

March 3, 2026 Election Protest of Philip E. Berger
N.C. Senate District 26 Primary

PROTESTOR

1. Provide your preferred contact information:

Name: Philip E. Berger County of Residence: Rockingham
Email: contact counsel Phone: contact counsel
Mailing Address: P.O. Box 528, Eden, NC 27289-0528

NOTE: You will be deemed to consent to service at all of the above addresses (including email), unless you attach an addendum indicating otherwise.

2. Are you represented by counsel? Yes No

NOTE: If you answered Yes, above, your counsel must complete and you must attach the Counsel Certification Addendum.

3. Mark all that describe you:

- Candidate for the office of North Carolina Senate, District 26
- Registered voter eligible to participate in the protested election contest
- Neither of the above*

**If you select this option, you are not eligible to file a protest.*

PROTEST SCOPE

4. List all election contests subject to your protest and calculate the margin of votes separating the apparent winner from the runner-up as of the date of filing. Your response does not waive your right to contest the validity of the current vote count. If your protest concerns all contests on the ballot, you must include the vote margin for each contest.

Protested Contest(s)	Current Vote Margin (subtract runner-up totals from apparent winner's totals)
N.C. Senate District 26 Primary	23

5. This protest alleges (*select at least one*):

- A defect in the manner by which votes were counted or results tabulated sufficient to cast doubt on the apparent results of the election.
- A violation of election law, irregularity, or misconduct sufficient to cast doubt on the apparent results of the election.

FACTUAL BASIS & LEGAL ARGUMENT

6. Provide all factual allegations in support of your protest. If any fact you allege is outside the scope of your personal knowledge, you may attach affidavits from those who have personal knowledge of that fact. All facts you allege in connection with this protest must be true and accurate to the best of your knowledge, and brought in the sincere belief that the facts alleged form a good faith basis to protest the conduct and results of the election.

Factual Basis

This protest concerns a ballot-style error affecting known Guilford County voters who are eligible to vote in the North Carolina Senate District 26 (“SD26”) primary election and who voted in the March 2026 Republican primary, but who reported that the ballot they received did not include the SD26 Republican primary contest between Phil Berger and Sam Page.

We are not including the names of the identified voters in this protest because an election-law complaint was filed with the North Carolina State Board of Elections seeking an investigation into this matter, and those investigations are confidential. Moreover, we believe our own efforts to learn whether more SD26 voters received an incorrect ballot style have been undermined by text communications that were purportedly sent by “Sheriff Sam Page’s Legal Defense Fund” to Guilford County voters. *See* Exhibit A. We are concerned that these text communications incorrectly characterize our investigation, could intimidate voters, and could deter citizens from coming forward with more information. For these reasons, we wish to protect the identities of the voters we have already identified.

After election day, a voter in SD26 identified herein as **Voter 1** reached out and said he was given a ballot that did not include the SD26 contest. **Voter 1** reported he was aware of another voter, **Voter 2**, who said they also did not recall seeing the SD26 race on their Republican ballot when they voted. **Voter 1** said that both he and **Voter 2** voted during early voting at the Deep River Recreation Center. Upon learning this information, members of the Phil Berger Committee’s team contacted multiple Guilford County voters whose voter registration records reflect residence within SD26 and who, based on voter history, voted in the March 2026 primary. In those conversations, some voters reported that the ballot they were issued and cast did not include the SD26 contest. Those voters include at least:

1. Voter 3
2. Voter 4
3. Voter 5
4. Voter 6
5. Voter 7
6. Voter 8

Voter 3 and Voter 5 stated that they voted during early voting at the Jamestown Town Hall early voting site and did not receive ballots containing the SD26 contest.

The remaining identified voters also reported that the SD26 contest was not included on their ballots. We are unable to independently confirm the ballot style actually issued to each voter because those records are uniquely within the possession, custody, and control of the Guilford County Board of Elections and the State Board of Elections.

For that reason, counsel for the Phil Berger Committee requested that the Guilford BOE investigate the reported ballot-style error by reviewing the official election records that would confirm whether SD26 was included on the ballots issued to the identified voters. Guilford BOE declined to initiate the requested investigation or otherwise provide the information necessary to determine whether these SD26-eligible voters were mistakenly issued an incorrect ballot style that omitted the SD26 contest.

Because the County is the custodian of the records that can confirm what ballot styles were issued to these voters, and because multiple SD26-eligible voters have reported that SD26 was missing from their ballots, we file this protest to compel investigation and appropriate remedial relief.

Legal Argument

All SD26-eligible voters who presented to vote were entitled to receive a ballot that included the SD26 contest. If SD26-eligible voters were issued ballots that omitted the SD26 contest, those voters were denied the opportunity to vote in that contest, contrary to the protections for qualified voters reflected in the North Carolina Constitution. N.C. Const. art. VI, §§ 1–2(1).

North Carolina law provides a remedy where a known voter or group of voters was given an incorrect ballot style. Specifically, the State Board of Elections has authority to take action necessary to ensure the election is determined

without irregularities that may have changed the result, including authorizing a recast-vote procedure “[w]here a known voter or known group of voters was given an incorrect ballot style.” NCGS § 163-182.12. The statute contemplates that affected voters may be permitted to recast their votes during a two-week period after canvass, under procedures approved by the State Board, and that the recast votes are added to the returns and included in the canvass. NCGS § 163-182.12.

The State Board also has general supervision over elections and authority to act on failures by a county board to comply with election-law duties. NCGS § 163-22(a), (c). Separately, the county board has a statutory duty to investigate and report election irregularities and nonperformance by election officials. NCGS § 163-33(3). Here, the record presented to the Board establishes a credible basis to believe that SD26-eligible voters were issued an incorrect ballot style omitting the SD26 contest. Because the Guilford BOE is the custodian of the election administration records necessary to confirm ballot styles issued to the identified voters, the appropriate and necessary next step is for the Guilford BOE to promptly review those records to determine whether the identified voters were issued an incorrect ballot style and whether the issue extends to additional SD26-eligible voters.

Accordingly, the Guilford BOE should sustain this protest and order appropriate relief consistent with NCGS § 163-182.12, including: (1) directing Guilford BOE staff to immediately investigate, using its official election administration records, whether the identified SD26-eligible voters were issued an incorrect ballot style omitting the SD26 contest and to determine the scope and cause of any such error; and (2) upon confirmation that a known voter or known group of voters was issued an incorrect ballot style, requesting that the State Board authorize and oversee a recast-vote procedure under NCGS § 163-182.12 so that affected voters’ SD26 votes are counted once, correctly, and included in the certified returns.

7. List all individuals, if any, you may call as witnesses to substantiate facts listed in Prompt 6. If there are multiple individuals, summarize the facts of which the individual has personal knowledge.

Charlie Collicutt; Voters 1 through 8

8. Cite any statute or case, administrative rule or decisions, and election policy or procedure that supports your claim set out under Prompt 5.

N.C. Const. art. VI, § 1; N.C. Const. art. VI, § 2(1); NCGS § 163-22(a); NCGS § 163-22(c); NCGS § 163-33(3); NCGS § 163-182.12.

RELIEF

9. What effect do you believe the facts alleged in response to Prompt 6, if proven, will have on the electoral outcome in the protested contest(s)? Your response should account for the current vote margin calculated in response to Prompt 4.

- The electoral outcome of the protested contest(s) will change.
- The electoral outcome of the protested contest(s) will not change.
- I am uncertain whether the outcome of the contest(s) will change. **(Due to other pending protests and recounts, these votes may be determinative of the outcome. Therefore, this protest is contingent on the votes at issue becoming determinative based on the outcome of the recount and other protests filed.)**
- Other _____

10. What relief do you seek?

- Correct the vote count
- A new election
- Other: We ask that (1) the Guilford County Board of Elections investigate the cause and full extent of this problem and (2) the State Board of Elections authorize the Guilford County Board of Elections to allow this group of voters (and any additional voters discovered in the investigation) to recast their correct ballots (with the Senate District 26 race included) pursuant to NCGS § 163-182.12.

ASSISTANCE

11. List all persons who assisted you in preparing the contents of this protest and indicate the nature of the assistance provided:

See Counsel Certification Addendum

Note: For protestors represented by an attorney, this protest is the initial filing in a proceeding as defined by N.C. State Bar Rules. See 27 N.C.A.C. 02 Rule 1.00(n).

12. Has any candidate, political party, organization, or person acting on behalf of the same requested that you bring this protest?

- Yes
- No

13. Have you received any financial or other benefit or promise of future financial or other benefit in exchange for filing this protest?

- Yes
- No

AFFECTED PARTIES & SERVICE

You must serve copies of all filings on every person with a direct stake in the outcome of this protest ("Affected Parties"). Affected Parties include every candidate seeking nomination or election in the protested contest(s) listed under Prompt 4, not only the apparent winner and runner-up. If a protest concerns the eligibility or ineligibility of particular voters, all such voters are Affected Parties and must be served. Address information for registered voters is available from the county board of elections or using the Voter Lookup at www.ncsbe.gov.

Materials may be served by personal delivery, transmittal through U.S. Mail or commercial carrier service to the Affected Party's mailing address of record on file with the county board of elections or the State Board, or by any other means affirmatively authorized by the Affected Party. If you know the Affected Party is represented by an attorney, service must be made on his or her counsel. Service must occur within one (1) business day of filing materials with the county board of elections. If service is by transmittal through the U.S. Mail or commercial carrier service, service will be complete when the properly addressed, postage-paid parcel is deposited into the care and custody of the U.S. Mail or commercial carrier service. It is your responsibility to ensure service is made on all Affected Parties.

14. List all Affected Parties, including their service address:

<i>Affected Party</i>	<i>Service Address</i>
<u>Samuel Scott Page</u>	<u>424 Dogwood Dr. Eden NC 27288</u>
<u>Sam Page 4 NC (campaign committee)</u>	<u>PO Box 4572, Eden, NC 27289-4572</u>
<u>Voters 1-8</u>	<u>The NCSBE has their addresses</u>
_____	_____
_____	_____

PROTESTOR CERTIFICATION

15. By signing this protest application, you affirm the following:

I, Philip E. Berger (full name), swear, under penalty of perjury, that the information provided in this protest filing is true and accurate to the best of my knowledge, and that I have read and understand the following:

(initial)

- I have reviewed the statutes and administrative rules governing election protests, including all deadlines.
- My protest must originate with a filing at the county board of elections.
- I must timely serve all Affected Parties.
- I must prove by *substantial evidence* either the existence of a defect in the manner by which votes were counted or results tabulated or the occurrence of a violation of election law, irregularity, or misconduct, either of which were sufficient to cast doubt on the apparent results of the election.
- It is a crime to interfere unlawfully with the conduct and certification of an election.
- It is a crime to interfere unlawfully with the ability of a qualified individual to vote and to have that vote counted in the election.
- The facts I allege in connection with this protest are true and accurate to the best of my knowledge, and I have a good faith basis to protest the conduct and results of the election.

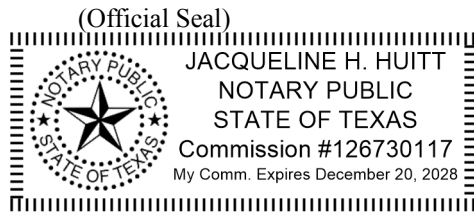
Submitting fraudulently or falsely completed declarations is a Class I felony under Chapter 163 of the General Statutes. This notice is provided pursuant to S.L. 2013-381, s. 5.4.

Signature of Protestor: Philip E. Berger Date: March 17, 2026
(This signature must be signed in the presence of a notary)

State of Texas, County of Harris

Sworn to (or affirmed) and subscribed before me this the 17th day of March, 2026.

Jacqueline H. Huitt
Official Signature of Notary



Jacqueline H. Huitt, Notary Public
Printed Name

My commission expires: December 20, 2028

Date/Time Filed with County Board
(completed by the county board)

NOTE: The county board must provide the State Board with a complete copy of a filed protest within one business day after it is filed. In addition, the county board shall provide a copy of the election audit with this copy of the protest.

Please direct any questions to your county board of elections or the North Carolina State Board of Elections & Ethics Enforcement, PO Box 27255, Raleigh, NC 27611-7255.

COUNSEL OF RECORD ADDENDUM

If you answered Yes to Prompt 2 on the above, your attorney must complete this form and you must file it with your Election Protest Application.

Attorney Must complete all of the following:


Protestor Name: Philip E. Berger Protestor County: Rockingham
Attorney Name: John E. Branch, III
Attorney Email: jbranch@bakerdonelson.com Attorney Phone: 984-844-7907

I am a member in good standing with the North Carolina State Bar
 I am not licensed to practice law in North Carolina but am a member in good standing in _____ (State or District of Columbia), and do hereby apply to appear pro hac vice and certify that I have or will file all appropriate documents required under G.S. 84-4.1.

Law Firm: Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.
Bar Number: 32598

I (choose one) am am not:
Subject to any order of any court or administrative agency disbaring, suspending, enjoining, restraining, or otherwise restricting me in the practice of law. If you are subject to any orders, explain in the space below.

I represent the Protestor whose name is provided above. I have read and understand the laws governing election protests in North Carolina General Statutes Chapter 163 and Title 8 of the N.C. Administrative Code. I swear/attest that the information I have provided in this Addendum is true and accurate to the best of my knowledge.


Attorney Signature

3/17/26
Date

COUNSEL OF RECORD ADDENDUM

If you answered Yes to Prompt 2 on the above, your attorney must complete this form and you must file it with your Election Protest Application.

Attorney Must complete all of the following:


Protestor Name: Philip E. Berger Protestor County: Rockingham
Attorney Name: Philip R. Thomas
Attorney Email: pthomas@chalmersadams.com Attorney Phone: (919) 670-5185

I am a member in good standing with the North Carolina State Bar
 I am not licensed to practice law in North Carolina but am a member in good standing in _____ (State or District of Columbia), and do hereby apply to appear pro hac vice and certify that I have or will file all appropriate documents required under G.S. 84-4.1.

Law Firm: Chalmers, Adams, Backer & Wallen, PLLC
Bar Number: 53751

I (choose one) am am not:
Subject to any order of any court or administrative agency disbaring, suspending, enjoining, restraining, or otherwise restricting me in the practice of law. If you are subject to any orders, explain in the space below.

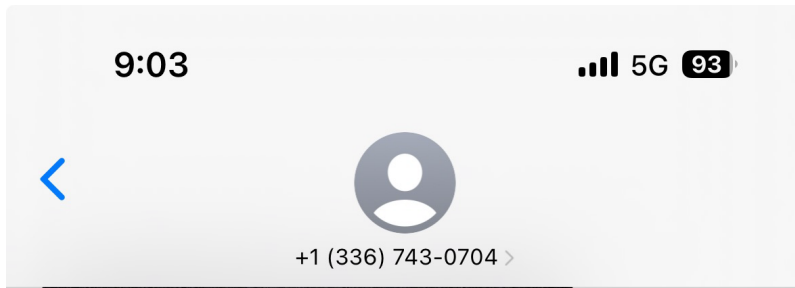
I represent the Protestor whose name is provided above. I have read and understand the laws governing election protests in North Carolina General Statutes Chapter 163 and Title 8 of the N.C. Administrative Code. I swear/attest that the information I have provided in this Addendum is true and accurate to the best of my knowledge.



Attorney Signature

3/17/2026
Date

EXHIBIT A



Sheriff Sam Page's legal defense fund here. Phil Berger's campaign is asking voters to claim they received the wrong ballot in an effort to challenge his election defeat. If anyone from the Berger campaign is pressuring you to sign something that isn't true, please reply to this message or call [\(336\) 365-4868](tel:3363654868) and let us know.

Submitting a false affidavit is a felony. Help put a stop to these dirty tricks.

- Sheriff Sam Page's Legal Defense Fund
stop=end

