board Defendants stating, "given the way [S. 747] is written and the limitations of it, [] we would need a court order or some sort of legislative change" in order to provide notice and an opportunity to be heard); VL Doc. 55-5 at 6 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) (stating that if an SDR voter fails address verification, the county board must remove the ballot and "not issue a challenge").) Consequently, Plaintiffs have established a likelihood of success in showing that the undeliverable mail provision does not provide for notice and an opportunity to be heard.

Finally, State Board Defendants argue that the burden imposed by the undeliverable mail provision is nevertheless "reasonable" when viewed "holistically in light of the others means by which voters may register." (DNC Doc. 53 at 13-14 (emphasis added).) It is true that voters in North Carolina have various other ways to register before the early voting period and to cast a ballot. Compared to non-SDR voters, SDR voters are subject to additional burdens at registration (e.g., a HAVA-compliant document). But

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000375

the State, having offered SDR, must offer a process that is not unconstitutional. The undeliverable mail provision burdens SDR voters by directing the removal of a cast ballot without any notice or possibility of cure, not merely by cancelling registration, and the burden demonstrated here would likely be imposed by governmental error unknown to the voter. See Husted, 696 F.3d at 595 (requiring notice and opportunity to be heard where the law required voters to have "omniscience" of poll worker error and "have a greater knowledge of their precinct, precinct ballot, and polling place than poll workers").[31]

Based on recent elections, approximately 100,000 North Carolinians are projected to utilize same-day registration in 2024, starting with the primary. NCSBE, Presentation to House Oversight and Reform Committee, supra, at 6 (showing over 100,000 SDR voters in both 2016 and 2020).[32] Each of these voters' addresses will be tested by S. 747's address verification procedure, and Plaintiffs are likely to show that some number of

[31] Party Intervenors liken an SDR voter's retrieved ballot due to failed address verification to a vote-by-mail ballot that gets lost in the mail, which they contend Plaintiffs view as unproblematic. (VL Doc. 51 at 14.) While the court has no record upon which to compare vote-by-mail to address verification, it is distinguishable at least because North Carolina provides a tracking system for mail ballots. See NCSBE, Ballot Tracking Available Again for Absentee-By-Mail Voters, supra.

[32] Neither State Board Defendants nor Intervenors argue that the presumably reduced number of voters anticipated for the upcoming primary election is a ground to not enter preliminary relief at this time.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000376

first cards will be returned before the canvass deadline as undeliverable due to governmental error, rather than factors related to voter eligibility. By failing to provide voters with notice and opportunity to be heard, section 163-82.6B(d) creates an unacceptable risk that eligible voters' ballots will be erroneously removed and not counted. As shown by Husted, Lee, and Andino, as well as the record evidence before this court, Plaintiffs are therefore likely to succeed in showing that the undeliverable mail provision — because it fails to provide for notice and opportunity to be heard — will impose a substantial burden on SDR voters.[33]

ii. Balancing the State's Interests

The court turns next to the justifications for the law put forth by State Board Defendants and Intervenors.

States may prescribe "[t]he Times, Places and Manner of holding Elections for Senators and Representatives." U.S. Const. art. I, § 4, cl. 1. The Supreme Court has therefore "recognized that States retain the power to regulate their own elections." Burdick, 504 U.S. at 433 (citing Sugarman v. Dougall, 413 U.S.

[33] Voto Latino Plaintiffs also point out that an SDR voter could vote and then move elsewhere in North Carolina under section 163-55(a), which permits a voter to vote at a prior residence within 30 days of relocation. (VL Doc. 45 at 25.) They contend that these voters could have their vote removed without any error occurring if they provide the Postal Service a forwarding address. (Id.) The court has no record of the magnitude of this issue and, given the court's ruling, need not consider it further at this stage.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000377

634, 647 (1973); Tashjian v. Republican Party of Conn., 479 U.S. 208, 217 (1986)). "The Constitution provides that state legislatures — not federal judges, not state judges, not state governors, not other state officials — bear primary responsibility for setting election rules." Democratic Nat'l Comm., 141 S. Ct. 28 (Mem.) (Gorsuch, J., concurring). Indeed, to require a state to "halt the ongoing implementation of one of its duly-enacted statutes — a statute that, for now at least, has not been rendered invalid" is "a form of irreparable injury" the court must consider. League of Women Voters of N.C., 769 F.3d at 249 (Motz, J., dissenting) (quoting Maryland v. King, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)).

Under Anderson-Burdick, the court must identify "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiffs' rights." Burdick, 504 U.S. at 434 (internal quotation marks omitted). The "rigorousness" of the inquiry into the State's interests will be informed by the substantial burden imposed by the undeliverable mail provision. Id. (requiring courts to employ a sliding scale approach whereby the greater the burden imposed, the more important the state's justification must be).

State Board Defendants and Intervenors principally assert that the undeliverable mail provision is justified by the need to

AMERICAN OVERSIGHT

preserve the integrity of the election process by ensuring that only eligible ballots are counted and that a registrant lives in the precinct within which he seeks to vote. (DNC Doc. 53 at 13 (State Board Defendants, "ensuring only eligible ballots are counted in an election"); DNC Doc. 52 at 17-18 (Legislative Intervenors, "preserving the integrity of the election process" and "ensure that a registrant lives in the precinct within which they seek to vote"); DNC Doc. 51 at 7-8 (Party Intervenors, "ensuring verification of each applicant's address, which is fundamental to determining a voter's eligibility"); VL Doc. 51 at 11 (Party Intervenors, "discouraging and preventing fraud").) They also assert the need to "level the playing field" between SDR and non-SDR voters, to ensure address verification cards return before the canvass, and to instill confidence in elections. (DNC Doc. 66:13-15; DNC Doc. 53 at 16; VL Doc. 52 at 19.)

North Carolina unquestionably has a legitimate and strong interest in ensuring the integrity of its elections, ensuring that only legitimate ballots are counted, and in preventing voter fraud. Purcell v. Gonzalez, 549 U.S. 1, 4 (2006). As to these interests, State Board Defendants and Intervenors need not present "elaborate, empirical verification of the weightiness of the State's asserted justifications." Timmons v. Twin Cities Area New Party, 520 U.S. 351, 364 (1997). Instead, the State may "respond to potential deficiencies in the electoral process with foresight

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000379

rather than reactively, provided that the response is reasonable and does not significantly impinge on constitutionally protected rights." Munro v. Socialist Workers Party, 479 U.S. 189, 195-96 (1986). Indeed, the Crawford court found that deterrence of voter fraud was a "neutral and nondiscriminatory reason" to require photo ID, even though the record contained no evidence of actual in-person fraud. Crawford, 553 U.S. at 195-97 (Stevens, J.) (citing Building Confidence in U.S. Elections § 2.5 (Sept. 2005), a report of the Commission on Federal Election Reform, chaired by former President Jimmy Carter and Secretary of State James A. Baker, III); see also id. at 209 (Scalia, J., concurring) ("The universally applicable requirements of Indiana's voter-identification law are eminently reasonable."); cf. Brnovich v. Democratic Nat'l Comm., 141 S. Ct. 2321, 2346, 2348 (2021) (on a Voting Rights Act challenge to a law that imposed a "usual burden[] of voting," "a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders").

Here, State Board Defendants contend that address verification ensures election integrity by acting as a "fail-safe" to test a voter's residency. (VL Doc. 61 at 45:16; see also id. at 88:25 (Party Intervenors likening address verification to "two-factor authentication").) The court accepts this; address verification may serve to disincentivize a registrant from providing a false address, to identify a registrant who erroneously

AMERICAN OVERSIGHT

provides an improper address, and especially in the case of traditional registration before SDR, which can occur online or by mail and does not require a HAVA document, to deny the registration of someone who might claim to register as someone else. Indeed, that an SDR voter must present a current HAVA document that shows his residence address, along with a photo ID, and attest in-person under penalty of perjury that he is an eligible voter, may explain the 98-to-99 percent rate of confirmation of SDR registrants under the State's prior two-card system. NCSBE, Presentation to House Oversight and Reform Committee, supra, at 6. While these State interests justify the use of address verification generally, the question, however, is whether the undeliverable mail provision for SDR voters meets its justifications as a "fail-safe" as to residency sufficient to exclude a ballot without notice and opportunity to be heard where failure is based on reasons entirely outside the control of the voter.

By Legislative Intervenors' own concession, address verification is not a precise instrument for enforcing the interests they assert.[34] (DNC Doc. 62 at 63:13-24).) That is,

[34] To the extent Plaintiffs more broadly criticize the State's address verification process, the court declines to consider that question. Address verification predated the adoption of SDR in North Carolina, 1994 N.C. Sess. Laws, ch. 762, § 2, and appears to be used by other states as a legitimate component of the voter registration process. See, e.g., Common Cause of Colo. v. Buescher, 750 F. Supp. 2d 1259 (D. Colo. 2010). Legislative Intervenors argue that the State has no other effective means to verify addresses short of sending personnel to make

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000381

in part, because the statute provides that the card need not be sent to the registrant's residential address. Rather, it must be sent to the mailing address the same-day registrant provides on his application, even if that address is outside the county of registration, (id. at 59:8-13), if the registrant does not receive mail at the residential address. N.C. Gen. Stat. § 163-57(1)(c) ("Residence shall be broadly construed to provide all persons with the opportunity to register and to vote, including stating a mailing address different from residence address."). The parties have presented no record as to how often same-day registrants' mailing addresses differ from their residential addresses — whether for students on campuses, individuals utilizing post office boxes, etc. (DNC Doc. 62 at 45:11-14 (State Board Defendants stating that they do not have "statistics to back it up," but upon belief, "most people's residential address will be their mailing address").) Address verification appears to work as intended for the vast majority of voters who receive mail at their residential address. But State Board Defendants and Intervenors have presented no evidence that address verification has ever filtered out a single ineligible same-day registrant. In fact, State Board Defendants concede that they have "no way" of knowing if an unreturned card truly demonstrates ineligibility because

home visits (DNC Doc. 62 at 63:13-21), and it is the province of the General Assembly to choose the process for verification.

AMERICAN OVERSIGHT

they only know the card was returned as undeliverable, not why. (VL Doc. 61 at 60:20-21.)

Only Party Intervenors directly contend that the provision serves to deter SDR voter fraud. (VL Doc. 51 at 15-18.) Voto Latino Plaintiffs offer an expert, Dr. Martha Kropf, a political science professor, who concluded that the undeliverable mail provision for SDR registrants "has no discernible benefit in terms of preventing voter fraud." (Doc. 49-1 at 6.)[35] While Legislative Intervenors dispute her definition of fraud as "prohibitively narrow," (VL Doc. 52 at 9), their own expert, Dr. Andrew Taylor, also a political science professor, conceded that he had "no reason to question the methods or results" of Dr. Kropf. (VL Doc. 52-1 at 13; VL Doc. 59-2 at 67:7-11 (confirming Dr. Taylor's conclusion at deposition).)

The State's proffered justifications, in light of the lack of notice and opportunity to be heard for SDR voters, are inconsistent with its interest in counting eligible ballots to the extent ballots are rejected for errors unrelated to the voter's actual eligibility. See Lee, 915 F.3d at 1322. Such SDR voters' ballots would be removed, not because voters do not live where they claimed, but rather because a postal worker or county board of

[35] As Party Plaintiffs argued, someone who "falsely swears out an application [and] forges a HAVA document" may likely be clever enough to provide a mailing address where he can receive mail. (DNC Doc. 62 at 94:9-11.)

AMERICAN OVERSIGHT

elections worker made an error that resulted in the return of a non-forwardable mail card. In fact, providing a chance to correct that error would appear to be consistent with section 163-57's call for "[r]esidence [to] be broadly construed to provide all persons with the opportunity to register and vote[.]" N.C. Gen. Stat. § 163-57(1)(c). Moreover, the State's interest in counting only eligible ballots is also mitigated to some extent by the fact that State Board Defendants concede they will continue to count the SDR ballots of voters whose single card returns as undeliverable after the canvass. (VL Doc. 61 at 54:1-6.)

Legislative Intervenors rely on the opinions of Dr. Taylor to support their view that the undeliverable mail provision ensures election integrity and instills confidence in the fairness of elections. (See VL Doc. 52 at 13, 17.) Dr. Taylor opines that the undeliverable mail provision will help ensure that the single card returns as undeliverable before the canvass. (VL Doc. 52-1 at 12.) While he opines that this "may increase North Carolinians' confidence" in elections, (id. at 17 (emphasis added)), he does not opine on whether the undeliverable card is probative of a voter's residence, and thus a voter's eligibility to vote. Instead, he states, "If the 23% of undelivered mail that is the result of USPS error represents an intolerable risk for SDR voters under S 747, it seems to me it should have represented an intolerable risk under the rules prior to S 747." (Id. at 11.)

AMERICAN OVERSIGHT

Moreover, Dr. Taylor states that voter fraud can go undetected, that address verification is important, and that voters have reduced confidence in elections. (Id. at 13-15.) On this record, there is no reason to doubt these principles. But Dr. Taylor does not discuss how enforcing the undeliverable mail provision without notice and hearing addresses them. Additionally, Dr. Taylor opines that a voter who "cannot tolerate the possibility of their registration being canceled" can "register and later vote in-person or absentee as do around 97 percent of others" in North Carolina. (Id. at 16.) Whatever merit this argument might have if SDR voters' registrations alone were at issue, the State, having offered the option of voting during SDR, cannot discard their ballots due to governmental error and without notice and an opportunity to be heard simply on the ground that the voters should have known not to take such a risk. Cf. Common Cause of Colo. v. Buescher, 750 F. Supp. 2d 1259, 1264 (D. Colo. 2010) (noting that Colorado law allows voters who are informed on election day they failed mail verification to cure by voting a provisional ballot with an ID).

Legislative Intervenors also assert that the undeliverable mail provision was intended to "level the playing field" between SDR and non-SDR voters because SDR voters prior to S. 747 had a "whole panoply of protections" that "regular registrants" did not. (DNC Doc. 66:13-15.) But the statutory scheme does not bear this

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000385

out. Chapter 163 appears to provide more favorable treatment to many non-SDR voters vis-à-vis SDR voters, particularly non-SDR voters who register just before the 25-day cut off for traditional registration. First, unlike an SDR voter under S. 747, the statute directs county boards to treat "as a registered voter" any non-SDR voter who fails address verification after voting — e.g., someone who registers before the 25-day cutoff, votes early or on election day, and then fails address verification. N.C. Gen. Stat. § 163-82.7(g)(3); cf. id. § 163-82.6B(d) (stating that a county board "shall not register" an SDR voter who fails address verification). Second, a non-SDR voter may still vote in person, with some procedures for verifying address, if his registration was so close to the 25-day cutoff for traditional registration that his first address verification card is sent within 25 days of the election and returns as undeliverable — e.g., he votes after the first card is returned as undeliverable but before return of a second card. Id. § 163-82.7(g)(2); cf. id. § 163-82.6B(d) (directing county board to remove SDR ballot from the official count upon failure of SDR voter's address verification based on a single card received by the day before the canvass). Third, non-SDR voters cannot be denied the right to vote in person unless two cards are returned as undeliverable, and the statute only states that a challenge is "not preclude[d]" if that occurs after a non-SDR voter votes. Id. § 163-82.7(g)(1); cf. id. § 163-82.6B(d)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000386
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 78 of 94

(directing removal of ballot based on only one card for SDR voters). And fourth, a voter who casts an absentee ballot and whose address verification card is returned as undeliverable "after [the] person has already voted by absentee ballot" may have his ballot challenged, will be given notice of the challenge, and has a right to "appear before the board at the hearing on the challenge and present evidence as to the validity of the ballot." Id. § 163-82.7(g)(2); § 163-89(e); NCSBE Numbered Memo 2022-05 (Dec. 15, 2023 update), supra, at 3, 11 (requiring county board to provide notice and providing sample notice letter). Thus, while the court acknowledges the State's legitimate interest in verifying addresses for all registrants, S. 747 does not appear to level the playing field between SDR and non-SDR voters. Rather, as to address verification, it appears to tilt it against SDR voters by requiring that the ballot be removed from the count without notice and opportunity to be heard.

In addition, State Board Defendants assert an interest in ensuring that the address verification card returns before the canvass. As the Fourth Circuit has acknowledged, "these concerns are real." McCrory, 831 F.3d at 237. Indeed, when the repeal of SDR was previously challenged before this court, the plaintiffs in that case "d[id] not seriously dispute" the issues SDR caused for the implementation of the State's address verification system, including in cases where the second address verification card was

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000387

returned after the canvass and the SDR voter's ballot was nevertheless counted. N.C. State Conf. of the NAACP v. McCrory, 182 F. Supp. 3d 320, 447 (M.D.N.C. 2016).[36] However, while State Board Defendants and Intervenors here are likely to show that a card mailed to an SDR voter would be more likely to return before the canvass, they have not shown why the substantial burden of exclusion without notice and an opportunity to be heard is justified when the failure — at least on the present record — is likely caused in significant respect by the government's own errors.

To the extent State Board Defendants and Intervenors argue that providing notice and an opportunity to be heard would impose an administrative burden, this argument is not adequately supported on this record. County boards of elections plainly have an interest in "protecting the integrity, fairness, and efficiency of their ballots and election processes as means for electing public officials." Timmons, 520 U.S. at 364. But the administrative burden of providing notice and an opportunity to be heard is limited in this context for at least three reasons.

First, prior to January 1, 2024, Chapter 163 already provided for a challenge procedure for SDR ballots. Until this year, SDR

[36] In precluding the elimination of SDR, the Fourth Circuit based its decision on a finding of discriminatory racial intent, not because the State was without power to eliminate SDR. McCrory, 831 F.3d at 233.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000388

ballots were treated as absentee ballots, and the statutory scheme provided a hearing for a challenge to the ballots of voters who failed address verification to be held by the county board of elections on the day set for the canvass. See N.C. Gen. Stat. §§ 163-82.6A (2012), 163-82.7(g)(2), 163-89.

Second, while S. 747 has reclassified SDR ballots as "retrievable," rather than "retrievable absentee," section 163-89 continues to apply to absentee ballots. See id. § 163-89 (as amended by 2023 N.C. Sess. Laws 140, § 15). Neither State Board Defendants nor Intervenors has provided any evidence that this challenge procedure generates any administrative burden. Given the number of projected address verification failures across North Carolina's 100 counties, State Board Defendants and Intervenors have not demonstrated that providing due process for those SDR voters who fail address verification would tally to an additional burdensome level for any county board of elections.

Third, State Board Defendants concede that they "stand ready to incorporate whatever additional procedural protections this Court deems necessary for such voters." (DNC Doc. 53 at 11; VL Doc. 54 at 10.) In fact, State Board Defendants appear to have already taken steps that begin to address Plaintiffs' concerns, including encouraging county boards to collect contact information from SDR voters. (VL Doc. 55-5 at 7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) (recommending that county boards contact voters

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000389
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 81 of 94

before sending verification card if staff have "questions regarding the address"); VL Doc. 55-6 (demonstrating blanket notice county boards will display at early voting sites); see also VL Doc. 61 at 76:16-19 (expressing General Assembly's view that section 163-89 would provide an "appropriate mechanism" to administer notice and opportunity to be heard, if needed).) Accordingly, providing notice would not impose some new duty to affirmatively investigate voters' contact information; voters currently have the option to provide contact information on their voter registration application, and county boards are already being directed to recommend applicants do so. See North Carolina Voter Registration Application, Form 06W, supra (Question 10); (VL Doc. 55-5 at 7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) ("[T]he election official assisting a same-day registrant must recommend that the voter provide their phone number and/or email address on the registration form.").)

In sum, Defendants and Intervenors are likely to show that they have strong and legitimate interests in protecting election integrity by ensuring that eligible voters vote in the proper precinct and that address verification supports that interest. However, after considering the extent to which those interests make it necessary to substantially burden same-day registrants' right to have a ballot counted once it is cast, the court finds Plaintiffs are likely to succeed on the merits of their

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000390

constitutional claim against the undeliverable mail provision because it does not provide notice and an opportunity to be heard.

b. Irreparable Injury

An infringement or abridgment of a constitutional right is an irreparable harm where monetary damages are inadequate or difficult to ascertain. Democracy N.C., 476 F. Supp. 3d at 236. "Courts routinely deem restrictions on fundamental voting rights irreparable injury." League of Women Voters of N.C., 769 F.3d at 247; see also Obama for Am., 697 F.3d at 436 ("A restriction on the fundamental right to vote . . . constitutes irreparable injury."); Williams v. Salerno, 792 F.2d 323, 326 (2d Cir. 1986) (holding that plaintiffs "would certainly suffer irreparable harm if their right to vote were impinged upon").

Here, the threatened injury of discounting an eligible SDR voter's ballot without notice and opportunity to be heard would constitute irreparable injury. Any court's intervention in the State's constitutional prerogative to set the manner of conducting elections, however, can constitute an irreparable injury to the State, especially in consideration of the preliminary nature of the motions before this court. Abbott v. Perez, 138 S. Ct. 2305, 2324 (2018) (emphasizing on motion to stay injunction that "[u]nless [a] statute is unconstitutional," enjoining a statute enacted by the legislature "would seriously and irreparably harm the State"). Legislative Intervenors argue that counting

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000391
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 83 of 94

"unverified applications where the mail verification fails" would create a "fraudulent result." (VL Doc. 52 at 21.) Accepting the legitimacy of the prophylactic purposes of address verification, however, giving notice and opportunity to be heard to SDR voters who fail address verification would not increase any potential for such an outcome; indeed, quite the opposite.

c. Balance of the Equities and Public Interest

The balance of the equities and the public interest "merge when the Government is the opposing party." Miranda v. Garland, 34 F.4th 338, 365 (4th Cir. 2022) (quoting Nken v. Holder, 556 U.S. 418, 435 (2009)).[37] "By definition, '[t]he public interest . . . favors permitting as many qualified voters to vote as possible.'" Democracy N.C., 476 F. Supp. 3d at 237 (quoting League of Women Voters of N.C., 769 F.3d at 247–48).

As discussed above under consideration of the State's interest, the State's potential harm is outweighed by the equities in Plaintiffs' favor at this stage. In balancing the equities, the court notes that Chapter 163 authorizes challenge procedures already, and that State Board Defendants and Intervenors have not forecast any evidence of its administrative burden. See N.C. Gen. Stat. §§ 163-82.6A (2012), 163-82.7(g)(2), 163-89. Moreover,

[37] Though Party Intervenors are non-governmental, they, too, combine the balance of the equities and the public interest in their analysis. (DNC Doc. 51 at 18–19; VL Doc. 51 at 22–23 (arguing harm to the State militates against injunction).)

AMERICAN OVERSIGHT

State Board Defendants concede that they "stand ready to incorporate whatever additional procedural protections this Court deems necessary for such voters" and have begun to do so already. (DNC Doc. 53 at 11; VL Doc. 54 at 10; VL Doc. 55-5 at 7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) (recommending that county boards contact voters before sending mail card if staff have "questions regarding the address"); VL Doc. 55-6 (demonstrating blanket notice county boards will display at early voting sites); see also VL Doc. 61 at 76:16-19 (expressing General Assembly's view that section 163-89 would provide an "appropriate mechanism" to administer notice and opportunity to be heard, if needed).) The court thus finds that the balance of the equities and the public interest tip in Plaintiffs' favor.

* * *

In sum, the Winter factors weigh in favor of Plaintiffs as to the undeliverable mail provision. "Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents." Trump v. Int'l Refugee Assistance Project, 582 U.S. 571, 579-80 (2017). "The purpose of such interim equitable relief is not to conclusively determine the rights of the parties, but to balance the equities as the litigation moves forward." Id. at 580 (internal citation omitted). "In the course of doing so, a court need not grant the total relief

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000393

sought by the applicant but may mold its decree to meet the exigencies of the particular case." Id. (internal quotation marks omitted). Generally, a preliminary injunction is "intended to protect the status quo," Di Biase v. SPX Corp., 872 F.3d 224, 230 (4th Cir. 2017), which may "require a party who has recently disturbed the status quo to reverse its actions." League of Women Voters of N.C., 769 F.3d at 236 (internal quotation marks and citation omitted); see also Lee, 915 F.3d at 1328 (noting district court's "Goldilocks solution" of preliminarily requiring notice and opportunity to cure rather than striking down entirety of signature matching scheme).

A court considering an injunction close to an election should consider the risk of "voter confusion." Purcell, 549 U.S. at 4-5; Wise v. Circosta, 978 F.3d 93, 99 n.6 (4th Cir. 2020) (focusing Purcell inquiry on the extent to which "[v]oter behavior" would be "impacted by [the court's] decision"). Neither Defendants nor Legislative Intervenors have argued that proximity to the primary election counsels against an injunction. Party Intervenors claim that "[e]lection officials, candidates, campaigns, and voters will struggle to understand how [an] injunction interplays with S.B. 747, and with the broader election code, to the result of inconsistent rules across the state, [] and the potential denial of voting opportunities." (DNC Doc. 51 at 19 (internal citation omitted).) The court does not discern any risk that voters will

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000394
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 86 of 94

be confused, especially because S. 747 seeks to alter prior law, and State Board Defendants have assured the court that they "stand ready" to implement changes as required by this court. (DNC Doc. 53 at 11; VL Doc. 54 at 10.) At a status conference to set out a briefing schedule, moreover, State Board Defendants represented that they could administer a remedy for the primary election, so long as the order was entered around the start of early voting on February 15, 2024.

As to the scope of the injunction, Plaintiffs have agreed that they would accept notice and an opportunity to be heard as a remedy narrower than the broadest they have requested. (Compare DNC Doc. 62 at 98:18-22 ("[T]he remedy [Party Plaintiffs] respectfully suggest is for the Court to . . . direct the State Board for purposes of the primary election to, in fact, apply the notice and opportunity to be heard provision in [] 82.7(g)(2)[.]"), with DNC Doc. 7 at 19 (implying that the court should require two cards be returned before vote is discarded); compare VL Doc. 61 at 26:1-9 (Voto Latino Plaintiffs accepting "as an alternative remedy" ordering county boards to contact voters and "provide a mechanism by which they may further demonstrate that they are eligible voters and are properly residents"), with VL Doc. 44 (seeking to enjoin section 163-82.6B(d)).) (See also VL Doc. 1 (repeatedly alleging in the complaint the undeliverable mail provision's lack of notice and opportunity to be heard as a

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000395
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 87 of 94

defect); DNC Doc. 1 (same).)

As discussed above, the parties disagree as to whether section 163-89, the provision previously used to challenge SDR ballots for voters who failed address verification, applies in light of S. 747's reclassification of SDR ballots as "retrievable," rather than "retrievable absentee."

It is not the court's role to draft a precise remedy. That State Board Defendants construe — correctly it appears — the undeliverable mail provision to not contemplate notice and opportunity to be heard and intend to enforce it accordingly absent a court order, is sufficient to justify the injunction set out below. Though the parties offered proposed provisions at the hearing,[38] the court expresses no opinion on whether the State Board may exercise its authority under section 163-22.2 to "make reasonable interim rules and regulations with respect to the pending primary or election as it deems advisable" in light of the court's preliminary holding that Plaintiffs are likely to show

[38] Legislative Intervenors' counsel offered his belief that State Board Defendants could "graft into [§ 163-82.6B(d)] a notice and procedure" for voters to be heard without violating the statute (DNC Doc. 62 at 76:9-14), stating, without conceding the constitutional issue, that:

> We think that [State Board Defendants] can use the challenge process under 163-89 to accommodate this. We think between 747 and the existing statutes — my client believes, and I'm authorized to state, that we think that that's an appropriate mechanism, if one is even needed.

(DNC Doc. 62 at 76:15-19.)

AMERICAN OVERSIGHT

that the undeliverable mail provision, as written, is unconstitutional. N.C. Gen. Stat. § 163-22.2. Any such interim rules and regulations, if promulgated, must not otherwise conflict with the provisions of Chapter 163. Id.; see Moore v. Circosta, 494 F. Supp. 3d 289, 326 (M.D.N.C. 2020) (finding NCSBE had "implemented a rule that conflicted directly with the statutes enacted by the North Carolina legislature" through invocation of section 22.2).

In sum, the "exigencies of the particular case" warrant the injunction as set out below, and nothing more. Int'l Refugee, 582 U.S. at 579-80.

3. Ineligible Voter Notice

Party Plaintiffs alone challenge another aspect of S. 747. Focusing on the county board of elections' statutory duty to tentatively determine voter eligibility (by checking driver's license number, social security number, etc.) before embarking on address verification, N.C. Gen. Stat. 163-82.6B(d), they claim that the law unconstitutionally fails to prescribe a mechanism for notifying same-day registrants of an adverse eligibility determination or the ground(s) of rejection, or provide an opportunity to contest the adverse eligibility determination. (DNC Doc. 7 at 16.) Party Plaintiffs contend that the silence in the statute allows "any election official [to] unilaterally deny a person his or her right to vote without due process." (Id.)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000397

State Board Defendants agree that S. 747 does not explicitly state the process for rejecting a same-day registration based on an ineligibility determination. (DNC Doc. 53 at 8.) However, they read the statute to require a same-day registrant whose application is rejected due to ineligibility to receive the same challenge process under section 163-89 as a same-day registrant currently would receive, even though SDR ballots are no longer considered "absentee ballots." (Id. at 7-8.) Indeed, NCSBE Numbered Memo 2023-05 further demonstrates the State Board plans to utilize the challenge provision of section 163-89 "because the county board is authorized to 'pass upon the legality of disputed ballots' during canvass.'" (DNC Doc. 60-1 at 6 n.9 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).)

Legislative Intervenors and Party Intervenors argue that Party Plaintiffs misread the statute to find that there is no process for same-day registrants who are found ineligible. (DNC Doc. 52 at 12; DNC Doc. 51 at 3-6.) They do not agree with State Board Defendants that there should be a challenge procedure under 163-89. Instead, they contend that section 163-82.7 applies, which is the same notice and opportunity to be heard afforded non-SDR applicants whom a county board determines to be ineligible. Under this provision, the SDR voter would receive a notice in the mail that informs him that his registration has been denied and outlines the method of appeal under 163-82.18, which provides for a public

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000398

hearing and appeal to a North Carolina Superior Court. Intervenors contend that this process suffices because this is the same process that non-SDR applicants receive. (DNC Doc. 52 at 12-13; DNC Doc. 51 at 4.)

Whether Defendants' or Intervenors' interpretation of the statute is correct, Party Plaintiffs have not demonstrated that they are likely to "suffer irreparable harm in the absence of preliminary relief." Winter, 555 U.S. at 20. Party Plaintiffs conceded as much, stating that they are not irreparably harmed if State Board Defendants are entitled under the law to apply its interpretation. (DNC Doc. 62 at 19:4-23 ("For purposes of a preliminary injunction, I don't think we need anything more from this Court other than the acknowledgement.").) By all accounts, State Board Defendants have represented in their briefing and in a public memorandum that they intend to fill any perceived silence in the statute with the notice and opportunity to be heard that Party Plaintiffs seek. (DNC Doc. 53 at 8; DNC Doc. 60-1 at 6-7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).) And even if Intervenors' reading controlled, Party Plaintiffs have not shown that the notice provided under sections 163-82.7 and 163-82.18 would be constitutionally inadequate process. Wolf v. Fauquier Cnty. Bd. of Supervisors, 555 F.3d 311, 323 (4th Cir. 2009) ("Procedural due process provides merely 'a guarantee of fair procedures — typically notice and an opportunity to be heard.'"

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000399

(citation omitted)); N.C. Gen. Stat. §§ 163-82.7, 163-82.18 (providing for notice and hearing before county board of elections with appeal to superior court). Accordingly, Party Plaintiffs' motion to preliminarily enjoin the enforcement S. 747's notice procedure as to SDR voters determined ineligible following the verification process to be conducted within two business days of registration will be denied.

III. CONCLUSION

For the reasons stated, State Board Defendants and Intervenors have shown valid State interests in the use of address verification by non-forwardable mail for confirming a voter's eligibility to vote — a process that has been in place for several decades, albeit employing two cards. These include undeniably legitimate interests in ensuring the integrity of elections, ensuring that only ballots of eligible voters are counted, preventing voter fraud, and instilling confidence in elections. Nevertheless, Plaintiffs have demonstrated a likelihood that the undeliverable mail provision in S. 747, codified as N.C. Gen. Stat. § 163-82.6B(d), will impose a substantial burden on same-day registrants who cast a ballot because, under the law's express terms, they will face a non-trivial risk of being erroneously disenfranchised by failing address verification due to governmental error, rather than factors related to their eligibility to vote, without any notice and opportunity to be

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000400

heard.

Plaintiffs have shown that the State's precise interests asserted in this case likely do not outweigh the substantial burden on the rights of same-day registrants who cast a ballot. Burdick, 504 U.S. at 434 (requiring courts weigh "the character and magnitude of the asserted injury" against "the precise interests put forward by the State," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights"). On this record, State Board Defendants and Intervenors have presented no evidence that any of the several thousand same-day registrants who have failed address verification since its inception in 2008 was in reality ineligible to vote on the ground of improper residency. For SDR voters, the lack of notice and opportunity to be heard is inconsistent with the State's interest in counting all eligible voters' ballots. Moreover, given the lack of showing of an administrative burden on county boards of elections, the risk of irreparable injury, the balance of equities, and the public interest all weigh in favor of requiring notice and an opportunity to be heard.

IT IS THEREFORE ORDERED that Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, are HEREBY ENJOINED from utilizing the procedures of N.C. Gen. Stat. § 163-82.6B(d) to remove from the official count the votes of the ballot of any voter

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000401

who has provided contact information in the registration process and whose first notice required under N.C. Gen. Stat. § 163-82.7(c) is returned by the Postal Service as undeliverable before the close of business on the business day before the canvass, without first providing such voter notice and an opportunity to be heard, and, only to this extent, Voto Latino Plaintiff's motion (VL Doc. 44) and Party Plaintiff's motion (DNC Doc. 6) are GRANTED. This injunction shall remain in force until such time as a procedure for notice and opportunity to be heard is implemented in accordance therewith.

IT IS FURTHER ORDERED that Voto Latino Plaintiff's motion (VL Doc. 44) and Party Plaintiff's motion (DNC Doc. 6) are, in all other respects, DENIED.

/s/ Thomas D. Schroeder
United States District Judge

January 21, 2024

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000402

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

VOTO LATINO, WATAUGA COUNTY VOTING RIGHTS TASK FORCE, DOWN HOME NORTH CAROLINA, and SOPHIE JAE MEAD, Plaintiffs, v. ALAN HIRSCH, in his official capacity as Chair of the State Board of Elections, JEFF CARMON, in his official capacity as Secretary of the State Board of Elections, STACEY EGGERS IV, in his official capacity as Member of the State Board of Elections, KEVIN N. LEWIS, in his official capacity as Member of the State Board of Elections, SIOBHAN O'DUFFY MILLEN, in her official capacity as Member of the State Board of Elections, KAREN BRINSON BELL, in her official capacity as Executive Director of the State Board of Elections, MICHAEL BEHRENT, in his official capacity as Chair of the Watauga County Board of Elections, ERIC ELLER, in his official capacity as Member of the Watauga County Board of Elections, MATT WALPOLE, in his official capacity as Member of the Watauga County Board of Elections, LETA COUNCILL, in her official capacity as Member of the Watauga County Board of Election, and ELAINE ROTHENBERG, in her official capacity as Member of the	1:23-CV-861

AMERICAN OVERSIGHT

Watauga County Board of Elections,

Defendants,

and

PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate, and TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives,

Defendant-Intervenors,

and

REPUBLICAN NATIONAL COMMITTEE, NORTH CAROLINA REPUBLICAN PARTY, VIRGINIA A. WASSERBERG, and BRENDA M. ELDRIDGE,

Defendant-Intervenors.

DEMOCRATIC NATIONAL COMMITTEE and NORTH CAROLINA DEMOCRATIC PARTY,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS, KAREN BRINSON BELL, in her official capacity as Executive Director of the State Board of Elections, ALAN HIRSCH, in his official capacity as Chair of the State Board of Elections, JEFF CARMON, in his official

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000404

capacity as Secretary of the State Board of Elections, STACEY EGGERS IV, in his official capacity as Member of the State Board of Elections, KEVIN N. LEWIS, in his official capacity as Member of the State Board of Elections, SIOBHAN O'DUFFY MILLEN, in her official capacity as Member of the State Board of Elections, Defendants, and PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate, and TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives, Defendant-Intervenors, and REPUBLICAN NATIONAL COMMITTEE, NORTH CAROLINA REPUBLICAN PARTY, VIRGINIA A. WASSERBERG, and BRENDA M. ELDRIDGE, Defendant-Intervenors.	)	1:23-CV-862

MEMORANDUM OPINION AND ORDER

THOMAS D. SCHROEDER, District Judge.

In these two actions,[1] Plaintiffs contest recent changes to

[1] The actions are not consolidated but are addressed jointly here because

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000405

North Carolina's rules for voters who register and cast a ballot during the State's seventeen-day same-day registration ("SDR") period that ends the Saturday before election day. Pursuant to the State's address verification process, the county board of elections sends all same-day registrants a card by non-forwardable mail. Under Senate Bill 747 ("S. 747"), which became law on October 10, 2023, as 2023 N.C. Sess. Laws 140, if, before the close of business on the day before the canvass, the United States Postal Service returns the verification card to the county board as undeliverable — even through no fault of the voter — the county board "shall not register the applicant and shall retrieve the applicant's ballot and remove that ballot's votes from the official count." 2023 N.C. Sess. Laws 140, § 10.(a) (codified as N.C. Gen. Stat. § 163-82.6B (2024)).

Before the court are motions for preliminary injunction by Plaintiffs Voto Latino, Watauga County Voting Rights Task Force, Down Home North Carolina, and Sophie Jae Mead ("Voto Latino Plaintiffs") (VL Doc. 44), and Plaintiffs Democratic National Committee and North Carolina Democratic Party ("Party Plaintiffs") (DNC Doc. 6) (collectively, "Plaintiffs").[2] Defendants Karen

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they raise identical issues. A third case raising similar issues is also pending before this court, 1:23-cv-878. The plaintiffs there have not moved for preliminary relief.

[2] Docket entry references for case number 1:23-CV-861 are "VL Doc. XX," and for case number 1:23-CV-862 are "DNC Doc. XX."

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000406

Brinson Bell, Alan Hirsch, Jeff Carmon, Stacy Eggers IV, Kevin N. Lewis, Siobhan O'Duffy Millen, and as to 1:23-cv-862, North Carolina State Board of Elections ("NCSBE") ("State Board Defendants"), Defendant-Intervenors Senator Philip E. Berger and Speaker Timothy K. Moore ("Legislative Intervenors"), and Defendant-Intervenors Republican National Committee, North Carolina Republican Party, Virginia Ann Wasserberg, and Brenda M. Eldridge ("Party Intervenors") (collectively, "Intervenors") have responded in opposition. (VL Docs. 51, 52, 54, 60; DNC Docs. 51, 52, 53.)[3] Plaintiffs have replied. (VL Doc. 59; DNC Doc. 58.)

Voto Latino Plaintiffs seek injunctive relief, claiming violations of the First and Fourteenth Amendments to the United States Constitution, pursuant to 42 U.S.C. § 1983. (VL Doc. 1 ¶¶ 83-98.) Party Plaintiffs allege violations of the First and Fourteenth Amendments to the United States Constitution, Article I, sections 10 and 19 of the North Carolina Constitution, the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(A), the Help America Vote Act ("HAVA"), 52 U.S.C. § 21082, and the Voting Rights Act, 52 U.S.C. § 10307(b). (DNC Doc. 1 ¶¶ 52-100.) Legislative Intervenors and

[3] Voto Latino Plaintiffs named Michael Behrent, Eric Eller, Matt Walpole, Leta Councill, and Elaine Rothenberg, all of whom are members of the Watauga County Board of Elections, as Defendants. In response to Plaintiffs' motion, these Defendants state they take no position and are "obligated to faithfully administer the election laws of the State of North Carolina, whatever they may be." (VL Doc. 50 at 2-3.) Both actions otherwise share the same named Defendants and Intervenors, except that Party Plaintiffs also sue NCSBE.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000407

Party Intervenors have intervened in both cases to oppose Plaintiffs' claims and to represent the interests of the North Carolina General Assembly and their political party, respectively. (VL minute entry Nov. 15, 2023; DNC Docs. 47, 48.)

Beyond the briefs, the parties to the suit brought by Voto Latino Plaintiffs have filed declarations concerning the backgrounds and allegations of the organizational and individual Plaintiffs, depositions from leaders of the organizational Plaintiffs and Plaintiff Mead, two preliminary expert opinions and corresponding depositions, and several NCSBE "Numbered Memos," which provide guidance to county election boards. The parties to the suit brought by Party Plaintiffs likewise rely on NCSBE Numbered Memos.

The parties have requested resolution of these motions ahead of the 2024 primary election, for which same-day registration begins on February 15, 2024. The court heard argument on the motions on December 28, 2023. For the reasons set forth below, the motions will be granted in part and denied in part.

I. BACKGROUND

The North Carolina General Assembly passed S. 747 over Governor Roy Cooper's veto on October 10, 2023. 2023 N.C. Sess. Laws 140, available at https://ncleg.gov/Sessions/2023/Bills/Senate/PDF/S747v6.pdf. The relevant provisions of S. 747, "[a]n act to make various changes regarding elections law,"

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000408

became effective January 1, 2024. Id. § 50. While the bill amends several provisions of the election laws in Chapter 163 of the North Carolina General Statutes, the present motions specifically seek to enjoin the enforcement of portions of section 10.(a), codified as N.C. Gen. Stat. § 163-82.6B, which makes changes to North Carolina's SDR procedures.

A. Voter Registration

All adult citizens, except felons, are entitled to vote in North Carolina. N.C. Const. art VI, §§ 1-2; N.C. Gen. Stat. § 163-55(a). To be eligible to vote in a given county, a voter must have resided in that county for at least 30 days prior to election day, N.C. Gen. Stat. § 163-55(a), and register there, id. § 163-54.

North Carolina offers two general methods of registration. Under the first method used by nearly all North Carolinians, called "traditional registration" or "non-SDR" herein, an eligible voter may register 25 days or more before an election day. Id. § 163-82.6(d). These registrants must complete a registration application that requires name, date of birth, residential address, and mailing address, if different. Id. § 163-82.4(a); see also North Carolina Voter Registration Application, Form 06W, at https://dl.ncsbe.gov/Voter_Registration/NCVoterRegForm_06W.pdf (last accessed Jan. 18, 2024). The mailing address need not be in the same precinct or even county as the residential address. (DNC

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000409
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 7 of 94

Doc. 62 at 59:8-13.) The application also requests identifying information, such as a driver's license number, last four digits of a social security number, and gender and ethnicity, and allows an applicant to select a political party affiliation. N.C. Gen. Stat. § 163-82.4(a). The applicant must attest that he is a citizen, is 18 years old or will be on election day, and that the contents of the application are true under penalty of perjury. Id. § 163-82.4(c), (e). The non-SDR applicant need not provide any document that proves residency.

When a county board of elections receives the application, it must make a "tentative determination that the applicant is qualified to vote at the address given." Id. § 163-82.7(a).[4] If the applicant is found not qualified, the county board of elections will mail him a notice within two days of the denial which informs him of alternatives to exercise the franchise and of the opportunity to appeal under section 163-82.18.[5] Id. § 163-82.7(b).

[4] Section 163-82.7(a) does not expressly state, and the parties have not represented, what the county board's initial determination for traditional registration entails. Presumably, it involves checking the applicant's age, citizenship status, felon status, driver's license or last four digits of the social security number, if provided, etc. to determine if the applicant is qualified to vote or is already registered. See N.C. Gen. Stat. § 163-82.6B(d).

[5] An applicant who receives a denial notice may appeal within five days of receiving the notice. N.C. Gen. Stat. § 163-82.18(a). The appeal is first heard before the county board of elections, which must provide notice of its decision within five days of the hearing. Id. § 163-82.18(b). If the denial is sustained, the applicant may appeal to a superior court of the county in which the board is located within ten

AMERICAN OVERSIGHT

If the applicant is "tentantive[ly] determin[ed]" to be qualified, the county board will implement the statutory procedures for "Verification of Address by Mail," or "address verification." Id. § 163-82.7(c). First, the county board will mail a "notice" (commonly referred to as "voter registration card"; hereinafter, "card") confirming the precinct and voting place of the voter by non-forwardable mail to the address provided on the application. Id. If the mailing address differs from the residence address, the county board will mail the verification card to the mailing address. (DNC Doc. 62 at 59:8-13); see also N.C. Gen. Stat. § 163-57(1)(c) ("Residence shall be broadly construed to provide all persons with the opportunity to register and to vote, including stating a mailing address different from residence address.").

If the Postal Service does not return the card to the county board as undeliverable, "the county board shall register the applicant to vote."[6] Id. § 163-82.7(d). If the card is returned, however, the county board will send a second card. Id. § 163-82.7(e). As with the first, if the Postal Service does not return the second card as undeliverable, "the county board shall register the applicant to vote." Id. But if the second card is returned

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days of receiving notice of the county board's final decision. Id. § 163-82.18(c).

[6] Neither the statute nor the NCSBE provides any time deadline for return of the address verification card. Thus, there is no specific time when an applicant is deemed "registered" — only the opposite.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000411
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 9 of 94

as undeliverable, the county board will deny the application and "need not try to notify the applicant further." Id. § 163-82.7(f). Voters may nevertheless check their registration status online via NCSBE's "Voter Search" tool. See NCSBE, View Your Voter Registration Status, at https://www.ncsbe.gov/registering/checking-your-registration (last accessed Jan. 9, 2024).[7]

Under the second method of registration, implemented in 2007, an individual who is qualified to register to vote may register in person and simultaneously cast a ballot at an early voting site in the individual's county of residence during the period of early voting. N.C. Gen. Stat. § 163-82.6B(a).[8] This is commonly called "same-day registration," or "SDR." To same-day register and vote, an individual must (1) complete a voter registration application; (2) provide proof of residence by presenting a HAVA[9]-compliant

[7] Section 163-82.7(g)(3) requires non-SDR voters who vote prior to failing two-card address verification to be treated "as a registered voter."

[8] Same-day registration was enacted in North Carolina in 2007. 2007 N.C. Sess. Laws 253, § 1 (codified as N.C. Gen. Stat. § 163-82.6A). Though section 163-82.6A once contained North Carolina's same-day registration rules, it was largely repealed by North Carolina Session Laws 2013-381, § 16.1. After the Fourth Circuit held this repeal unlawful, N.C. State Conf. of the NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016), section 163-82.6A was given legal effect again. However, Numbered Memo 2016-15 has effectively housed North Carolina's same-day registration laws from September 22, 2016, until January 1, 2024, because Chapter 163 was never amended to codify the holding in McCrory. (See VL Doc. 55-2 at 4 (NCSBE Numbered Memo 2016-15, Appendix A).) Section 163-82.6B now appears to abrogate the legal effect of Numbered Memo 2016-15's Appendix A. N.C. Gen. Stat. § 163-82.6B(a) ("Notwithstanding any provision of law to the contrary . . . .").

[9] Help America Vote Act, 52 U.S.C. § 20901 et seq.

AMERICAN OVERSIGHT

document listing the individual's current name and residence address; and (3) present photo identification pursuant to section 163-166.16.[10] Id. § 163-82.6B(b). A HAVA-compliant document is one of the following:

> (1) A current utility bill
> (2) A current bank statement
> (3) A current government check
> (4) A current paycheck
> (5) Another current government document
> (6) A current document issued from the institution who issued the photo identification shown by the voter pursuant to G.S. 163-166.16.

Id. § 163-82.6B(e).[11] A "current" HAVA document must be unexpired or have an issuance date within six months of presentation to an election official. (VL Doc. 55-5 at 3 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).) As with traditional registration, the mailing address on the application may be different from that on the HAVA document and can even be in a different county. (DNC Doc. 62 at 59:8-13.) Upon completing these steps, an individual then "vote[s] a retrievable ballot." N.C. Gen. Stat. § 163-82.6B(c).

Prior to S. 747, the procedures up until address verification

[10] As a technical matter, the same-day registration law prior to S. 747 did not expressly require a same-day registrant to show a photo identification to vote. However, in light of the North Carolina Supreme Court's April 2023 opinion upholding section 163-166.16, SDR voters would appear to be required to present a photo identification even without S. 747. See Holmes v. Moore, 384 N.C. 326, 460 (2023).

[11] NCSBE Numbered Memo 2023-05 provides further guidance to county boards on government documents allowable under (5) and (6). (VL Doc. 55-5 at 3-5 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).)

AMERICAN OVERSIGHT

were the same, except that the proof-of-residency documents required to be produced in person at registration were: "North Carolina drivers license, a photo identification from a government agency, or ['a current utility bill, bank statement, government check, paycheck, or other government document']." See N.C. Gen. Stat § 163-82.6A (2012), available at VL Doc. 55-2 at 4 (NCSBE Numbered Memo 2016-15, Appendix A). Additionally, rather than vote a "retrievable ballot" as S. 747 requires, the same-day registrant would previously vote a "retrievable absentee ballot as provided in G.S. 163-227.2." Id. § 163-82.6A(c) (2012) (emphasis added).

Under S. 747, after a same-day registrant casts a ballot, the county board must, within two business days of registration, "determine[]" if he is qualified to vote by verifying the North Carolina driver's license or social security number in accordance with section 163-82.12, updating the statewide registration database, and searching for possible duplicate registrations. N.C. Gen. Stat. § 163-82.6B(d). A same-day registrant's vote will be counted "unless the county board determines that the applicant is not qualified to vote in accordance with the provisions of this Chapter." Id.[12]

[12] As discussed below, the parties to civil action number 1:23-CV-862 disagree on the practical effect of this clause in terms of its provision of notice and opportunity to be heard for voters found "not qualified."

AMERICAN OVERSIGHT

B. Address Verification for SDR

If the county board of elections tentatively determines that a same-day registrant is eligible to vote (i.e., passes check of driver's license number, social security number, etc.), the county board of elections proceeds to conduct address verification by mail. The core dispute on these motions concerns S. 747's changes to the State's process for doing so for SDR voters, which the parties refer to as the "undeliverable mail provision."

Prior to S. 747, if a same-day registrant was determined eligible, the county board would conduct address verification. N.C. Gen. Stat. § 163-82.6A(d) (2012); N.C. Gen. Stat. § 163-82.7(c)-(f). Just as for non-SDR voters, if the first non-forwardable card was returned as undeliverable, the county board would send a second one. However, given the short window between early voting and the county canvass, in some instances the second card was returned as undeliverable after the county canvass. In those instances, although those SDR voters failed address verification, their votes were counted. N.C. Gen. Stat. § 163-82.7(g); (VL Doc. 55-2 at 3 (NCSBE Numbered Memo 2016-15 (Sept. 22, 2016)).)

When the Postal Service returned the second card as undeliverable before the county canvass, however, the law before S. 747 provided that the ballot (then considered a "retrievable absentee" ballot) could be challenged pursuant to section 163-89,

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000415

which authorizes a challenge procedure for absentee ballots to occur ten days after the election. Id. §§ 163-82.7(g)(2), 163-182.5. If this occurred, the county board would "need not try to notify the applicant further." Id. § 163-82.7(f).[13] However, the voter is entitled to appear and present evidence as to the validity of the ballot, provided he is notified of the challenge, for example, by another voter or organization. Id. § 163-89(e). Under this challenge system, "[n]o challenge shall be sustained unless the challenge is substantiated by affirmative proof," and "[i]n the absence of such proof, the presumption shall be that the voter is properly registered or affiliated." Id. § 163-90.1(b). In the last four even-year elections, 1,799 out of 100,578; 696 out of 45,666; 2,151 out of 116,326; and 391 out of 34,289 same-day registrants failed address verification. NCSBE, Presentation to House Oversight and Reform Committee, at 6 (June 22, 2023), at https://webservices.ncleg.gov/ViewDocSiteFile/80406 (last

[13] SDR voters may utilize NCSBE's "Voter Search" to track the status of their ballot, but NCSBE's website indicates that a voter's history "may take up to a few weeks after Election Day" to update. NCSBE, Vote Early in Person, at https://www.ncsbe.gov/voting/vote-early-person (last accessed Jan. 9, 2024). Moreover, even though SDR ballots were technically considered "absentee" ballots prior to S. 747, the court has no record that NCSBE's vote-by-mail tracking system, BallotTrax, was or is now available to SDR voters. See NCSBE, Ballot Tracking Available Again for Absentee-By-Mail Voters, at https://www.ncsbe.gov/news/press-releases/2022/03/14/ballot-tracking-available-again-absentee-mail-voters (Mar. 14, 2022) (last accessed Jan. 9, 2024).

AMERICAN OVERSIGHT

accessed Jan. 3, 2023).[14]

In reality, however, no challenges based on failed address verification have been held since August 2018. (VL Doc. 61 at 53:13-16 (State Board stating so at oral argument); VL Doc. 55-4 at 1-2 (NCSBE Numbered Memo 2018-07 (Aug. 8, 2018)); see also VL Doc. 55-3 at 8 (NCSBE Numbered Memo 2022-05 (May 12, 2022)).)[15] This results from the NCSBE's interpretation of an injunction entered in North Carolina State Conference of the NAACP v. Bipartisan Board of Elections & Ethics Enforcement, No. 1:16CV1274, 2018 WL 3748172 (M.D.N.C. Aug. 7, 2018). (See VL Doc. 55-3 at 8 (NCSBE Numbered Memo 2022-05 (May 12, 2022)) (explaining that "a 2018 federal court order [i.e., the Bipartisan Board order] prohibits any voter challenges from being brought without individualized knowledge within 90 days of a federal election"); VL Doc. 44-4 at 9-10 (Letter from State Board to Watauga County Board ordering the county board, pursuant to Bipartisan Board injunction, to halt its section 163-89 challenges based on same-day registrants' failure to complete address verification)).)

[14] The court may take judicial notice of facts that are "matters of public record." Justice 360 v. Stirling, 42 F.4th 450, 455 (4th Cir. 2022); Fed. R. Evid. 201.

[15] NCSBE updated the version of Numbered Memo 2022-05 available online on December 15, 2023, in light of S. 747. See NCSBE Numbered Memo 2022-05 (Dec. 15, 2023 update), at https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2022/Numbered%20Memo%202022-05_Absentee%20Voter%20Challenges%20by%20County%20Board.pdf. The memo before the updates is memorialized at VL Doc. 55-3 and DNC Doc. 54-3.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000417

In Bipartisan Board, individual voters in Beaufort, Cumberland, and Moore counties sent a single mailing to thousands of registered voters. Bipartisan Board, 2018 WL 3748172, at *4-9. These individuals together received thousands of pieces of mail returned as undeliverable, after which they brought challenges pursuant to N.C. Gen. Stat. §§ 163-85 and 163-86, which permit third-party challenges to a voter's right to register in a county due to, among other reasons, change in residency.[16] Id. When presented to the county boards, the single unreturned mailings constituted prima facie evidence that the corresponding voters did not reside at the address listed. Id.; N.C. Gen. Stat. § 163-85(e). The county boards thus struck the registrations of scores of registered voters, and plaintiffs sued to restore the registrations and receive prospective relief pursuant to the National Voter Registration Act ("NVRA," also known as the "Motor Voter Act"), 52 U.S.C. § 20507. Id. at *1. Finding that these third-party challenges violated 52 U.S.C §§ 20507(d)[17] and

[16] The Bipartisan Board order refers to these provisions as N.C. Gen. Stat. §§ 163A-911 and 163A-912. The provisions were re-codified by North Carolina Session Laws 2018-146, § 3.1(a), effective January 31, 2019, as N.C. Gen. Stat. §§ 163-85 and 163-86. This order will refer to the provisions as presently codified.

[17] Section 20507(d)(1) prohibits "remov[ing] 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": (1) confirms in writing that he has moved outside the registrar's jurisdiction; or (2) fails to respond to a notice as outlined under subsection (d)(2), and (3) has not voted or appeared to vote in

AMERICAN OVERSIGHT

(c)(2)(A),[18] the court permanently enjoined the NCSBE from

> (1) removing the registration of voters from the official list of eligible voters in elections for federal office through the challenge procedures set forth in N.C. Gen. Stat. §§ 163A-911 et seq.,[19] when those challenges are based on change of residency and the State has neither received written confirmation from the voter of a change of residency outside of the county, nor complied with the NVRA's prior notice requirement and two-election cycle waiting period;
>
> (2) using the challenge procedure set forth in N.C. Gen. Stat. §§ 163A-911[20] et seq. to remove voters from the rolls without individualized inquiry as to the circumstances of each voter in the 90 days preceding a federal election in the absence of a request of the registrant, necessity under State law by reason of criminal conviction or mental incapacity, or the death of the registrant; and
>
> (3) holding hearings or taking any other action(s) to process challenges filed under those provisions in the circumstances identified above.

Bipartisan Board, 2018 WL 3748172, at *12. The court found that the challenges, which occurred within 90 days of a federal election based on a single mailing, violated the NVRA because the process did not rely upon "individualized information" as to the voters sought to be removed. Id. at *6-10 (citing Arcia v. Fla. Sec'y of

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two federal election cycles following receipt of notice. Section 20507(d)(2) prescribes the content for a NVRA-compliant notice.

[18] Section 20507(c)(2)(A) provides that "[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."

[19] Now codified as N.C. Gen. Stat. §§ 163-85 et seq.

[20] Now codified as N.C. Gen. Stat. §§ 163-85 et seq.

AMERICAN OVERSIGHT

State, 772 F.3d 1335, 1346 (11th Cir. 2014)). Although Bipartisan Board dealt with challenges pursuant to section 163-85, State Board Defendants have construed the injunction to also prohibit challenges under section 163-89 for same-day registrants under the belief that the challenge procedures "bear a close resemblance" to one another. (VL Doc. 44-4 at 9-10 (pointing to the Bipartisan Board court's finding that the mailings constituted "generic evidence [that] conveyed no information about each challenged voter's specific circumstances").) As a result of Bipartisan Board and State Board Defendants' interpretation of it, failed address verifications for same-day registrants have not resulted in challenges since 2018.

S. 747 amends the address verification system for SDR voters to, as State Board Defendants contend, address the State's inability to conduct address verification before the canvass and to avoid counting ballots of SDR voters who fail address verification. (DNC Doc. 53 at 13; VL Doc. 54 at 11.) In pertinent part, the "undeliverable mail provision" now provides:

> Notwithstanding any other provision of this Chapter, if the Postal Service returns the first notice required under G.S. 163-82.7(c) as undeliverable before the close of business on the business day before canvass, the county board shall not register the applicant and shall retrieve the applicant's ballot and remove that ballot's votes from the official count.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000420

N.C. Gen. Stat. § 163-82.6B(d).[21] State Board Defendants state that all SDR voters will be given a notice at the polling place that their vote may not be counted if address verification fails, but there is no individualized notice and opportunity to be heard after the card is returned as undeliverable and before the ballot is removed from the official count. (See VL Doc. 55-6 (Notice to Same Day Registrants); VL Doc. 54 at 13 n.8 ("The State Board has also created a written notice that poll workers are required to give to all same-day registrants informing them" that, if address verification fails, their "voter registration will be denied and [their] vote will not be counted").)

State Board Defendants contend that North Carolina's interest in the undeliverable mail provision is "in ensuring only eligible ballots are counted in an election." (DNC Doc. 53 at 13.) Legislative Intervenors argue that S. 747 "(1) preserv[es] the integrity of the election process; and (2) instill[s] confidence in the fairness of the election." (DNC Doc. 52 at 17.) With respect to election integrity, Legislative Intervenors contend that the law "ensure[s] that registrant[s] live in the precinct within which they seek to vote." (Id. at 18.) They argue that

[21] It is unclear whether the provision referencing the "first notice" indicates that no second card will be sent, especially in light of the provision that the county board "shall not register" the SDR voter. State Board Defendants take the view that a second card is sent only if the first card returns after the canvass. (VL Doc. 55-5 at 7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000421
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 19 of 94

North Carolina has a "legitimate interest" in ensuring "that the card is returned before the end of the canvass," and that S. 747 is designed to bring SDR voters into parity with other voters. (VL Doc. 52 at 14; VL Doc. 61 at 66:13-15.) Legislative Intervenors also rely on the expert report and testimony of Dr. Andrew Taylor which, as discussed in more detail below, they urge shows that the undeliverable mail provision supports the State's interests. (See VL Doc. 52-1.) Party Intervenors contend that the State's "compelling interest" is in "ensuring verification of each applicant's address, which is fundamental to determining a voter's eligibility" (DNC Doc. 51 at 7-8), and in "discouraging and preventing fraud," (VL Doc. 51 at 11).

Neither State Board Defendants nor Intervenors point to any portion of the legislative history to demonstrate the General Assembly's purpose in enacting this change.[22] Legislative

[22] State Board Defendants and Intervenors have cited just one source of legislative history, a transcript of testimony by Defendant Bell before the House Committee on Oversight and Reform, available at https://webservices.ncleg.gov/ViewDocSiteFile/80708 (last accessed Jan. 17, 2024). However, neither this source nor other documents available online through the Senate Committee on Redistricting and Elections or the House Committee on Election Law and Campaign Finance Reform reveals the General Assembly's rationale for the undeliverable mail provision. This may be explained by the fact that the undeliverable mail provision appears to have been added to S. 747 by the House Committee on Election Law and Campaign Finance Reform one day before it passed the full chamber. See North Carolina General Assembly, Senate Bill 747 House Committee Substitute (Aug. 15, 2023), https://www.ncleg.gov/Sessions/2023/Bills/Senate/PDF/S747v4.pdf; see also North Carolina General Assembly, Senate Bill 747 / SL 2023-140, https://www.ncleg.gov/BillLookUp/2023/s%20747 (last accessed Jan. 17, 2024).

AMERICAN OVERSIGHT

Intervenors represent that State Board Defendants requested the change, the evidentiary support for which is a former State and Watauga County election board member's understanding. (VL Doc. 52 at 4; Doc. 52-2 at 9.) There is no record that address verification has ever revealed a same-day registrant who was in fact ineligible to vote because he did not reside at the residence provided. In fact, State Board Defendants state that they would have "no way to know" from the card itself. (VL Doc. 61 at 60:21.)

C. Parties

Plaintiff Voto Latino is a section 501(c)(4) nonprofit that encourages voting and assists with voter registration, particularly among eligible Latino voters. (VL Doc. 1 ¶¶ 17, 18.) Plaintiff Watauga County Voting Rights Taskforce is a volunteer, nonpartisan organization that conducts voter registration drives, voter education sessions, volunteer training, community outreach, among other functions. (Id. ¶¶ 22-24.) Relevant here, the Taskforce has defended voters whose ballots have been challenged. (Id. ¶ 25.) Plaintiff Down Home North Carolina is a section 501(c)(4) nonprofit that works, in part, to ensure that rural, working-class people in North Carolina have access to the franchise. (Id. ¶ 28.) Plaintiff Sophie Jae Mead is a senior at Appalachian State University and a member of the Watauga County Voting Rights Taskforce. (Id. ¶ 31.) Her ballot was allegedly challenged under section 163-89 due to an undeliverable address

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000423
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 21 of 94

verification card in 2022. (Id. ¶ 31.) Plaintiff Democratic National Committee ("DNC") is the national committee of the Democratic Party. (DNC Doc. 1 ¶¶ 22-23.) Plaintiff North Carolina Democratic Party ("NCDP") is a state committee of the Democratic Party. (Id. ¶ 25.)

Party Plaintiffs have sued the NCSBE, which is the executive agency responsible for administering election laws in North Carolina. (Id. ¶ 28.) All Plaintiffs also have sued NCSBE's executive director, Defendant Karen Brinson Bell, NCSBE's chair, Defendant Alan Hirsch, NCSBE's secretary, Defendant Jeff Carmon, and NCSBE members, Defendants Stacy Eggers IV, Kevin N. Lewis, and Siobhan O'Duffy Millen. (Id. ¶¶ 29-34; VL Doc. 1 ¶¶ 34-35.) All these individuals are sued in their respective official capacities. (DNC Doc. 1 ¶¶ 29-34; VL Doc. 1 ¶ 34.) Voto Latino has also sued Defendant Michael Behrent, the chair of the Watauga County Board of Elections, and Defendants Leta Councill, Eric Eller, Matt Walpole, and Elaine Rothenberg, who are members of the Watauga County Board of Elections, in their respective official capacities. (VL Doc. 1 ¶ 37.)

Legislative Intervenors are Philip E. Berger, President Pro Tempore of the North Carolina Senate, and Timothy K. Moore, Speaker of the North Carolina House of Representatives. They have intervened in their respective official capacities. Party Intervenors are the North Carolina Republican Party, the

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000424

Republican National Committee, Brenda M. Eldridge, and Virginia Ann Wasserberg. Eldridge and Wasserberg are registered Republican voters who "typically vote for Republican candidates, have served as poll observers in the past, and intend to do so in the future. (DNC Doc. 48 at 3.)

D. Procedural Background

Voto Latino Plaintiffs filed their motion for preliminary injunction on November 15, 2023 (VL Doc. 44), to which State Board Defendants and Intervenors responded on December 13, 2023 (VL Docs. 50-54). In the period between the motion and responses, the parties engaged in limited discovery by mutual agreement, the result of which are filings attached to State Board Defendants' and Intervenors' responses and Voto Latino Plaintiffs' reply brief. Voto Latino Plaintiffs' motion seeks preliminary injunctive relief solely against the enforcement of the undeliverable mail provision.

In the other case, Party Plaintiffs filed their motion for preliminary injunction on October 10, 2023 (DNC Doc. 6), to which State Board Defendants and Intervenors responded on November 20, 2023 (DNC Docs. 51-53). Party Plaintiffs replied on December 4, 2023. (DNC Doc. 58.) Party Plaintiffs seek preliminary injunctive relief precluding the following:

> (1) requiring same-day registrants (i.e., voters who seek to register and vote on the same day, prior to election day) to produce documentation that other

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000425

registrants need not produce;

(2) denying a same-day registrant's application to register without providing that individual with sufficient notice and a meaningful opportunity to be heard;

(3) rejecting a same-day registrant's application to register based on the return of a single notice as undeliverable by the U.S. Postal Service;

(4) applying different voting-registration standards, practices, or procedures to different individuals in the same county; and

(5) failing to provide a free-access system by which same-day registrants can track their retrievable ballots.

(DNC Doc. 6.)

Before proceeding, it bears noting what is not presently before the court. As described above, State Board Defendants have not enforced North Carolina's two-card address verification requirement for same-day registrants since the 2018 Bipartisan Board injunction against using challenges under N.C. Gen. Stat. §§ 163-85 et seq. to remove voters from the rolls in violation of the NVRA. At present, Plaintiffs have not brought suit under the NVRA, which requires 90 days' notice before an "aggrieved person may bring a civil action." 52 U.S.C. § 20510(b). At the hearing on the present motions, Party Plaintiffs represented that they have given notice to State Board Defendants of their intent to sue and that the 90-day notice period will expire sometime this month. (DNC Doc. 62 at 78 ("Nowhere near 90 days has gone past. We didn't

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000426
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 24 of 94

think when we filed our preliminary injunction motion asking that the Court rule by January, which will be 90 days, that there would be time to get effective relief under the NVRA.").)

The parties have studiously avoided any argument as to whether the undeliverable mail provision of S. 747 complies with the NVRA and/or the Bipartisan Board injunction. Despite figuring prominently in the history of SDR, the injunction is raised only in passing in the briefs. (VL Doc. 59 at 22 n. 6; VL Doc. 54 at 6; DNC Doc. 53 at 6-7.) Though during the hearing the court probed the parties about the effect, if any, of the Bipartisan Board injunction and the NVRA on Plaintiffs' requested relief, the parties demurred (DNC Doc. 61 at 78:9-18 (Party Plaintiffs expressing that "we have not yet looked at this issue"); id. at 35:11-12 (Voto Latino Plaintiffs expressing view that "it is certainly possible that the law does violate the injunction . . . and the NVRA"); id. at 43:11-22 (State Board Defendants expressing that they "haven't completely looked at whether the new law as a whole" violates Bipartisan Board but expressing belief that challenge procedures would); id. at 77:4-11 (Legislative Intervenors expressing belief that Bipartisan Board is "distinguishable")), such that it is assuredly not raised before the court at this time. Thus, the court expresses no opinion on the effect, if any, of the injunction or the NVRA, and turns to consideration of the statutory and constitutional claims actually

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000427
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 25 of 94

raised.

II. ANALYSIS

A. Standing

Legislative Intervenors and Party Intervenors challenge the Article III standing of all Voto Latino Plaintiffs. (VL Doc. 51 at 4-7; VL Doc. 52 at 15-16.) Plaintiff Mead contends that she has standing as an individual, Plaintiff Voto Latino contends that it has standing in its own right as an organization, and Plaintiffs Task Force and Down Home NC contend that they satisfy either standing in their own right or representational standing. (VL Doc. 45 at 16-17.) Intervenors argue that the organizational Voto Latino Plaintiffs' claims are generalized grievances and that the organizations have not demonstrated that a diversion of resources "has yet to occur," and that they "may never occur." (VL Doc. 51 at 7, Doc. 52 at 15, Doc. 60 at 2-3.) Moreover, Legislative Intervenors maintain that Plaintiff Mead's injury is speculative because it involves "some *potential* SDR issue in a *future* election where she *might* utilize SDR." (VL Doc. 52 at 16 (emphasis in original).)

Legislative Intervenors also challenge the Article III standing of Party Plaintiffs. (DNC Doc. 52 at 7-8.) Party Plaintiffs argue that they have standing in their own right and representational standing. (DNC Doc. 58 at 14 n.5.) Legislative Intervenors argue that Party Plaintiffs "utterly failed to allege

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000428

that any of the same-day registration provisions challenged in S.B. 747 create[s] specific harm to their organizations or Democratic voters," such that the claims are speculative, generalized grievances. (DNC Doc. 52 at 8.)

"No lawsuit may proceed in federal court unless the party seeking relief has Article III standing." Carolina Youth Action Project v. Wilson, 60 F.4th 770, 778 (4th Cir. 2023). The basic standing requirements are that a plaintiff must show: (1) he has suffered an "injury in fact," (2) the injury is "fairly . . . trace[able] to the challenged action of the defendant," and (3) it is "likely" that "the injury will be redressed by a favorable decision." Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992) (citations and internal quotation marks omitted) (alteration and omission in original). In multi-plaintiff cases, "[a]t least one plaintiff must have standing to seek each form of relief requested in the complaint." Town of Chester v. Laroe Estates, Inc., 137 S. Ct. 1645, 1651 (2017). If there is one such plaintiff, the court need not consider whether other plaintiffs have standing to seek that same form of relief. Carolina Youth Action, 60 F.4th at 778.

The injury in fact "requirement ensures that plaintiffs have a 'personal stake in the outcome of the controversy.'" Kenny v. Wilson, 885 F.3d 280, 287 (4th Cir. 2018) (quoting Warth v. Seldin, 422 U.S. 490, 498 (1975)). An injury in fact is "'an invasion of a legally protected interest' that is 'concrete and

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000429

particularized' and 'actual or imminent, not conjectural or hypothetical.'" Spokeo, Inc. v. Robins, 578 U.S. 330, 339 (2016) (quoting Lujan, 504 U.S. at 560). "An allegation of future injury may suffice if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur." Susan B. Anthony List v. Driehaus, 573 U.S. 149, 158 (2014) (citation and internal quotation marks omitted). When plaintiffs seek prospective relief, they must establish an ongoing or imminent injury in fact. O'Shea v. Littleton, 414 U.S. 488, 495–96 (1974).

An organizational plaintiff can satisfy the standing requirements in two ways: either injury in its own right, or injury as a representative of its members. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181, 199 (2023). To have standing in its own right, the organization may show that an alleged illegal action "perceptibly impair[s]" its ability to carry out its mission, including by draining the organization's resources. Havens Realty Corp. v. Coleman, 455 U.S. 363, 379 (1982). An organization does not have standing, however, where injury results "not from any actions taken by [the defendant], but rather from the [organization's] own budgetary choices," such as "educating members, responding to member inquiries, or undertaking litigation in response to legislation." Lane v. Holder, 703 F.3d 668, 674–75 (4th Cir. 2012) (internal quotation marks and citation omitted) (finding lack of standing

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000430
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 28 of 94

where resource drain resulted from "inquiries [from members] into the operation and consequences of interstate handgun transfer provisions").

Some voter advocacy groups in this district have established standing on their own behalf under Havens Realty and Lane where they allege a link between their mission and the alleged illegal act, as well as resource expenditures beyond merely educating voters and responding to inquiries. Democracy N.C. v. N.C. State Bd. of Elections, 476 F. Supp. 3d 158, 182-83 (M.D.N.C. 2020) (finding standing where organization would divert resources to assist voters with registering to vote before 25-day deadline); Action NC v. Strach, 216 F. Supp. 3d 597, 617-18 (M.D.N.C. 2016) (finding standing where organization would divert limited time and resources to assist voters with registration after DMV allegedly failed to transmit voter registration information to NCSBE); N.C. State Conf. of the NAACP v. N.C. State Bd. of Elections, 283 F. Supp. 3d 393, 402-03 (M.D.N.C. 2017) (finding standing where organization would divert resources to combat "*en masse* voter challenges"). Moreover, a political party may have standing in its own right where a law "threatens and inhibits" the party's efforts to register eligible voters and requires diverting resources to cure ballot defects. Democratic Party of Va. v. Brink, 599 F. Supp. 3d 346, 355 (E.D. Va. 2022) (citing Crawford v. Marion Cnty. Election Bd., 472 F.3d 949, 951 (7th Cir. 2007)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000431
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 29 of 94

(Posner, J.), aff'd, 553 U.S. 181 (2008)).

To represent its members, rather than have injury in its own right, the organization must demonstrate that "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." Students for Fair Admissions, 600 U.S. at 199 (quoting Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 343 (1977)).

Standing is not "dispensed in gross"; instead, the court must consider standing with respect to the requested relief. Town of Chester, 581 U.S. at 439. The court will first consider Plaintiffs' request to enjoin the enforcement of the undeliverable mail provision — i.e., relief that all Plaintiffs join in seeking. It will then turn to Party Plaintiffs' other requested relief.

Plaintiff Voto Latino alleges that its mission is "engag[ing], empower[ing], and educat[ing] its core constituency of Latinx communities throughout the country to ensure that they are enfranchised and included in the democratic process." (VL Doc. 1 ¶ 17.) Voto Latino anticipates spending approximately $1 million during the 2024 election cycle in North Carolina, including on registering new voters through same-day registration. (Id. ¶ 18.) It contends that its mission will be frustrated because it

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000432
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 30 of 94

will divert resources ordinarily spent on issue advocacy toward encouraging eligible voters to register prior to early voting to avoid the risk of failing address verification. (Id. ¶ 19.) Further, Voto Latino contends that it will spend more resources (1) reaching out to voters to encourage them to provide a mailing address where they can receive mail as a second address, (2) registering more voters to account for those who will be erroneously not counted, and (3) contacting voters whose registrations were ultimately denied to get them registered again. (VL Doc. 51-4 at 53:24-55:1.) Moreover, Voto Latino contends that "thousands of eligible voter constituents that Voto Latino plans to assist in 2024" face an "extremely high risk" that they will be disenfranchised because of the undeliverable mail provision. (VL Doc. 1 ¶ 21.)

Plaintiff Voto Latino's allegations are sufficient to establish standing in its own right at this stage. As alleged, erroneous disenfranchisement of SDR voters would hinder Voto Latino's mission of registering eligible voters and engaging in voter advocacy. See League of Women Voters of S.C. v. Andino, 497 F. Supp. 3d 59, 75-76 (D.S.C. 2020) (finding organizational standing where state removed notice-and-cure procedure for absentee ballots and thus impaired the organization's mission to register voters). Moreover, Voto Latino sufficiently alleges resource expenditures required to address the change in law with

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000433
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 31 of 94

prospective same-day registrants. See Democracy N.C., 476 F. Supp. 3d at 182 (finding organizational standing where an organization would have to divert resources to warn voters about the risks of absentee voting and where efforts spent encouraging voter participation would be obviated by inadvertent disenfranchisement). The court further finds that Voto Latino's alleged injury is traceable to the undeliverable mail provision and would be redressable by the requested relief. Lujan, 504 U.S. at 560–61. As a result, Voto Latino has standing as an organization.

Because Plaintiff Voto Latino has standing to pursue this relief, the court need not determine the standing of the other Voto Latino Plaintiffs. Carolina Youth Action, 60 F.4th at 778. Nevertheless, it is likely that Down Home NC would have representational standing as well. Down Home NC has identified at least one member who would have standing. Summers v. Earth Island Inst., 555 U.S. 488, 498–99 (2009) (requiring an organization to name affected members, unless all members of the organization are harmed). This individual has allegedly resided in a hotel in Alamance County since a fire destroyed her home. (VL Doc. 60-3 at 67:6-8.) Down Home NC contends that she is unable to stay in the same room to establish residency, (id. at 67:6-10), and that she intends to use same-day registration in 2024, (id. at 76:4). Because a person's right to vote is "individual and personal in

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000434

nature," Reynolds v. Sims, 377 U.S. 533, 561 (1964), "'voters who allege facts showing disadvantage to themselves as individuals have standing to sue' to remedy that disadvantage." Gill v. Whitford, 138 S. Ct. 1916, 1920 (2018) (quoting Baker v. Carr, 369 U.S. 186, 206 (1962)). This individual identified by Down Home NC would have standing, as she faces a concrete and imminent risk of harm because she is unlikely to have a stable address where she can receive mail at least by early voting in February 2024. See Lujan, 504 U.S. at 564 (finding no standing upon mere "some day" intentions without "any description" of concrete plans); N.C. State Conf. of the NAACP, 283 F. Supp. 3d at 404 (finding standing where individual faced "real and imminent risk" of being unlawfully removed from voter rolls by "systematic, *en masse*" voter challenges). This individual thus has a concrete risk of having her vote not counted after she same-day registers. Moreover, the interests Down Home NC seeks to protect are germane to its stated purpose of "ensur[ing] that working-class North Carolinians . . . have access to the franchise." (VL Doc. 44-3 ¶ 5.) Finally, this individual's participation is not required in this lawsuit. Students for Fair Admissions, 600 U.S. at 199 (quoting Hunt, 432 U.S. at 343)). Accordingly, Down Home NC has satisfied the requirements of representational standing. Id.

In the other lawsuit, North Carolina Democratic Party's mission is to "elect Democratic candidates to public office

AMERICAN OVERSIGHT

throughout North Carolina." (DNC Doc. 1 ¶ 25.) The Democratic National Committee's organizational purpose is to "communicate the Democratic Party's position and messages on issues; protect the legal rights of voters; and aid and encourage the election of Democratic candidates at the national, state, and local levels, including by persuading and organizing citizens not only to register to vote as Democrats, but also to cast their votes for Democratic candidates." (Id. ¶ 23.) Party Plaintiffs contend that it is "exceedingly likely" that one or more of the 2.4 million registered Democratic Party members in North Carolina will be removed from the voting rolls. (DNC Doc. 1 ¶ 26.) Of note, however, Party Plaintiffs do not name any specific members. Party Plaintiffs also contend they are harmed as organizations because the law will "require each organization to expend and divert funds and resources that they would otherwise spend on voter outreach and mobilization efforts . . . in order to ensure that those voters are not erroneously prevented from voting." (Id. ¶ 27.) Moreover, they allege that the "likely erroneous denial of Democratic voters' right to cast a ballot and have it counted . . . undermin[es] the two organizations' abilities to succeed in getting Democrats elected." (Id.) Party Plaintiffs represented that 880 of the 2,000 voters who required a second address verification card in 2020 were registered Democrats. (DNC Doc. 62 at 13:11-12.)

For much of the same reasons as for Plaintiff Voto Latino,

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000436
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 34 of 94

Party Plaintiffs have standing on their own behalf to seek relief as to the undeliverable mail provision because they have adequately alleged a frustration of their mission of registering voters and a diversion of resources as a result of the undeliverable mail provision. See Brink, 599 F. Supp. 3d at 355; Andino, 49 F. Supp. 3d at 75-76; Democracy N.C., 476 F. Supp. 3d at 182.

Party Plaintiffs seek additional relief that Voto Latino does not. This includes "requiring same-day registrants . . . to produce documentation that other registrants need not produce; [] denying a same-day registrant's application to register without providing that individual with sufficient notice and a meaningful opportunity to be heard; [] applying different voting-registration standards, practices, or procedures to different individuals in the same county; and [] failing to provide a free-access system by which same-day registrants can track their retrievable ballots." (DNC Doc. 6.) The parties have not made any particularized arguments as to Party Plaintiffs' Article III standing for these forms of relief. The court nevertheless finds at this stage that Party Plaintiffs' standing to seek these forms of relief is no different than it is for the undeliverable mail provision, as each would redress the injuries to the missions and the resource diversions alleged above. The court will address State Board Defendants' and Intervenors' positions on statutory standing under the Civil Rights Act and the Help America Vote Act below.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000437

Having found the requisite Article III standing, the court will turn to the merits of the motions.

B. Preliminary Injunction Standard

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). Such an injunction "is an extraordinary remedy intended to protect the status quo and prevent irreparable harm during the pendency of a lawsuit." Di Biase v. SPX Corp., 872 F.3d 224, 230 (4th Cir. 2017). To demonstrate a likelihood of success on the merits, "[a] plaintiff need not establish a certainty of success, but must make a clear showing that he is likely to succeed at trial." Id.

Party Plaintiffs alone raise two statutory claims that reach S. 747's undeliverable mail provision as well as other provisions of state election law. Before the court "can address the constitutional arguments," it must "attempt to resolve" the motions "on non-constitutional grounds first, if possible." Nat'l Lab. Rels. Bd. v. Enter. Leasing Co. Se., LLC, 722 F.3d 609, 613 (4th Cir. 2013); Ashwander v. Tenn. Valley Auth., 297 U.S. 288, 347 (1936) (Brandeis, J., concurring). The court thus turns to these statutory claims first.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000438
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 36 of 94

C. Civil Rights Act

Party Plaintiffs alone argue that S. 747 violates the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(A), by applying different registration standards, practices, or procedures to different groups of individuals in the same county. (DNC Doc. 7 at 21.) Party Plaintiffs contend that S. 747 treats SDR and non-SDR voters disparately by requiring SDR voters to provide documentary proof of residency; by providing SDR voters only one mail card for address verification, instead of two; and by not providing notice and opportunity to be heard to SDR voters who are found ineligible to vote by the State Board. (Id. at 22-23.) Party Plaintiffs seek an order enjoining these differences in treatment. (DNC Doc. 6.)

In response, State Board Defendants argue that the CRA is only enforceable through 42 U.S.C. § 1983 and that Party Plaintiffs must, but did not, bring their CRA claim pursuant to that statute. (DNC Doc. 53 at 15.) Intervenors contend that Party Plaintiffs are unlikely to show that they have a private right of action to enforce their claims under 52 U.S.C. § 10101. (DNC Doc. 52 at 8-9; DNC Doc. 51 at 12-13.) Moreover, State Board Defendants and Intervenors contend that SDR and non-SDR are "inherently different" types of registration and thus require different procedures for each. (Id.; DNC Doc. 51 at 13-14 ("[T]his is not a case where different standards are applied to individuals based

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000439
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 37 of 94

on race, age, gender, neighborhood of residence, profession, etc."); DNC Doc. 52 at 10.) They argue, in addition, that Party Plaintiffs' interpretation of the CRA would put in jeopardy all requirements which apply to a set of voters, including differences between procedures for vote-by-mail and in-person voting. (DNC Doc. 53 at 16; DNC Doc. 52 at 10; DNC Doc. 51 at 14-16.)

Whether the CRA creates a private right of action is a question of "statutory standing." CGM, LLC v. BellSouth Telecommc'ns, Inc., 664 F.3d 46, 51-52 (4th Cir. 2011). Statutory standing "applies only to legislatively-created causes of action" and concerns "whether a statute creating a private right of action authorizes a particular plaintiff to avail herself of that right of action." Id. (internal quotation marks omitted).

Courts have disagreed as to whether the CRA provides a private right of action. McKay v. Thompson, 226 F.3d 752, 756 (6th Cir. 2000) (no private right of action, but decided before Gonzaga Univ. v. Doe, 536 U.S. 273 (2002)); Schwier v. Cox, 340 F.3d 1284, 1297 (11th Cir. 2003) (private right of action); Vote.org v. Callanen, 89 F.4th 459, 474-78 (5th Cir. 2023) (private right of action). The Fourth Circuit has assumed without deciding that a private right of action existed. Washington v. Finlay, 664 F.2d 913, 926 (4th Cir. 1981). And the Third Circuit reversed a district court that had found no private right of action, but the Supreme Court subsequently vacated the decision and ordered that the case be

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000440

dismissed as moot. Migliori v. Cohen, 36 F.4th 153 (3d Cir. 2022), cert. granted, judgment vacated sub nom. Ritter v. Migliori, 143 S. Ct. 297 (2022).

This statutory standing question would be properly considered on a motion to dismiss for failure to state a claim upon which relief can be granted. CGM, LLC, 664 F.3d at 51-52. Unlike a jurisdictional question that the court must answer, the statutory standing question here may be avoided where there are alternative grounds upon which to resolve the motion. Willner v. Dimon, 849 F.3d 93, 102 n.1 (4th Cir. 2017) (avoiding alternative bases to dismiss "in view of the resolution of th[e] case on other bases"). Such alternative grounds exist here to find that Party Plaintiffs are unlikely to succeed on the merits.[23]

The CRA states in part:

> No person acting under color of law shall . . . in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar subdivision who have been found by State officials to be qualified to vote[.]

52 U.S.C. § 10101(a)(2)(A) (previously codified as 42 U.S.C. § 1971). In Rokita, the plaintiffs argued that the photo ID requirement violated the CRA because all voters, namely absentee

[23] For similar reasons, the court need not address Party Plaintiffs' lack of citation to 42 U.S.C. § 1983, as raised by State Board Defendants. (DNC Doc. 53 at 15.)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000441

voters, did not need to present a photo ID. Ind. Democratic Party v. Rokita, 458 F. Supp. 2d 775, 839 (S.D. Ind. 2006), aff'd sub nom. Crawford v. Marion Cnty. Election Bd., 472 F.3d 949 (7th Cir. 2007) (Posner. J.), aff'd, 553 U.S. 181 (2008). The court rejected the plaintiffs' argument, in part, because the CRA is not intended to prevent states from providing different procedures for different methods of voting. Id. at 839-40. The court reasoned that because "absentee voting is an *inherently* different procedure from voting in person," the State must apply different "standards, practices, or procedures" to these two groups of voters. Id. at 840 (emphasis in original). The court further observed that prohibiting such differences would be a "radical departure from settled law." Id.

Here, Party Plaintiffs cite no case in support of their construction and no persuasive limiting principle that would avoid the unintended consequences identified in Rokita and by State Board Defendants and Intervenors. Party Plaintiffs urge that the CRA under their theory would only stop differential treatment "in determining whether any individual is qualified under State law or laws to vote," rather than different methods of registration or voting. (DNC Doc. 58 at 12 (quoting § 10101(a)(2)(A).) Even if this were a meaningful distinction, Party Plaintiffs have not shown that the CRA nevertheless undercuts North Carolina's ability to employ different procedures for determining one's qualifications

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000442
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 40 of 94

to vote depending on how one registers, without due regard to the practical reality that offering various methods of registration — many of which may be less burdensome on voters — may require different procedures.

Moreover, Party Plaintiffs have not established a likelihood of success in demonstrating that a court may properly consider SDR registrants as a class under the CRA when comparing standards, practices, and procedures applied between "any individual" and "other individuals." See 52 U.S.C. § 10101(a)(2)(A). While the parties have not argued, and this court thus does not hold, that the CRA applies only to certain protected classes, Party Plaintiffs have not fairly raised any allegation of discrimination against a protected class, stating only in a footnote that "[h]olding same-day registrants to a higher standard is [] likely to disproportionately disenfranchise African American voters." (DNC Doc. 7 at 23 n.8; see also DNC Doc. 52 at 10 n.8 (demonstrating Legislative Intervenors' intent to move to dismiss CRA claim for failure to allege or prove race discrimination).) Party Plaintiffs' lack of authority raises considerable doubt as to their likelihood of success in showing that the CRA protects SDR voters. Consequently, the court will deny Party Plaintiffs' motion for injunctive relief under the CRA.

D. Help America Vote Act

Party Plaintiffs argue, pursuant to the Help America Vote

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000443

Act, 52 U.S.C. § 21082(a)(5), that S. 747 does not provide an individual who casts a provisional ballot with a "free access system" to track if a provisional ballot is counted and "written information" about a tracking system. (DNC Doc. 7 at 24.) Party Plaintiffs contend that the retrievable ballot under S. 747 is a "provisional ballot" under HAVA. (Id.) They thus seek an order requiring that State Board Defendants "provide a free-access system by which same-day registrants can track their retrievable ballots." (DNC Doc. 6.)

In response, State Board Defendants argue that HAVA is only enforceable through 42 U.S.C. § 1983 and that that Party Plaintiffs must, but did not, bring their HAVA claim pursuant to that statute. (DNC Doc. 53 at 17.) Legislative Intervenors contend that Party Plaintiffs are unlikely to show that they have a private right of action to enforce their claims under 52 U.S.C. § 21082. (DNC Doc. 52 at 8-9.) Moreover, State Board Defendants and Intervenors argue that a retrievable ballot under S. 747 is not a provisional ballot that triggers HAVA's requirements, and that North Carolina is otherwise in compliance with HAVA. (DNC Doc. 53 at 18-20; DNC Doc. 52 at 9; DNC Doc. 51 at 10-11.)

As with the CRA, courts have disagreed as to whether HAVA provides a private right of action. Am. Civil Rights Union v. Phila. City Comm'rs, 872 F.3d 175, 181 (3d Cir. 2017) ("HAVA does not include a private right of action that allows aggrieved parties

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000444

to sue nonconforming states."); Crowley v. Nevada ex rel. Nev. Sec'y of State, 678 F.3d 730, 735 (9th Cir. 2012) (recognizing there is no private right of action under the HAVA, and foreclosing a section 1983 suit)); Colon-Marrero v. Velez, 813 F.3d 1, 22 (1st Cir. 2016) (permitting private right of action through section 1983); Sandusky Cnty. Democratic Party v. Blackwell, 387 F.3d 565, 572 (6th Cir. 2004) (same). For the same reasons stated above for the CRA, the court need not address this statutory standing question because Party Plaintiffs' HAVA claim can be resolved on alternative grounds. See CGM, LLC, 664 F.3d at 51-52; Willner, 849 F.3d at 102 n.1 (avoiding alternative bases to dismiss "in view of the resolution of th[e] case on other bases").[24]

In relevant part, HAVA provides:

> The appropriate State or local election official shall establish a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.

52 U.S.C. § 21082(a)(5)(B). HAVA also provides that when an individual casts a provisional ballot, the "election official shall give the individual written information" about the tracking system. Id. § 21082(a)(5)(A). The provisions Party Plaintiffs

[24] Similarly, the court need not address State Board Defendants' argument regarding Party Plaintiffs' lack of citation to 42 U.S.C. § 1983. (DNC Doc. 53 at 17.)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000445

rely upon apply to an individual who "declares" that he is a "registered voter" but whose name does not appear on the official list of eligible voters. 52 U.S.C. § 21082(a).

In North Carolina, a "'[p]rovisional official ballot' means an official ballot that is voted and then placed in an envelope that contains an affidavit signed by the voter certifying identity and eligibility to vote." N.C. Gen. Stat. § 163-165(6). By contrast, a retrievable ballot is one that a voter "shall cast . . . and then shall deposit [] in the ballot box or voting system in the same manner as if such box or system was in use in a precinct on election day." N.C. Gen. Stat. § 166.45 (as amended by section 27.(c) and recodified by section 1.(b) of 2023 N.C. Sess. Laws 140). According to NCSBE Numbered Memo 2023-04, a same-day registrant who does not have a HAVA document — i.e., one who does not complete an SDR registration — may vote a provisional ballot instead of a retrievable ballot. NCSBE Numbered Memo 2023-04, at 9 (Oct. 12, 2023), https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2023/Numbered%20Memo%202023-04%20Provisional%20Ballots%20and%20Canvass%20Procedures.pdf (last accessed Jan. 2, 2023).

Here, Party Plaintiffs have not demonstrated that they are likely to succeed in showing that this provision applies to SDR voters. In their reply, Party Plaintiffs argue that SDR voters are provisional voters because they "declare they are registered

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000446
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 44 of 94

upon turning in a completed registration form" and "will not immediately appear on the list of eligible voters." (DNC Doc. 58 at 12.) While that may be one technical, if not strained, similarity between provisional voters and SDR voters, North Carolina law otherwise treats these voters differently. See, e.g., N.C. Gen. Stat. § 166.45 (requiring retrievable ballots be placed in ballot box); NCSBE Numbered Memo 2023-04, supra (outlining procedures applicable to provisional ballots to determine eligibility and to count the ballot). Moreover, Party Plaintiffs do not argue that North Carolina is otherwise out of compliance with HAVA. As a consequence, Party Plaintiffs' motion for preliminary injunction pursuant to HAVA will be denied.

E. Fourteenth Amendment Claims

1. Due Process and Anderson-Burdick

All Plaintiffs challenge portions of section 10.(a) of S. 747 (codified as N.C. Gen. Stat. § 163-82.6B) on procedural due process grounds. The parties dispute which test should apply. Plaintiffs argue that the court should apply the test set out in Mathews v. Eldridge, 424 U.S. 319 (1976). (DNC Doc. 7 at 15; VL Doc. 45 at 19.) They argue, alternatively, that even if the court were to apply the test provided by Anderson v. Celebrezze, 460 U.S. 780 (1983) and Burdick v. Takushi, 504 U.S. 428 (1992), commonly called "Anderson-Burdick," they should prevail anyway. (DNC Doc. 58 at 5-6; VL Doc. 59 at 24-29.)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000447

To prevail on a claim for a procedural due process deprivation under Eldridge, a plaintiff must demonstrate: "(1) a cognizable liberty or property interest; (2) the deprivation of that interest by some form of state action; and (3) that the procedures employed were constitutionally inadequate." Accident, Injury & Rehab., PC v. Azar, 943 F.3d 195, 203 (4th Cir. 2019) (internal quotation marks omitted). "To assess the constitutional adequacy of an opportunity to be heard, courts consider (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of that interest given the procedures used, as well as the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest," id., "including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail," Eldridge, 424 U.S. at 335.

State Board Defendants concede that if Eldridge were the proper test, the undeliverable mail provision would be unconstitutional. (DNC Doc. 53 at 10-11; VL Doc. 54 at 9-10.) They, along with Intervenors, contend, however, that the Anderson-Burdick test is the proper framework for analyzing the law. (DNC Doc. 53 at 11; VL Doc. 54 at 10; VL Doc. 52 at 16 n. 12; VL Doc. 51 at 9-10.) Under this test, regulations that impose a severe burden on the right to vote must be "narrowly drawn to advance a state interest of compelling importance." Burdick, 504 U.S. at

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000448

434 (quoting Norman v. Reed, 502 U.S. 279, 289 (1992)). Non-severe burdens, by contrast, are subject to Anderson-Burdick's more flexible balancing standard, under which this court must

> weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights."

Id. (quoting Anderson, 460 U.S. at 789). Within Anderson-Burdick's balancing standard, the "rigorousness of [the court's] inquiry into the propriety of a state election law depends" upon the severity of the burden imposed. Id. Accordingly, Anderson-Burdick balancing operates on a sliding scale: the greater the burden imposed, the more important a state's justification must be. Id.

Voto Latino contends that applying Anderson-Burdick to this case would improperly extend a test fashioned for equal protection claims to procedural due process claims. (VL Doc. 59 at 19.) To be sure, Anderson was an equal protection-based right-to-vote case. 460 U.S. at 783, 786 n.7 (reviewing finding of equal protection violation and relying on cases that apply the "'fundamental rights' strand of equal protection analysis"). Crawford v. Marion County Election Board, 553 U.S. 181 (2008), too, which involved a challenge to Indiana's photo ID requirement, was an equal protection challenge, at least at the district court

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000449
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 47 of 94

level. See Rokita, 458 F. Supp. 2d at 830-31. While the Supreme Court has never formally foreclosed the application of Eldridge in the voting rights context, its cases have not cabined the Anderson-Burdick analysis to equal protection rights under the Fourteenth Amendment. See, e.g., Burdick, 504 U.S. 428 (repeatedly referring to rights under the "First and Fourteenth Amendments"); Crawford, 553 U.S. at 204 (Scalia, J., concurring) ("To evaluate a law respecting the right to vote — whether it governs voter qualifications, candidate selection, or the voting process — we use the approach set out in Burdick v. Takushi[.]" (emphasis added)); see also McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 345 (1995) (not applying Anderson-Burdick where the statute at issue "[did] not control the mechanics of the electoral process"). Indeed, circuit courts have applied Anderson-Burdick to cases across the election litigation spectrum. See, e.g., Fusaro v. Howard, 19 F.4th 357, 364 (4th Cir. 2021) (applying Anderson-Burdick to Free Speech Clause claim where resident sought access to list of registered voters); Weber v. Shelley, 347 F.3d 1101, 1105-07 (9th Cir. 2003) (analyzing a due process challenge to a county's use of touch screen voting systems under the Anderson-Burdick framework); Obama for Am. v. Husted, 697 F.3d 423, 430 (6th Cir. 2012) (concluding that Anderson-Burdick serves as "a single standard for evaluating challenges to voting restrictions"); Acevedo v. Cook Cnty. Officers Electoral Bd., 925

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000450
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 48 of 94

F.3d 944, 948 (7th Cir. 2019) (concluding that Anderson-Burdick applies "to all First and Fourteenth Amendment challenges to state election laws").

The right to vote is fundamental. See, e.g., Burdick, 504 U.S. at 433. "Other rights, even the most basic, are illusory if the right to vote is undermined." Wesberry v. Sanders, 376 U.S. 1, 17 (1964). The Constitution delegates to the states the manner of conducting elections, U.S. Const. art. I, § 4, cl. 1, and the Supreme Court has recognized that "[t]here must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." Storer v. Brown, 415 U.S. 724, 730 (1974). Acknowledging the importance of both sides of this balance, three circuit courts have recently stated that Anderson-Burdick is the proper framework even where a plaintiff in a voting rights case alleges a procedural due process violation under Eldridge. Richardson v. Tex. Sec'y of State, 978 F.3d 220, 233 (5th Cir. 2020) (on motion to stay preliminary injunction); Ariz. Democratic Party v. Hobbs, 18 F.4th 1179, 1195 (9th Cir. 2021) (on review of entry of preliminary injunction); New Ga. Project v. Raffensperger, 976 F.3d 1278, 1282 (11th Cir. 2020) (on motion to stay preliminary injunction). Moreover, the Ninth and Eleventh Circuits have suggested that Anderson-Burdick may "conceptually duplicat[e]" Eldridge to some extent. Raffensperger, 976 F.3d at

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000451
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 49 of 94

1282; Hobbs, 18 F.4th at 1195 ("To the extent that the Eldridge test would strike a different balance, we do not think that the Supreme Court's extensive jurisprudence on challenges to voting restrictions may be discarded merely by raising the same challenge under the banner of procedural due process."); see also Rivera-Powell v. N.Y.C. Bd. of Elections, 470 F.3d 458, 468-69 (2d Cir. 2006) (Sotomayor, J.) (denying Anderson-Burdick claim after finding that state had provided adequate notice and opportunity to be heard under Due Process Clause). But see Richardson, 978 F.3d at 235 (suggesting that Eldridge would "inevitably result in courts' 'weigh[ing] the pros and cons of various balloting systems,' thereby 't[ying] the hands of States seeking to assure that elections are operated equitably and efficiently'" (internal citations omitted)).

The court finds the reasoning of these cases as to the application of Anderson-Burdick persuasive. See also Democratic Nat'l Comm. v. Wisconsin State Legislature, 141 S. Ct. 28 (Mem) (2020) (Gorsuch, J., concurring) (expressing skepticism in judicial intervention in election regulations because "[l]egislatures enjoy far greater resources for research and factfinding . . . than usually can be mustered in litigation between discrete parties before a single judge"); Crawford, 553 U.S. at 210 (Souter, J., dissenting) (endorsing Anderson-Burdick for its consideration of "the legitimacy of interests" in voting

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000452

rights and in election regulation).

To the extent district courts in this circuit have applied Eldridge in the election regulation context, this court is cognizant that some of those district courts did not benefit from the development of the circuit guidance that this court now enjoys, and those decisions were also at a preliminary stage. See Democracy N.C., 476 F. Supp. 3d at 226 (applying Eldridge to preliminarily enjoin absentee voting regulation and refraining from applying Anderson-Burdick); Andino, 497 F. Supp. 3d at 76–77 (applying both Eldridge and Anderson-Burdick on preliminary injunction); Brink, 599 F. Supp. 3d at 361 (applying Anderson-Burdick on preliminary injunction and rejecting application of Eldridge after analyzing Richardson, Raffensperger, and Hobbs).

Voto Latino Plaintiffs rely on three Fourth Circuit cases to support its argument for applying Eldridge, (VL Doc. 59 at 18), but none is on point. Barefoot v. City of Wilmington, 306 F.3d 113 (4th Cir. 2002), involved a land annexation dispute, not an election regulation. Id. at 124 ("Appellants do not have the right to vote on annexation."). The Fourth Circuit's observation that the Due Process Clause "requires fair and adequate procedures" for voting was set out in a footnote and was in reference to voting on annexation, not political elections. Id. at 124 n.5. In any event, the court did not discuss the appropriate test to apply. Id. Voto Latino Plaintiffs' other cases fare no better, as Kirk

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000453
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 51 of 94

v. Comm'r of Soc. Sec. Admin., 987 F.3d 314 (4th Cir. 2021), was an Eldridge case regarding the Social Security Administration's redetermination procedures for benefits, and Halcomb v. Ravenell, 992 F.3d 316 (4th Cir. 2021), was an Eldridge challenge to the procedural protections applicable to a prisoner's security detention hearing. Neither was an election case.

Consequently, the court will apply Anderson-Burdick to Plaintiffs' due process claims.[25]

2. Undeliverable Mail Provision

a. Likelihood of Success on the Merits

First, the court considers Plaintiffs' challenge to the undeliverable mail provision. Voto Latino Plaintiffs contend that a single address verification card is "inherently error-prone and not a reliable indicator of non-residency or ineligibility." (VL Doc. 45 at 20.) In particular, Voto Latino Plaintiffs note that errors beyond the fault of the voter, namely poll worker and U.S. Postal Service error, will result in erroneous disenfranchisement. (Id. at 21-26.) Voto Latino Plaintiffs also note that voters who move after casting a same-day ballot may risk erroneous disenfranchisement because that voter is entitled under § 163-55(a) to vote at a prior residence if relocation occurs within 30

[25] Though Anderson-Burdick is the test applied here, for the reasons stated below, the outcome of Plaintiffs' constitutional claims would not differ under Eldridge.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000454

days of an election, but would not be reachable with a non-forwardable address verification card. (Id. at 25.)

Party Plaintiffs similarly argue that the single-card address verification process creates a substantial risk that an eligible SDR voter's ballot will be erroneously not counted. (DNC Doc. 7 at 17.) In particular, they argue that there is no notice or opportunity to be heard before a same-day registrant's ballot is removed from the count because, by definition, the card is not delivered to the voter. (Id. at 17-18.)

State Board Defendants acknowledge that it is a "close question" but maintain that the provision "passes muster" under Anderson-Burdick. (DNC Doc. 53 at 12; VL Doc. 54 at 11.) They argue that the burdens imposed by the undeliverable mail provision should be considered "holistically in light of other means by which voters may register." (DNC Doc. 53 at 13-14; VL Doc. 54 at 12.) The State's interest in the undeliverable mail provision, they argue, is "in ensuring only eligible ballots are counted in an election." (DNC Doc. 53 at 13.)

Legislative Intervenors argue that S. 747's use of a single card on which to preclude a ballot is justified because the limitation on time between SDR and the canvass precludes effective administration of a two-card system. (DNC Doc. 52 at 13.) Moreover, they argue that S. 747 "(1) preserv[es] the integrity of the election process; and (2) instill[s] confidence in the fairness

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000455
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 53 of 94

of the election." (DNC Doc. 52 at 17.) In this respect, they contend that the law "ensure[s] that registrant[s] live in the precinct within which they seek to vote." (Id. at 18.) They also argue that North Carolina has a "legitimate interest" in ensuring "that the card is returned before the end of the canvass" and that the undeliverable mail provision is designed to bring SDR voters into parity with other voters. (VL Doc. 52 at 14; VL Doc. 61 at 66:13-15.)

Party Intervenors argue that Plaintiffs have not shown a constitutional injury because, in their view, the alleged error of approximately 1 percent is not by design and thus "carries no constitutional significance." (VL Doc. 51 at 12-13.) Party Intervenors contend that the State's "compelling interest" is in "ensuring verification of each applicant's address, which is fundamental to determining a voter's eligibility," (DNC Doc. 51 at 7-8), and in "discouraging and preventing fraud," (VL Doc. 51 at 11).[26]

[26] Plaintiffs have not argued that the undeliverable mail provision burdens voters by erroneously rejecting SDR voters' registrations. Voto Latino Plaintiffs seek an order "enjoining enforcement of the portion of § 163-82.6B(d) (the 'Undeliverable Mail Provision')" which provides that if an SDR voter fails address verification with a single card, "the county board shall not register the applicant and shall retrieve the applicant's ballot and remove that ballot's votes from the official count.'" (VL Doc. 44.) Whether "not register[ing] the applicant" creates an unconstitutional burden has not been briefed and is consequently not considered on these motions.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000456

i. Burden on the Right to Vote

The court must first determine whether Plaintiffs are likely to show that the alleged burdens are severe, minimal, or "in between these two extremes." Obama for Am., 697 F.3d at 429. Election regulations that impose a "severe" burden are subject to strict scrutiny. Pisano v. Strach, 743 F.3d 927, 933 (4th Cir. 2014). Such "severe" burdens are generally "invidiously" discriminatory and may be "irrelevant to the voter's qualifications." Crawford, 553 U.S. at 189 (Stevens, J.) (citing Harper v. Va. Bd. of Elections, 383 U.S. 663, 666-67 (1966)). By contrast, "'evenhanded restrictions that protect the integrity and reliability of the electoral process itself' are not invidious and satisfy the standard set forth in Harper." Id. at 189-90 (quoting Anderson, 460 U.S. at 788 n.9). There is no "litmus test for measuring the severity of a burden that state law imposes on . . . an individual voter, or a discrete class of voters." Id. at 191. The court must consider both the "character and magnitude" of the alleged burden on voting, Burdick, 504 U.S. at 434 (quoting Anderson, 460 U.S. at 789), and then "make the 'hard judgment' that our adversary system demands," Crawford, 553 U.S. at 190 (Stevens, J.). Courts generally evaluate the burden from the perspective of all affected voters, "within the landscape of all opportunities that [the State] provides to vote." Mays v. LaRose, 951 F.3d 775, 784-85 (6th Cir. 2020); see also Crawford, 553 U.S.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000457

at 198-99 (Stevens, J.) (reviewing burden on "most voters" where photo ID law applied to in-person voters); Tully v. Okeson, 977 F.3d 608, 617 (7th Cir. 2020) (reviewing burden on voters who could not vote absentee in light of "Indiana's electoral scheme as a whole").

In Northeast Ohio Coalition for the Homeless v. Husted, 696 F.3d 580 (6th Cir. 2012) (per curiam), voters who went to the correct polling location and were sent — in error — to a different location by a poll worker, and consequently voted a provisional ballot that would go uncounted, suffered "systemic disqualification" without any notice. Id. at 593 (stating that Ohio rejected more than 14,000 ballots in 2008, 11,000 in 2010, and 1,800 in 2011). The district court found, and the Sixth Circuit affirmed, that this burden was "substantial" and held that the defendants had likely violated the Equal Protection and Due Process Clauses. Id. at 593-95, 598. In affirming the district court, the Sixth Circuit expressed reservations that "[t]he State would disqualify thousands of [] provisional ballots, where the voter's only mistake was relying on the poll-worker's precinct guidance." Id. at 599; see also Stewart v. Blackwell, 444 F.3d 843, 872 (6th Cir. 2006), superseded by 473 F.3d 692 (6th Cir. 2007)[27] (applying strict scrutiny where evidence showed voters in

[27] The Sixth Circuit subsequently granted *en banc* review, thus vacating

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000458
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 56 of 94

counties using punch-card system rather than optical scan equipment were four times as likely not to have their votes counted due to factors out of voter's control).

In Democratic Executive Committee of Florida v. Lee, 915 F.3d 1312 (11th Cir. 2019), challengers argued that Florida's signature match regime for vote-by-mail and provisional ballots violated the First and Fourteenth Amendment. The district court preliminarily ordered the State to provide 48 hours for voters to cure their signature mismatch. Id. at 1315. The defendants moved to stay the injunction, but the Eleventh Circuit denied the request. The court agreed with the district court that Florida lacked "uniform standards for matching signatures" and "qualifications or training for those who engage in the job." Id. at 1319. Observing a "crazy quilt of enforcement," the court noted that errors by election officials and "innocent factors like the writer's body position, writing surface, [and] type of pen" could result in disqualification. Id. at 1320. Even after the State instituted a notice-and-cure process in response to a court order, many voters did not learn that their vote would not be counted "until it was too late to do anything about it." Id. at 1321. Focusing on the burden on vote-by-mail and provisional voters specifically, the

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the panel decision, and then vacated the judgment of the district court as moot after the defendants replaced the challenged voting equipment. 473 F.3d at 693-94.

AMERICAN OVERSIGHT

court had "no trouble" finding that the burden was "at least [] serious." Id. (citing League of Women Voters of N.C. v. North Carolina, 769 F.3d 224, 244 (4th Cir. 2014)).[28] Critically, before the Eleventh Circuit heard an appeal of the injunction on the merits, the State "significantly amended the signature-match provisions at issue in th[e] case," after which the plaintiffs voluntarily dismissed the lawsuit and appellants agreed the appeal was moot. Democratic Exec. Comm. of Florida v. Nat'l Republican Senatorial Comm., 950 F.3d 790, 793 (11th Cir. 2020) (per curiam). The Eleventh Circuit did not vacate the motions panel opinion because its "preliminary nature" precluded it "from having an effect outside that case." Id. at 795.

In Andino, 497 F. Supp. 3d 59 (D.S.C. 2020), challengers argued that South Carolina's signature matching regime violated voters' procedural due process rights. The court granted the motion for preliminary injunction in part and denied it in part. On the one hand, voters who failed to sign the ballot altogether had no right to notice and cure. Id. at 71 ("[T]he error of a missing signature is the fault of the voter, not the government." (citing Hobbs, 976 F.3d at 1086)). The court observed that there was little risk of error where a signature was missing because a

[28] There was an extensive dissent, but its criticisms of the panel opinion relate to the distinguishable factual record in that case and do not suggest a different result under the facts of the present case.

AMERICAN OVERSIGHT

blank line can be "observed objectively." Id. On the other hand, the court found that the burden was "significant" for voters who were disqualified by signature matching — i.e., where election officials compared a provided signature against one on file. Id. at 76. In that court's estimation, the burden was significant because voters would be disqualified, without notice, on the basis of a "subjective judgment that the voter's signature does not match some sample relied upon by county election officials." Id.

State Board Defendants and Intervenors cite one case that could support the proposition that fault-free errors that lead to disenfranchisement without notice and opportunity to be heard create a mere minimal burden.[29] In Richardson, 978 F.3d 220 (5th Cir. 2020), challengers won a preliminary injunction in the district court that required Texas to provide notice and an

[29] Party Intervenors also cite Hutchinson v. Miller, 797 F.2d 1279 (4th Cir. 1986), and several out-of-circuit cases cited in Hutchinson, for the proposition that "courts have 'uniformly declined' to find constitutional violations 'with respect to garden variety election irregularities.'" (VL Doc. 51 at 13 (quoting Hutchinson, 797 F.2d at 1283).) In Hutchinson, three unsuccessful candidates for public office sued under 42 U.S.C. § 1983 and the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1964, for approximately $9 million in damages based on alleged election irregularities. Party Intervenors' quotation omits a critical phrase, wherein the Fourth Circuit observed that courts have "uniformly declined to endorse action under § 1983 with respect to garden variety election irregularities." Id. at 1283 (emphasis added). The court thus held that "federal courts do not sit to award post-election damages to defeated candidates," but observed that courts retain a role in providing equitable relief post-election in "rare and extraordinary circumstances," id. at 1287, and in "striking down state laws or rules of general application which improperly restrict or constrict the franchise or otherwise burden the exercise of political rights," id. at 1283 (citing Anderson, 460 U.S. 780 (1983)) (internal quotation marks omitted).

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000461

opportunity to be heard before a voter's absentee ballot could be rejected by an election official on the basis of a mismatched signature. The district court found that Texas's signature matching scheme imposed a severe burden on the right to vote because, in part, voters were notified that their absentee ballot was rejected only after the election and thus had no opportunity to contest the decision. Id. at 235-36. In an opinion staying the injunction pending appeal, the court found the burden imposed on voters to be only "minimal." Id. at 238. However, the court stayed the injunction on the alternative ground that the defendant was likely to prevail on her defense of sovereign immunity. Id. at 241. Concurring in the stay, Judge Patrick E. Higginbotham wrote that "this motions panel granting a stay settles no law" and "has no precedential force and is not binding on the merits panel, leaving it as a writing in water — made the more empty by pretermitting the jurisdictional requisites of sovereignty and the reach of Ex parte Young." Id. at 244 (Higginbotham, J., concurring in the stay). Indeed, the merits panel later vacated the preliminary injunction solely on the ground that the district court erred in finding that the defendant was the "proper defendant under Ex parte Young" — not because of the district court's Anderson-Burdick analysis. Richardson v. Flores, 28 F.4th 649, 655 (5th Cir. 2022); see also Andino, 497 F. Supp. 3d at 77 (rejecting Richardson at the preliminary injunction stage as an "outlier"

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000462
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 60 of 94

case reflecting an "extremely constricted view of liberty that does not include voting rights").

Though these cases are not binding on this court, one throughline of them is that election regulations that disenfranchise voters based on errors by governmental officials implementing them and over which the voter has no control, and which provide for no notice or opportunity to be heard to correct the error, may warrant closer inquiry under Anderson-Burdick. Put another way, "the precise interests put forward by the State as justifications for the burden imposed by its rule," Burdick, 504 U.S. at 434, must address why discarding an eligible voter's ballot due solely to government employee error and without an opportunity to correct it should be sustained.

Here, Plaintiffs are likely to show that the undeliverable mail provision of S. 747 imposes a substantial burden on SDR voters because it lacks notice and opportunity to be heard before removing the votes of a cast ballot from the count.

Voto Latino Plaintiffs provide several examples of 2022 SDR voters whose address verification cards were returned as undeliverable due to governmental errors wholly out of the control of the voter. For example, Plaintiff Mead's November 2022 address verification card was returned as undeliverable after a county board of elections official allegedly wrote "SAME" for her mailing address instead of writing out the actual address (which happened

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000463
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 61 of 94

to be the same as her residential address). (VL Doc. 44-5 ¶ 7.)


Director Of Elections
WATAUGA COUNTY BOARD OF ELECTIONS
PO BOX 528
BOONE NC 28607
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SOPHIE JAE MEAD
SAME
BOONE NC 28607

(Id. at 8.) After the address verification card was returned, another voter challenged Mead's registration under section 163-89 based only on the returned card. (Id. ¶ 7.) Ultimately, Mead's ballot was counted after Defendant Bell wrote a letter to the Watauga County Board of Elections ordering them to halt the challenges. (VL Doc. 44-4 at 9-10.) Voto Latino Plaintiffs contend, with some merit, that had the current system been in place, Mead's vote likely would not have counted. (VL Doc. 45 at 22.)

Voto Latino Plaintiffs also point to other poll worker errors that resulted in address verification cards returned as undeliverable in 2022, including another voter whose address was

AMERICAN OVERSIGHT

listed as "SAME," voters for whom the county board of elections appears to have written incorrect street numbers (e.g., "199 Wood Circle Dr.," rather than "190 Wood Circle Dr."), cards sent to an old address rather than an address updated at same-day registration, cards with missing apartment numbers, and cards sent to residential addresses rather than to different mailing addresses that were provided. (Id. at 22-23 (citing VL Doc. 44-4 ¶¶ 11-20).)

Voto Latino Plaintiffs also provided a declaration by a postman with forty years of experience that enumerates several reasons why mail may be returned as undeliverable, including faulty barcodes, illegible address information, lack of or damage to a mailbox or receptacle, sorting error, assignment to the wrong carrier for delivery, and temporary absence of the residence, none of which is pertinent to a voter's qualification to vote in the precinct. (VL Doc. 44-7 (Decl. Timothy Green).) Plaintiffs also cite a U.S. Postal Service Office of the Inspector General report from May 2015 that found that 4.3 percent of all mail was undeliverable as addressed, 23 percent of which was due to Postal Service error. (DNC Doc. 7 at 12 (citing Office of Inspector General, U.S. Postal Service, Strategies for Reducing Undeliverable as Addressed Mail, at 5 (May 1, 2015), at https://www.uspsoig.gov/sites/default/files/reports/2023-01/ms-ma-15-006.pdf (last accessed Jan. 3, 2024)); VL Doc. 45 at 24

AMERICAN OVERSIGHT

(same).) While these figures are nearly a decade old and possibly overstate the case in this context to some extent, they nevertheless are consistent with the limited record provided so far.

In the last four even-year elections, 1,799 out of 100,578; 696 out of 45,666; 2,151 out of 116,326; and 391 out of 34,289 same-day registrants have failed address verification. NCSBE, Presentation to House Oversight and Reform Committee, supra, at 6. These numbers are based on the State's prior two-card system, however, and the court can reasonably infer that there would not be any fewer failures if State Board Defendants send only one mail card, as required by section 163-82.6B(d). State Board Defendants and Intervenors, meanwhile, have provided no evidence at this stage that any of the several thousand same-day registrants who have failed address verification since its inception in 2008 was ineligible to vote on the ground of improper residency. In fact, State Board Defendants represented at oral argument that they have "no way to know" if any voter who fails address verification does so because of ineligibility or because of error. (VL Doc. 61 at 60:21.)

Plaintiffs are also likely to show that section 163-82.6B(d) deprives same-day registrants of notice and opportunity to be heard before their ballots are rejected through no fault of their own. State Board Defendants and Party Intervenors agree. (VL Doc. 54

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000466

at 9-10 ("The State Board Defendants concede that the notice mailing process set forth under the new same-day registration regime does not provide for either of these protections [i.e., notice and opportunity to be heard]."); VL Doc. 51 at 19-20 (Party Intervenors: "To demand notice and a hearing based on postal error in these circumstances would be to expect too much from state officials[.]").) Legislative Intervenors, on the other hand, acknowledged in their brief that the undeliverable mail provision itself does not provide SDR voters with notice. (VL Doc. 52 at 18 ("Plaintiffs make much ado about the fact that voters who fail address verification do not receive notice[.]" (emphasis added).) At oral argument, counsel for Legislative Intervenors suggested, albeit without any legislative history in support, that "everybody assumed that the State Board would treat [the ballots of SDR voters who fail address verification] like the way they had treated one-stop absentee ballots and that 163-89 would continue to apply." (Id. at 108:21-25.)

Section 163-89 outlines a challenge procedure for absentee ballots that includes the right of the challenged voter to be heard. See N.C. Gen. Stat. § 163-89(e). In light of S. 747's reclassification of SDR ballots as "retrievable," rather than "retrievable absentee,"[30] State Board Defendants and Party

[30] Section 163-82.6B(c) states that a same-day registrant votes a

AMERICAN OVERSIGHT

Plaintiffs disagree with Legislative Intervenors that section 163-89 applies to SDR voters. (VL Doc. 61 at 110:12-15; id. at 111:14-19; see also VL Doc. 55-5 at 6 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) (showing State Board's current understanding, and intent to enforce S. 747 accordingly, that if an SDR voter fails address verification, "[t]he county board shall not issue a challenge").)

Even if section 163-89 applied to SDR voters, however, neither it nor section 163-82.7 appears to require that notice be given to voters before the challenge hearing. N.C. Gen. Stat. § 163-82.7(g)(2) (authorizing challenges for absentee ballots under section 163-89, but not requiring notice); id. § 163-89 (outlining challenge procedure process for absentee ballots, but not requiring notice).

In summary, the express terms of section 163-82.6B(d) do not provide for notice and an opportunity to be heard; instead, they direct the retrieval and removal of a ballot upon failure of address verification. By all accounts, all parties agree — correctly it appears — that section 163-82.6B(d) at a minimum does

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"retrievable ballot as provided in G.S. 163-166.45," while prior law considered SDR ballots to be "retrievable absentee ballot[s]," N.C. Gen. Stat. § 163-82.6A(c) (2012). There are at least eight instances where S. 747 replaces the phrase "one-stop absentee voting" with "early voting." Moreover, section 163-166.45 — which is cross-referenced in section 163-82.6B — now governs "Retrievable ballots," instead of its prior heading of "Alternate procedures for requesting application for absentee ballot; 'one stop' voting procedure in board office." See N.C. Gen. Stat. § 163-166.45 (previously codified as N.C. Gen. Stat. § 163-227.5) (emphasis added).

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000468

not provide for notice before a ballot of an SDR voter who fails address verification is removed from the count. Moreover, State Board Defendants, i.e., those responsible for the enforcement of the undeliverable mail provision, have represented that they do not intend to offer any notice or opportunity to be heard via 163-89 or any other provision, absent a court order or statutory change. (VL Doc. 61 at 49:5-11 (State Board Defendants stating, "given the way [S. 747] is written and the limitations of it, [] we would need a court order or some sort of legislative change" in order to provide notice and an opportunity to be heard); VL Doc. 55-5 at 6 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) (stating that if an SDR voter fails address verification, the county board must remove the ballot and "not issue a challenge").) Consequently, Plaintiffs have established a likelihood of success in showing that the undeliverable mail provision does not provide for notice and an opportunity to be heard.

Finally, State Board Defendants argue that the burden imposed by the undeliverable mail provision is nevertheless "reasonable" when viewed "holistically in light of the others means by which voters may register." (DNC Doc. 53 at 13-14 (emphasis added).) It is true that voters in North Carolina have various other ways to register before the early voting period and to cast a ballot. Compared to non-SDR voters, SDR voters are subject to additional burdens at registration (e.g., a HAVA-compliant document). But

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000469

the State, having offered SDR, must offer a process that is not unconstitutional. The undeliverable mail provision burdens SDR voters by directing the removal of a cast ballot without any notice or possibility of cure, not merely by cancelling registration, and the burden demonstrated here would likely be imposed by governmental error unknown to the voter. See Husted, 696 F.3d at 595 (requiring notice and opportunity to be heard where the law required voters to have "omniscience" of poll worker error and "have a greater knowledge of their precinct, precinct ballot, and polling place than poll workers").[31]

Based on recent elections, approximately 100,000 North Carolinians are projected to utilize same-day registration in 2024, starting with the primary. NCSBE, Presentation to House Oversight and Reform Committee, supra, at 6 (showing over 100,000 SDR voters in both 2016 and 2020).[32] Each of these voters' addresses will be tested by S. 747's address verification procedure, and Plaintiffs are likely to show that some number of

[31] Party Intervenors liken an SDR voter's retrieved ballot due to failed address verification to a vote-by-mail ballot that gets lost in the mail, which they contend Plaintiffs view as unproblematic. (VL Doc. 51 at 14.) While the court has no record upon which to compare vote-by-mail to address verification, it is distinguishable at least because North Carolina provides a tracking system for mail ballots. See NCSBE, Ballot Tracking Available Again for Absentee-By-Mail Voters, supra.

[32] Neither State Board Defendants nor Intervenors argue that the presumably reduced number of voters anticipated for the upcoming primary election is a ground to not enter preliminary relief at this time.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000470

first cards will be returned before the canvass deadline as undeliverable due to governmental error, rather than factors related to voter eligibility. By failing to provide voters with notice and opportunity to be heard, section 163-82.6B(d) creates an unacceptable risk that eligible voters' ballots will be erroneously removed and not counted. As shown by Husted, Lee, and Andino, as well as the record evidence before this court, Plaintiffs are therefore likely to succeed in showing that the undeliverable mail provision — because it fails to provide for notice and opportunity to be heard — will impose a substantial burden on SDR voters.[33]

ii. Balancing the State's Interests

The court turns next to the justifications for the law put forth by State Board Defendants and Intervenors.

States may prescribe "[t]he Times, Places and Manner of holding Elections for Senators and Representatives." U.S. Const. art. I, § 4, cl. 1. The Supreme Court has therefore "recognized that States retain the power to regulate their own elections." Burdick, 504 U.S. at 433 (citing Sugarman v. Dougall, 413 U.S.

[33] Voto Latino Plaintiffs also point out that an SDR voter could vote and then move elsewhere in North Carolina under section 163-55(a), which permits a voter to vote at a prior residence within 30 days of relocation. (VL Doc. 45 at 25.) They contend that these voters could have their vote removed without any error occurring if they provide the Postal Service a forwarding address. (Id.) The court has no record of the magnitude of this issue and, given the court's ruling, need not consider it further at this stage.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000471

634, 647 (1973); Tashjian v. Republican Party of Conn., 479 U.S. 208, 217 (1986)). "The Constitution provides that state legislatures — not federal judges, not state judges, not state governors, not other state officials — bear primary responsibility for setting election rules." Democratic Nat'l Comm., 141 S. Ct. 28 (Mem.) (Gorsuch, J., concurring). Indeed, to require a state to "halt the ongoing implementation of one of its duly-enacted statutes — a statute that, for now at least, has not been rendered invalid" is "a form of irreparable injury" the court must consider. League of Women Voters of N.C., 769 F.3d at 249 (Motz, J., dissenting) (quoting Maryland v. King, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)).

Under Anderson-Burdick, the court must identify "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiffs' rights." Burdick, 504 U.S. at 434 (internal quotation marks omitted). The "rigorousness" of the inquiry into the State's interests will be informed by the substantial burden imposed by the undeliverable mail provision. Id. (requiring courts to employ a sliding scale approach whereby the greater the burden imposed, the more important the state's justification must be).

State Board Defendants and Intervenors principally assert that the undeliverable mail provision is justified by the need to

AMERICAN OVERSIGHT

preserve the integrity of the election process by ensuring that only eligible ballots are counted and that a registrant lives in the precinct within which he seeks to vote. (DNC Doc. 53 at 13 (State Board Defendants, "ensuring only eligible ballots are counted in an election"); DNC Doc. 52 at 17-18 (Legislative Intervenors, "preserving the integrity of the election process" and "ensure that a registrant lives in the precinct within which they seek to vote"); DNC Doc. 51 at 7-8 (Party Intervenors, "ensuring verification of each applicant's address, which is fundamental to determining a voter's eligibility"); VL Doc. 51 at 11 (Party Intervenors, "discouraging and preventing fraud").) They also assert the need to "level the playing field" between SDR and non-SDR voters, to ensure address verification cards return before the canvass, and to instill confidence in elections. (DNC Doc. 66:13-15; DNC Doc. 53 at 16; VL Doc. 52 at 19.)

North Carolina unquestionably has a legitimate and strong interest in ensuring the integrity of its elections, ensuring that only legitimate ballots are counted, and in preventing voter fraud. Purcell v. Gonzalez, 549 U.S. 1, 4 (2006). As to these interests, State Board Defendants and Intervenors need not present "elaborate, empirical verification of the weightiness of the State's asserted justifications." Timmons v. Twin Cities Area New Party, 520 U.S. 351, 364 (1997). Instead, the State may "respond to potential deficiencies in the electoral process with foresight

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000473
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 71 of 94

rather than reactively, provided that the response is reasonable and does not significantly impinge on constitutionally protected rights." Munro v. Socialist Workers Party, 479 U.S. 189, 195-96 (1986). Indeed, the Crawford court found that deterrence of voter fraud was a "neutral and nondiscriminatory reason" to require photo ID, even though the record contained no evidence of actual in-person fraud. Crawford, 553 U.S. at 195-97 (Stevens, J.) (citing Building Confidence in U.S. Elections § 2.5 (Sept. 2005), a report of the Commission on Federal Election Reform, chaired by former President Jimmy Carter and Secretary of State James A. Baker, III); see also id. at 209 (Scalia, J., concurring) ("The universally applicable requirements of Indiana's voter-identification law are eminently reasonable."); cf. Brnovich v. Democratic Nat'l Comm., 141 S. Ct. 2321, 2346, 2348 (2021) (on a Voting Rights Act challenge to a law that imposed a "usual burden[] of voting," "a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders").

Here, State Board Defendants contend that address verification ensures election integrity by acting as a "fail-safe" to test a voter's residency. (VL Doc. 61 at 45:16; see also id. at 88:25 (Party Intervenors likening address verification to "two-factor authentication").) The court accepts this; address verification may serve to disincentivize a registrant from providing a false address, to identify a registrant who erroneously

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000474
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 72 of 94

provides an improper address, and especially in the case of traditional registration before SDR, which can occur online or by mail and does not require a HAVA document, to deny the registration of someone who might claim to register as someone else. Indeed, that an SDR voter must present a current HAVA document that shows his residence address, along with a photo ID, and attest in-person under penalty of perjury that he is an eligible voter, may explain the 98-to-99 percent rate of confirmation of SDR registrants under the State's prior two-card system. NCSBE, Presentation to House Oversight and Reform Committee, supra, at 6. While these State interests justify the use of address verification generally, the question, however, is whether the undeliverable mail provision for SDR voters meets its justifications as a "fail-safe" as to residency sufficient to exclude a ballot without notice and opportunity to be heard where failure is based on reasons entirely outside the control of the voter.

By Legislative Intervenors' own concession, address verification is not a precise instrument for enforcing the interests they assert.[34] (DNC Doc. 62 at 63:13-24).) That is,

[34] To the extent Plaintiffs more broadly criticize the State's address verification process, the court declines to consider that question. Address verification predated the adoption of SDR in North Carolina, 1994 N.C. Sess. Laws, ch. 762, § 2, and appears to be used by other states as a legitimate component of the voter registration process. See, e.g., Common Cause of Colo. v. Buescher, 750 F. Supp. 2d 1259 (D. Colo. 2010). Legislative Intervenors argue that the State has no other effective means to verify addresses short of sending personnel to make

AMERICAN OVERSIGHT

in part, because the statute provides that the card need not be sent to the registrant's residential address. Rather, it must be sent to the mailing address the same-day registrant provides on his application, even if that address is outside the county of registration, (id. at 59:8-13), if the registrant does not receive mail at the residential address. N.C. Gen. Stat. § 163-57(1)(c) ("Residence shall be broadly construed to provide all persons with the opportunity to register and to vote, including stating a mailing address different from residence address."). The parties have presented no record as to how often same-day registrants' mailing addresses differ from their residential addresses — whether for students on campuses, individuals utilizing post office boxes, etc. (DNC Doc. 62 at 45:11-14 (State Board Defendants stating that they do not have "statistics to back it up," but upon belief, "most people's residential address will be their mailing address").) Address verification appears to work as intended for the vast majority of voters who receive mail at their residential address. But State Board Defendants and Intervenors have presented no evidence that address verification has ever filtered out a single ineligible same-day registrant. In fact, State Board Defendants concede that they have "no way" of knowing if an unreturned card truly demonstrates ineligibility because

home visits (DNC Doc. 62 at 63:13-21), and it is the province of the General Assembly to choose the process for verification.

AMERICAN OVERSIGHT

they only know the card was returned as undeliverable, not why. (VL Doc. 61 at 60:20-21.)

Only Party Intervenors directly contend that the provision serves to deter SDR voter fraud. (VL Doc. 51 at 15-18.) Voto Latino Plaintiffs offer an expert, Dr. Martha Kropf, a political science professor, who concluded that the undeliverable mail provision for SDR registrants "has no discernible benefit in terms of preventing voter fraud." (Doc. 49-1 at 6.)[35] While Legislative Intervenors dispute her definition of fraud as "prohibitively narrow," (VL Doc. 52 at 9), their own expert, Dr. Andrew Taylor, also a political science professor, conceded that he had "no reason to question the methods or results" of Dr. Kropf. (VL Doc. 52-1 at 13; VL Doc. 59-2 at 67:7-11 (confirming Dr. Taylor's conclusion at deposition).)

The State's proffered justifications, in light of the lack of notice and opportunity to be heard for SDR voters, are inconsistent with its interest in counting eligible ballots to the extent ballots are rejected for errors unrelated to the voter's actual eligibility. See Lee, 915 F.3d at 1322. Such SDR voters' ballots would be removed, not because voters do not live where they claimed, but rather because a postal worker or county board of

[35] As Party Plaintiffs argued, someone who "falsely swears out an application [and] forges a HAVA document" may likely be clever enough to provide a mailing address where he can receive mail. (DNC Doc. 62 at 94:9-11.)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000477

elections worker made an error that resulted in the return of a non-forwardable mail card. In fact, providing a chance to correct that error would appear to be consistent with section 163-57's call for "[r]esidence [to] be broadly construed to provide all persons with the opportunity to register and vote[.]" N.C. Gen. Stat. § 163-57(1)(c). Moreover, the State's interest in counting only eligible ballots is also mitigated to some extent by the fact that State Board Defendants concede they will continue to count the SDR ballots of voters whose single card returns as undeliverable after the canvass. (VL Doc. 61 at 54:1-6.)

Legislative Intervenors rely on the opinions of Dr. Taylor to support their view that the undeliverable mail provision ensures election integrity and instills confidence in the fairness of elections. (See VL Doc. 52 at 13, 17.) Dr. Taylor opines that the undeliverable mail provision will help ensure that the single card returns as undeliverable before the canvass. (VL Doc. 52-1 at 12.) While he opines that this "may increase North Carolinians' confidence" in elections, (id. at 17 (emphasis added)), he does not opine on whether the undeliverable card is probative of a voter's residence, and thus a voter's eligibility to vote. Instead, he states, "If the 23% of undelivered mail that is the result of USPS error represents an intolerable risk for SDR voters under S 747, it seems to me it should have represented an intolerable risk under the rules prior to S 747." (Id. at 11.)

AMERICAN OVERSIGHT

Moreover, Dr. Taylor states that voter fraud can go undetected, that address verification is important, and that voters have reduced confidence in elections. (Id. at 13-15.) On this record, there is no reason to doubt these principles. But Dr. Taylor does not discuss how enforcing the undeliverable mail provision without notice and hearing addresses them. Additionally, Dr. Taylor opines that a voter who "cannot tolerate the possibility of their registration being canceled" can "register and later vote in-person or absentee as do around 97 percent of others" in North Carolina. (Id. at 16.) Whatever merit this argument might have if SDR voters' registrations alone were at issue, the State, having offered the option of voting during SDR, cannot discard their ballots due to governmental error and without notice and an opportunity to be heard simply on the ground that the voters should have known not to take such a risk. Cf. Common Cause of Colo. v. Buescher, 750 F. Supp. 2d 1259, 1264 (D. Colo. 2010) (noting that Colorado law allows voters who are informed on election day they failed mail verification to cure by voting a provisional ballot with an ID).

Legislative Intervenors also assert that the undeliverable mail provision was intended to "level the playing field" between SDR and non-SDR voters because SDR voters prior to S. 747 had a "whole panoply of protections" that "regular registrants" did not. (DNC Doc. 66:13-15.) But the statutory scheme does not bear this

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000479

out. Chapter 163 appears to provide more favorable treatment to many non-SDR voters vis-à-vis SDR voters, particularly non-SDR voters who register just before the 25-day cut off for traditional registration. First, unlike an SDR voter under S. 747, the statute directs county boards to treat "as a registered voter" any non-SDR voter who fails address verification after voting — e.g., someone who registers before the 25-day cutoff, votes early or on election day, and then fails address verification. N.C. Gen. Stat. § 163-82.7(g)(3); cf. id. § 163-82.6B(d) (stating that a county board "shall not register" an SDR voter who fails address verification). Second, a non-SDR voter may still vote in person, with some procedures for verifying address, if his registration was so close to the 25-day cutoff for traditional registration that his first address verification card is sent within 25 days of the election and returns as undeliverable — e.g., he votes after the first card is returned as undeliverable but before return of a second card. Id. § 163-82.7(g)(2); cf. id. § 163-82.6B(d) (directing county board to remove SDR ballot from the official count upon failure of SDR voter's address verification based on a single card received by the day before the canvass). Third, non-SDR voters cannot be denied the right to vote in person unless two cards are returned as undeliverable, and the statute only states that a challenge is "not preclude[d]" if that occurs after a non-SDR voter votes. Id. § 163-82.7(g)(1); cf. id. § 163-82.6B(d)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000480
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 78 of 94

(directing removal of ballot based on only one card for SDR voters). And fourth, a voter who casts an absentee ballot and whose address verification card is returned as undeliverable "after [the] person has already voted by absentee ballot" may have his ballot challenged, will be given notice of the challenge, and has a right to "appear before the board at the hearing on the challenge and present evidence as to the validity of the ballot." Id. § 163-82.7(g)(2); § 163-89(e); NCSBE Numbered Memo 2022-05 (Dec. 15, 2023 update), supra, at 3, 11 (requiring county board to provide notice and providing sample notice letter). Thus, while the court acknowledges the State's legitimate interest in verifying addresses for all registrants, S. 747 does not appear to level the playing field between SDR and non-SDR voters. Rather, as to address verification, it appears to tilt it against SDR voters by requiring that the ballot be removed from the count without notice and opportunity to be heard.

In addition, State Board Defendants assert an interest in ensuring that the address verification card returns before the canvass. As the Fourth Circuit has acknowledged, "these concerns are real." McCrory, 831 F.3d at 237. Indeed, when the repeal of SDR was previously challenged before this court, the plaintiffs in that case "d[id] not seriously dispute" the issues SDR caused for the implementation of the State's address verification system, including in cases where the second address verification card was

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000481

returned after the canvass and the SDR voter's ballot was nevertheless counted. N.C. State Conf. of the NAACP v. McCrory, 182 F. Supp. 3d 320, 447 (M.D.N.C. 2016).[36] However, while State Board Defendants and Intervenors here are likely to show that a card mailed to an SDR voter would be more likely to return before the canvass, they have not shown why the substantial burden of exclusion without notice and an opportunity to be heard is justified when the failure — at least on the present record — is likely caused in significant respect by the government's own errors.

To the extent State Board Defendants and Intervenors argue that providing notice and an opportunity to be heard would impose an administrative burden, this argument is not adequately supported on this record. County boards of elections plainly have an interest in "protecting the integrity, fairness, and efficiency of their ballots and election processes as means for electing public officials." Timmons, 520 U.S. at 364. But the administrative burden of providing notice and an opportunity to be heard is limited in this context for at least three reasons.

First, prior to January 1, 2024, Chapter 163 already provided for a challenge procedure for SDR ballots. Until this year, SDR

[36] In precluding the elimination of SDR, the Fourth Circuit based its decision on a finding of discriminatory racial intent, not because the State was without power to eliminate SDR. McCrory, 831 F.3d at 233.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000482

ballots were treated as absentee ballots, and the statutory scheme provided a hearing for a challenge to the ballots of voters who failed address verification to be held by the county board of elections on the day set for the canvass. See N.C. Gen. Stat. §§ 163-82.6A (2012), 163-82.7(g)(2), 163-89.

Second, while S. 747 has reclassified SDR ballots as "retrievable," rather than "retrievable absentee," section 163-89 continues to apply to absentee ballots. See id. § 163-89 (as amended by 2023 N.C. Sess. Laws 140, § 15). Neither State Board Defendants nor Intervenors has provided any evidence that this challenge procedure generates any administrative burden. Given the number of projected address verification failures across North Carolina's 100 counties, State Board Defendants and Intervenors have not demonstrated that providing due process for those SDR voters who fail address verification would tally to an additional burdensome level for any county board of elections.

Third, State Board Defendants concede that they "stand ready to incorporate whatever additional procedural protections this Court deems necessary for such voters." (DNC Doc. 53 at 11; VL Doc. 54 at 10.) In fact, State Board Defendants appear to have already taken steps that begin to address Plaintiffs' concerns, including encouraging county boards to collect contact information from SDR voters. (VL Doc. 55-5 at 7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) (recommending that county boards contact voters

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000483
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 81 of 94

before sending verification card if staff have "questions regarding the address"); VL Doc. 55-6 (demonstrating blanket notice county boards will display at early voting sites); see also VL Doc. 61 at 76:16-19 (expressing General Assembly's view that section 163-89 would provide an "appropriate mechanism" to administer notice and opportunity to be heard, if needed).) Accordingly, providing notice would not impose some new duty to affirmatively investigate voters' contact information; voters currently have the option to provide contact information on their voter registration application, and county boards are already being directed to recommend applicants do so. See North Carolina Voter Registration Application, Form 06W, supra (Question 10); (VL Doc. 55-5 at 7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) ("[T]he election official assisting a same-day registrant must recommend that the voter provide their phone number and/or email address on the registration form.").)

In sum, Defendants and Intervenors are likely to show that they have strong and legitimate interests in protecting election integrity by ensuring that eligible voters vote in the proper precinct and that address verification supports that interest. However, after considering the extent to which those interests make it necessary to substantially burden same-day registrants' right to have a ballot counted once it is cast, the court finds Plaintiffs are likely to succeed on the merits of their

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000484

constitutional claim against the undeliverable mail provision because it does not provide notice and an opportunity to be heard.

b. Irreparable Injury

An infringement or abridgment of a constitutional right is an irreparable harm where monetary damages are inadequate or difficult to ascertain. Democracy N.C., 476 F. Supp. 3d at 236. "Courts routinely deem restrictions on fundamental voting rights irreparable injury." League of Women Voters of N.C., 769 F.3d at 247; see also Obama for Am., 697 F.3d at 436 ("A restriction on the fundamental right to vote . . . constitutes irreparable injury."); Williams v. Salerno, 792 F.2d 323, 326 (2d Cir. 1986) (holding that plaintiffs "would certainly suffer irreparable harm if their right to vote were impinged upon").

Here, the threatened injury of discounting an eligible SDR voter's ballot without notice and opportunity to be heard would constitute irreparable injury. Any court's intervention in the State's constitutional prerogative to set the manner of conducting elections, however, can constitute an irreparable injury to the State, especially in consideration of the preliminary nature of the motions before this court. Abbott v. Perez, 138 S. Ct. 2305, 2324 (2018) (emphasizing on motion to stay injunction that "[u]nless [a] statute is unconstitutional," enjoining a statute enacted by the legislature "would seriously and irreparably harm the State"). Legislative Intervenors argue that counting

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000485

"unverified applications where the mail verification fails" would create a "fraudulent result." (VL Doc. 52 at 21.) Accepting the legitimacy of the prophylactic purposes of address verification, however, giving notice and opportunity to be heard to SDR voters who fail address verification would not increase any potential for such an outcome; indeed, quite the opposite.

c. Balance of the Equities and Public Interest

The balance of the equities and the public interest "merge when the Government is the opposing party." Miranda v. Garland, 34 F.4th 338, 365 (4th Cir. 2022) (quoting Nken v. Holder, 556 U.S. 418, 435 (2009)).[37] "By definition, '[t]he public interest . . . favors permitting as many qualified voters to vote as possible.'" Democracy N.C., 476 F. Supp. 3d at 237 (quoting League of Women Voters of N.C., 769 F.3d at 247–48).

As discussed above under consideration of the State's interest, the State's potential harm is outweighed by the equities in Plaintiffs' favor at this stage. In balancing the equities, the court notes that Chapter 163 authorizes challenge procedures already, and that State Board Defendants and Intervenors have not forecast any evidence of its administrative burden. See N.C. Gen. Stat. §§ 163-82.6A (2012), 163-82.7(g)(2), 163-89. Moreover,

[37] Though Party Intervenors are non-governmental, they, too, combine the balance of the equities and the public interest in their analysis. (DNC Doc. 51 at 18–19; VL Doc. 51 at 22–23 (arguing harm to the State militates against injunction).)

AMERICAN OVERSIGHT

State Board Defendants concede that they "stand ready to incorporate whatever additional procedural protections this Court deems necessary for such voters" and have begun to do so already. (DNC Doc. 53 at 11; VL Doc. 54 at 10; VL Doc. 55-5 at 7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) (recommending that county boards contact voters before sending mail card if staff have "questions regarding the address"); VL Doc. 55-6 (demonstrating blanket notice county boards will display at early voting sites); see also VL Doc. 61 at 76:16-19 (expressing General Assembly's view that section 163-89 would provide an "appropriate mechanism" to administer notice and opportunity to be heard, if needed).) The court thus finds that the balance of the equities and the public interest tip in Plaintiffs' favor.

* * *

In sum, the Winter factors weigh in favor of Plaintiffs as to the undeliverable mail provision. "Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents." Trump v. Int'l Refugee Assistance Project, 582 U.S. 571, 579-80 (2017). "The purpose of such interim equitable relief is not to conclusively determine the rights of the parties, but to balance the equities as the litigation moves forward." Id. at 580 (internal citation omitted). "In the course of doing so, a court need not grant the total relief

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000487

sought by the applicant but may mold its decree to meet the exigencies of the particular case." Id. (internal quotation marks omitted). Generally, a preliminary injunction is "intended to protect the status quo," Di Biase v. SPX Corp., 872 F.3d 224, 230 (4th Cir. 2017), which may "require a party who has recently disturbed the status quo to reverse its actions." League of Women Voters of N.C., 769 F.3d at 236 (internal quotation marks and citation omitted); see also Lee, 915 F.3d at 1328 (noting district court's "Goldilocks solution" of preliminarily requiring notice and opportunity to cure rather than striking down entirety of signature matching scheme).

A court considering an injunction close to an election should consider the risk of "voter confusion." Purcell, 549 U.S. at 4-5; Wise v. Circosta, 978 F.3d 93, 99 n.6 (4th Cir. 2020) (focusing Purcell inquiry on the extent to which "[v]oter behavior" would be "impacted by [the court's] decision"). Neither Defendants nor Legislative Intervenors have argued that proximity to the primary election counsels against an injunction. Party Intervenors claim that "[e]lection officials, candidates, campaigns, and voters will struggle to understand how [an] injunction interplays with S.B. 747, and with the broader election code, to the result of inconsistent rules across the state, [] and the potential denial of voting opportunities." (DNC Doc. 51 at 19 (internal citation omitted).) The court does not discern any risk that voters will

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000488
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 86 of 94

be confused, especially because S. 747 seeks to alter prior law, and State Board Defendants have assured the court that they "stand ready" to implement changes as required by this court. (DNC Doc. 53 at 11; VL Doc. 54 at 10.) At a status conference to set out a briefing schedule, moreover, State Board Defendants represented that they could administer a remedy for the primary election, so long as the order was entered around the start of early voting on February 15, 2024.

As to the scope of the injunction, Plaintiffs have agreed that they would accept notice and an opportunity to be heard as a remedy narrower than the broadest they have requested. (Compare DNC Doc. 62 at 98:18-22 ("[T]he remedy [Party Plaintiffs] respectfully suggest is for the Court to . . . direct the State Board for purposes of the primary election to, in fact, apply the notice and opportunity to be heard provision in [] 82.7(g)(2)[.]"), with DNC Doc. 7 at 19 (implying that the court should require two cards be returned before vote is discarded); compare VL Doc. 61 at 26:1-9 (Voto Latino Plaintiffs accepting "as an alternative remedy" ordering county boards to contact voters and "provide a mechanism by which they may further demonstrate that they are eligible voters and are properly residents"), with VL Doc. 44 (seeking to enjoin section 163-82.6B(d)).) (See also VL Doc. 1 (repeatedly alleging in the complaint the undeliverable mail provision's lack of notice and opportunity to be heard as a

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000489
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 87 of 94

defect); DNC Doc. 1 (same).)

As discussed above, the parties disagree as to whether section 163-89, the provision previously used to challenge SDR ballots for voters who failed address verification, applies in light of S. 747's reclassification of SDR ballots as "retrievable," rather than "retrievable absentee."

It is not the court's role to draft a precise remedy. That State Board Defendants construe — correctly it appears — the undeliverable mail provision to not contemplate notice and opportunity to be heard and intend to enforce it accordingly absent a court order, is sufficient to justify the injunction set out below. Though the parties offered proposed provisions at the hearing,[38] the court expresses no opinion on whether the State Board may exercise its authority under section 163-22.2 to "make reasonable interim rules and regulations with respect to the pending primary or election as it deems advisable" in light of the court's preliminary holding that Plaintiffs are likely to show

[38] Legislative Intervenors' counsel offered his belief that State Board Defendants could "graft into [§ 163-82.6B(d)] a notice and procedure" for voters to be heard without violating the statute (DNC Doc. 62 at 76:9-14), stating, without conceding the constitutional issue, that:

> We think that [State Board Defendants] can use the challenge process under 163-89 to accommodate this. We think between 747 and the existing statutes — my client believes, and I'm authorized to state, that we think that that's an appropriate mechanism, if one is even needed.

(DNC Doc. 62 at 76:15-19.)

AMERICAN OVERSIGHT

that the undeliverable mail provision, as written, is unconstitutional. N.C. Gen. Stat. § 163-22.2. Any such interim rules and regulations, if promulgated, must not otherwise conflict with the provisions of Chapter 163. Id.; see Moore v. Circosta, 494 F. Supp. 3d 289, 326 (M.D.N.C. 2020) (finding NCSBE had "implemented a rule that conflicted directly with the statutes enacted by the North Carolina legislature" through invocation of section 22.2).

In sum, the "exigencies of the particular case" warrant the injunction as set out below, and nothing more. Int'l Refugee, 582 U.S. at 579-80.

3. Ineligible Voter Notice

Party Plaintiffs alone challenge another aspect of S. 747. Focusing on the county board of elections' statutory duty to tentatively determine voter eligibility (by checking driver's license number, social security number, etc.) before embarking on address verification, N.C. Gen. Stat. 163-82.6B(d), they claim that the law unconstitutionally fails to prescribe a mechanism for notifying same-day registrants of an adverse eligibility determination or the ground(s) of rejection, or provide an opportunity to contest the adverse eligibility determination. (DNC Doc. 7 at 16.) Party Plaintiffs contend that the silence in the statute allows "any election official [to] unilaterally deny a person his or her right to vote without due process." (Id.)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000491

State Board Defendants agree that S. 747 does not explicitly state the process for rejecting a same-day registration based on an ineligibility determination. (DNC Doc. 53 at 8.) However, they read the statute to require a same-day registrant whose application is rejected due to ineligibility to receive the same challenge process under section 163-89 as a same-day registrant currently would receive, even though SDR ballots are no longer considered "absentee ballots." (Id. at 7-8.) Indeed, NCSBE Numbered Memo 2023-05 further demonstrates the State Board plans to utilize the challenge provision of section 163-89 "because the county board is authorized to 'pass upon the legality of disputed ballots' during canvass.'" (DNC Doc. 60-1 at 6 n.9 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).)

Legislative Intervenors and Party Intervenors argue that Party Plaintiffs misread the statute to find that there is no process for same-day registrants who are found ineligible. (DNC Doc. 52 at 12; DNC Doc. 51 at 3-6.) They do not agree with State Board Defendants that there should be a challenge procedure under 163-89. Instead, they contend that section 163-82.7 applies, which is the same notice and opportunity to be heard afforded non-SDR applicants whom a county board determines to be ineligible. Under this provision, the SDR voter would receive a notice in the mail that informs him that his registration has been denied and outlines the method of appeal under 163-82.18, which provides for a public

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000492
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 90 of 94

hearing and appeal to a North Carolina Superior Court. Intervenors contend that this process suffices because this is the same process that non-SDR applicants receive. (DNC Doc. 52 at 12-13; DNC Doc. 51 at 4.)

Whether Defendants' or Intervenors' interpretation of the statute is correct, Party Plaintiffs have not demonstrated that they are likely to "suffer irreparable harm in the absence of preliminary relief." Winter, 555 U.S. at 20. Party Plaintiffs conceded as much, stating that they are not irreparably harmed if State Board Defendants are entitled under the law to apply its interpretation. (DNC Doc. 62 at 19:4-23 ("For purposes of a preliminary injunction, I don't think we need anything more from this Court other than the acknowledgement.").) By all accounts, State Board Defendants have represented in their briefing and in a public memorandum that they intend to fill any perceived silence in the statute with the notice and opportunity to be heard that Party Plaintiffs seek. (DNC Doc. 53 at 8; DNC Doc. 60-1 at 6-7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).) And even if Intervenors' reading controlled, Party Plaintiffs have not shown that the notice provided under sections 163-82.7 and 163-82.18 would be constitutionally inadequate process. Wolf v. Fauquier Cnty. Bd. of Supervisors, 555 F.3d 311, 323 (4th Cir. 2009) ("Procedural due process provides merely 'a guarantee of fair procedures — typically notice and an opportunity to be heard.'"

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000493

(citation omitted)); N.C. Gen. Stat. §§ 163-82.7, 163-82.18 (providing for notice and hearing before county board of elections with appeal to superior court). Accordingly, Party Plaintiffs' motion to preliminarily enjoin the enforcement S. 747's notice procedure as to SDR voters determined ineligible following the verification process to be conducted within two business days of registration will be denied.

III. CONCLUSION

For the reasons stated, State Board Defendants and Intervenors have shown valid State interests in the use of address verification by non-forwardable mail for confirming a voter's eligibility to vote — a process that has been in place for several decades, albeit employing two cards. These include undeniably legitimate interests in ensuring the integrity of elections, ensuring that only ballots of eligible voters are counted, preventing voter fraud, and instilling confidence in elections. Nevertheless, Plaintiffs have demonstrated a likelihood that the undeliverable mail provision in S. 747, codified as N.C. Gen. Stat. § 163-82.6B(d), will impose a substantial burden on same-day registrants who cast a ballot because, under the law's express terms, they will face a non-trivial risk of being erroneously disenfranchised by failing address verification due to governmental error, rather than factors related to their eligibility to vote, without any notice and opportunity to be

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000494

heard.

Plaintiffs have shown that the State's precise interests asserted in this case likely do not outweigh the substantial burden on the rights of same-day registrants who cast a ballot. Burdick, 504 U.S. at 434 (requiring courts weigh "the character and magnitude of the asserted injury" against "the precise interests put forward by the State," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights"). On this record, State Board Defendants and Intervenors have presented no evidence that any of the several thousand same-day registrants who have failed address verification since its inception in 2008 was in reality ineligible to vote on the ground of improper residency. For SDR voters, the lack of notice and opportunity to be heard is inconsistent with the State's interest in counting all eligible voters' ballots. Moreover, given the lack of showing of an administrative burden on county boards of elections, the risk of irreparable injury, the balance of equities, and the public interest all weigh in favor of requiring notice and an opportunity to be heard.

IT IS THEREFORE ORDERED that Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, are HEREBY ENJOINED from utilizing the procedures of N.C. Gen. Stat. § 163-82.6B(d) to remove from the official count the votes of the ballot of any voter

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000495

who has provided contact information in the registration process and whose first notice required under N.C. Gen. Stat. § 163-82.7(c) is returned by the Postal Service as undeliverable before the close of business on the business day before the canvass, without first providing such voter notice and an opportunity to be heard, and, only to this extent, Voto Latino Plaintiff's motion (VL Doc. 44) and Party Plaintiff's motion (DNC Doc. 6) are GRANTED. This injunction shall remain in force until such time as a procedure for notice and opportunity to be heard is implemented in accordance therewith.

IT IS FURTHER ORDERED that Voto Latino Plaintiff's motion (VL Doc. 44) and Party Plaintiff's motion (DNC Doc. 6) are, in all other respects, DENIED.

/s/ Thomas D. Schroeder
United States District Judge

January 21, 2024

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NC-DURHAM-24-0352-A-000496

From: Berot, Lisa
To: Bell, Karen B; Kelly, Bret; Gannon, Patrick; Baddour, Neil; Blackman, Allison; Holland, Parker; Velez, Trena; Cox, Paul; LaToya Peele; Bowens, Derek; Kristin Scott; Summer Heatherly; Rhonda Johnson; Caudill, Kimberly; Love, Katelyn; McCurry, Virginia; Adams, Steve; Dell, Laura; Jones, Brooks; Noce, John; leighsa.jones; Main, Sharon H; Stone, Matthew; Pamlico.boe; Main, Sharon H
Date: Tuesday, February 20, 2024 8:41:43 AM

Good morning. Below are a few updates for the Signature Verification Solution Pilot Program:

- Responses to vendors' questions were posted to NC's electronic Vendor Portal (eVP) yesterday afternoon.
- The next step is the bid opening on Tuesday, 2/27.

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From:	Berot, Lisa
To:	Bell, Karen B; Kelly, Bret; Gannon, Patrick; Baddour, Neil; Blackman, Allison; Holland, Parker; Velez, Trena; Cox, Paul; LaToya Peele; Bowens, Derek; Kristin Scott; Summer Heatherly; Rhonda Johnson; Caudill, Kimberly; Love, Katelyn; McCurry, Virginia; Adams, Steve; Dell, Laura; Jones, Brooks; Noce, John; leighsa.jones; Main, Sharon H; Stone, Matthew; Pamlico.boe; Main, Sharon H
Date:	Tuesday, March 19, 2024 12:44:25 PM

Good afternoon,

As of today, I can share that SBE is using the Request for Quote (RFQ) procurement method to pursue the Signature Verification Solution. We are currently waiting on DIT's approval of the RFQ document.

Once I have more information to share, I will post it here.

Regards,

Lisa

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Lassiter, Daniel

From: Meredith Moran <mmoran@naco.org>
Sent: Tuesday, January 16, 2024 10:37 AM
To: Bowens, Derek
Subject: NACo County News, signature verification pilot program

Derek,

Hello! I'm a staff writer for The National Association of Counties' newspaper, *County News*. We're focusing on election-related topics for our next issue, publishing Jan. 29, and I'm writing a story on North Carolina's 10-county signature verification pilot program that will be used for the primary.

I'm interested in hearing about how exactly this will impact election workers in the chosen counties – how they're planning on handling added workload, scrutiny, etc. Please let me know if you're available for a quick phone call sometime over the next few days to discuss.

Thank you!

Best,

Meredith

Caution: Do not click links or open attachments unless you recognize the sender and know the content is safe.

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NORTH CAROLINA
STATE BOARD OF ELECTIONS

P.O. Box 27255
Raleigh, NC 27611
(866) 522-4723
www.ncsbe.gov

Numbered Memo 2024-04

TO: Boards of Elections for Bertie, Cherokee, Durham, Halifax, Henderson, Jones, Montgomery, Pamlico, Rowan, and Wilkes Counties

FROM: Karen Brinson Bell, Executive Director[1]

RE: Absentee Ballot Signature Verification Pilot Program

DATE: May 1, 2024

This memo explains how selected county boards will carry out an absentee ballot signature verification pilot program for the 2024 primary election as required by Session Law 2023-140 (Senate Bill 747). The pilot program is being conducted for evaluation purposes only and will not affect whether any absentee ballot is counted for the election.[2]

1. Overview

The pilot program consists of selected county boards of elections using automated signature verification software to compare the signatures of voters on all executed absentee-by-mail ballots received by the county board in the 2024 primary. County boards shall accept signatures that are determined to be a match by the software. For signatures that are not identified as a match by the software, county boards of elections will conduct a manual review of those signatures to help evaluate the accuracy of the automated software review. County boards will then compile data from the pilot and forward it to the State Board for analysis, and the State Board will report the results of the analysis to the General Assembly.[3]

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[1] This memo is issued under the authority delegated by the State Board to the executive director pursuant to G.S. § 163-22(p).

[2] Session Law 2023-140, Section 48(c).

[3] Session Law 2023-140 provides the requirement to conduct a pilot program:

> SECTION 48(a) The State Board of Elections shall select 10 counties in the State in which to conduct a pilot program during the primary held in 2024 for signature verification on executed mail-in absentee ballots. In selecting the 10 counties for the pilot, the State Board of Elections shall seek diversity of population size, regional location, and demographic composition. The pilot program shall consist of county boards

AMERICAN OVERSIGHT

2. Sources of Clipped Signature Images

County boards will begin by comparing the voter's signature on file in VoterView in SEIMS with the voter's signature on the absentee envelope. The clipped signature in VoterView will generally be the voter's most recent signature. This signature is frequently captured using a means of signing other than pen to paper. Sources of clipped signatures in VoterView include:

- **Voter registration forms and updates from registration activity.** These signatures may be scanned images from paper forms or digital images from registration activity through DMV. Most voter registration signatures come from DMV, where signatures are captured using a stylus on an electronic signature pad in a DMV office. Signatures received from DMV are typically 200 dpi (dots per inch), and therefore may appear slightly pixelated and bolder. They may also be missing part of the image due to signing on a signature pad.
- **Absentee request forms.** The signature may be a scanned image from a paper form or, if the request was made through the State Board's online absentee request portal, the signature was provided electronically using a mouse or a finger on a touchscreen. Visually impaired voters are permitted to type their signature.
- **Paper or electronic pollbooks and provisional applications.** These signatures are scanned images from paper forms.
- **Other sources.** Other sources of signatures include National Change of Address (NCOA), confirmation, and verification cards returned by voters with updates.

3. Steps for Signature Comparison

There are two tiers of review in the process of comparing the voter's signature on the absentee envelope with the voter's signature on file:

1. Tier 1 (automated comparison)
2. Tier 2 (manual comparison)

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of elections using signature verification software to check the signatures of voters noted on all executed mail-in absentee ballots received by the county boards of elections in the 2024 primary. The State Board of Elections shall select the signature verification software and ensure that the software is available for all 10 counties to use in the 2024 primary. The State Board shall assist the selected county boards of elections in implementing the signature verification software, including assisting the selected county boards of elections in any training needed on how the software is to be used for signature matching on executed mail-in absentee ballots.

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Tier 1 Review

Tier 1 review is carried out by automated signature verification software, which will have a match sensitivity set by the State Board for all counties participating. If the software determines the voter's signature on the absentee envelope is a match for the voter's signature on file, no further review shall occur. The software vendor and the State Board will provide training and other resources to the county boards about how to use the software.

Tier 2 Review

If the software is unable to determine that the signatures match, the signature on the absentee envelope will proceed to Tier 2 review. In this step, the county board will conduct a manual review to compare the two signatures and, if needed, review other signatures and information in the voter's registration record. The county board will then vote on whether the signature on the absentee envelope is sufficiently similar to the signature(s) on file and may be approved. This process occurs in an open meeting.

4. County Board Meetings

The county board of elections shall schedule an open meeting to review signatures identified for Tier 2 review. All deliberations must be conducted in an open meeting. At least three board members (a quorum) must attend the meeting.[4] A majority of the board members present at the meeting must vote for an action for it to pass. It is a best practice for board members from both parties to be present at the meeting.

Staff must research and compile materials, including all of the voter's previous signatures on file in SEIMS, ahead of time to streamline the county board's review. As a reminder, county board members are not permitted to access SEIMS.[5]

In the meeting, county board members will simultaneously compare the voter's signature on the absentee envelope with the voter's signature in VoterView. This may be accomplished by preparing individual packets or displaying the signatures on one or more terminals. Regardless of the means of signature comparison that is used, county boards must ensure that members of the public in attendance at the meeting are not permitted to make any copy, tracing, photograph, or recording of the voter's signatures.[6]

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[4] G.S. § 163-31(d).

[5] See page 3 of Numbered Memo 2020-17.

[6] G.S. 163-82.10(a2): "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

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All decisions by the county board shall be documented in a spreadsheet. The State Board will provide a sample spreadsheet for use by the county boards.

5. Public Records Requests for Signatures

North Carolina law prohibits any person other than an authorized election official from copying or tracing a voter's signature.[7] Voter signatures may be viewed in the county board office. If a member of the public requests access to voter signatures, the county board shall allow the signatures to be viewed in the office, but staff must supervise to ensure that the signatures are not recorded, copied, or traced. As indicated in Numbered Memo 2022-01, scheduling access to view public records may depend on the availability of staff to supervise the review. The county board need not allow review of signatures during, or immediately before or after a board meeting, if it does not have sufficient staff to do so.

It is a crime for someone who is not authorized by law to retain a voter's signature from a submitted voter registration form.[8]

6. Analysis of Signatures

As mentioned, during Tier 2 review the county board will simultaneously compare the voter's signature on the absentee envelope with the voter's signatures in VoterView. The county board may also use the voter's signature on the copy of their photo ID submitted with the absentee envelope, if an ID was submitted and the ID has a signature. A signature on a photo ID exemption form may not be used since it was signed and submitted simultaneous with the absentee envelope under review.

When comparing signatures, it is important to keep in mind that everyone writes differently, and no one signs their name exactly the same way twice. A voter's signature on the absentee envelope should not be rejected just because it does not look *exactly* the same as the signature in the voter's SEIMS profile.

Signature comparison begins with the presumption that the signature on the absentee envelope is the voter's signature. Again, an exact match is not necessary for the county board to confirm that

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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."

[7] G.S. 163-82.10(a2).

[8] G.S. § 163-274(16) makes it a Class 2 misdemeanor for any person who is not an elections official or who is not otherwise authorized by law to retain a voter's signature from any form described in G.S. 163-82.3 after submission of the form to the county board of elections or elections official.

AMERICAN OVERSIGHT

the signature on the absentee envelope is a valid signature, since a human voter cannot be expected to make a precisely matching signature each time they sign something. Similar characteristics between a signature being compared and any signature in the voter's record are sufficient to determine that a signature is valid.

When evaluating signatures, the county board should review using broad characteristics to evaluate an entire signature as a unit, and if needed to confirm a match, they should also focus on specific letters within a signature. For examples and detailed guidance on how to consider broad and narrow characteristics, see the appendix at the end of this memo.

The county board shall conduct the following analysis when deciding whether signatures are consistent with each other:

5.1 Evaluate the signature's broad characteristics

Broad characteristics include:

1. The type of writing (e.g., cursive vs. print)
2. The amount of care put into the writing (e.g., quick and sweeping vs. slow and detailed)
3. Overall spacing
4. Overall size and proportions
5. Position of the signature (e.g., slanted vs. straight)
6. Spelling and punctuation

If the broad characteristics of the signature on the absentee envelope are consistent with the broad characteristics of the voter's signature on file, the county board shall accept the signature.

5.2 Evaluate the signature's local characteristics

If the county board finds a combination of dissimilarities between the two signatures' broad characteristics, then the county board shall evaluate local characteristics, which include:

1. Internal spacing
2. The size or proportions of a letter or letter combination
3. Curves, loops, and cross-points
4. The presence or absence of pen lifts
5. Beginning and ending strokes

After evaluating the signatures' local characteristics, the county board must decide whether to accept the signature on the absentee envelope as genuine. A county board may not reject a voter's signature without first comparing it to all of the other voter's signatures on file in the voter's SEIMS record.

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5.3 Explanations for discrepancies

If, after going through the above analysis, the county board finds a combination of differences between the signature on the absentee envelope and the signature or signatures in the voter's record, consider whether the differences can be reasonably explained. **If the county board can reasonably explain the differences, the signature must be accepted.** Looking at more than one signature from the voter's SEIMS record, if available, may be necessary because people develop certain signature habits over time. Identify these habitual marks and determine whether they exist in the signature on the absentee envelope.

The county board shall consider the following as possible explanations for discrepancies in signatures:

1. Evidence of trembling or shaking in a signature could be health-related or the result of aging.
2. The voter may have used a diminutive of their full legal name, including, but not limited to the use of initials, or the rearrangement of components of their full legal name, such as a reversal of first and last names, use of a middle name in place of a first name, or omitting a second last name.
3. The voter's signature style may have changed over time.
4. The voter's signature on the absentee envelope or registration form may have been written quickly.
5. A signature in the voter's record may have been written with a stylus pen or other electronic signature tool that may result in a thick or fuzzy quality.
6. The surface of the location where the signature was made may have been hard, soft, uneven, or unstable.
7. Factors applicable to a particular voter, such as the age of the voter, the age of the signature(s) contained in the voter's record, the possibility that the voter is disabled, and the quality of any digitized signature(s) contained in the voter's record.

Only a signature possessing multiple, significant, and obvious differing characteristics with all signatures in the voter's registration record may be rejected. To reject a signature, the county board must find beyond a reasonable doubt that the voter's signature on the absentee envelope differs in multiple, significant, and obvious respects from all signatures in the voter's registration record, and that the differences cannot be reasonably explained.

6. Reporting Requirements

The State Board will closely monitor the pilot program and will compile and analyze the results upon completion of the pilot.

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NC-DURHAM-24-0352-A-000505

County boards should keep careful records during the pilot and be prepared to report to the State Board their findings. Certain information is statutorily required to be reported by the county boards, including:

1. Whether the signature verification software was used for all returned mail-in absentee ballots.
2. How many executed mail-in absentee ballots were counted by the county board of elections in the 2024 primary.
3. How many executed mail-in absentee ballots were flagged by the signature verification software.[9]

The State Board will also survey the counties for certain additional information about the pilot, including:

1. Any research indicating signatures identified in Tier 1 review as not matching were a match and any available information about why the mismatch may have occurred.
2. Approximate staff time and county board time spent on the pilot.
3. Suggestions or changes for how to implement signature verification statewide for absentee ballots.
4. Suggestions on designing a process for how a voter can cure a deficiency related to signature verification of absentee ballots in the future.
5. Any other feedback the county board would like to share.

Answers to Frequently Asked Questions

1. Will UOCAVA voters' ballots be included in the pilot?

Yes, if submitted by mail. Section 48(a) of Session Law 2023-140 requires that the signature verification software be used for "all executed mail-in absentee ballots received by the county boards of elections in the 2024 primary."

2. What happens if the voter printed their name rather than signed in cursive on the absentee envelope?

The signature on the absentee envelope must match at least one of the voter's signatures on file with the county board. If the signature on the absentee envelope is printed, but the signature on file with the county board is in cursive, the board will still need to compare those signatures according to the criteria in this memo. In other words, the difference in the type of writing (cursive vs. print) is a dissimilarity in a broad characteristic that should be considered in determining whether there is a match. But that factor *alone* should not determine a mismatch. The board will still need to consider whether there are other dissimilarities. Also, keep in mind that some voters, particularly younger voters, may use a printed name as their signature. In this

[9] Session Law 2023-140, Section 48(b).

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000506

case, if the printed signature on the absentee envelope matches the printed signature on file with the county board, the signature on the absentee envelope should be approved.

3. What if the voter puts their initials instead of signing their full name?

The use of initials alone is not considered a mismatch. As discussed in Section 5.3, the county board must consider as a possible explanation for a discrepancy that a voter printed their initials rather than the voter's full name. This could include, for example, using a first initial instead of first name, or using initials entirely instead of the voter's full name. If this is the case, the county board must go through the process outlined in this memo to compare the two.

4. What if the voter has a disability that prevents them from signing their name, such as a blind voter who submits their absentee ballot through the State Board's online portal and uses a typed signature?

The county board may not reject a signature due to a voter's disability. As explained in Section 5.3 of this memo, the county board must consider any explanations for discrepancies between the signatures, including those caused by the voter's disability. If the voter has attested under penalty of perjury that they have a disability that prevents them from signing, the typed signature should be approved.

5. What about if the voter makes their mark instead of signing, or what if the assistant writes "Disabled - cannot sign"?

See the Appendix to this memo, starting on page 17.

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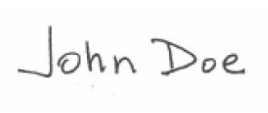
Appendix[10]

Note: Each of the examples below are designed to show what certain differing characteristics look like. This is not to suggest that in each example below, the signature should be rejected. A *single* differing characteristic is not enough to reject a signature. Instead, to reject a signature, the county board must find beyond a reasonable doubt that the voter's signature on the absentee envelope differs in multiple, significant, and obvious respects from all signatures in the voter's registration record, and that the differences cannot be reasonably explained.

BROAD CHARACTERISTICS

1. TYPE OF WRITING

Next to spelling, the type of writing is the easiest characteristic to notice a difference in. Does the voter's record have only cursive handwriting, but the absentee envelope has print? This is an immediate indicator for further research and review.

Genuine Signature	Questioned Signature
	

2. APPARENT SPEED OF WRITING

A person writing their own signature will perform the act fairly quickly. This is because the person has likely signed their name thousands of times, so the gesture is automatic and harmonious, requiring little thought or concentration.

If someone other than the voter took a long time to copy the voter's signature, the copied signature will not have a free and natural look to it. Instead, you should see more deliberate marks. If the forger attempted to create the signature quickly, then it should have various characteristic differences.

[10] This appendix was adapted from the Arizona Secretary of State's Signature Verification Guide, Feb. 26, 2024.

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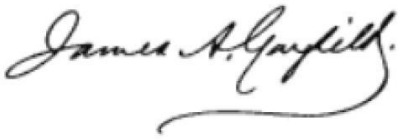
Keep in mind, however, that this situation may go in reverse. If the voter naturally has shaky or poor handwriting that is evident in the voter registration record signature, but the ballot's signature is suddenly of high quality, that could indicate a forgery.

Look to see whether the signature on the absentee envelope was made with the deliberateness as the signatures in the voter's record. Keep in mind that a reasonable explanation for a shaky signature is the voter's advanced age, decreased muscle strength, or the surface below the envelope.

Genuine Signature	Questioned Signature
	
	

3. OVERALL SPACING

Writing a signature is a fixed and subconscious habit, so the signature's spacing should be reasonably similar. Determine whether the signature on the absentee envelope has odd or unnatural spacing that cannot be reasonably explained.

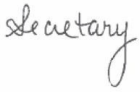
Genuine Signature	Questioned Signature
	
	

4. OVERALL SIZE AND PROPORTIONS

The signatures' size and proportions should also be reasonably similar. At your first impression, identify whether the signature on the absentee envelope is too large or small compared to the signatures in the voter's record. This comparison may be difficult to perform by looking only at one voter signature. You may need to conduct further research or review additional signatures.

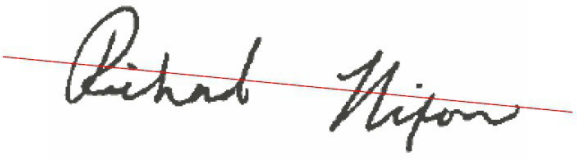
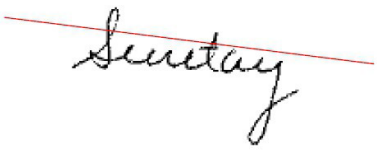
AMERICAN OVERSIGHT

The first example below has odd proportions because the letter's height compared to the name's length is very different than the genuine signature. The remaining two examples have unreasonably different sizes.

Genuine Signature	Questioned Signature
	
	
	

5. SLANT OF WRITING

Differences in a signature's slant may also raise questions about a match. The first slant to be aware of is the signature's position relative to the signature line. People tend to hold the pen and paper the same way each time they write, which causes their writing to slant in the same direction each time. You may also find that individual letters in the signature slant in the opposite direction. This type of deviation will usually accompany a difference in the signature's overall spacing. See the third example below. Look to see whether the entire signature slants or leans in a different direction than the signatures in the voter's record. A writer's slant is one of the most consistent parts of their signature.

Genuine Signature	Questioned Signature
	
	
	

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6. SPELLING

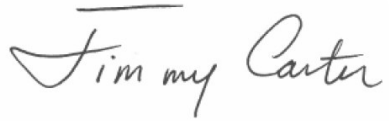
If the name is misspelled, you should seriously question the signature, unless there is some reasonable explanation—for example, it looks like the name is misspelled when, in fact, perhaps an atypical writing tool like a stylus was used and it did not create letters with the clarity that is typical in a voter's signature. Bear in mind that a voter may use a common nickname or initials (for instance, a voter may sign as "Bobby" instead of "Robert") so long as the characteristics of the signature remain the same.

Genuine Signature	Questioned Signature
	

LOCAL CHARACTERISTICS

1. INTERNAL SPACING

As mentioned before, the spacing and the relationship between successive letters should be reasonably similar. In the examples below, you will notice that the "R" in Ronald is much closer in the questioned signature than in the genuine one, and the questioned "Jimmy" has a great deal of space in between certain letters.

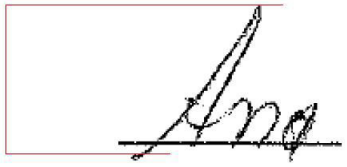
Genuine Signature	Questioned Signature
	
	

2. SIZE OR PROPORTIONS OF A LETTER OR LETTER COMBINATION

Letter sizes and proportions should be reasonably similar. Review whether letters are the same size and whether letter height, when compared to the name's length, leads to suspicious proportions.

Below, the first questioned signature has unreasonable proportion in "Madison." The remaining two signatures have noticeably different sizes in certain letters.

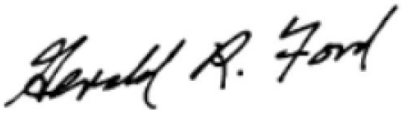
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Genuine Signature	Questioned Signature
	
	
	

3. CURVES, LOOPS, AND CROSS-POINTS

Like size, these characteristics may be difficult to identify if you are comparing the signature on the absentee envelope to only one signature in the voter's record. Some writers tend to have very loopy signatures while others have sharp, angular writing. Characteristics like loops and curves tend to be consistent across a person's handwriting, but keep in mind that cross-points can be reasonably impacted by simple factors like the type of pen the person used, which may be a reasonable explanation for such differences.

Find whether there are any noticeably different marks like in the examples below.

Genuine Signature	Questioned Signature
	
	

4. THE PRESENCE OR ABSENCE OF PEN LIFTS

If someone is not familiar with a signature, they may have written in pieces or chunks. When this occurs, they will leave connection or hesitation marks that will not appear in the voter registration record signatures.

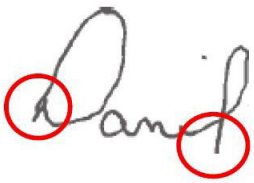
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Look to see whether there are any strange connection points or hesitation marks like in the examples below.

Genuine Signature	Questioned Signature
	
	

5. BEGINNING AND ENDING STROKES

A genuine signature becomes automatic over time. This automatic nature leads to what appears to be "flying starts and finishes," where the signature's start and end points seem to vanish off the paper. Genuine writers tend to begin writing their signature before the pen even hits the page. A reason to question a signature is if there are larger ink dots or marks at the beginning or end of a signature.

Genuine Signature	Questioned Signature
	
	

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ELECTRONIC SIGNATURES

When reviewing signatures in the voter's file, it is very likely that you will encounter some signatures that were created and captured electronically. DMV offices use an electronic signature pad to record signatures. In addition, voters who request an absentee ballot online sign electronically using a mouse or a finger on a touchscreen. These signatures are included in the voter's record and are used as references when verifying their signature on the absentee envelope. Electronic signatures create some unique circumstances that you should consider when verifying a ballot affidavit signature.

When comparing an electronic signature to a handwritten signature, you should continue to consider the factors listed on the previous pages.

- This means you should begin your analysis by looking at each signature's broad characteristics and if those characteristics are not clearly consistent, you should continue your analysis by examining the local characteristics.
- Keep in mind that the local characteristics of an electronic signature may be difficult to determine. Since the technology for electronic signatures is not as precise as pen and paper, it may be difficult, for example, to spot the presence or absence of pen lifts or beginning and ending strokes as space may be limited. Regardless, you should still consider all the factors described in the previous pages of this memo when comparing these signatures and make a decision based on the totality of what you find.

If, after going through your analysis, you find a combination of differences between the signature on the ballot affidavit envelope and the signatures in the voter registration record, ask whether the differences can be reasonably explained.

- You should consider that electronic signatures in particular may not be as precise as their handwritten counterparts and may even appear "blurry" or "messy" in comparison. It is possible that this may reasonably explain the difference between a handwritten and an electronic signature.
- **Remember:** You may need to look through the voter's entire signature history to determine if the current signature on the absentee envelope was written by the voter. If you find that the electronic signature found in the voter's history is difficult to read or match, it is possible there are other signatures on file that may be easier to read and distinguish. Before declining to accept a voter's signature on the ballot envelope, review these other signatures to determine if the inconsistency is with the ballot envelope signature or with the electronic signature in the voter registration record.

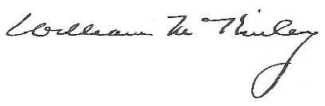
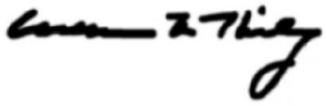
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1. "MESSY" OR "BLURRY" ELECTRONIC SIGNATURES

Because the technology for capturing electronic signatures is not always as precise as a pen and paper signature, an electronic signature may appear "messy" or "blurry" in comparison. However, even a "messy" or "blurry" signature should be compared using the two-step process described above.

In the first example below, the electronic signature found in the voter registration record looks vague and imprecise compared to the handwritten signature found on the absentee envelope. However, the broad characteristics appear to be substantially similar. The type, speed, spacing, size, and position of each signature appear to be the same and any minor disparities can be explained by the fact that one signature was created using an electronic pad and the other was created using pen and paper.

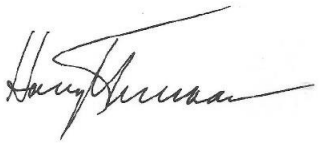
In the second example, many of the broad characteristics are again substantially similar, although the electronic signature is not as precise as the handwritten signature. Regardless, these signatures can still be considered a match because the broad characteristics are substantially similar. If you decide an electronic signature is too "messy" or "blurry" compared to a handwritten signature to fairly compare, you should always look through the voter's signature history to determine if there is a clearer signature on file.

Handwritten Signature	Electronic Signature
	
	

2. ELECTRONIC SIGNATURES THAT HAVE BEEN CUT OFF

In some instances, a person signing an electronic signature pad may have some of their signature cut off. This is likely because the voter's pen stroke went outside the area that the electronic signature pad could capture. You should still compare the full electronic signature to the handwritten signature using the two-step process outlined in this memo. If you cannot verify the signatures using the two-step process, remember there may be more signatures in the voter's signature history that you can use to compare.

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Handwritten Signature	Electronic Signature
	
	

SPECIAL CIRCUMSTANCES

1. VOTERS WHO ARE UNABLE TO SIGN OR MAKE THEIR MARK DUE TO DISABILITY

Absentee envelopes contain a line for the voter to sign and a line for the voter assistant, if any, to sign. A voter assistant signature is required if the voter received assistance completing the envelope, marking the ballot, or mailing or returning their ballot. A voter assistant signature is also required if the voter is physically unable to sign or make their mark due to disability. In this case, the person assisting with the ballot should write in the voter's signature line, "Disabled - cannot sign."[11] If this is the case, no signature comparison will take place, because there is no voter signature to compare, and this will be noted accordingly in the county board's spreadsheet.

2. BALLOTS WITH A MARK

A voter who is unable to sign their name may instead make their mark on the signature line. A mark is an "X," like in the example below, or some other sign or marking made in lieu of a signature. If a ballot contains a mark, the voter's mark must be compared to the voter's signature or mark on file for the voter.[12]

---

[11] See Numbered Memo 2022-11, explaining how disabled voters must be able to receive assistance to cast an absentee ballot.

[12] The law providing for the signature verification pilot program requires the county boards to check all signatures on absentee ballots against the voter's records. See Session Law 2023-140, sec. 48.

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Mark Example



3. SIGNATURES FROM VOTERS IN GROUP RESIDENTIAL FACILITIES

Pay close attention to pen strokes found on absentee envelopes from voters living in group residential facilities. The signatures of these voters are at a higher risk of having changed or deteriorated over time and may look less and less like the comparison signature found in the voter registration record. With this risk in mind, the following precautions should be taken when reviewing signatures from these voters.

- Look for a pattern of deterioration in the voter's signature history. You may do this for any signature that you review, but for signatures from voters in group residential facilities, taking this extra step can be even more beneficial. If the signatures you review in the voter's file reveal a pattern of deterioration, then this fact may reasonably explain the difference between the ballot's signature and the signatures found in the voter registration record.
- Be mindful of the voter's situation when reviewing signatures from group residential facility voters. Remember that if, after going through normal signature analysis, the differences between two signatures can be reasonably explained, you should accept a voter's signature as valid.

Accordingly, during the pilot program, if the voter makes their mark on the absentee envelope but the voter's record contains only the voter's signature, the signature will likely be found to mismatch. Other states, such as Arizona, account for this situation by requiring that an assistant sign the absentee envelope instead of verifying the voter's mark when the voter is unable to sign due to disability. See Arizona Secretary of State's Signature Verification Guide, Feb. 26, 2024, at 15. This requirement also avoids the difficulty of trying to compare a commonplace mark such as an "X" between documents. Such an accommodation would be appropriate for the North Carolina General Assembly to consider when assessing the results of this pilot program.

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Lassiter, Daniel

From: Spectacular Magazine <info+spectacularmag.com@ccsend.com>
Sent: Friday, January 5, 2024 6:29 PM
To: Bowens, Derek
Subject: Over 700 Pounds Of Marijuana & "Shake" Seized | Parade Grand Marshal Named | & More!

ICYMI | NEWS & UPDATES

January 5, 2023 Edition

Trailblazer: The Honorable Elaine O'Neal Named Grand Marshal Of NC MLK Black History Month Parade

READ MORE

State Board Of Elections Selects Durham County, 9 Others For Signature Matching Pilot Program

READ MORE

255 Pounds Of Marijuana, 524 Pounds Of "Shake" Material Seized In Person County Traffic Stop

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Raleigh Improv | Wednesday Jan. 17 | 7:30 pm (One Show Only)

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The Show of a Lifetime
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In Theaters January 24

IF
Stars Ryan Reynolds, John Krasinski, Cailey Fleming
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Lassiter, Daniel

Subject:	Overview meeting regarding signature verification pilot program
Location:	Microsoft Teams Meeting
Start:	Mon 1/8/2024 1:00 PM
End:	Mon 1/8/2024 2:00 PM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Declined
Organizer:	Bell, Karen B

Microsoft Teams meeting

Join on your computer, mobile app or room device
Click here to join the meeting

Meeting ID: 257 804 001 068
Passcode: b7LT5V
Download Teams | Join on the web

Join with a video conferencing device
ncgov@m.webex.com
Video Conference ID: 115 322 548 3
Alternate VTC instructions

Or call in (audio only)
+1 984-204-1487,,792651300# United States, Raleigh
Phone Conference ID: 792 651 300#
Find a local number | Reset PIN

Learn More | Meeting options

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Lassiter, Daniel

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Show Time As:	Tentative
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Organizer:	Bell, Karen B

Microsoft Teams meeting

Join on your computer, mobile app or room device
Click here to join the meeting

Meeting ID: 257 804 001 068
Passcode: b7LT5V
Download Teams | Join on the web

Join with a video conferencing device
ncgov@m.webex.com
Video Conference ID: 115 322 548 3
Alternate VTC instructions

Or call in (audio only)
+1 984-204-1487,,792651300# United States, Raleigh
Phone Conference ID: 792 651 300#
Find a local number | Reset PIN

Learn More | Meeting options

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Lassiter, Daniel

From: Caitlin Metzguer <caitlin@youcanvote.org>
Sent: Thursday, January 11, 2024 10:48 AM
To: Bowens, Derek
Cc: Kate Fellman
Subject: pilot for absentee voters

Hey Derek, happy new year. I hope you are feeling good diving into 2024!

I wanted to touch base about the pilot program and Durham participation. Is there anything we should know or help to distribute to raise awareness on the signature verification program? I'm happy to drop by or call you if there is anything we can do to help spread the word on making it successful.

My understanding is that this is only for the Primary, and we don't expect it for November. Is that correct?

Thanks for all you do,
--
Caitlin Metzguer
pronouns: she/her/hers
Deputy Director, You Can Vote
www.youcanvote.org

Click here to donate!
You Can Vote is a 501(c)(3) nonprofit organization. Contributions are tax-deductible to the extent allowed by law.

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Lassiter, Daniel

From: Emma Mintz <emintz@joebidenconsultants.com>
Sent: Friday, February 23, 2024 3:49 PM
To: Bowens, Derek
Subject: Post Election Meetings

Hi Derek,

My name is Emma Mintz and I am the voter protection advisor to the Biden for President Campaign. I have a few questions about the timing of post election meetings. They are below. Please feel free to give me a call if you would rather discuss. 9732143231

1. When and where will hearings on absentee ballot challenges take place?
2. Will you have a post-election absentee counting meeting? If so, when and where?
3. When and where will post-election provisional ballot meetings take place?
4. When and where will the post-election canvass take place?
5. When and where will meetings related to same-day registration voters needing cure take place? I.e., Will there be a hearing on the day of the canvass for anyone wishing to cure in person? Will there be any other same-day registration processing meetings?
6. Are there any other post-election meetings that will take place? If so, what are they and when/where will they be?
7. (In select counties): When and where will you be conducting signature matching as part of the pilot program?

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Lassiter, Daniel

From: Ellen Reckhow <ereckhow@gmail.com>
Sent: Saturday, January 20, 2024 3:52 PM
To: Bowens, Derek
Subject: Question on Implementing the Signature Matching Pilot

ereckhow@gmail.com appears similar to someone who previously sent you email, but may not be that person. Learn why this could be a risk

Hi Derek,

Sorry to bother you at this busy time.

I was at a LWV Lunch and Learn event and there seems to be confusion over whether the pilot signature matching for absentee ballots, that Durham was chosen to participate in, will lead to ballots being discarded for not matching. I read the provision in ratified S747 and it appears that they would not be discarded.

This is the link to the bill - https://www.ncleg.gov/Sessions/2023/Bills/Senate/PDF/S747v6.pdf

The relevant wording is at the bottom of page 42. The wording appears to be clear that votes should not be rejected for failing the signature matching.

SECTION 48.(c) In implementing the pilot program established in this section, no executed mail-in absentee ballot shall be rejected by the county board of elections for failing any signature verification. All executed mail-in absentee ballots that are otherwise eligible to be counted in accordance with Chapter 163 of the General Statutes shall be counted.

Can you clarify how the wording will be administered?

Thanks a lot, Ellen

Ellen Reckhow
Durham, NC
919-210-5535

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Lassiter, Daniel

From: Weaver, James
To: Bowens, Derek
Sent: Friday, January 5, 2024 12:43 PM
Subject: Read: Absentee By Mail Signature Verification Pilot Program: Durham Selected

Your message

To: Weaver, James
Subject: Absentee By Mail Signature Verification Pilot Program: Durham Selected
Sent: Tuesday, January 2, 2024 1:04:13 PM (UTC-05:00) Eastern Time (US & Canada)

was read on Friday, January 5, 2024 12:43:08 PM (UTC-05:00) Eastern Time (US & Canada).

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Lassiter, Daniel

From: Baker, Brenda
To: Bowens, Derek
Sent: Tuesday, January 2, 2024 1:23 PM
Subject: Read: Absentee By Mail Signature Verification Pilot Program: Durham Selected

Your message

To: Baker, Brenda
Subject: Absentee By Mail Signature Verification Pilot Program: Durham Selected
Sent: Tuesday, January 2, 2024 1:04:13 PM (UTC-05:00) Eastern Time (US & Canada)

was read on Tuesday, January 2, 2024 1:22:06 PM (UTC-05:00) Eastern Time (US & Canada).

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Lassiter, Daniel

From: Craig-Ray, Deborah
To: Bowens, Derek
Sent: Tuesday, January 2, 2024 1:42 PM
Subject: Read: Absentee By Mail Signature Verification Pilot Program: Durham Selected

Your message

To: Craig-Ray, Deborah
Subject: Absentee By Mail Signature Verification Pilot Program: Durham Selected
Sent: Tuesday, January 2, 2024 1:04:13 PM (UTC-05:00) Eastern Time (US & Canada)

was read on Tuesday, January 2, 2024 1:41:10 PM (UTC-05:00) Eastern Time (US & Canada).

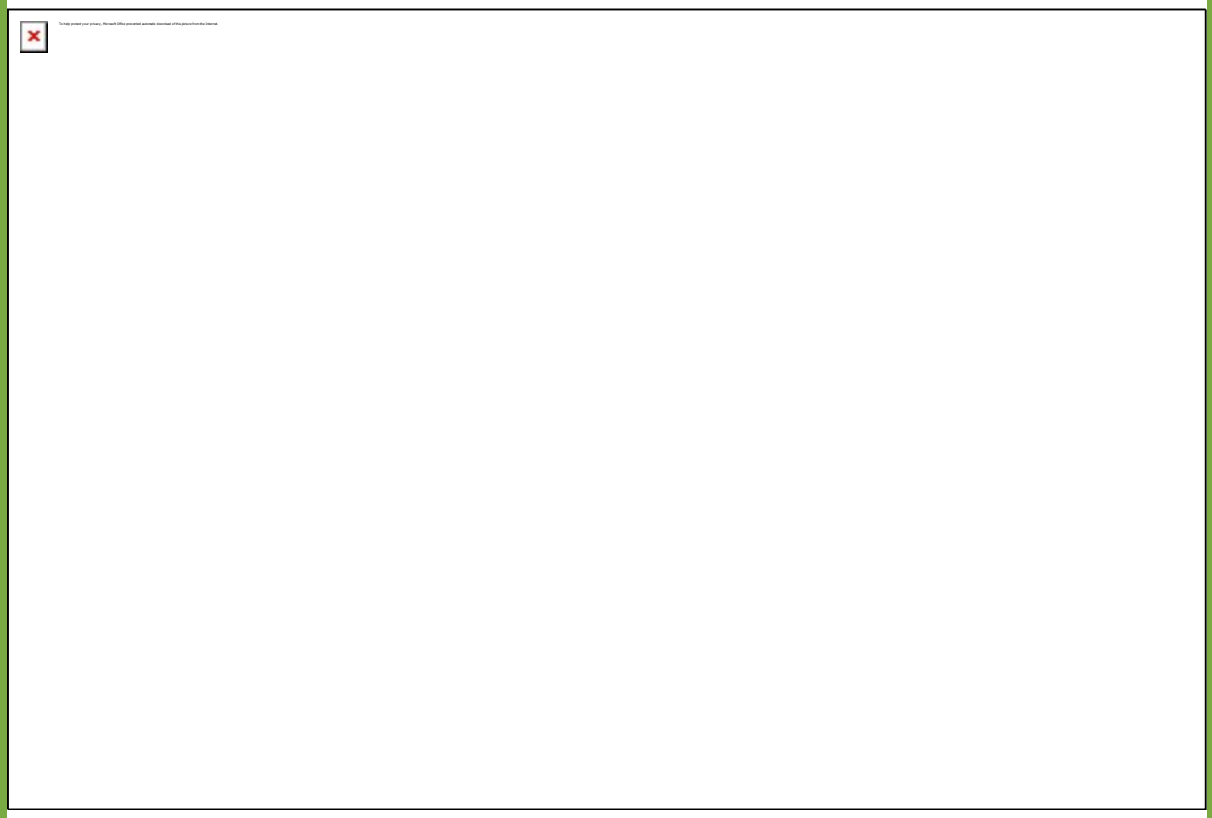
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Lassiter, Daniel

From: public_information
Sent: Thursday, February 1, 2024 4:28 PM
Subject: Representing the Finest Clerks, Recorders, Election Officials & Treasurers, In Touch with Durham County, American Heart Month, and more in this issue of NYCU!

The Weekly Edition of News You Can Use by and for Durham County Government Employees.

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NC-DURHAM-24-0352-A-000531



Representing the Finest Clerks, Recorders, Election Officials & Treasurers

NC-DURHAM-24-0352-A-000532

Durham County Assistant Register of Deeds Karen Perry represented Durham County Government at the recent International Association of Government Officials (iGO) Conference in Savannah, Georgia.

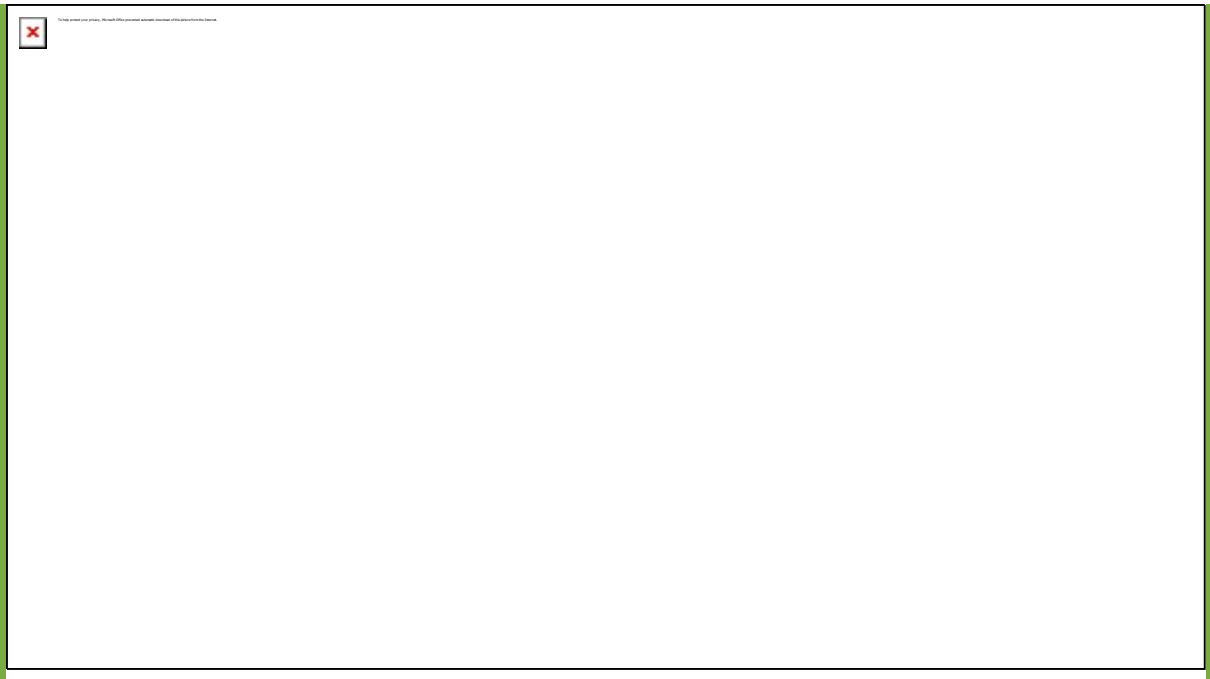
Perry, who manages the County's Vital Records Division in the Register of Deeds, is currently serving as iGO's Second Vice President as a member of the 2023-2024 iGO Executive Board. Her duties in this role include serving on the Conference Committee, Budget Committee Chair, serving in place of the President and First Vice President in case of absence, and other duties as assigned by the President.

The iGO organization is comprised mainly of other registers, court clerks, and election officials and meets bi-annually to discuss best practices in each field to ensure that the communities where they reside are receiving the highest level of service possible. Its motto is "Fostering excellence in public service through education, innovation, and networking."

Learn more about iGO on the website.

Congratulations, Karen!

NC-DURHAM-24-0352-A-000533



Latest Edition of In Touch with Durham County

Durham County Tax Administrator Keyar Doyle and Durham County Elections Director Derek Bowens are featured guests on the February 2024 edition of the "In Touch with Durham County" show.

In segment one, host Durham County Chief Communications Officer Deborah Craig-Ray, talks to Doyle about his role as well as tax bills, payment plans, and the upcoming Durham County property tax reappraisal process that will occur in 2025. In segment two, Bowens discusses the 2024 Primary and Election, the early voting period, and Election Day of Tuesday, March 5, 2024. He also touches upon the NC Voter Photo ID requirements, absentee voting, sample ballots, key dates, and more! Lastly, he talks about Durham County's involvement in the State Board of Elections' mailed ballot signature-matching pilot program.

Read more about this segment here. View the show on demand on

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County's DCo YouTube Channel. The show also airs daily on the Durham Television Network (DTN). Get caught up on previous segments here!

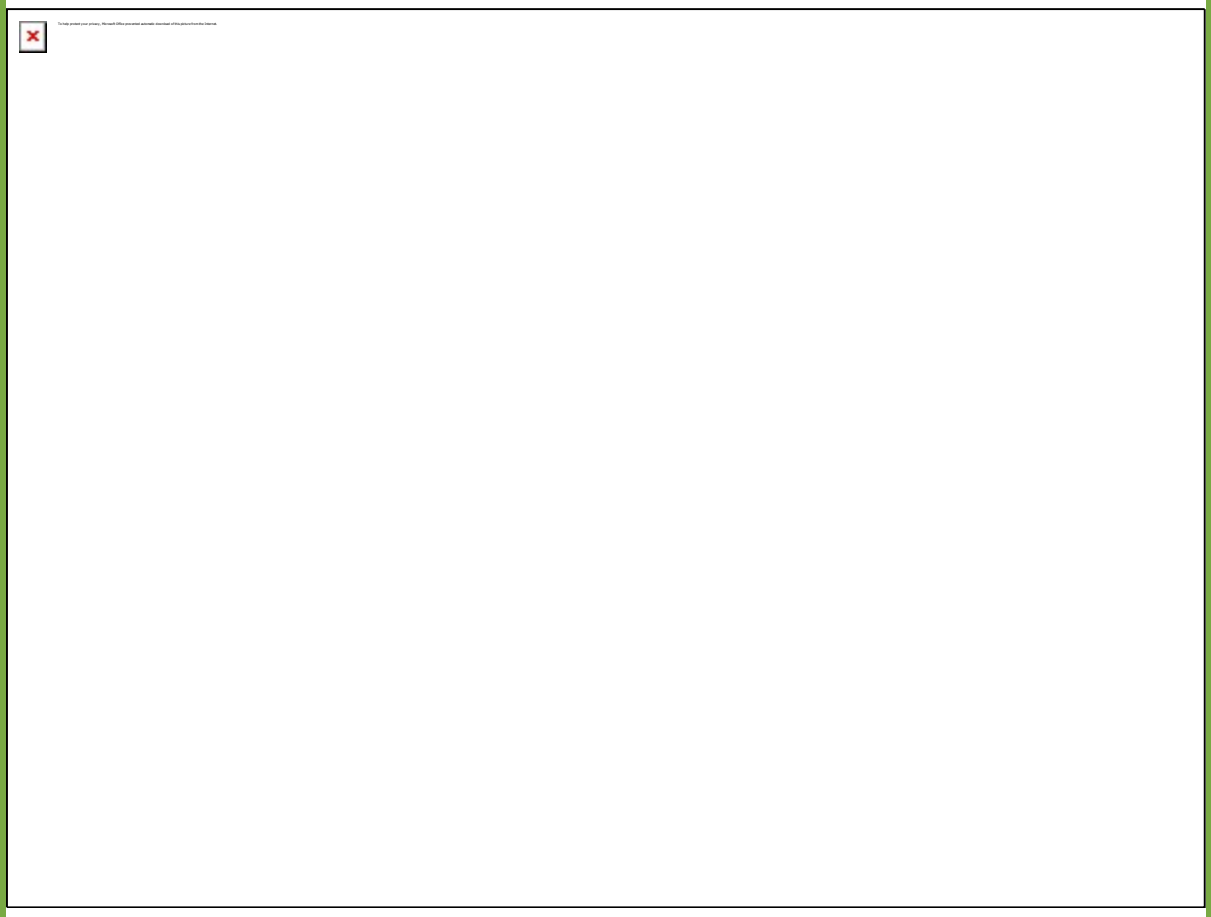


American Heart Month

This month cardiovascular health will be of great focus as many recognize American Heart Month. Throughout the month, all people—especially women—are encouraged to listen to their hearts giving close attention to any irregularities such as elevated blood pressure.

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Durham County Employee Wellness invites you to participate in *Say it with Your Shirt* during American Heart Month. Participants are encouraged to share their unique messages about heart health on their personally designed shirts. The shirts should be completed by February 21, 2024. Learn more about this opportunity to shed light on heart health on MyDCo under the Employee Wellness section.



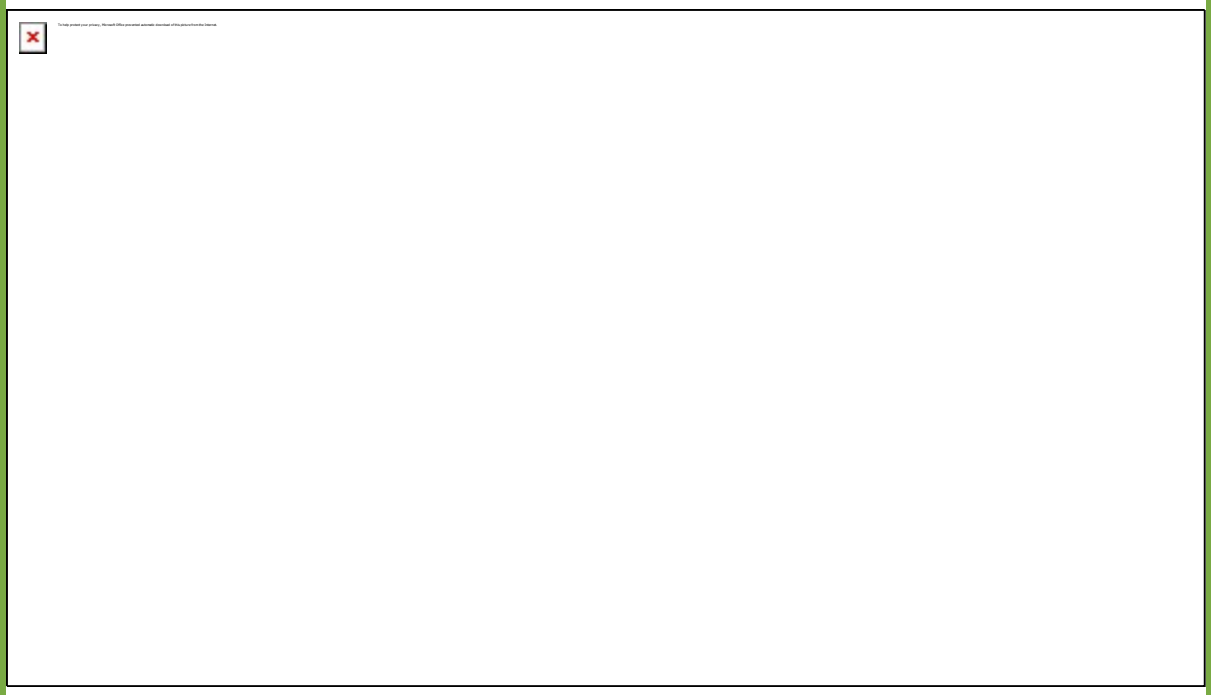
BOCC to Meet

The Durham Board of County Commissioners (BOCC) will hold a Work Session on Monday, February 5, 2024. This meeting will begin at 9 a.m. All sessions are held inside the Commissioners' Chambers,

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located on the second floor of the Administration I Building, located at 200 E. Main Street.

Download the agenda for the upcoming session here.



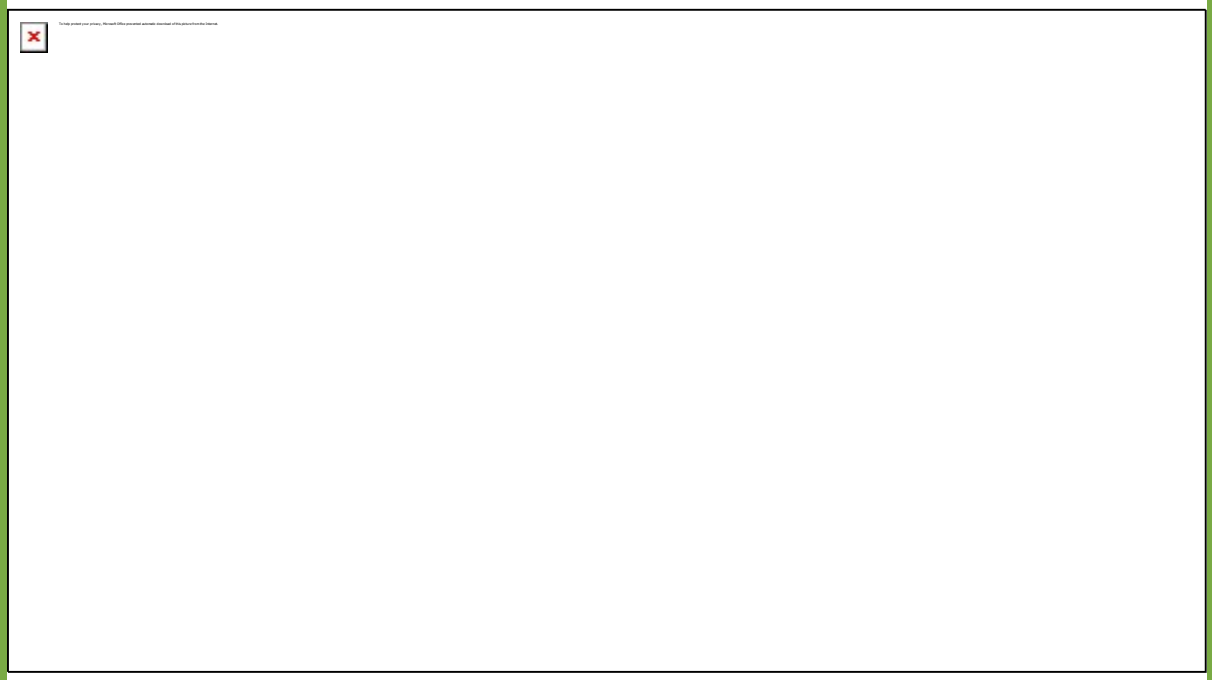
DCo Toastmasters Club

Toastmasters is celebrating 100 years and counting. The international program, designed to help improve how people express themselves through practice and evaluation in a fun club environment, is shaping global leaders.

DCo Toastmasters invites you to learn more about how public speaking can help you and improve your career. DCo Toastmasters meets twice a month, and it is free and open to everyone!

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Contact Bert White at bwhite@dconc.gov for more information about DCo Toastmasters or visit https://dco.toastmastersclubs.org/.



Fitness Friday

This week's workout for Fitness Friday, brought to you by the Durham County Department of Public Health, is all about balance.

You are invited to Join PopSugar Fitness the final part of a special five-part fitness assessment series that will help you start the new year with a fresh perspective. Part 5 is a 30-minute, balance-focused yoga flow. This assessment is the end of the series, which is the perfect time to slow down. It is hoped that participants have gotten valuable insight into the areas where they are excelling or where they may want to improve.

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Access this assessment here.



Health Webinars offered by Public Health

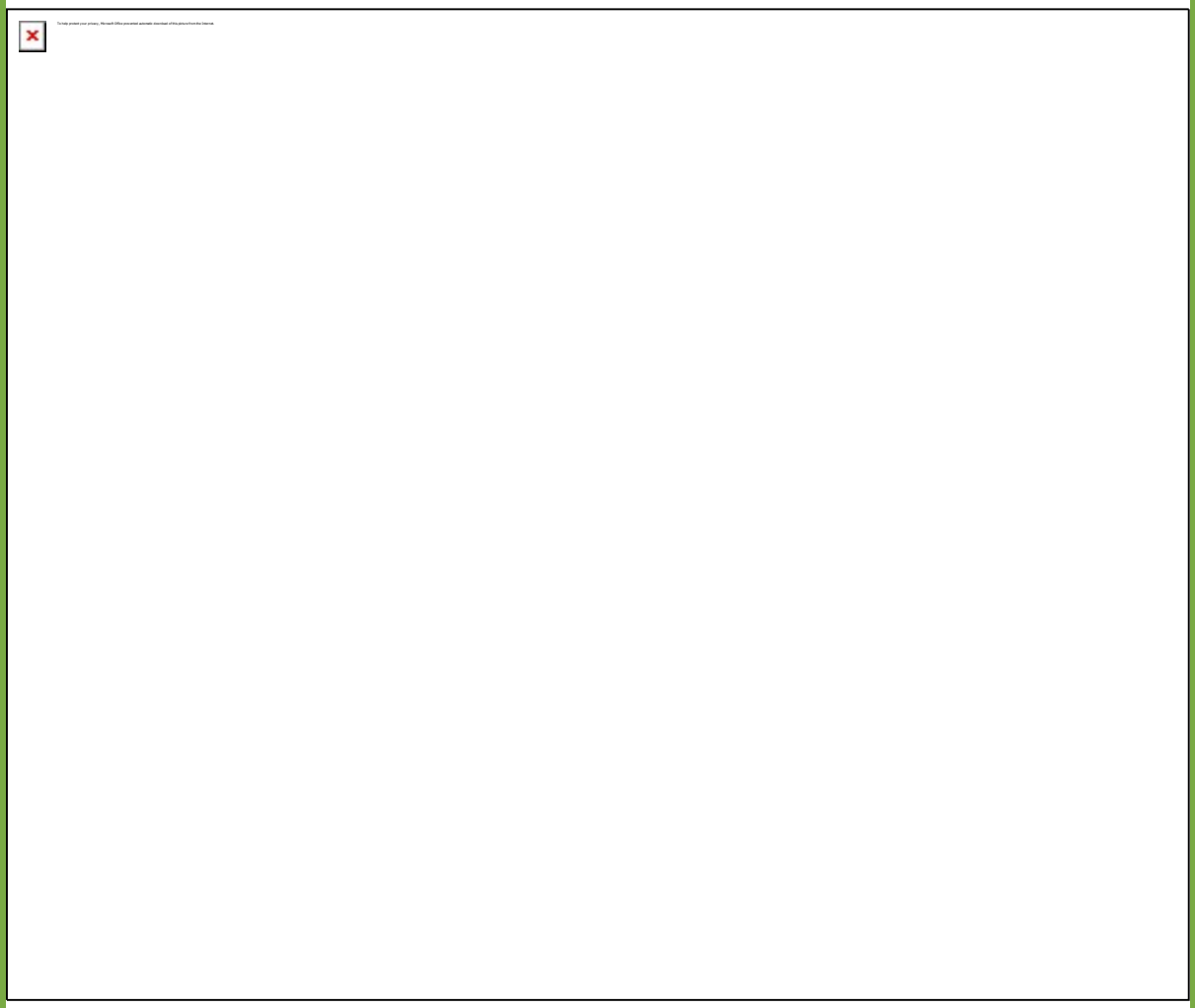
Durham County Department of Public Health offers health webinars and events throughout the month. Take a look at these upcoming webinars:

On Wednesday, February 7, the **My Body Doesn't Want Me to**

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Exercise and Other Obstacles webinar discusses medical issues that may surface during exercise and movement. Join this session to look at some diagnoses and ways to work around them. The webinar takes place from 10:30-11 a.m. Click here to register.

The **What's Love Got to Do With It?** webinar invites participants to understand how heartbreak can affect one's mental and physical well-being and learn tips on how to move forward. The webinar takes place on February 14, from 11a.m. -12 p.m. Click here to register.



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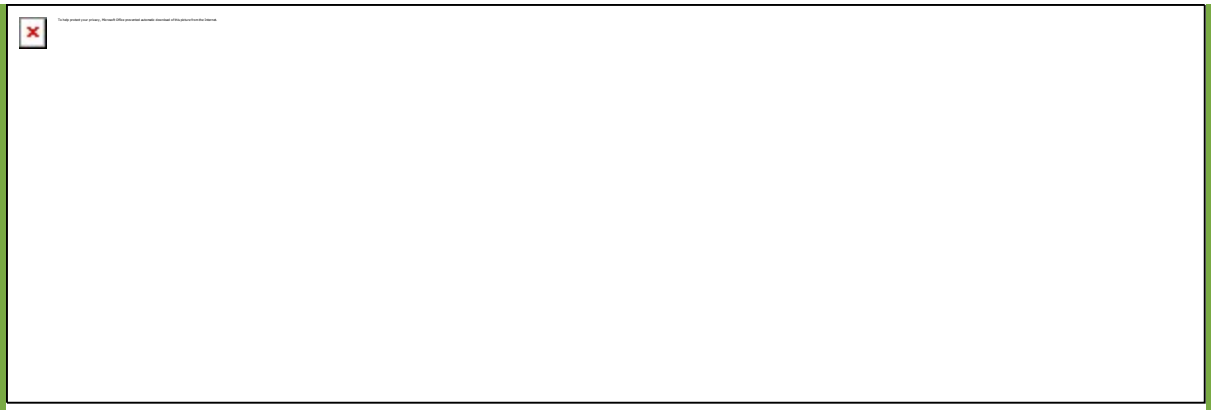
Film Screenings Shed Light on Muslim-American Students' Murders & Families' Fight for Justice

On February 10, 2015, three Muslim-American students were murdered in Chapel Hill. A new documentary tells the story of Deah Barakat, his wife Yusor Abu-Salha, and her sister Razan Abu-Salha — and their families' fight to have the killings recognized as hate crimes.

In *36 Seconds: Portrait of a Hate Crime*, filmmaker Tarek Albaba makes an impassioned case for justice for Yusor, Razan, and Deah, and for his community. The film chronicles the aftermath of a tragic hate crime in Chapel Hill, offering a poignant reflection on the challenges faced by Muslim Americans in the American South. Through the lens of resilience and advocacy, the film emphasizes the pressing need for societal change in addressing hate crimes and discrimination. The film had its world premiere in November 2023 at the DOC NYC Film festival and has been officially selected to the Santa Barbara International Film Festival, where it will have its West Coast premiere on February 13. Additional 2024 screenings are slated in New York, Washington D.C., Berkeley, and North Carolina.

There will be several screenings of '36 Seconds in the Triangle this month. The screening in Durham will take place on February 12 at the Carolina Theatre. The screening will begin at 7 p.m. and will be followed by a panel discussion including Durham County Board of Commissioners Chair Nida Allam, Durham County District Attorney Satana Deberry, and North Carolina Senator Jay Chaudhuri**,** moderated by WUNC's Leoneda Inge. Admission is $14.

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Happenings In and Around Durham County

DCo Info

- **2/14 -** DCo employees are invited to enroll in upcoming DATA Academy **PBI for Beginners** introduces participants to Power BI and walks through the basics of creating a dashboard.
- **2/21** - DCo employees are invited to enroll in upcoming DATA Academy. Durham Neighborhood Compass teaches attendees how to use data to ensure racial equity in the outcomes of their work, the Durham Neighborhood Compass can provide a lot of insight.
- **3/30 -** Durham County departments are encouraged to apply for the National Association of Counties (NACo) Achievement Awards by March 30. Learn more, here.
- **3/31** - Durham County employees are reminded of the deadline to earn next year's Health Risk Assessment Credit. To earn the HRA Credit, complete an annual physical by March 31, 2024. Complete the Wellness Screening form and submit it to Cigna. Also, complete the

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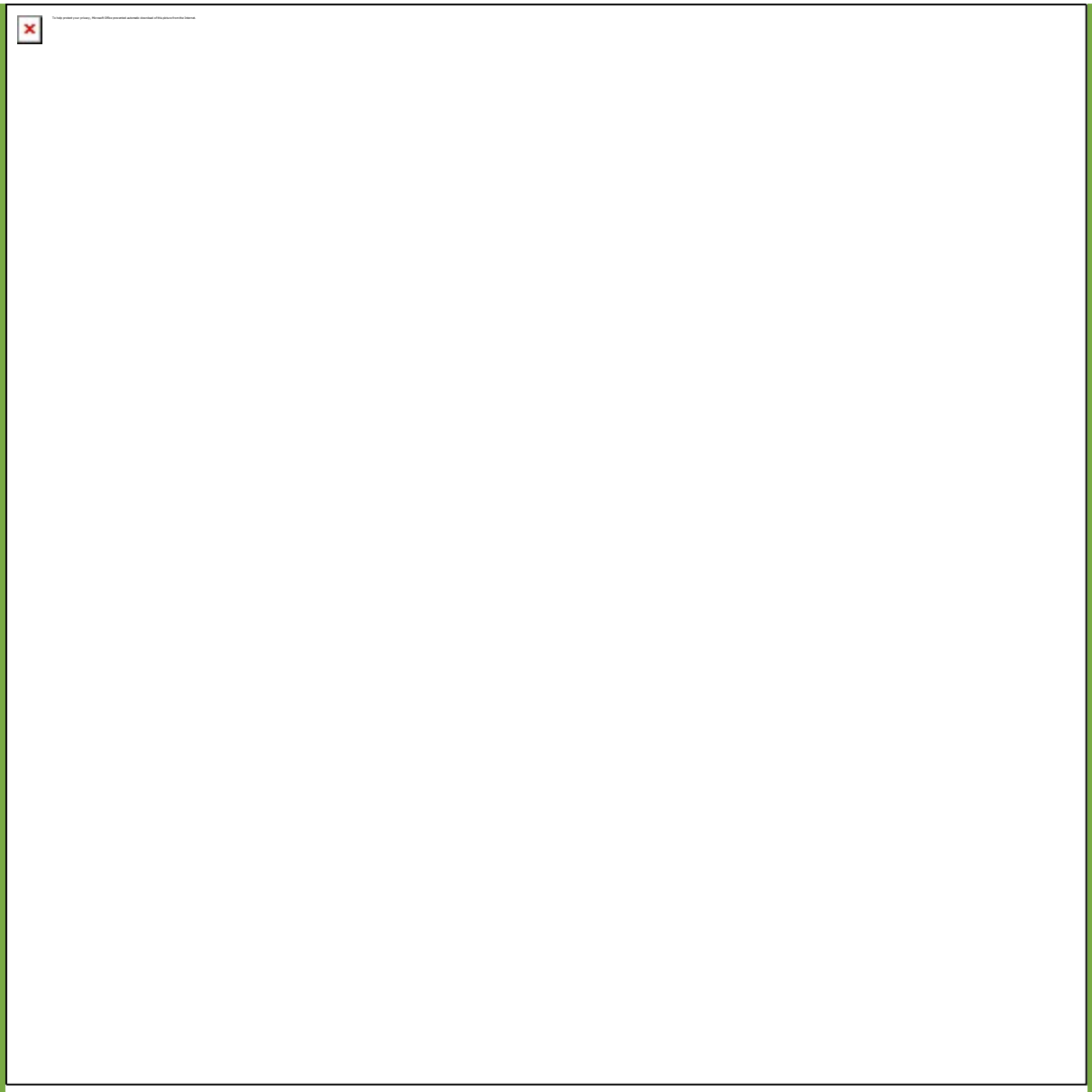
Personalized Health Assessment. Get more information about the HRA Credit on the MyDCo webpage.

- **4/21** - DCo employees are invited to enroll in upcoming DATA Academy. Intro to Web GIS introduces users to GoMaps, Durham Maps and the ArcGIS Enterprise portal for those who want to take their web mapping skills to the next level.
- **5/10** - The Early Bird application deadline for the 2024 Savvy Awards is in April. The Savvy Awards have represented the best in government communications for more than 30 years. Learn more about the Savvy Awards Competition here.

Community Information and Events:

- **4/12** - Durham County has ordered a new vehicle that will serve residents as a "mobile Durham County Office." DCo On the Go will include broadband access, meeting rooms, large screens to share videos, and other services. This vehicle will need distinctive artwork and the County is asking local artists to assist! The deadline for the **DCo On the Go Design Contest** has been extended. Visit www.dconc.gov/DCoOnTheGo for more information and how to apply.

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Do you have news you would like to see included in DCo's "News You Can Use"?

Send an email to:
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public_information@dconc.gov

Let us know what has worked in the past, what works now, and what doesn't work by emailing the County Public Information Office at public_information@dconc.gov. All submissions will be kept confidential as well as identities. We appreciate your support and readership!

NYCU

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News You Can Use

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From: Love, Katelyn
To: Bowens, Derek
Subject: Request for review of draft numbered memo
Date: Friday, March 22, 2024 2:36:29 PM
Attachments: Numbered Memo 2024-04 Signature Verification Pilot_clean version for review.docx

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Hi Derek,

I hope your week is going well. I wanted to ask for your review of the attached draft numbered memo for the signature verification pilot program. The first five pages is the memo itself, and the remainder is an appendix with more technical details about signature review. Since you are the largest county in the pilot, and you have so much elections experience, it would be particularly helpful to get your input on any changes or improvements we could make to the memo.

Please send me any feedback by Wednesday, March 27 if possible.

Thank you very much!

Katelyn

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NORTH CAROLINA
STATE BOARD OF ELECTIONS

P.O. Box 27255
Raleigh, NC 27611
(866) 522-4723
www.ncsbe.gov

Numbered Memo 2024-04

TO: Boards of Elections for Bertie, Cherokee, Durham, Halifax, Henderson, Jones, Montgomery, Pamlico, Rowan, and Wilkes Counties

FROM: Karen Brinson Bell, Executive Director[1]

RE: Signature Verification Pilot Program

DATE: March ___, 2024

This memo explains how selected county boards will carry out a signature verification pilot program for the 2024 primary election as required by Session Law 2023-140 (Senate Bill 747). The pilot program is being conducted for evaluation purposes only and will not affect whether any absentee ballot is counted for the election.[2]

1. Overview

The pilot program consists of selected county boards of elections using automated signature verification software to compare the signatures of voters on all executed absentee-by-mail ballots received by the county board in the 2024 primary. For signatures that are not identified as a match by the software, county boards of elections will conduct a manual review of those signatures to help evaluate the accuracy of the automated software review. County boards will then compile data from the pilot and forward it to the State Board for analysis, and the State Board will report the results of the analysis to the General Assembly.[3]

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[1] This memo is issued under the authority delegated by the State Board to the executive director pursuant to G.S. § 163-22(p).

[2] Session Law 2023-140, Section 48(c).

[3] Session Law 2023-140 provides the requirement to conduct a pilot program:

> SECTION 48(a) The State Board of Elections shall select 10 counties in the State in which to conduct a pilot program during the primary held in 2024 for signature verification on executed mail-in absentee ballots. In selecting the 10 counties for the pilot, the State Board of Elections shall seek diversity of population size, regional location, and demographic composition. The pilot program shall consist of county boards of elections using signature verification software to check the signatures of voters noted

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The pilot will occur after the conclusion of the canvass period. This will ensure that no ballots are accepted or rejected based on the signature verification pilot. It will also avoid any delay of the completion of the canvass period, which is required to finalize official election results.

2. Sources of Signature Images

County boards will compare the voter's signature on file in VoterView in SEIMS with the voter's signature on the absentee envelope. The clipped signature in VoterView will generally be the voter's most recent signature. This signature is frequently captured using a means of signing other than pen to paper. Sources of clipped signatures in VoterView include:

- **Voter registration forms and updates from registration activity.** These signatures may be scanned images from paper forms or digital images from registration activity through DMV. Most voter registration signatures come from DMV, where signatures are captured using a stylus on an electronic signature pad in a DMV office. Signatures received from DMV are typically 200 dpi (dots per inch), and therefore may appear slightly pixelated and bolder. They may also be missing part of the image due to signing on a signature pad.
- **Absentee request forms.** The signature may be a scanned image from a paper form or, if the request was made through the State Board's online absentee request portal, the signature was provided electronically using a mouse or a finger on a touchscreen. Visually impaired voters are permitted to type their signature.
- **Paper or electronic pollbooks and provisional applications.** These signatures are scanned images from paper forms.

3. Steps for Signature Comparison

There are two tiers of review in the process of comparing the voter's signature on the absentee envelope with the voter's signature on file:

1. Tier 1 (automated comparison)
2. Tier 2 (manual comparison)

---

on all executed mail-in absentee ballots received by the county boards of elections in the 2024 primary. The State Board of Elections shall select the signature verification software and ensure that the software is available for all 10 counties to use in the 2024 primary. The State Board shall assist the selected county boards of elections in implementing the signature verification software, including assisting the selected county boards of elections in any training needed on how the software is to be used for signature matching on executed mail-in absentee ballots.

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Tier 1 Review

Tier 1 review is carried out by automated signature verification software. If the software determines the voter's signature on the absentee envelope is a match for the voter's signature on file, no further review is required. The software vendor and the State Board will provide training and other resources to the county boards about how to use the software.

Tier 2 Review

If the software is unable to determine that the signatures match, the signature on the absentee envelope will proceed to Tier 2 review. In this step, the county board will conduct a manual review to compare the two signatures and, if needed, review other signatures and information in the voter's registration record. The county board will then vote on whether the signature on the absentee envelope is sufficiently similar to the signature(s) on file and may be approved. This process occurs in an open meeting.

4. County Board Meetings

The county board of elections shall schedule an open meeting to review signatures identified for Tier 2 review. As mentioned, the meeting will occur after the 2024 primary canvass period. All deliberations must be conducted in an open meeting. At least three board members (a quorum) must attend the meeting.[4] A majority of the board members present at the meeting must vote for an action for it to pass. ~~It is permissible for s~~

Staff may ~~to~~ research and compile materials, such as all of the voter's previous signatures on file, ahead of time to streamline the county board's review. Alternatively, staff may do this during the board meeting. As a reminder, ~~for review by the county board~~ county board members are not permitted to access SEIMS.[5]

In the meeting, county board members will simultaneously compare the voter's signature on the absentee envelope with the voter's signature in VoterView. This may be accomplished by using one or more terminals, or by projecting the information on an overhead projector. If a projector is used, county boards must ensure that members of the public in attendance at the meeting are not permitted to make any copy, tracing, photograph, or recording of the voter's signatures.[6] It is a

[4] G.S. § 163-31(d).

[5] See page 3 of Numbered Memo 2020-17.

[6] G.S. 163-82.10(a2): "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."

Commented [CP1]: I think if we suggest this, we need to make it a requirement for them to do it. We wouldn't want some counties doing this and getting more informative results, versus others that don't.

Commented [KL2R1]: Since we haven't done this before I'm concerned about dictating the process in a specific way that doesn't work for each county board. In a small county I could see staff preparing a packet ahead of time. In a larger county this might not be possible. We also don't know what the error rate will be at this point. I do think the research will be required in pretty much all cases before they reject a signature.

Commented [PC3R1]: Let's see what Parker and team think. The way I read this now, it sounds like they're supposed to always do the research for Tier 2, and the discretion is about when they compile those materials. If that's what we mean, we should more clearly say they need to pull together other signatures for all Tier 2 reviews. But I understand the challenge that could pose if you've got a ton of rejections from the software. I just don't know how we assess the software appropriately without having the counties all do this. I suppose we could instruct some counties to do it and some not to, and then compare their rejection rates?

Commented [KL4]: I'm concerned about how we can protect the confidentiality of signatures in practice if we allow them to be projected to the public. It seems like there is a fair amount of risk to projecting the signatures for the public to see, especially at a large meeting, where the county board may not be able to know whether people are taking pictures. Typically when signatures are made available for viewing it would be in one-on-one situation where it's easy to monitor the person.

Commented [CP5R4]: Yeah, I agree. let's see what the counties think about this. Ideally, we could ask them to hold these meetings remotely and make it so no cameras are trained on the projection.

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crime for someone who is not authorized by law to retain a voter's signature from a submitted voter registration form.[7]

All decisions by the county board shall be documented in a spreadsheet. The State Board will provide a sample spreadsheet for use by the county boards.

Commented [KL6]: This needs to be created

5. Analysis of Signatures

When comparing signatures, it is important to keep in mind that everyone writes differently, and no one signs their name exactly the same way twice. A voter's signature on the absentee envelope should not be rejected just because it does not look *exactly* the same as the signature in the voter's signature on file.

Signature comparison begins with the presumption that the signature on the absentee envelope is the voter's signature. Again, an exact match is not necessary for the county board to confirm that the signature on the absentee envelope is a valid signature. Similar characteristics between a signature being compared and any signature in the voter's record are sufficient to determine that a signature is valid. In comparing signatures, the county board may not review or consider a voter's identity, address, or other personal demographics (e.g., party preference, age, gender, race, or ethnicity).

When evaluating signatures, the county board should review using broad characteristics to evaluate an entire signature as a unit, and if needed to confirm a match, they should also focus on specific letters within a signature. For examples and detailed guidance on how to consider broad and narrow characteristics, see the appendix at the end of this memo.

The county board shall conduct the following analysis when deciding whether signatures are consistent with each other:

5.1 Evaluate the signature's broad characteristics

Broad characteristics include:

1. The type of writing (e.g., cursive vs. print)
2. The amount of care put into the writing (e.g., quick and sweeping vs. slow and detailed)
3. Overall spacing
4. Overall size and proportions
5. Position of the signature (e.g., slanted vs. straight)
6. Spelling and punctuation

[7] G.S. § 163-274(16) makes it a Class 2 misdemeanor for any person who is not an elections official or who is not otherwise authorized by law to retain a voter's signature from any form described in G.S. 163-82.3 after submission of the form to the county board of elections or elections official.

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If the broad characteristics of the signature on the absentee envelope are consistent with the broad characteristics of the voter's signature on file, the county board shall accept the signature.

5.2 Evaluate the signature's local characteristics

If the county board finds a combination of dissimilarities between the two signatures' broad characteristics, then the county board shall evaluate local characteristics, which include:

1. Internal spacing
2. The size or proportions of a letter or letter combination
3. Curves, loops, and cross-points
4. The presence or absence of pen lifts
5. Beginning and ending strokes

After evaluating the signatures' local characteristics, the county board must decide whether to accept the signature on the absentee envelope as genuine. A county board may not reject a voter's signature without first comparing it to all of the other voter's signatures on file in SEIMS.

5.3 Explanations for discrepancies

If, after going through the above analysis, the county board finds a combination of differences between the signature on the absentee envelope and the signature or signatures in the voter's record, consider whether the differences can be reasonably explained. **If the county board can reasonably explain the differences, the signature must be accepted.** Looking at more than one signature from the voter's SEIMS record, if available, may be necessary because people develop certain signature habits over time. Identify these habitual marks and determine whether they exist in the signature on the absentee envelope.

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The county board shall consider the following as possible explanations for discrepancies in signatures:

1. Evidence of trembling or shaking in a signature could be health-related or the result of aging.
2. The voter may have used a diminutive of their full legal name, including, but not limited to the use of initials, or the rearrangement of components of their full legal name, such as a reversal of first and last names, use of a middle name in place of a first name, or omitting a second last name.
3. The voter's signature style may have changed over time.
4. The voter's signature on the absentee envelope or registration form may have been written quickly.
5. A signature in the voter's record may have been written with a stylus pen or other electronic signature tool that may result in a thick or fuzzy quality.
6. The surface of the location where the signature was made may have been hard, soft, uneven, or unstable.

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7. Factors applicable to a particular voter, such as the age of the voter, the age of the signature(s) contained in the voter's record, the possibility that the voter is disabled, and the quality of any digitized signature(s) contained in the voter's record.

Only a signature possessing multiple, significant, and obvious differing characteristics with all signatures in the voter's registration record may be rejected. To reject a signature, the county board must find beyond a reasonable doubt that the voter's signature on the absentee envelope differs in multiple, significant, and obvious respects from all signatures in the voter's registration record.

6. Reporting Requirements

The State Board will closely monitor the pilot program and will compile and analyze the results upon completion of the pilot.

County boards should keep careful records during the pilot and be prepared to report to the State Board their findings. Certain information is statutorily required to be reported by the county boards, including:

1. Whether the signature verification software was used for all returned mail-in absentee ballots.
2. How many executed mail-in absentee ballots were counted by the county board of elections in the 2024 primary.
3. How many executed mail-in absentee ballots were flagged by the signature verification software.[8]

The State Board will also survey the counties for certain additional information about the pilot, including:

1. Any research indicating signatures identified in Tier 1 review as not matching were a match and any available information about why the mismatch may have occurred.
2. Approximate staff time and county board time spent on the pilot.
3. Suggestions or changes for how to implement signature verification statewide for absentee ballots.
4. Suggestions on designing a process for how a voter can cure a deficiency related to signature verification of absentee ballots in the future.
5. Any other feedback the county board would like to share.

Commented [CP7]: Do you think we need our spreadhseet for the review to be more robust to capture more details? Like, it could be really helpful if we had indicators of common characteristics for those that were approved manually but originally disapproved. Consider whether we add columns for each entry for the CBEs to "check all that apply" for those ultimately approved on Tier II for things like: low-quality image, method of capturing signature different (I don't know how to best say this), anything else you can think of.

Commented [KL8R7]: I think that would be helpful. The other types of reasons would be the ones listed above in Section 5.3. I see these issues as generally falling into one of two buckets: (1) the technology or (2) something with the voter (i.e., shakiness). There could be others we haven't thought of, I think the pilot will be a learning experience for this.

[8] Session Law 2023-140, Section 48(b).

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Answers to Frequently Asked Questions

1. Will UOCAVA voters' ballots be included in the pilot?

Yes. Section 48(a) of Session Law 2023-140 requires that the signature verification software be used for "all executed mail-in absentee ballots received by the county boards of elections in the 2024 primary".

2. What happens if the voter printed their name rather than signed in cursive on the absentee envelope?

The signature on the absentee envelope must match at least one of the voter's signatures on file with the county board. If the signature on the absentee envelope is printed, but the signature on file with the county board is in cursive, the board will still need to compare those signatures according to the criteria in this memo. In other words, the difference in the type of writing (cursive vs. print) is a dissimilarity in a broad characteristic that should be considered in determining whether there is a match. But that factor *alone* should not determine a mismatch. The board will still need to consider whether there are other dissimilarities. . Also, keep in mind that some voters, particularly younger voters, may use a printed name as their signature. In this case, if the printed signature on the absentee envelope matches the printed signature on file with the county board, the signature on the absentee envelope should be approved.

3. What if the voter has a disability that prevents them from signing their name, such as a blind voter who submits their absentee ballot through the State Board's online portal and uses a typed signature?

The county board may not reject a signature due to a voter's disability. As explained in Section 5.3 of this memo, the county board must consider any explanations for discrepancies between the signatures, including those caused by the voter's disability. If the voter has attested under penalty of perjury that they have a disability that prevents them from signing, the typed signature should be approved.

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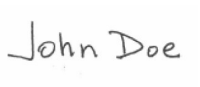
Appendix[9]

Note: Each of the examples below are designed to show what certain differing characteristics look like. This is not to suggest that in each example below, the signature would have to be rejected. A *single* differing characteristic is not enough to reject a signature. Instead, to reject a signature, the county board must find beyond a reasonable doubt that the voter's signature on the absentee envelope differs in multiple, significant, and obvious respects from all signatures in the voter's registration record.

BROAD CHARACTERISTICS

1. TYPE OF WRITING

Next to spelling, the type of writing is the easiest characteristic to notice a difference in. Does the voter's record have only cursive handwriting, but the absentee envelope has print? This is an immediate indicator for further research and review.

Genuine Signature	Questioned Signature
	

2. SPEED OF WRITING

A person writing their own signature will perform the act fairly quickly. This is because the person has likely signed their name thousands of times, so the gesture is automatic and harmonious, requiring little thought or concentration.

If someone other than the voter took a long time to copy the voter's signature, the copied signature will not have a free and natural look to it. Instead, you should see slower, more deliberate marks. If the forger attempted to create the signature quickly, then it should have various characteristic differences.

[9] This appendix was adapted from the Arizona Secretary of State's Signature Verification Guide, Feb. 26, 2024.

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Keep in mind, however, that this situation may go in reverse. If the voter naturally has shaky or poor handwriting that is evident in the voter registration record signature, but the ballot's signature is suddenly of high quality, that could indicate a forgery.

Look to see whether the signature on the absentee envelope was made at the same speed as the signatures in the voter's record. Keep in mind that a reasonable explanation for a shaky signature is the voter's advanced age, decreased muscle strength, or the surface below the envelope.

Genuine Signature	Questioned Signature
	
	

3. OVERALL SPACING

Writing a signature is a fixed and subconscious habit, so the signature's spacing should be reasonably similar. Determine whether the signature on the absentee envelope has odd or unnatural spacing that cannot be reasonably explained.

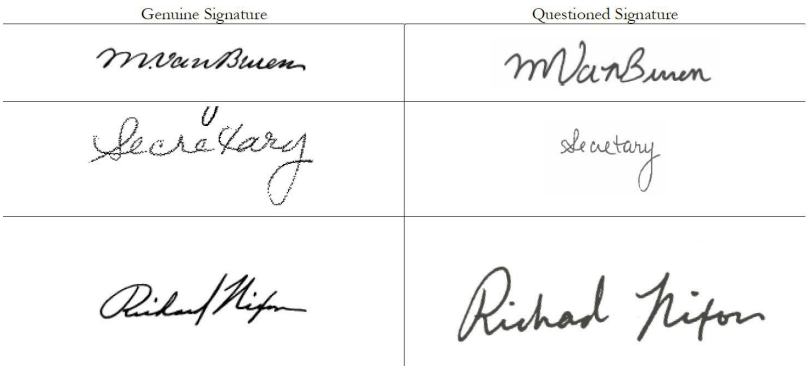
Genuine Signature	Questioned Signature
	
	

4. OVERALL SIZE AND PROPORTIONS

The signatures' size and proportions should also be reasonably similar. At your first impression, identify whether the signature on the absentee envelope is too large or small compared to the signatures in the voter's record. This comparison may be difficult to perform by looking only at one voter signature. You may need to conduct further research or review additional signatures.

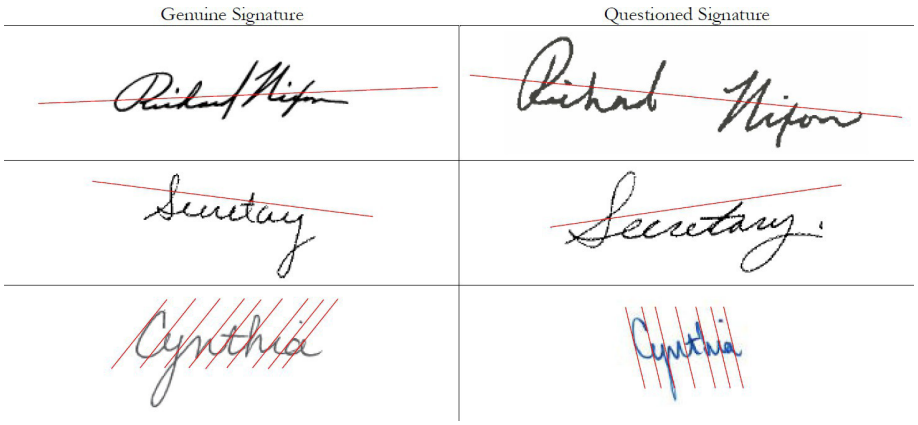
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The first example below has odd proportions because the letter's height compared to the name's length is very different than the genuine signature. The remaining two examples have unreasonably different sizes.



5. SLANT OF WRITING

Differences in a signature's slant may also raise questions about a match. The first slant to be aware of is the signature's position relative to the signature line. People tend to hold the pen and paper the same way each time they write, which causes their writing to slant in the same direction each time. You may also find that individual letters in the signature slant in the opposite direction. This type of deviation will usually accompany a difference in the signature's overall spacing. See the third example below. Look to see whether the entire signature slants or leans in a different direction than the signatures in the voter's record. A writer's slant is one of the most consistent parts of their signature.



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6. SPELLING

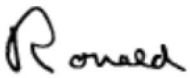
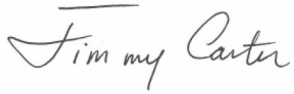
If the name is misspelled, you should seriously question the signature, unless there is some reasonable explanation—for example, it looks like the name is misspelled when, in fact, perhaps an atypical writing tool like a stylus was used and it did not create letters with the clarity that is typical in a voter's signature. Bear in mind that a voter may use a common nickname or initials (for instance, a voter may sign as "Bobby" instead of "Robert") so long as the characteristics of the signature remain the same.

Genuine Signature	Questioned Signature
	

LOCAL CHARACTERISTICS

1. INTERNAL SPACING

As mentioned before, the spacing and the relationship between successive letters should be reasonably similar. In the examples below, you will notice that the "R" in Ronald is much closer in the questioned signature than in the genuine one, and the questioned "Jimmy" has a great deal of space in between certain letters.

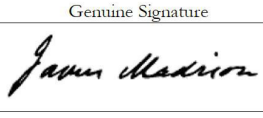
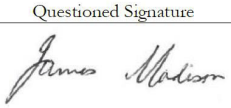
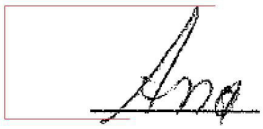
Genuine Signature	Questioned Signature
	
	

2. SIZE OR PROPORTIONS OF A LETTER OR LETTER COMBINATION

Letter sizes and proportions should be reasonably similar. Review whether letters are the same size and whether letter height, when compared to the name's length, leads to suspicious proportions.

Below, the first questioned signature has unreasonable proportion in "Madison." The remaining two signatures have noticeably different sizes in certain letters.

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Genuine Signature	Questioned Signature
	
	
	

3. CURVES, LOOPS, AND CROSS-POINTS

Like size, these characteristics may be difficult to identify if you are comparing the signature on the absentee envelope to only one signature in the voter's record. Some writers tend to have very loopy signatures while others have sharp, angular writing. Characteristics like loops and curves tend to be consistent across a person's handwriting, but keep in mind that cross-points can be reasonably impacted by simple factors like the type of pen the person used, which may be a reasonable explanation for such differences.

Find whether there are any noticeably different marks like in the examples below.

Genuine Signature	Questioned Signature
	
	

4. THE PRESENCE OR ABSENCE OF PEN LIFTS

If someone is not familiar with a signature, they may have written in pieces or chunks. When this occurs, they will leave connection or hesitation marks that will not appear in the voter registration record signatures.

Commented [PC9]: The reference to forgers is off-putting to me. Sounds like a criminal investigator's manual or something.

Commented [KL10R9]: Yea this language rubbed me the wrong way too. I think those changes make sense while still keeping the idea that the point here is to look for some other person having written the signature.

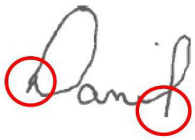
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Look to see whether there are any strange connection points or hesitation marks like in the examples below.

Genuine Signature	Questioned Signature
	
	

5. BEGINNING AND ENDING STROKES

A genuine signature becomes automatic over time. This automatic nature leads to what appears to be "flying starts and finishes," where the signature's start and end points seem to vanish off the paper. Genuine writers tend to begin writing their signature before the pen even hits the page. A reason to question a signature is if there are larger ink dots or marks at the beginning or end of a signature.

Genuine Signature	Questioned Signature
	
	

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ELECTRONIC SIGNATURES

When reviewing signatures in the voter's file, it is very likely that you will encounter some signatures that were created and captured electronically. DMV offices use an electronic signature pad to record signatures. In addition, voters who request an absentee ballot online sign electronically using a mouse or a finger on a touchscreen. These signatures are included in the voter's record and are used as references when verifying their signature on the absentee envelope. Electronic signatures create some unique circumstances that you should consider when verifying a ballot affidavit signature.

When comparing an electronic signature to a handwritten signature, you should continue to consider the factors listed on the previous pages.

- This means you should begin your analysis by looking at each signature's broad characteristics and if those characteristics are not clearly consistent, you should continue your analysis by examining the local characteristics.
- Keep in mind that the local characteristics of an electronic signature may be difficult to determine. Since the technology for electronic signatures is not as precise as pen and paper, it may be difficult, for example, to spot the presence or absence of pen lifts or beginning and ending strokes as space may be limited. Regardless, you should still consider all the factors described in the previous pages of this memo when comparing these signatures and make a decision based on the totality of what you find.

If, after going through your analysis, you find a combination of differences between the signature on the ballot affidavit envelope and the signatures in the voter registration record, ask whether the differences can be reasonably explained.

- You should consider that electronic signatures in particular may not be as precise as their handwritten counterparts and may even appear "blurry" or "messy" in comparison. It is possible that this may reasonably explain the difference between a handwritten and an electronic signature.
- **Remember:** You may need to look through the voter's entire signature history to determine if the current signature on the absentee envelope was written by the voter. If you find that the electronic signature found in the voter's history is difficult to read or match, it is possible there are other signatures on file that may be easier to read and distinguish. Before declining to accept a voter's signature on the ballot envelope, review these other signatures to determine if the inconsistency is with the ballot envelope signature or with the electronic signature in the voter registration record.

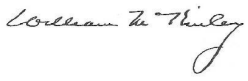
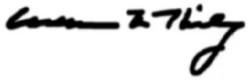
1. "MESSY" OR "BLURRY" ELECTRONIC SIGNATURES

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Because the technology for capturing electronic signatures is not always as precise as a pen and paper signature, an electronic signature may appear "messy" or "blurry" in comparison. However, even a "messy" or "blurry" signature should be compared using the two-step process described above.

In the first example below, the electronic signature found in the voter registration record looks vague and imprecise compared to the handwritten signature found on the absentee envelope. However, the broad characteristics appear to be substantially similar. The type, speed, spacing, size, and position of each signature appear to be the same and any minor disparities can be explained by the fact that one signature was created using an electronic pad and the other was created using pen and paper.

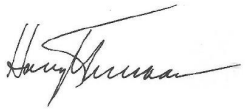
In the second example, many of the broad characteristics are again substantially similar, although the electronic signature is not as precise as the handwritten signature. Regardless, these signatures can still be considered a match because the broad characteristics are substantially similar. If you decide an electronic signature is too "messy" or "blurry" compared to a handwritten signature to fairly compare, you should always look through the voter's signature history to determine if there is a clearer signature on file.

Handwritten Signature	Electronic Signature
	
	

2. ELECTRONIC SIGNATURES THAT HAVE BEEN CUT OFF

In some instances, a person signing an electronic signature pad may have some of their signature cut off. This is likely because the voter's pen stroke went outside the area that the electronic signature pad could capture. You should still compare the full electronic signature to the handwritten signature using the two-step process outlined in this memo. If you cannot verify the signatures using the two-step process, remember there may be more signatures in the voter's signature history that you can use to compare.

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Handwritten Signature	Electronic Signature
	
	

SPECIAL CIRCUMSTANCES

1. VOTERS WHO ARE UNABLE TO SIGN OR MAKE THEIR MARK DUE TO DISABILITY

Absentee envelopes contain a line for the voter to sign and a line for the voter assistant, if any, to sign. A voter assistant signature is required if the voter received assistance completing the envelope, marking the ballot, or mailing or returning their ballot. A voter assistant signature is also required if the voter is physically unable to sign or make their mark due to disability. In this case, the person assisting with the ballot should write in the signature line, "Disabled - cannot sign." If this is the case, no signature comparison will take place and this will be noted accordingly in the county board's spreadsheet.

2. BALLOTS WITH A MARK

A voter who is unable to sign their name may instead make their mark on the signature line. A mark is an "X," like in the example below, or some other sign or marking made in lieu of a signature. If a ballot contains a mark, the voter's mark must be compared to the voter's signature or mark on file for the voter.

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Mark Example



3. SIGNATURES FROM VOTERS IN GROUP RESIDENTIAL FACILITIES

Pay close attention to pen strokes found on absentee envelopes from voters living in group residential facilities. The signatures of these voters are at a higher risk of having changed or deteriorated over time and may look less and less like the comparison signature found in the voter registration record. With this risk in mind, the following precautions should be taken when reviewing signatures from these voters.

- Look for a pattern of deterioration in the voter's signature history. You may do this for any signature that you review, but for signatures from voters in group residential facilities, taking this extra step can be even more beneficial. If the signatures you review in the voter's file reveal a pattern of deterioration, then this fact may reasonably explain the difference between the ballot's signature and the signatures found in the voter registration record.
- Be mindful of the voter's situation when reviewing signatures from group residential facility voters. Remember that if, after going through normal signature analysis, the differences between two signatures can be reasonably explained, you should accept a voter's signature as valid.

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Lassiter, Daniel

From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Friday, January 19, 2024 11:08 AM
To: SBOE_Grp - Legal
Subject: REVISED Numbered Memo 2021-03 - Absentee Envelope Deficiencies
Attachments: Numbered Memo 2021-03_Absentee Deficiencies (updated 1.2024) .pdf; CHANGES - Numbered Memo 2021-03_Absentee Deficiencies (updated 1.2024).pdf

Directors (via BCC):

Please find attached and at this link a revised numbered memo issued by Executive Director Karen Brinson Bell, concerning absentee envelope deficiencies and the procedures for addressing those deficiencies (i.e., "curing," spoiling and reissuing, etc.).

This memo has been updated to reflect the changes in the law from Session Law 2023-140 (SB 747). The law codified in statute many of the processes we already had in place for addressing absentee envelope deficiencies. But the law made some important revisions, as reflected in this memo. The updated memo also addresses a number of questions that have been raised by county boards and members of the public since the last update of the memo. For your reference, I've also included a PDF showing the changes in this memo from the prior version.

Please read this memo carefully, since absentee voting is officially starting today, and you and your staff will need to address deficiencies in returned absentee ballots in accordance with this revised guidance on the requirements of the law.

With best regards,

Paul Cox
General Counsel
NORTH CAROLINA STATE BOARD OF ELECTIONS
RALEIGH, NC 27611
919.814.0700
www.ncsbe.gov

Caution: Do not click links or open attachments unless you recognize the sender and know the content is safe.

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NORTH CAROLINA
STATE BOARD OF ELECTIONS

Mailing Address:
P.O. Box 27255
Raleigh, NC 27611

(919) 814-0700 or
(866) 522-4723

Fax: (919) 715-0135

Numbered Memo 2021-03

TO: County Boards of Elections

FROM: Karen Brinson Bell, Executive Director[1]

RE: Absentee Container-Return Envelope Deficiencies

DATE: June 11, 2021 (updated September 25, 2023; January 19, 2024)[2]

The State Board is required to provide a cure process for voters whose absentee ballot envelopes contain certain deficiencies.[3] In general, the cure process for absentee-by-mail deficiencies is guided by G.S. § 163-230.1(e), as amended by Session Law 2023-140 (SB 747), and this numbered memo. ~~A~~ The cure process for photo ID documentation containing deficiencies, when that documentation is submitted with an absentee ballot, is provided through G.S. § 163-230.1(e), as amended by Session Law 2023-140, ~~and~~ an administrative rule adopted by the State Board[4], and is guided by this numbered memo. ~~The cure process for all other absentee-by-mail deficiencies is guided by this numbered memo.~~ County boards of elections must ensure that the votes of all eligible voters are counted using the same standards, regardless of the county in which the voter resides.

The ballot container-return envelope (ballot envelope) and the accompanying photocopy of the voter's photo ID or completed Photo ID Exception Form (photo ID documentation) are transmitted to the county board in an outer return envelope. This numbered memo directs the

[1] This memo is issued under the authority delegated by the State Board to the executive director pursuant to G.S. § 163-22(p).

[2] This numbered memo replaces Numbered Memo 2020-19, which was first issued on August 21, 2020 and subsequently revised and reissued on September 22, 2020, and October 17, 2020. This numbered memo was updated on September 25, 2023, and again on January 19, 2024, to include processes related to photo ID requirements for absentee-by-mail voting.

[3] See G.S. § 163-230.1(e), revised by N.C. Session Law 2023-140 § 35, to provide a cure process for deficiencies associated with returned absentee-by-mail ballots. *See also* *Democracy NC v. State Board of Elections*, 476 F.Supp.3d 158 (M.D.N.C. Aug. 4, 2020) (explaining that due process requires such a cure opportunity).

[4] 08 NCAC 17 .0109(b).

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procedure county boards must use to address deficiencies in the envelopes and photo ID documentation, to ensure that a voter is provided every opportunity to correct certain deficiencies, while also recognizing that processes must be manageable for county boards to timely complete required tasks.

No Signature Verification[5]

Verification of the voter's identity is completed through the witness requirement. The voter's signature on the envelope shall not be compared with the voter's signature in their registration record, on their request form, or ~~the voter's signature~~ on their photocopy of photo ID or Photo ID Exception Form submitted with their ballot, because this is not a requirement for the approval of an absentee ballot under North Carolina law.[6] County boards shall accept the voter's signature on the ballot envelope if it appears to be made by the voter, meaning the signature on the envelope appears to be the name of the voter and not some other person. Absent clear evidence to the contrary, the county board shall presume that the voter's signature is that of the voter, even if the signature is illegible. A voter may sign their signature or make their mark.

Types of Deficiencies

Trained county board staff shall review each return envelope, executed ballot envelope, and photo ID documentation the office receives to determine if there are any deficiencies. County board staff shall, to the extent possible, regularly review these absentee ballot materials on each business day, to ensure that voters have every opportunity to timely correct deficiencies.[7] Review for deficiencies occurs *after* intake. The initial review is conducted by staff to expedite processing of the envelopes in advance of a county board absentee meeting.[8]

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[5] Session Law 2023-140 § 48 provides for a signature verification pilot program to be conducted during the 2024 primary election. As stated in Section 48.(c), however, "[i]n implementing the pilot program established in this section, no executed mail-in absentee ballot shall be rejected by the county board of elections for failing any signature verification. All executed mail-in absentee ballots that are otherwise eligible to be counted in accordance with Chapter 163 of the General Statutes shall be counted."

[6] See *In re: Request for Declaratory Ruling on Signature Matching for Absentee Ballot Requests and Ballot Envelopes*, N.C. State Bd. of Elections (July 22, 2022). See also Numbered Memo 2020-15, which explains that signature comparison is not permissible for absentee request forms.

[7] Specifically for ballot application deficiencies and photo ID documentation deficiencies, discussed below, G.S. § 163-230.1(e) requires that the county board "promptly notify the voter of the deficiency and the manner in which the voter may cure the deficiency."

[8] See Numbered Memo 2020-25 regarding preparatory steps for absentee meetings.

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There are three categories of deficiencies: 1) return deficiencies, 2) ballot application deficiencies, and 3) photo ID documentation deficiencies.

1. Return Deficiencies

Previously, a voter transmitted their absentee-by-mail ballot to the county board in a single ballot container-return envelope. However, with the implementation of photo ID requirements starting with the 2023 municipal elections, the ballot envelope is now transmitted to the county board in an outer return envelope to ensure the privacy of the accompanying photo ID documentation. As a result, there may be certain instances where the return of the absentee ballot requires the ballot to be spoiled and the absentee package reissued to the voter.

Deficiencies that Require the Ballot to Be Spoiled (Civilian)

- Ballot is inside the ballot envelope, which is not sealed or which appears to have been opened and re-sealed, and the ballot envelope is received in a return envelope which is not sealed or which appears to have been opened and re-sealed.[9]
- Ballot is inside the executed ballot envelope, which is not sealed, and someone other than the voter hand delivers the ballot envelope to an early voting site or the county board office, and the return envelope is also unsealed or there is no return envelope. Even if the person is authorized to return this ballot, they cannot seal the ballot without the voter being present. The voter must direct that the ballot be sealed "in the voter's presence."[10]
- The return or ballot envelope indicates the voter is requesting a replacement ballot.

If a county board identifies one of these deficiencies, county board staff shall spoil the returned ballot and reissue a ballot, as long as the new ballot is issued before Election Day, along with a notice explaining the county board office's action, in accordance with this numbered memo.

Anomalies that Are Not Deficiencies (Civilian)[11]

- Ballot is inside the executed ballot envelope, which is not sealed or which appears to have been opened and re-sealed, but the ballot envelope is received in a sealed return

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[9] Ballots must be "sealed in the container-return envelope." G.S. § 163-230.1(d); see also G.S. § 163-231(a)(3).

[10] G.S. § 163-231(a)(3).

[11] With all ballot mistakes or anomalies, elections officials must be guided by the clear instruction in the federal Civil Rights Act of 1964 to not allow an error on ballot materials to lead to a ballot's rejection when that error is immaterial to determining a voter's eligibility to cast the ballot: "No person acting under color of law shall . . . deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election." 52 U.S.C. § 10101(a)(2)(B).

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envelope. Immediately upon opening the return envelope and noticing this situation, staff should re-seal the return envelope with a notation of "sealed in return envelope." The county board should open the return envelope and address that ballot at its next absentee meeting.[12]

- Ballot is not inside the ballot envelope or has been placed inside the clear sleeve on the ballot envelope used for including the photo ID documentation, but the return envelope is sealed. Immediately upon opening the return envelope and noticing this situation, staff should re-seal the return envelope with a notation of "sealed in return envelope." The county board should open the return envelope and address that ballot at its next absentee meeting.[13]
- Ballot is received in a return envelope that is not sealed or appears to have been opened and re-sealed, but the ballot is inside the executed ballot envelope that is sealed. This situation does not require any special action to document the anomaly before presenting the ballot envelope to the county board.
- Ballot is inside the executed ballot envelope, which is not sealed, and the voter hand delivers the ballot envelope to an early voting site or the county board office. Before taking receipt of the envelope, staff should request that the voter first seal the ballot envelope.

In all of the above situations, the ballot was received in a sealed envelope and is therefore not deficient.[14]

A person hand-delivering the absentee ballot, whether it is the voter or someone authorized to return the voter's ballot, is not required to deliver the ballot envelope inside the return envelope for the absentee application to be approved. The return envelope is designed to protect the voter's confidential identifying information during mail transit. If the person hand-delivers only the sealed ballot envelope, staff should follow their usual storage practices and keep the ballot envelope in a secure location, which may include placing the ballot envelope in a new return envelope for storage purposes.

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[12] In this situation, for the purposes of staff's initial review of photo ID documentation pursuant to 08 NCAC 17 .0109(b), the ballot application is not "received" until the return envelope is opened at the absentee meeting.

[13] In this situation, for the purposes of staff's initial review of photo ID documentation pursuant to 08 NCAC 17 .0109(b), the ballot application is not "received" until the return envelope is opened at the absentee meeting.

[14] G.S. §§ 163-230.1(d), 163-231(a)(3).

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2. Ballot Application Deficiencies

The ballot application is the form on the ballot envelope that is completed by the voter, their witnesses or notary, and assistant (if applicable).[15] Ballot application deficiencies fall into two main categories: those that can be cured with a cure certification (*i.e.*, an attestation) by the voter, and those that cannot be cured. If a deficiency cannot be cured, the ballot must be spoiled and a new ballot must be issued, as long as the new ballot is issued before Election Day. See the Voter Notification Section below.

Deficiencies Curable with Cure Certification (Civilian and UOCAVA)

The following deficiencies can be cured by sending the voter a cure certification:

- Voter did not sign the Voter Certification.[16]
- Voter signed in the wrong place.[17]

The cure certification process applies to civilian and UOCAVA voters.

Deficiencies that Require the Ballot to Be Spoiled (Civilian)

The following deficiencies cannot be cured by certification, because the missing information comes from someone other than the voter:

- The name of the witness or assistant is not printed,[18] unless the witness's or assistant's signature is legible such that the name can be determined, in which case the ballot envelope is not deficient and the ballot shall not be spoiled for this reason.[19]
- A witness or assistant did not print their address.[20]

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[15] G.S. § 163-229(b).

[16] G.S. § 163-230.1(e)(1).

[17] G.S. § 163-230.1(e)(2).

[18] G.S. § 163-230.1(e) provides that "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." However, if~~If~~ the printed name is readable and on the correct line, even if it is written in cursive script, for example, it does not invalidate the ballot envelope.

[19] G.S. § 163-231(a)(5) ("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.").

[20] Failure to list a witness's ZIP code does not invalidate the ballot envelope. G.S. § 163-231(a)(5). A witness's or assistant's address does not have to be a residential address; it may be a post office box or other mailing address. Additionally, if the address is missing a city or state, but the county board of elections can determine the correct address, the failure to list that information does not invalidate the ballot envelope. For example, if a witness lists "Raleigh 27603," you can determine the state is NC, or if a

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- A witness or assistant did not sign.
- A witness or assistant signed on the wrong line. Where the witness or assistant signed in place of the voter's signature, that deficiency cannot be cured and requires the ballot to be spoiled. ~~Otherwise, h~~However, if all required information from the witness or assistant is present but not on the designated line for each (for example, the witness or assistant printed their name on the address line, printed their address on the name line, and signed), the ballot envelope is not deficient and the ballot shall not be spoiled for this reason.

Additionally, when a voter's witness is a notary, two errors in the notarial certificate ~~cannot be cured by certification and~~ will result in the ballot being spoiled: 1) the notary's signature is missing, or 2) the notarial seal is missing altogether or contains missing information. As discussed in Numbered Memo 2021-07, other technical errors with the notarial certificate will not affect the sufficiency, validity, or enforceability of the notarial certificate itself or the underlying document and are not considered deficiencies.

3. Photo ID Documentation Deficiencies

When a voter includes photo ID documentation with their absentee ballot envelope, there may be deficiencies in that documentation that require a cure notice to be sent to the voter. All deficiencies with a voter's photo ID documentation are curable, because the cure documentation comes from the voter.[21]

Photocopy of Photo ID Deficiencies

Deficiencies in a photocopy of a voter's photo ID include:

- The ID is not a type of ID that is acceptable for voting purposes under 08 NCAC 17 .0101(a)(1).
- The ID does not meet expiration requirements, if applicable.
- The photocopy is not readable, which means that the name on the ID cannot be read, the photograph on the ID does not depict a person (e.g., it only depicts a shadow or outline of a person), or both.

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witness lists "333 North Main Street, 27701," you can determine that the city/state is Durham, NC. If both the city and ZIP code are missing, staff will need to determine whether the correct address can be identified. If the correct address cannot be identified, the envelope shall be considered deficient and the ballot spoiled and a new ballot reissued. See Numbered Memo 2020-29 for additional information regarding address issues.

[21] G.S. § 163-230.1(e) ("Curable deficiencies are deficiencies that can be cured with supplemental documentation or attestation provided by the voter[.]").

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- The name on the ID is not the same as or substantially equivalent to the voter's name in their voter record.

Any difference between the voter's address on their ID and the address in their registration record is not a deficiency.

Photo ID Exception Form Deficiencies

Deficiencies in a Photo ID Exception Form include:

- The voter did not print their name on the Form, unless the voter's signature on the Form appears to be made by the voter, meaning the signature on the Form appears to be the name of the voter and not some other person. The county board shall presume that the voter's signature is that of the voter, even if the signature is illegible, unless there is clear evidence to rebut this presumption.
- The voter did not check a box for at least one claimed exception from the photo ID requirements, or if the exception is a reasonable impediment, the voter failed to identify their specific reasonable impediment (including by writing their reason if they chose "Other"[22]).
- If the reasonable impediment chosen is that the voter is unable to make a photocopy of their ID to include with their ballot, the voter did not include their North Carolina driver's license number, DMV ID number, or last 4 digits of their social security number.[23] However, if the voter has additionally checked a box indicating another reasonable impediment that prevents them from including a copy of a photo ID, the Form cannot be found deficient for the missing identification number alone.
- The voter did not sign the Form.[24]

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[22] If the voter writes a reason for "Other" but does not check the "Other" box, the Form is not deficient for that reason alone. Similarly, if the voter writes their North Carolina driver's license number, DMV ID number, or last 4 digits of their social security number but does not check the "I am unable to include a photocopy of my photo ID with this absentee ballot envelope" box, the Form is not deficient for that reason alone provided that the voter did check the first box indicating that they suffer from a reasonable impediment that prevents them from including a copy of photo ID.

[23] G.S. § 163-230.1(g)(2).

[24] If a voter is unable to sign the Photo ID Exception Form due to a disability, the person of the voter's choice who is assisting them can sign the Form on the voter's behalf and must complete the assistant certification on the envelope. See Numbered Memo 2022-11, p. 3 (Court Order Regarding Assistance for Absentee Voters with Disabilities).

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Additionally, a voter's failure to include *any* photo ID documentation—either a photocopy of their ID or an Exception Form—is a deficiency that may be cured.[25]

A voter may respond to a notification that their ballot is missing photo ID documentation by stating that it is in the ballot envelope. If this occurs, and staff have not otherwise identified any return or ballot application deficiencies that would require the ballot to be spoiled and reissued, staff must defer the review of the photo ID documentation to the next absentee board meeting, when the county board can review the application and, if approved, open the ballot envelope and confirm photo ID compliance.[26] If the board identifies a photo ID deficiency at that point, staff should be instructed to notify the voter of the opportunity to cure as explained further in this memo.

County Board Review of Photo ID Exception Forms for Falsity

Although a county board's finding that a Photo ID Exception Form is false will result in the absentee ballot being rejected, this is not a "deficiency" in the same sense as the ones listed above—where staff will take action to notify the voter to address a deficiency. Staff deficiency review of Photo ID Exception Forms is for completeness—not falsity.[27] A board's finding of falsity can only come after the board ~~considers other information and~~ gives the voter notice and an opportunity to be heard on the matter. See Numbered Memo 2020-25, p 8 ("Review of Photo ID Exception Forms"). County boards shall follow the applicable administrative code provisions[28] and Numbered Memo 2023-03, pp. 11–13, when considering whether a Photo ID Exception Form is false.

4. Deficiencies that ~~require board action~~are first discovered at a board meeting

Some deficiencies ~~cannot be resolved by staff and require action by the county board. These include situations where the deficiency is~~will not be ~~first noticed at a board meeting or if it becomes~~ apparent ~~during~~ until a board meeting and, when discovered, will require board action at that time. These deficiencies can include the following:

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[25] G.S. § 163-230.1(e)(3).

[26] This does not prevent the voter from also choosing to send photo ID cure documentation to the county board while its review of the application is pending, and staff may encourage the voter to do so when time is of the essence.

[27] Of course, staff may flag an Exception Form for the board's review at a meeting if staff has specific information suggesting the form is false.

[28] See 08 NCAC 17 .0109(c).

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- There is ~~that~~ no ballot ~~is~~ in the ballot envelope. In this situation, although there is no ballot to spoil, the entire absentee package must be reissued to the voter so that the statutory requirements for voting and transmitting an absentee ballot can be met.
- There is more than one ballot ~~is~~ in the ballot envelope. In this situation, both ballots will need to be spoiled and new absentee ballot packages issued to both voters, because it will not be possible to determine which of the two ballots were voted by the voter who completed the application.
- T~~, or t~~wo voters' ballots and ballot envelopes were switched, based on the county board's review of the CIV numbers (ballot identifying numbers). In this situation, the county board will need to consider the circumstances of the ballots and ballot envelopes together to decide whether to approve the ballots. **If the two voters had their absentee ballots sent to the same address and there are no issues with the applications, then the county board should not spoil the ballots**, because under those circumstances, each voter has properly attested to voting the ballot enclosed with their application. The ballot identifying numbers associated with the enclosed ballots are used for official tracking purposes, and voters in the same household should not have their ballots rejected for failing to ensure these numbers match between their ballots and applications, which is neither a requirement for approval of the ballot under state law nor material to determining a voter's eligibility to cast the ballot under federal law.[29] The board staff should make a note of the ballot number that now corresponds with the voter in the SEIMS record.

If the county board disapproves a ballot envelope by majority vote in a board meeting, it shall proceed according to the notification process in G.S. § 163-230.1(e) and as outlined below. If the county board disapproves a ballot for a reason based on the voter's photo ID documentation, it shall proceed according to the notification process in 08 NCAC 17 .0109 and as outlined below.

Voter Notification

~~Issuance of~~Sending an Absentee Ballot Deficiency Notification or New Ballot

If there are any **return deficiencies** or **ballot application deficiencies**, the county board of elections shall ~~contact the voter in writing by~~ mail a notice to the voter within one business day of identifying the deficiency to inform the voter there is an issue with their absentee ballot, enclosing an absentee ballot deficiency notification, which contains the cure certification, or a new ballot.[30] The written notice shall also include information on how to vote in-person during

[29] See 52 U.S.C. § 10101(a)(2)(B).

[30] When there is a curable deficiency, G.S. § 163-230.1(e) specifically provides that the county board must "promptly notify the voter of the deficiency and the manner in which the voter may cure the deficiency." If a ballot must be spoiled and reissued, the same need to act promptly exists.

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the early voting period and on Election Day. When the voter is issued a new ballot, they must include new photo ID documentation with their ballot when transmitting it back to the county board, because each absentee ballot envelope "returned to the county board . . . shall be accompanied by" a photocopy of the voter's photo ID or Photo ID Exception Form.[31]

The written notice shall be sent to the address to which the voter requested their ballot be sent. The outside of the envelope containing the new ballot or absentee ballot deficiency notification should be in an official envelope so that it indicates that it contains official election mail, unless it is not possible due to the use of a specialized USPS or commercial carrier service envelope.

If the deficiency can be cured and the voter provided their phone number or email address on the absentee ballot request form, then the county board shall additionally notify the voter of the curable deficiency by phone or email.[32] Like with the mail notice, this shall be done within one business day of identifying the deficiency, and the same information shall be provided as in the mail notice. If a voter did not provide their phone number or email address on the absentee ballot request form, then staff shall additionally notify the voter by phone or email if the voter has a phone number oran email address on filecontained in the voter's registration record. If both phone and email are available, notify the voter by email.. If notifying the voter by email, the county board shall also sendinclude the absentee ballot deficiency notification document that is also mailed to the voter by email. If the county board sends the notification by email and by mail, the county board should encourage the voter to only return *one* of the notifications with the certification. If the voter did not provide anvoter's email address is not on file but did providethe voter has provided a phone number, the county board shall contact the voter by phone to inform the voter that the county board has mailed the voter an absentee ballot deficiency notification.

If the deficiency cannot be cured, and the voter has an email address on file, the county board shall notify the voter by email that a new ballot has been issued by mail to the voter. If the voter did not provide an email address but did provide a phone number, the county board shall contact the voter by phone to inform the voter that the county board has issued a new ballot by mail.

A county board shall not reissue a ballot on or after Election Day. If there is a curable deficiency, the county board shall contact voters up until the day before county canvass.

If there is a **photo ID documentation deficiency**, the county board must follow the cure process in 08 NCAC 17 .0109(b). The county board must mail notice to contact the voter in writing by mail within one business day of identifying the deficiency to inform the voter there is an issue with their absentee ballot, enclosing an absentee ballot deficiency notification that identifies the

[31] N.C.G.S. § 163-230.1(f1).

[32] G.S. § 163-230.1(e).

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specific deficiencies with the photo ID documentation.[33] The notification must also inform 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 the photo ID cure documentation to the county board.[34] If the voter provided their phone number or email address on the absentee ballot request form, then the county board shall additionally notify the voter of the photo ID documentation deficiency by phone or email using the phone number or email address listed on the request form~~.~~.[35] Like with the mail notice, this shall be done within one business day of identifying the deficiency, and the same information shall be provided as in the mail notice. If a voter did not provide their phone number or email address on the absentee ballot request form, then staff shall~~Staff must~~ additionally notify the voter by ~~tele~~phone or email, using any ~~tele~~phone number or email address contained in the voter's registration record ~~or provided by the voter when requesting an absentee ballot~~.[36] If both phone and email are available, notify the voter by email. If notifying the voter by email, the county board shall include the absentee ballot deficiency notification document that is also mailed to the voter.

The photo ID cure documentation can be either a new photocopy of the voter's photo ID or a new Absentee Photo ID Exception Form. A voter who submitted a deficient photocopy of their photo ID may also submit a Photo ID Exception Form for the first time. A voter may choose to do so, for example, because~~,~~ in this instance~~, it is now likely that~~ they may no longer be ~~are un~~able to make a photocopy of their ID to include with their ballot. Likewise, a voter who submitted a deficient Photo ID Exception Form may also submit a photocopy of a photo ID for the first time. A voter may choose to do so, for example, because they may have obtained a photo ID, or the means to make a photocopy, since the time at which they transmitted their absentee ballot to the county board. Accordingly, **when sending an absentee ballot deficiency notification for a photo ID documentation deficiency, the county board must include a blank Absentee Photo ID Exception Form**.

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[33] As explained above, all photo ID documentation deficiencies are curable, and when there is a curable deficiency, G.S. § 163-230.1(e) specifically provides that the county board must "promptly notify the voter of the deficiency and the manner in which the voter may cure the deficiency." See also 08 NCAC 17 .0109(b).

[34] 08 NCAC 17 .0109(b).

[35] G.S. § 163-230.1(e).

[36] 08 NCAC 17 .0109(b).

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Receipt of a Cure Certification or Photo ID Cure Documentation

The cure certification or photo ID cure documentation must be received by the county board of elections by 5 p.m. the day before county canvass.[37]

The cure documents may only be returned by the voter, the voter's near relative or legal guardian, a multipartisan assistance team (MAT), or a person of the voter's choice if the voter needs assistance due to the voter's disability.[38] A cure document returned by any other person is invalid.

The cure documents may be submitted to the county board office by email, by mail or commercial carrier, in person, or by fax.[39] When submitting cure documents by email, the voter may attach an image of their cure documentation (*e.g.*, emailing a photo of their photo ID or executed Exception Form). ~~There is not a postmark requirement for cure documents returned by mail.~~ The documents must be *received* by the deadline~~,~~ (not postmarked by the deadline).

If a voter appears in person at the county board office to cure their ballot, they may also be given, and can complete, a cure certification. Similarly, a voter may appear in person and

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[37] G.S. § 163-230.1(e) ("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.").

[38] Voters who require assistance in returning their ballot due to the voter's disability, can direct the person of their choice to return the ballot according to the voter's instruction (*i.e.*, by mail or in person to the county board). See Numbered Memo 2022-11.

[39] Although G.S. 163-230.1(e) now provides that photo ID cure documentation "may be transmitted via e-mail to the county board of elections," this does not preclude the use of email to transmit a cure certification for ballot application deficiencies, because the statute is otherwise silent on the manner of transmittal and form of receipt of cure documentation for those deficiencies, and the statute's instruction to notify a voter of a curable deficiency by email indicates transmission of cure documentation by email is permissible.

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complete a Photo ID Exception Form to accompany the ballot envelope[40],[41] or request that staff make a photocopy of the voter's photo ID to accompany the ballot envelope.[42]

It is not permissible for a cure certification to be submitted through a portal or form created or maintained by a third party. A cure certification may not be submitted simultaneously with the ballot.

Any person who is permitted to assist a voter with their ballot may assist a voter in filling out the cure certification, making a photocopy of the voter's photo ID, or filling out the Photo ID Exception Form, but the certification and Photo ID Exception Form must be signed by the voter.[43] A wet ink signature is not required for cure documents, but the signature used must be unique to the individual. A typed signature is not acceptable, even if it is cursive or italics such as is commonly seen with an electronic signature program, such as DocuSign.

County Board Review of Cure Documentation

At each absentee board meeting, the county board of elections may consider deficient ballot return envelopes for which cure documentation has been returned, whether a cure certification or photo ID documentation. The county board shall consider together the executed absentee ballot envelope and the cure documentation. If the cure documentation was timely received, includes the required documentation or attestations, and was returned by an authorized person, the county board of elections shall approve the absentee ballot. See Numbered Memo 2020-25.

Data Entry in SEIMS

County board staff shall follow the instructions provided by the State Board in the most recent guide for the proper entry of data in SEIMS when processing absentee ballots and addressing deficiencies. Data shall be promptly entered as ballots are processed. This will ensure that the

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[40] ~~The option to complete a Photo ID Exception Form in the county board office is only available for voters who are voting absentee-by-mail. Voters who vote in person at an early voting site or on Election Day must complete the Photo ID Exception Form at the voting site. See Numbered Memo 2023-03.~~

[41] The option to complete a Photo ID Exception Form in the county board office is only available for voters who are voting absentee-by-mail. Voters who vote in person at an early voting site or on Election Day must complete the Photo ID Exception Form at the voting site. See Numbered Memo 2023-03.

[42] See Numbered Memo 2020-23 regarding staff making photocopies of photo IDs for inclusion with an absentee ballot envelope.

[43] If a voter is physically unable to sign or make their mark on the Photo ID Exception Form due to disability, any person of that voter's choice can write in the signature line, "Disabled - cannot sign." See Numbered Memo 2022-11.

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data maintained by the county boards and State Board follows uniform conventions and is up to date. This will help ensure the processing of absentee ballots is transparent to the public.

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NORTH CAROLINA
STATE BOARD OF ELECTIONS

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Numbered Memo 2021-03

TO: County Boards of Elections

FROM: Karen Brinson Bell, Executive Director[1]

RE: Absentee Container-Return Envelope Deficiencies

DATE: June 11, 2021 (updated September 25, 2023; January 19, 2024)[2]

The State Board is required to provide a cure process for voters whose absentee ballot envelopes contain certain deficiencies.[3] In general, the cure process for absentee-by-mail deficiencies is guided by G.S. § 163-230.1(e), as amended by Session Law 2023-140 (SB 747), and this numbered memo. The cure process for photo ID documentation containing deficiencies, when that documentation is submitted with an absentee ballot, is provided through G.S. § 163-230.1(e), as amended by Session Law 2023-140, an administrative rule adopted by the State Board[4], and is guided by this numbered memo. County boards of elections must ensure that the votes of all eligible voters are counted using the same standards, regardless of the county in which the voter resides.

The ballot container-return envelope (ballot envelope) and the accompanying photocopy of the voter's photo ID or completed Photo ID Exception Form (photo ID documentation) are transmitted to the county board in an outer return envelope. This numbered memo directs the procedure county boards must use to address deficiencies in the envelopes and photo ID

[1] This memo is issued under the authority delegated by the State Board to the executive director pursuant to G.S. § 163-22(p).

[2] This numbered memo replaces Numbered Memo 2020-19, which was first issued on August 21, 2020 and subsequently revised and reissued on September 22, 2020, and October 17, 2020. This numbered memo was updated on September 25, 2023, and again on January 19, 2024, to include processes related to photo ID requirements for absentee-by-mail voting.

[3] See G.S. § 163-230.1(e), revised by N.C. Session Law 2023-140 § 35, to provide a cure process for deficiencies associated with returned absentee-by-mail ballots. *See also Democracy NC v. State Board of Elections*, 476 F.Supp.3d 158 (M.D.N.C. Aug. 4, 2020) (explaining that due process requires such a cure opportunity).

[4] 08 NCAC 17 .0109(b).

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documentation, to ensure that a voter is provided every opportunity to correct certain deficiencies, while also recognizing that processes must be manageable for county boards to timely complete required tasks.

No Signature Verification[5]

Verification of the voter's identity is completed through the witness requirement. The voter's signature on the envelope shall not be compared with the voter's signature in their registration record, on their request form, or on their photocopy of photo ID or Photo ID Exception Form submitted with their ballot, because this is not a requirement for the approval of an absentee ballot under North Carolina law.[6] County boards shall accept the voter's signature on the ballot envelope if it appears to be made by the voter, meaning the signature on the envelope appears to be the name of the voter and not some other person. Absent clear evidence to the contrary, the county board shall presume that the voter's signature is that of the voter, even if the signature is illegible. A voter may sign their signature or make their mark.

Types of Deficiencies

Trained county board staff shall review each return envelope, executed ballot envelope, and photo ID documentation the office receives to determine if there are any deficiencies. County board staff shall, to the extent possible, regularly review these absentee ballot materials on each business day, to ensure that voters have every opportunity to timely correct deficiencies.[7] Review for deficiencies occurs *after* intake. The initial review is conducted by staff to expedite processing of the envelopes in advance of a county board absentee meeting.[8]

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[5] Session Law 2023-140 § 48 provides for a signature verification pilot program to be conducted during the 2024 primary election. As stated in Section 48.(c), however, "[i]n implementing the pilot program established in this section, no executed mail-in absentee ballot shall be rejected by the county board of elections for failing any signature verification. All executed mail-in absentee ballots that are otherwise eligible to be counted in accordance with Chapter 163 of the General Statutes shall be counted."

[6] See *In re: Request for Declaratory Ruling on Signature Matching for Absentee Ballot Requests and Ballot Envelopes*, N.C. State Bd. of Elections (July 22, 2022). See also Numbered Memo 2020-15, which explains that signature comparison is not permissible for absentee request forms.

[7] Specifically for ballot application deficiencies and photo ID documentation deficiencies, discussed below, G.S. § 163-230.1(e) requires that the county board "promptly notify the voter of the deficiency and the manner in which the voter may cure the deficiency."

[8] See Numbered Memo 2020-25 regarding preparatory steps for absentee meetings.

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There are three categories of deficiencies: 1) return deficiencies, 2) ballot application deficiencies, and 3) photo ID documentation deficiencies.

1. Return Deficiencies

Previously, a voter transmitted their absentee-by-mail ballot to the county board in a single ballot container-return envelope. However, with the implementation of photo ID requirements starting with the 2023 municipal elections, the ballot envelope is now transmitted to the county board in an outer return envelope to ensure the privacy of the accompanying photo ID documentation. As a result, there may be certain instances where the return of the absentee ballot requires the ballot to be spoiled and the absentee package reissued to the voter.

Deficiencies that Require the Ballot to Be Spoiled (Civilian)

- Ballot is inside the ballot envelope, which is not sealed or which appears to have been opened and re-sealed, and the ballot envelope is received in a return envelope which is not sealed or which appears to have been opened and re-sealed.[9]
- Ballot is inside the executed ballot envelope, which is not sealed, and someone other than the voter hand delivers the ballot envelope to an early voting site or the county board office, and the return envelope is also unsealed or there is no return envelope. Even if the person is authorized to return this ballot, they cannot seal the ballot without the voter being present. The voter must direct that the ballot be sealed "in the voter's presence."[10]
- The return or ballot envelope indicates the voter is requesting a replacement ballot.

If a county board identifies one of these deficiencies, county board staff shall spoil the returned ballot and reissue a ballot, as long as the new ballot is issued before Election Day, along with a notice explaining the county board office's action, in accordance with this numbered memo.

Anomalies that Are Not Deficiencies (Civilian)[11]

- Ballot is inside the executed ballot envelope, which is not sealed or which appears to have been opened and re-sealed, but the ballot envelope is received in a sealed return

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[9] Ballots must be "sealed in the container-return envelope." G.S. § 163-230.1(d); see also G.S. § 163-231(a)(3).

[10] G.S. § 163-231(a)(3).

[11] With all ballot mistakes or anomalies, elections officials must be guided by the clear instruction in the federal Civil Rights Act of 1964 to not allow an error on ballot materials to lead to a ballot's rejection when that error is immaterial to determining a voter's eligibility to cast the ballot: "No person acting under color of law shall . . . deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if

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envelope. Immediately upon opening the return envelope and noticing this situation, staff should re-seal the return envelope with a notation of "sealed in return envelope." The county board should open the return envelope and address that ballot at its next absentee meeting.[12]

- Ballot is not inside the ballot envelope or has been placed inside the clear sleeve on the ballot envelope used for including the photo ID documentation, but the return envelope is sealed. Immediately upon opening the return envelope and noticing this situation, staff should re-seal the return envelope with a notation of "sealed in return envelope." The county board should open the return envelope and address that ballot at its next absentee meeting.[13]
- Ballot is received in a return envelope that is not sealed or appears to have been opened and re-sealed, but the ballot is inside the executed ballot envelope that is sealed. This situation does not require any special action to document the anomaly before presenting the ballot envelope to the county board.
- Ballot is inside the executed ballot envelope, which is not sealed, and the voter hand delivers the ballot envelope to an early voting site or the county board office. Before taking receipt of the envelope, staff should request that the voter first seal the ballot envelope.

In all of the above situations, the ballot was received in a sealed envelope and is therefore not deficient.[14]

A person hand-delivering the absentee ballot, whether it is the voter or someone authorized to return the voter's ballot, is not required to deliver the ballot envelope inside the return envelope for the absentee application to be approved. The return envelope is designed to protect the voter's confidential identifying information during mail transit. If the person hand-delivers only the sealed ballot envelope, staff should follow their usual storage practices and keep the ballot

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such error or omission is not material in determining whether such individual is qualified under State law to vote in such election." 52 U.S.C. § 10101(a)(2)(B).

[12] In this situation, for the purposes of staff's initial review of photo ID documentation pursuant to 08 NCAC 17 .0109(b), the ballot application is not "received" until the return envelope is opened at the absentee meeting.

[13] In this situation, for the purposes of staff's initial review of photo ID documentation pursuant to 08 NCAC 17 .0109(b), the ballot application is not "received" until the return envelope is opened at the absentee meeting.

[14] G.S. §§ 163-230.1(d), 163-231(a)(3).

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envelope in a secure location, which may include placing the ballot envelope in a new return envelope for storage purposes.

2. Ballot Application Deficiencies

The ballot application is the form on the ballot envelope that is completed by the voter, their witnesses or notary, and assistant (if applicable).[15] Ballot application deficiencies fall into two main categories: those that can be cured with a cure certification (*i.e.*, an attestation) by the voter, and those that cannot be cured. If a deficiency cannot be cured, the ballot must be spoiled and a new ballot must be issued, as long as the new ballot is issued before Election Day. See the Voter Notification Section below.

Deficiencies Curable with Cure Certification (Civilian and UOCAVA)

The following deficiencies can be cured by sending the voter a cure certification:

- Voter did not sign the Voter Certification.[16]
- Voter signed in the wrong place.[17]

The cure certification process applies to civilian and UOCAVA voters.

Deficiencies that Require the Ballot to Be Spoiled (Civilian)

The following deficiencies cannot be cured by certification, because the missing information comes from someone other than the voter:

- The name of the witness or assistant is not printed,[18] unless the witness's or assistant's signature is legible such that the name can be determined, in which case the ballot envelope is not deficient and the ballot shall not be spoiled for this reason.[19]
- A witness or assistant did not print their address.[20]

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[15] G.S. § 163-229(b).

[16] G.S. § 163-230.1(e)(1).

[17] G.S. § 163-230.1(e)(2).

[18] G.S. § 163-230.1(e) provides that "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." However, if the printed name is readable and on the correct line, even if it is written in cursive script, for example, it does not invalidate the ballot envelope.

[19] G.S. § 163-231(a)(5) ("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.").

[20] Failure to list a witness's ZIP code does not invalidate the ballot envelope. G.S. § 163-231(a)(5). A witness's or assistant's address does not have to be a residential address; it may be a post office box or

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- A witness or assistant did not sign.
- A witness or assistant signed on the wrong line. Where the witness or assistant signed in place of the voter's signature, that deficiency cannot be cured and requires the ballot to be spoiled. However, if all required information from the witness or assistant is present but not on the designated line for each (for example, the witness or assistant printed their name on the address line, printed their address on the name line, and signed), the ballot envelope is not deficient and the ballot shall not be spoiled for this reason.

Additionally, when a voter's witness is a notary, two errors in the notarial certificate will result in the ballot being spoiled: 1) the notary's signature is missing, or 2) the notarial seal is missing altogether or contains missing information. As discussed in Numbered Memo 2021-07, other technical errors with the notarial certificate will not affect the sufficiency, validity, or enforceability of the notarial certificate itself or the underlying document and are not considered deficiencies.

3. Photo ID Documentation Deficiencies

When a voter includes photo ID documentation with their absentee ballot envelope, there may be deficiencies in that documentation that require a cure notice to be sent to the voter. All deficiencies with a voter's photo ID documentation are curable, because the cure documentation comes from the voter. [21]

Photocopy of Photo ID Deficiencies

Deficiencies in a photocopy of a voter's photo ID include:

- The ID is not a type of ID that is acceptable for voting purposes under 08 NCAC 17 .0101(a)(1).
- The ID does not meet expiration requirements, if applicable.

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other mailing address. Additionally, if the address is missing a city or state, but the county board of elections can determine the correct address, the failure to list that information does not invalidate the ballot envelope. For example, if a witness lists "Raleigh 27603," you can determine the state is NC, or if a witness lists "333 North Main Street, 27701," you can determine that the city/state is Durham, NC. If both the city and ZIP code are missing, staff will need to determine whether the correct address can be identified. If the correct address cannot be identified, the envelope shall be considered deficient and the ballot spoiled and a new ballot reissued. See Numbered Memo 2020-29 for additional information regarding address issues.

[21] G.S. § 163-230.1(e) ("Curable deficiencies are deficiencies that can be cured with supplemental documentation or attestation provided by the voter[.]").

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- The photocopy is not readable, which means that the name on the ID cannot be read, the photograph on the ID does not depict a person (e.g., it only depicts a shadow or outline of a person), or both.
- The name on the ID is not the same as or substantially equivalent to the voter's name in their voter record.

Any difference between the voter's address on their ID and the address in their registration record is not a deficiency.

Photo ID Exception Form Deficiencies

Deficiencies in a Photo ID Exception Form include:

- The voter did not print their name on the Form, unless the voter's signature on the Form appears to be made by the voter, meaning the signature on the Form appears to be the name of the voter and not some other person. The county board shall presume that the voter's signature is that of the voter, even if the signature is illegible, unless there is clear evidence to rebut this presumption.
- The voter did not check a box for at least one claimed exception from the photo ID requirements, or if the exception is a reasonable impediment, the voter failed to identify their specific reasonable impediment (including by writing their reason if they chose "Other"[22]).
- If the reasonable impediment chosen is that the voter is unable to make a photocopy of their ID to include with their ballot, the voter did not include their North Carolina driver's license number, DMV ID number, or last 4 digits of their social security number.[23] However, if the voter has additionally checked a box indicating another reasonable impediment that prevents them from including a copy of a photo ID, the Form cannot be found deficient for the missing identification number alone.

[22] If the voter writes a reason for "Other" but does not check the "Other" box, the Form is not deficient for that reason alone. Similarly, if the voter writes their North Carolina driver's license number, DMV ID number, or last 4 digits of their social security number but does not check the "I am unable to include a photocopy of my photo ID with this absentee ballot envelope" box, the Form is not deficient for that reason alone provided that the voter did check the first box indicating that they suffer from a reasonable impediment that prevents them from including a copy of photo ID.

[23] G.S. § 163-230.1(g)(2).

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- The voter did not sign the Form.[24]

Additionally, a voter's failure to include *any* photo ID documentation—either a photocopy of their ID or an Exception Form—is a deficiency that may be cured.[25]

A voter may respond to a notification that their ballot is missing photo ID documentation by stating that it is in the ballot envelope. If this occurs, and staff have not otherwise identified any return or ballot application deficiencies that would require the ballot to be spoiled and reissued, staff must defer the review of the photo ID documentation to the next absentee board meeting, when the county board can review the application and, if approved, open the ballot envelope and confirm photo ID compliance.[26] If the board identifies a photo ID deficiency at that point, staff should be instructed to notify the voter of the opportunity to cure as explained further in this memo.

County Board Review of Photo ID Exception Forms for Falsity

Although a county board's finding that a Photo ID Exception Form is false will result in the absentee ballot being rejected, this is not a "deficiency" in the same sense as the ones listed above—where staff will take action to notify the voter to address a deficiency. Staff deficiency review of Photo ID Exception Forms is for completeness—not falsity.[27] A board's finding of falsity can only come after the board gives the voter notice and an opportunity to be heard on the matter. See Numbered Memo 2020-25, p 8 ("Review of Photo ID Exception Forms"). County boards shall follow the applicable administrative code provisions[28] and Numbered Memo 2023-03, pp. 11–13, when considering whether a Photo ID Exception Form is false.

---

[24] If a voter is unable to sign the Photo ID Exception Form due to a disability, the person of the voter's choice who is assisting them can sign the Form on the voter's behalf and must complete the assistant certification on the envelope. See Numbered Memo 2022-11, p. 3 (Court Order Regarding Assistance for Absentee Voters with Disabilities).

[25] G.S. § 163-230.1(e)(3).

[26] This does not prevent the voter from also choosing to send photo ID cure documentation to the county board while its review of the application is pending, and staff may encourage the voter to do so when time is of the essence.

[27] Of course, staff may flag an Exception Form for the board's review at a meeting if staff has specific information suggesting the form is false.

[28] See 08 NCAC 17 .0109(c).

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4. Deficiencies that are first discovered at a board meeting

Some deficiencies will not be apparent until a board meeting and, when discovered, will require board action at that time. These deficiencies can include the following:

- There is no ballot in the ballot envelope. In this situation, although there is no ballot to spoil, the entire absentee package must be reissued to the voter so that the statutory requirements for voting and transmitting an absentee ballot can be met.
- There is more than one ballot in the ballot envelope. In this situation, both ballots will need to be spoiled and new absentee ballot packages issued to both voters, because it will not be possible to determine which of the two ballots were voted by the voter who completed the application.
- Two voters' ballots and ballot envelopes were switched, based on the county board's review of the CIV numbers (ballot identifying numbers). In this situation, the county board will need to consider the circumstances of the ballots and ballot envelopes together to decide whether to approve the ballots. **If the two voters had their absentee ballots sent to the same address and there are no issues with the applications, then the county board should not spoil the ballots**, because under those circumstances, each voter has properly attested to voting the ballot enclosed with their application. The ballot identifying numbers associated with the enclosed ballots are used for official tracking purposes, and voters in the same household should not have their ballots rejected for failing to ensure these numbers match between their ballots and applications, which is neither a requirement for approval of the ballot under state law nor material to determining a voter's eligibility to cast the ballot under federal law.[29] The board staff should make a note of the ballot number that now corresponds with the voter in the SEIMS record.

If the county board disapproves a ballot envelope by majority vote in a board meeting, it shall proceed according to the notification process in G.S. § 163-230.1(e) and as outlined below. If the county board disapproves a ballot for a reason based on the voter's photo ID documentation, it shall proceed according to the notification process in 08 NCAC 17 .0109 and as outlined below.

Voter Notification

Sending an Absentee Ballot Deficiency Notification or New Ballot

If there are any **return deficiencies** or **ballot application deficiencies**, the county board of elections shall mail a notice to the voter within one business day of identifying the deficiency to inform the voter there is an issue with their absentee ballot, enclosing an absentee ballot

[29] See 52 U.S.C. § 10101(a)(2)(B).

AMERICAN OVERSIGHT

deficiency notification, which contains the cure certification, or a new ballot.[30] The written notice shall also include information on how to vote in-person during the early voting period and on Election Day. When the voter is issued a new ballot, they must include new photo ID documentation with their ballot when transmitting it back to the county board, because each absentee ballot envelope "returned to the county board . . . shall be accompanied by" a photocopy of the voter's photo ID or Photo ID Exception Form.[31]

The written notice shall be sent to the address to which the voter requested their ballot be sent. The outside of the envelope containing the new ballot or absentee ballot deficiency notification should be in an official envelope so that it indicates that it contains official election mail, unless it is not possible due to the use of a specialized USPS or commercial carrier service envelope.

If the deficiency can be cured and the voter provided their phone number or email address on the absentee ballot request form, then the county board shall additionally notify the voter of the curable deficiency by phone or email.[32] Like with the mail notice, this shall be done within one business day of identifying the deficiency, and the same information shall be provided as in the mail notice. If a voter did not provide their phone number or email address on the absentee ballot request form, then staff shall additionally notify the voter by phone or email if the voter has a phone number or email address contained in the voter's registration record. If both phone and email are available, notify the voter by email. If notifying the voter by email, the county board shall include the absentee ballot deficiency notification document that is also mailed to the voter. If the county board sends the notification by email and by mail, the county board should encourage the voter to only return *one* of the notifications with the certification.

If the deficiency cannot be cured, and the voter has an email address on file, the county board shall notify the voter by email that a new ballot has been issued by mail to the voter. If the voter did not provide an email address but did provide a phone number, the county board shall contact the voter by phone to inform the voter that the county board has issued a new ballot by mail.

A county board shall not reissue a ballot on or after Election Day. If there is a curable deficiency, the county board shall contact voters up until the day before county canvass.

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[30] When there is a curable deficiency, G.S. § 163-230.1(e) specifically provides that the county board must "promptly notify the voter of the deficiency and the manner in which the voter may cure the deficiency." If a ballot must be spoiled and reissued, the same need to act promptly exists.

[31] G.S. § 163-230.1(f1).

[32] G.S. § 163-230.1(e).

AMERICAN OVERSIGHT

If there is a **photo ID documentation deficiency**, the county board must mail notice to the voter within one business day of identifying the deficiency to inform the voter there is an issue with their absentee ballot, enclosing an absentee ballot deficiency notification that identifies the specific deficiencies with the photo ID documentation.[33] The notification must also inform 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 the photo ID cure documentation to the county board.[34] If the voter provided their phone number or email address on the absentee ballot request form, then the county board shall additionally notify the voter of the photo ID documentation deficiency by phone or email using the phone number or email address listed on the request form.[35] Like with the mail notice, this shall be done within one business day of identifying the deficiency, and the same information shall be provided as in the mail notice. If a voter did not provide their phone number or email address on the absentee ballot request form, then staff shall additionally notify the voter by phone or email, using any phone number or email address contained in the voter's registration record.[36] If both phone and email are available, notify the voter by email. If notifying the voter by email, the county board shall include the absentee ballot deficiency notification document that is also mailed to the voter.

The photo ID cure documentation can be either a new photocopy of the voter's photo ID or a new Absentee Photo ID Exception Form. A voter who submitted a deficient photocopy of their photo ID may also submit a Photo ID Exception Form for the first time. A voter may choose to do so, for example, because in this instance they may no longer be able to make a photocopy of their ID to include with their ballot. Likewise, a voter who submitted a deficient Photo ID Exception Form may also submit a photocopy of a photo ID for the first time. A voter may choose to do so, for example, because they may have obtained a photo ID, or the means to make a photocopy, since the time at which they transmitted their absentee ballot to the county board. Accordingly, **when sending an absentee ballot deficiency notification for a photo ID documentation deficiency, the county board must include a blank Absentee Photo ID Exception Form**.

---

[33] As explained above, all photo ID documentation deficiencies are curable, and when there is a curable deficiency, G.S. § 163-230.1(e) specifically provides that the county board must "promptly notify the voter of the deficiency and the manner in which the voter may cure the deficiency." See also 08 NCAC 17 .0109(b).

[34] 08 NCAC 17 .0109(b).

[35] G.S. § 163-230.1(e).

[36] 08 NCAC 17 .0109(b).

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Receipt of a Cure Certification or Photo ID Cure Documentation

The cure certification or photo ID cure documentation must be received by the county board of elections by 5 p.m. the day before county canvass.[37]

The cure documents may only be returned by the voter, the voter's near relative or legal guardian, a multipartisan assistance team (MAT), or a person of the voter's choice if the voter needs assistance due to the voter's disability.[38] A cure document returned by any other person is invalid.

The cure documents may be submitted to the county board office by email, by mail or commercial carrier, in person, or by fax.[39] When submitting cure documents by email, the voter may attach an image of their cure documentation (*e.g.*, emailing a photo of their photo ID or executed Exception Form).The documents must be *received* by the deadline (not postmarked by the deadline).

If a voter appears in person at the county board office to cure their ballot, they may also be given, and can complete, a cure certification. Similarly, a voter may appear in person and

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[37] G.S. § 163-230.1(e) ("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.").

[38] Voters who require assistance in returning their ballot due to the voter's disability, can direct the person of their choice to return the ballot according to the voter's instruction (*i.e.*, by mail or in person to the county board). See Numbered Memo 2022-11.

[39] Although G.S. 163-230.1(e) now provides that photo ID cure documentation "may be transmitted via e-mail to the county board of elections," this does not preclude the use of email to transmit a cure certification for ballot application deficiencies, because the statute is otherwise silent on the manner of transmittal and form of receipt of cure documentation for those deficiencies, and the statute's instruction to notify a voter of a curable deficiency by email indicates transmission of cure documentation by email is permissible.

AMERICAN OVERSIGHT

complete a Photo ID Exception Form to accompany the ballot envelope,[40] or request that staff make a photocopy of the voter's photo ID to accompany the ballot envelope.[41]

It is not permissible for a cure certification to be submitted through a portal or form created or maintained by a third party. A cure certification may not be submitted simultaneously with the ballot.

Any person who is permitted to assist a voter with their ballot may assist a voter in filling out the cure certification, making a photocopy of the voter's photo ID, or filling out the Photo ID Exception Form, but the certification and Photo ID Exception Form must be signed by the voter.[42] A wet ink signature is not required for cure documents, but the signature used must be unique to the individual. A typed signature is not acceptable, even if it is cursive or italics such as is commonly seen with an electronic signature program, such as DocuSign.

County Board Review of Cure Documentation

At each absentee board meeting, the county board of elections may consider deficient ballot return envelopes for which cure documentation has been returned, whether a cure certification or photo ID documentation. The county board shall consider together the executed absentee ballot envelope and the cure documentation. If the cure documentation was timely received, includes the required documentation or attestations, and was returned by an authorized person, the county board of elections shall approve the absentee ballot. See Numbered Memo 2020-25.

Data Entry in SEIMS

County board staff shall follow the instructions provided by the State Board in the most recent guide for the proper entry of data in SEIMS when processing absentee ballots and addressing deficiencies. Data shall be promptly entered as ballots are processed. This will ensure that the data maintained by the county boards and State Board follows uniform conventions and is up to date. This will help ensure the processing of absentee ballots is transparent to the public.

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[40] The option to complete a Photo ID Exception Form in the county board office is only available for voters who are voting absentee-by-mail. Voters who vote in person at an early voting site or on Election Day must complete the Photo ID Exception Form at the voting site. See Numbered Memo 2023-03.

[41] See Numbered Memo 2020-23 regarding staff making photocopies of photo IDs for inclusion with an absentee ballot envelope.

[42] If a voter is physically unable to sign or make their mark on the Photo ID Exception Form due to disability, any person of that voter's choice can write in the signature line, "Disabled - cannot sign." See Numbered Memo 2022-11.

AMERICAN OVERSIGHT

Lassiter, Daniel

From: D Boone <dkboone@outlook.com>
Sent: Tuesday, January 2, 2024 4:08 PM
To: Bowens, Derek
Subject: Re: Absentee By Mail Signature Verification Pilot Program: Durham Selected

Friday works. Any time
Sent from my iPhone

On Jan 2, 2024, at 3:03 PM, Bowens, Derek <dbowens@dconc.gov> wrote:

Hey Mr. Boone,

This week would work best as I am out of town next week in my capacity with National Association of Election Officials. Can you do tomorrow or Friday?

Thanks,

Derek

Derek L. Bowens
Director of Elections
<image001.png>
Durham County Board of Elections
Physical address: 201 N. Roxboro Street, Durham, NC 27701
Mailing address: PO Box 868, Durham, NC 27702
Phone: (919) 560-7072
Fax: (919) 560-0688
www.dcovotes.com

From: D Boone <dkboone@outlook.com>
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Sent from my iPhone

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From: D Boone <dkboone@outlook.com>
Sent: Wednesday, January 3, 2024 9:46 AM
To: Bowens, Derek
Subject: Re: Absentee By Mail Signature Verification Pilot Program: Durham Selected

11 is fine. See you then.

Thx

From: Bowens, Derek <dbowens@dconc.gov>
Sent: Wednesday, January 3, 2024 9:35 AM
To: D Boone <dkboone@outlook.com>
Subject: RE: Absentee By Mail Signature Verification Pilot Program: Durham Selected

How about 11:00 a.m.? Thanks.

Derek L. Bowens
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AMERICAN OVERSIGHT

Lassiter, Daniel

From: Adrianne Rushton <adrianne.rushton@brunswickcountync.gov>
Sent: Tuesday, October 10, 2023 9:38 AM
To: Blackman, Allison
Cc: Bowens, Derek; Terri Young
Subject: RE: absentee consultants needed

Good morning!

Do you have more information regarding meetings after October 16? It would be helpful to have a better understanding of the time commitment before making a decision.

Thank you,

Adrianne Rushton | Elections Deputy Director
Brunswick County Board of Elections
75 Stamp Act Drive NE | Bldg H | PO Box 2 | Bolivia, NC 28422
Main: 910-253-2620 | Phone: 910-253-2626 | Fax: 910-253-2618
Email: adrianne.rushton@brunswickcountync.gov
Website: www.brunswickncvotes.gov

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

From: Blackman, Allison <Allison.Blackman@ncsbe.gov>
Sent: Tuesday, October 10, 2023 9:17 AM
To: Derek Bowens <DBOWENS@DCONC.GOV>; Terri Young <tyoung@orangecountync.gov>; Adrianne Rushton <adrianne.rushton@brunswickcountync.gov>
Subject: absentee consultants needed

CAUTION: This email originated from outside of Brunswick County Government. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Happy Election Day for October Counties!

Probably not an optimal time to request, however I am looking for a few consultants to assist with laying out all the needs for the signature verification pilot project. This does not mean your county has to participate in the pilot. This is more about you as expert individuals working to ensure that we outline all needs for the IFB (Invitation for bid). You know for all things absentee I'm starting with my Hub OGs. It says two people but I would love to have all three of you. I also understand if this is more than you want to do at this point. If that's the case I will work my way through the rest of our Hub.

Here is information from Lisa about what we need and the time commitment:

- We are in the planning stage of the Signature Verification Solution Pilot Project
- We are requesting assistance from two county staff to assist with writing requirements for the Invitation For Bid (IFB) procurement method
    - DIT recommended this procurement method, re: time constraint and SBE is seeking a system that can be configured (modify settings) vs. customized (changing code)

AMERICAN OVERSIGHT

- County input is important to provide insight on actual processes to help us hone in on potential solution needs
- A meeting will be held on or about Monday 10/16 to review the updated requirements; attendance is optional
    - Subsequent meetings may be held prior to submitting the requirements to DOA, attendance is optional
- Assisting with requirements is not a commitment nor indication of desire to participate in the pilot
- If desired, participation in the remaining procurement efforts will be discussed with the Strategy Team

Best regards,

Allison

Allison Blackman
Vote by Mail Program Specialist | CERA
NORTH CAROLINA
STATE BOARD OF ELECTIONS

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AMERICAN OVERSIGHT

Lassiter, Daniel

From: Ellen Reckhow <ereckhow@gmail.com>
Sent: Tuesday, January 23, 2024 9:01 AM
To: Bowens, Derek
Subject: Re: FW: Durham County Board of Elections Selected for Absentee By-Mail Signature Verification Pilot Program

Looks great! Thanks!

Ellen Reckhow
ereckhow@gmail.com
Mobile: 919-210-5535

On Tue, Jan 23, 2024 at 8:38 AM Bowens, Derek <dbowens@dconc.gov> wrote:

> FYI
>
> **Derek L. Bowens**
>
> **Director of Elections**
>
> DURHAM COUNTY
> Board of Elections
>
> Durham County Board of Elections
>
> Physical address: 201 N. Roxboro Street, Durham, NC 27701
>
> Mailing address: PO Box 868, Durham, NC 27702
>
> Phone: (919) 560-7072
>
> Fax: (919) 560-0688
>
> www.dcovotes.com

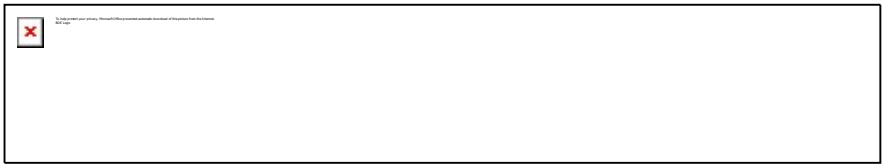
From: Durham County Webmaster <durhamcounty@enotify.visioninternet.com>
Sent: Monday, January 22, 2024 8:01 PM

AMERICAN OVERSIGHT

To: Pollworkers <pollworkers@dconc.gov>
Subject: Durham County Board of Elections Selected for Absentee By-Mail Signature Verification Pilot Program

Durham County Board of Elections Selected for Absentee By-Mail Signature Verification Pilot Program

Post Date: 01/22/2024 8:00 PM



NEWS RELEASE

Durham, N.C. - The Durham County Board of Elections was one of ten counties selected to participate in an absentee by-mail signature verification pilot program for the 2024 Statewide Primary and Election. This pilot program is required in accordance with Section 48 of Session Law 2023-140, better known as Senate Bill 747. As required by this law, the State Board of Elections will be providing all ten participating counties with signature verification software and training needed to execute the pilot program. The data collected from this pilot program will be reported to the State Board of Elections and the General Assembly.

The Board wants all residents to be aware that Section 48.(c) of Senate Bill 747 prevents properly executed by-mail ballots from being rejected due to failing signature verification. Section 48.(c) states the following:

"In implementing the pilot program established in this section, no executed mail-in absentee ballot shall be rejected by the county board of elections for failing any signature verification. All executed mail-in absentee ballots that are otherwise eligible to be counted in accordance with Chapter 163 of the General Statutes shall be counted."

For more information on the absentee by-mail signature verification pilot program, please contact the Board of Elections by phone at 919-560-0700 or email us at elections@dconc.gov.

###

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AMERICAN OVERSIGHT

Lassiter, Daniel

From: Bell, Karen B <Karen.Bell@ncsbe.gov>
Sent: Friday, February 16, 2024 11:03 AM
To: Berot, Lisa; Baddour, Neil; Blackman, Allison; Holland, Parker; Velez, Trena; Cox, Paul; LaToya Peele; leighsa.jones; Bowens, Derek; Kristin Scott; Summer, Heatherly; Jennifer King; Rhonda Johnson; Lisa Bennett; Main, Sharon H; Kim Caudill; SBOE_Grp - SST
Cc: Kelly, Bret; Gannon, Patrick; Love, Katelyn; Jones, Brooks; McCurry, Virginia; Adams, Steve; Dell, Laura; Noce, John; Stone, Matthew
Subject: RE: Overview meeting regarding signature verification pilot program

Good morning Pilot Participants,

I wanted to share the following information provided by our project manager, Lisa Berot, in the chat from our previous meeting. Lisa will continue to add information to the meeting chat in Teams, so please monitor if possible. Her post this morning:

Good morning,

The IFB was posted on 2/8 and vendors had up to noon yesterday to submit questions. We received a total 40 questions from multiple vendors. We have through Monday, 2/19 to respond and post the responses.

Bids will be opened on 2/27 and SBE will evaluate bids and select a vendor on 2/28.

After 2/28, the dates are less definitive. From conversations with Procurement, we have to submit the selected vendor to DIT for review and approval. I haven't received the exact dates/workflows for those approvals but we will check in often to help push this through.

Going forward, I will post updates to this chat.

Obviously your focus and energy are on conducting voting between now and Election Day. We'll manage the pilot program at this point, but wanted to keep you informed.

Thank you for all you do,
Karen

Karen Brinson Bell, CERA, PMP
Executive Director, NCSBE
(919) 814-0700 Main Line

NORTH CAROLINA
STATE BOARD OF ELECTIONS

-----Original Appointment-----
From: Bell, Karen B
Sent: Tuesday, January 2, 2024 4:50 PM
To: Bell, Karen B; Berot, Lisa; Baddour, Neil; Blackman, Allison; Holland, Parker; Velez, Trena; Cox, Paul; LaToya Peele; 'leighsa.jones@cherokeecounty-nc.gov'; Derek Bowens; Kristin Scott; Summer, Heatherly; Jennifer King; Rhonda

AMERICAN OVERSIGHT

Johnson; Lisa Bennett; Main, Sharon H; Kim Caudill; SBOE_Grp - SST
Cc: Kelly, Bret; Gannon, Patrick; Love, Katelyn; Jones, Brooks; McCurry, Virginia; Adams, Steve; Dell, Laura; Noce, John; Stone, Matthew
Subject: Overview meeting regarding signature verification pilot program
When: Monday, January 8, 2024 1:00 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting

Microsoft Teams meeting

Join on your computer, mobile app or room device
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AMERICAN OVERSIGHT

Lassiter, Daniel

From: Bell, Karen B <Karen.Bell@ncsbe.gov>
Sent: Monday, January 8, 2024 4:02 PM
To: Kelly, Bret; Berot, Lisa; Baddour, Neil; Blackman, Allison; Holland, Parker; Velez, Trena; Cox, Paul; LaToya Peele; leighsa.jones; Bowens, Derek; Kristin Scott; Summer, Heatherly; Jennifer King; Rhonda Johnson; Lisa Bennett; Main, Sharon H; Kim Caudill; SBOE_Grp - SST
Cc: Gannon, Patrick; Love, Katelyn; Jones, Brooks; McCurry, Virginia; Adams, Steve; Dell, Laura; Noce, John; Stone, Matthew
Subject: RE: Overview meeting regarding signature verification pilot program
Attachments: Overview Meeting with Selected Counties 1-8-2024 with discussion notes.pdf

Thank you for a great meeting this afternoon. Attached are the slides we covered with the final slide containing notes from the discussion at the end. This file may be shared. We will keep you posted as we know more about the bid and next steps.

@Kelly, Bret is it possible to create an email distribution group for the folks in this email to ensure everyone receives communication on this project going forward since I don't believe we can set up a Teams channel.

Thank you for all you do and have a great afternoon,
Karen

Karen Brinson Bell, CERA, PMP
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(919) 814-0700 Main Line

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AMERICAN OVERSIGHT

Overview Meeting for Counties Selected for Signature Verification Pilot Program

January 8, 2024

AMERICAN OVERSIGHT

Welcome *(Karen)*

- Meeting Purpose & Expectations
- Session Law 2023-140 Section 48 (a)
  - The State Board of Elections shall select 10 counties in the State in which to conduct a pilot program during the primary held in 2024 for signature verification on executed mail-in absentee ballots. In selecting the 10 counties for the pilot, the State Board of Elections shall seek diversity of population size, regional location, and demographic composition. The pilot program shall consist of county boards of elections using signature verification software to check the signatures of voters noted on all executed mail-in absentee ballots received by the county boards of elections in the 2024 primary. The State Board of Elections shall select the signature verification software and ensure that the software is available for all 10 counties to use in the 2024 primary. The State Board shall assist the selected county boards of elections in implementing the signature verification software, including assisting the selected county boards of elections in any training needed on how the software is to be used for signature matching on executed mail-in absentee ballots.
- Selected Counties
  - *Bertie, Cherokee, Durham, Halifax, Henderson, Jones, Montgomery, Pamlico, Rowan, and Wilkes*

AMERICAN OVERSIGHT

Selection Process *(Karen and Paul)*

- Session Law 2023-140 Section 48 (a)
  - "…diversity of population size, regional location, and demographic composition."
- Random Selection Process
  - Divide counties into thirds based on ranking of population size, with the groupings each containing a total third of the voter population (roughly 2.4 million). *(3 counties)*
  - Order the counties based on nonwhite population percentage, divide the counties into three groupings based on those rankings (1–33, 34–66, 67–100). *(3 counties)*
  - If, after the first six drawings, any region is not represented, draw a county at random from that region until there is at least one county per region but no more than two counties. *(4 counties)*

AMERICAN OVERSIGHT

Project Plan & Bid Process *(Lisa)*

- IFB (Information for Bid) still under review by DIT Procurement
  - 10 day posting (standard)

- Implementation target period: First week of February
  - Start training
  - Initial setup
  - Delay in IFB posting means implementation period likely to shift

- Project Manager: Lisa Berot
- Business Owner: Parker Holland

AMERICAN OVERSIGHT

Conduct of the Pilot Program *(Neil, Parker, Paul)*

- There will not be any signature matching until after county canvass so not factor in ballot acceptance or rejection.
- Counties will need to report the following:
  - (1)Whether the signature verification software was used for all returned mail-in absentee ballots, and what the voter signature on the executed mail-in absentee ballot was matched against.
  - (2) How many executed mail-in absentee ballots were counted by the county board of elections in the 2024 primary.
  - (3) How many executed mail-in absentee ballots were flagged by the signature verification software, and any information known on how close of a match the signatures must be for the signature match software to not flag the voter's signature.
  - (4) Information on how the signature matching software flagged an executed mail-in absentee ballot with a signature that did not match the signature on file for the voter, including any known information on the rate of error in the software.
  - The State Board of Elections will compile a composite report of this information as well as the cost of the pilot, and suggested law changes.
- Field Support Technicians (formerly known as SST's) will be on site.

AMERICAN OVERSIGHT

SEIMS *(Parker)*

- Once the software is chosen, we will create enhancements for our SEIMS system.
- The release will occur in the future, and it may only impact the counties who are in the pilot. More information is to come.

AMERICAN OVERSIGHT

Project Deliverables *(Trena)*

Hardware and Software

- Signature Scanning Equipment
- Resources for installation and/or configuration of the signature verification software.

- **Standard Operating Procedures**
  - Material management
  - Signature Verification software
  - Accounting and Reconciliation
  - Process Guidance
    - addressing non-matching flagged signatures, *no cures for pilot)*
    - Out-sorted envelopes
    - Contingency plans for unexpected events limiting use: power, connectivity, malfunction
  - Chain of Custody

AMERICAN OVERSIGHT

Project Deliverables *(Trena)*

Training Materials

- Manuals and job aids
- Workshop during the February conference

Board and Community Engagement

- Board involvement/attendance
- Public meeting/notices, accessibility and observation
- Press Releases/media kit

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- **Recording/Reporting Tools**
  - Spreadsheet
  - Survey
  - Lessons Learned

Project Deliverables *(Trena)*

AMERICAN OVERSIGHT

Open Floor

(Karen with everyone)

- Questions
- Comments
- Ideas
- Next Steps
- Close

- Notes:
- Other states have experience and resources to draw from
- Additional time for these counties to complete 30-day sort? Or considerations for managing these two processes? Sequence of sorting vs. signature verification? Bandwidth issues? Explanation to SBE as required when 30 days not met?

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Open Floor

(Karen with everyone)

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AMERICAN OVERSIGHT

Lassiter, Daniel

From: Bowens, Derek
Sent: Monday, January 22, 2024 6:46 PM
To: Caitlin Metzguer
Cc: Kate Fellman
Subject: RE: pilot for absentee voters

Hello, Caitlin –

I hope you are well. The signature verification pilot will not affect the Board's adjudication of absentee ballots for the 2024 Statewide Primary and Election. This is basically a data collection exercise for the General Assembly. The State Board of Elections will provide us with software and we will use the software to conduct signature verifications on returned ballots against SEIMS data. This will likely happen after the election has been completed.

We are planning to send a press release out explaining this to the community tonight or tomorrow. We are not sure if the General Assembly will attempt to implement this fully in November.

Let me know if you have further questions.

Regards,

Derek

Derek L. Bowens
Director of Elections

DURHAM COUNTY
Board of Elections

Durham County Board of Elections
Physical address: 201 N. Roxboro Street, Durham, NC 27701
Mailing address: PO Box 868, Durham, NC 27702
Phone: (919) 560-7072
Fax: (919) 560-0688
www.dcovotes.com

From: Caitlin Metzguer <caitlin@youcanvote.org>
Sent: Thursday, January 11, 2024 10:48 AM
To: Bowens, Derek <dbowens@dconc.gov>
Cc: Kate Fellman <Kate@youcanvote.org>
Subject: pilot for absentee voters

Hey Derek, happy new year. I hope you are feeling good diving into 2024!

I wanted to touch base about the pilot program and Durham participation. Is there anything we should know or help to distribute to raise awareness on the signature verification program? I'm happy to drop by or call you if there is anything we can do to help spread the word on making it successful.

My understanding is that this is only for the Primary, and we don't expect it for November. Is that correct?

AMERICAN OVERSIGHT

Thanks for all you do,
--
Caitlin Metzguer
pronouns: she/her/hers
Deputy Director, You Can Vote
www.youcanvote.org



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Lassiter, Daniel

From: Caitlin Metzguer <caitlin@youcanvote.org>
Sent: Thursday, January 25, 2024 9:24 AM
To: Bowens, Derek
Cc: Kate Fellman
Subject: Re: pilot for absentee voters

Thanks for the clarification! If there is anything we should do about educating voters on this, please let us know. The population of voters inside the Durham jail may be the only voters we encounter who it impacts using absentee ballots.

On Mon, Jan 22, 2024 at 6:46 PM Bowens, Derek <dbowens@dconc.gov> wrote:

> Hello, Caitlin –
>
> I hope you are well. The signature verification pilot will not affect the Board's adjudication of absentee ballots for the 2024 Statewide Primary and Election. This is basically a data collection exercise for the General Assembly. The State Board of Elections will provide us with software and we will use the software to conduct signature verifications on returned ballots against SEIMS data. This will likely happen after the election has been completed.
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>
> Let me know if you have further questions.
>
> Regards,
>
> Derek
>
> **Derek L. Bowens**
>
> **Director of Elections**

AMERICAN OVERSIGHT

Durham County Board of Elections

Physical address: 201 N. Roxboro Street, Durham, NC 27701

Mailing address: PO Box 868, Durham, NC 27702

Phone: (919) 560-7072

Fax: (919) 560-0688

www.dcovotes.com

From: Caitlin Metzguer <caitlin@youcanvote.org>
Sent: Thursday, January 11, 2024 10:48 AM
To: Bowens, Derek <dbowens@dconc.gov>
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Thanks for all you do,

--

AMERICAN OVERSIGHT

Caitlin Metzguer

pronouns: she/her/hers

Deputy Director, You Can Vote

www.youcanvote.org



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You Can Vote is a 501(c)(3) nonprofit organization. Contributions are tax-deductible to the extent allowed by law.

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--

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Lassiter, Daniel

From: DCONC <noreply@formresponse.com>
Sent: Thursday, January 18, 2024 12:41 PM
To: Crenshaw, Wendell; Bowens, Derek
Subject: Re: Public Comments and Questions - Susan Pochapsky9196
Attachments: Susan-Pochapsky9196-01-18-2024.pdf

Public Comments and Questions

Organization	Durham Democratic Party
Your Name	Susan Pochapsky9196
Enter Your Phone number below:	(919) 656-5228
Enter your email address below:	schapek@yahoo.com
Enter the Board Meeting date associated with your public comment:	01-18-2024
Please enter any questions / comments you have for the Board of Elections below:	re: the Signature Match test I'm hoping that today Director Bowens can give definite answers (in some cases, reassurance) to some questions I've received about the signature matching software test Durham County will be running this year. When exactly will the test take place? Has the testing software undergone any formal certification process in NC? Is it definite that the test will not cause any ballot cast this year to be discarded? Which signatures will the software compare? (Original voter registration? Most recent polling place sign-in? Or what?) Will individuals whose ballot is discarded in the test be notified? Is the State paying for the software? Is the State paying for staff training and staff hours spent running the test? If we don't know an answer now, when can we expect to know?

AMERICAN OVERSIGHT

As ever, thank you.

You can edit this submission and view all your submissions easily.

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AMERICAN OVERSIGHT

Thursday, January 18, 2024

Board of Elections

Public Comments and Questions

Your Name	Susan Pochapsky9196
Enter Your Phone number below:	(919) 656-5228
Enter your email address below:	schapek@yahoo.com
Enter the Board Meeting date associated with your public comment:	Thursday, January 18, 2024

Please enter any questions / comments you have for the Board of Elections below:

re: the Signature Match test
I'm hoping that today Director Bowens can give definite answers (in some cases, reassurance) to some questions I've received about the signature matching software test Durham County will be running this year.

When exactly will the test take place?
Has the testing software undergone any formal certification process in NC?
Is it definite that the test will not cause any ballot cast this year to be discarded?
Which signatures will the software compare? (Original voter registration? Most recent polling place sign-in? Or what?)
Will individuals whose ballot is discarded in the test be notified?
Is the State paying for the software?
Is the State paying for staff training and staff hours spent running the test?
If we don't know an answer now, when can we expect to know?

As ever, thank you.

AMERICAN OVERSIGHT

Lassiter, Daniel

From: Bowens, Derek
Sent: Saturday, January 20, 2024 5:04 PM
To: Ellen Reckhow
Subject: RE: Question on Implementing the Signature Matching Pilot

Great point. We will plan to do that next week. Thanks – Derek

Derek L. Bowens
Director of Elections

DURHAM COUNTY
Board of Elections

Durham County Board of Elections
Physical address: 201 N. Roxboro Street, Durham, NC 27701
Mailing address: PO Box 868, Durham, NC 27702
Phone: (919) 560-7072
Fax: (919) 560-0688
www.dcovotes.com

From: Ellen Reckhow <ereckhow@gmail.com>
Sent: Saturday, January 20, 2024 4:15 PM
To: Bowens, Derek <dbowens@dconc.gov>
Subject: Re: Question on Implementing the Signature Matching Pilot

Derek,

Thanks so much for your quick response. Unfortunately, there is some confusion in the community. You or your board may want to issue a press release to indicate that the pilot matching will not be used to disqualify a ballot in the upcoming election.

Thanks again,
Ellen

Ellen Reckhow
Durham, NC
919-210-5535

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AMERICAN OVERSIGHT

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Please let me know if you have anymore questions or if this one has not been adequately answered.

Thanks,

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SECTION 48.(c) In implementing the pilot program established in this section, no executed mail-in absentee ballot shall be rejected by the county board of elections for failing any signature verification. All executed mail-in absentee ballots that are otherwise eligible to be counted in accordance with Chapter 163 of the General Statutes shall be counted.

Can you clarify how the wording will be administered?

Thanks a lot, Ellen

Ellen Reckhow

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919-210-5535

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Lassiter, Daniel

Sent: Saturday, January 20, 2024 4:28 PM
To: Ellen Reckhow
Subject: RE: Question on Implementing the Signature Matching Pilot

We will plan

Derek L. Bowens
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> Thanks,
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> Derek
>
> **Derek L. Bowens**

AMERICAN OVERSIGHT

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Lassiter, Daniel

Sent: Saturday, January 20, 2024 3:58 PM
To: Ellen Reckhow
Subject: RE: Question on Implementing the Signature Matching Pilot

Hi Commissioner Reckhow,

Your reading is correct. None of the data collected under the signature verification pilot program will be used to reject a voter's ballot. The data collected from the signature verification software will be transmitted to the State Board of Elections for further analysis and reporting to the General Assembly.

Data from the verification software will not be considered during ballot adjudication. The Board will review ballots under

Please let me know if you have anymore questions or if this one has not been adequately answered.

Thanks,

Derek

Derek L. Bowens
Director of Elections

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Durham, NC
919-210-5535

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Lassiter, Daniel

Sent: Friday, March 22, 2024 5:31 PM
To: Love, Katelyn
Subject: RE: Request for review of draft numbered memo
Attachments: Numbered Memo 2024-04 Signature Verification Pilot_clean version for review_DBReview.docx

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From: Love, Katelyn <katelyn.love@ncsbe.gov>
Sent: Friday, March 22, 2024 2:35 PM
To: Bowens, Derek <dbowens@dconc.gov>
Subject: Request for review of draft numbered memo

Hi Derek,

I hope your week is going well. I wanted to ask for your review of the attached draft numbered memo for the signature verification pilot program. The first five pages is the memo itself, and the remainder is an appendix with more technical details about signature review. Since you are the largest county in the pilot, and you have so much elections experience, it would be particularly helpful to get your input on any changes or improvements we could make to the memo.

Please send me any feedback by Wednesday, March 27 if possible.

Thank you very much!

Katelyn

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AMERICAN OVERSIGHT

From: Bowens, Derek
To: Love, Katelyn
Subject: RE: Request for review of draft numbered memo
Date: Friday, March 22, 2024 5:31:00 PM
Attachments: Numbered Memo 2024-04 Signature Verification Pilot_clean version for review_DBReview.docx
image001.png

Hi Katelyn,

See my notes attached. I did not do as much of a detailed review of the technical information following the memo, but happy to do that if you think it is necessary.

Let me know if you would like to discuss.

Derek

Derek L. Bowens
Director of Elections

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NORTH CAROLINA
STATE BOARD OF ELECTIONS

P.O. Box 27255
Raleigh, NC 27611
(866) 522-4723
www.ncsbe.gov

Numbered Memo 2024-04

TO: Boards of Elections for Bertie, Cherokee, Durham, Halifax, Henderson, Jones, Montgomery, Pamlico, Rowan, and Wilkes Counties

FROM: Karen Brinson Bell, Executive Director[1]

RE: Signature Verification Pilot Program

DATE: March ___, 2024

This memo explains how selected county boards will carry out a signature verification pilot program for the 2024 primary election as required by Session Law 2023-140 (Senate Bill 747). The pilot program is being conducted for evaluation purposes only and will not affect whether any absentee ballot is counted for the election.[2]

1. Overview

The pilot program consists of selected county boards of elections using automated signature verification software to compare the signatures of voters on all executed absentee-by-mail ballots received by the county board in the 2024 primary. For signatures that are not identified as a match by the software, county boards of elections will conduct a manual review of those signatures to help evaluate the accuracy of the automated software review. County boards will then compile data from the pilot and forward it to the State Board for analysis, and the State Board will report the results of the analysis to the General Assembly.[3]

---

[1] This memo is issued under the authority delegated by the State Board to the executive director pursuant to G.S. § 163-22(p).

[2] Session Law 2023-140, Section 48(c).

[3] Session Law 2023-140 provides the requirement to conduct a pilot program:

> SECTION 48(a) The State Board of Elections shall select 10 counties in the State in which to conduct a pilot program during the primary held in 2024 for signature verification on executed mail-in absentee ballots. In selecting the 10 counties for the pilot, the State Board of Elections shall seek diversity of population size, regional location, and demographic composition. The pilot program shall consist of county boards of elections using signature verification software to check the signatures of voters noted

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The pilot will occur after the conclusion of the canvass period. This will ensure that no ballots are accepted or rejected based on the signature verification pilot. It will also avoid any delay of the completion of the canvass period, which is required to finalize official election results.

2. Sources of Signature Images

County boards will compare the voter's signature on file in VoterView in SEIMS with the voter's signature on the absentee envelope. The clipped signature in VoterView will generally be the voter's most recent signature. This signature is frequently captured using a means of signing other than pen to paper. Sources of clipped signatures in VoterView include:

- **Voter registration forms and updates from registration activity.** These signatures may be scanned images from paper forms or digital images from registration activity through DMV. Most voter registration signatures come from the DMV, where signatures are captured using a stylus on an electronic signature pad in a DMV office. Signatures received from DMV are typically 200 dpi (dots per inch), and therefore may appear slightly pixelated and bolder. They may also be missing part of the image due to signing on a signature pad.
- **Absentee request forms.** The signature may be a scanned image from a paper form or, if the request was made through the State Board's online absentee request portal, the signature was provided electronically using a mouse or a finger on a touchscreen. Visually impaired voters are permitted to type their signature.
- **Paper or electronic pollbooks and provisional applications.** These signatures are scanned images from paper forms.

3. Steps for Signature Comparison

There are two tiers of review in the process of comparing the voter's signature on the absentee envelope with the voter's signature on file:

1. Tier 1 (automated comparison)
2. Tier 2 (manual comparison)

Commented [DB1]: May be addressed later, but are we analyzing all signatures on the profile? Signatures not gleaned from DMV may be better to assess as it is the voter's physical signature and likely to be more comparable.

Commented [DB2]: May not be necessary to mention but other sources would be NCOA, Confirmation, and Verification Card returns by voter's with updates. Also ATV's and EV update forms.

---

on all executed mail-in absentee ballots received by the county boards of elections in the 2024 primary. The State Board of Elections shall select the signature verification software and ensure that the software is available for all 10 counties to use in the 2024 primary. The State Board shall assist the selected county boards of elections in implementing the signature verification software, including assisting the selected county boards of elections in any training needed on how the software is to be used for signature matching on executed mail-in absentee ballots.

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Tier 1 Review

Tier 1 review is carried out by automated signature verification software. If the software determines the voter's signature on the absentee envelope is a match for the voter's signature on file, no further review is required. The software vendor and the State Board will provide training and other resources to the county boards about how to use the software.

Tier 2 Review

If the software is unable to determine that the signatures match, the signature on the absentee envelope will proceed to Tier 2 review. In this step, the county board will conduct a manual review to compare the two signatures and, if needed, review other signatures and information in the voter's registration record. The county board will then vote on whether the signature on the absentee envelope is sufficiently similar to the signature(s) on file and may be approved. This process occurs in an open meeting.

4. County Board Meetings

The county board of elections shall schedule an open meeting to review signatures identified for Tier 2 review. As mentioned, the meeting will occur after the 2024 primary canvass period. All deliberations must be conducted in an open meeting. At least three board members (a quorum) must attend the meeting.[4] A majority of the board members present at the meeting must vote for an action for it to pass. ~~It is permissible for s~~

Staff may ~~to~~ research and compile materials, such as all of the voter's previous signatures on file, ahead of time to streamline the county board's review. Alternatively, staff may do this during the board meeting. As a reminder, ~~for review by the county board~~ county board members are not permitted to access SEIMS.[5]

In the meeting, county board members will simultaneously compare the voter's signature on the absentee envelope with the voter's signature in VoterView. This may be accomplished by using one or more terminals, or by projecting the information on an overhead projector. If a projector is used, county boards must ensure that members of the public in attendance at the meeting are not permitted to make any copy, tracing, photograph, or recording of the voter's signatures.[6] It is a

[4] G.S. § 163-31(d).

[5] See page 3 of Numbered Memo 2020-17.

[6] G.S. 163-82.10(a2): "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."

Commented [DB3]: This should be a multi-signature review. I do not believe the pilot language limits the scope to the latest signature on file. There should be deference in the software to analyze forms that have physical signatures first before stylus or computer generated. I have an idea on this by looking at reg/doc source code. I would hate for the software to reject when there is a clear match on file for an unclipped signature. This could help decrease the burden of Tier 2 reviews.

Commented [DB4]: This may address the previous comment, but it would be nice if Tier 1 Review could look at multiple signatures through the software.

Commented [CP5]: I think if we suggest this, we need to make it a requirement for them to do it. We wouldn't want some counties doing this and getting more informative results, versus others that don't.

Commented [KL6R5]: Since we haven't done this before I'm concerned about dictating the process in a specific way that doesn't work for each county board. In a small county I could see staff preparing a packet ahead of time. In a larger county this might not be possible. We also don't know what the error rate will be at this point. I do think the research will be required in pretty much all cases before they reject a signature.

Commented [PC7R5]: Let's see what Parker and team think. The way I read this now, it sounds like they're supposed to always do the research for Tier 2, and the discretion is about when they compile those materials. If that's what we mean, we should more clearly say they need to pull together other signatures for all Tier 2 reviews. But I understand the challenge that could pose if you've got a ton of rejections from the software. I just don't know how we assess the software appropriately without having the counties all do this. I suppose we could instruct some counties to do it and some not to, and then compare their rejection rates?

Commented [DB8R5]: I agree with Paul on this. It should be uniform and given the volume from the primary, I do not think any county would be adversely affected.

Commented [DB9]: This should be mandated ahead of the meeting. That is quite a lot of work, potentially, to execute during a Board meeting. I think it would be fine to suggest ...

Commented [KL10]: I'm concerned about how we can protect the confidentiality of signatures in practice if we allow them to be projected to the public. It seems like ther ...

Commented [CP11R10]: Yeah, I agree. let's see what the counties think about this. Ideally, we could ask them to ho ...

Commented [DB12R10]: I agree Katelyn. I think you can have Board members review each packet individually and then vote or have a packet for each Board member so that ...

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crime for someone who is not authorized by law to retain a voter's signature from a submitted voter registration form.[7]

All decisions by the county board shall be documented in a spreadsheet. The State Board will provide a sample spreadsheet for use by the county boards.

Commented [KL13]: This needs to be created

5. Tier 2 Analysis of Signatures

When comparing signatures, it is important to keep in mind that everyone writes differently, and no one signs their name exactly the same way twice. A voter's signature on the absentee envelope should not be rejected just because it does not look *exactly* the same as the signature in the voter's ~~signature on~~ SEIMS profile~~file~~.

Signature comparison begins with the presumption that the signature on the absentee envelope is the voter's signature. Again, an exact match is not necessary for the county board to confirm that the signature on the absentee envelope is a valid signature. Similar characteristics between a signature being compared and any signature in the voter's record are sufficient to determine that a signature is valid. In comparing signatures, the county board may not review or consider a voter's identity, address, or other personal demographics (e.g., party preference, age, gender, race, or ethnicity).

Commented [DB14]: I might consider rewording this to something like: In comparing signatures, the county board's review is limited to the voter's signature provided on the absentee envelope and signature(s) in the voter's SEIMS record.

When evaluating signatures, the county board should review using broad characteristics to evaluate an entire signature as a unit, and if needed to confirm a match, they should also focus on specific letters within a signature. For examples and detailed guidance on how to consider broad and narrow characteristics, see the appendix at the end of this memo.

The county board shall conduct the following analysis when deciding whether signatures are consistent with each other:

5.1 Evaluate the signature's broad characteristics

Broad characteristics include:

1. The type of writing (e.g., cursive vs. print)
2. The amount of care put into the writing (e.g., quick and sweeping vs. slow and detailed)
3. Overall spacing
4. Overall size and proportions
5. Position of the signature (e.g., slanted vs. straight)
6. Spelling and punctuation

[7] G.S. § 163-274(16) makes it a Class 2 misdemeanor for any person who is not an elections official or who is not otherwise authorized by law to retain a voter's signature from any form described in G.S. 163-82.3 after submission of the form to the county board of elections or elections official.

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If the broad characteristics of the signature on the absentee envelope are consistent with the broad characteristics of the voter's signature on file, the county board shall accept the signature.

5.2 Evaluate the signature's local characteristics

If the county board finds a combination of dissimilarities between the two signatures' broad characteristics, then the county board shall evaluate local characteristics, which include:

1. Internal spacing
2. The size or proportions of a letter or letter combination
3. Curves, loops, and cross-points
4. The presence or absence of pen lifts
5. Beginning and ending strokes

After evaluating the signatures' local characteristics, the county board must decide whether to accept the signature on the absentee envelope as genuine. A county board may not reject a voter's signature without first comparing it to all of the other voter's signatures on file in the voter's SEIMS record.

5.3 Explanations for discrepancies

If, after going through the above analysis, the county board finds a combination of differences between the signature on the absentee envelope and the signature or signatures in the voter's record, consider whether the differences can be reasonably explained. **If the county board can reasonably explain the differences, the signature must be accepted.** Looking at more than one signature from the voter's SEIMS record, if available, may be necessary because people develop certain signature habits over time. Identify these habitual marks and determine whether they exist in the signature on the absentee envelope.

Formatted: Font: Bold

The county board shall consider the following as possible explanations for discrepancies in signatures:

1. Evidence of trembling or shaking in a signature could be health-related or the result of aging.
2. The voter may have used a diminutive of their full legal name, including, but not limited to the use of initials, or the rearrangement of components of their full legal name, such as a reversal of first and last names, use of a middle name in place of a first name, or omitting a second last name.
3. The voter's signature style may have changed over time.
4. The voter's signature on the absentee envelope or registration form may have been written quickly.
5. A signature in the voter's record may have been written with a stylus pen or other electronic signature tool that may result in a thick or fuzzy quality.
6. The surface of the location where the signature was made may have been hard, soft, uneven, or unstable.

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7. Factors applicable to a particular voter, such as the age of the voter, the age of the signature(s) contained in the voter's record, the possibility that the voter is disabled, and the quality of any digitized signature(s) contained in the voter's record.

Only a signature possessing multiple, significant, and obvious differing characteristics with all signatures in the voter's registration record may be rejected. To reject a signature, the county board must find beyond a reasonable doubt that the voter's signature on the absentee envelope differs in multiple, significant, and obvious respects from all signatures in the voter's registration record.

6. Reporting Requirements

The State Board will closely monitor the pilot program and will compile and analyze the results upon completion of the pilot.

County boards should keep careful records during the pilot and be prepared to report to the State Board their findings. Certain information is statutorily required to be reported by the county boards, including:

1. Whether the signature verification software was used for all returned mail-in absentee ballots.
2. How many executed mail-in absentee ballots were counted by the county board of elections in the 2024 primary.
3. How many executed mail-in absentee ballots were flagged by the signature verification software.[8]

The State Board will also survey the counties for certain additional information about the pilot, including:

1. Any research indicating signatures identified in Tier 1 review as not matching were a match and any available information about why the mismatch may have occurred.
2. Approximate staff time and county board time spent on the pilot.
3. Suggestions or changes for how to implement signature verification statewide for absentee ballots.
4. Suggestions on designing a process for how a voter can cure a deficiency related to signature verification of absentee ballots in the future.
5. Any other feedback the county board would like to share.

[8] Session Law 2023-140, Section 48(b).

Commented [DB15]: Earlier we mention not considering demographics. (Analysis of Signatures section)

Commented [CP16]: Do you think we need our spreadhseet for the review to be more robust to capture more details? Like, it could be really helpful if we had indicators of common characteristics for those that were approved manually but originally disapproved. Consider whether we add columns for each entry for the CBEs to "check all that apply" for those ultimately approved on Tier II for things like: low-quality image, method of capturing signature different (I don't know how to best say this), anything else you can think of.

Commented [KL17R16]: I think that would be helpful. The other types of reasons would be the ones listed above in Section 5.3. I see these issues as generally falling into one of two buckets: (1) the technology or (2) something with the voter (i.e., shakiness). There could be others we haven't thought of, I think the pilot will be a learning experience for this.

Commented [DB18R16]: I would be happy to take a stab at developing the spreadsheet.

Commented [DB19]: All of this should be a MS Forms survey. This is adjacent to the actual verification process.

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Answers to Frequently Asked Questions

1. Will UOCAVA voters' ballots be included in the pilot?

Yes. Section 48(a) of Session Law 2023-140 requires that the signature verification software be used for "all executed mail-in absentee ballots received by the county boards of elections in the 2024 primary".

Commented [DB20]: This may be completely irrelevant. Could rejection of a UOCAVA ballot for signature discrepancy be permitted given the non-essential requirements provision in Article 21A?

2. What happens if the voter printed their name rather than signed in cursive on the absentee envelope?

The signature on the absentee envelope must match at least one of the voter's signatures on file with the county board. If the signature on the absentee envelope is printed, but the signature on file with the county board is in cursive, the board will still need to compare those signatures according to the criteria in this memo. In other words, the difference in the type of writing (cursive vs. print) is a dissimilarity in a broad characteristic that should be considered in determining whether there is a match. But that factor *alone* should not determine a mismatch. The board will still need to consider whether there are other dissimilarities. Also, keep in mind that some voters, particularly younger voters, may use a printed name as their signature. In this case, if the printed signature on the absentee envelope matches the printed signature on file with the county board, the signature on the absentee envelope should be approved.

3. What if the voter has a disability that prevents them from signing their name, such as a blind voter who submits their absentee ballot through the State Board's online portal and uses a typed signature?

Commented [DB21]: What about NM 2022-11 situations where a voter marks an "x" or the assistor writes "Disabled - Cannot Sign"? May be worthy of an FAQ question. Some discrepancies may be due to a lack of signature either in print or cursive script.

The county board may not reject a signature due to a voter's disability. As explained in Section 5.3 of this memo, the county board must consider any explanations for discrepancies between the signatures, including those caused by the voter's disability. If the voter has attested under penalty of perjury that they have a disability that prevents them from signing, the typed signature should be approved.

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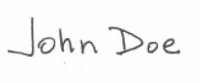
Appendix[9]

Note: Each of the examples below are designed to show what certain differing characteristics look like. This is not to suggest that in each example below, the signature would have to be rejected. A *single* differing characteristic is not enough to reject a signature. Instead, to reject a signature, the county board must find beyond a reasonable doubt that the voter's signature on the absentee envelope differs in multiple, significant, and obvious respects from all signatures in the voter's registration record.

BROAD CHARACTERISTICS

1. TYPE OF WRITING

Next to spelling, the type of writing is the easiest characteristic to notice a difference in. Does the voter's record have only cursive handwriting, but the absentee envelope has print? This is an immediate indicator for further research and review.

Genuine Signature	Questioned Signature
	

2. SPEED OF WRITING

A person writing their own signature will perform the act fairly quickly. This is because the person has likely signed their name thousands of times, so the gesture is automatic and harmonious, requiring little thought or concentration.

If someone other than the voter took a long time to copy the voter's signature, the copied signature will not have a free and natural look to it. Instead, you should see slower, more deliberate marks. If the forger attempted to create the signature quickly, then it should have various characteristic differences.

[9] This appendix was adapted from the Arizona Secretary of State's Signature Verification Guide, Feb. 26, 2024.

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Keep in mind, however, that this situation may go in reverse. If the voter naturally has shaky or poor handwriting that is evident in the voter registration record signature, but the ballot's signature is suddenly of high quality, that could indicate a forgery.

Look to see whether the signature on the absentee envelope was made at the same speed as the signatures in the voter's record. Keep in mind that a reasonable explanation for a shaky signature is the voter's advanced age, decreased muscle strength, or the surface below the envelope.

Genuine Signature	Questioned Signature
	
	

3. OVERALL SPACING

Writing a signature is a fixed and subconscious habit, so the signature's spacing should be reasonably similar. Determine whether the signature on the absentee envelope has odd or unnatural spacing that cannot be reasonably explained.

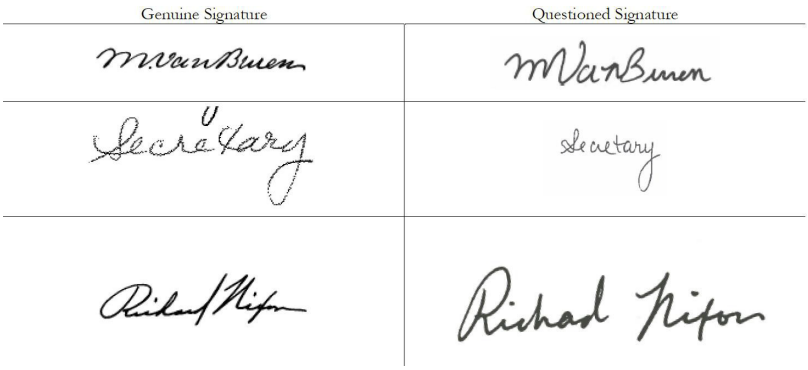
Genuine Signature	Questioned Signature
	
	

4. OVERALL SIZE AND PROPORTIONS

The signatures' size and proportions should also be reasonably similar. At your first impression, identify whether the signature on the absentee envelope is too large or small compared to the signatures in the voter's record. This comparison may be difficult to perform by looking only at one voter signature. You may need to conduct further research or review additional signatures.

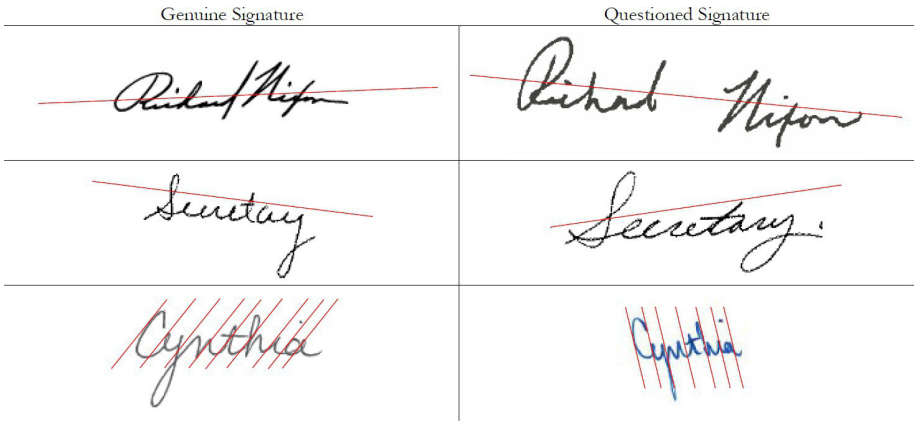
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The first example below has odd proportions because the letter's height compared to the name's length is very different than the genuine signature. The remaining two examples have unreasonably different sizes.



5. SLANT OF WRITING

Differences in a signature's slant may also raise questions about a match. The first slant to be aware of is the signature's position relative to the signature line. People tend to hold the pen and paper the same way each time they write, which causes their writing to slant in the same direction each time. You may also find that individual letters in the signature slant in the opposite direction. This type of deviation will usually accompany a difference in the signature's overall spacing. See the third example below. Look to see whether the entire signature slants or leans in a different direction than the signatures in the voter's record. A writer's slant is one of the most consistent parts of their signature.



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6. SPELLING

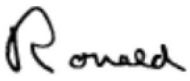
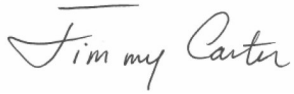
If the name is misspelled, you should seriously question the signature, unless there is some reasonable explanation—for example, it looks like the name is misspelled when, in fact, perhaps an atypical writing tool like a stylus was used and it did not create letters with the clarity that is typical in a voter's signature. Bear in mind that a voter may use a common nickname or initials (for instance, a voter may sign as "Bobby" instead of "Robert") so long as the characteristics of the signature remain the same.

Genuine Signature	Questioned Signature
	

LOCAL CHARACTERISTICS

1. INTERNAL SPACING

As mentioned before, the spacing and the relationship between successive letters should be reasonably similar. In the examples below, you will notice that the "R" in Ronald is much closer in the questioned signature than in the genuine one, and the questioned "Jimmy" has a great deal of space in between certain letters.

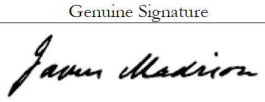
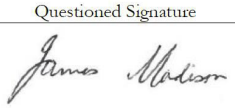
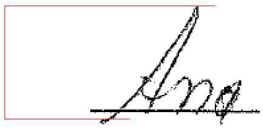
Genuine Signature	Questioned Signature
	
	

2. SIZE OR PROPORTIONS OF A LETTER OR LETTER COMBINATION

Letter sizes and proportions should be reasonably similar. Review whether letters are the same size and whether letter height, when compared to the name's length, leads to suspicious proportions.

Below, the first questioned signature has unreasonable proportion in "Madison." The remaining two signatures have noticeably different sizes in certain letters.

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Genuine Signature	Questioned Signature
	
	
	

3. CURVES, LOOPS, AND CROSS-POINTS

Like size, these characteristics may be difficult to identify if you are comparing the signature on the absentee envelope to only one signature in the voter's record. Some writers tend to have very loopy signatures while others have sharp, angular writing. Characteristics like loops and curves tend to be consistent across a person's handwriting, but keep in mind that cross-points can be reasonably impacted by simple factors like the type of pen the person used, which may be a reasonable explanation for such differences.

Find whether there are any noticeably different marks like in the examples below.

Genuine Signature	Questioned Signature
	
	

4. THE PRESENCE OR ABSENCE OF PEN LIFTS

If someone is not familiar with a signature, they may have written in pieces or chunks. When this occurs, they will leave connection or hesitation marks that will not appear in the voter registration record signatures.

Commented [PC22]: The reference to forgers is off-putting to me. Sounds like a criminal investigator's manual or something.

Commented [KL23R22]: Yea this language rubbed me the wrong way too. I think those changes make sense while still keeping the idea that the point here is to look for some other person having written the signature.

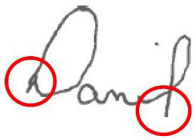
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Look to see whether there are any strange connection points or hesitation marks like in the examples below.

Genuine Signature	Questioned Signature
	
	

5. BEGINNING AND ENDING STROKES

A genuine signature becomes automatic over time. This automatic nature leads to what appears to be "flying starts and finishes," where the signature's start and end points seem to vanish off the paper. Genuine writers tend to begin writing their signature before the pen even hits the page. A reason to question a signature is if there are larger ink dots or marks at the beginning or end of a signature.

Genuine Signature	Questioned Signature
	
	

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ELECTRONIC SIGNATURES

When reviewing signatures in the voter's file, it is very likely that you will encounter some signatures that were created and captured electronically. DMV offices use an electronic signature pad to record signatures. In addition, voters who request an absentee ballot online sign electronically using a mouse or a finger on a touchscreen. These signatures are included in the voter's record and are used as references when verifying their signature on the absentee envelope. Electronic signatures create some unique circumstances that you should consider when verifying a ballot affidavit signature.

When comparing an electronic signature to a handwritten signature, you should continue to consider the factors listed on the previous pages.

- This means you should begin your analysis by looking at each signature's broad characteristics and if those characteristics are not clearly consistent, you should continue your analysis by examining the local characteristics.
- Keep in mind that the local characteristics of an electronic signature may be difficult to determine. Since the technology for electronic signatures is not as precise as pen and paper, it may be difficult, for example, to spot the presence or absence of pen lifts or beginning and ending strokes as space may be limited. Regardless, you should still consider all the factors described in the previous pages of this memo when comparing these signatures and make a decision based on the totality of what you find.

If, after going through your analysis, you find a combination of differences between the signature on the ballot affidavit envelope and the signatures in the voter registration record, ask whether the differences can be reasonably explained.

- You should consider that electronic signatures in particular may not be as precise as their handwritten counterparts and may even appear "blurry" or "messy" in comparison. It is possible that this may reasonably explain the difference between a handwritten and an electronic signature.
- **Remember:** You may need to look through the voter's entire signature history to determine if the current signature on the absentee envelope was written by the voter. If you find that the electronic signature found in the voter's history is difficult to read or match, it is possible there are other signatures on file that may be easier to read and distinguish. Before declining to accept a voter's signature on the ballot envelope, review these other signatures to determine if the inconsistency is with the ballot envelope signature or with the electronic signature in the voter registration record.

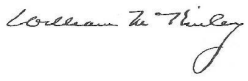
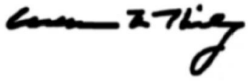
1. "MESSY" OR "BLURRY" ELECTRONIC SIGNATURES

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Because the technology for capturing electronic signatures is not always as precise as a pen and paper signature, an electronic signature may appear "messy" or "blurry" in comparison. However, even a "messy" or "blurry" signature should be compared using the two-step process described above.

In the first example below, the electronic signature found in the voter registration record looks vague and imprecise compared to the handwritten signature found on the absentee envelope. However, the broad characteristics appear to be substantially similar. The type, speed, spacing, size, and position of each signature appear to be the same and any minor disparities can be explained by the fact that one signature was created using an electronic pad and the other was created using pen and paper.

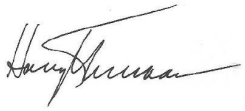
In the second example, many of the broad characteristics are again substantially similar, although the electronic signature is not as precise as the handwritten signature. Regardless, these signatures can still be considered a match because the broad characteristics are substantially similar. If you decide an electronic signature is too "messy" or "blurry" compared to a handwritten signature to fairly compare, you should always look through the voter's signature history to determine if there is a clearer signature on file.

Handwritten Signature	Electronic Signature
	
	

2. ELECTRONIC SIGNATURES THAT HAVE BEEN CUT OFF

In some instances, a person signing an electronic signature pad may have some of their signature cut off. This is likely because the voter's pen stroke went outside the area that the electronic signature pad could capture. You should still compare the full electronic signature to the handwritten signature using the two-step process outlined in this memo. If you cannot verify the signatures using the two-step process, remember there may be more signatures in the voter's signature history that you can use to compare.

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Handwritten Signature	Electronic Signature
	
	

SPECIAL CIRCUMSTANCES

1. VOTERS WHO ARE UNABLE TO SIGN OR MAKE THEIR MARK DUE TO DISABILITY

Absentee envelopes contain a line for the voter to sign and a line for the voter assistant, if any, to sign. A voter assistant signature is required if the voter received assistance completing the envelope, marking the ballot, or mailing or returning their ballot. A voter assistant signature is also required if the voter is physically unable to sign or make their mark due to disability. In this case, the person assisting with the ballot should write in the signature line, "Disabled - cannot sign." If this is the case, no signature comparison will take place and this will be noted accordingly in the county board's spreadsheet.

2. BALLOTS WITH A MARK

A voter who is unable to sign their name may instead make their mark on the signature line. A mark is an "X," like in the example below, or some other sign or marking made in lieu of a signature. If a ballot contains a mark, the voter's mark must be compared to the voter's signature or mark on file for the voter.

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Mark Example



3. SIGNATURES FROM VOTERS IN GROUP RESIDENTIAL FACILITIES

Pay close attention to pen strokes found on absentee envelopes from voters living in group residential facilities. The signatures of these voters are at a higher risk of having changed or deteriorated over time and may look less and less like the comparison signature found in the voter registration record. With this risk in mind, the following precautions should be taken when reviewing signatures from these voters.

- Look for a pattern of deterioration in the voter's signature history. You may do this for any signature that you review, but for signatures from voters in group residential facilities, taking this extra step can be even more beneficial. If the signatures you review in the voter's file reveal a pattern of deterioration, then this fact may reasonably explain the difference between the ballot's signature and the signatures found in the voter registration record.
- Be mindful of the voter's situation when reviewing signatures from group residential facility voters. Remember that if, after going through normal signature analysis, the differences between two signatures can be reasonably explained, you should accept a voter's signature as valid.

AMERICAN OVERSIGHT

From: Bowens, Derek
To: Jacobs, Rusty
Subject: RE: WUNC - interview request
Date: Wednesday, April 10, 2024 10:34:00 AM
Attachments: image001.png

Hi Rusty –

This will work.

Thanks,

Derek

Derek L. Bowens
Director of Elections

Durham County Board of Elections
Physical address: 201 N. Roxboro Street, Durham, NC 27701
Mailing address: PO Box 868, Durham, NC 27702
Phone: (919) 560-7072
Fax: (919) 560-0688
www.dcovotes.com

From: Jacobs, Rusty <rjacobs@wunc.org>
Sent: Wednesday, April 10, 2024 9:57 AM
To: Bowens, Derek <dbowens@dconc.gov>
Subject: RE: WUNC - interview request

Ha! Then let's definitely have you come to the station – we wouldn't want you undernourished for the day!

What time works for you to come by the station tomorrow? Do you prefer that 11 am slot?

From: Bowens, Derek <dbowens@dconc.gov>
Sent: Wednesday, April 10, 2024 9:34 AM
To: Jacobs, Rusty <rjacobs@wunc.org>
Subject: Re: WUNC - interview request

I actually have an 11:30 conference call. How's tomorrow? I mentioned the studio since I frequent Parker and Otis for lunch and would hate to pass up a reason to get a Shrimp BLT.

Derek L. Bowens
Director of Elections

Durham County Board of Elections
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Mailing address: PO Box 868, Durham, NC 27702
Phone: (919) 560-7072
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From: Jacobs, Rusty <rjacobs@wunc.org>
Sent: Wednesday, April 10, 2024 9:08 AM
To: Bowens, Derek <dbowens@dconc.gov>
Subject: Re: WUNC - interview request

Could we make it 11:30 or noon (I'll be tied up with other tasks until then)? And I think coming to the station is a long way to go for what I think would be a very brief conversation. It might be easier for to just pop in at your office—but I'll defer to you.

Thanks,
Rusty

Sent from my iPhone

AMERICAN OVERSIGHT

On Apr 10, 2024, at 9:03 AM, Bowens, Derek <dbowens@dconc.gov> wrote:

Hi Rusty -

I can come down to the station at 11 if that works.

Derek

Derek L. Bowens
Director of Elections

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From: Jacobs, Rusty <rjacobs@wunc.org>
Sent: Tuesday, April 9, 2024 9:23 AM
To: Bowens, Derek <dbowens@dconc.gov>
Subject: WUNC - interview request

Derek,
I wanted to see whether you would be available for a quick Q&A on the signature verification pilot Durham was supposed to participate in. I know the State Bd is still looking for a vendor – but I wanted to talk with a couple of directors from counties selected to participate in the pilot program. Just wanted to know what you're expecting in terms of timing, demands, logistics for getting equipment or software in place – and getting staff trained.

Since our station is very close to your office I'd love to talk in person—but I can always do it by phone too. I'm available today – or tomorrow before noon. Later in the week would work too but I hope to get a quick interview done sooner than later.

Thank you for considering my request.

Sincerely,
Rusty Jacobs - WUNC

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Lassiter, Daniel

Sent: Wednesday, April 10, 2024 10:31 AM
To: Jacobs, Rusty
Subject: RE: WUNC - interview request

Hi Rusty –

Derek L. Bowens
Director of Elections

DURHAM COUNTY
Board of Elections

Durham County Board of Elections
Physical address: 201 N. Roxboro Street, Durham, NC 27701
Mailing address: PO Box 868, Durham, NC 27702
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AMERICAN OVERSIGHT

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To: Bowens, Derek <dbowens@dconc.gov>
Subject: Re: WUNC - interview request

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Rusty

Sent from my iPhone

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> Derek
>
> **Derek L. Bowens**
> **Director of Elections**
> DURHAM COUNTY
> Board of Elections
> Durham County Board of Elections
> Physical address: 201 N. Roxboro Street, Durham, NC 27701
> Mailing address: PO Box 868, Durham, NC 27702
> Phone: (919) 560-7072
> Fax: (919) 560-0688
> www.dcovotes.com

From: Jacobs, Rusty <rjacobs@wunc.org>
Sent: Tuesday, April 9, 2024 9:23 AM
To: Bowens, Derek <dbowens@dconc.gov>
Subject: WUNC - interview request

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AMERICAN OVERSIGHT

Since our station is very close to your office I'd love to talk in person—but I can always do it by phone too. I'm available today – or tomorrow before noon. Later in the week would work too but I hope to get a quick interview done sooner than later.

Thank you for considering my request.

Sincerely,
Rusty Jacobs - WUNC

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AMERICAN OVERSIGHT

From: Jacobs, Rusty
To: Bowens, Derek
Subject: RE: WUNC - interview request
Date: Wednesday, April 10, 2024 9:56:51 AM
Attachments: image001.png

Ha! Then let's definitely have you come to the station – we wouldn't want you undernourished for the day!

What time works for you to come by the station tomorrow? Do you prefer that 11 am slot?

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AMERICAN OVERSIGHT

From: Bowens, Derek
To: Jacobs, Rusty
Subject: Re: WUNC - interview request
Date: Wednesday, April 10, 2024 9:33:33 AM

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AMERICAN OVERSIGHT

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To: Bowens, Derek
Subject: Re: WUNC - interview request
Date: Wednesday, April 10, 2024 9:08:41 AM

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AMERICAN OVERSIGHT

From: Bowens, Derek
To: Jacobs, Rusty
Subject: Re: WUNC - interview request
Date: Wednesday, April 10, 2024 9:03:22 AM

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AMERICAN OVERSIGHT

From: Jacobs, Rusty
To: Bowens, Derek
Subject: Re: WUNC - interview request
Date: Wednesday, April 10, 2024 10:57:12 AM
Attachments: image001.png

Great—see you at the station tomorrow at 11

Sent from my iPhone

> On Apr 10, 2024, at 10:34 AM, Bowens, Derek <dbowens@dconc.gov> wrote:
>
> Hi Rusty –
>
> This will work.
>
> Thanks,
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AMERICAN OVERSIGHT

Lassiter, Daniel

From: Bell, Karen B <Karen.Bell@ncsbe.gov>
Sent: Tuesday, January 2, 2024 6:28 PM
To: Bowens, Derek
Subject: RE: [External] Declined: Overview meeting regarding signature verification pilot program

Sorry about the conflict. Will definitely at least do notes and send them around. Safe travels!

Karen Brinson Bell, CERA, PMP
Executive Director, NCSBE
(919) 814-0700 Main Line



-----Original Appointment-----
From: Bowens, Derek <dbowens@dconc.gov>
Sent: Tuesday, January 2, 2024 5:56 PM
To: Bell, Karen B
Subject: [External] Declined: Overview meeting regarding signature verification pilot program
When: Monday, January 8, 2024 1:00 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Will not be able to attend. Will be in DC on Election Center business. I hope that you all record this event or memorialize important points in some way.

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AMERICAN OVERSIGHT

Lassiter, Daniel

From: Adrianne Rushton <adrianne.rushton@brunswickcountync.gov>
Sent: Tuesday, October 10, 2023 1:14 PM
To: Teresa Young; Blackman, Allison
Cc: Bowens, Derek
Subject: RE: [External] RE: absentee consultants needed

Thank you, Allison. I'll participate.

Adrianne Rushton | Elections Deputy Director
Brunswick County Board of Elections
75 Stamp Act Drive NE | Bldg H | PO Box 2 | Bolivia, NC 28422
Main: 910-253-2620 | Phone: 910-253-2626 | Fax: 910-253-2618
Email: adrianne.rushton@brunswickcountync.gov
Website: www.brunswickncvotes.gov

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

From: Teresa Young <tyoung@orangecountync.gov>
Sent: Tuesday, October 10, 2023 11:17 AM
To: Blackman, Allison <Allison.Blackman@ncsbe.gov>; Adrianne Rushton <adrianne.rushton@brunswickcountync.gov>
Cc: Derek Bowens <DBOWENS@DCONC.GOV>
Subject: RE: [External] RE: absentee consultants needed

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Thank you Allison. I would like to participate.

Teresa Young
Deputy Director
Orange County Board of Elections
PO Box 220
Hillsborough, NC 27278
(919) 245-2350

From: Blackman, Allison <Allison.Blackman@ncsbe.gov>
Sent: Tuesday, October 10, 2023 11:16 AM
To: Adrianne Rushton <Adrianne.Rushton@brunswickcountync.gov>

AMERICAN OVERSIGHT

Cc: Derek Bowens <DBOWENS@DCONC.GOV>; Teresa Young <tyoung@orangecountync.gov>
Subject: RE: [External] RE: absentee consultants needed

Morning,

One meeting for sure (Monday, 10/16 if it works for everyone's schedule), and possibly one more. The need and date for the second meeting are contingent on the first meeting.

Regards,

From: Adrianne Rushton <adrianne.rushton@brunswickcountync.gov>
Sent: Tuesday, October 10, 2023 9:38 AM
To: Blackman, Allison <Allison.Blackman@ncsbe.gov>
Cc: Derek Bowens <DBOWENS@DCONC.GOV>; Terri Young <tyoung@orangecountync.gov>
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Good morning!

Do you have more information regarding meetings after October 16? It would be helpful to have a better understanding of the time commitment before making a decision.

Thank you,

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AMERICAN OVERSIGHT

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Here is information from Lisa about what we need and the time commitment:

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- A meeting will be held on or about Monday 10/16 to review the updated requirements; attendance is optional
    - Subsequent meetings may be held prior to submitting the requirements to DOA, attendance is optional
- Assisting with requirements is not a commitment nor indication of desire to participate in the pilot
- If desired, participation in the remaining procurement efforts will be discussed with the Strategy Team

Best regards,

Allison

Allison Blackman
Vote by Mail Program Specialist | CERA

NORTH CAROLINA
STATE BOARD OF ELECTIONS

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AMERICAN OVERSIGHT

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ORANGE COUNTY
NORTH CAROLINA

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From: Blackman, Allison <Allison.Blackman@ncsbe.gov>
Sent: Tuesday, October 10, 2023 9:17 AM
To: Derek Bowens <DBOWENS@DCONC.GOV>; Terri Young <tyoung@orangecountync.gov>; Adrianne Rushton <adrianne.rushton@brunswickcountync.gov>
Subject: absentee consultants needed

CAUTION: This email originated from outside of Brunswick County Government. Do not click links or open attachments unless you recognize the sender and know the content is safe.

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Happy Election Day for October Counties!

Probably not an optimal time to request, however I am looking for a few consultants to assist with laying out all the needs for the signature verification pilot project. This does not mean your county has to participate in the pilot. This is more about you as expert individuals working to ensure that we outline all needs for the IFB (Invitation for bid). You know for all things absentee I'm starting with my Hub OGs. It says two people but I would love to have all three of you. I also understand if this is more than you want to do at this point. If that's the case I will work my way through the rest of our Hub.

Here is information from Lisa about what we need and the time commitment:

- We are in the planning stage of the Signature Verification Solution Pilot Project
- We are requesting assistance from two county staff to assist with writing requirements for the Invitation For Bid (IFB) procurement method
    - DIT recommended this procurement method, re: time constraint and SBE is seeking a system that can be configured (modify settings) vs. customized (changing code)
- County input is important to provide insight on actual processes to help us hone in on potential solution needs
- A meeting will be held on or about Monday 10/16 to review the updated requirements; attendance is optional
    - Subsequent meetings may be held prior to submitting the requirements to DOA, attendance is optional
- Assisting with requirements is not a commitment nor indication of desire to participate in the pilot
- If desired, participation in the remaining procurement efforts will be discussed with the Strategy Team

Best regards,

Allison

Allison Blackman
Vote by Mail Program Specialist | CERA
NORTH CAROLINA
STATE BOARD OF ELECTIONS

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AMERICAN OVERSIGHT

Lassiter, Daniel

From: Love, Katelyn <katelyn.love@ncsbe.gov>
Sent: Saturday, March 23, 2024 2:07 PM
To: Bowens, Derek
Subject: Re: [External] RE: Request for review of draft numbered memo

Thanks! I will take a look.

Get Outlook for iOS

From: Bowens, Derek <dbowens@dconc.gov>
Sent: Friday, March 22, 2024 5:31:56 PM
To: Love, Katelyn <katelyn.love@ncsbe.gov>
Subject: [External] RE: Request for review of draft numbered memo

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Hi Katelyn,

See my notes attached. I did not do as much of a detailed review of the technical information following the memo, but happy to do that if you think it is necessary.

Let me know if you would like to discuss.

Derek

Derek L. Bowens
Director of Elections

DURHAM COUNTY
Board of Elections

Durham County Board of Elections
Physical address: 201 N. Roxboro Street, Durham, NC 27701
Mailing address: PO Box 868, Durham, NC 27702
Phone: (919) 560-7072
Fax: (919) 560-0688
www.dcovotes.com

From: Love, Katelyn <katelyn.love@ncsbe.gov>
Sent: Friday, March 22, 2024 2:35 PM
To: Bowens, Derek <dbowens@dconc.gov>
Subject: Request for review of draft numbered memo

Hi Derek,

I hope your week is going well. I wanted to ask for your review of the attached draft numbered memo for the signature verification pilot program. The first five pages is the memo itself, and the remainder is an appendix with more technical details about signature review. Since you are the largest county in the

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pilot, and you have so much elections experience, it would be particularly helpful to get your input on any changes or improvements we could make to the memo.

Please send me any feedback by Wednesday, March 27 if possible.

Thank you very much!

Katelyn

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Lassiter, Daniel

To: Durham BOE Board Members
Subject: Signature Pilot Program

Good Afternoon, Board Members:

I hope you are well. I am emailing you to let you know that Durham County is one of the 10 counties that has been randomly selected to use pilot signature verification software for absentee-by-mail voting, during the 2024 Statewide Primary and Election, by the State Board of Elections. The data collected from this pilot will not be used to reject absentee ballots for signature discrepancies pursuant to Section 48.(c) of S.L. 2023-140. Click here to access the full session law and see below for the relevant section of the law that applies to the pilot program (pages 42-43). I will have a full update for the Board at our rescheduled 1/18 Board meeting. Please let me know if there are any questions in the meantime. Thanks – Derek

SECTION 48.(b) The State Board of Elections shall closely monitor the pilot program established in this section. The selected county boards of elections shall report to the State Board of Elections its findings on the use of the signature verification software during the 2024 primary, including all of the following:

(1) Whether the signature verification software was used for all returned mail-in absentee ballots, and what the voter signature on the executed mail-in absentee ballot was matched against.
(2) How many executed mail-in absentee ballots were counted by the county board of elections in the 2024 primary.
(3) How many executed mail-in absentee ballots were flagged by the signature verfication software, and any information known on how close of a match the signatures must be for the signature match software to not flag the voter's signature.
(4) Information on how the signature matching software flagged an executed mail-in absentee ballot with a signature that did not match the signature on file for the voter, including any known information on the rate of error in the software.

SECTION 48.(c) In implementing the pilot program established in this section, no executed mail-in absentee ballot shall be rejected by the county board of elections for failing any signature verification. All executed mail-in absentee ballots that are otherwise eligible to be counted in accordance with Chapter 163 of the General Statutes shall be counted.

SECTION 48.(d) The State Board of Elections shall report its findings, along with any recommendations, to the General Assembly on or before May 1, 2024. The report shall be delivered to the Joint Legislative Elections Oversight Committee and shall also include the following:

(1) A compilation of the information reported from the selected county boards of elections as required by subsection (b) of this section.
(2) The estimated cost to implement signature verification for mail-in absentee ballots statewide.
(3) Any suggested law changes to fully implement signature verification statewide for mail-in absentee ballots, including suggestions on a process for how a voter can cure a deficiency related to signature verification of mail-in absentee ballots.
(4) Any other information relevant to signature verification of mail-in absentee ballots.

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Derek L. Bowens
Director of Elections

DURHAM COUNTY
Board of Elections

Durham County Board of Elections
Physical address: 201 N. Roxboro Street, Durham, NC 27701
Mailing address: PO Box 868, Durham, NC 27702
Phone: (919) 560-7072
Fax: (919) 560-0688
www.dcovotes.com

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Lassiter, Daniel

From: Bell, Karen B <Karen.Bell@ncsbe.gov>
Sent: Tuesday, January 2, 2024 4:50 PM
To: LaToya Peele; leighsa.jones; Bowens, Derek; Kristin Scott; Summer, Heatherly; Jennifer King; Rhonda Johnson; Lisa Bennett; Main, Sharon H; Kim Caudill; Berot, Lisa; Baddour, Neil; Blackman, Allison; Holland, Parker; Velez, Trena; Cox, Paul; SBOE_Grp - SST
Cc: Kelly, Bret; Gannon, Patrick
Subject: Signature Verification Pilot Program Overview Meeting

Good afternoon,

During today's State Board meeting, a random selection process was used to select 10 counties for the signature verification pilot program. Those counties are Bertie, Cherokee, Durham, Halifax, Henderson, Jones, Montgomery, Pamlico, Rowan, and Wilkes. The press release below describes more about the meeting.

This may be a shock to some of you. Some of you have expressed concerns about being selected. Some of you may be excited. Whatever your status – we've got this. You'll receive a meeting invitation (also below) for Monday to have an overview meeting about where things stand with the pilot program, what we anticipate, and the support we're planning. We do not have all the answers – it's new for the SBE, too – but we've done pilots before and we'll pull this one off as well! Y'all are a strong group of counties and many of you have been at the forefront of innovation in our profession, so I know we can do this together. Please come ready with questions, ideas, and energy – and invite others from your staff, too. Again, we may not have all the answers on Monday but we can at least set the pace and know what's on your minds as well.

Thank you for all you do,
Karen

Microsoft Teams meeting

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Passcode: b7LT5V
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Karen Brinson Bell, CERA, PMP
Executive Director, NCSBE

AMERICAN OVERSIGHT

(919) 814-0700 Main Line

NORTH CAROLINA
STATE BOARD OF ELECTIONS

From: NC State Board of Elections <ncsbe.comms@ncsbe.gov>
Sent: Tuesday, January 2, 2024 4:26 PM
To: SBOE_Grp - Staff.Sboe <Staff.Sboe@ncsbe.gov>
Subject: [External] [State Board of Elections] State Board Finalizes Presidential Primary Candidates, Selects 10 Counties for a Signature Matching Pilot Program

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The bipartisan State Board of Elections on Tuesday voted unanimously to finalize the list of 2024 presidential primary candidates.

FOR IMMEDIATE RELEASE

Tuesday, January 2, 2024

Patrick Gannon, Public Information Director

Email

State Board Finalizes Presidential Primary Candidates, Selects 10 Counties for Signature Matching Pilot Program

Raleigh, N.C. — The bipartisan State Board of Elections on Tuesday voted unanimously to finalize the list of presidential preference primary candidates for 2024, deferring to the lists of candidates provided by the state's political parties for their respective primary ballots. No candidates were added beyond what the parties requested for their primaries.

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During the presidential preference primary, eligible voters choose their preferred candidate for president. The results of the presidential preference primary determine how each party's delegates will be allocated at the party's national nominating convention next summer.

At its Dec. 19 meeting, the State Board approved candidates for the Democratic, Libertarian, and Republican parties' presidential preference primaries that were submitted by the political parties. The Green Party did not submit a list of presidential primary candidates and will therefore defer its delegate allocation to the national nominating convention. The No Labels Party will select its presidential primary candidate by convention and without a primary, per state law, because the 2024 general election is the first election after the party was recognized in North Carolina.

For the list of names to be included on primary ballots, see press release: "State Board Approves Presidential Primary Candidates."

State law permits a candidate to be included on a party's primary ballot by gathering sufficient petition signatures from North Carolina voters, but no such petitions were received by the State Board. Several additional candidates wrote to the State Board asking to add them to a party's primary ballot, but the Board voted 5-0 to include only the names provided by the state's recognized parties.

The primary election is March 5. Ballots are being designed, coded, and proofed in the coming days. Primary ballots will be sent to voters who requested them beginning January 19, 2024.

[Full video of this meeting is available at the State Board's meeting folder.]

Signature Matching Pilot Program

The State Board also selected 10 counties to participate in a signature matching pilot program following the March primary election. The pilot program is required by Session Law 2023-140, approved by the General Assembly in 2023. The counties were determined using a system of random selection, based on rankings for population size, racial diversity, and regional location. Rankings of counties' economic well-being and median age were also taken into account.

The 10 counties, listed below, will use signature verification software to compare the signatures on mail-in absentee ballot applications and envelopes against voters' signatures on file with the elections offices. This is for experimental purposes only. It will not affect the counting of any voter's ballot in the primary election. All counties, including the 10 pilot counties, will accept absentee by mail ballots from registered North Carolina voters who meet the current criteria of properly requesting a ballot, marking it, signing it, having it witnessed, and providing a copy of an acceptable photo ID or an ID exception form before returning it to the county board of elections,

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The counties participating in the pilot are: Bertie, Cherokee, Durham, Halifax, Henderson, Jones, Montgomery, Pamlico, Rowan, and Wilkes.

State Board staff will work with these counties to ensure they have access to and are trained on the matching software. The State Board will report findings of the pilot program and any recommendations to the General Assembly by May 1, 2024.

For more information on how to request and vote an absentee by mail ballot visit ncsbe.gov/voting/vote-mail.

Temporary Election Observer Rules

The Board also unanimously approved temporary administrative rules regarding procedures related to election observers appointed by political parties or candidates to observe elections inside early voting sites and Election Day polling places. Brief descriptions of the rules, which now go to the Rules Review Commission for consideration, are listed below, with links to the approved rules.

- **08 NCAC 20 .0101** deals with procedures for challenging the appointment of an observer. A challenge may be entered by the county board or the chief judge, and the decision is appealable to the State Board.
- **08 NCAC 20 .0102** deals with the procedures for appealing the chief judge's removal of an observer. This decision may be appealed to the county board of elections.
- **08 NCAC 20 .0103** deals with identification tags observers are required to wear to identify themselves when on duty at a voting site.

Other business

- State Board staff has updated 2024 primary candidate lists to reflect only contests and candidates, including presidential preference primary candidates, that will appear on March 5 primary election ballots. Also, the general election candidate lists now include those candidates who will appear on Nov. 5 general election ballots because they do not have primary opponents. All primary and general lists are available at Candidate Lists. Anyone with questions about the lists should email patrick.gannon@ncsbe.gov.
- The Board unanimously approved an early voting plan for Lincoln County for the 2024 primary. The approved plan, the "majority plan," includes an additional voting site at the Lentz Gym in Lincolnton.

###

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NC State Board of Elections
North Carolina State Board of Elections (NCSBE)

,



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From: Teresa Young
To: Bowens, Derek
Subject: Signature verification pilot
Date: Wednesday, March 20, 2024 9:56:47 AM
Attachments: image001.png

Hi Derek,
I am very interested in this absentee signature verification pilot project. It was my understanding that the selected counties would be testing this after canvass of the Primary. If that is correct and scanning envelopes is yet to be done, I would like to observe the process in Durham if you would allow me to do so. This is just for my own interest and so I will have some idea of what to expect assuming this becomes law.
Is this something you would consider?

Thanks,

Teresa Young
Deputy Director
Orange County Board of Elections
PO Box 220
Hillsborough, NC 27278
(919) 245-2350

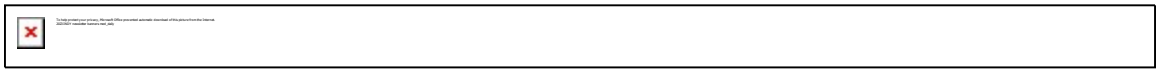


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Lassiter, Daniel

From: INDY <editors@indyweek.com>
Sent: Thursday, January 4, 2024 9:47 AM
To: Bowens, Derek
Subject: Tara Waters Sworn in as Wake County Commissioner • Durham to Participate in Ballot Signature-Matching Pilot Program



It's Thursday, January 4.

Support the INDY Press Club.

Good morning, readers.

Here in Wake County, the new year has brought with it a shift in local politics.

Wake County Public Schools board member Tara Waters was officially sworn in as the newest member of the county Board of Commissioners on Tuesday, filling Dr. James West's vacant seat.

West, 79, died on November 18 "following a sudden health issue," according to his family. He was a longtime activist, participating in the Civil Rights Movement as a college student and later co-founded a youth development collaborative to help Raleigh teens. In 1999, he was elected to the Raleigh City Council and in 2010, to the Wake County Board of Commissioners.

"Dr. West was unbelievably committed to this community and his mission was always making sure that people who didn't have a voice had one through him," current board chair Shinica Thomas said in a news release. "His storytelling, work ethic, integrity and his love for this community are going to be greatly missed."

Waters said she is "proud to carry on Dr. West's legacy of lifting up our vulnerable residents and helping them gain greater access to the services they need to thrive."

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Waters was nominated for the District 5 seat by the Wake County Democratic Party, beating out four other candidates: Knightdale Mayor Jessica Day, former Raleigh mayoral candidate DaQuanta Copeland, Tammy Martin, and Frank White Sr.

Waters's seat will come up for election in November along with two other Board of Commissioners seats. Waters and DaQuanta Copeland have each filed to run and will compete in this year's primary election on March 5.

Waters, whose day job is a manager of the Volunteer Raleigh program, served as the vice chair of the Wake County Board of Education before her new appointment. Waters's now-empty school board seat will be filled by appointment, with board members voting on nominees later this month.

Have a good Thursday.

— Jasmine

Durham

Durham will be one of ten counties participating in a ballot signature-matching pilot program from the NC Board of Elections during the upcoming primaries.

Wake

The last workers at the old DMV headquarters on New Bern Avenue in Raleigh are preparing to leave [paywalled]. The city has plans to redevelop the property.

Orange

Triangle Blog Blog has 12 ideas for revitalizing Franklin Street.

North Carolina

North Carolina will pilot a new license plate reading program on state-controlled roads. Proponents say the ALPRs (automatic license plate readers) will assist with safety; critics say they're an invasion of privacy.

Today's weather
Sunny with a high of 51 degrees.



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NC-DURHAM-24-0352-A-000710

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Lassiter, Daniel

From: Main, Sharon H <Sharon.Main@rowancountync.gov>
Sent: Monday, January 8, 2024 1:50 PM
To: Bell, Karen B; Kelly, Bret; Gannon, Patrick; Berot, Lisa; Baddour, Neil; Blackman, Allison; Holland, Parker; Velez, Trena; Cox, Paul; LaToya Peele; Bowens, Derek; Kristin Scott; Summer Heatherly; Rhonda Johnson; Caudill, Kimberly; Love, Katelyn; McCurry, Virginia; Adams, Steve; Dell, Laura; Jones, Brooks; Noce, John; leighsa.jones; Main, Sharon H; Stone, Matthew; Pamlico.boe; 8:teamsvisitor:d2fb8b02c1a1444a8350d730a85c1e16; 8:teamsvisitor:1b04f0ff9c37478d8f92e3782c0e0139; 8:teamsvisitor:6c6d1455ef0f444f86045ca9c651ba07; 8:teamsvisitor:6eadac35160b4ffdbf6d039674a98664; 8:teamsvisitor:b4652496fa404d298e58d33f2cf9dbbd

Are the states that are currently using the signature verification, states that do a mailing of ballots to ALL of their registered voters?

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Lassiter, Daniel

From: Main, Sharon H <Sharon.Main@rowancountync.gov>
Sent: Friday, February 16, 2024 10:11 AM
To: Bell, Karen B; Kelly, Bret; Gannon, Patrick; Berot, Lisa; Baddour, Neil; Blackman, Allison; Holland, Parker; Velez, Trena; Cox, Paul; LaToya Peele; Bowens, Derek; Kristin Scott; Summer Heatherly; Rhonda Johnson; Caudill, Kimberly; Love, Katelyn; McCurry, Virginia; Adams, Steve; Dell, Laura; Jones, Brooks; Noce, John; leighsa.jones; Main, Sharon H; Stone, Matthew; Pamlico.boe

Any updates for the Signature Verification Pilot Program? Has a vendor been selected?

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Lassiter, Daniel

From: Donald H Beskind <beskind@law.duke.edu>
Sent: Sunday, January 21, 2024 8:52 PM
To: Bowens, Derek
Attachments: 2024.01.21 - VL v. Hirsch - Order granting PI.pdf

FYI

This message was probably dictated; errors should not be a surprise. Phone: 919 612-3955

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AMERICAN OVERSIGHT

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

VOTO LATINO, WATAUGA COUNTY VOTING RIGHTS TASK FORCE, DOWN HOME NORTH CAROLINA, and SOPHIE JAE MEAD, Plaintiffs, v. ALAN HIRSCH, in his official capacity as Chair of the State Board of Elections, JEFF CARMON, in his official capacity as Secretary of the State Board of Elections, STACEY EGGERS IV, in his official capacity as Member of the State Board of Elections, KEVIN N. LEWIS, in his official capacity as Member of the State Board of Elections, SIOBHAN O'DUFFY MILLEN, in her official capacity as Member of the State Board of Elections, KAREN BRINSON BELL, in her official capacity as Executive Director of the State Board of Elections, MICHAEL BEHRENT, in his official capacity as Chair of the Watauga County Board of Elections, ERIC ELLER, in his official capacity as Member of the Watauga County Board of Elections, MATT WALPOLE, in his official capacity as Member of the Watauga County Board of Elections, LETA COUNCILL, in her official capacity as Member of the Watauga County Board of Election, and ELAINE ROTHENBERG, in her official capacity as Member of the	)	1:23-CV-861

AMERICAN OVERSIGHT

Watauga County Board of Elections,

Defendants,

and

PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate, and TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives,

Defendant-Intervenors,

and

REPUBLICAN NATIONAL COMMITTEE, NORTH CAROLINA REPUBLICAN PARTY, VIRGINIA A. WASSERBERG, and BRENDA M. ELDRIDGE,

Defendant-Intervenors.

DEMOCRATIC NATIONAL COMMITTEE and NORTH CAROLINA DEMOCRATIC PARTY,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS, KAREN BRINSON BELL, in her official capacity as Executive Director of the State Board of Elections, ALAN HIRSCH, in his official capacity as Chair of the State Board of Elections, JEFF CARMON, in his official

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NC-DURHAM-24-0352-A-000716

capacity as Secretary of the State Board of Elections, STACEY EGGERS IV, in his official capacity as Member of the State Board of Elections, KEVIN N. LEWIS, in his official capacity as Member of the State Board of Elections, SIOBHAN O'DUFFY MILLEN, in her official capacity as Member of the State Board of Elections, Defendants, and PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate, and TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives, Defendant-Intervenors, and REPUBLICAN NATIONAL COMMITTEE, NORTH CAROLINA REPUBLICAN PARTY, VIRGINIA A. WASSERBERG, and BRENDA M. ELDRIDGE, Defendant-Intervenors.	)	1:23-CV-862

MEMORANDUM OPINION AND ORDER

THOMAS D. SCHROEDER, District Judge.

In these two actions,[1] Plaintiffs contest recent changes to

[1] The actions are not consolidated but are addressed jointly here because

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NC-DURHAM-24-0352-A-000717

North Carolina's rules for voters who register and cast a ballot during the State's seventeen-day same-day registration ("SDR") period that ends the Saturday before election day. Pursuant to the State's address verification process, the county board of elections sends all same-day registrants a card by non-forwardable mail. Under Senate Bill 747 ("S. 747"), which became law on October 10, 2023, as 2023 N.C. Sess. Laws 140, if, before the close of business on the day before the canvass, the United States Postal Service returns the verification card to the county board as undeliverable — even through no fault of the voter — the county board "shall not register the applicant and shall retrieve the applicant's ballot and remove that ballot's votes from the official count." 2023 N.C. Sess. Laws 140, § 10.(a) (codified as N.C. Gen. Stat. § 163-82.6B (2024)).

Before the court are motions for preliminary injunction by Plaintiffs Voto Latino, Watauga County Voting Rights Task Force, Down Home North Carolina, and Sophie Jae Mead ("Voto Latino Plaintiffs") (VL Doc. 44), and Plaintiffs Democratic National Committee and North Carolina Democratic Party ("Party Plaintiffs") (DNC Doc. 6) (collectively, "Plaintiffs").[2] Defendants Karen

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they raise identical issues. A third case raising similar issues is also pending before this court, 1:23-cv-878. The plaintiffs there have not moved for preliminary relief.

[2] Docket entry references for case number 1:23-CV-861 are "VL Doc. XX," and for case number 1:23-CV-862 are "DNC Doc. XX."

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NC-DURHAM-24-0352-A-000718

Brinson Bell, Alan Hirsch, Jeff Carmon, Stacy Eggers IV, Kevin N. Lewis, Siobhan O'Duffy Millen, and as to 1:23-cv-862, North Carolina State Board of Elections ("NCSBE") ("State Board Defendants"), Defendant-Intervenors Senator Philip E. Berger and Speaker Timothy K. Moore ("Legislative Intervenors"), and Defendant-Intervenors Republican National Committee, North Carolina Republican Party, Virginia Ann Wasserberg, and Brenda M. Eldridge ("Party Intervenors") (collectively, "Intervenors") have responded in opposition. (VL Docs. 51, 52, 54, 60; DNC Docs. 51, 52, 53.)[3] Plaintiffs have replied. (VL Doc. 59; DNC Doc. 58.)

Voto Latino Plaintiffs seek injunctive relief, claiming violations of the First and Fourteenth Amendments to the United States Constitution, pursuant to 42 U.S.C. § 1983. (VL Doc. 1 ¶¶ 83-98.) Party Plaintiffs allege violations of the First and Fourteenth Amendments to the United States Constitution, Article I, sections 10 and 19 of the North Carolina Constitution, the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(A), the Help America Vote Act ("HAVA"), 52 U.S.C. § 21082, and the Voting Rights Act, 52 U.S.C. § 10307(b). (DNC Doc. 1 ¶¶ 52-100.) Legislative Intervenors and

[3] Voto Latino Plaintiffs named Michael Behrent, Eric Eller, Matt Walpole, Leta Councill, and Elaine Rothenberg, all of whom are members of the Watauga County Board of Elections, as Defendants. In response to Plaintiffs' motion, these Defendants state they take no position and are "obligated to faithfully administer the election laws of the State of North Carolina, whatever they may be." (VL Doc. 50 at 2-3.) Both actions otherwise share the same named Defendants and Intervenors, except that Party Plaintiffs also sue NCSBE.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000719

Party Intervenors have intervened in both cases to oppose Plaintiffs' claims and to represent the interests of the North Carolina General Assembly and their political party, respectively. (VL minute entry Nov. 15, 2023; DNC Docs. 47, 48.)

Beyond the briefs, the parties to the suit brought by Voto Latino Plaintiffs have filed declarations concerning the backgrounds and allegations of the organizational and individual Plaintiffs, depositions from leaders of the organizational Plaintiffs and Plaintiff Mead, two preliminary expert opinions and corresponding depositions, and several NCSBE "Numbered Memos," which provide guidance to county election boards. The parties to the suit brought by Party Plaintiffs likewise rely on NCSBE Numbered Memos.

The parties have requested resolution of these motions ahead of the 2024 primary election, for which same-day registration begins on February 15, 2024. The court heard argument on the motions on December 28, 2023. For the reasons set forth below, the motions will be granted in part and denied in part.

I. BACKGROUND

The North Carolina General Assembly passed S. 747 over Governor Roy Cooper's veto on October 10, 2023. 2023 N.C. Sess. Laws 140, available at https://ncleg.gov/Sessions/2023/Bills/Senate/PDF/S747v6.pdf. The relevant provisions of S. 747, "[a]n act to make various changes regarding elections law,"

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NC-DURHAM-24-0352-A-000720

became effective January 1, 2024. Id. § 50. While the bill amends several provisions of the election laws in Chapter 163 of the North Carolina General Statutes, the present motions specifically seek to enjoin the enforcement of portions of section 10.(a), codified as N.C. Gen. Stat. § 163-82.6B, which makes changes to North Carolina's SDR procedures.

A. Voter Registration

All adult citizens, except felons, are entitled to vote in North Carolina. N.C. Const. art VI, §§ 1-2; N.C. Gen. Stat. § 163-55(a). To be eligible to vote in a given county, a voter must have resided in that county for at least 30 days prior to election day, N.C. Gen. Stat. § 163-55(a), and register there, id. § 163-54.

North Carolina offers two general methods of registration. Under the first method used by nearly all North Carolinians, called "traditional registration" or "non-SDR" herein, an eligible voter may register 25 days or more before an election day. Id. § 163-82.6(d). These registrants must complete a registration application that requires name, date of birth, residential address, and mailing address, if different. Id. § 163-82.4(a); see also North Carolina Voter Registration Application, Form 06W, at https://dl.ncsbe.gov/Voter_Registration/NCVoterRegForm_06W.pdf (last accessed Jan. 18, 2024). The mailing address need not be in the same precinct or even county as the residential address. (DNC

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000721
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 7 of 94

Doc. 62 at 59:8-13.) The application also requests identifying information, such as a driver's license number, last four digits of a social security number, and gender and ethnicity, and allows an applicant to select a political party affiliation. N.C. Gen. Stat. § 163-82.4(a). The applicant must attest that he is a citizen, is 18 years old or will be on election day, and that the contents of the application are true under penalty of perjury. Id. § 163-82.4(c), (e). The non-SDR applicant need not provide any document that proves residency.

When a county board of elections receives the application, it must make a "tentative determination that the applicant is qualified to vote at the address given." Id. § 163-82.7(a).[4] If the applicant is found not qualified, the county board of elections will mail him a notice within two days of the denial which informs him of alternatives to exercise the franchise and of the opportunity to appeal under section 163-82.18.[5] Id. § 163-82.7(b).

[4] Section 163-82.7(a) does not expressly state, and the parties have not represented, what the county board's initial determination for traditional registration entails. Presumably, it involves checking the applicant's age, citizenship status, felon status, driver's license or last four digits of the social security number, if provided, etc. to determine if the applicant is qualified to vote or is already registered. See N.C. Gen. Stat. § 163-82.6B(d).

[5] An applicant who receives a denial notice may appeal within five days of receiving the notice. N.C. Gen. Stat. § 163-82.18(a). The appeal is first heard before the county board of elections, which must provide notice of its decision within five days of the hearing. Id. § 163-82.18(b). If the denial is sustained, the applicant may appeal to a superior court of the county in which the board is located within ten

AMERICAN OVERSIGHT

If the applicant is "tentantive[ly] determin[ed]" to be qualified, the county board will implement the statutory procedures for "Verification of Address by Mail," or "address verification." Id. § 163-82.7(c). First, the county board will mail a "notice" (commonly referred to as "voter registration card"; hereinafter, "card") confirming the precinct and voting place of the voter by non-forwardable mail to the address provided on the application. Id. If the mailing address differs from the residence address, the county board will mail the verification card to the mailing address. (DNC Doc. 62 at 59:8-13); see also N.C. Gen. Stat. § 163-57(1)(c) ("Residence shall be broadly construed to provide all persons with the opportunity to register and to vote, including stating a mailing address different from residence address.").

If the Postal Service does not return the card to the county board as undeliverable, "the county board shall register the applicant to vote."[6] Id. § 163-82.7(d). If the card is returned, however, the county board will send a second card. Id. § 163-82.7(e). As with the first, if the Postal Service does not return the second card as undeliverable, "the county board shall register the applicant to vote." Id. But if the second card is returned

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days of receiving notice of the county board's final decision. Id. § 163-82.18(c).

[6] Neither the statute nor the NCSBE provides any time deadline for return of the address verification card. Thus, there is no specific time when an applicant is deemed "registered" — only the opposite.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000723
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 9 of 94

as undeliverable, the county board will deny the application and "need not try to notify the applicant further." Id. § 163-82.7(f). Voters may nevertheless check their registration status online via NCSBE's "Voter Search" tool. See NCSBE, View Your Voter Registration Status, at https://www.ncsbe.gov/registering/checking-your-registration (last accessed Jan. 9, 2024).[7]

Under the second method of registration, implemented in 2007, an individual who is qualified to register to vote may register in person and simultaneously cast a ballot at an early voting site in the individual's county of residence during the period of early voting. N.C. Gen. Stat. § 163-82.6B(a).[8] This is commonly called "same-day registration," or "SDR." To same-day register and vote, an individual must (1) complete a voter registration application; (2) provide proof of residence by presenting a HAVA[9]-compliant

[7] Section 163-82.7(g)(3) requires non-SDR voters who vote prior to failing two-card address verification to be treated "as a registered voter."

[8] Same-day registration was enacted in North Carolina in 2007. 2007 N.C. Sess. Laws 253, § 1 (codified as N.C. Gen. Stat. § 163-82.6A). Though section 163-82.6A once contained North Carolina's same-day registration rules, it was largely repealed by North Carolina Session Laws 2013-381, § 16.1. After the Fourth Circuit held this repeal unlawful, N.C. State Conf. of the NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016), section 163-82.6A was given legal effect again. However, Numbered Memo 2016-15 has effectively housed North Carolina's same-day registration laws from September 22, 2016, until January 1, 2024, because Chapter 163 was never amended to codify the holding in McCrory. (See VL Doc. 55-2 at 4 (NCSBE Numbered Memo 2016-15, Appendix A).) Section 163-82.6B now appears to abrogate the legal effect of Numbered Memo 2016-15's Appendix A. N.C. Gen. Stat. § 163-82.6B(a) ("Notwithstanding any provision of law to the contrary . . . .").

[9] Help America Vote Act, 52 U.S.C. § 20901 et seq.

AMERICAN OVERSIGHT

document listing the individual's current name and residence address; and (3) present photo identification pursuant to section 163-166.16.[10] Id. § 163-82.6B(b). A HAVA-compliant document is one of the following:

> (1) A current utility bill
> (2) A current bank statement
> (3) A current government check
> (4) A current paycheck
> (5) Another current government document
> (6) A current document issued from the institution who issued the photo identification shown by the voter pursuant to G.S. 163-166.16.

Id. § 163-82.6B(e).[11] A "current" HAVA document must be unexpired or have an issuance date within six months of presentation to an election official. (VL Doc. 55-5 at 3 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).) As with traditional registration, the mailing address on the application may be different from that on the HAVA document and can even be in a different county. (DNC Doc. 62 at 59:8-13.) Upon completing these steps, an individual then "vote[s] a retrievable ballot." N.C. Gen. Stat. § 163-82.6B(c).

Prior to S. 747, the procedures up until address verification

[10] As a technical matter, the same-day registration law prior to S. 747 did not expressly require a same-day registrant to show a photo identification to vote. However, in light of the North Carolina Supreme Court's April 2023 opinion upholding section 163-166.16, SDR voters would appear to be required to present a photo identification even without S. 747. See Holmes v. Moore, 384 N.C. 326, 460 (2023).

[11] NCSBE Numbered Memo 2023-05 provides further guidance to county boards on government documents allowable under (5) and (6). (VL Doc. 55-5 at 3-5 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000725

were the same, except that the proof-of-residency documents required to be produced in person at registration were: "North Carolina drivers license, a photo identification from a government agency, or ['a current utility bill, bank statement, government check, paycheck, or other government document']." See N.C. Gen. Stat § 163-82.6A (2012), available at VL Doc. 55-2 at 4 (NCSBE Numbered Memo 2016-15, Appendix A). Additionally, rather than vote a "retrievable ballot" as S. 747 requires, the same-day registrant would previously vote a "retrievable absentee ballot as provided in G.S. 163-227.2." Id. § 163-82.6A(c) (2012) (emphasis added).

Under S. 747, after a same-day registrant casts a ballot, the county board must, within two business days of registration, "determine[]" if he is qualified to vote by verifying the North Carolina driver's license or social security number in accordance with section 163-82.12, updating the statewide registration database, and searching for possible duplicate registrations. N.C. Gen. Stat. § 163-82.6B(d). A same-day registrant's vote will be counted "unless the county board determines that the applicant is not qualified to vote in accordance with the provisions of this Chapter." Id.[12]

[12] As discussed below, the parties to civil action number 1:23-CV-862 disagree on the practical effect of this clause in terms of its provision of notice and opportunity to be heard for voters found "not qualified."

AMERICAN OVERSIGHT

B. Address Verification for SDR

If the county board of elections tentatively determines that a same-day registrant is eligible to vote (i.e., passes check of driver's license number, social security number, etc.), the county board of elections proceeds to conduct address verification by mail. The core dispute on these motions concerns S. 747's changes to the State's process for doing so for SDR voters, which the parties refer to as the "undeliverable mail provision."

Prior to S. 747, if a same-day registrant was determined eligible, the county board would conduct address verification. N.C. Gen. Stat. § 163-82.6A(d) (2012); N.C. Gen. Stat. § 163-82.7(c)-(f). Just as for non-SDR voters, if the first non-forwardable card was returned as undeliverable, the county board would send a second one. However, given the short window between early voting and the county canvass, in some instances the second card was returned as undeliverable after the county canvass. In those instances, although those SDR voters failed address verification, their votes were counted. N.C. Gen. Stat. § 163-82.7(g); (VL Doc. 55-2 at 3 (NCSBE Numbered Memo 2016-15 (Sept. 22, 2016)).)

When the Postal Service returned the second card as undeliverable before the county canvass, however, the law before S. 747 provided that the ballot (then considered a "retrievable absentee" ballot) could be challenged pursuant to section 163-89,

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000727

which authorizes a challenge procedure for absentee ballots to occur ten days after the election. Id. §§ 163-82.7(g)(2), 163-182.5. If this occurred, the county board would "need not try to notify the applicant further." Id. § 163-82.7(f).[13] However, the voter is entitled to appear and present evidence as to the validity of the ballot, provided he is notified of the challenge, for example, by another voter or organization. Id. § 163-89(e). Under this challenge system, "[n]o challenge shall be sustained unless the challenge is substantiated by affirmative proof," and "[i]n the absence of such proof, the presumption shall be that the voter is properly registered or affiliated." Id. § 163-90.1(b). In the last four even-year elections, 1,799 out of 100,578; 696 out of 45,666; 2,151 out of 116,326; and 391 out of 34,289 same-day registrants failed address verification. NCSBE, Presentation to House Oversight and Reform Committee, at 6 (June 22, 2023), at https://webservices.ncleg.gov/ViewDocSiteFile/80406 (last

[13] SDR voters may utilize NCSBE's "Voter Search" to track the status of their ballot, but NCSBE's website indicates that a voter's history "may take up to a few weeks after Election Day" to update. NCSBE, Vote Early in Person, at https://www.ncsbe.gov/voting/vote-early-person (last accessed Jan. 9, 2024). Moreover, even though SDR ballots were technically considered "absentee" ballots prior to S. 747, the court has no record that NCSBE's vote-by-mail tracking system, BallotTrax, was or is now available to SDR voters. See NCSBE, Ballot Tracking Available Again for Absentee-By-Mail Voters, at https://www.ncsbe.gov/news/press-releases/2022/03/14/ballot-tracking-available-again-absentee-mail-voters (Mar. 14, 2022) (last accessed Jan. 9, 2024).

AMERICAN OVERSIGHT

accessed Jan. 3, 2023).[14]

In reality, however, no challenges based on failed address verification have been held since August 2018. (VL Doc. 61 at 53:13-16 (State Board stating so at oral argument); VL Doc. 55-4 at 1-2 (NCSBE Numbered Memo 2018-07 (Aug. 8, 2018)); see also VL Doc. 55-3 at 8 (NCSBE Numbered Memo 2022-05 (May 12, 2022)).)[15] This results from the NCSBE's interpretation of an injunction entered in North Carolina State Conference of the NAACP v. Bipartisan Board of Elections & Ethics Enforcement, No. 1:16CV1274, 2018 WL 3748172 (M.D.N.C. Aug. 7, 2018). (See VL Doc. 55-3 at 8 (NCSBE Numbered Memo 2022-05 (May 12, 2022)) (explaining that "a 2018 federal court order [i.e., the Bipartisan Board order] prohibits any voter challenges from being brought without individualized knowledge within 90 days of a federal election"); VL Doc. 44-4 at 9-10 (Letter from State Board to Watauga County Board ordering the county board, pursuant to Bipartisan Board injunction, to halt its section 163-89 challenges based on same-day registrants' failure to complete address verification)).)

[14] The court may take judicial notice of facts that are "matters of public record." Justice 360 v. Stirling, 42 F.4th 450, 455 (4th Cir. 2022); Fed. R. Evid. 201.

[15] NCSBE updated the version of Numbered Memo 2022-05 available online on December 15, 2023, in light of S. 747. See NCSBE Numbered Memo 2022-05 (Dec. 15, 2023 update), at https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2022/Numbered%20Memo%202022-05_Absentee%20Voter%20Challenges%20by%20County%20Board.pdf. The memo before the updates is memorialized at VL Doc. 55-3 and DNC Doc. 54-3.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000729

In Bipartisan Board, individual voters in Beaufort, Cumberland, and Moore counties sent a single mailing to thousands of registered voters. Bipartisan Board, 2018 WL 3748172, at *4-9. These individuals together received thousands of pieces of mail returned as undeliverable, after which they brought challenges pursuant to N.C. Gen. Stat. §§ 163-85 and 163-86, which permit third-party challenges to a voter's right to register in a county due to, among other reasons, change in residency.[16] Id. When presented to the county boards, the single unreturned mailings constituted prima facie evidence that the corresponding voters did not reside at the address listed. Id.; N.C. Gen. Stat. § 163-85(e). The county boards thus struck the registrations of scores of registered voters, and plaintiffs sued to restore the registrations and receive prospective relief pursuant to the National Voter Registration Act ("NVRA," also known as the "Motor Voter Act"), 52 U.S.C. § 20507. Id. at *1. Finding that these third-party challenges violated 52 U.S.C §§ 20507(d)[17] and

[16] The Bipartisan Board order refers to these provisions as N.C. Gen. Stat. §§ 163A-911 and 163A-912. The provisions were re-codified by North Carolina Session Laws 2018-146, § 3.1(a), effective January 31, 2019, as N.C. Gen. Stat. §§ 163-85 and 163-86. This order will refer to the provisions as presently codified.

[17] Section 20507(d)(1) prohibits "remov[ing] 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": (1) confirms in writing that he has moved outside the registrar's jurisdiction; or (2) fails to respond to a notice as outlined under subsection (d)(2), and (3) has not voted or appeared to vote in

AMERICAN OVERSIGHT

(c)(2)(A),[18] the court permanently enjoined the NCSBE from

> (1) removing the registration of voters from the official list of eligible voters in elections for federal office through the challenge procedures set forth in N.C. Gen. Stat. §§ 163A-911 et seq.,[19] when those challenges are based on change of residency and the State has neither received written confirmation from the voter of a change of residency outside of the county, nor complied with the NVRA's prior notice requirement and two-election cycle waiting period;
>
> (2) using the challenge procedure set forth in N.C. Gen. Stat. §§ 163A-911[20] et seq. to remove voters from the rolls without individualized inquiry as to the circumstances of each voter in the 90 days preceding a federal election in the absence of a request of the registrant, necessity under State law by reason of criminal conviction or mental incapacity, or the death of the registrant; and
>
> (3) holding hearings or taking any other action(s) to process challenges filed under those provisions in the circumstances identified above.

Bipartisan Board, 2018 WL 3748172, at *12. The court found that the challenges, which occurred within 90 days of a federal election based on a single mailing, violated the NVRA because the process did not rely upon "individualized information" as to the voters sought to be removed. Id. at *6-10 (citing Arcia v. Fla. Sec'y of

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two federal election cycles following receipt of notice. Section 20507(d)(2) prescribes the content for a NVRA-compliant notice.

[18] Section 20507(c)(2)(A) provides that "[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."

[19] Now codified as N.C. Gen. Stat. §§ 163-85 et seq.

[20] Now codified as N.C. Gen. Stat. §§ 163-85 et seq.

AMERICAN OVERSIGHT

State, 772 F.3d 1335, 1346 (11th Cir. 2014)). Although Bipartisan Board dealt with challenges pursuant to section 163-85, State Board Defendants have construed the injunction to also prohibit challenges under section 163-89 for same-day registrants under the belief that the challenge procedures "bear a close resemblance" to one another. (VL Doc. 44-4 at 9-10 (pointing to the Bipartisan Board court's finding that the mailings constituted "generic evidence [that] conveyed no information about each challenged voter's specific circumstances").) As a result of Bipartisan Board and State Board Defendants' interpretation of it, failed address verifications for same-day registrants have not resulted in challenges since 2018.

S. 747 amends the address verification system for SDR voters to, as State Board Defendants contend, address the State's inability to conduct address verification before the canvass and to avoid counting ballots of SDR voters who fail address verification. (DNC Doc. 53 at 13; VL Doc. 54 at 11.) In pertinent part, the "undeliverable mail provision" now provides:

> Notwithstanding any other provision of this Chapter, if the Postal Service returns the first notice required under G.S. 163-82.7(c) as undeliverable before the close of business on the business day before canvass, the county board shall not register the applicant and shall retrieve the applicant's ballot and remove that ballot's votes from the official count.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000732

N.C. Gen. Stat. § 163-82.6B(d).[21] State Board Defendants state that all SDR voters will be given a notice at the polling place that their vote may not be counted if address verification fails, but there is no individualized notice and opportunity to be heard after the card is returned as undeliverable and before the ballot is removed from the official count. (See VL Doc. 55-6 (Notice to Same Day Registrants); VL Doc. 54 at 13 n.8 ("The State Board has also created a written notice that poll workers are required to give to all same-day registrants informing them" that, if address verification fails, their "voter registration will be denied and [their] vote will not be counted").)

State Board Defendants contend that North Carolina's interest in the undeliverable mail provision is "in ensuring only eligible ballots are counted in an election." (DNC Doc. 53 at 13.) Legislative Intervenors argue that S. 747 "(1) preserv[es] the integrity of the election process; and (2) instill[s] confidence in the fairness of the election." (DNC Doc. 52 at 17.) With respect to election integrity, Legislative Intervenors contend that the law "ensure[s] that registrant[s] live in the precinct within which they seek to vote." (Id. at 18.) They argue that

[21] It is unclear whether the provision referencing the "first notice" indicates that no second card will be sent, especially in light of the provision that the county board "shall not register" the SDR voter. State Board Defendants take the view that a second card is sent only if the first card returns after the canvass. (VL Doc. 55-5 at 7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000733
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 19 of 94

North Carolina has a "legitimate interest" in ensuring "that the card is returned before the end of the canvass," and that S. 747 is designed to bring SDR voters into parity with other voters. (VL Doc. 52 at 14; VL Doc. 61 at 66:13-15.) Legislative Intervenors also rely on the expert report and testimony of Dr. Andrew Taylor which, as discussed in more detail below, they urge shows that the undeliverable mail provision supports the State's interests. (See VL Doc. 52-1.) Party Intervenors contend that the State's "compelling interest" is in "ensuring verification of each applicant's address, which is fundamental to determining a voter's eligibility" (DNC Doc. 51 at 7-8), and in "discouraging and preventing fraud," (VL Doc. 51 at 11).

Neither State Board Defendants nor Intervenors point to any portion of the legislative history to demonstrate the General Assembly's purpose in enacting this change.[22] Legislative

[22] State Board Defendants and Intervenors have cited just one source of legislative history, a transcript of testimony by Defendant Bell before the House Committee on Oversight and Reform, available at https://webservices.ncleg.gov/ViewDocSiteFile/80708 (last accessed Jan. 17, 2024). However, neither this source nor other documents available online through the Senate Committee on Redistricting and Elections or the House Committee on Election Law and Campaign Finance Reform reveals the General Assembly's rationale for the undeliverable mail provision. This may be explained by the fact that the undeliverable mail provision appears to have been added to S. 747 by the House Committee on Election Law and Campaign Finance Reform one day before it passed the full chamber. See North Carolina General Assembly, Senate Bill 747 House Committee Substitute (Aug. 15, 2023), https://www.ncleg.gov/Sessions/2023/Bills/Senate/PDF/S747v4.pdf; see also North Carolina General Assembly, Senate Bill 747 / SL 2023-140, https://www.ncleg.gov/BillLookUp/2023/s%20747 (last accessed Jan. 17, 2024).

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000734

Intervenors represent that State Board Defendants requested the change, the evidentiary support for which is a former State and Watauga County election board member's understanding. (VL Doc. 52 at 4; Doc. 52-2 at 9.) There is no record that address verification has ever revealed a same-day registrant who was in fact ineligible to vote because he did not reside at the residence provided. In fact, State Board Defendants state that they would have "no way to know" from the card itself. (VL Doc. 61 at 60:21.)

C. Parties

Plaintiff Voto Latino is a section 501(c)(4) nonprofit that encourages voting and assists with voter registration, particularly among eligible Latino voters. (VL Doc. 1 ¶¶ 17, 18.) Plaintiff Watauga County Voting Rights Taskforce is a volunteer, nonpartisan organization that conducts voter registration drives, voter education sessions, volunteer training, community outreach, among other functions. (Id. ¶¶ 22-24.) Relevant here, the Taskforce has defended voters whose ballots have been challenged. (Id. ¶ 25.) Plaintiff Down Home North Carolina is a section 501(c)(4) nonprofit that works, in part, to ensure that rural, working-class people in North Carolina have access to the franchise. (Id. ¶ 28.) Plaintiff Sophie Jae Mead is a senior at Appalachian State University and a member of the Watauga County Voting Rights Taskforce. (Id. ¶ 31.) Her ballot was allegedly challenged under section 163-89 due to an undeliverable address

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000735

verification card in 2022. (Id. ¶ 31.) Plaintiff Democratic National Committee ("DNC") is the national committee of the Democratic Party. (DNC Doc. 1 ¶¶ 22-23.) Plaintiff North Carolina Democratic Party ("NCDP") is a state committee of the Democratic Party. (Id. ¶ 25.)

Party Plaintiffs have sued the NCSBE, which is the executive agency responsible for administering election laws in North Carolina. (Id. ¶ 28.) All Plaintiffs also have sued NCSBE's executive director, Defendant Karen Brinson Bell, NCSBE's chair, Defendant Alan Hirsch, NCSBE's secretary, Defendant Jeff Carmon, and NCSBE members, Defendants Stacy Eggers IV, Kevin N. Lewis, and Siobhan O'Duffy Millen. (Id. ¶¶ 29-34; VL Doc. 1 ¶¶ 34-35.) All these individuals are sued in their respective official capacities. (DNC Doc. 1 ¶¶ 29-34; VL Doc. 1 ¶ 34.) Voto Latino has also sued Defendant Michael Behrent, the chair of the Watauga County Board of Elections, and Defendants Leta Councill, Eric Eller, Matt Walpole, and Elaine Rothenberg, who are members of the Watauga County Board of Elections, in their respective official capacities. (VL Doc. 1 ¶ 37.)

Legislative Intervenors are Philip E. Berger, President Pro Tempore of the North Carolina Senate, and Timothy K. Moore, Speaker of the North Carolina House of Representatives. They have intervened in their respective official capacities. Party Intervenors are the North Carolina Republican Party, the

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000736
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 22 of 94

Republican National Committee, Brenda M. Eldridge, and Virginia Ann Wasserberg. Eldridge and Wasserberg are registered Republican voters who "typically vote for Republican candidates, have served as poll observers in the past, and intend to do so in the future. (DNC Doc. 48 at 3.)

D. Procedural Background

Voto Latino Plaintiffs filed their motion for preliminary injunction on November 15, 2023 (VL Doc. 44), to which State Board Defendants and Intervenors responded on December 13, 2023 (VL Docs. 50-54). In the period between the motion and responses, the parties engaged in limited discovery by mutual agreement, the result of which are filings attached to State Board Defendants' and Intervenors' responses and Voto Latino Plaintiffs' reply brief. Voto Latino Plaintiffs' motion seeks preliminary injunctive relief solely against the enforcement of the undeliverable mail provision.

In the other case, Party Plaintiffs filed their motion for preliminary injunction on October 10, 2023 (DNC Doc. 6), to which State Board Defendants and Intervenors responded on November 20, 2023 (DNC Docs. 51-53). Party Plaintiffs replied on December 4, 2023. (DNC Doc. 58.) Party Plaintiffs seek preliminary injunctive relief precluding the following:

> (1) requiring same-day registrants (i.e., voters who seek to register and vote on the same day, prior to election day) to produce documentation that other

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000737

registrants need not produce;

(2) denying a same-day registrant's application to register without providing that individual with sufficient notice and a meaningful opportunity to be heard;

(3) rejecting a same-day registrant's application to register based on the return of a single notice as undeliverable by the U.S. Postal Service;

(4) applying different voting-registration standards, practices, or procedures to different individuals in the same county; and

(5) failing to provide a free-access system by which same-day registrants can track their retrievable ballots.

(DNC Doc. 6.)

Before proceeding, it bears noting what is not presently before the court. As described above, State Board Defendants have not enforced North Carolina's two-card address verification requirement for same-day registrants since the 2018 Bipartisan Board injunction against using challenges under N.C. Gen. Stat. §§ 163-85 et seq. to remove voters from the rolls in violation of the NVRA. At present, Plaintiffs have not brought suit under the NVRA, which requires 90 days' notice before an "aggrieved person may bring a civil action." 52 U.S.C. § 20510(b). At the hearing on the present motions, Party Plaintiffs represented that they have given notice to State Board Defendants of their intent to sue and that the 90-day notice period will expire sometime this month. (DNC Doc. 62 at 78 ("Nowhere near 90 days has gone past. We didn't

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000738
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 24 of 94

think when we filed our preliminary injunction motion asking that the Court rule by January, which will be 90 days, that there would be time to get effective relief under the NVRA.").)

The parties have studiously avoided any argument as to whether the undeliverable mail provision of S. 747 complies with the NVRA and/or the Bipartisan Board injunction. Despite figuring prominently in the history of SDR, the injunction is raised only in passing in the briefs. (VL Doc. 59 at 22 n. 6; VL Doc. 54 at 6; DNC Doc. 53 at 6-7.) Though during the hearing the court probed the parties about the effect, if any, of the Bipartisan Board injunction and the NVRA on Plaintiffs' requested relief, the parties demurred (DNC Doc. 61 at 78:9-18 (Party Plaintiffs expressing that "we have not yet looked at this issue"); id. at 35:11-12 (Voto Latino Plaintiffs expressing view that "it is certainly possible that the law does violate the injunction . . . and the NVRA"); id. at 43:11-22 (State Board Defendants expressing that they "haven't completely looked at whether the new law as a whole" violates Bipartisan Board but expressing belief that challenge procedures would); id. at 77:4-11 (Legislative Intervenors expressing belief that Bipartisan Board is "distinguishable")), such that it is assuredly not raised before the court at this time. Thus, the court expresses no opinion on the effect, if any, of the injunction or the NVRA, and turns to consideration of the statutory and constitutional claims actually

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000739
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 25 of 94

raised.

II. ANALYSIS

A. Standing

Legislative Intervenors and Party Intervenors challenge the Article III standing of all Voto Latino Plaintiffs. (VL Doc. 51 at 4-7; VL Doc. 52 at 15-16.) Plaintiff Mead contends that she has standing as an individual, Plaintiff Voto Latino contends that it has standing in its own right as an organization, and Plaintiffs Task Force and Down Home NC contend that they satisfy either standing in their own right or representational standing. (VL Doc. 45 at 16-17.) Intervenors argue that the organizational Voto Latino Plaintiffs' claims are generalized grievances and that the organizations have not demonstrated that a diversion of resources "has yet to occur," and that they "may never occur." (VL Doc. 51 at 7, Doc. 52 at 15, Doc. 60 at 2-3.) Moreover, Legislative Intervenors maintain that Plaintiff Mead's injury is speculative because it involves "some *potential* SDR issue in a *future* election where she *might* utilize SDR." (VL Doc. 52 at 16 (emphasis in original).)

Legislative Intervenors also challenge the Article III standing of Party Plaintiffs. (DNC Doc. 52 at 7-8.) Party Plaintiffs argue that they have standing in their own right and representational standing. (DNC Doc. 58 at 14 n.5.) Legislative Intervenors argue that Party Plaintiffs "utterly failed to allege

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000740
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 26 of 94

that any of the same-day registration provisions challenged in S.B. 747 create[s] specific harm to their organizations or Democratic voters," such that the claims are speculative, generalized grievances. (DNC Doc. 52 at 8.)

"No lawsuit may proceed in federal court unless the party seeking relief has Article III standing." Carolina Youth Action Project v. Wilson, 60 F.4th 770, 778 (4th Cir. 2023). The basic standing requirements are that a plaintiff must show: (1) he has suffered an "injury in fact," (2) the injury is "fairly . . . trace[able] to the challenged action of the defendant," and (3) it is "likely" that "the injury will be redressed by a favorable decision." Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992) (citations and internal quotation marks omitted) (alteration and omission in original). In multi-plaintiff cases, "[a]t least one plaintiff must have standing to seek each form of relief requested in the complaint." Town of Chester v. Laroe Estates, Inc., 137 S. Ct. 1645, 1651 (2017). If there is one such plaintiff, the court need not consider whether other plaintiffs have standing to seek that same form of relief. Carolina Youth Action, 60 F.4th at 778.

The injury in fact "requirement ensures that plaintiffs have a 'personal stake in the outcome of the controversy.'" Kenny v. Wilson, 885 F.3d 280, 287 (4th Cir. 2018) (quoting Warth v. Seldin, 422 U.S. 490, 498 (1975)). An injury in fact is "'an invasion of a legally protected interest' that is 'concrete and

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000741
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 27 of 94

particularized' and 'actual or imminent, not conjectural or hypothetical.'" Spokeo, Inc. v. Robins, 578 U.S. 330, 339 (2016) (quoting Lujan, 504 U.S. at 560). "An allegation of future injury may suffice if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur." Susan B. Anthony List v. Driehaus, 573 U.S. 149, 158 (2014) (citation and internal quotation marks omitted). When plaintiffs seek prospective relief, they must establish an ongoing or imminent injury in fact. O'Shea v. Littleton, 414 U.S. 488, 495–96 (1974).

An organizational plaintiff can satisfy the standing requirements in two ways: either injury in its own right, or injury as a representative of its members. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181, 199 (2023). To have standing in its own right, the organization may show that an alleged illegal action "perceptibly impair[s]" its ability to carry out its mission, including by draining the organization's resources. Havens Realty Corp. v. Coleman, 455 U.S. 363, 379 (1982). An organization does not have standing, however, where injury results "not from any actions taken by [the defendant], but rather from the [organization's] own budgetary choices," such as "educating members, responding to member inquiries, or undertaking litigation in response to legislation." Lane v. Holder, 703 F.3d 668, 674–75 (4th Cir. 2012) (internal quotation marks and citation omitted) (finding lack of standing

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000742
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 28 of 94

where resource drain resulted from "inquiries [from members] into the operation and consequences of interstate handgun transfer provisions").

Some voter advocacy groups in this district have established standing on their own behalf under Havens Realty and Lane where they allege a link between their mission and the alleged illegal act, as well as resource expenditures beyond merely educating voters and responding to inquiries. Democracy N.C. v. N.C. State Bd. of Elections, 476 F. Supp. 3d 158, 182-83 (M.D.N.C. 2020) (finding standing where organization would divert resources to assist voters with registering to vote before 25-day deadline); Action NC v. Strach, 216 F. Supp. 3d 597, 617-18 (M.D.N.C. 2016) (finding standing where organization would divert limited time and resources to assist voters with registration after DMV allegedly failed to transmit voter registration information to NCSBE); N.C. State Conf. of the NAACP v. N.C. State Bd. of Elections, 283 F. Supp. 3d 393, 402-03 (M.D.N.C. 2017) (finding standing where organization would divert resources to combat "*en masse* voter challenges"). Moreover, a political party may have standing in its own right where a law "threatens and inhibits" the party's efforts to register eligible voters and requires diverting resources to cure ballot defects. Democratic Party of Va. v. Brink, 599 F. Supp. 3d 346, 355 (E.D. Va. 2022) (citing Crawford v. Marion Cnty. Election Bd., 472 F.3d 949, 951 (7th Cir. 2007)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000743

(Posner, J.), aff'd, 553 U.S. 181 (2008)).

To represent its members, rather than have injury in its own right, the organization must demonstrate that "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." Students for Fair Admissions, 600 U.S. at 199 (quoting Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 343 (1977)).

Standing is not "dispensed in gross"; instead, the court must consider standing with respect to the requested relief. Town of Chester, 581 U.S. at 439. The court will first consider Plaintiffs' request to enjoin the enforcement of the undeliverable mail provision — i.e., relief that all Plaintiffs join in seeking. It will then turn to Party Plaintiffs' other requested relief.

Plaintiff Voto Latino alleges that its mission is "engag[ing], empower[ing], and educat[ing] its core constituency of Latinx communities throughout the country to ensure that they are enfranchised and included in the democratic process." (VL Doc. 1 ¶ 17.) Voto Latino anticipates spending approximately $1 million during the 2024 election cycle in North Carolina, including on registering new voters through same-day registration. (Id. ¶ 18.) It contends that its mission will be frustrated because it

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000744
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 30 of 94

will divert resources ordinarily spent on issue advocacy toward encouraging eligible voters to register prior to early voting to avoid the risk of failing address verification. (Id. ¶ 19.) Further, Voto Latino contends that it will spend more resources (1) reaching out to voters to encourage them to provide a mailing address where they can receive mail as a second address, (2) registering more voters to account for those who will be erroneously not counted, and (3) contacting voters whose registrations were ultimately denied to get them registered again. (VL Doc. 51-4 at 53:24-55:1.) Moreover, Voto Latino contends that "thousands of eligible voter constituents that Voto Latino plans to assist in 2024" face an "extremely high risk" that they will be disenfranchised because of the undeliverable mail provision. (VL Doc. 1 ¶ 21.)

Plaintiff Voto Latino's allegations are sufficient to establish standing in its own right at this stage. As alleged, erroneous disenfranchisement of SDR voters would hinder Voto Latino's mission of registering eligible voters and engaging in voter advocacy. See League of Women Voters of S.C. v. Andino, 497 F. Supp. 3d 59, 75-76 (D.S.C. 2020) (finding organizational standing where state removed notice-and-cure procedure for absentee ballots and thus impaired the organization's mission to register voters). Moreover, Voto Latino sufficiently alleges resource expenditures required to address the change in law with

AMERICAN OVERSIGHT

prospective same-day registrants. See Democracy N.C., 476 F. Supp. 3d at 182 (finding organizational standing where an organization would have to divert resources to warn voters about the risks of absentee voting and where efforts spent encouraging voter participation would be obviated by inadvertent disenfranchisement). The court further finds that Voto Latino's alleged injury is traceable to the undeliverable mail provision and would be redressable by the requested relief. Lujan, 504 U.S. at 560–61. As a result, Voto Latino has standing as an organization.

Because Plaintiff Voto Latino has standing to pursue this relief, the court need not determine the standing of the other Voto Latino Plaintiffs. Carolina Youth Action, 60 F.4th at 778. Nevertheless, it is likely that Down Home NC would have representational standing as well. Down Home NC has identified at least one member who would have standing. Summers v. Earth Island Inst., 555 U.S. 488, 498–99 (2009) (requiring an organization to name affected members, unless all members of the organization are harmed). This individual has allegedly resided in a hotel in Alamance County since a fire destroyed her home. (VL Doc. 60-3 at 67:6-8.) Down Home NC contends that she is unable to stay in the same room to establish residency, (id. at 67:6-10), and that she intends to use same-day registration in 2024, (id. at 76:4). Because a person's right to vote is "individual and personal in

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000746

nature," Reynolds v. Sims, 377 U.S. 533, 561 (1964), "'voters who allege facts showing disadvantage to themselves as individuals have standing to sue' to remedy that disadvantage." Gill v. Whitford, 138 S. Ct. 1916, 1920 (2018) (quoting Baker v. Carr, 369 U.S. 186, 206 (1962)). This individual identified by Down Home NC would have standing, as she faces a concrete and imminent risk of harm because she is unlikely to have a stable address where she can receive mail at least by early voting in February 2024. See Lujan, 504 U.S. at 564 (finding no standing upon mere "some day" intentions without "any description" of concrete plans); N.C. State Conf. of the NAACP, 283 F. Supp. 3d at 404 (finding standing where individual faced "real and imminent risk" of being unlawfully removed from voter rolls by "systematic, *en masse*" voter challenges). This individual thus has a concrete risk of having her vote not counted after she same-day registers. Moreover, the interests Down Home NC seeks to protect are germane to its stated purpose of "ensur[ing] that working-class North Carolinians . . . have access to the franchise." (VL Doc. 44-3 ¶ 5.) Finally, this individual's participation is not required in this lawsuit. Students for Fair Admissions, 600 U.S. at 199 (quoting Hunt, 432 U.S. at 343)). Accordingly, Down Home NC has satisfied the requirements of representational standing. Id.

In the other lawsuit, North Carolina Democratic Party's mission is to "elect Democratic candidates to public office

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000747
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 33 of 94

throughout North Carolina." (DNC Doc. 1 ¶ 25.) The Democratic National Committee's organizational purpose is to "communicate the Democratic Party's position and messages on issues; protect the legal rights of voters; and aid and encourage the election of Democratic candidates at the national, state, and local levels, including by persuading and organizing citizens not only to register to vote as Democrats, but also to cast their votes for Democratic candidates." (Id. ¶ 23.) Party Plaintiffs contend that it is "exceedingly likely" that one or more of the 2.4 million registered Democratic Party members in North Carolina will be removed from the voting rolls. (DNC Doc. 1 ¶ 26.) Of note, however, Party Plaintiffs do not name any specific members. Party Plaintiffs also contend they are harmed as organizations because the law will "require each organization to expend and divert funds and resources that they would otherwise spend on voter outreach and mobilization efforts . . . in order to ensure that those voters are not erroneously prevented from voting." (Id. ¶ 27.) Moreover, they allege that the "likely erroneous denial of Democratic voters' right to cast a ballot and have it counted . . . undermin[es] the two organizations' abilities to succeed in getting Democrats elected." (Id.) Party Plaintiffs represented that 880 of the 2,000 voters who required a second address verification card in 2020 were registered Democrats. (DNC Doc. 62 at 13:11-12.)

For much of the same reasons as for Plaintiff Voto Latino,

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000748

Party Plaintiffs have standing on their own behalf to seek relief as to the undeliverable mail provision because they have adequately alleged a frustration of their mission of registering voters and a diversion of resources as a result of the undeliverable mail provision. See Brink, 599 F. Supp. 3d at 355; Andino, 49 F. Supp. 3d at 75-76; Democracy N.C., 476 F. Supp. 3d at 182.

Party Plaintiffs seek additional relief that Voto Latino does not. This includes "requiring same-day registrants . . . to produce documentation that other registrants need not produce; [] denying a same-day registrant's application to register without providing that individual with sufficient notice and a meaningful opportunity to be heard; [] applying different voting-registration standards, practices, or procedures to different individuals in the same county; and [] failing to provide a free-access system by which same-day registrants can track their retrievable ballots." (DNC Doc. 6.) The parties have not made any particularized arguments as to Party Plaintiffs' Article III standing for these forms of relief. The court nevertheless finds at this stage that Party Plaintiffs' standing to seek these forms of relief is no different than it is for the undeliverable mail provision, as each would redress the injuries to the missions and the resource diversions alleged above. The court will address State Board Defendants' and Intervenors' positions on statutory standing under the Civil Rights Act and the Help America Vote Act below.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000749

Having found the requisite Article III standing, the court will turn to the merits of the motions.

B. Preliminary Injunction Standard

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). Such an injunction "is an extraordinary remedy intended to protect the status quo and prevent irreparable harm during the pendency of a lawsuit." Di Biase v. SPX Corp., 872 F.3d 224, 230 (4th Cir. 2017). To demonstrate a likelihood of success on the merits, "[a] plaintiff need not establish a certainty of success, but must make a clear showing that he is likely to succeed at trial." Id.

Party Plaintiffs alone raise two statutory claims that reach S. 747's undeliverable mail provision as well as other provisions of state election law. Before the court "can address the constitutional arguments," it must "attempt to resolve" the motions "on non-constitutional grounds first, if possible." Nat'l Lab. Rels. Bd. v. Enter. Leasing Co. Se., LLC, 722 F.3d 609, 613 (4th Cir. 2013); Ashwander v. Tenn. Valley Auth., 297 U.S. 288, 347 (1936) (Brandeis, J., concurring). The court thus turns to these statutory claims first.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000750
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 36 of 94

C. Civil Rights Act

Party Plaintiffs alone argue that S. 747 violates the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(A), by applying different registration standards, practices, or procedures to different groups of individuals in the same county. (DNC Doc. 7 at 21.) Party Plaintiffs contend that S. 747 treats SDR and non-SDR voters disparately by requiring SDR voters to provide documentary proof of residency; by providing SDR voters only one mail card for address verification, instead of two; and by not providing notice and opportunity to be heard to SDR voters who are found ineligible to vote by the State Board. (Id. at 22-23.) Party Plaintiffs seek an order enjoining these differences in treatment. (DNC Doc. 6.)

In response, State Board Defendants argue that the CRA is only enforceable through 42 U.S.C. § 1983 and that Party Plaintiffs must, but did not, bring their CRA claim pursuant to that statute. (DNC Doc. 53 at 15.) Intervenors contend that Party Plaintiffs are unlikely to show that they have a private right of action to enforce their claims under 52 U.S.C. § 10101. (DNC Doc. 52 at 8-9; DNC Doc. 51 at 12-13.) Moreover, State Board Defendants and Intervenors contend that SDR and non-SDR are "inherently different" types of registration and thus require different procedures for each. (Id.; DNC Doc. 51 at 13-14 ("[T]his is not a case where different standards are applied to individuals based

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000751

on race, age, gender, neighborhood of residence, profession, etc."); DNC Doc. 52 at 10.) They argue, in addition, that Party Plaintiffs' interpretation of the CRA would put in jeopardy all requirements which apply to a set of voters, including differences between procedures for vote-by-mail and in-person voting. (DNC Doc. 53 at 16; DNC Doc. 52 at 10; DNC Doc. 51 at 14-16.)

Whether the CRA creates a private right of action is a question of "statutory standing." CGM, LLC v. BellSouth Telecommc'ns, Inc., 664 F.3d 46, 51-52 (4th Cir. 2011). Statutory standing "applies only to legislatively-created causes of action" and concerns "whether a statute creating a private right of action authorizes a particular plaintiff to avail herself of that right of action." Id. (internal quotation marks omitted).

Courts have disagreed as to whether the CRA provides a private right of action. McKay v. Thompson, 226 F.3d 752, 756 (6th Cir. 2000) (no private right of action, but decided before Gonzaga Univ. v. Doe, 536 U.S. 273 (2002)); Schwier v. Cox, 340 F.3d 1284, 1297 (11th Cir. 2003) (private right of action); Vote.org v. Callanen, 89 F.4th 459, 474-78 (5th Cir. 2023) (private right of action). The Fourth Circuit has assumed without deciding that a private right of action existed. Washington v. Finlay, 664 F.2d 913, 926 (4th Cir. 1981). And the Third Circuit reversed a district court that had found no private right of action, but the Supreme Court subsequently vacated the decision and ordered that the case be

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000752

dismissed as moot. Migliori v. Cohen, 36 F.4th 153 (3d Cir. 2022), cert. granted, judgment vacated sub nom. Ritter v. Migliori, 143 S. Ct. 297 (2022).

This statutory standing question would be properly considered on a motion to dismiss for failure to state a claim upon which relief can be granted. CGM, LLC, 664 F.3d at 51-52. Unlike a jurisdictional question that the court must answer, the statutory standing question here may be avoided where there are alternative grounds upon which to resolve the motion. Willner v. Dimon, 849 F.3d 93, 102 n.1 (4th Cir. 2017) (avoiding alternative bases to dismiss "in view of the resolution of th[e] case on other bases"). Such alternative grounds exist here to find that Party Plaintiffs are unlikely to succeed on the merits.[23]

The CRA states in part:

> No person acting under color of law shall . . . in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar subdivision who have been found by State officials to be qualified to vote[.]

52 U.S.C. § 10101(a)(2)(A) (previously codified as 42 U.S.C. § 1971). In Rokita, the plaintiffs argued that the photo ID requirement violated the CRA because all voters, namely absentee

[23] For similar reasons, the court need not address Party Plaintiffs' lack of citation to 42 U.S.C. § 1983, as raised by State Board Defendants. (DNC Doc. 53 at 15.)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000753

voters, did not need to present a photo ID. Ind. Democratic Party v. Rokita, 458 F. Supp. 2d 775, 839 (S.D. Ind. 2006), aff'd sub nom. Crawford v. Marion Cnty. Election Bd., 472 F.3d 949 (7th Cir. 2007) (Posner. J.), aff'd, 553 U.S. 181 (2008). The court rejected the plaintiffs' argument, in part, because the CRA is not intended to prevent states from providing different procedures for different methods of voting. Id. at 839-40. The court reasoned that because "absentee voting is an *inherently* different procedure from voting in person," the State must apply different "standards, practices, or procedures" to these two groups of voters. Id. at 840 (emphasis in original). The court further observed that prohibiting such differences would be a "radical departure from settled law." Id.

Here, Party Plaintiffs cite no case in support of their construction and no persuasive limiting principle that would avoid the unintended consequences identified in Rokita and by State Board Defendants and Intervenors. Party Plaintiffs urge that the CRA under their theory would only stop differential treatment "in determining whether any individual is qualified under State law or laws to vote," rather than different methods of registration or voting. (DNC Doc. 58 at 12 (quoting § 10101(a)(2)(A).) Even if this were a meaningful distinction, Party Plaintiffs have not shown that the CRA nevertheless undercuts North Carolina's ability to employ different procedures for determining one's qualifications

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000754
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 40 of 94

to vote depending on how one registers, without due regard to the practical reality that offering various methods of registration — many of which may be less burdensome on voters — may require different procedures.

Moreover, Party Plaintiffs have not established a likelihood of success in demonstrating that a court may properly consider SDR registrants as a class under the CRA when comparing standards, practices, and procedures applied between "any individual" and "other individuals." See 52 U.S.C. § 10101(a)(2)(A). While the parties have not argued, and this court thus does not hold, that the CRA applies only to certain protected classes, Party Plaintiffs have not fairly raised any allegation of discrimination against a protected class, stating only in a footnote that "[h]olding same-day registrants to a higher standard is [] likely to disproportionately disenfranchise African American voters." (DNC Doc. 7 at 23 n.8; see also DNC Doc. 52 at 10 n.8 (demonstrating Legislative Intervenors' intent to move to dismiss CRA claim for failure to allege or prove race discrimination).) Party Plaintiffs' lack of authority raises considerable doubt as to their likelihood of success in showing that the CRA protects SDR voters. Consequently, the court will deny Party Plaintiffs' motion for injunctive relief under the CRA.

D. Help America Vote Act

Party Plaintiffs argue, pursuant to the Help America Vote

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000755

Act, 52 U.S.C. § 21082(a)(5), that S. 747 does not provide an individual who casts a provisional ballot with a "free access system" to track if a provisional ballot is counted and "written information" about a tracking system. (DNC Doc. 7 at 24.) Party Plaintiffs contend that the retrievable ballot under S. 747 is a "provisional ballot" under HAVA. (Id.) They thus seek an order requiring that State Board Defendants "provide a free-access system by which same-day registrants can track their retrievable ballots." (DNC Doc. 6.)

In response, State Board Defendants argue that HAVA is only enforceable through 42 U.S.C. § 1983 and that that Party Plaintiffs must, but did not, bring their HAVA claim pursuant to that statute. (DNC Doc. 53 at 17.) Legislative Intervenors contend that Party Plaintiffs are unlikely to show that they have a private right of action to enforce their claims under 52 U.S.C. § 21082. (DNC Doc. 52 at 8-9.) Moreover, State Board Defendants and Intervenors argue that a retrievable ballot under S. 747 is not a provisional ballot that triggers HAVA's requirements, and that North Carolina is otherwise in compliance with HAVA. (DNC Doc. 53 at 18-20; DNC Doc. 52 at 9; DNC Doc. 51 at 10-11.)

As with the CRA, courts have disagreed as to whether HAVA provides a private right of action. Am. Civil Rights Union v. Phila. City Comm'rs, 872 F.3d 175, 181 (3d Cir. 2017) ("HAVA does not include a private right of action that allows aggrieved parties

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000756
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 42 of 94

to sue nonconforming states."); Crowley v. Nevada ex rel. Nev. Sec'y of State, 678 F.3d 730, 735 (9th Cir. 2012) (recognizing there is no private right of action under the HAVA, and foreclosing a section 1983 suit)); Colon-Marrero v. Velez, 813 F.3d 1, 22 (1st Cir. 2016) (permitting private right of action through section 1983); Sandusky Cnty. Democratic Party v. Blackwell, 387 F.3d 565, 572 (6th Cir. 2004) (same). For the same reasons stated above for the CRA, the court need not address this statutory standing question because Party Plaintiffs' HAVA claim can be resolved on alternative grounds. See CGM, LLC, 664 F.3d at 51-52; Willner, 849 F.3d at 102 n.1 (avoiding alternative bases to dismiss "in view of the resolution of th[e] case on other bases").[24]

In relevant part, HAVA provides:

> The appropriate State or local election official shall establish a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.

52 U.S.C. § 21082(a)(5)(B). HAVA also provides that when an individual casts a provisional ballot, the "election official shall give the individual written information" about the tracking system. Id. § 21082(a)(5)(A). The provisions Party Plaintiffs

[24] Similarly, the court need not address State Board Defendants' argument regarding Party Plaintiffs' lack of citation to 42 U.S.C. § 1983. (DNC Doc. 53 at 17.)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000757

rely upon apply to an individual who "declares" that he is a "registered voter" but whose name does not appear on the official list of eligible voters. 52 U.S.C. § 21082(a).

In North Carolina, a "'[p]rovisional official ballot' means an official ballot that is voted and then placed in an envelope that contains an affidavit signed by the voter certifying identity and eligibility to vote." N.C. Gen. Stat. § 163-165(6). By contrast, a retrievable ballot is one that a voter "shall cast . . . and then shall deposit [] in the ballot box or voting system in the same manner as if such box or system was in use in a precinct on election day." N.C. Gen. Stat. § 166.45 (as amended by section 27.(c) and recodified by section 1.(b) of 2023 N.C. Sess. Laws 140). According to NCSBE Numbered Memo 2023-04, a same-day registrant who does not have a HAVA document — i.e., one who does not complete an SDR registration — may vote a provisional ballot instead of a retrievable ballot. NCSBE Numbered Memo 2023-04, at 9 (Oct. 12, 2023), https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2023/Numbered%20Memo%202023-04%20Provisional%20Ballots%20and%20Canvass%20Procedures.pdf (last accessed Jan. 2, 2023).

Here, Party Plaintiffs have not demonstrated that they are likely to succeed in showing that this provision applies to SDR voters. In their reply, Party Plaintiffs argue that SDR voters are provisional voters because they "declare they are registered

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000758
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 44 of 94

upon turning in a completed registration form" and "will not immediately appear on the list of eligible voters." (DNC Doc. 58 at 12.) While that may be one technical, if not strained, similarity between provisional voters and SDR voters, North Carolina law otherwise treats these voters differently. See, e.g., N.C. Gen. Stat. § 166.45 (requiring retrievable ballots be placed in ballot box); NCSBE Numbered Memo 2023-04, supra (outlining procedures applicable to provisional ballots to determine eligibility and to count the ballot). Moreover, Party Plaintiffs do not argue that North Carolina is otherwise out of compliance with HAVA. As a consequence, Party Plaintiffs' motion for preliminary injunction pursuant to HAVA will be denied.

E. Fourteenth Amendment Claims

1. Due Process and Anderson-Burdick

All Plaintiffs challenge portions of section 10.(a) of S. 747 (codified as N.C. Gen. Stat. § 163-82.6B) on procedural due process grounds. The parties dispute which test should apply. Plaintiffs argue that the court should apply the test set out in Mathews v. Eldridge, 424 U.S. 319 (1976). (DNC Doc. 7 at 15; VL Doc. 45 at 19.) They argue, alternatively, that even if the court were to apply the test provided by Anderson v. Celebrezze, 460 U.S. 780 (1983) and Burdick v. Takushi, 504 U.S. 428 (1992), commonly called "Anderson-Burdick," they should prevail anyway. (DNC Doc. 58 at 5-6; VL Doc. 59 at 24-29.)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000759

To prevail on a claim for a procedural due process deprivation under Eldridge, a plaintiff must demonstrate: "(1) a cognizable liberty or property interest; (2) the deprivation of that interest by some form of state action; and (3) that the procedures employed were constitutionally inadequate." Accident, Injury & Rehab., PC v. Azar, 943 F.3d 195, 203 (4th Cir. 2019) (internal quotation marks omitted). "To assess the constitutional adequacy of an opportunity to be heard, courts consider (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of that interest given the procedures used, as well as the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest," id., "including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail," Eldridge, 424 U.S. at 335.

State Board Defendants concede that if Eldridge were the proper test, the undeliverable mail provision would be unconstitutional. (DNC Doc. 53 at 10-11; VL Doc. 54 at 9-10.) They, along with Intervenors, contend, however, that the Anderson-Burdick test is the proper framework for analyzing the law. (DNC Doc. 53 at 11; VL Doc. 54 at 10; VL Doc. 52 at 16 n. 12; VL Doc. 51 at 9-10.) Under this test, regulations that impose a severe burden on the right to vote must be "narrowly drawn to advance a state interest of compelling importance." Burdick, 504 U.S. at

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000760

434 (quoting Norman v. Reed, 502 U.S. 279, 289 (1992)). Non-severe burdens, by contrast, are subject to Anderson-Burdick's more flexible balancing standard, under which this court must

> weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights."

Id. (quoting Anderson, 460 U.S. at 789). Within Anderson-Burdick's balancing standard, the "rigorousness of [the court's] inquiry into the propriety of a state election law depends" upon the severity of the burden imposed. Id. Accordingly, Anderson-Burdick balancing operates on a sliding scale: the greater the burden imposed, the more important a state's justification must be. Id.

Voto Latino contends that applying Anderson-Burdick to this case would improperly extend a test fashioned for equal protection claims to procedural due process claims. (VL Doc. 59 at 19.) To be sure, Anderson was an equal protection-based right-to-vote case. 460 U.S. at 783, 786 n.7 (reviewing finding of equal protection violation and relying on cases that apply the "'fundamental rights' strand of equal protection analysis"). Crawford v. Marion County Election Board, 553 U.S. 181 (2008), too, which involved a challenge to Indiana's photo ID requirement, was an equal protection challenge, at least at the district court

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000761
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 47 of 94

level. See Rokita, 458 F. Supp. 2d at 830-31. While the Supreme Court has never formally foreclosed the application of Eldridge in the voting rights context, its cases have not cabined the Anderson-Burdick analysis to equal protection rights under the Fourteenth Amendment. See, e.g., Burdick, 504 U.S. 428 (repeatedly referring to rights under the "First and Fourteenth Amendments"); Crawford, 553 U.S. at 204 (Scalia, J., concurring) ("To evaluate a law respecting the right to vote — whether it governs voter qualifications, candidate selection, or the voting process — we use the approach set out in Burdick v. Takushi[.]" (emphasis added)); see also McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 345 (1995) (not applying Anderson-Burdick where the statute at issue "[did] not control the mechanics of the electoral process"). Indeed, circuit courts have applied Anderson-Burdick to cases across the election litigation spectrum. See, e.g., Fusaro v. Howard, 19 F.4th 357, 364 (4th Cir. 2021) (applying Anderson-Burdick to Free Speech Clause claim where resident sought access to list of registered voters); Weber v. Shelley, 347 F.3d 1101, 1105-07 (9th Cir. 2003) (analyzing a due process challenge to a county's use of touch screen voting systems under the Anderson-Burdick framework); Obama for Am. v. Husted, 697 F.3d 423, 430 (6th Cir. 2012) (concluding that Anderson-Burdick serves as "a single standard for evaluating challenges to voting restrictions"); Acevedo v. Cook Cnty. Officers Electoral Bd., 925

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000762
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 48 of 94

F.3d 944, 948 (7th Cir. 2019) (concluding that Anderson-Burdick applies "to all First and Fourteenth Amendment challenges to state election laws").

The right to vote is fundamental. See, e.g., Burdick, 504 U.S. at 433. "Other rights, even the most basic, are illusory if the right to vote is undermined." Wesberry v. Sanders, 376 U.S. 1, 17 (1964). The Constitution delegates to the states the manner of conducting elections, U.S. Const. art. I, § 4, cl. 1, and the Supreme Court has recognized that "[t]here must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." Storer v. Brown, 415 U.S. 724, 730 (1974). Acknowledging the importance of both sides of this balance, three circuit courts have recently stated that Anderson-Burdick is the proper framework even where a plaintiff in a voting rights case alleges a procedural due process violation under Eldridge. Richardson v. Tex. Sec'y of State, 978 F.3d 220, 233 (5th Cir. 2020) (on motion to stay preliminary injunction); Ariz. Democratic Party v. Hobbs, 18 F.4th 1179, 1195 (9th Cir. 2021) (on review of entry of preliminary injunction); New Ga. Project v. Raffensperger, 976 F.3d 1278, 1282 (11th Cir. 2020) (on motion to stay preliminary injunction). Moreover, the Ninth and Eleventh Circuits have suggested that Anderson-Burdick may "conceptually duplicat[e]" Eldridge to some extent. Raffensperger, 976 F.3d at

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000763
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 49 of 94

1282; Hobbs, 18 F.4th at 1195 ("To the extent that the Eldridge test would strike a different balance, we do not think that the Supreme Court's extensive jurisprudence on challenges to voting restrictions may be discarded merely by raising the same challenge under the banner of procedural due process."); see also Rivera-Powell v. N.Y.C. Bd. of Elections, 470 F.3d 458, 468-69 (2d Cir. 2006) (Sotomayor, J.) (denying Anderson-Burdick claim after finding that state had provided adequate notice and opportunity to be heard under Due Process Clause). But see Richardson, 978 F.3d at 235 (suggesting that Eldridge would "inevitably result in courts' 'weigh[ing] the pros and cons of various balloting systems,' thereby 't[ying] the hands of States seeking to assure that elections are operated equitably and efficiently'" (internal citations omitted)).

The court finds the reasoning of these cases as to the application of Anderson-Burdick persuasive. See also Democratic Nat'l Comm. v. Wisconsin State Legislature, 141 S. Ct. 28 (Mem) (2020) (Gorsuch, J., concurring) (expressing skepticism in judicial intervention in election regulations because "[l]egislatures enjoy far greater resources for research and factfinding . . . than usually can be mustered in litigation between discrete parties before a single judge"); Crawford, 553 U.S. at 210 (Souter, J., dissenting) (endorsing Anderson-Burdick for its consideration of "the legitimacy of interests" in voting

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000764

rights and in election regulation).

To the extent district courts in this circuit have applied Eldridge in the election regulation context, this court is cognizant that some of those district courts did not benefit from the development of the circuit guidance that this court now enjoys, and those decisions were also at a preliminary stage. See Democracy N.C., 476 F. Supp. 3d at 226 (applying Eldridge to preliminarily enjoin absentee voting regulation and refraining from applying Anderson-Burdick); Andino, 497 F. Supp. 3d at 76–77 (applying both Eldridge and Anderson-Burdick on preliminary injunction); Brink, 599 F. Supp. 3d at 361 (applying Anderson-Burdick on preliminary injunction and rejecting application of Eldridge after analyzing Richardson, Raffensperger, and Hobbs).

Voto Latino Plaintiffs rely on three Fourth Circuit cases to support its argument for applying Eldridge, (VL Doc. 59 at 18), but none is on point. Barefoot v. City of Wilmington, 306 F.3d 113 (4th Cir. 2002), involved a land annexation dispute, not an election regulation. Id. at 124 ("Appellants do not have the right to vote on annexation."). The Fourth Circuit's observation that the Due Process Clause "requires fair and adequate procedures" for voting was set out in a footnote and was in reference to voting on annexation, not political elections. Id. at 124 n.5. In any event, the court did not discuss the appropriate test to apply. Id. Voto Latino Plaintiffs' other cases fare no better, as Kirk

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000765
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 51 of 94

v. Comm'r of Soc. Sec. Admin., 987 F.3d 314 (4th Cir. 2021), was an Eldridge case regarding the Social Security Administration's redetermination procedures for benefits, and Halcomb v. Ravenell, 992 F.3d 316 (4th Cir. 2021), was an Eldridge challenge to the procedural protections applicable to a prisoner's security detention hearing. Neither was an election case.

Consequently, the court will apply Anderson-Burdick to Plaintiffs' due process claims.[25]

2. Undeliverable Mail Provision

a. Likelihood of Success on the Merits

First, the court considers Plaintiffs' challenge to the undeliverable mail provision. Voto Latino Plaintiffs contend that a single address verification card is "inherently error-prone and not a reliable indicator of non-residency or ineligibility." (VL Doc. 45 at 20.) In particular, Voto Latino Plaintiffs note that errors beyond the fault of the voter, namely poll worker and U.S. Postal Service error, will result in erroneous disenfranchisement. (Id. at 21-26.) Voto Latino Plaintiffs also note that voters who move after casting a same-day ballot may risk erroneous disenfranchisement because that voter is entitled under § 163-55(a) to vote at a prior residence if relocation occurs within 30

[25] Though Anderson-Burdick is the test applied here, for the reasons stated below, the outcome of Plaintiffs' constitutional claims would not differ under Eldridge.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000766

days of an election, but would not be reachable with a non-forwardable address verification card. (Id. at 25.)

Party Plaintiffs similarly argue that the single-card address verification process creates a substantial risk that an eligible SDR voter's ballot will be erroneously not counted. (DNC Doc. 7 at 17.) In particular, they argue that there is no notice or opportunity to be heard before a same-day registrant's ballot is removed from the count because, by definition, the card is not delivered to the voter. (Id. at 17-18.)

State Board Defendants acknowledge that it is a "close question" but maintain that the provision "passes muster" under Anderson-Burdick. (DNC Doc. 53 at 12; VL Doc. 54 at 11.) They argue that the burdens imposed by the undeliverable mail provision should be considered "holistically in light of other means by which voters may register." (DNC Doc. 53 at 13-14; VL Doc. 54 at 12.) The State's interest in the undeliverable mail provision, they argue, is "in ensuring only eligible ballots are counted in an election." (DNC Doc. 53 at 13.)

Legislative Intervenors argue that S. 747's use of a single card on which to preclude a ballot is justified because the limitation on time between SDR and the canvass precludes effective administration of a two-card system. (DNC Doc. 52 at 13.) Moreover, they argue that S. 747 "(1) preserv[es] the integrity of the election process; and (2) instill[s] confidence in the fairness

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000767
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 53 of 94

of the election." (DNC Doc. 52 at 17.) In this respect, they contend that the law "ensure[s] that registrant[s] live in the precinct within which they seek to vote." (Id. at 18.) They also argue that North Carolina has a "legitimate interest" in ensuring "that the card is returned before the end of the canvass" and that the undeliverable mail provision is designed to bring SDR voters into parity with other voters. (VL Doc. 52 at 14; VL Doc. 61 at 66:13-15.)

Party Intervenors argue that Plaintiffs have not shown a constitutional injury because, in their view, the alleged error of approximately 1 percent is not by design and thus "carries no constitutional significance." (VL Doc. 51 at 12-13.) Party Intervenors contend that the State's "compelling interest" is in "ensuring verification of each applicant's address, which is fundamental to determining a voter's eligibility," (DNC Doc. 51 at 7-8), and in "discouraging and preventing fraud," (VL Doc. 51 at 11).[26]

[26] Plaintiffs have not argued that the undeliverable mail provision burdens voters by erroneously rejecting SDR voters' registrations. Voto Latino Plaintiffs seek an order "enjoining enforcement of the portion of § 163-82.6B(d) (the 'Undeliverable Mail Provision')" which provides that if an SDR voter fails address verification with a single card, "the county board shall not register the applicant and shall retrieve the applicant's ballot and remove that ballot's votes from the official count.'" (VL Doc. 44.) Whether "not register[ing] the applicant" creates an unconstitutional burden has not been briefed and is consequently not considered on these motions.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000768

i. Burden on the Right to Vote

The court must first determine whether Plaintiffs are likely to show that the alleged burdens are severe, minimal, or "in between these two extremes." Obama for Am., 697 F.3d at 429. Election regulations that impose a "severe" burden are subject to strict scrutiny. Pisano v. Strach, 743 F.3d 927, 933 (4th Cir. 2014). Such "severe" burdens are generally "invidiously" discriminatory and may be "irrelevant to the voter's qualifications." Crawford, 553 U.S. at 189 (Stevens, J.) (citing Harper v. Va. Bd. of Elections, 383 U.S. 663, 666-67 (1966)). By contrast, "'evenhanded restrictions that protect the integrity and reliability of the electoral process itself' are not invidious and satisfy the standard set forth in Harper." Id. at 189-90 (quoting Anderson, 460 U.S. at 788 n.9). There is no "litmus test for measuring the severity of a burden that state law imposes on . . . an individual voter, or a discrete class of voters." Id. at 191. The court must consider both the "character and magnitude" of the alleged burden on voting, Burdick, 504 U.S. at 434 (quoting Anderson, 460 U.S. at 789), and then "make the 'hard judgment' that our adversary system demands," Crawford, 553 U.S. at 190 (Stevens, J.). Courts generally evaluate the burden from the perspective of all affected voters, "within the landscape of all opportunities that [the State] provides to vote." Mays v. LaRose, 951 F.3d 775, 784-85 (6th Cir. 2020); see also Crawford, 553 U.S.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000769

at 198-99 (Stevens, J.) (reviewing burden on "most voters" where photo ID law applied to in-person voters); Tully v. Okeson, 977 F.3d 608, 617 (7th Cir. 2020) (reviewing burden on voters who could not vote absentee in light of "Indiana's electoral scheme as a whole").

In Northeast Ohio Coalition for the Homeless v. Husted, 696 F.3d 580 (6th Cir. 2012) (per curiam), voters who went to the correct polling location and were sent — in error — to a different location by a poll worker, and consequently voted a provisional ballot that would go uncounted, suffered "systemic disqualification" without any notice. Id. at 593 (stating that Ohio rejected more than 14,000 ballots in 2008, 11,000 in 2010, and 1,800 in 2011). The district court found, and the Sixth Circuit affirmed, that this burden was "substantial" and held that the defendants had likely violated the Equal Protection and Due Process Clauses. Id. at 593-95, 598. In affirming the district court, the Sixth Circuit expressed reservations that "[t]he State would disqualify thousands of [] provisional ballots, where the voter's only mistake was relying on the poll-worker's precinct guidance." Id. at 599; see also Stewart v. Blackwell, 444 F.3d 843, 872 (6th Cir. 2006), superseded by 473 F.3d 692 (6th Cir. 2007)[27] (applying strict scrutiny where evidence showed voters in

[27] The Sixth Circuit subsequently granted *en banc* review, thus vacating

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000770
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 56 of 94

counties using punch-card system rather than optical scan equipment were four times as likely not to have their votes counted due to factors out of voter's control).

In Democratic Executive Committee of Florida v. Lee, 915 F.3d 1312 (11th Cir. 2019), challengers argued that Florida's signature match regime for vote-by-mail and provisional ballots violated the First and Fourteenth Amendment. The district court preliminarily ordered the State to provide 48 hours for voters to cure their signature mismatch. Id. at 1315. The defendants moved to stay the injunction, but the Eleventh Circuit denied the request. The court agreed with the district court that Florida lacked "uniform standards for matching signatures" and "qualifications or training for those who engage in the job." Id. at 1319. Observing a "crazy quilt of enforcement," the court noted that errors by election officials and "innocent factors like the writer's body position, writing surface, [and] type of pen" could result in disqualification. Id. at 1320. Even after the State instituted a notice-and-cure process in response to a court order, many voters did not learn that their vote would not be counted "until it was too late to do anything about it." Id. at 1321. Focusing on the burden on vote-by-mail and provisional voters specifically, the

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the panel decision, and then vacated the judgment of the district court as moot after the defendants replaced the challenged voting equipment. 473 F.3d at 693-94.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000771
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 57 of 94

court had "no trouble" finding that the burden was "at least [] serious." Id. (citing League of Women Voters of N.C. v. North Carolina, 769 F.3d 224, 244 (4th Cir. 2014)).[28] Critically, before the Eleventh Circuit heard an appeal of the injunction on the merits, the State "significantly amended the signature-match provisions at issue in th[e] case," after which the plaintiffs voluntarily dismissed the lawsuit and appellants agreed the appeal was moot. Democratic Exec. Comm. of Florida v. Nat'l Republican Senatorial Comm., 950 F.3d 790, 793 (11th Cir. 2020) (per curiam). The Eleventh Circuit did not vacate the motions panel opinion because its "preliminary nature" precluded it "from having an effect outside that case." Id. at 795.

In Andino, 497 F. Supp. 3d 59 (D.S.C. 2020), challengers argued that South Carolina's signature matching regime violated voters' procedural due process rights. The court granted the motion for preliminary injunction in part and denied it in part. On the one hand, voters who failed to sign the ballot altogether had no right to notice and cure. Id. at 71 ("[T]he error of a missing signature is the fault of the voter, not the government." (citing Hobbs, 976 F.3d at 1086)). The court observed that there was little risk of error where a signature was missing because a

[28] There was an extensive dissent, but its criticisms of the panel opinion relate to the distinguishable factual record in that case and do not suggest a different result under the facts of the present case.

AMERICAN OVERSIGHT

blank line can be "observed objectively." Id. On the other hand, the court found that the burden was "significant" for voters who were disqualified by signature matching — i.e., where election officials compared a provided signature against one on file. Id. at 76. In that court's estimation, the burden was significant because voters would be disqualified, without notice, on the basis of a "subjective judgment that the voter's signature does not match some sample relied upon by county election officials." Id.

State Board Defendants and Intervenors cite one case that could support the proposition that fault-free errors that lead to disenfranchisement without notice and opportunity to be heard create a mere minimal burden.[29] In Richardson, 978 F.3d 220 (5th Cir. 2020), challengers won a preliminary injunction in the district court that required Texas to provide notice and an

[29] Party Intervenors also cite Hutchinson v. Miller, 797 F.2d 1279 (4th Cir. 1986), and several out-of-circuit cases cited in Hutchinson, for the proposition that "courts have 'uniformly declined' to find constitutional violations 'with respect to garden variety election irregularities.'" (VL Doc. 51 at 13 (quoting Hutchinson, 797 F.2d at 1283).) In Hutchinson, three unsuccessful candidates for public office sued under 42 U.S.C. § 1983 and the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1964, for approximately $9 million in damages based on alleged election irregularities. Party Intervenors' quotation omits a critical phrase, wherein the Fourth Circuit observed that courts have "uniformly declined to endorse action under § 1983 with respect to garden variety election irregularities." Id. at 1283 (emphasis added). The court thus held that "federal courts do not sit to award post-election damages to defeated candidates," but observed that courts retain a role in providing equitable relief post-election in "rare and extraordinary circumstances," id. at 1287, and in "striking down state laws or rules of general application which improperly restrict or constrict the franchise or otherwise burden the exercise of political rights," id. at 1283 (citing Anderson, 460 U.S. 780 (1983)) (internal quotation marks omitted).

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000773

opportunity to be heard before a voter's absentee ballot could be rejected by an election official on the basis of a mismatched signature. The district court found that Texas's signature matching scheme imposed a severe burden on the right to vote because, in part, voters were notified that their absentee ballot was rejected only after the election and thus had no opportunity to contest the decision. Id. at 235-36. In an opinion staying the injunction pending appeal, the court found the burden imposed on voters to be only "minimal." Id. at 238. However, the court stayed the injunction on the alternative ground that the defendant was likely to prevail on her defense of sovereign immunity. Id. at 241. Concurring in the stay, Judge Patrick E. Higginbotham wrote that "this motions panel granting a stay settles no law" and "has no precedential force and is not binding on the merits panel, leaving it as a writing in water — made the more empty by pretermitting the jurisdictional requisites of sovereignty and the reach of Ex parte Young." Id. at 244 (Higginbotham, J., concurring in the stay). Indeed, the merits panel later vacated the preliminary injunction solely on the ground that the district court erred in finding that the defendant was the "proper defendant under Ex parte Young" — not because of the district court's Anderson-Burdick analysis. Richardson v. Flores, 28 F.4th 649, 655 (5th Cir. 2022); see also Andino, 497 F. Supp. 3d at 77 (rejecting Richardson at the preliminary injunction stage as an "outlier"

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000774
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 60 of 94

case reflecting an "extremely constricted view of liberty that does not include voting rights").

Though these cases are not binding on this court, one throughline of them is that election regulations that disenfranchise voters based on errors by governmental officials implementing them and over which the voter has no control, and which provide for no notice or opportunity to be heard to correct the error, may warrant closer inquiry under Anderson-Burdick. Put another way, "the precise interests put forward by the State as justifications for the burden imposed by its rule," Burdick, 504 U.S. at 434, must address why discarding an eligible voter's ballot due solely to government employee error and without an opportunity to correct it should be sustained.

Here, Plaintiffs are likely to show that the undeliverable mail provision of S. 747 imposes a substantial burden on SDR voters because it lacks notice and opportunity to be heard before removing the votes of a cast ballot from the count.

Voto Latino Plaintiffs provide several examples of 2022 SDR voters whose address verification cards were returned as undeliverable due to governmental errors wholly out of the control of the voter. For example, Plaintiff Mead's November 2022 address verification card was returned as undeliverable after a county board of elections official allegedly wrote "SAME" for her mailing address instead of writing out the actual address (which happened

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000775
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 61 of 94

to be the same as her residential address). (VL Doc. 44-5 ¶ 7.)


Director Of Elections
WATAUGA COUNTY BOARD OF ELECTIONS
PO BOX 528
BOONE NC 28607
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SOPHIE JAE MEAD
SAME
BOONE NC 28607

(Id. at 8.) After the address verification card was returned, another voter challenged Mead's registration under section 163-89 based only on the returned card. (Id. ¶ 7.) Ultimately, Mead's ballot was counted after Defendant Bell wrote a letter to the Watauga County Board of Elections ordering them to halt the challenges. (VL Doc. 44-4 at 9-10.) Voto Latino Plaintiffs contend, with some merit, that had the current system been in place, Mead's vote likely would not have counted. (VL Doc. 45 at 22.)

Voto Latino Plaintiffs also point to other poll worker errors that resulted in address verification cards returned as undeliverable in 2022, including another voter whose address was

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000776

listed as "SAME," voters for whom the county board of elections appears to have written incorrect street numbers (e.g., "199 Wood Circle Dr.," rather than "190 Wood Circle Dr."), cards sent to an old address rather than an address updated at same-day registration, cards with missing apartment numbers, and cards sent to residential addresses rather than to different mailing addresses that were provided. (Id. at 22-23 (citing VL Doc. 44-4 ¶¶ 11-20).)

Voto Latino Plaintiffs also provided a declaration by a postman with forty years of experience that enumerates several reasons why mail may be returned as undeliverable, including faulty barcodes, illegible address information, lack of or damage to a mailbox or receptacle, sorting error, assignment to the wrong carrier for delivery, and temporary absence of the residence, none of which is pertinent to a voter's qualification to vote in the precinct. (VL Doc. 44-7 (Decl. Timothy Green).) Plaintiffs also cite a U.S. Postal Service Office of the Inspector General report from May 2015 that found that 4.3 percent of all mail was undeliverable as addressed, 23 percent of which was due to Postal Service error. (DNC Doc. 7 at 12 (citing Office of Inspector General, U.S. Postal Service, Strategies for Reducing Undeliverable as Addressed Mail, at 5 (May 1, 2015), at https://www.uspsoig.gov/sites/default/files/reports/2023-01/ms-ma-15-006.pdf (last accessed Jan. 3, 2024)); VL Doc. 45 at 24

AMERICAN OVERSIGHT

(same).) While these figures are nearly a decade old and possibly overstate the case in this context to some extent, they nevertheless are consistent with the limited record provided so far.

In the last four even-year elections, 1,799 out of 100,578; 696 out of 45,666; 2,151 out of 116,326; and 391 out of 34,289 same-day registrants have failed address verification. NCSBE, Presentation to House Oversight and Reform Committee, supra, at 6. These numbers are based on the State's prior two-card system, however, and the court can reasonably infer that there would not be any fewer failures if State Board Defendants send only one mail card, as required by section 163-82.6B(d). State Board Defendants and Intervenors, meanwhile, have provided no evidence at this stage that any of the several thousand same-day registrants who have failed address verification since its inception in 2008 was ineligible to vote on the ground of improper residency. In fact, State Board Defendants represented at oral argument that they have "no way to know" if any voter who fails address verification does so because of ineligibility or because of error. (VL Doc. 61 at 60:21.)

Plaintiffs are also likely to show that section 163-82.6B(d) deprives same-day registrants of notice and opportunity to be heard before their ballots are rejected through no fault of their own. State Board Defendants and Party Intervenors agree. (VL Doc. 54

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000778
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 64 of 94

at 9-10 ("The State Board Defendants concede that the notice mailing process set forth under the new same-day registration regime does not provide for either of these protections [i.e., notice and opportunity to be heard]."); VL Doc. 51 at 19-20 (Party Intervenors: "To demand notice and a hearing based on postal error in these circumstances would be to expect too much from state officials[.]").) Legislative Intervenors, on the other hand, acknowledged in their brief that the undeliverable mail provision itself does not provide SDR voters with notice. (VL Doc. 52 at 18 ("Plaintiffs make much ado about the fact that voters who fail address verification do not receive notice[.]" (emphasis added).) At oral argument, counsel for Legislative Intervenors suggested, albeit without any legislative history in support, that "everybody assumed that the State Board would treat [the ballots of SDR voters who fail address verification] like the way they had treated one-stop absentee ballots and that 163-89 would continue to apply." (Id. at 108:21-25.)

Section 163-89 outlines a challenge procedure for absentee ballots that includes the right of the challenged voter to be heard. See N.C. Gen. Stat. § 163-89(e). In light of S. 747's reclassification of SDR ballots as "retrievable," rather than "retrievable absentee,"[30] State Board Defendants and Party

[30] Section 163-82.6B(c) states that a same-day registrant votes a

AMERICAN OVERSIGHT

Plaintiffs disagree with Legislative Intervenors that section 163-89 applies to SDR voters. (VL Doc. 61 at 110:12-15; id. at 111:14-19; see also VL Doc. 55-5 at 6 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) (showing State Board's current understanding, and intent to enforce S. 747 accordingly, that if an SDR voter fails address verification, "[t]he county board shall not issue a challenge").)

Even if section 163-89 applied to SDR voters, however, neither it nor section 163-82.7 appears to require that notice be given to voters before the challenge hearing. N.C. Gen. Stat. § 163-82.7(g)(2) (authorizing challenges for absentee ballots under section 163-89, but not requiring notice); id. § 163-89 (outlining challenge procedure process for absentee ballots, but not requiring notice).

In summary, the express terms of section 163-82.6B(d) do not provide for notice and an opportunity to be heard; instead, they direct the retrieval and removal of a ballot upon failure of address verification. By all accounts, all parties agree — correctly it appears — that section 163-82.6B(d) at a minimum does

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"retrievable ballot as provided in G.S. 163-166.45," while prior law considered SDR ballots to be "retrievable absentee ballot[s]," N.C. Gen. Stat. § 163-82.6A(c) (2012). There are at least eight instances where S. 747 replaces the phrase "one-stop absentee voting" with "early voting." Moreover, section 163-166.45 — which is cross-referenced in section 163-82.6B — now governs "Retrievable ballots," instead of its prior heading of "Alternate procedures for requesting application for absentee ballot; 'one stop' voting procedure in board office." See N.C. Gen. Stat. § 163-166.45 (previously codified as N.C. Gen. Stat. § 163-227.5) (emphasis added).

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000780

not provide for notice before a ballot of an SDR voter who fails address verification is removed from the count. Moreover, State Board Defendants, i.e., those responsible for the enforcement of the undeliverable mail provision, have represented that they do not intend to offer any notice or opportunity to be heard via 163-89 or any other provision, absent a court order or statutory change. (VL Doc. 61 at 49:5-11 (State Board Defendants stating, "given the way [S. 747] is written and the limitations of it, [] we would need a court order or some sort of legislative change" in order to provide notice and an opportunity to be heard); VL Doc. 55-5 at 6 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) (stating that if an SDR voter fails address verification, the county board must remove the ballot and "not issue a challenge").) Consequently, Plaintiffs have established a likelihood of success in showing that the undeliverable mail provision does not provide for notice and an opportunity to be heard.

Finally, State Board Defendants argue that the burden imposed by the undeliverable mail provision is nevertheless "reasonable" when viewed "holistically in light of the others means by which voters may register." (DNC Doc. 53 at 13-14 (emphasis added).) It is true that voters in North Carolina have various other ways to register before the early voting period and to cast a ballot. Compared to non-SDR voters, SDR voters are subject to additional burdens at registration (e.g., a HAVA-compliant document). But

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000781

the State, having offered SDR, must offer a process that is not unconstitutional. The undeliverable mail provision burdens SDR voters by directing the removal of a cast ballot without any notice or possibility of cure, not merely by cancelling registration, and the burden demonstrated here would likely be imposed by governmental error unknown to the voter. See Husted, 696 F.3d at 595 (requiring notice and opportunity to be heard where the law required voters to have "omniscience" of poll worker error and "have a greater knowledge of their precinct, precinct ballot, and polling place than poll workers").[31]

Based on recent elections, approximately 100,000 North Carolinians are projected to utilize same-day registration in 2024, starting with the primary. NCSBE, Presentation to House Oversight and Reform Committee, supra, at 6 (showing over 100,000 SDR voters in both 2016 and 2020).[32] Each of these voters' addresses will be tested by S. 747's address verification procedure, and Plaintiffs are likely to show that some number of

[31] Party Intervenors liken an SDR voter's retrieved ballot due to failed address verification to a vote-by-mail ballot that gets lost in the mail, which they contend Plaintiffs view as unproblematic. (VL Doc. 51 at 14.) While the court has no record upon which to compare vote-by-mail to address verification, it is distinguishable at least because North Carolina provides a tracking system for mail ballots. See NCSBE, Ballot Tracking Available Again for Absentee-By-Mail Voters, supra.

[32] Neither State Board Defendants nor Intervenors argue that the presumably reduced number of voters anticipated for the upcoming primary election is a ground to not enter preliminary relief at this time.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000782
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 68 of 94

first cards will be returned before the canvass deadline as undeliverable due to governmental error, rather than factors related to voter eligibility. By failing to provide voters with notice and opportunity to be heard, section 163-82.6B(d) creates an unacceptable risk that eligible voters' ballots will be erroneously removed and not counted. As shown by Husted, Lee, and Andino, as well as the record evidence before this court, Plaintiffs are therefore likely to succeed in showing that the undeliverable mail provision — because it fails to provide for notice and opportunity to be heard — will impose a substantial burden on SDR voters.[33]

ii. Balancing the State's Interests

The court turns next to the justifications for the law put forth by State Board Defendants and Intervenors.

States may prescribe "[t]he Times, Places and Manner of holding Elections for Senators and Representatives." U.S. Const. art. I, § 4, cl. 1. The Supreme Court has therefore "recognized that States retain the power to regulate their own elections." Burdick, 504 U.S. at 433 (citing Sugarman v. Dougall, 413 U.S.

[33] Voto Latino Plaintiffs also point out that an SDR voter could vote and then move elsewhere in North Carolina under section 163-55(a), which permits a voter to vote at a prior residence within 30 days of relocation. (VL Doc. 45 at 25.) They contend that these voters could have their vote removed without any error occurring if they provide the Postal Service a forwarding address. (Id.) The court has no record of the magnitude of this issue and, given the court's ruling, need not consider it further at this stage.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000783
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 69 of 94

634, 647 (1973); Tashjian v. Republican Party of Conn., 479 U.S. 208, 217 (1986)). "The Constitution provides that state legislatures — not federal judges, not state judges, not state governors, not other state officials — bear primary responsibility for setting election rules." Democratic Nat'l Comm., 141 S. Ct. 28 (Mem.) (Gorsuch, J., concurring). Indeed, to require a state to "halt the ongoing implementation of one of its duly-enacted statutes — a statute that, for now at least, has not been rendered invalid" is "a form of irreparable injury" the court must consider. League of Women Voters of N.C., 769 F.3d at 249 (Motz, J., dissenting) (quoting Maryland v. King, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)).

Under Anderson-Burdick, the court must identify "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiffs' rights." Burdick, 504 U.S. at 434 (internal quotation marks omitted). The "rigorousness" of the inquiry into the State's interests will be informed by the substantial burden imposed by the undeliverable mail provision. Id. (requiring courts to employ a sliding scale approach whereby the greater the burden imposed, the more important the state's justification must be).

State Board Defendants and Intervenors principally assert that the undeliverable mail provision is justified by the need to

AMERICAN OVERSIGHT

preserve the integrity of the election process by ensuring that only eligible ballots are counted and that a registrant lives in the precinct within which he seeks to vote. (DNC Doc. 53 at 13 (State Board Defendants, "ensuring only eligible ballots are counted in an election"); DNC Doc. 52 at 17-18 (Legislative Intervenors, "preserving the integrity of the election process" and "ensure that a registrant lives in the precinct within which they seek to vote"); DNC Doc. 51 at 7-8 (Party Intervenors, "ensuring verification of each applicant's address, which is fundamental to determining a voter's eligibility"); VL Doc. 51 at 11 (Party Intervenors, "discouraging and preventing fraud").) They also assert the need to "level the playing field" between SDR and non-SDR voters, to ensure address verification cards return before the canvass, and to instill confidence in elections. (DNC Doc. 66:13-15; DNC Doc. 53 at 16; VL Doc. 52 at 19.)

North Carolina unquestionably has a legitimate and strong interest in ensuring the integrity of its elections, ensuring that only legitimate ballots are counted, and in preventing voter fraud. Purcell v. Gonzalez, 549 U.S. 1, 4 (2006). As to these interests, State Board Defendants and Intervenors need not present "elaborate, empirical verification of the weightiness of the State's asserted justifications." Timmons v. Twin Cities Area New Party, 520 U.S. 351, 364 (1997). Instead, the State may "respond to potential deficiencies in the electoral process with foresight

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000785

rather than reactively, provided that the response is reasonable and does not significantly impinge on constitutionally protected rights." Munro v. Socialist Workers Party, 479 U.S. 189, 195-96 (1986). Indeed, the Crawford court found that deterrence of voter fraud was a "neutral and nondiscriminatory reason" to require photo ID, even though the record contained no evidence of actual in-person fraud. Crawford, 553 U.S. at 195-97 (Stevens, J.) (citing Building Confidence in U.S. Elections § 2.5 (Sept. 2005), a report of the Commission on Federal Election Reform, chaired by former President Jimmy Carter and Secretary of State James A. Baker, III); see also id. at 209 (Scalia, J., concurring) ("The universally applicable requirements of Indiana's voter-identification law are eminently reasonable."); cf. Brnovich v. Democratic Nat'l Comm., 141 S. Ct. 2321, 2346, 2348 (2021) (on a Voting Rights Act challenge to a law that imposed a "usual burden[] of voting," "a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders").

Here, State Board Defendants contend that address verification ensures election integrity by acting as a "fail-safe" to test a voter's residency. (VL Doc. 61 at 45:16; see also id. at 88:25 (Party Intervenors likening address verification to "two-factor authentication").) The court accepts this; address verification may serve to disincentivize a registrant from providing a false address, to identify a registrant who erroneously

AMERICAN OVERSIGHT

provides an improper address, and especially in the case of traditional registration before SDR, which can occur online or by mail and does not require a HAVA document, to deny the registration of someone who might claim to register as someone else. Indeed, that an SDR voter must present a current HAVA document that shows his residence address, along with a photo ID, and attest in-person under penalty of perjury that he is an eligible voter, may explain the 98-to-99 percent rate of confirmation of SDR registrants under the State's prior two-card system. NCSBE, Presentation to House Oversight and Reform Committee, supra, at 6. While these State interests justify the use of address verification generally, the question, however, is whether the undeliverable mail provision for SDR voters meets its justifications as a "fail-safe" as to residency sufficient to exclude a ballot without notice and opportunity to be heard where failure is based on reasons entirely outside the control of the voter.

By Legislative Intervenors' own concession, address verification is not a precise instrument for enforcing the interests they assert.[34] (DNC Doc. 62 at 63:13-24).) That is,

[34] To the extent Plaintiffs more broadly criticize the State's address verification process, the court declines to consider that question. Address verification predated the adoption of SDR in North Carolina, 1994 N.C. Sess. Laws, ch. 762, § 2, and appears to be used by other states as a legitimate component of the voter registration process. See, e.g., Common Cause of Colo. v. Buescher, 750 F. Supp. 2d 1259 (D. Colo. 2010). Legislative Intervenors argue that the State has no other effective means to verify addresses short of sending personnel to make

AMERICAN OVERSIGHT

in part, because the statute provides that the card need not be sent to the registrant's residential address. Rather, it must be sent to the mailing address the same-day registrant provides on his application, even if that address is outside the county of registration, (id. at 59:8-13), if the registrant does not receive mail at the residential address. N.C. Gen. Stat. § 163-57(1)(c) ("Residence shall be broadly construed to provide all persons with the opportunity to register and to vote, including stating a mailing address different from residence address."). The parties have presented no record as to how often same-day registrants' mailing addresses differ from their residential addresses — whether for students on campuses, individuals utilizing post office boxes, etc. (DNC Doc. 62 at 45:11-14 (State Board Defendants stating that they do not have "statistics to back it up," but upon belief, "most people's residential address will be their mailing address").) Address verification appears to work as intended for the vast majority of voters who receive mail at their residential address. But State Board Defendants and Intervenors have presented no evidence that address verification has ever filtered out a single ineligible same-day registrant. In fact, State Board Defendants concede that they have "no way" of knowing if an unreturned card truly demonstrates ineligibility because

home visits (DNC Doc. 62 at 63:13-21), and it is the province of the General Assembly to choose the process for verification.

AMERICAN OVERSIGHT

they only know the card was returned as undeliverable, not why. (VL Doc. 61 at 60:20-21.)

Only Party Intervenors directly contend that the provision serves to deter SDR voter fraud. (VL Doc. 51 at 15-18.) Voto Latino Plaintiffs offer an expert, Dr. Martha Kropf, a political science professor, who concluded that the undeliverable mail provision for SDR registrants "has no discernible benefit in terms of preventing voter fraud." (Doc. 49-1 at 6.)[35] While Legislative Intervenors dispute her definition of fraud as "prohibitively narrow," (VL Doc. 52 at 9), their own expert, Dr. Andrew Taylor, also a political science professor, conceded that he had "no reason to question the methods or results" of Dr. Kropf. (VL Doc. 52-1 at 13; VL Doc. 59-2 at 67:7-11 (confirming Dr. Taylor's conclusion at deposition).)

The State's proffered justifications, in light of the lack of notice and opportunity to be heard for SDR voters, are inconsistent with its interest in counting eligible ballots to the extent ballots are rejected for errors unrelated to the voter's actual eligibility. See Lee, 915 F.3d at 1322. Such SDR voters' ballots would be removed, not because voters do not live where they claimed, but rather because a postal worker or county board of

[35] As Party Plaintiffs argued, someone who "falsely swears out an application [and] forges a HAVA document" may likely be clever enough to provide a mailing address where he can receive mail. (DNC Doc. 62 at 94:9-11.)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000789

elections worker made an error that resulted in the return of a non-forwardable mail card. In fact, providing a chance to correct that error would appear to be consistent with section 163-57's call for "[r]esidence [to] be broadly construed to provide all persons with the opportunity to register and vote[.]" N.C. Gen. Stat. § 163-57(1)(c). Moreover, the State's interest in counting only eligible ballots is also mitigated to some extent by the fact that State Board Defendants concede they will continue to count the SDR ballots of voters whose single card returns as undeliverable after the canvass. (VL Doc. 61 at 54:1-6.)

Legislative Intervenors rely on the opinions of Dr. Taylor to support their view that the undeliverable mail provision ensures election integrity and instills confidence in the fairness of elections. (See VL Doc. 52 at 13, 17.) Dr. Taylor opines that the undeliverable mail provision will help ensure that the single card returns as undeliverable before the canvass. (VL Doc. 52-1 at 12.) While he opines that this "may increase North Carolinians' confidence" in elections, (id. at 17 (emphasis added)), he does not opine on whether the undeliverable card is probative of a voter's residence, and thus a voter's eligibility to vote. Instead, he states, "If the 23% of undelivered mail that is the result of USPS error represents an intolerable risk for SDR voters under S 747, it seems to me it should have represented an intolerable risk under the rules prior to S 747." (Id. at 11.)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000790

Moreover, Dr. Taylor states that voter fraud can go undetected, that address verification is important, and that voters have reduced confidence in elections. (Id. at 13-15.) On this record, there is no reason to doubt these principles. But Dr. Taylor does not discuss how enforcing the undeliverable mail provision without notice and hearing addresses them. Additionally, Dr. Taylor opines that a voter who "cannot tolerate the possibility of their registration being canceled" can "register and later vote in-person or absentee as do around 97 percent of others" in North Carolina. (Id. at 16.) Whatever merit this argument might have if SDR voters' registrations alone were at issue, the State, having offered the option of voting during SDR, cannot discard their ballots due to governmental error and without notice and an opportunity to be heard simply on the ground that the voters should have known not to take such a risk. Cf. Common Cause of Colo. v. Buescher, 750 F. Supp. 2d 1259, 1264 (D. Colo. 2010) (noting that Colorado law allows voters who are informed on election day they failed mail verification to cure by voting a provisional ballot with an ID).

Legislative Intervenors also assert that the undeliverable mail provision was intended to "level the playing field" between SDR and non-SDR voters because SDR voters prior to S. 747 had a "whole panoply of protections" that "regular registrants" did not. (DNC Doc. 66:13-15.) But the statutory scheme does not bear this

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000791

out. Chapter 163 appears to provide more favorable treatment to many non-SDR voters vis-à-vis SDR voters, particularly non-SDR voters who register just before the 25-day cut off for traditional registration. First, unlike an SDR voter under S. 747, the statute directs county boards to treat "as a registered voter" any non-SDR voter who fails address verification after voting — e.g., someone who registers before the 25-day cutoff, votes early or on election day, and then fails address verification. N.C. Gen. Stat. § 163-82.7(g)(3); cf. id. § 163-82.6B(d) (stating that a county board "shall not register" an SDR voter who fails address verification). Second, a non-SDR voter may still vote in person, with some procedures for verifying address, if his registration was so close to the 25-day cutoff for traditional registration that his first address verification card is sent within 25 days of the election and returns as undeliverable — e.g., he votes after the first card is returned as undeliverable but before return of a second card. Id. § 163-82.7(g)(2); cf. id. § 163-82.6B(d) (directing county board to remove SDR ballot from the official count upon failure of SDR voter's address verification based on a single card received by the day before the canvass). Third, non-SDR voters cannot be denied the right to vote in person unless two cards are returned as undeliverable, and the statute only states that a challenge is "not preclude[d]" if that occurs after a non-SDR voter votes. Id. § 163-82.7(g)(1); cf. id. § 163-82.6B(d)

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000792
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 78 of 94

(directing removal of ballot based on only one card for SDR voters). And fourth, a voter who casts an absentee ballot and whose address verification card is returned as undeliverable "after [the] person has already voted by absentee ballot" may have his ballot challenged, will be given notice of the challenge, and has a right to "appear before the board at the hearing on the challenge and present evidence as to the validity of the ballot." Id. § 163-82.7(g)(2); § 163-89(e); NCSBE Numbered Memo 2022-05 (Dec. 15, 2023 update), supra, at 3, 11 (requiring county board to provide notice and providing sample notice letter). Thus, while the court acknowledges the State's legitimate interest in verifying addresses for all registrants, S. 747 does not appear to level the playing field between SDR and non-SDR voters. Rather, as to address verification, it appears to tilt it against SDR voters by requiring that the ballot be removed from the count without notice and opportunity to be heard.

In addition, State Board Defendants assert an interest in ensuring that the address verification card returns before the canvass. As the Fourth Circuit has acknowledged, "these concerns are real." McCrory, 831 F.3d at 237. Indeed, when the repeal of SDR was previously challenged before this court, the plaintiffs in that case "d[id] not seriously dispute" the issues SDR caused for the implementation of the State's address verification system, including in cases where the second address verification card was

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000793

returned after the canvass and the SDR voter's ballot was nevertheless counted. N.C. State Conf. of the NAACP v. McCrory, 182 F. Supp. 3d 320, 447 (M.D.N.C. 2016).[36] However, while State Board Defendants and Intervenors here are likely to show that a card mailed to an SDR voter would be more likely to return before the canvass, they have not shown why the substantial burden of exclusion without notice and an opportunity to be heard is justified when the failure — at least on the present record — is likely caused in significant respect by the government's own errors.

To the extent State Board Defendants and Intervenors argue that providing notice and an opportunity to be heard would impose an administrative burden, this argument is not adequately supported on this record. County boards of elections plainly have an interest in "protecting the integrity, fairness, and efficiency of their ballots and election processes as means for electing public officials." Timmons, 520 U.S. at 364. But the administrative burden of providing notice and an opportunity to be heard is limited in this context for at least three reasons.

First, prior to January 1, 2024, Chapter 163 already provided for a challenge procedure for SDR ballots. Until this year, SDR

[36] In precluding the elimination of SDR, the Fourth Circuit based its decision on a finding of discriminatory racial intent, not because the State was without power to eliminate SDR. McCrory, 831 F.3d at 233.

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000794

ballots were treated as absentee ballots, and the statutory scheme provided a hearing for a challenge to the ballots of voters who failed address verification to be held by the county board of elections on the day set for the canvass. See N.C. Gen. Stat. §§ 163-82.6A (2012), 163-82.7(g)(2), 163-89.

Second, while S. 747 has reclassified SDR ballots as "retrievable," rather than "retrievable absentee," section 163-89 continues to apply to absentee ballots. See id. § 163-89 (as amended by 2023 N.C. Sess. Laws 140, § 15). Neither State Board Defendants nor Intervenors has provided any evidence that this challenge procedure generates any administrative burden. Given the number of projected address verification failures across North Carolina's 100 counties, State Board Defendants and Intervenors have not demonstrated that providing due process for those SDR voters who fail address verification would tally to an additional burdensome level for any county board of elections.

Third, State Board Defendants concede that they "stand ready to incorporate whatever additional procedural protections this Court deems necessary for such voters." (DNC Doc. 53 at 11; VL Doc. 54 at 10.) In fact, State Board Defendants appear to have already taken steps that begin to address Plaintiffs' concerns, including encouraging county boards to collect contact information from SDR voters. (VL Doc. 55-5 at 7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) (recommending that county boards contact voters

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000795
Case 1:23-cv-00861-TDS-JEP Document 68 Filed 01/21/24 Page 81 of 94

before sending verification card if staff have "questions regarding the address"); VL Doc. 55-6 (demonstrating blanket notice county boards will display at early voting sites); see also VL Doc. 61 at 76:16-19 (expressing General Assembly's view that section 163-89 would provide an "appropriate mechanism" to administer notice and opportunity to be heard, if needed).) Accordingly, providing notice would not impose some new duty to affirmatively investigate voters' contact information; voters currently have the option to provide contact information on their voter registration application, and county boards are already being directed to recommend applicants do so. See North Carolina Voter Registration Application, Form 06W, supra (Question 10); (VL Doc. 55-5 at 7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) ("[T]he election official assisting a same-day registrant must recommend that the voter provide their phone number and/or email address on the registration form.").)

In sum, Defendants and Intervenors are likely to show that they have strong and legitimate interests in protecting election integrity by ensuring that eligible voters vote in the proper precinct and that address verification supports that interest. However, after considering the extent to which those interests make it necessary to substantially burden same-day registrants' right to have a ballot counted once it is cast, the court finds Plaintiffs are likely to succeed on the merits of their

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000796

constitutional claim against the undeliverable mail provision because it does not provide notice and an opportunity to be heard.

b. Irreparable Injury

An infringement or abridgment of a constitutional right is an irreparable harm where monetary damages are inadequate or difficult to ascertain. Democracy N.C., 476 F. Supp. 3d at 236. "Courts routinely deem restrictions on fundamental voting rights irreparable injury." League of Women Voters of N.C., 769 F.3d at 247; see also Obama for Am., 697 F.3d at 436 ("A restriction on the fundamental right to vote . . . constitutes irreparable injury."); Williams v. Salerno, 792 F.2d 323, 326 (2d Cir. 1986) (holding that plaintiffs "would certainly suffer irreparable harm if their right to vote were impinged upon").

Here, the threatened injury of discounting an eligible SDR voter's ballot without notice and opportunity to be heard would constitute irreparable injury. Any court's intervention in the State's constitutional prerogative to set the manner of conducting elections, however, can constitute an irreparable injury to the State, especially in consideration of the preliminary nature of the motions before this court. Abbott v. Perez, 138 S. Ct. 2305, 2324 (2018) (emphasizing on motion to stay injunction that "[u]nless [a] statute is unconstitutional," enjoining a statute enacted by the legislature "would seriously and irreparably harm the State"). Legislative Intervenors argue that counting

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000797

"unverified applications where the mail verification fails" would create a "fraudulent result." (VL Doc. 52 at 21.) Accepting the legitimacy of the prophylactic purposes of address verification, however, giving notice and opportunity to be heard to SDR voters who fail address verification would not increase any potential for such an outcome; indeed, quite the opposite.

c. Balance of the Equities and Public Interest

The balance of the equities and the public interest "merge when the Government is the opposing party." Miranda v. Garland, 34 F.4th 338, 365 (4th Cir. 2022) (quoting Nken v. Holder, 556 U.S. 418, 435 (2009)).[37] "By definition, '[t]he public interest . . . favors permitting as many qualified voters to vote as possible.'" Democracy N.C., 476 F. Supp. 3d at 237 (quoting League of Women Voters of N.C., 769 F.3d at 247–48).

As discussed above under consideration of the State's interest, the State's potential harm is outweighed by the equities in Plaintiffs' favor at this stage. In balancing the equities, the court notes that Chapter 163 authorizes challenge procedures already, and that State Board Defendants and Intervenors have not forecast any evidence of its administrative burden. See N.C. Gen. Stat. §§ 163-82.6A (2012), 163-82.7(g)(2), 163-89. Moreover,

[37] Though Party Intervenors are non-governmental, they, too, combine the balance of the equities and the public interest in their analysis. (DNC Doc. 51 at 18–19; VL Doc. 51 at 22–23 (arguing harm to the State militates against injunction).)

AMERICAN OVERSIGHT

State Board Defendants concede that they "stand ready to incorporate whatever additional procedural protections this Court deems necessary for such voters" and have begun to do so already. (DNC Doc. 53 at 11; VL Doc. 54 at 10; VL Doc. 55-5 at 7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)) (recommending that county boards contact voters before sending mail card if staff have "questions regarding the address"); VL Doc. 55-6 (demonstrating blanket notice county boards will display at early voting sites); see also VL Doc. 61 at 76:16-19 (expressing General Assembly's view that section 163-89 would provide an "appropriate mechanism" to administer notice and opportunity to be heard, if needed).) The court thus finds that the balance of the equities and the public interest tip in Plaintiffs' favor.

* * *

In sum, the Winter factors weigh in favor of Plaintiffs as to the undeliverable mail provision. "Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents." Trump v. Int'l Refugee Assistance Project, 582 U.S. 571, 579-80 (2017). "The purpose of such interim equitable relief is not to conclusively determine the rights of the parties, but to balance the equities as the litigation moves forward." Id. at 580 (internal citation omitted). "In the course of doing so, a court need not grant the total relief

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000799

sought by the applicant but may mold its decree to meet the exigencies of the particular case." Id. (internal quotation marks omitted). Generally, a preliminary injunction is "intended to protect the status quo," Di Biase v. SPX Corp., 872 F.3d 224, 230 (4th Cir. 2017), which may "require a party who has recently disturbed the status quo to reverse its actions." League of Women Voters of N.C., 769 F.3d at 236 (internal quotation marks and citation omitted); see also Lee, 915 F.3d at 1328 (noting district court's "Goldilocks solution" of preliminarily requiring notice and opportunity to cure rather than striking down entirety of signature matching scheme).

A court considering an injunction close to an election should consider the risk of "voter confusion." Purcell, 549 U.S. at 4-5; Wise v. Circosta, 978 F.3d 93, 99 n.6 (4th Cir. 2020) (focusing Purcell inquiry on the extent to which "[v]oter behavior" would be "impacted by [the court's] decision"). Neither Defendants nor Legislative Intervenors have argued that proximity to the primary election counsels against an injunction. Party Intervenors claim that "[e]lection officials, candidates, campaigns, and voters will struggle to understand how [an] injunction interplays with S.B. 747, and with the broader election code, to the result of inconsistent rules across the state, [] and the potential denial of voting opportunities." (DNC Doc. 51 at 19 (internal citation omitted).) The court does not discern any risk that voters will

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000800

be confused, especially because S. 747 seeks to alter prior law, and State Board Defendants have assured the court that they "stand ready" to implement changes as required by this court. (DNC Doc. 53 at 11; VL Doc. 54 at 10.) At a status conference to set out a briefing schedule, moreover, State Board Defendants represented that they could administer a remedy for the primary election, so long as the order was entered around the start of early voting on February 15, 2024.

As to the scope of the injunction, Plaintiffs have agreed that they would accept notice and an opportunity to be heard as a remedy narrower than the broadest they have requested. (Compare DNC Doc. 62 at 98:18-22 ("[T]he remedy [Party Plaintiffs] respectfully suggest is for the Court to . . . direct the State Board for purposes of the primary election to, in fact, apply the notice and opportunity to be heard provision in [] 82.7(g)(2)[.]"), with DNC Doc. 7 at 19 (implying that the court should require two cards be returned before vote is discarded); compare VL Doc. 61 at 26:1-9 (Voto Latino Plaintiffs accepting "as an alternative remedy" ordering county boards to contact voters and "provide a mechanism by which they may further demonstrate that they are eligible voters and are properly residents"), with VL Doc. 44 (seeking to enjoin section 163-82.6B(d)).) (See also VL Doc. 1 (repeatedly alleging in the complaint the undeliverable mail provision's lack of notice and opportunity to be heard as a

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NC-DURHAM-24-0352-A-000801

defect); DNC Doc. 1 (same).)

As discussed above, the parties disagree as to whether section 163-89, the provision previously used to challenge SDR ballots for voters who failed address verification, applies in light of S. 747's reclassification of SDR ballots as "retrievable," rather than "retrievable absentee."

It is not the court's role to draft a precise remedy. That State Board Defendants construe — correctly it appears — the undeliverable mail provision to not contemplate notice and opportunity to be heard and intend to enforce it accordingly absent a court order, is sufficient to justify the injunction set out below. Though the parties offered proposed provisions at the hearing,[38] the court expresses no opinion on whether the State Board may exercise its authority under section 163-22.2 to "make reasonable interim rules and regulations with respect to the pending primary or election as it deems advisable" in light of the court's preliminary holding that Plaintiffs are likely to show

[38] Legislative Intervenors' counsel offered his belief that State Board Defendants could "graft into [§ 163-82.6B(d)] a notice and procedure" for voters to be heard without violating the statute (DNC Doc. 62 at 76:9-14), stating, without conceding the constitutional issue, that:

> We think that [State Board Defendants] can use the challenge process under 163-89 to accommodate this. We think between 747 and the existing statutes — my client believes, and I'm authorized to state, that we think that that's an appropriate mechanism, if one is even needed.

(DNC Doc. 62 at 76:15-19.)

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that the undeliverable mail provision, as written, is unconstitutional. N.C. Gen. Stat. § 163-22.2. Any such interim rules and regulations, if promulgated, must not otherwise conflict with the provisions of Chapter 163. Id.; see Moore v. Circosta, 494 F. Supp. 3d 289, 326 (M.D.N.C. 2020) (finding NCSBE had "implemented a rule that conflicted directly with the statutes enacted by the North Carolina legislature" through invocation of section 22.2).

In sum, the "exigencies of the particular case" warrant the injunction as set out below, and nothing more. Int'l Refugee, 582 U.S. at 579-80.

3. Ineligible Voter Notice

Party Plaintiffs alone challenge another aspect of S. 747. Focusing on the county board of elections' statutory duty to tentatively determine voter eligibility (by checking driver's license number, social security number, etc.) before embarking on address verification, N.C. Gen. Stat. 163-82.6B(d), they claim that the law unconstitutionally fails to prescribe a mechanism for notifying same-day registrants of an adverse eligibility determination or the ground(s) of rejection, or provide an opportunity to contest the adverse eligibility determination. (DNC Doc. 7 at 16.) Party Plaintiffs contend that the silence in the statute allows "any election official [to] unilaterally deny a person his or her right to vote without due process." (Id.)

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NC-DURHAM-24-0352-A-000803

State Board Defendants agree that S. 747 does not explicitly state the process for rejecting a same-day registration based on an ineligibility determination. (DNC Doc. 53 at 8.) However, they read the statute to require a same-day registrant whose application is rejected due to ineligibility to receive the same challenge process under section 163-89 as a same-day registrant currently would receive, even though SDR ballots are no longer considered "absentee ballots." (Id. at 7-8.) Indeed, NCSBE Numbered Memo 2023-05 further demonstrates the State Board plans to utilize the challenge provision of section 163-89 "because the county board is authorized to 'pass upon the legality of disputed ballots' during canvass.'" (DNC Doc. 60-1 at 6 n.9 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).)

Legislative Intervenors and Party Intervenors argue that Party Plaintiffs misread the statute to find that there is no process for same-day registrants who are found ineligible. (DNC Doc. 52 at 12; DNC Doc. 51 at 3-6.) They do not agree with State Board Defendants that there should be a challenge procedure under 163-89. Instead, they contend that section 163-82.7 applies, which is the same notice and opportunity to be heard afforded non-SDR applicants whom a county board determines to be ineligible. Under this provision, the SDR voter would receive a notice in the mail that informs him that his registration has been denied and outlines the method of appeal under 163-82.18, which provides for a public

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NC-DURHAM-24-0352-A-000804

hearing and appeal to a North Carolina Superior Court. Intervenors contend that this process suffices because this is the same process that non-SDR applicants receive. (DNC Doc. 52 at 12-13; DNC Doc. 51 at 4.)

Whether Defendants' or Intervenors' interpretation of the statute is correct, Party Plaintiffs have not demonstrated that they are likely to "suffer irreparable harm in the absence of preliminary relief." Winter, 555 U.S. at 20. Party Plaintiffs conceded as much, stating that they are not irreparably harmed if State Board Defendants are entitled under the law to apply its interpretation. (DNC Doc. 62 at 19:4-23 ("For purposes of a preliminary injunction, I don't think we need anything more from this Court other than the acknowledgement.").) By all accounts, State Board Defendants have represented in their briefing and in a public memorandum that they intend to fill any perceived silence in the statute with the notice and opportunity to be heard that Party Plaintiffs seek. (DNC Doc. 53 at 8; DNC Doc. 60-1 at 6-7 (NCSBE Numbered Memo 2023-05 (Dec. 8, 2023)).) And even if Intervenors' reading controlled, Party Plaintiffs have not shown that the notice provided under sections 163-82.7 and 163-82.18 would be constitutionally inadequate process. Wolf v. Fauquier Cnty. Bd. of Supervisors, 555 F.3d 311, 323 (4th Cir. 2009) ("Procedural due process provides merely 'a guarantee of fair procedures — typically notice and an opportunity to be heard.'"

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NC-DURHAM-24-0352-A-000805

(citation omitted)); N.C. Gen. Stat. §§ 163-82.7, 163-82.18 (providing for notice and hearing before county board of elections with appeal to superior court). Accordingly, Party Plaintiffs' motion to preliminarily enjoin the enforcement S. 747's notice procedure as to SDR voters determined ineligible following the verification process to be conducted within two business days of registration will be denied.

III. CONCLUSION

For the reasons stated, State Board Defendants and Intervenors have shown valid State interests in the use of address verification by non-forwardable mail for confirming a voter's eligibility to vote — a process that has been in place for several decades, albeit employing two cards. These include undeniably legitimate interests in ensuring the integrity of elections, ensuring that only ballots of eligible voters are counted, preventing voter fraud, and instilling confidence in elections. Nevertheless, Plaintiffs have demonstrated a likelihood that the undeliverable mail provision in S. 747, codified as N.C. Gen. Stat. § 163-82.6B(d), will impose a substantial burden on same-day registrants who cast a ballot because, under the law's express terms, they will face a non-trivial risk of being erroneously disenfranchised by failing address verification due to governmental error, rather than factors related to their eligibility to vote, without any notice and opportunity to be

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heard.

Plaintiffs have shown that the State's precise interests asserted in this case likely do not outweigh the substantial burden on the rights of same-day registrants who cast a ballot. Burdick, 504 U.S. at 434 (requiring courts weigh "the character and magnitude of the asserted injury" against "the precise interests put forward by the State," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights"). On this record, State Board Defendants and Intervenors have presented no evidence that any of the several thousand same-day registrants who have failed address verification since its inception in 2008 was in reality ineligible to vote on the ground of improper residency. For SDR voters, the lack of notice and opportunity to be heard is inconsistent with the State's interest in counting all eligible voters' ballots. Moreover, given the lack of showing of an administrative burden on county boards of elections, the risk of irreparable injury, the balance of equities, and the public interest all weigh in favor of requiring notice and an opportunity to be heard.

IT IS THEREFORE ORDERED that Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, are HEREBY ENJOINED from utilizing the procedures of N.C. Gen. Stat. § 163-82.6B(d) to remove from the official count the votes of the ballot of any voter

AMERICAN OVERSIGHT

NC-DURHAM-24-0352-A-000807

who has provided contact information in the registration process and whose first notice required under N.C. Gen. Stat. § 163-82.7(c) is returned by the Postal Service as undeliverable before the close of business on the business day before the canvass, without first providing such voter notice and an opportunity to be heard, and, only to this extent, Voto Latino Plaintiff's motion (VL Doc. 44) and Party Plaintiff's motion (DNC Doc. 6) are GRANTED. This injunction shall remain in force until such time as a procedure for notice and opportunity to be heard is implemented in accordance therewith.

IT IS FURTHER ORDERED that Voto Latino Plaintiff's motion (VL Doc. 44) and Party Plaintiff's motion (DNC Doc. 6) are, in all other respects, DENIED.

/s/ Thomas D. Schroeder
United States District Judge

January 21, 2024

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NC-DURHAM-24-0352-A-000808

Lassiter, Daniel

From: Main, Sharon H <Sharon.Main@rowancountync.gov>
Sent: Saturday, January 20, 2024 9:12 AM
To: Bell, Karen B; Kelly, Bret; Gannon, Patrick; Berot, Lisa; Baddour, Neil; Blackman, Allison; Holland, Parker; Velez, Trena; Cox, Paul; LaToya Peele; Bowens, Derek; Kristin Scott; Summer Heatherly; Rhonda Johnson; Caudill, Kimberly; Love, Katelyn; McCurry, Virginia; Adams, Steve; Dell, Laura; Jones, Brooks; Noce, John; leighsa.jones; Main, Sharon H; Stone, Matthew; Pamlico.boe

Also, can board members attend the meetings/trainings for the Signature Verification Pilot Program?

AMERICAN OVERSIGHT

Lassiter, Daniel

From: Main, Sharon H <Sharon.Main@rowancountync.gov>
Sent: Tuesday, January 16, 2024 5:41 PM
To: Bell, Karen B; Kelly, Bret; Gannon, Patrick; Berot, Lisa; Baddour, Neil; Blackman, Allison; Holland, Parker; Velez, Trena; Cox, Paul; LaToya Peele; Bowens, Derek; Kristin Scott; Summer Heatherly; Rhonda Johnson; Caudill, Kimberly; Love, Katelyn; McCurry, Virginia; Adams, Steve; Dell, Laura; Jones, Brooks; Noce, John; leighsa.jones; Main, Sharon H; Stone, Matthew; Pamlico.boe

Will the software for the signature verification and the scanner have to be certified by the State Board?

AMERICAN OVERSIGHT

From: Jacobs, Rusty
To: Bowens, Derek
Subject: WUNC - interview request
Date: Tuesday, April 9, 2024 9:23:54 AM

Derek,
I wanted to see whether you would be available for a quick Q&A on the signature verification pilot Durham was supposed to participate in. I know the State Bd is still looking for a vendor – but I wanted to talk with a couple of directors from counties selected to participate in the pilot program. Just wanted to know what you're expecting in terms of timing, demands, logistics for getting equipment or software in place – and getting staff trained.

Since our station is very close to your office I'd love to talk in person—but I can always do it by phone too. I'm available today – or tomorrow before noon. Later in the week would work too but I hope to get a quick interview done sooner than later.

Thank you for considering my request.

Sincerely,
Rusty Jacobs - WUNC

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Lassiter, Daniel

From: NC State Board of Elections <ncsbe.comms@ncsbe.gov>
Sent: Friday, December 29, 2023 11:31 AM
To: Bowens, Derek
Subject: [State Board of Elections] Meeting Notice for 11 a.m. Tuesday, January 2, 2024

FOR IMMEDIATE RELEASE

Friday, December 29, 2023

Patrick Gannon, Public Information Director

Email

Notice of Meeting

The State Board of Elections will hold a remote meeting at **11 a.m. Tuesday, January 2, 2024**. Any member of the public may observe the meeting online or by phone using the information below.

- Online: Webex (Password: NCSBE)
- By Phone: Dial 415-655-0003, enter access code 2429 403 0887#, passcode 62723#

Meeting materials will be posted as they are available to the State Board's meeting webpage.

Tentative Agenda

Statement regarding ethics and conflicts of interest

G.S. § 138A-15(e)

Prior meeting minutes approval

G.S. § 143-318.10(e)

County board member vacancy appointments

AMERICAN OVERSIGHT

G.S. § 163-30(d)

Selection of 10 counties in the State for participation in a pilot program for signature verification on executed mail-in absentee ballots

S.L. 2023-140, § 48(a)

Consideration of non-unanimous early voting plans for Lincoln County

G.S. § 163-166.35

Finalization of presidential preference primary candidates

G.S. § 163-213.4

Temporary rule adoption for election observers

G.S. § 150B-21.1; S.L. 2023-140, sec. 7(b)

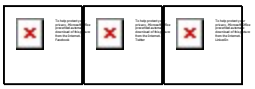
Hearing of board member complaint – Longman (Harnett)

G.S. § 163-22(c); 08 NCAC 03 .0103

Appeal from candidate challenge decision – (Robinson - Catawba)

G.S. § 163-127.6

Adjourn



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Lassiter, Daniel

From: NC State Board of Elections <ncsbe.comms@ncsbe.gov>
Sent: Friday, December 29, 2023 11:31 AM
To: Oxendine, Pamela
Subject: [State Board of Elections] Meeting Notice for 11 a.m. Tuesday, January 2, 2024

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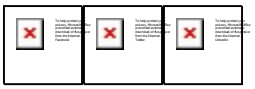
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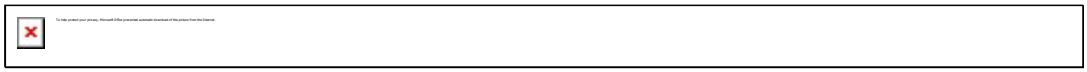
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Lassiter, Daniel

From: NC State Board of Elections <ncsbe.comms@ncsbe.gov>
Sent: Tuesday, January 2, 2024 4:26 PM
To: Bowens, Derek
Subject: [State Board of Elections] State Board Finalizes Presidential Primary Candidates, Selects 10 Counties for a Signature Matching Pilot Program



FOR IMMEDIATE RELEASE

Tuesday, January 2, 2024

Patrick Gannon, Public Information Director

Email

State Board Finalizes Presidential Primary Candidates, Selects 10 Counties for Signature Matching Pilot Program

Raleigh, N.C. — The bipartisan State Board of Elections on Tuesday voted unanimously to finalize the list of presidential preference primary candidates for 2024, deferring to the lists of candidates provided by the state's political parties for their respective primary ballots. No candidates were added beyond what the parties requested for their primaries.

During the presidential preference primary, eligible voters choose their preferred candidate for president. The results of the presidential preference primary determine how each party's delegates will be allocated at the party's national nominating convention next summer.

At its Dec. 19 meeting, the State Board approved candidates for the Democratic, Libertarian, and Republican parties' presidential preference primaries that were submitted by the political parties. The Green Party did not submit a list of presidential primary candidates and will therefore defer its delegate allocation to the national nominating convention. The No Labels Party will select its presidential primary candidate by convention and without a primary, per state

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law, because the 2024 general election is the first election after the party was recognized in North Carolina.

For the list of names to be included on primary ballots, see press release: "State Board Approves Presidential Primary Candidates."

State law permits a candidate to be included on a party's primary ballot by gathering sufficient petition signatures from North Carolina voters, but no such petitions were received by the State Board. Several additional candidates wrote to the State Board asking to add them to a party's primary ballot, but the Board voted 5-0 to include only the names provided by the state's recognized parties.

The primary election is March 5. Ballots are being designed, coded, and proofed in the coming days. Primary ballots will be sent to voters who requested them beginning January 19, 2024.

[Full video of this meeting is available at the State Board's meeting folder.]

Signature Matching Pilot Program

The State Board also selected 10 counties to participate in a signature matching pilot program following the March primary election. The pilot program is required by Session Law 2023-140, approved by the General Assembly in 2023. The counties were determined using a system of random selection, based on rankings for population size, racial diversity, and regional location. Rankings of counties' economic well-being and median age were also taken into account.

The 10 counties, listed below, will use signature verification software to compare the signatures on mail-in absentee ballot applications and envelopes against voters' signatures on file with the elections offices. This is for experimental purposes only. It will not affect the counting of any voter's ballot in the primary election. All counties, including the 10 pilot counties, will accept absentee by mail ballots from registered North Carolina voters who meet the current criteria of properly requesting a ballot, marking it, signing it, having it witnessed, and providing a copy of an acceptable photo ID or an ID exception form before returning it to the county board of elections,

The counties participating in the pilot are: Bertie, Cherokee, Durham, Halifax, Henderson, Jones, Montgomery, Pamlico, Rowan, and Wilkes.

State Board staff will work with these counties to ensure they have access to and are trained on the matching software. The State Board will report findings of the pilot program and any recommendations to the General Assembly by May 1, 2024.

For more information on how to request and vote an absentee by mail ballot visit ncsbe.gov/voting/vote-mail.

Temporary Election Observer Rules

AMERICAN OVERSIGHT

The Board also unanimously approved temporary administrative rules regarding procedures related to election observers appointed by political parties or candidates to observe elections inside early voting sites and Election Day polling places. Brief descriptions of the rules, which now go to the Rules Review Commission for consideration, are listed below, with links to the approved rules.

- **08 NCAC 20 .0101** deals with procedures for challenging the appointment of an observer. A challenge may be entered by the county board or the chief judge, and the decision is appealable to the State Board.
- **08 NCAC 20 .0102** deals with the procedures for appealing the chief judge's removal of an observer. This decision may be appealed to the county board of elections.
- **08 NCAC 20 .0103** deals with identification tags observers are required to wear to identify themselves when on duty at a voting site.

Other business

- State Board staff has updated 2024 primary candidate lists to reflect only contests and candidates, including presidential preference primary candidates, that will appear on March 5 primary election ballots. Also, the general election candidate lists now include those candidates who will appear on Nov. 5 general election ballots because they do not have primary opponents. All primary and general lists are available at Candidate Lists. Anyone with questions about the lists should email patrick.gannon@ncsbe.gov.
- The Board unanimously approved an early voting plan for Lincoln County for the 2024 primary. The approved plan, the "majority plan," includes an additional voting site at the Lentz Gym in Lincolnton.

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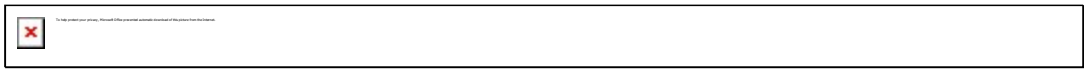


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