



NC STATE BOE RULE CHANGES

July 17, 2017

HOW TO USE THIS TOOLKIT

StrongerNC is committed to making civic engagement easier. We believe democracy works when voters are Informed & Empowered, so we have put together this toolkit with the aim of educating you about rule changes currently being proposed by the NC State Board of Elections and Ethics (NCSBOE).

The North Carolina State Board of Elections and Ethics (NCSBOE) is seeking public comment to [proposed rule changes](#) now through July 31, 2017.

We encourage all NC voting citizens to read through these proposed changes which we have summarized for you with our interpretations and recommendations for comment.

After reading through the proposed elections rule changes, we encourage you to either submit comments via the public comment portal (link to the right) or submit written comment to the Deputy General Counsel (address to the right).

For a quick direct response, you can also use DemocracyNC's email portal and customize your comments [here](#).

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PUBLIC COMMENT

Public comment may be made through any of the following methods:

[NCSBOE Online Public Comment Portal](#)

Email: rules@ncsbe.gov

Mail

Katelyn Love, Deputy General Counsel,
441 N. Harrington Street, Raleigh, NC
27603

A public hearing will be held as follows:

Date: July 31, 2017 at Noon.

Location: NCSBE, 441 N. Harrington Street, Raleigh, NC 27603

This notice may be found at:
www.ncsbe.gov

BACKGROUND INFORMATION

The State Board of Elections

The North Carolina State Board of Elections is the state agency charged with administering the elections process and campaign finance disclosure. Since the election of Gov. Cooper, the GOP-majority has continually endeavoured to refashion the State Board of Elections by merging it with the NC State Board of Ethics, which enforces ethics and lobbying laws, and changing the the composition and appointment process for the Board. This body charged with overseeing North Carolina's elections is [currently vacant](#) as the GOP-restructuring of the NC State Board of Elections continues to be mired in [legal battles](#).

The Recent Restructuring Rumpus

In one of the December 2016 "Special Sessions", the GOP-majority legislature voted to merge the NC State Board of Elections, which oversees all voter registration and election activities, with the NC State Board of Ethics, which enforces ethics and lobbying laws. This law, "SB4" (Senate Bill 4), was overturned by an NC Superior Court 3-judge panel; so the NCGA reintroduced the bill (with some changes) as "[SB 68](#)" (Senate Bill 68).

SB68 makes the combined Elections/Ethics Board more partisan because each political party nominates 6 people selected by the chair of the political party (who is not an elected government official). This bill also strips the ability of the Secretary of State to investigate and levy fines for violating the code of ethics. Governor Cooper vetoed SB68, as it took away the ability to control and appoint members to the board by the Executive Branch, as well as diluting the effectiveness of a separate oversight board for ethics concerns.

The NCGOP overrode the veto during cross-over week in April 2017, sending it back to court where a three-judge panel temporarily blocked it. The NCGA made changes to who can be on a three-judge panel, and how those judges are elected. A three-judge panel then reversed and dismissed the Governor's challenge in June 2017, consolidating the agency as the "bipartisan" NC State Board of Elections and Ethics Enforcement (NCSBOE).

The GOP gave partisan preference to its own party with this consolidation, by making the head of the new board a Republican in even years, when elections occur, and a Democrat in odd years when there are typically no elections which would need to be governed or protested. Governor Cooper has now appealed to state Court of Appeals.

NCSBOE EXECUTIVE DIRECTOR

Kim Strach has been Executive Director of the NCSBOE since May 2013, roughly the same time that the North Carolina State Legislature was crafting “the country’s worst voter suppression law” that targeted African-American voters with “almost surgical precision” which was later defended (unsuccessfully) in court by her husband, Phil Strach.

During Mrs. Strach’s tenure as Executive Director of the State Board of Elections, there have been actions that have disproportionately affected African-American voters, including a “purge” of approximately 6,700 voters (mostly African-Americans) through a process that targeted Black voters in a scheme that a Federal judge called “insane” and “like something that was put together in 1901” in the Jim Crow South.

In addition, there have been violations of the the National Voter Registration Act, such as leaving voters off the registration rolls who had registered via either the DMV or Social Services. Most recently, Mrs. Strach has been in the news for quickly turning over voter information to the Kobach Commission.

WHY IS THIS IMPORTANT?

Why is this information important to the citizens of NC?

The Board of Elections rules are currently being re-written, and they are asking for our feedback. This is an excellent opportunity to speak up and let them know you are engaged. We have seen that public feedback and awareness serves a considerable role in how policy is made.

PROPOSED RESPONSES

08 NCAC 01 .0106 – EMERGENCY POWERS OF EXECUTIVE DIRECTOR

Gives one person, currently Executive Director Kim Strach, broad discretionary authority to exercise emergency power over an election in the case of extreme weather, emergency or war.

Short Answer	Rationale
I support this rule with more definition and controls in place.	As written, this proposed Rule is overly broad and gives too much discretionary and undefined power to one person, who may have conflicts of interest. We suggest this Rule be defined with more controls in place.

While we certainly want there to be provisions made when voting is interrupted by an emergency, as currently written this proposed rule is vague and overly broad. More importantly, it gives too much discretionary authority to one person.

Giving any discretionary authority to Kim Strach is especially concerning, given the history of numerous actions under her tenure that disproportionately affected Black voters. There would have to be controls in place to be sure that the Executive Director would not treat counties with significant African-American populations differently than counties that were largely white.

With North Carolina’s history of disenfranchising minority voters, (especially recent history), the proposed rule as currently written would undermine the faith and trust of the public by giving too much discretionary authority to one person - especially since the person who currently holds that office gives the appearance of wanting to restrict the ability of minorities and poor people to vote. In order to be sure that emergency powers were used fairly, there would have to be some more controls and limits in place.

For these reasons, this proposed rule should not be enacted as currently written.

08 NCAC 02 .0110 – ELECTION CONTINUITY

This rule clarifies that the election tabulation process will continue regardless of a protest unless the protest relates to quantities of voters or numbers of votes large enough to change the outcome of an election.

Short Answer	Rationale
I support this change.	Prevents undue delay in election outcomes.

08 NCAC 02 .0111 – ELECTION PROTEST FORM

This amendment largely rewrites the protest form to clarify the standard of review, require a certification that the facts alleged are true and accurate by the person filing the protest, and require that attorneys who file protests in the name of citizens identify themselves and who they represent in the matter (unlike in the bogus protests filed in the fall by out-of-state attorneys who did not identify themselves). The changes are blacklined in the notice.

Short Answer	Rationale	Background Info
I support these changes.	It is very important to prevent the sort of fraud we saw last fall when out-of-state political operatives submitted bogus voter protests under the names of North Carolina citizens. Making frivolous, false charges against law-abiding North Carolinians should not be tolerated. Previously, there was not a requirement that the citizen filing the protest have actual knowledge of the facts alleged, or that an attorney filing the protest identify himself. This lack of transparency and accountability made it easy for out-of-state political operatives to file false protests under the names of North Carolina citizens.	Only citizens and residents of the county may file a protest, but without any requirement that the allegations be true or any requirement that attorneys purporting to act on behalf of voters identify themselves, the process was abused by out-of-state operatives who signed the protest forms with the names of local voters by acting as their “attorney” - but who actually represented politicians. REFERENCES: Democracy NC and the Institute for Southern Studies reports of filing false voter challenges: http://nc-democracy.org/democracy-nc-calls-for-criminal-investigation-of-mccrory-conspiracy-against-nc-voters/ https://www.facingsouth.org/2017/04/prominent-va-politician-implicated-nc-gop-voter-fraud-deceit

08 NCAC 02 .0114 – PROTEST DISMISSALS

This proposed rule would provide a process whereby the Executive Director can recommend that a protest be dismissed. A similar process is enacted for county boards of election.

Short Answer	Rationale
These changes would be acceptable if there was a way to ensure that the Executive Director did not use his or her authority in a Partisan way (for example, dismissing all protests against Republicans, or dismissing all protests against white people).	There are opportunities for this rule to be exploited if protests were made by parties with opposing views to the Executive Director of the NCSBOE.

08 NCAC 10B .0109 – MODIFIED FULL-TIME OFFICES

In counties with fewer than 6,501 registered voters, the County Boards of Elections will change from being open 5 days a week to being open 3 days a week.

Short Answer	Rationale
I oppose this change.	It is not clear at what point where the number of voters be measured. The number of voters will be different next year than last year. There would need to be controls to be sure that this rule would not motivate counties to register fewer voters so that they do not have to pay to be open all 5 days, and be sure that this rule change will not disproportionately affect minority or low-income populations.

08 NCAC 10B .0109 – VOTING SITE UNIFORMITY

This proposed rule sets out the organization of a voting site and describes responsibilities assigned to election officials at each station. *Of note: It includes language about voters providing “any required identification information”, but it does not actually require identification.*

Short Answer	Rationale	Background Info
I oppose this change. Delete all language regarding voters providing “any required identification information”.	There should not be any mention of voters providing “any required identification information” because the Courts have overturned the so-called “Voter ID” law.	https://www.thenation.com/article/the-countrys-worst-anti-voting-law-was-just-struck-down-in-north-carolina/ https://www.nytimes.com/2017/05/15/us/politics/voter-id-laws-supreme-court-north-carolina.html?_r=0

08 NCAC 16 .0102 – MULTIPARTISAN ASSISTANCE TEAMS

The new section mandates that Multipartisan Assistance Teams (M.A.T) members cannot be County Board of Elections members or employees.

Short answer	Rationale
I support this change.	This responds to a circumstance raised in the last cycle and addresses concerns over conflicts of interest or apparent conflicts of interest.

08 NCAC 16 .0104 – MULTIPARTISAN ASSISTANCE TEAMS

The new sections clarify that an M.A.T. member may assist the voter to sign/mark the absentee form or to coordinate a return visit for that purpose. The revision also allows coordination between CBEs to send M.A.T. members to assist a voter who may be in a care facility outside their county of registration.

Short Answer	Rationale
I support this change.	We should be making it easier for citizens needing assistance to vote.

08 NCAC 18 .0101 – ABSENTEE BALLOT RETURNS

The proposed rule limits who may return an absentee ballot on behalf of a disabled voter.

Short Answer	Rationale	Background Info
I oppose this change. There is no reason to add restrictions to the current rule in place.	Current statutes allow for absentee ballots to be returned “by mail or by commercial courier service, at the voter’s expense, or delivered in person, or by the voter’s near relative or verifiable legal guardian” (N.C.G.S. § 163-231). There is no reason to add restrictions, and it is suspicious that the “summary” is misleading.	http://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_163/GS_163-231.pdf

08 NCAC 18 .0102 – ABSENTEE BALLOT DELIVERIES

Changes who can deliver Absentee Ballots to limit it to a relative or guardian.

Short Answer	Rationale	Background Info
<p>I oppose this change. This process is already spelled out in the current rules.</p>	<p>The “summary” of this change on the public comment portal is misleading; it gives the appearance that the NCSBOE wants to change the rules without drawing attention to the change. This is especially troubling in light of NC's history. Absentee ballots are often used by minority voters in areas with history of Racially motivated voter intimidation and disenfranchisement.</p>	<p>Current statutes allow for absentee ballots to be returned “by mail or by commercial courier service, at the voter's expense, or delivered in person, or by the voter's near relative or verifiable legal guardian” (N.C.G.S. § 163-231). http://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_163/GS_163-231.pdf</p>

08 NCAC 20 .0101 – ELECTION OBSERVERS

This rule is in regards to election observers at early voting sites and precinct locations.

Short answer	Rationale
<p>I support this rule with modifications.</p>	<p>This proposed rule should be changed to require that chief judges confirm the identity and appointment for people who purport to be election observers. Procedures for removing election observers who break the rules should be specified.</p>

SUPPORTING LINKS

Kim Strach's Potential Conflicts of Interest:

1. Kim Strach's tenure as Executive Director has included:
 - a. Failure to comply with National Voter Registration Act:
 - i. <http://www.projectvote.org/press-releases/nearly-1500-votes-counted-action-nc-v-strach/>
 - ii. [https://s3.amazonaws.com/dl.ncsbe.gov/Requests/2016_General_Election_\(post\)/11-19_Court_Ordered_Provisionals.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/Requests/2016_General_Election_(post)/11-19_Court_Ordered_Provisionals.pdf)
 - iii. <http://www.wral.com/court-dmv-failed-to-register-voters-properly/16172403/>
 - iv. http://www.cache.wral.com/asset/news/state/nccapitol/2016/10/28/16172473/Action_NC_et_al_v_Kim_Westbrook_Strach_et_al.pdf
 - b. Misleading Report: At the NC General Assembly Elections Committee meeting on May 4, 2017, Ms. Strach delivered a carefully shaded report that insinuated that registered voters whose eligibility was being reviewed *after* the election were in the same category as voters committing "fraud." While the NC GOP and local press coverage of the report focused on 441 *possibly* ineligible votes resulting from poor voter roll maintenance by the NCSBOE, the real story was the nearly 2000 *actual* eligible votes that were only counted because of an audit and a court order. See: <https://strongernc.org/call-coming-inside-house-threat-election-integrity-north-carolina/>
 - c. Voter Registrations not being added to rolls: Suspicious declines in voter registration through Social Service Offices, that Mrs. Strach has claimed to be unaware of:
 - i. <http://www.wral.com/advocates-say-nc-is-failing-to-register-public-benefit-recipients-as-voters/14632146/>
 - ii. <http://www.wral.com/paper-trail-indicates-dhhs-aware-of-voting-issue-despite-response/14638093/>
2. Kim Strach's husband, attorney [Phil Strach](#), has argued in favor of numerous actions and laws that have been overturned by the Supreme Court for Racial discrimination, including the "Monster", Voting Law SL2013-38, and Racial Gerrymandering of Congressional and Legislative voting districts.

Repeated National Voter Registration Act (NVRA) violations by NC State Board of Elections:

1. Voter “Purge” initiated by “voter integrity” vigilantes within 90 days of election
 - a. <https://www.scribd.com/document/329763629/DOJ-Statement-of-Interest-NC-NAACP-v-SBOE-NVRA>
 - b. http://www.huffingtonpost.com/entry/north-carolina-naacp-voter-suppression_us_5817634fe4b064e1b4b385df
 - c. http://d3n8a8pro7vnm.cloudfront.net/naacpnc/mailings/1050/attachments/original/Time-Stamped_NC_NAACP_Initial_NVRA_Complaint_-10-31-2016.pdf?1477925949
 - d. “U.S. District Judge Loretta Biggs slammed an ongoing North Carolinian voter purge during a dramatic Wednesday hearing, telling county attorneys that she was “horrified” by the “insane” process by which voters could be removed from the rolls without their knowledge. “It almost looks like a cattle call, the way people are being purged,” Biggs said. “This sounds like something that was put together in 1901,” when the state used Jim Crow laws to prevent black citizens from casting a ballot.”
http://www.slate.com/blogs/the_slatest/2016/11/03/federal_judge_slams_north_carolina_voter_purge.html
 - e. NC Republicans try to disenfranchise 100 year old woman:
<https://www.thenation.com/article/north-carolina-republicans-tried-to-disenfranchise-a-100-year-old-african-american-woman/>
2. DMV and other agencies not transferring voter registrations:
 - a. <http://www.wral.com/advocates-say-nc-is-failing-to-register-public-benefit-recipients-as-voters/14632146/>
 - b. <http://www.wral.com/paper-trail-indicates-dhhs-aware-of-voting-issue-despite-response/14638093/>
3. Action NC, Democracy North Carolina brought suit for failure to comply with NVRA:
 - a. <http://www.projectvote.org/press-releases/nearly-1500-votes-counted-action-nc-v-strach/>
 - b. [https://s3.amazonaws.com/dl.ncsbe.gov/Requests/2016_General_Election_\(post\)/11-19_Court_Ordered_Provisionals.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/Requests/2016_General_Election_(post)/11-19_Court_Ordered_Provisionals.pdf)
 - c. <http://www.wral.com/court-dmv-failed-to-register-voters-properly/16172403/>

Other issues:

1. Potential conflict of interest calls election integrity into question:
<https://www.indyweek.com/indyweek/director-of-state-board-of-elections-married-to-lawyer-defending-controversial-voting-reforms/Content?oid=4269359>
2. Controversial anti-voter fraud program risks disenfranchising voters through racial bias, report finds:
<https://thevotingnews.com/tag/interstate-crosscheck/>
3. As documented by Democracy NC and the Institute for Southern Studies, the NC GOP filed bogus voter challenges across North Carolina in the fall of 2016 and falsely publicly accusing some voters of being felons as part of its efforts to create an illusion of rampant “voter fraud”.
<https://www.facingsouth.org/2017/04/prominent-va-politician-implicated-nc-gop-voter-fraud-deceit>
4. NC citizens falsely accused of voter fraud:
<http://nc-democracy.org/wp-content/uploads/2017/03/StrachSBOELtrProtestFraudRule.pdf>
5. NC GOP directs County Boards of Elections to make “party line changes”, including eliminating Sunday early voting on the day the NAACP traditionally holds “Souls to the Polls” events:
<https://www.thenation.com/article/north-carolina-wont-stop-suppressing-the-vote/>
<http://www.newsobserver.com/news/politics-government/election/article96179857.html>
6. NC GOP brags about how the changes it made to voting hours suppressed Black voters:
<http://www.motherjones.com/politics/2016/11/north-carolina-gop-brags-about-how-few-black-people-were-able-to-vote-early/>
<http://www.wral.com/editorial-n-c-legislature-stop-rigging-state-s-elections/16662634/>