

# North Carolina: 2020 Election Policies & Practices

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## I. Contemporary Controversies in North Carolina

### A. Ongoing Litigation Over Rules For Absentee Voting

The rules regarding absentee ballots in North Carolina have changed frequently during the last month. As of October 17, 2020, the notice and cure process for the general election has been restored after being temporarily suspended due to litigation. On October 14, 2020, U.S. District Judge William Osteen issued an injunction: 1) preventing the state from curing via affidavit absentee mail ballots with missing witness signatures; 2) allowing other affidavit cures to proceed; and 3) kept the extended ballot receipt deadline of November 12, 2020 if the envelope is postmarked by, or before, November 3. On October 17, 2020, the North Carolina State Board of Elections (NCSBE) reissued [Numbered Memo 2020-19](#) (October 17 Memo), which lays out the current notice and cure process, cure deadlines, and relevant laws in North Carolina. The notice and cure process was temporarily suspended on October 4, 2020 following a temporary restraining order issued by U.S. District Judge James Denver on October 3, 2020. That order blocked the rules that were then in effect as a result of a settlement between voting rights groups and the NCSBE. The order blocked the guidance set forth in the NCSBE's [September Memo](#) and reverted to the prior rules set forth in its [August Memo](#). The October 4 Memo suspended the notice and cure process, which was reinstated in its current form by the [October 17 Memo](#). This litigation, spanning both state and federal court, has resulted in multiple rule changes throughout the end of September and October, after voting was already underway. The

[Trump campaign](#) and the [GOP leadership](#) both filed separate appeals to the Supreme Court. On October 28, 2020 the Supreme Court in a [5-3 decision denied](#) the linked applications for injunctive relief and maintained the November 12 extended deadline. Additionally, in [Berger v. North Carolina State Board of Elections](#), the state GOP leadership applied for injunctive relief seeking the U.S. Supreme Court to stay, pending appeal, an order by the North Carolina Supreme Court leaving in place an extension of the ballot receipt deadline. However, that application was also denied by the Supreme Court leaving the ballot receipt deadline in place.

## B. Allowing Partisan Citizen Inspections Into County Boards of Elections

On October 5, 2020, the North Carolina Republican Party [filed a lawsuit](#) seeking to force the NCSBE to provide access to absentee ballot envelopes (for a detailed description of the suit please review this [article](#)). They want to be able to send partisan citizen inspectors into the county boards of elections before absentee ballots are approved by election officials and allow those individuals to start challenging those ballots that they see as potentially not meeting requirements. If granted this could slow the counting of ballots beyond Election Day, especially because absentee ballots are likely to make up 25 percent of the vote in North Carolina. The lawsuit remains pending.

## C. Absentee Rejection Rate

Prior to COVID-19 North Carolina historically had low rates of absentee voting. However, as of October 7, 2020, the state has already seen [double the mail-in ballots](#) it counted in the entire 2016 presidential election. With the increase of absentee ballots it is expected that there will be a higher number of rejected ballots for mistakes such as missing signatures, witness error related issues, or other minor issues. Also as of October 7, 2020, the total number of rejected ballots in North Carolina is slightly less than double the entire 2016 sum. Concerningly, it appears that Black voters' ballots are being rejected at a massively disproportionate rate, according to elections expert [Michael McDonald](#). This trend has been noted in previous elections in North Carolina. According to recent Analysis by ProPublica, in the 2018 election, [Black voters' ballots were more than twice as likely as those sent in by](#)

[white voters to be rejected](#). Voters across all minority groups in the 2018 election [were nearly twice as likely](#) to have their mail-in ballots rejected compared with white voters. Historically, vote-by-mail has made up only a small fraction of ballots cast in North Carolina but, this year, state election officials are [predicting that as many as 40% of voters](#) will send their ballots through the mail due to the ongoing COVID-19 pandemic. It is possible that the recent creation of a notice and cure process, the decision to reduce the number of errors that require a ballot to be reissued rather than being cured by affidavit, and the decision to accept ballots until November 12 as long as they are postmarked on or before Election Day could reduce these historical and current racial gaps.

#### D. Voter Intimidation During Early Voting and on Election Day

Both the Trump and Biden campaigns have made numerous stops in North Carolina, and there have been concerns of voter intimidation in the State. During [a rally in Winston-Salem](#) President Trump encouraged attendees to “[b]e poll watchers when you go [to the polls]. Watch all the thieving and stealing and robbing they do.” Shortly after this rally, the North Carolina State Board of Elections has [reminded](#) voters they must be authorized to be poll observers of Election Day and that voter intimidation is illegal. In North Carolina members of the public can’t just become poll observers, as they must be [appointed by political parties](#) in the state. Early voting in North Carolina has brought [complaints](#) about voter intimidation. There have been [documented incidents](#) of electioneering within the 50-foot buffer zone, incidents where voters have been videotaped, and instances of abusive language and racial slurs. One former Wake County Commissioner and an official Republican poll observer at the Wake Forest early voting site have been [cited and charged after being accused of pushing an election worker](#). In Guilford County, poll observers have been [seen not wearing masks](#), which is required for observers, but not voters. Despite the documented issues [local NAACP leaders](#) remain optimistic that overall people are able to safely access the polls.

## II. Key Dates and Deadlines

- [October 15, 2020 to Saturday October 31, 2020](#): Early in-person voting period

- **Deadlines for registering to vote:**
  - **If voting early in person:** [October 31, 2020](#) (individuals who aren't registered to vote in a county may register at early voting sites during the early voting period).
  - **By Mail:** [October 9, 2020](#)
  - **Online:** [October 9, 2020](#)
- [October 27, 2020:](#) Last day to apply for a mail-in or civilian absentee ballot.
- [November 3, 2020:](#) General Election. Polls are open from 6:30 a.m. to 7:30 p.m.
  - Deadlines for returning your mail-in or civilian absentee ballot:
    - **By mail: November 12, 2020** if postmarked before or on November 3, 2020 (per recent order by Judge Osteen, but might get appealed)
    - **In-person:** May be returned to their county board of elections office by **5 p.m. on November 3, 2020** (also can be submitted at early voting sites until they end on **October 31, 2020**, but cannot be submitted at their polling place on Election Day).
  - Challenges to absentee ballots:
    - **Noon to 5:00 PM on November 3:** Challenges to absentee ballots received prior to election day may be lodged on election day between noon and five, if lodged by another voter, or at the closing of polls by the chief election judge of that precinct (N.C. Gen. Stat. § 163-89(a)).
- **5:00 PM November 12, 2020:** Absentee/mail ballot signature cure deadline (the cure deadline is determined by the absentee mail ballot deadline)
- **Counting timeline:**
  - **Pre-counting:** -- counties may use optical scan devices to remove ballots from their envelopes and place them in tabulators -- **September 29, 2020.**
  - **Counting**-- ballots may begin on **November 3, 2020** (County boards of elections may meet to begin hand counting absentee ballots if a resolution is passed 2 weeks prior to Election Day setting 2 p.m. as the time of the meeting. )
  - **7:00 PM on November 3, 2020:** Initial count of Election Day ballots will occur at precincts. County boards will complete machine count of absentee ballots.
  - **Between November 4 and November 13:** County boards of elections may set one or more times to meet to count absentee ballots that arrived after 5 p.m. on the day before the election.

- **November 12, 2020:** Ballots from UOCAVA (Uniformed and Overseas Citizens Absentee Voting Act) voters must be received by the county board office by 7:30 p.m. on Election Day, November 3, 2020, or submitted for mailing, electronic transmission, or fax by 12:01 a.m. on Election Day, at the place where the voter completes the ballot. If mailed, UOCAVA ballots must be received by the close of the business on the day before county canvass. County canvass is scheduled for November 13, 2020, and therefore the deadline would be November 12, 2020. UOCAVA ballots received after the statutorily required time are invalid
- **November 13, 2020:** County boards start the process of “canvassing,” or certifying, the vote.
  - Before 11:00 AM on November 13: County board of elections meet to count provisional ballots.
  - Deadline for election protest concerning votes counted or tabulation of results (NC Gen. Stat. 163-182.9(b)(4)(a)).
  - 11:00 AM on November 13: County canvass begins, unless the initial count is not complete. (N.C. Gen. Stat. § 163-182.5(b)).
  - Before 5:00 PM on November 13: Later received absentee ballots may be challenged by 5:00 PM the business day following the deadline for receipt of those ballots. (N.C. Gen. Stat. § 163-89(a)).
- **November 17, 2020:**
  - Deadline to request a recount, if the official count is within the recount margin.
  - If the initial recount is not “hand-to-eye,” the losing candidate of the recount can demand a hand recount of a 3% sample of the precincts. (N.C. Gen. Stat. § 163-182.7A(a)).
  - Deadline to file election protest concerning any irregularity other than votes or tabulation of results. (N.C. Gen. Stat. 163-182.9(b)(4)(c)).
  - If the difference between the 3% hand count and the mechanical recount would be significant enough to tilt the election if extrapolated to the whole then the losing candidate can demand a full state hand recount. (N.C. Gen. Stat. § 163-182.7A(a)).
- **November 19, 2020:** County boards of elections issue certificates if no protest is pending. (N.C. Gen. Stat. 163-182.15).
- **11:00 AM on November 24, 2020:** State canvass begins. (N.C. Gen Stat. § 163-182.5(c)).
- **November 30, 2020:** State Board of Elections will issue certificate of election unless an election protest is pending (if state canvass was held on Nov. 24).

- **December 4, 2020:** The latest date the state canvass may be held, if the State Board of Elections has not received all the county board abstracts by 11 a.m. on Nov. 24. N.C. Gen Stat. § 163182.5(c).

### III. Voter Registration in North Carolina

As of October 31, 2020 there are [7.3 million registered voters](#) in North Carolina, including 2.6 million registered Democrats, 2.2 million registered Republicans, and 2.5 million voters of other parties or with no party affiliation. Prospective voters that aren't planning to vote early in person needed to register by October 9, 2020, which can be done online or by mail. Prospective voters that are planning to vote early in person have until October 31, 2020, and may do so by registering at an early voting site during the early voting period. During the 2016 presidential election, around 4.8 million North Carolinians voted, representing 65.37% of the voting age population and 68.98% of the 6,914,248 registered voters. As of October 31, 2020 [4.3 million North Carolinians](#) have already voted.

### IV. Absentee Voting

Voters in North Carolina may vote by mail without an excuse. Registered voters who want to vote by mail must complete an absentee ballot request form, which has to be returned by mail, fax, or in person to the voter's county Board of Election office. [Historically](#), only four to five percent of voters in North Carolina vote by absentee ballot. Following illegal ballot harvesting in the 2018 9th Congressional District elections, the North Carolina legislature passed [Senate Bill 683](#), which restricted who can request and fill out absentee ballot applications. The bill was a [bipartisan effort](#) that expanded early-in-person ballots, increased criminal penalties for absentee ballot fraud, and tightened ID requirements for absentee ballots. Karen Brinson Bell, the Executive Director of the North Carolina State Board of Elections (NCSBE), [projected that](#) 40% of votes in the November general election will be cast absentee. However, it appears that number will now be closer to 20%, based on [current voting trends](#). The state therefore must be prepared to handle five to ten times more mail-in ballots than in a typical year. As part of preparations for the election, North Carolina [loosened](#) its rules surrounding absentee voting.



## A. Ballot Drop Off Options

North Carolina voters have three options for returning their completed absentee ballots. Other than mailing in their ballot, voters can return their ballot to the county board of elections office or at an early voting site. North Carolina voters can return their absentee ballot to the county board of elections office in-person until [5 p.m. on November 3, 2020](#) or in-person at an early voting site between [October 15, 2020 to Saturday October 31, 2020](#). Voters have until November 12, 2020 to return their absentee ballot by mail if the ballot is postmarked before or on November 3, 2020 (this is the current deadline following the most recent North Carolina order on Oct 14, 2020). However, if there is [no postmark](#) the ballot must be received by November 3, 2020.

North Carolina, however, does not allow voters to drop off completed absentee ballots at polling places on Election Day. If a voter has not yet returned their absentee ballot and wishes to vote in-person on Election Day they may do so, however their [absentee ballot will be spoiled](#) after the voter votes in person.

Notably, on October 14 a [federal court denied a motion for a preliminary injunction](#) that was sought by President Trump's Campaign, the RNC, and GOP leaders of the North Carolina General Assembly that would have decreased the extended deadline for county boards to accept absentee ballots after Election Day as long as they are postmarked by Nov. 3. As a result, the extended deadline of November 12, 2020 was maintained. The numerous attempts to change the ballot receipt deadline has been unsuccessful and November 12, 2020 remains the deadline.

## B. Signature Verification

On October 17, 2020 the NCSBE issued the October 17 Memo, which establishes the cure deadlines and relevant laws as established by Karen Brinson Bell, NCSBE Executive Director, pursuant to the State Board of Elections' general supervisory authority over elections as set forth in [N.C.G.S.A. § 163-22\(a\)](#) and the authority of the Executive Director in [N.C.G.S.A. § 163-26](#). North Carolina once again has a notice and cure process, following a period of time starting on October 4 where any deficient ballot was stored and not considered by the county board until this guidance was issued. North Carolina in the past month had three other sets of rules established by the October 4 Memo,

[August Memo](#), and the [September Memo](#), due to the ongoing litigation. It is possible that the rules might change again due to an appeal based on the merits, but due to the proximity to Election Day that is less likely to occur. The policies laid out by the October 17th Memo, October 4th Memo, August Memo, and September Memo will be highlighted below.

<b>October 17th NCSBE Memo Rules (In Effect as of October 19 )</b>	<b>October 4th NCSBE Memo Rules (No longer in effect following the October 17th Guidance)</b>	<b>September NCSBE Memo Rules (In effect from September 22 until blocked on Oct 3, 2020, by Judge Dever’s Temporary Restraining Order)</b>	<b>August NCSBE Memo Rules (In effect from August 21, 2020 - September 22, 2020 &amp; Oct 3, 2020 to Oct 4, 2020, under Judge Dever’s Temporary Restraining Order)</b>
<u><b>Canvassing Start Date for absentee/mail ballots:</b></u>  Fifth Tuesday before Election Day ( <a href="#">N.C.G.S.A. § 163-230.1</a> and <a href="#">163-234</a> ). This year: <b>September 29, 2020.</b>	<u><b>Canvassing Start Date for absentee/mail ballots:</b></u>  Fifth Tuesday before Election Day ( <a href="#">N.C.G.S.A. § 163-230.1</a> and <a href="#">163-234</a> ). This year: <b>September 29, 2020.</b>	<u><b>Canvassing Start Date for absentee/mail ballots:</b></u>  Fifth Tuesday before Election Day ( <a href="#">N.C.G.S.A. § 163-230.1</a> and <a href="#">163-234</a> ). This year: <b>September 29, 2020.</b>	<u><b>Canvassing Start Date for absentee/mail ballots:</b></u>  Fifth Tuesday before Election Day ( <a href="#">N.C.G.S.A. § 163-230.1</a> and <a href="#">163-234</a> ). This year: <b>September 29, 2020.</b>

<p><b><u>Witness Requirement:</u></b></p> <p>One witness required for an absentee ballot in the 2020 general election (<a href="#">S.L. 2020-17</a>). The voter is required to mark the ballot in the presence of the witness (<a href="#">S.L. 2020-17</a>).</p>	<p><b><u>Witness Requirement:</u></b></p> <p>One witness required for an absentee ballot in the 2020 general election (<a href="#">S.L. 2020-17</a>). The voter is required to mark the ballot in the presence of the witness (<a href="#">S.L. 2020-17</a>).</p>	<p><b><u>Witness Requirement:</u></b></p> <p>One witness required for an absentee ballot in the 2020 general election (<a href="#">S.L. 2020-17</a>). The voter is required to mark the ballot in the presence of the witness (<a href="#">S.L. 2020-17</a>).</p>	<p><b><u>Witness Requirement:</u></b></p> <p>One Witness required for an absentee ballot in the 2020 general election (<a href="#">S.L. 2020-17</a>). The voter is required to mark the ballot in the presence of the witness (<a href="#">S.L. 2020-17</a>).</p>
<p><b><u>Comparing Signatures:</u></b></p> <p>Following a recent <a href="#">federal court order</a>, the North Carolina State Board of Elections eliminated signature matching and clarified that a voter's signature on the envelope shall not be compared with the voter's signature on file.</p>	<p><b><u>Comparing Signatures:</u></b></p> <p>Following a recent <a href="#">federal court order</a>, the North Carolina State Board of Elections eliminated signature matching and clarified that a voter's signature on the envelope shall not be compared with the voter's signature on file.</p>	<p><b><u>Comparing Signatures:</u></b></p> <p>Following a recent <a href="#">federal court order</a>, the North Carolina State Board of Elections eliminated signature matching and clarified that a voter's signature on the envelope shall not be compared with the voter's signature on file (<a href="#">September Memo</a>).</p>	<p><b><u>Comparing Signatures:</u></b></p> <p>Following a recent <a href="#">federal court order</a>, the North Carolina State Board of Elections eliminated signature matching and clarified that a voter's signature on the envelope shall not be compared with the voter's signature on file (<a href="#">August Memo</a>).</p>

<p><b>October 17th NCSBE Memo Rules (In Effect as of October 19, 2020)</b></p>	<p><b>October 4th NCSBE Memo Rules (No longer in effect following the October 17th Guidance)</b></p>	<p><b>September NCSBE Memo Rules (In effect from September 22 until blocked on Oct 3, 2020, by Judge Dever's Temporary Restraining Order)</b></p>	<p><b>August NCSBE Memo Rules (In effect from August 21, 2020 - September 22, 2020, &amp; Oct 3, 2020 to Oct 4, 2020, under Judge Dever's Temporary Restraining Order)</b></p>
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<p><b><u>Five deficiencies can be cured via affidavit</u></b> (<a href="#">Oct 17 Memo</a>): 1) a voter failing to sign the Voter Certification; 2) a voter signing in the wrong place; 3) a witness or assistant failing to print their name; 4) a witness or assistant failing to print their address; and 5) a witness or assistant signing on the wrong line</p>	<p><b><u>No deficiencies can be cured via affidavit</u></b> (Oct 4th Memo).</p>	<p><b><u>Six deficiencies can be cured via affidavit</u></b> (<a href="#">September Memo</a>): 1) a voter failing to sign the Voter Certification; 2) a voter signing in the wrong place; 3) a witness or assistant failing to print their name; 4) a witness or assistant failing to print their address; 5) a witness or assistant failing to sign; and 6) a witness or assistant signing on the wrong line (<a href="#">September Memo</a>).</p>	<p><b><u>Two deficiencies can be cured via affidavit</u></b> (<a href="#">August Memo</a>): 1) a voter failing to sign the Voter Certification, and 2) a voter signing in the wrong place. (<a href="#">August Memo</a>).</p>
<p><b>There are three deficiencies that cannot be cured by an affidavit and which result in the ballot being spoiled</b> (<a href="#">Oct 17 Memo</a>): 1) if the witness or assistant did not sign; 2) if the envelope is unsealed upon arrival at the county board office; and 3) The envelope indicates the voter is requesting a replacement ballot.</p>	<p><b>All ballot deficiencies result in the ballot being stored and not considered by the county boards until pending litigation is resolved and/or a new guidance is issued</b> (Oct 4th Memo).</p>	<p><b>There are two deficiencies that cannot be cured by an affidavit and which result in the ballot being spoiled</b> (<a href="#">September Memo</a>): 1) if the envelope is unsealed upon arrival at the county board office, and 2) if the envelope indicates the voter is requesting a replacement ballot (<a href="#">September Memo</a>).</p>	<p><b>There are five deficiencies that cannot be cured by an affidavit and which result in the ballot being spoiled</b> (<a href="#">August Memo</a>): 1) a witness or assistant failing to print their name; 2) a witness or assistant failing to print their address; 3) a witness or assistant failing to sign; 4) a witness or assistant signing on the wrong line; 5) upon arrival at the county board office, the envelope is unsealed or appears to have been opened and resealed (<a href="#">August Memo</a>).</p>

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<p><b>Observers:</b> Observers do not observe ballot processing or inspection (<a href="#">N.C.G.S.A. § 163 45</a>).</p>	<p><b>Observers:</b> Observers do not observe ballot processing or inspection (<a href="#">N.C.G.S.A. § 163 45</a>).</p>	<p><b>Observers:</b> Observers in North Carolina do not observe ballot processing or inspection (<a href="#">N.C.G.S.A. § 163 45</a>).</p>	<p><b>Observers:</b> Observers in North Carolina do not observe ballot processing or inspection (<a href="#">N.C.G.S.A. § 163 45</a>).</p>
<p><b>Notice:</b> North Carolina requires the county board office to contact a voter in writing, via either email or mail, within one business day of identifying a ballot deficiency and enclose either a cure affidavit or new ballot (<a href="#">Oct 17th Memo</a>). If the voter did not provide an email address, the county board is required to call the voter to inform them that their cure affidavit or new ballot has been sent (<a href="#">Oct 17th Memo</a>).</p>	<p><b>Notice:</b> The entire notice and cure process is temporarily suspended (Oct 4th Memo). No voters will be notified of deficient ballots, and any deficient ballot will be stored without being considered by the county boards until a new guidance is issued (Oct 4th Memo).</p>	<p><b>Notice:</b> North Carolina requires the county board office to contact a voter in writing, via either email or mail, within one business day of identifying a ballot deficiency and enclose either a cure affidavit or new ballot (<a href="#">September Memo</a>). If the voter did not provide an email address, the county board is required to call the voter to inform them that their cure affidavit or new ballot has been sent (<a href="#">September Memo</a>).</p>	<p><b>Notice:</b> North Carolina requires the county board office to contact a voter in writing, via either email or mail, within one business day of identifying a ballot deficiency and enclose either a cure affidavit or new ballot (<a href="#">August Memo</a>). If the voter did not provide an email address, the county board is required to call the voter to inform them that their cure affidavit or new ballot has been sent (<a href="#">August Memo</a>).</p>

<p><b>October 17th NCSBE Memo Rules (In Effect as of October 19, 2020)</b></p>	<p><b>October 4th NCSBE Memo Rules</b> (No longer in effect following the October 17th Guidance)</p>	<p><b>September NCSBE Memo Rules</b> (In effect from September 22 until blocked on Oct 3, 2020 by Judge Dever's Temporary Restraining Order)</p>	<p><b>August NCSBE Memo Rules</b> (In effect from August 21, 2020 - September 22, 2020, &amp; Oct 3, 2020 to Oct 4, 2020, under Judge Dever's Temporary Restraining Order)</p>
<p><b><u>Cure Deadline:</u></b> Absentee/mail ballot signature cure deadline is <b>November 12, 2020, by 5:00 pm</b> for both civilian and UOCAVA voters (<a href="#">Oct 17th Memo</a>).</p>	<p><b><u>Cure Deadline:</u></b> Because the notice and cure process is temporarily suspended there is currently no cure deadline (Oct 4th Memo).</p>	<p><b><u>Cure Deadline:</u></b> Absentee/mail ballot signature cure deadline is <b>November 12, 2020, by 5:00 pm</b> for both civilian and UOCAVA voters (<a href="#">September Memo</a>).</p>	<p><b><u>Cure Deadline:</u></b> Absentee/mail ballot signature cure deadline is November 6, 2020, for civilian ballots postmarked by 5:00 pm on Election Day (<a href="#">August Memo</a>).</p>
<p><b><u>Cure Process:</u></b> The cure affidavit can be submitted to the county board office by fax, email, in person, or by mail or commercial carrier (<a href="#">Oct 17th Memo</a>). If a voter shows up in person at the county board office, they may also be given a new cure affidavit to fill out (<a href="#">Oct 17th Memo</a>). The cure affidavit may be returned only by the voter, the voter's near relative, or legal guardian, or by a bipartisan assistance team (MAT) (<a href="#">Oct 17th Memo</a>).</p>	<p><b><u>Cure Process:</u></b> The cure process is temporarily suspended and voters will not be notified of or able to cure any deficient ballots (Oct 4th Memo).</p>	<p><b><u>Cure Process:</u></b> The cure affidavit can be submitted to the county board office by fax, email, in person, or by mail or commercial carrier (<a href="#">September Memo</a>). If a voter shows up in person at the county board office, they may also be given a new cure affidavit to fill out (<a href="#">September Memo</a>). The cure affidavit may be returned only by the voter, the voter's near relative, or legal guardian, or by a bipartisan assistance team (MAT) (<a href="#">September Memo</a>).</p>	<p><b><u>Cure Process:</u></b> The cure affidavit can be submitted to the county board office by fax, email, in person, or by mail or commercial carrier (<a href="#">August Memo</a>). If a voter shows up in person at the county board office, they may also be given a new cure affidavit to fill out (<a href="#">August Memo</a>). The cure affidavit may be returned only by the voter, the voter's near relative, or legal guardian, or by a bipartisan assistance team (MAT) (<a href="#">August Memo</a>).</p>

## *The Signature Matching Process and Standards*

**North Carolina does not have a signature matching verification process**, but county board staff do inspect envelopes to ensure they are signed by the voter and the witness and that the witness information is printed ([October 17 Memo](#)). The North Carolina State Board of Elections (NCSBE) requires the county board staff to confirm that the voter has signed the Voter Certificate in the correct place and that the witness or assistant has provided their name and address, signed on the correct line, sealed the ballot envelope, and that the voter has not indicated on their ballot that the voter is requesting a replacement ballot ([October 17 Memo](#)). The NCSBE gives specific instructions guiding county board staff on what sort of missing information does not require a cure ([October 17 Memo](#)).

County boards are involved in the review of ballot deficiencies when they are first noticed, including when there is no ballot or more than one ballot in the official return envelope. If, by majority vote in a board meeting, the county board rejects a return envelope due to a deficiency, the voter is notified of the deficiency according to the notification process. This process is now occurring again under the [October 17 Memo](#) after being suspended due to the Oct 4th guidance from the NCSBE.

## *Rejection Rates Due to Signature Defects*

The elimination of the signature matching requirement is not expected to significantly reduce the overall rejection rate of vote-by-mail ballots, as signature mismatches comprised less than one percent of all rejected mail ballots in both the 2016 and 2018 elections. On the other hand, the notification and cure process established by the [October 17 Memo](#) for missing signatures and witness-related errors has the potential to significantly reduce the overall vote-by-mail rejection rate as both deficiencies were major issues in the 2016 and 2018 elections. However, the [October 17 Memo](#), compared to the [September Memo](#), made it harder to cure missing witness signatures. Witness signature related errors were a significant reason for ballot rejection in the 2016 and 2018 elections and it is unclear how many voters will take the appropriate actions after their ballots are spoiled. The current notice and cure process may potentially decrease the rejected ballot rate in 2020. However, the higher number of mail-in votes because of the COVID-19 pandemic and confusion caused by rapid rule changes may counteract efforts to facilitate ballot curing in North Carolina.

As of September 17, 2020, Black voters’ ballots in North Carolina are being [rejected at a rate of more than four times that of white voters](#)’ ballots. Black voters have mailed in 13,747 ballots and, so far, 642 have been rejected, or 4.7%. White voters have mailed in 60,954 ballots, with only 661 being rejected, or 1.1%. These numbers include ballots rejected for all reasons, and the vast majority of ballot rejections have been due to [incorrect or missing witness information](#). According to recent Analysis by ProPublica, in the 2018 election, [Black voters’ ballots were more than twice as likely as those sent in by white voters to be rejected](#). Voters across all minority groups in the 2018 election [were nearly twice as likely](#) to have their mail-in ballots rejected compared with white voters. Historically, vote-by-mail has made up only a small fraction of ballots cast in North Carolina but, this year, state election officials are [predicting that as many as 40% of voters](#) will send their ballots through the mail due to the ongoing COVID-19 pandemic. It is possible that the recent creation of a notice and cure process, the decision to reduce the number of errors that require a ballot to be reissued rather than being cured by affidavit, and the decision to accept ballots until November 12 as long as they are postmarked on or before Election Day could reduce these historical and current racial gaps. While all of these policies were temporarily suspended by the [October 4th Memo](#), all were restored by the [October 17 Memo](#) except for allowing a voter to cure a missing witness signature via an affidavit. It is possible that this notice and cure process will help to close the persistent racial gap that is found in the ballot rejection rate in North Carolina.

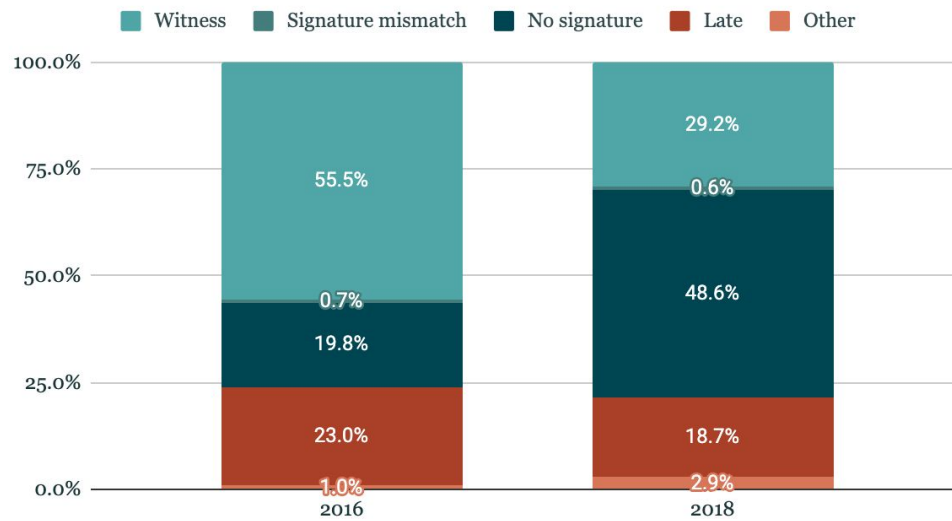
*Table 1: Rejection rates in North Carolina due to late ballots, missing signatures, or signature mismatches*

	<i>Ballots received</i>	<i>Vote By Mail total</i>	<i>Total Vote By Mail rejections</i>	<i>Rejected for lateness</i>	<i>Rejected for missing signature</i>	<i>Rejected for signature mismatch</i>	<i>Rejected for witness related error</i>
<b>2016 General (#)</b>	4,690,195	179,263	4,861	1,119	963	32	2,700
<b>2016 General (%)</b>		4.3%	2.7%	23%	19.8%	0.7%	55.5%
<b>2018 Midterm (#)</b>	3,705,224	95,546	5,835	1,089	2,835	33	1,701
<b>2018 Midterm (%)</b>		5.4%	6.1%	18.7%	48.6%	0.6%	29.2%



(2016 & 2018 EAVS data)

Figure 2: Reason for ballot rejections in 2016 and 2018



### C. Ballot Tracking

North Carolina utilizes [BallotTrax](#) to track the status of their ballot from when it is mailed to when it is received by the county board of elections. In North Carolina voters with valid absentee ballot requests may create an account and view the status of their request and ballot, learn if their ballot cannot be accepted because of deficiencies, and sign up for email, text, and/or voice alerts for status updates.

### D. 2020 Absentee Ballot Outlook

As of October 31, 2020, the [North Carolina State Board of Elections](#) has received over 1.4 million absentee ballot requests, including 668,269 Democrats, 287,552 Republicans, and 497,361 from other parties or non-affiliated voters. Additionally, as of October 31, 2020, according to the [U.S.](#)

[Election Project](#), over 900,000 North Carolina voters have already returned completed absentee ballots. Of those voters, over 45% are registered Democrats, and 20% are registered Republicans.

North Carolina may see an **estimated 1000% increase** in absentee voters between the typical absentee voting rate and what is typically seen in the state. Karen Brinson Bell, the Executive Director of the North Carolina State Board of Elections, [projected that](#) 40% of votes in the November general election will be cast absentee. However, as stated above the data indicates it is like that absentee voting will account for a smaller position of the vote. In North Carolina absentee voting in the primaries has stayed below the typical rate of 4-5%. North Carolina's presidential primaries took place on March 3, 2020. Over 2.1 million people voted in several major and minor party nominating contests. 98.8% of those votes were cast in person, whether on Election Day on a conventional ballot, via a provisional ballot, or through the state's "Absentee One-Stop" voting, which took place in the weeks leading up to the election. Several lawsuits in the state focused on expanding ballot access further. In the March 3 primary, absentee ballots made up about 1% of total ballots. This rose to over 3% for the June 23 runoff, still in line with North Carolina's historical rate of 4-5% absentee voting and far below the expected 40% in November.

A key concern regarding absentee voting in North Carolina is the rejection rate, which has historically seen non-White North Carolinians being disproportionately rejected. Following the October 4, 2020 guidance and until the NCSBE issued further guidance on October 17, 2020 the notice and cure process was halted until litigation regarding the cure deadline and whether witness related errors could be cured by affidavit was resolved. Now that this litigation was resolved, it seems that North Carolina has taken steps to make it easier for absentee voters to cure several common reasons for ballot rejection in the 2020 election. However, it remains to be seen whether these changes will be enough to alleviate the unfortunate historic trends given that five to ten times as many people will be voting by mail, many for the first time.

A bipartisan group of lawmakers filed [a bill](#) aiming to address the problems of holding an election during a pandemic. The bill was signed into law on June 12. Major provisions include: 1) Reducing the witness requirement for absentee ballots from two to one; 2) Requiring that only one precinct assistant need be a resident of the precinct; 3) Permitting individuals trained and authorized by the county board of elections to assist voters with requesting absentee ballots and to deliver completed request forms for absentee ballots to the county board of elections; 4) Permitting absentee

ballots to be delivered in person or by mail, email, or fax by either the voter, their relatives, their guardians, or “any individual working as part of a multi-partisan team trained and authorized by the county BOE;” 5) Tasking the NCSBE to submit a report outlining how county-approved individuals could enter nursing homes, hospitals, and other areas under quarantine in order to help voters request, fill out, or return absentee ballots; 6) Expanding the kinds of photo ID that can be used; and 7) matching \$2.2 million in order to receive the \$11 million from the CARES Act.

The CARES Act awarded North Carolina \$11 million for administration of the 2020 federal election. HB 1169 allows NC to access these funds, because it provides the required 20% matching funds. The NCSBE plans to use the money for: 1) One-time-use pens and styluses for each voter, or sanitization of reusable supplies; 2) Hand sanitizer and masks for voters, poll workers, and election staff; 3) Social distancing tools and protective devices such as face shields, stanchions and plexiglass shields at check-in stations; 4) Facility rental fees to assist counties in moving to sites large enough to accommodate social distancing, including former department stores or grocery stores, if available; and 5) Facility cleaning fees before, during, and after the election.

## V. Early Voting

North Carolina voters can vote before Election Day through an early voting process that is frequently called “one-stop early voting.” In 2020, early voting runs from [Thursday, October 15, 2020 to Saturday October 31, 2020](#). Any registered voter or eligible individual in North Carolina may cast an absentee ballot in person during this period. Voters may cast a ballot at any early voting site in their county, and would-be voters may same-day register and vote. Voters may also deliver their absentee ballots at a one-stop early voting site during any time that the site is open for voting. Early voting has traditionally been popular among North Carolina voters, [more than 60% of the total ballots cast](#) during the 2016 presidential election, or nearly 3 million votes, in North Carolina were cast through early in-person voting. It is expected for this percentage to drop in 2020 due to the increase in absentee ballots.

Table 2: Number of early votes and share won by candidate in 2016 and 2012 general election

	Trump		Clinton	
Method	Votes	Share	Votes	Share
Early (Mail or in-person)	1,474,296	47.1%	1,552,203	49.6%
	Romney		Obama	
	Votes	Share	Votes	Share
Early (Mail or in-person)	1,297,067	47.2%	1,426,129	51.9%

(North Carolina State Board of Elections)

Any voter who qualifies for assistance may ask for help at an early voting site ([N.C.G.S. § 163-166.8](#)). Additionally, in 2020, every voting site in North Carolina offers [curbside voting](#) for voters who are unable to enter the voting place without physical assistance due to age or disability. The term “disability” means you:

- Are unable to enter the polling place due to age or physical or mental disability, such as agoraphobia;
- Have a medical condition that puts you at increased risk of COVID-19;
- Should not wear a mask due to a medical or behavioral condition or disability; or
- Are experiencing symptoms of COVID-19.

Curbside voting allows voters to cast a ballot while in a vehicle outside of the polling location and some locations also provide a walk-up area for curbside voting in addition to the driving area. Curbside voters must sign an affidavit affirming that they are unable to enter the voting place to cast their ballot.

In addition to curbside voting, North Carolina has taken significant precautions to protect voters and election officials against the transmission of coronavirus. These include enforcing social distancing, erecting barriers between election workers, and voters at check-in tables, and more. A challenge in North Carolina has been recruiting enough poll workers. [HB 1169](#) allows poll workers to serve in precincts besides their own and [SB 217](#) ensures that their compensation will not affect their unemployment benefits. North Carolina has still not adopted the NCSBE's recommendation to lower the age requirement for precinct officials, despite many older Americans being wary of serving as poll workers. Voters are encouraged, but not required, to wear masks at early voting sites.

## VI. Election Day in North Carolina

### A. Rules on Election Day Intimidation Efforts or Violence

North Carolina state law [prohibits](#) intimidating any legally qualified voter. Any direct or indirect [attempt](#) at voter intimidation is a Class 2 misdemeanor. Though the statute does not provide an explicit definition of intimidation, the State Board of Elections [provides](#) examples of conduct that may unlawfully intimidate voters, including:

- Approaching voters who appear to be of a certain ethnic group to ask whether they speak English or to demand that they verify their citizenship.
- Following a non-English speaker who is receiving assistance from a person of their choice and accusing them of committing voter fraud.
- Yelling insults or profanity at people who received assistance in the voting enclosure.

More broadly, North Carolina law [forbids](#) engaging in “disruptive behavior” that may interfere with voting, [detering](#) voters from exercising their rights, [photographing](#) or filming inside the polling place without consent, or [hindering](#) access, harassing others, distributing campaign literature, placing political advertising or otherwise engaging in election-related activity within the buffer zone designated by county board of elections around the voting place. Additionally, North Carolina law includes provisions dictating election officials' and poll monitors' responsibilities to prevent voter intimidation. Chief judges of polling places are responsible for [maintaining](#) order at polling places, including preventing and stopping attempts to intimidate any person registering or voting. Chief

judges are [mandated](#) to conduct elections fairly and impartially and to enforce peace and good order at the polling location. If necessary, the chief judge may call the police to aid them in enforcing the law. Election observers [may not](#) interfere with voters under any circumstances, participate in electioneering, or [attempt](#) to challenge voters without a proper basis.

In spite of these directives, voter intimidation continues to remain a major concern in threatening the integrity of the electoral process in North Carolina. In February 2020, the NAACP [sent](#) a letter to the General Counsel for the North Carolina State Board of Elections calling for emergency action regarding voter intimidation. The letter came in response to an incident at an early voting site during the presidential primary. Demonstrators protesting a panel discussion of “The Civil War Today” displayed flags supporting the Confederacy, the League of the South, and President Donald Trump in close proximity to a polling location. And, during the 2018 midterm election, election officials [removed](#) a poll worker from an early voting site for alleged voter intimidation. The poll worker allegedly repeatedly asked a number of African American voters to spell their names.

North Carolina courts have infrequently considered claims of voter intimidation.<sup>1</sup> In [State v. Rogers](#), a 1901 case in North Carolina’s Supreme Court, an individual was expelled from a church he was a member of because he had voted for the Democratic party. The defendants, charged with “having injured, threatened, oppressed, and attempted to intimidate” the man, were acquitted on the basis that “[t]he injury or oppression, if any . . . was not of a physical nature,” and the man “suffered no loss of property or gain, nor was [ ] in any way restrained of his liberty or otherwise controlled in the exercise of his physical conduct.” This case is now over a century old and the statute it interpreted has changed,<sup>2</sup> so it may hold little sway. But if adopted, it may outline a requirement for physical violence that is not explicit in North Carolina law.

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<sup>1</sup> There are several cases from the late 1800s, including [State v. Williams](#) (1895) and [Roberts v. Calvert](#) (1887). However, due to changes in the applicable law, explained further in footnote three, it is unclear to what extent courts would apply this older precedent now.

<sup>2</sup> The statute this case interpreted has changed since the case was decided. The relevant section [provided](#), “Any person who shall discharge from employment, withdraw patronage from, or otherwise injure, threaten, oppress or attempt to intimidate any qualified voter of the state, because of the vote such voter may or may not have cast in any election, shall be guilty of a misdemeanor.” However, similar language exists in [section 163-274](#) of North Carolina’s general statutes (stating that it is a misdemeanor for “any person, directly or indirectly, to discharge or threaten to discharge from employment, or otherwise intimidate or oppose any legally qualified voter on account of any vote such voter may cast or consider or intend to cast, or not to cast, or which he may have failed to cast.”).

The **chief judge or one-stop site manager** is responsible for ensuring voters have unimpeded access into the buffer zone and voting enclosure. By rule, the chief judge is required to:

- (19) ensure peace and good order at the voting place as required by G.S. 163-48. Examples of peace and good order include:
  - (A) keeping open and unobstructed the place at which voters or persons seeking to register or vote have access to the place of registration and voting;
  - (B) preventing and stopping attempts to obstruct, intimidate, or interfere with any person in registering or voting;
  - (C) protecting challengers and witnesses against molestation and violence in the performance of their duties; and
  - (D) ejecting from the place of registration or voting any challenger or witness for violation of any provisions of the election laws or rules

In North Carolina, election officials may only invite police into the voting enclosure because of an “urgent need” ([N.C.G.S. § 163-166.3](#)). Furthermore, police activity must be limited to the “extent necessary to address that need” ([N.C.G.S. § 163-166.3](#)). County offices are encouraged to meet with local law enforcement to alert them of the upcoming election dates and election laws related to voting places, and then share any information about possible threats or gatherings. However, in an [October guidance the NCSBE](#) emphasized that it was inappropriate and impermissible for law enforcement to be stationed at a voting place. When a county board must utilize law enforcement for parking and traffic issues at a voting site, officers must be in plain clothes. The guidance also provides that if the county board uses private security, the security guards must be unarmed and shall not be stationed inside the voting enclosure.

State law provides special protections inside the marked buffer zone outside voting sites. The buffer zone is measured from the door of the entrance to the voting place -- the building where voting is taking place. If practical, the buffer zone shall be 50 feet from the entrance to the voting place, when the door is closed, but in no event shall it be more than 50 feet or less than 25 feet. To ensure ADA compliance and accessibility, exit areas may be marked to ensure they remain clear and do not impede a voter’s mobility. The area in the buffer zone exists so that voters can freely access the voting place without being harassed or intimidated. Electioneering activity and all forms of hindrance and harassment are prohibited in the buffer zone:

No person or group of persons shall hinder access, harass others, distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity in the voting place or in a buffer zone which shall be prescribed by the county board of elections around the voting place.

### **Relevant Rules to Note:**

- Using violence on Election Officials
  - [North Carolina](#): Misdemeanor charge for “any person to break up or by force or violence to stay or interfere with the holding of any primary or election, to interfere with the possession of any ballot box, election book, ballot, or return sheet by those entitled to possession of the same under the law, or to interfere in any manner with the performance of any duty imposed by law upon any election officer or member of any board of elections.”
- Interrupting the voting process
  - [North Carolina](#): Class 2 misdemeanor for anyone to interfere with a voter in the voting enclosure or any voter marking their ballot.
- Extending Polling Hours due to emergencies
  - North Carolina law [explicitly contemplates](#) extending polling hours by court order, or by order of a local board of elections, in case of emergencies.

### **B. Poll Workers on Election Day**

Poll workers were [difficult to find](#) for the primary runoff. Many poll workers called in absent on Election Day, creating shortages in some areas. For example, in Buncombe County, poll workers fell from 327 during the 2012 primary runoff to 240 for the June 23 election. Gov. Roy Cooper and the state legislature attempted to increase the number of available poll workers. Resulting from the recommendation [SB 217](#) ensured that unemployed benefits are not affected by working at the polls and eliminated the requirement that a majority of poll workers reside in precinct. HB 1169 allows poll workers to serve in precincts besides their own. North Carolina has still not adopted the NCSBE’s



recommendation to lower the age requirement for precinct officials, despite many older Americans being wary of serving as poll workers.

**Mail:** In Wake County, North Carolina, the Election Board [conducted](#) a mail campaign to implement its “Vote to Volunteer” Program. It mailed a “Vote to Volunteer” buck slip to all registered voters at a cost of \$0.025 per slip, asking them to work the polls. In addition to sending the buck slip in voter mailings, though, Wake County also collaborated with the Wake County Revenue Department to include the buck slip in the Revenue Department’s annual tax revenue mailing that is sent to each Wake County resident.

**Static online training programs:** In New Hanover County, North Carolina, the Election Board developed an online “[Election Official Resource Portal](#)” to provide centralized access to static election-related documents, including training videos and election-day assignments. [Wisconsin](#) has also created a static repository of videos for all of its poll worker training.

### C. Poll Observers on Election Day

In North Carolina, political party chairs in the county can appoint [two election observers](#) per precinct. These election observers must be registered voters in the county and must have “good moral character.” County party chairs can also appoint [10 at-large election observers](#) to go to any precinct in that county to observe the election process; these at-large observers must be registered to vote in the state. The list of observers must be submitted to the county board of election at least five days before a person is scheduled to observe. Candidates cannot be poll watchers. Because any registered voter in that county can [challenge](#) any other voter, poll watchers (as registered voters) can challenge any voter they choose. Poll watchers have to be [partisan](#), unless open spots remain and no party fills them. Observers must be [unpaid](#).

Observers in North Carolina may observe and take notes. They are not allowed to disrupt voters or election officials. They can’t speak to voters or stand close enough to see ballot or registration information. To reduce the transmission of coronavirus, this year, observers are required to wear face masks and adhere to social distancing guidelines. Any observer who does not adhere to the mask rules or social distancing recommendations will be required to leave.

### **Other acts not permitted by observers:**

- Wearing or distributing campaign material;
- Using any kind of electronic device to film or take photographs inside the voting enclosure;
- Taking photos, videos or recording a voter without the consent of the voter and the chief judge;
- Entering the voting booth area or attempting to view ballots;
- Boarding a vehicle containing curbside voters; and
- Providing voter assistance.

Observers and any voter issuing a challenge may not do so without a proper basis. State law prohibits challenges made indiscriminately or based on speculation (G.S. § 163-90.1). It is also a violation of federal law, which may result in civil or criminal penalties, for any voter to challenge an individual on the basis of the individual's ethnicity, religion, language fluency, or national origin.<sup>3</sup>

Anyone is allowed to watch from outside the buffer zone discussed in the section above. The chief judge is responsible for enforcing these rules.

### **D. Mask Compliance on Election Day**

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<sup>3</sup> 18 U.S.C. § 241. 18 U.S.C. § 242: "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death." See 52 U.S.C. §§ 10101, 10301, 10303(f), and 10503 for civil action by U.S. Attorney General. See Federal Prosecution of Election Offenses (Dec. 2017) for additional information.

As outlined in [Numbered Memo 2020-18](#), voters are strongly encouraged to wear face coverings, but cannot be turned away if they do not wear one. Voters who state that a medical exception applies may vote curbside if they wish, but they are not required to do so. If a voter refuses to wear a mask and does not indicate that an exception to wearing a mask applies, they are not eligible to vote curbside if they do not meet one of the other criteria to vote curbside (See [Numbered Memo 2020-20](#)). Because voters cannot be turned away from voting or denied entry to the voting place if they have a fever or other symptoms of illness, voters shall not be asked to submit to a temperature check before entering the voting place. If a voting site generally requires all non-voters to wear masks and submit to temperature screenings prior to entering the building, or if a municipality enacts the same requirements for all municipal-owned buildings, the voting place within the affected building may be sectioned off so that voters, who do not go through the checks, are not able to enter other areas of the building (See [Numbered Memo 2020-30](#)).

[Executive Order](#) 147, issued on June 24, 2020 (extending earlier Order 141), mandates masks and does not address voting.

The State Board of Elections [issued an emergency order](#) on July 17, 2020 entitled “Administering the November 3, 2020 General Election During the Global COVID-19 Pandemic and Public Health Emergency.” The emergency order stipulates that:

- All county boards shall require that elections officials wear face coverings, and make face coverings available to voters. Voters will not be required to wear a face covering to vote.
- Voters unable to enter the voting enclosure due to age or physical disability (very broadly defined) may sign a “curbside affidavit” and vote curbside. “Neither fear of contracting COVID-19 nor refusal to wear a mask due to personal preference... makes a voter eligible.” However, election workers shouldn’t seek proof of a disability, and any voter that signs the affidavit can vote curbside.

The Department of Health and Human Services has [issued](#) “Interim Guidance for Election Voting Locations,” most recently updated on October 9, 2020. According to the guidance:

- County boards of elections shall require that election workers wear face coverings when within six feet of others.

- Election workers shall encourage all voters to wear face coverings.
- Election workers shall offer face coverings to voters not wearing them.
  - If a voter states that an exception applies, try to make an accommodation by providing curbside service or allowing the customer to enter without a face covering.
  - Voters should not be turned away if they do not have or cannot wear a face covering.
- It is recommended that all voting sites have signs posted providing instruction on proper removal and handling of face coverings.

As noted above observers on Election Day are required to wear masks.

## VII. After the Election

The way North Carolina processes and counts its mail-in ballots may have a profound effect on the results of the state's 2020 General Election. As of September 30, 2020, North Carolina had already [experienced](#) an approximately nine-fold increase in absentee ballot requests over the number requested at the same date in 2016. North Carolina election law allows officials some flexibility to deal with this influx. For instance, local election officials have the authority to begin [opening](#) and preparing absentee ballots for counting on the fifth Tuesday before Election Day. They may also hold additional meetings after Election Day and prior to the day of canvass to [count](#) late-arriving absentee ballots.

Although some aspects of North Carolina election law require statewide uniformity, others allow a degree of discretion for individual counties. North Carolina statute lays out some [general principles](#) for how ballots should be counted. It also requires the North Carolina State Board of Elections to adopt [uniform](#) standards and procedures for how counties should count votes and how individual counties may make use of [different](#) vote-counting systems, such as electronic, mechanical, or hand-to-eye counts. All counties may be required to [engage](#) in hand-to-eye counts or recounts of at least some of their paper ballots or records. The results from all counties will be [viewable](#) on election night on the North Carolina Election Results Dashboard. Later, the canvassing and certification of votes [takes](#) place both at both the county and state level, with the potential for mandatory and discretionary recounts to [delay](#) the completion of the canvass at each level.

## A. Processing Mail-In Ballots

North Carolina election law and guidance provide flexibility for county boards of elections to deal with the anticipated significant increase in mail-in ballots. Before beginning to count mail-in ballots (which North Carolina election officials often [refer](#) to as “absentee ballots”), county boards of elections may begin [scanning](#) each approved absentee ballot, a process which consists of opening approved absentee ballots, removing them from their envelopes, and inserting them into the tabulator. At this time, the county boards [may](#) use the tabulators to “read” the ballots, but the tabulators do not count the ballots until Election Day. This early preparatory step allows election officials to [identify](#) which ballots cannot be read by the tabulator machine, perhaps because of damage, and to make duplicate copies of the unreadable ballots that can be read by the tabulator machine. That way, election staff can [avoid](#) having to manually input each voter’s selections from a ballot into the reporting software, which can save time come Election Day. All approved absentee ballots must be [scanned](#) by the tabulator machine. Each county board of election can [decide](#), by majority vote, to begin the scanning process during each absentee board meeting. Indeed, a September 22, 2020, [memo](#) from North Carolina State Board of Elections Executive Director Karen Bell notes that, due “to the significant increase in absentee ballots this election, it is strongly recommended that county boards authorize the scanning of approved ballots during absentee board meetings instead of waiting until Election Day.” The earliest county boards can [begin](#) scanning absentee ballots is thus during the first absentee board meeting, which county boards are required to hold on September 29 for the 2020 general election. County boards also [have](#) the authority to delegate additional preparatory steps to staff to perform before absentee board meetings. Preparatory steps [include](#) tasks such as inspecting the ballot return envelopes for deficiencies and, if any deficiencies are discovered, notifying voters within one business day.

An August 2020 [memo](#) from North Carolina State Board of Elections Executive Director Karen Bell, following a recent settlement in [N.C. Alliance for Retired Americans v. North Carolina](#), provides guidance on how the county boards and their staff can evaluate and address deficiencies in absentee return envelopes. Notably, in verifying the voter’s signature on the return envelope, the county board should [presume](#) that the signature is that of the voter, absent clear evidence to the contrary, if “it appears to be the name of the voter.” But the signature will be accepted even if the signature is illegible and should “not be [compared](#) with the voter’s signature on file because this is not

required by North Carolina law.” This and other rules for evaluating and addressing deficiencies in absentee return envelopes from the August 2020 [memo](#) are, however, at issue in pending litigation. On October 3, the U.S. District Court for the Eastern District of North Carolina, Western Division [issued](#) a temporary restraining order preventing the State Board of Elections from enforcing the aforementioned August 2020 memo and transferred the case to the U.S. District Court for the Middle District of North Carolina. On October 14, the latter court then [denied](#) the conversion of the temporary restraining order into a preliminary injunction, allowing the State Board to continue to enforce most of the original rules from the August 2020 memo to address deficiencies in absentee return envelopes for the 2020 general election, pending the outcome of further litigation. In a separate opinion issued the same day, however, the court [granted](#) a preliminary injunction against the State Board of Elections to prevent it from enforcing a rule in the August 2020 memo which would have allowed it to accept ballots without a witness (or assistant) signature.

Following the October 14 [ruling](#), most of the rules for addressing deficiencies in absentee return envelopes have now been reinstated in accordance with the August 2020 memo. Generally speaking, some deficiencies can be cured by the submission of a certification from the voter addressing the deficiency, whereas other deficiencies require the reissuance of a ballot, and still others require board action. If a deficiency is [discovered](#) in a board meeting, then it cannot be resolved by staff and will instead require board action to evaluate the deficiency. If the board [rejects](#) the envelope by majority vote, then it must notify the voter within one business day. If the envelope [indicates](#) that the voter is requesting a replacement ballot or if the return envelope is unsealed when it arrives at the county board office, then staff will reject the ballot and reissue a ballot along with a notice to the voter within one business day. Following the October 14 [ruling](#), if a voter’s absentee return envelope lacks a witness signature then staff must also reissue a new ballot. By contrast, the following deficiencies can [still](#) be [fixed](#) by sending the voter a cure certification through mail or email to provide them an opportunity to address it:

- Voter did not sign the Voter Certification
- Voter signed in the wrong place
- Witness or assistant did not print name
- Witness or assistant did not print address
- Witness or assistant signed on the wrong line

Although North Carolina election law does not allow county boards of elections to begin counting mail-in ballots until Election Day, it does provide some flexibility to allow additional time for counting. Under [§163-234](#), each county board of elections is required to meet at 5:00 PM on Election Day to begin counting all mail-in ballots, except for late-arriving ballots or those challenged before 5:00 PM on Election Day. However, [§163-234](#) also allows county boards to begin counting absentee ballots from uniformed officers and overseas voters as early as 9:00 AM on Election Day. In addition, [§163-234](#) allows county boards to begin counting other mail-in ballots as early as 2:00 PM on Election Day, as long as they adopt a resolution at least two weeks prior to Election Day that states the place and time they will begin counting.

Election law also provides county boards of elections additional time to deal with an influx of late-arriving absentee ballots. For instance, county boards of elections can [adopt](#) a resolution to hold additional meetings after Election Day and before canvassing to count absentee ballots. If a county board adopts such a resolution, then [§163-234](#) requires them to publicly publish its contents. [§163-234](#) also requires county boards to meet after Election Day and before the start of canvassing to determine if all late-arriving absentee ballots have been assessed and counted. Any late-arriving ballots not [counted](#) before the day of canvass will be counted on the day of canvass.

Finally, North Carolina election law allows some flexibility in the allocation of labor regarding who can count absentee ballots, even while setting requirements for how they can count them. Each county board of elections [may](#) hire staff to help them count the absentee ballots but must observe and supervise them. As staffers open each ballot envelope, the county boards will [record](#) the names of each voter in a paper or computer pollbook then place each ballot in the appropriate box, according to ballot type. Only after all ballots have been placed in their respective boxes can the counting process [begin](#).

## B. Tabulating the Vote

North Carolina election law lays out some requirements regarding the timing and organization of the counting of ballots. Under [§163-182.2](#), vote counting at each precinct begins immediately after the closing of its polls and continues until it is completed. [§163-182.2](#) also requires that vote counting in each precinct be conducted with the participation of precinct officials from all political parties

present. In addition, it [allows](#) for any member of the public to witness the counting process but forbids them from participating or otherwise interfering.

[§163-182.1](#) lays out some of the general principles and rules for counting ballots. For instance, under [§163-182.1](#), no ballot can be rejected because of technical errors made in marking the ballot, unless it is impossible to determine the voter's choice. Furthermore, if a ballot is [rejected](#) by a scanner or other counting machine but election staff can clearly discern the voter's choice, then the ballot will be counted by hand. In addition to the general principles provided directly in the statute, [§163-182.1](#) requires the North Carolina State Board of Elections to adopt "uniform and nondiscriminatory procedures and standards" for vote counting. These include rules such as [08 NCAC 06B .0105](#), which indicates that provisional ballots will be counted before canvass. [08 NCAC 06B .0105](#) also prohibits county boards from discarding a voter's entire ballot if they are ineligible to vote for some items on the ballot; boards are required to count the items for which the voter is eligible.

Although counties may make use of different vote-counting systems, all counties may be required to engage in hand-to-eye counts of at least some of their paper ballots or records. [§163-182.2](#) notes how, in addition to hand-to-eye counts of paper ballots, counties may make use of "any certified mechanical or electronic voting system," including optical scan and direct record electronic voting systems. Any counties that use a system other than hand-to-eye counts of paper ballots, however, are required to [hold](#) a hand-to-eye count of a random sampling of their paper ballots. The sampling may [include](#) all paper ballots from one or more precincts, mailed absentee ballots, and ballots from early voting sites (where absentee voters are allowed to vote in-person before Election Day). It [must](#) also be of sufficient size to produce a statistically significant result. If there is a "[material discrepancy](#)" between the mechanical or electronic count and the hand-to-eye count, and there is no reason to doubt the accuracy of the hand-to-eye count, such as because paper ballots have been lost or destroyed, then the hand-to-eye count takes precedence. If the discrepancy is "[significant](#)," then a complete hand-to-eye count will be conducted.

### C. Reporting the Vote

The process for reporting the unofficial results is straightforward. After the counting is completed at the precincts, the chief judge or someone he or she designates will verbally [announce](#) the precinct's unofficial results. Following the requirements of the recently rewritten [§163-182.2](#),



precinct officials will then transmit the results in an unofficial report to the county board of elections as quickly as possible. This unofficial preliminary report will [include](#) the number of provisional ballots cast in that precinct and will not have a binding effect on the official county canvass. Immediately after the precinct reports are received, the chair, secretary, or their designee will [publish](#) the unofficial results to the news media.

County boards are in charge of reporting election returns. Under [§163-132.5G](#), county boards are required to report returns by precinct within 30 days after the election. The 30-day deadline does not, however, “[relieve](#) the county board of the duty to report returns as soon as practicable after the election.” North Carolina State Board of Elections Executive Director Karen Bell [extended](#) the reporting deadline of [§163-132.5G](#) by an additional 30 days, effective March 20, 2020, but her emergency amendment authorizing the extension [expired](#) in June 2020. In reporting the returns, the county boards must also [report](#), by precinct and by ballot item in each precinct, how many voters did not select any choice for a ballot item and how many voters selected too many choices for a ballot item.

On election night, the State Board of Elections will maintain an Election Results [dashboard](#). The dashboard will be updated as precincts report results to the State Board of Elections (SBE) and [will include data](#), in the form of maps, tables, and charts, and enable visitors to download election results spreadsheets. After polls close, the state expects to update the [dashboard](#) every 5-10 minutes.

#### D. Certifying the Vote

Under [§163-182.5](#) and [§163-182.6](#), canvassing and certification take place at both the county and state level. At the county level, each county board of elections will [meet](#) at 11:00 AM 10 days after the election to conduct the official tally of votes (or canvass) in precincts in that county and to ensure that all votes have been counted and tabulated correctly. If the initial canvass has not been completed by that time, the board may [hold](#) the canvass meeting at “a reasonable time thereafter.” After completing the canvass, the county board will prepare “abstracts” (defined under [§163-182](#) as “a document signed by members of the board of elections showing the votes for each candidate”) in the uniform format [requested](#) by the State Board of Elections. The abstract, at a minimum, [states](#) each candidate’s name and the number of votes received. Each county board [prepares](#) three originals of the abstract, retaining one for itself, submitting one to the clerk of the superior court for that county, and

submitting one to the State Board of Elections. Six days after the completion of the canvass, if there is no election protest pending, then the county board will [issue](#) a certificate of election.

At the state level, the State Board of Elections will [meet](#) at 11:00 AM on the Tuesday three weeks after Election Day to complete its statewide canvass and ensure that the votes have been counted and tabulated correctly. If, at the time of its canvas meeting, the State Board has not yet received abstracts from some county boards, the State Board can temporarily [adjourn](#) the meeting for up to 10 days while it obtains the missing abstracts. In obtaining the abstracts from the county boards, the State Board is [authorized](#) to obtain one of the triplicate originals at the expense of the counties. Immediately after completing the canvass, the State Board will prepare two original copies of its composite abstracts, retaining one for itself and submitting the other to the Secretary of State, which the Secretary is then [required](#) to keep accessible to the public. Six days after the completion of the State Board canvass, if there is no election protest pending, then the State Board will [issue](#) a certificate of election.

## E. Recount Procedures

Recounts have the potential to delay the completion of a canvass, and there are two types: discretionary and mandatory. When necessary to complete its canvass, the State Board has discretion to [order](#) a recount, and a county board may do the same if the State Board has not already [denied](#) a recount in that county. A losing candidate on a statewide ballot has the right to [demand](#) a recount if the margin of votes between the losing and the prevailing candidate is less than 0.5% of the votes cast or fewer than 10,000 votes. If the losing candidate wants to exercise this right, they must submit their [demand](#) in writing to the State Board by “noon on the second business day after the county canvass.” If the Executive Director later revises the initial results and concludes that the winning margin qualifies the losing candidate to demand a recount, then the Executive Director is [required](#) to notify the losing candidate immediately. After being notified, the losing candidate has 48 hours to [exercise](#) the right to a recount.

Candidates [have](#) the right to demand an *additional* recount following an initial recount if the initial recount did not use hand-to-eye counting and did not reverse the results for the losing candidate. In these circumstances, the losing candidate may, within 24 hours of completion of the initial recount, [demand](#) a hand-to-eye recount in a sampling of precincts. If the initial recount was not hand-to-eye and it does overturn the election results for the candidate who had initially been declared

the winner, then that candidate [has](#) the same right to a hand-to-eye recount in a sampling of the precincts. Such a sampling must [include](#) all ballots in 3% of the precincts casting votes in each county, rounded up to the nearest whole number of precincts. For the purposes of this calculation, each one-stop (early) voting site would [be](#) considered a precinct. If extrapolating the discrepancy between the initial recount and the hand-to-eye recount in the sampling would [lead](#) to a reversal of the election results, then the State Board of Elections will order a hand-to-eye recount in the entire jurisdiction in which the election is held.

## F. Electoral College and Safe Harbor Scenario

Electors from every state and the District of Columbia are scheduled to cast their states' votes for president on December 14, 2020, as part of the Electoral College process established by the Constitution. The Electoral College activities are also governed by certain federal laws. For instance, under 3 U.S.C. § 5, the law requires that, as long as a state has chosen its Electors at least six days before the designated Electoral voting date, Congress will accept that state's Electors. For 2020, this so-called "safe harbor date" is December 8th."

If the safe harbor deadline is fast approaching and a state has not been able to select its Electors, the state legislature could possibly appoint Electors loyal to the majority party, regardless of which candidate won the popular vote count in their state. Given the expected delays in counting an unprecedented number of mail-in-ballots this year, this alternate scenario is a greater possibility than in past elections (but it is still unlikely).

Both Article II of the Constitution and the Electoral Count Act of 1887 could be cited as justifications for a state legislature selecting a slate of electors loyal to the legislature's majority party and preferred presidential candidate, if the state experiences prolonged delays in counting the votes of the people. Yet there are ambiguities open to different interpretations, and there are concerns on whether the Electoral Count Act itself is constitutional, opening the door to potential judicial involvement.

North Carolina along with all five of the other swing states (Arizona, Florida, Michigan, Pennsylvania, and Wisconsin) have Republican-controlled state legislatures, and two of the six (Arizona and Florida)

have Republican governors. However, North Carolina and the other three (Michigan, Pennsylvania, and Wisconsin) have Democratic governors, who could use their powers to certify a different slate. In this scenario, these four states might put forth two different slates of Electors-- one from the Democratic governor and one from the Republican legislature, potentially supporting two different candidates.

## Appendix

### A. Relevant Litigation

***Advance N.C. v. North Carolina*, No. 20CV-02965 (Wake Cnty. Super. Ct.) (Status: Pending)**

North Carolina has "no-excuse" absentee voting by mail which requires an application for an absentee ballot. Until 2018, voters could submit completed applications directly or through a third party. Following enactment of SB 683, most third-party organizations and individuals were prohibited from assisting voters in completing applications, with the exception that assistance may be provided to those who need assistance "due to blindness, disability, or inability to read and write" who do not have "a near relative or legal guardian available to assist." Advance North Carolina filed this suit seeking a declaratory judgement that the law violates the North Carolina Constitution's clauses on freedom of speech, freedom of assembly, equal protection, and free elections. Plaintiffs also seek a preliminary and permanent injunction of the law.

***Arnett v. North Carolina State Board of Elections*, No. 20-CV-570 (Gen. Ct. Justice, Super. Ct. Div., Duplin Cnty.) (Status: Dispositive Meeting)**

The chairman of the Duplin County Republican Party and the North Carolina Republican Party sued the State Board of Elections, its chair and others, seeking a judicial decree that would enable plaintiffs to lodge challenges to approvals or disapprovals of absentee ballots, stop the counting process while challenges are being adjudicated, and permit appeals of the adjudication of challenges. The [complaint](#) alleges violations of the North Carolina Constitution and the North Carolina Public Records Act, in that the defendants have refused to permit plaintiffs to "inspect and examine"

absentee ballot envelopes, which are public records, and that the existing pre-election day absentee ballot processing procedures “create an unconstitutionally unequal status among voters who vote absentee by mail versus voters who vote in-person,” thus depriving voters of equal protection.

([Brennan Center](#))

On October 12, 2020 the North Carolina Democratic Party filed motions to intervene and to stay proceedings.

**[Chambers v. North Carolina](#), No. XX (N.C. Super. Ct., Wake Cnty.) (Status: Dispositive Ruling)**

Plaintiffs were in ill health, some were senior citizens and all live alone and are following social distancing guidelines. They all intend to vote via absentee ballot and are concerned about the witness requirements exposing them to COVID-19.

On September 3, 2020, the court denied DENIED plaintiff’s motion for Preliminary Injunction (i) to prohibit enforcement of North Carolina’s witness requirement for absentee ballots during the pandemic, (ii) to require the counting of ballots that are otherwise valid but fail the witness requirement, and (iii) to educate the public about the invalidation of the witness requirement. The court found that plaintiffs do not have a substantial likelihood of prevailing on the merits and that the equities do not weigh in their favor as defendants would have to replace or modify existing ballots envelopes and voter guides costing hundreds of thousands of dollars and delay the mailing of mail ballots for all voters, and, these actions would likely create voter confusion.

**[Community Success Initiative v. Moore](#), No. 19-cv-15941 (Wake Cnty. Super. Ct.) (Status: Dispositive Ruling)**

Community Success Initiatives, Justice Served NC, and the North Carolina State Conference of the NAACP sued the North Carolina secretary of state, the president pro tempore of the North Carolina Senate, and others, challenging state laws that prohibit persons convicted of felonies from voting until they have fully discharged their sentences, including parole and probation, and further condition restoration of voting rights on full payment of all court fines, fees and restitution. The [complaint](#) alleges violations of the North Carolina Constitution, in that the laws deny the state

constitutional guarantees of “substantially equal voting power,” and to participate in free and fair elections. ([Brennan Center](#))

On September 4, 2020, the Court granted in part and denied in part a [motion for summary judgment](#) or in the alternative for preliminary injunction that permits individuals who have been released from supervision but who still own legal financial obligations to register and vote.

**[DSCC v. North Carolina State Bd. of Elections](#), No. 20 CVS 09947 (N.C. Super. Ct., Wake Cnty.) ( Status: Pending)**

The Democratic Senatorial Campaign Committee, Democratic Congressional Campaign Committee, and the North Carolina Democratic Party sued the North Carolina State Board of Elections, its chair and its executive director, challenging defendants’ failure to provide all voters with an adequate opportunity to cure ballot defects related to the witness requirement. The [complaint](#) alleges violations of the North Carolina Constitution, in that the lack of a notice and cure opportunity deprives voters of procedural due process, equal protection, and the right to participate in free and fair elections, and burdens the fundamental right to vote without being justified by a sufficiently important state interest. ([Brennan Center](#))

**[Democracy N.C. v. N.C. State Bd. of Elections](#), No. 1:20-cv-00457 (M.D.N.C.) (Status: Pending)**

Voting rights advocates, including the League of Women Voters, have filed a federal lawsuit seeking to waive North Carolina’s requirement that absentee voters have their ballots notarized or signed by two witnesses. They also want the state’s 25-day deadline for requesting absentee ballots relaxed. Additionally they would like polling locations to be safer with proper PPE equipment and access to early voting.

On August 4, 2020 the court granted the preliminary injunction in part and denied in part. The court first decided that only some plaintiffs have standing to sue on some of the challenged claims. It then enjoined the statutes limiting assistance by employees of the applicable facilities and the applicable criminal provisions until such time as a plan exists that would reasonably allow a disabled individual affected by these statutes to vote. It also enjoined the State Board of Elections from allowing

county boards of elections to reject a delivered absentee ballot without notice and an opportunity to be heard until the State Board of Elections puts such a uniform procedure in place. Appeal held in abeyance August 26, 2020; [Motions for reconsideration](#) denied September 30, 2020; Plaintiffs' [motion to enforce](#) order granting in part preliminary injunction [granted as to expedited consideration and denied in all other respects](#) October 2, 2020; Oral argument scheduled October 7, 2020.

**[Holmes v. Moore](#), 18 CVS 15292 (Gen. Ct. Justice, Sup. Ct. Division, Wake Cnty.); No. COA19-762 (N.C. Ct. App.) (Status: Dispositive Ruling)**

Individual voters sued the speaker of the North Carolina House of Representatives, president pro tempore of the North Carolina Senate and others, challenging a 2018 law (SB 824) that requires that in-person and absentee voters, with narrow exceptions, present one of eight forms of photo ID. The [complaint](#) alleges violations of Article 1, §§10, 12, 14 and 19 of the North Carolina Constitution, in that the law intentionally discriminates and disparately impacts African-American and American Indian voters; unduly burdens the fundamental right to vote; unjustifiably creates separate classes of voters who are treated differently, thus denying the Constitution's guarantee of equal protection; imposes a financial cost and a property requirement as a condition of voting, in violation of the Free Elections and Property Qualifications Clauses; and impedes voters' ability to engage in political expression and speech by voting, in violation of the right of assembly and petition and freedom of speech. ([Brennan Center](#))

Lower court denied plaintiffs' [motion for preliminary injunction](#) and granted defendants' motions to dismiss as to all but one claim (discriminatory intent). The North Carolina Court of Appeals [reversed and remanded](#), directing the lower court to grant the requested preliminary injunction. Legislative Defendants' [motion to dissolve the preliminary injunction](#) filed July 9, 2020. ([Brennan Center](#))

**[League of Women Voters v. RNC](#), No. 20-1728 (1:20-cv-00457-WO-JLW) (status: Dispositive Ruling)**

Appeal granted for Democracy N.C. v. N.C. State Bd. of Elections. On August 26, 2020 the circuit court granted appellants' motion and placed this case in abeyance pending the resolution of

ongoing district court proceedings. On October 6, 2020 the Court granted a [motion](#) for voluntary dismissal.

**[Moore v. Circosta](#), No. 4:20-cv-00182 (E.D.N.C.) (Status: Pending)**

Plaintiffs, the Speaker of the North Carolina House of Representatives, the President Pro Tempore of the North Carolina Senate, and multiple residents of North Carolina, bring claims against the North Carolina State Board of Elections under the Equal Protection and Elections Clauses of the U.S. Constitution. The claims focus on three memoranda released by the state board of elections altering election regulations as required by the settlement in North Carolina Alliance for Retired Americans. Plaintiffs claim that these changes were outside of the authority of the board and deny people who voted prior to the changes equal protection of the laws.

On October 1, 2020 Judge Dever granted an emergency motion for temporary restraining order. On October 3, 2020 the NCSBE was temporarily enjoined from enforcing the September 2020-19 Memo, and Numbered Memos 2020-22 and 2020-23 until October 16, 2020 and transferred the case to Hon. William L. Osteen to resolve.

On October 14, 2020 Judge Osteen issued an [injunction](#) preventing the state from curing absentee-by-mail ballots with missing witness signatures. Per his order, all other cures can go forward and the extended deadline to November 12, 2020 if the envelope is postmarked by, or before, November 3 remains in place. On October 17, 2020 the NCSBE issued [guidance](#) that reestablished the notice and cure process in North Carolina as stipulated by this order. Following Judge Osteen's order, the Plaintiffs in *Wise* and *Moore* sought an emergency motion for injunction pending appeal from the United States Court of Appeals for the Fourth Circuit to block the extension for accepting ballots. On October 20, 2020, the 4th Circuit Court of Appeals [declined](#) to block the extension, in a [12-3 ruling](#) where all 15 of the court's active judges participated, rather than a smaller panel. The opinion noted that if the court forced the state to shorten the deadline, it would violate a legal principle (*Purcell*) that limits how federal courts intervene in ballot rules close to an election. The three dissenting judges [urged the appellants](#) to take the issue to the Supreme Court of the United States, and the appellants have done so. The [Trump campaign](#) and the [GOP leadership](#) both filed separate appeals to the Supreme Court that were denied by the Supreme Court in a 5-3 decision on October 28, 2020.



**[N.C. Alliance for Retired Americans v. North Carolina](#), No. 20 CVS 08881 (N.C. Super. Ct., Wake Cnty.) (Status: Dispositive Ruling)**

Plaintiffs, an organization for retired persons and a group of elderly voters worried about COVID, bring suit against North Carolina and the State Board of Elections. They challenge the state's alleged failure to provide accessible in-person voting opportunities that comply with health recommendations for COVID as well as the state's enforcement of absentee voting restrictions that they allege will together unduly burden or deny the franchise to a large number of voters. The challenged provisions include limitations on early voting, requirements that absentee ballots be signed by a witness, a failure to provide pre-paid postage for mail-in ballots, laws implementing a receipt deadline for absentee ballots, rejection of ballots for signature defects, a voter assistance ban, and limits to ballot delivery aids. The Plaintiffs claim that these provisions violate the North Carolina Constitution's Equal Protection and Free Elections clauses.

On September 22, 2020 the Court [approved](#) of the settlement that extends the ballot receipt deadline to nine days after the election, institutes a cure process for ballot deficiencies, and requires the state to establish ballot drop-off boxes. The temporary restraining order issued by Judge Dever temporarily blocked the settlement from being in effect.

On October 26, 2020 the Supreme Court of North Carolina [denied](#) the petition to stay the consent decree ending the challenges in state court that the consent decree had been subjected to. However, this ruling was appealed to the United States Supreme Court in *berger v. North Carolina State Board of Elections*. However, the state GOP leadership application for the Supreme Court to stay, pending appeal, the North Carolina Supreme Court order that left in place the extended deadline. However, that application was denied by the Supreme Court.

**[North Carolina Democratic Party v. North Carolina](#), No. 19-CV-14688 (Gen. Ct. of Justice, Super Ct. Div., Wake Cnty.) (pending)**

The North Carolina Democratic Party, Democratic Senatorial Campaign Committee, and Democratic Congressional Campaign Committee sued the State of North Carolina, the State Board of Elections, and the chair of the BOE challenging state laws that restrict early voting opportunities. The [amended complaint](#) alleges violations of Art. I, § 10 (Free Elections Clause), § 14 (freedom of

speech), § 12 (freedom of assembly), and § 19 (equal protection) of the North Carolina Constitution, in that the challenged provisions unduly burden the right to vote.

***North Carolina State Conference of the NAACP v. Cooper*, No. 1:18-cv-1034 (M.D.N.C.);  
*North Carolina State Conference of the NAACP v. Raymond*, Nos. 19-1091, 19-1094,  
19-2273 & 20-1092 (4th Cir.) (status: Dispositive Ruling)**

The North Carolina State Conference of the NAACP, Chapel Hill-Carboro NAACP, Greensboro NAACP, and others sued the governor of North Carolina, the chair of the North Carolina State Board of Elections and others, challenging a state law that requires that voters present one of a limited number of photo IDs (excluding public assistance IDs) in order to cast a ballot and expanded the number of permitted poll watchers and bases for challenging ballots. The [complaint](#) alleges violations of the 14th and 15th Amendments to the U.S. Constitution and Section 2 of the Voting Rights Act, in that the law was motivated by impermissibly racially discriminatory intent, discriminates on the basis of race, and denies or abridges the right to vote on account of race or color. ([Brennan Center](#))

The district court [granted in part and denied in part](#) plaintiffs' [motion](#) for a [preliminary injunction](#), prohibiting defendants from implementing the law's voter ID requirements and ballot-challenge provisions for any election, pending further court order. ([Brennan Center](#))

Appeal filed January 24, 2020; Denial of motion to intervene [vacated by 4th Circuit](#) August 14, 2020; Petition for rehearing en banc filed and [stay of mandate](#) issued by 4th Circuit September 11, 2020. ([Brennan Center](#))

***North Carolina State Conference of the NAACP v. North Carolina State Board of Elections*, 20-CVS-5035 (N.C. Super. Ct., Wake Cnty.) (Status: Dispositive Ruling)**

The North Carolina State Conference of the NAACP and four individual voters sued the North Carolina State Board of Elections and various county boards of elections, challenging the counties' use of ExpressVote electronic ballot-marking devices, which, plaintiffs allege, "suffer from security vulnerabilities, are inaccurate, tabulate votes based on a bar code that cannot be read by the voter, and cannot be sufficiently audited." The [complaint](#) alleges violations of Article 1, §§ 10 and 19

of the North Carolina Constitution, in that the use of the machines severely burdens plaintiffs' right to participate in free and fair elections that "accurately ascertain the will of the people," and denies equal protection to voters in counties which employ the machines. The motion for preliminary injunction was denied on August 19, 2020.

**[Stringer v. North Carolina](#), No. 20-CVS-5615 (N.C. Super. Ct., Wake Cnty.)**

Individual North Carolina voters sued the State of North Carolina, the State Board of Elections, and others, challenging state laws that (1) require that each absentee ballot be witnessed and certified by a notary or two qualified individuals; (2) require most voters to pay for postage when applying for an absentee ballot; (3) reject ballots received more than three days past the election, even if postmarked on or before Election Day; (4) fail to prescribe uniform standards for signature verification; and (5) fail to provide notice and an opportunity to cure to voters whose signatures are perceived to be inconsistent. The [complaint](#) alleges violations of Art. I, § 10 (Free Elections clause), § 14 (freedom of speech), § 12 (freedom of assembly), and § 19 (equal protection) of the North Carolina Constitution, in that the laws infringe on the right to participate in free and fair elections, and unconstitutionally burden the right to vote. ([Brennan Center](#))

**[Taliaferro v. North Carolina State Board of Elections](#), No. 5:20-cv-411 (E.D.N.C.)**

Four individual voters, the North Carolina Council of the Blind, the Governor Morehead School Alumni Association, and others sued the North Carolina State Board of Elections, its director, chair, and others, challenging the state's absentee voting program, which requires voters to complete a paper ballot using an ink marking device and physically return the voted ballot to the County Board of Elections, and is thus inaccessible to blind voters who wish to vote independently. The [complaint](#) alleges violations of Title 2 of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, in that the absentee voting program denies individuals with disabilities an equal opportunity to access the benefits of the program, fails to provide reasonable modifications to avoid discrimination on the basis of disability, excludes individuals with disabilities from participation in the program, and discriminates on the basis of disability. ([Brennan Center](#)). [Motions for preliminary injunction granted](#) September 24, 2020

***Wise v. N.C. State Bd. of Elections*, No. 5:20-cv-00505 (E.D.N.C.) (Status: Pending)**

Plaintiffs, representatives for the Trump election campaign, two U.S. Congressmen, and representatives for the state and national Republican Party bring suit against the North Carolina Board of Elections under the Elections Clause, Article 2 Section 1, and the Fourteenth Amendment of the United States Constitution for changes made to voting procedures under a settlement entered into in North Carolina Alliance for Retired Americans. Plaintiffs claim that these changes were outside of the defendants' authority to regulate congressional and presidential elections in the state and will lead to increases in voter fraud.

On October 1, 2020 Judge Dever granted an emergency motion for temporary restraining order. On October 3, 2020 the NCSBE was temporarily enjoined from enforcing the September 2020-19 Memo, and Numbered Memos 2020-22 and 2020-23 until October 16, 2020 and transferred the case to Hon. William L. Osteen to resolve.

On October 14, 2020 Judge Osteen issued an [injunction](#) preventing the state from curing absentee-by-mail ballots with missing witness signatures. Per his order, all other cures can go forward and the extended deadline to November 12, 2020 if the envelope is postmarked by, or before, November 3, remains in place. On October 17, 2020 the NCSBE issued [guidance](#) that reestablished the notice and cure process in North Carolina as stipulated by this order. Following Judge Osteen's order the Plaintiffs in *Wise* and *Moore* sought an emergency motion for injunction pending appeal from the United States Court of Appeals for the Fourth Circuit to block the extension for accepting ballots. On October 20, 2020, the 4th Circuit Court of Appeals [declined](#) to block the extension, in a [12-3 ruling](#) where all 15 of the court's active judges participated, rather than a smaller panel. The opinion noted that if the court forced the state to shorten the deadline, it would violate a legal principle (*Purcell*) that limits how federal courts intervene in ballot rules close to an election. The three dissenting judges [urged the appellants](#) to take the issue to the Supreme Court, and the appellants have done so. The [Trump campaign](#) and the [GOP leadership](#) both filed separate appeals to the Supreme Court that were both denied. Both applications were unsuccessful and on October 28, 2020 the Supreme Court in a 5-3 decision denied the linked applications for injunctive relief and maintained the extended deadline, as well as the other measures that were sought in *Wise*.

## B. North Carolina 2020 Primaries

The state had scheduled a special election in its 11th Congressional District to replace former Rep. Mark Meadows. The first round of the primary took place on March 3, with a run-off originally set to take place on May 12. The state [delayed](#) this run-off to June 23 due to COVID-19.

[The NCSBE](#) announced the following precautions for the June 23 primary to protect voters and poll workers:

- Masks available for all poll workers and voters who do not bring their own.
- Single-use pens for voters to mark their ballots.
- Single-use cotton swabs for voters using touchscreen voting machines.
- Social distancing for all poll workers and voters, including markings or barriers to prevent voters in line from standing too close together.
- Hand sanitizer for voters and poll workers.
- Face shields and gloves for poll workers.
- Protective barriers between poll workers and voters at check-in tables.
- Special sanitation kits at each precinct to ensure poll worker protection and clean tables, voting booths and voting machines throughout the voting process.
- Thorough cleaning of voting sites before and after the election.

Most of the 17 counties in the 11th District posted this information on their websites.

These precautions were accompanied by polling place closures and precinct consolidation. In Haywood County, for example, 18 of 29 polling places closed. Affected voters were [notified by mail](#), and signage was posted at closed locations indicating where people should vote instead.

Absentee ballot requests [rose](#) for the second primary, though they fell far short of the projections for November. In the March 3 primary, absentee ballots made up about 1% of total ballots. This rose to over 3% for the June 23 runoff, still in line with North Carolina's historical rate of 4-5% absentee voting and far below the expected 40% in November.

Poll workers were [difficult to find](#) for the primary runoff. Many poll workers called in absent on Election Day, creating shortages in some areas. For example, in Buncombe County, poll workers fell from 327 during the 2012 primary runoff down to 240 for the June 23 election.