NORTH CAROLINA
STATE BOARD OF ELECTIONS
www.ncsbe.gov

Election Protest Procedures Guide

Updated November 4, 2026

DISCLAIMER: This guide was prepared by State Board of Elections legal staff for general informational purposes for the public and for the county boards of elections who will hear and resolve elections protests. This guide does not constitute legal advice.

Contents

Overview of Election Protests 1
Filing a Protest 2
Who May File a Protest 2
What Must Be Included in a Protest Filing 2
When May a Protest Be Filed 3
Where Must a Protest Be Filed 5
How the County Board Gives Notice of the Protest Filing 5
County Board Proceedings on Protests 6
Administrative Dismissal by a Director of Elections 6
Preliminary Consideration by the County Board 6
Protest Hearing 9
Appeal of Protest Decisions 15
Who May Appeal a County Board Decision 15
When and How to File an Appeal 15
State Board Decision on a Protest Appeal 16
Appeal of State Board Decision on a Protest Appeal 17
Document References 18

This guide provides information, practical tips, and legal standards for the requirements and processes involved with election protests, from the initial filing through any appeals. Legal citations throughout this guide are noted in endnotes in the document references section. This guide, protest-related forms, and State Board decisions on election protest appeals can be accessed electronically on the State Board's website.[1]

Unless otherwise indicated, statutes and rules applicable to protests are available at Article 15A of Chapter 163 of the North Carolina General Statutes and Chapter 02 of Title 08 of the North Carolina Administrative Code. The State Board does not warrant that the content in this guide is comprehensive or current. Parties to protests and the county boards of elections should always consult applicable laws and rules relating to protests

Overview of Election Protests

"Election protests enable North Carolina citizens to freely raise concerns about the election process and give the county boards of elections a chance to address those concerns. . . . The process is simple so that everyone, not just lawyers, can use it."[2]

An election protest is a formal complaint based on alleged violations of election laws, irregularities, or misconduct that affected the outcome of the election, which may include a defect in the way votes were counted or tabulated.

An election protest is initiated when a candidate or registered voter eligible to participate in the protested contest files a protest with the county board where the alleged problem occurred. The county board will give the protest filing a preliminary review and decide whether it meets the requirements to advance to an evidentiary hearing. If the protest does not meet the preliminary requirements, then the county board will dismiss the protest.

If, however, the protest does meet the preliminary requirements, the protest advances to an evidentiary hearing where the board will assess evidence in the form of witness testimony, affidavits, documents, and any other evidence presented. The county board will then determine whether there is substantial evidence that voting irregularities occurred and whether the irregularities were outcome-determinative. An election protest proved by substantial evidence can correct results, cause a recount, or even result in a new election.

An interested party may appeal the county board's decision on a protest by filing an appeal with the State Board of Elections. A final State Board decision on the protest appeal may generally be appealed to the Superior Court in Wake County.

Filing a Protest

Who May File a Protest

An election protest may be filed by the following:[3]

- a registered voter who was eligible to vote in the protested election contest
- a candidate in the protested election contest

If multiple protests of the same contest are filed by different voters or candidates, the State Board or county board may combine them into one proceeding.

What Must Be Included in a Protest Filing

A protest must be filed in writing on the Election Protest Form, available on the State Board's website in different formats, and must be signed by the protestor.[4] The protestor should include with their form any written materials and documents they believe will support the allegations made in the protest.

If the form is not used, the filing will not be dismissed as deficient if it otherwise satisfies the statutory requirements for protest filings. At minimum, the protest filing must meet **all of** the following requirements in N.C.G.S. § 163-182.9:

- Be in writing
- Be signed by the protestor (the form is designed to be filed by one individual)
- Include the protestor's name, address, and telephone number
- Include a statement that the protestor is a registered voter in the jurisdiction of the contest under protest or is a candidate in that contest
- State whether the protest is alleging a defect in the way votes were counted or is alleging a violation of election law, irregularity, or misconduct in the election
- State what remedy is being sought by the protestor

The following three subsections explain some of the reasons for filing a protest.

Protests based on the counting or tabulating of votes

A defect in how "votes were counted and results tabulated" means the actual vote counting and tabulation process. If a protestor is alleging that there would have been a different vote total or outcome in the contest because of some other irregularity (e.g., participation in the election by ineligible voters), then that is not a defect in how votes were counted or results tabulated.

Protests based on challenges to a candidate's eligibility

A challenge to a candidate's eligibility should be filed as a candidate challenge under Article 11B of Chapter 163. If a challenger discovers grounds for challenging a candidate after the deadline in N.C.G.S. § 163-127.2(a), that may be the basis for a protest. If a protest is filed on the basis of a candidate's eligibility, the burden of proof is on the protestor, not the candidate.[5]

Protests based on challenges to voters' eligibility

If a voter questions the eligibility of other voters, they must file a voter challenge. A challenge to a voter's registration must be filed no later than 25 days before the election. A challenge to an in-person voter's ballot must be made at the time the voter presents to vote. A challenge to an absentee ballot must be made no later than the fifth business day after the election.[6]

Although a protest can be premised on ineligible voters participating in an election, the State Board has clarified multiple times that a protest will be dismissed if it merely disputes the eligibility of a voter without alleging an outcome-determinative violation of election law, irregularity, or misconduct.[7] In other words, evidence of unqualified individuals voting may only be used as evidence if those individuals' votes could have impacted the election's outcome. If the protest involves a multicounty contest and the protestor is alleging the participation of ineligible voters across multiple counties, that information would be relevant to include in each protest filed in the counties, because it could inform each county board's outcome-determinative analysis.

When May a Protest Be Filed

The deadline for filing a protest depends on the nature of the allegations in the protest. This section provides details regarding those deadlines.

On or after Election Day

The deadline for filing protests on or after Election Day depends on the allegations in the protest:[8]

> **If a protest alleges an issue with the manner in which votes were counted or results were tabulated**:
>
> the protest must be filed before the county canvass meeting begins. If the protestor can show good cause for a delay in their filing such a protest, then they can file the protest by 5 p.m. on the second business day after the county canvass meeting concludes.
>
> **If a protest alleges a violation of election law, irregularity, or misconduct in the election that is not an issue with vote counting or the tabulation of results**:
>
> the protest must be filed by 5 p.m. on second business day after the county canvass meeting concludes.

The county canvass meeting for primaries and elections typically begins at 11 a.m. on the tenth day after Election Day.[9] A protestor can confirm the date and time of the canvass meeting with the county board. The county board receiving any protest filing should date-stamp the protest form when it is received.

Before Election Day

Election protests may also be filed before Election Day. The protest may be heard and decided before the election, but if the protest is filed too close to the election, then the proceedings—including the preliminary consideration of the protest—will be delayed until after Election Day.

This delay is required if **any** of the following conditions exist:[10]

- Ballots have already been printed
- The voter registration deadline has already passed
- Any of the protest proceedings will occur within 30 days of election

Even if the protest is stayed, it can still be heard before Election Day if the defending party (e.g., the candidate who would oppose the protest) requests to proceed. This request must be in writing and be submitted to the county board with jurisdiction over the protest.

Protests of a recount

Any candidate in a contest subject to a **recount** can file a protest about the conduct of the recount.[11] The protest of the recount must be filed within 24 hours after the recount is completed or by noon of the next business day of the county board office, whichever is later.

Allegations unrelated to the recount may not be included in the recount protest unless the protest is filed within the timeframe for filing an election protest discussed above. A voter is not eligible to file a protest of the recount unless the protest is filed within the timeframe for filing an election protest discussed above.

Protests that are not timely filed

A county board is not allowed to hear a protest that is filed after the deadlines discussed above and must forward any untimely protests to the State Board.[12] The State Board has broad authority to consider election protests on its own, including those that were not filed on time.[13] However, the State Board is not required to consider untimely or improperly filed protests, and in some instances may be unable to do so.

> **Legal Standard**: If the certificate of nomination or election has been issued for the contest before an untimely protest is filed, then the State Board **does not have jurisdiction** to hear the protest.[14]

Where Must a Protest Be Filed

The protest must be filed with the county board in the county where the alleged issue in the election contest occurred. Even if the contest is a statewide or multicounty contest, the protest must be filed in the county where the issue occurred. If a protestor alleges problems in multiple counties, then they must file protests in each county.

A protest may be filed with the county board by hand delivery or mail to the county board office, by fax, or by email. A protestor can confirm the physical, mailing, or email address for filing by contacting the county board where the protest will be filed. Contact information for the county boards is available on the State Board's website.[15]

How the County Board Gives Notice of the Protest Filing

The county board receiving a protest must email a copy and any attachments to:[16]

- the State Board by email to legal@ncsbe.gov
- any affected candidates in the contest
- the county party chairs

The email notice must be sent within 24 hours after the protest is filed if it is filed by hand-delivery or mail, and the notice must be sent on the same day if the protest is filed by fax or email.

It is best practice for a county board to notify its county attorney immediately when a protest is filed. Historically, county attorneys have offered guidance and assistance in the proceedings and in drafting orders. The county attorney may also be able to help secure a court reporter for the proceedings.

County Board Proceedings on Protests

A timely-filed protest will be reviewed by the county board and, if it meets the necessary requirements, advance to an evidentiary hearing. The proceedings before the county board will culminate in a written decision on the protest.

Administrative Dismissal by a Director of Elections

When an election protest is filed with the county board, the county director of elections must review the allegations and evidence. By administrative rule, a director may recommend to their board the administrative dismissal of a protest within two business days of the filing if it meets certain criteria.[17] If an election protest is not administratively dismissed using this process, the county board will conduct a preliminary review of the protest filing as discussed in the next section.

> **Practical Tip**: The deadline for an administrative dismissal recommendation is also the same deadline for the county board to meet and conduct its preliminary consideration of the protest under a separate rule. As such, administrative dismissal by the director **should only be used in exceedingly rare occasions and is not recommended** if there is any question about whether the filing has failed to meet the requirements for filing a protest.

If an election protest is administratively dismissed by the county director, the protestor may appeal the director's administrative dismissal to the Executive Director of the State Board. The protestor must use the Appeal of Director Administrative Dismissal Form listed in 08 NCAC 02 .0114(d) and accessible on the State Board's website. The appeal must be received by the State Board office by U.S. mail, courier service, or hand delivery no later than five business days after the protester received written notice of the county director's administrative dismissal.

Preliminary Consideration by the County Board

Except in the rare occasion that a director administratively dismisses a protest, an election protest will undergo an initial review by the county board at a preliminary consideration meeting.

The county board conducts the meeting and makes its decision in an open session meeting. All board members in attendance, physically or remotely, must vote on the matter unless they are otherwise required to recuse themselves from the proceedings.

The county board must notice the meeting and convene **within 2 business days** from when the protest was filed to determine:[18]

1. whether the protest has substantially complied with the filing requirements
2. whether the protest and any attachments establish probable cause

This requirement to quickly convene may require calling an emergency meeting of the county board if 48 hours of notice cannot be given, in which case the county board must comply with the requirements of N.C.G.S. § 143-318.12(b)(3).

If the protest is filed before Election Day and is stayed by statute, the preliminary consideration meeting must be held within two business days after Election Day.

The county board should provide individualized notice of the preliminary consideration meeting to the protestor and affected candidates. The county board, however, is not required to permit these individuals to speak at the meeting because the board is only considering whether the protest form, with any attachments, *on its own* (*i.e.*, without receiving any evidence or testimony) establishes probable cause.

The preliminary consideration meeting is not required to be recorded, but the county board may choose to do so. The county board must also keep full and accurate minutes of the meeting in accordance with the open meetings laws.

Preliminary consideration review

In the meeting, the county board will first determine whether the protestor is eligible to file the protest and substantially complied with the requirements of N.C.G.S. § 163-182.9 discussed in the "Filing a Protest" section of this guide.

The county board will also determine whether the protest and any attachments establish "probable cause" of (1) an outcome-determinative defect in the manner in which votes were counted or results tabulated; or (2) an outcome-determinative irregularity, violation of law, or misconduct in the election.[19]

> **Legal Standard**: **Probable cause** is a commonsense, practical standard: Is the material submitted by the protestor sufficient for a reasonable and prudent person to believe that the apparent result of the election was swayed by election law violations, irregularity, or misconduct. It does not mean that such a belief is necessarily correct or more likely true than false. A probability of an outcome-determinative irregularity is sufficient.[20]

The county board should review "the totality of the circumstances" by analyzing all the facts alleged along with any documents included with the protest filing. **The county board should consider only allegations presented on the protest form and any attachments.** The preliminary consideration is **not** an opportunity for the protestor to present new evidence or for any affected candidates to present their own evidence in opposition to the protest.

Preliminary consideration decision

The county board has two options at the end of the preliminary consideration meeting. The two options are:[21]

- advance the protest to a protest hearing; or
- dismiss the protest

If the county board finds that the protest meets the procedural requirements for filing a protest and that the protest meets the probable cause standard, then the county board must advance the protest to a protest hearing. The requirements for scheduling and noticing the protest hearing are discussed in the next section of this guide.

If the county board finds that the protest fails to meet the procedural requirements for filing a protest or that the protest fails to meet the probable cause standard (or fails to meet both), then the county board must dismiss the protest. A decision to dismiss the protest at the end of the preliminary consideration meeting must be memorialized in a written decision. The written minutes are not sufficient to be the county board's written decision on the protest.

> **Practical Tip**: The county attorney should attend the preliminary consideration meeting, if possible. The county board should work with the county attorney to draft the written decision and order, even if using a template decision order provided by the State Board legal department.

The county board's decision to dismiss the protest must be filed in the county board office within 2 business days of the decision being made at the meeting, and it must be served on the protestor and any affected candidate or officeholder at the time it is filed at the board office.[22] Email is the preferred method of service. If the county board has no email address for a person required to be served, the board must serve that person by U.S. mail and immediately call that person at their phone number of record. The decision must also be provided to the State Board by email to the legal department.

If the protest is dismissed, the protestor has two options: (1) amend their protest if the protest filing deadline has not passed; or (2) file an appeal of the dismissal.[23] Appeals are discussed later in this guide in the "Appeal of Protest Decisions" section.

> **Practical Tip**: If the protestor files a new protest before the filing deadline with the same allegations but correcting any deficiencies identified in the original protest, then the county board should treat that as an amended protest and must still conduct a preliminary consideration on the amended protest.

Protest Hearing

The protest hearing is a quasi-judicial proceeding. At the hearing, the county board will receive documentary evidence and witness testimony about the allegations in the protest. The protestor and other interested parties may present their evidence to the county board. The county board will then weigh the evidence before it at the end of the hearing and make a decision. Ultimately, the county board must determine whether the record evidence shows the protestor has proven the allegations in the protest and, if so, what would be an appropriate remedy.

Scheduling and noticing the hearing

When the protest hearing is held and noticed depends on what is alleged in the election protest.

If the protest involves **vote tabulation or vote counting**, and the alleged number of votes affected could affect the outcome of the election, the protest hearing must be held and resolved at the county canvass.[24] If the alleged number of votes affected could not affect the outcome of the election, then the county board can dismiss the protest at the preliminary consideration meeting.

When the protestor files a protest on these grounds, they must be told at the time of filing that the protest will be heard at the time of the canvass. Notice of the protest hearing must be given to other required parties as soon as possible before the hearing.[25]

The completion of the canvass of the protested contest can only be delayed if needed to resolve a protest involving vote tabulation or vote counting, and only the canvass of the contest(s) under protest may be delayed. The delay in the canvass can be for no more than three days, unless a longer delay is approved by the State Board. When a county board delays canvass to resolve a protest, it must notify the State Board's legal department.

If the protest relates to an **election-related irregularity other than results tabulation or vote counting**, the protest is not required to be resolved by canvass, and the county board must set a hearing date that is within 7 business days of the preliminary consideration meeting.[26]

The protest hearing for a protest on these grounds must be noticed at least 5 business days prior to the hearing.[27] The canvass cannot be delayed for protests on these grounds. Instead, the county board must complete the canvass and then the certificate of nomination or election is withheld pending the outcome of the protest.[28]

For **all protests**, when a county board gives notice of the protest hearing, it must be actual notice (meaning notice is actually received). Notice of the protest hearing must be provided to the following persons:[29]

- the protestor
- any candidate likely to be affected
- elections officials alleged to have acted improperly
- any person likely to have a significant interest in the resolution of the protest

Notice must also be provided to the county political parties. Each person given notice must also be given a copy of the protest or a summary of its allegations.

The manner of notice is up to the county board and can be oral or in writing.[30] If oral notice is given, it must be followed with a written notice. If written notice is given, it must be by email if the county board has an email address for the person required to receive notice. If the county board does not have their email address, then the written notice must be sent by U.S. mail to their mailing address of record and staff must call them by phone at their number of record.

Recording the hearing

The protest hearing must be recorded by a court reporter or by audio/video recording.[31] The recording is necessary in case there is an appeal and the State Board, or a court of law, must review the proceedings. If an audio/video recording is made, the county board must ensure it is high quality and can be easily transcribed.

If the protest is appealed to the State Board, the county board will be required to obtain a transcript of the hearing and have it delivered to the State Board, at the county board's expense, within seven business days of the notice of appeal.[32] The county board will also need to provide the State Board with a copy of all documentary exhibits submitted by the parties in the hearing.

Hearing standard

The burden of proof is on the protestor.[33] To sustain an election protest, the county board must find "substantial evidence" of irregularities or misconduct that impacted the election results.

The county board's decision on the protest must be based on the evidence received in the hearing that is relevant to the issues at hand.

> **Legal Standard**: **Substantial evidence** is such relevant evidence as a reasonable mind might accept as adequate to support the conclusion that certain irregularities occurred and that they swayed the results of the election. Substantial evidence is "more than a scintilla or a permissible inference." Rather, the evidence must be strong enough to establish to a reasonable person that the claimed irregularities occurred and that those irregularities swayed the election.[34]

Conduct of the hearing

Although the North Carolina Rules of Evidence (Chapter 8C) and Rules of Civil Procedure (Chapter 1A) do not apply to protest proceedings, county boards are well advised to use these rules to guide the conduct of their quasi-judicial protest hearings, where practical.

> **Legal Standard**: In making decisions on how the parties may present their cases at the hearing, the county board must ensure the **elements of a fair trial** are met. This includes the opportunity to offer evidence in support of one's position and against the other, to cross-examine adverse witnesses, and to inspect any documentary evidence presented.[35]

Many county boards find it expedient for the board chair, as the presiding officer of the hearing, to make basic evidentiary and procedural rulings to ensure the fair and efficient presentation of each side's case. Some boards also find it useful to issue prehearing orders to the parties from the chair or board that set some of the ground rules, parameters, and sequencing of the hearing.

For instance, the county board may permit the protestor to give an opening statement before their presentation of evidence, as well as a closing argument after their presentation of evidence. An opening statement is a chance to explain what the evidence to be offered will show and what the law requires. The closing argument is a chance to explain why the evidence that was offered supports the desired outcome and why the desired outcome is what the law requires. Providing for an opening statement and closing argument can help keep the hearing organized and easier to follow for all involved.

The protestor must be permitted to present their allegations and introduce evidence at the hearing. The county board may also receive evidence at the hearing from any person with information concerning the subject of the protest. Any other person who was required to be given notice of the hearing, if present, must be permitted to present evidence at the hearing.[36]

The county board can also permit evidence to be presented by individuals with relevant information who did not receive notice of the hearing but have "significant interest" in the protest's resolutions and that interest is not adequately represented by other participants.

At the hearing, evidence may be in the form of affidavits, witness testimony, or other documentary evidence. Each witness must be placed under oath before testifying.

> **Practical Tip**: The following oath as outlined in N.C.G.S. § 11-11 may be used: "Do you swear (or affirm) that the testimony you shall give to the board shall be the truth, the whole truth, and nothing but the truth; so help you, God?"

A witness can voluntarily appear at the hearing to provide testimony, and they do not have to be served with a subpoena before testifying. In some instances, a subpoena may be needed to require a witness's attendance or to obtain documentary evidence.

The board's chair or any two members may use their statutory authority to subpoena witnesses or any documents.[37] The protestor or other interested parties may also request that the chair or any two members of the county board issue subpoenas for witnesses or documents, following the process in an administrative rule.[38]

When a party requests a subpoena be issued pursuant to the rule, the chair or two members of the county board must issue the subpoena if they find **all of** the following conditions are met:

- the witnesses or documents are likely to provide information that is both relevant and material to the questions the county board must adjudicate in the protest
- the information sought is not unnecessarily duplicative of other available evidence
- the subpoena is not likely to subject the recipient to undue burden or expense

> **Legal Standard**: The county board's **subpoena power**, whether under its statutory authority or the administrative rule, is limited to appropriate witnesses within the county board's "respective jurisdiction[]."[39] The county board is recommended to consult with the county attorney on the issuance of any subpoenas.

Protest hearing decision

At the conclusion of the hearing, the county board must weigh the evidence presented and make a decision on the protest. The decision must be voted on and announced at the hearing and then be put into a written decision. The written decision serves as the county board's final decision, and must include findings of fact, conclusions of law, and an order.[40]

When deliberating, the county board will need to determine what the evidence showed to have occurred, whether that occurrence was a violation of the election law or other irregularity or misconduct, and if so, whether that violation, irregularity, or misconduct was sufficient to cast doubt on the results of the election. The county board will then need to either order the protest be dismissed or order it be upheld with a further order on an appropriate remedy.

> **Practical Tip**: The county board's discussion on these points will assist the county attorney with drafting the board's written decision on the protest. For that reason, it is advisable for the board to consider voting on the key "findings of fact" and "conclusions of law" in addition to the ultimate conclusion of whether the protest will be dismissed or upheld.

If the county board is not able to determine what law is applicable to its findings of fact, then it may send its findings of fact to the State Board for it to determine the applicable law.[41] The State Board will then remand the matter back to the county board with instructions on the proper law for the county board to apply in making a final decision on the protest.[42]

When making a decision on the protest, the county board is required to **dismiss** the protest if the board concludes that:[43]

- it has not been shown by substantial evidence that there was a violation of the election law or other irregularity or misconduct;
- or even if there was a violation, irregularity, or misconduct, it has not been shown by substantial evidence that it was sufficient to cast doubt on the results of the election (*e.g.*, that the affected ballots or irregularities could not have changed the election's outcome).

If the county board determines there is substantial evidence that a violation did occur and it was "sufficiently serious to cast doubt on the apparent results of the election," it should **uphold** the protest and make an appropriate order. This could include declaring new results, ordering a recount, sending the protest and decision to the State Board for further action, or taking any other action within the county board's authority.[44]

> **Legal Standard**: Only the State Board has the authority to order a **new election**, even if the contest under protest is one within the county board's jurisdiction.[45]

Finally, if the protested contest is a **multi-county or statewide contest**, and the county board finds there is substantial evidence to believe there was a violation occurred but it cannot conclude the violations were outcome-determinative, the county board must send the protest and its decision to the State Board.[46] The State Board will then determine whether the violations were sufficient to change the election's result and order an appropriate remedy.

Notice and service of the protest hearing decision

Once the county board makes its decision on the protest, the county board must give **notice** of its decision and then **file and serve** its written decision.[47]

The county board must **notify** the protestor, any affected candidate, and any affected officeholder of its decision no later than 5:00 p.m. the next day after the conclusion of the hearing. The notice must be given in the same manner as the notice of the hearing, but no separate notice is required if the person was present at the hearing when the decision was announced.

The county board must **file** a written decision at its office no later than 5:00 p.m. three business days after the conclusion of the hearing. The written decision must be **served** on any person required to receive notice of the protest hearing, and service must be made at the same time it is filed at the board office. The preference is that service be by email, but if the county board has no email address for the person, then the board must serve them by U.S. mail and immediately call them at their phone number of record to notify them that the decision has been filed.

Appeal of Protest Decisions

The decision by the county board of elections on the election protest may be appealed to the State Board.

Who May Appeal a County Board Decision

Any of the following people may appeal the county board's decision:[48]

- The individual who filed the election protest
- The candidate or elected official adversely affected by the decision
- Any other person with a significant interest adversely affected and who participated in the protest hearing

When and How to File an Appeal

An appeal cannot be filed until after the county board's written decision is filed in its office. There are two steps for an appeal, and both are required to perfect the appeal.[49]

First, an appealing party must notify the county board in writing of the party's intent to appeal within 24 hours of the board's written decision being filed in its office. The written notice of appeal must be received by that deadline and can be delivered to the county board by any method so long as it is in writing (e.g., in-person delivery or email). The notice of appeal given to the county board is not required to include a copy of the appeal form itself.

Second, the appealing party must timely file an appeal to the State Board. The appeal must be in writing and on the Appeal of County Board Protest Decision Form, which is available on the State Board's website. The appeal must be delivered to the State Board in person or be deposited in the mail by the appropriate deadline.

> **Practical Tip**: If mailing the protest appeal, the appealing party should get documentation of when they mail the protest appeal (i.e., a receipt from USPS) so they are able to confirm they timely mailed the appeal. A person seeking to appeal the protest should also email a copy of the appeal to legal@ncsbe.gov as soon as it is put in the mail or delivered.

The deadline for filing a protest appeal depends on the type of election. If the protest decision concerns a **first primary**, the appeal must be delivered in person or deposited in the mail by the end of the second calendar day after the day the county board issued its written decision.

If the protest decision concerns **any other election**, the appeal must be delivered in person or deposited in the mail by the fifth calendar day after the county board issued its written decision.

State Board Decision on a Protest Appeal

Appeals of protests that are dismissed at the preliminary consideration stage, as well as untimely filed election protests that are sent to the State Board, may be administratively denied by the State Board's Executive Director pursuant to an administrative rule.[50] Under this process, the Executive Director has two business days to make an administrative denial recommendation after the appeal is filed.

That recommendation is then transmitted to the State Board members for their review along with the record. If no State Board member makes an objection within two calendar days of the denial recommendation being made, the protest appeal will be denied. If a member of the State Board raises an objection, then the appeal is heard by the State Board.

Appeals of county board decisions following an evidentiary protest hearing are heard by the State Board and are not typically subject to administrative dismissal by the Executive Director. The parties to the protest appeal are given the opportunity to present written and oral argument on their appeal and to explain why they believe the county board made the right or wrong decision on the protest.

The State Board has broad discretion in its appellate role.[51] It may decide the appeal on the existing record, or it may require the county board or an interested party to supplement or add to the evidence. Alternatively, the State Board may conduct its own protest hearing and decide the protest based on that proceeding. Finally, it may remand the protest back to the county board with an order for additional proceedings.

When the State Board hears a protest appeal without hearing new evidence, the Board applies the "whole record test."

> **Legal Standard**: The **whole record test** does not permit the State Board to substitute its judgment for the county board's judgment as between two conflicting views, even though it could reasonably have reached a different result had it reviewed the matter *de novo* (a legal term that means "over again" or "anew"). The State Board examines all the record evidence, including evidence that detracts from the county board's findings and conclusions as well as that evidence tends to support them, to determine whether there is substantial evidence to justify the county board's decision. The Board determines whether purely legal issues were correctly decided by the county board under *de novo* review.[52]

The State Board also has the discretionary authority to consider protests that were not filed in compliance with N.C.G.S. § 163-182.9, to initiate and consider complaints on its own motion, to intervene and take jurisdiction over protests pending before a county board, and to take any other action necessary to assure that an election is determined without taint of fraud or corruption and without irregularities that may have changed the result of an election.[53]

Appeal of State Board Decision on a Protest Appeal

Most protest decisions of the State Board may be appealed to the Superior Court of Wake County within 10 days of the date of service of the decision.[54]

> **Legal Standard**: The certificate of nomination or election in the contest will be issued unless the appealing party files an election protest appeal **and** obtains a court order staying the certification of the contest from the Superior Court of Wake County within 10 calendar days after the date of service of the State Board's decision, plus an additional three (3) calendar days to account for mailing time.

When the protested contest is a general or special election for the General Assembly or an office on the Council of State, only an unsuccessful candidate in the election has the right to appeal the State Board's final decision. That appeal is not made to superior court. Instead, the appeal is made to the General Assembly in accordance with Article 3 of Chapter 120, for General Assembly contests, or in accordance with N.C.G.S. § 163-182.13A, for Council of State offices.[55]

Document References

[1] https://www.ncsbe.gov/about-elections/legal-resources/challenge-protest-appeal-and-complaint-forms.
[2] *Bouvier v. Porter*, 386 N.C. 1, 4 (2024).
[3] N.C.G.S. § 163-182.9(a).
[4] N.C.G.S. § 163-182.9(b) and (c); 08 NCAC 02. 0111.
[5] N.C.G.S. § 163-182.10(d)(2). *See Appeal of Ramseur*, 120 N.C. App. 521 (1995) and In re Protest of Lilly, Order, State Bd. of Elections (Aug. 3, 2020); see also In Re: Appeal of Election Protest of Keith Hunter, Order, State Bd. of Elections (Nov. 27, 2024).
[6] See the State Board's Voter Challenge Procedures Guide.
[7] See In the Matter of: Consideration of Certain Legal Questions Affecting the Authentication of the 2016 General Election, Order, State Bd. of Elections (Nov. 28, 2016); see also In Re: Appeal of Election Protest of James Byerly, Order, State Bd. of Elections (Dec. 22, 2025).
[8] N.C.G.S. § 163-182.9(b)(4)a, b, and c.
[9] N.C.G.S. § 163-182.5. The county canvass meeting for primaries and elections in September and October in odd-numbered years begins at 11 a.m. on the *seventh* day after Election Day. See N.C.G.S. §§ 163-291(5), -293(c).
[10] N.C.G.S. § 163-182.9(b)(4)d.
[11] 08 NCAC 09 .0106(g).
[12] 08 NCAC 02. 0110(b).
[13] N.C.G.S. § 163-182.12.
[14] See *In re Protest of Whittacre*, 228 N.C. App. 58, 59 (2013); *In re Election Protest of Fletcher*, 175 N.C. App. 755, 759 (2006); *see also* N.C.G.S. § 163-182(2) (a certificate of election is "a document prepared by the official or body with the legal authority to do so, conferring upon a candidate the right to assume an elective office as a result of being elected to it.").
[15] https://vt.ncsbe.gov/BOEInfo/.
[16] 08 NCAC 02 .0110(a).
[17] 08 NCAC 02 .0114(b).
[18] 08 NCAC 02 .0110(c).
[19] N.C.G.S. § 163-182.10(a)(1).
[20] *Adams v. City of Raleigh*, 245 N.C. App. 330, 336-37 (2016).
[21] N.C.G.S. § 163-182.10(a)(1); 08 NCAC 02. 0110(c).
[22] 08 NCAC 02 .0110(e)(2).
[23] N.C.G.S. § 163-182.10(a)(1); see also N.C.G.S. § 163-182.11.
[24] N.C.G.S. § 163-182.10(a)(2).
[25] N.C.G.S. § 163-182.10(b)(1).
[26] 08 NCAC 02. 0110(c).
[27] N.C.G.S. § 163-182.10(b)(2); 08 NCAC 02. 0110(d).
[28] N.C.G.S. § 163-182.10(a)(3); N.C.G.S. § 163-182.15.
[29] N.C.G.S. § 163-182.10(b).
[30] 08 NCAC 02. 0110(d).

[31] N.C.G.S. § 163-182.10(c)(3).
[32] 08 NCAC 02. 0110(e)(3).
[33] *Appeal of Ramseur*, 120 N.C. App. 521 (1995); *Appeal of Harper*, 118 N.C. App. 698 (1995) ("When an unsuccessful candidate seeks to invalidate an election, the burden of proof is on him to show that he would have been successful had the irregularities not occurred.").
[34] *Lackey v. N.C. Dep't of Hum. Res.*, 306 N.C. 231, 238 (1982); *Humble Oil & Ref. Co. v. Bd. of Aldermen*, 284 N.C. 458, 470–71 (1974).
[35] *Coastal Ready–Mix Concrete Co. v. Board of Comm'rs of Nags Head*, 299 N.C. 620, 626 (1980); *Cook v. Union Cnty. Zoning Bd. of Adjustment*, 185 N.C. App. 582, 594 (2007).
[36] N.C.G.S. § 163-182.10(c)(2).
[37] N.C.G.S. § 163-182.10(c)(1).
[38] 08 NCAC 02. 0110(e)(1).
[39] N.C.G.S. § 163-33.
[40] N.C.G.S. § 163-182.10(d).
[41] N.C.G.S. § 163-182.10(d)(3).
[42] See e.g., In Re: Referral of Election Protest of Duron Burney and Appeal of Caroline Sumpter, Order, State Bd. of Elections (Dec. 31, 2025).
[43] N.C.G.S. §§ 163-182.10(d)(2)b. and c.
[44] N.C.G.S. § 163-182.10(d)(2)e.
[45] N.C.G.S. § 163-182.13.
[46] N.C.G.S. § 163-182.10(d)(2)d.
[47] 08 NCAC 02. 0110(e)(2).
[48] N.C.G.S. § 163-182.11(a).
[49] N.C.G.S. § 163-182.11(a).
[50] 08 NCAC 02 .0114(e).
[51] N.C.G.S. § 163-182.11(b).
[52] *See* In Re: Appeal of Election Protest of Robert Hanig, Order, State Bd. of Elections (Sept. 5, 2022) (explaining that in a protest appeal, "fact-intensive questions, such as 'sufficiency of the evidence,' are reviewed under the 'whole-record test'") (citing *Meza v. Division of Social Services*, 364 N.C. 61, 69 (2010)); In Re: Appeal of Election Protest of Duron Burney, Order, State Bd. of Elections (April 24, 2026).
[53] N.C.G.S. § 163-182.12.
[54] N.C.G.S. § 163-182.14(b).
[55] N.C.G.S. § 163-182.14(c).