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## Voter Challenge Procedures Guide<sup>1</sup>

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### 1. OVERVIEW

A voter challenge questions “the right of any person to register, remain registered or vote” in the county.<sup>2</sup> There are three types of voter challenges: voter registration challenges, absentee ballot challenges, and in-person ballot challenges. Voters can only be challenged for the reasons listed in statute. Provisional ballots are not subject to challenges; state law requires county boards to determine a provisional voter’s eligibility according to research during the canvass period.<sup>3</sup>

Challenges must be made on the [Voter Challenge Form](#) created by the State Board of Elections. A separate form must be completed for each voter challenged. Challenges can be brought by a voter registered in the same county as the challenged voter.

Challenges are adjudicated through a formal hearing process before the county board of elections or precinct officials. This affords due process to the challenged voter.

Challenges and the materials submitted in connection with challenges are public records which shall be produced upon request, subject to any redaction required for voter confidential information.<sup>4</sup>

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<sup>1</sup> This guidance is issued under the authority delegated by the State Board to the executive director pursuant to G.S. § 163-22(p).

<sup>2</sup> G.S. § 163-85.

<sup>3</sup> G.S. §§ 163-166.11(5), -182.2(a)(4).

<sup>4</sup> G.S. § 132-1. See Numbered Memo 2022-01 on confidential voter information. Also, bear in mind that certain other personal information that may be listed on financial or other non-voting records, some of which is occasionally filed with a voter challenge, is also confidential. See, e.g., G.S. 132-1.10(b)(5) (forbidding public agencies from disclosing a person’s “identifying information” as that phrase is defined in G.S. § 14-113.20(b), with certain exceptions).

## 2. FILING A VOTER CHALLENGE

### A. Voter Registration Challenge

<b>Who may file</b>	Any voter registered within the same county as the challenged voter. <sup>5</sup>
<b>Where to file</b>	With the county board of elections in the county where the challenged voter is registered. <sup>6</sup>
<b>What form to use</b>	Use the <a href="#">Voter Challenge Form</a> , available on the State Board's website. A separate form must be used for each voter challenged and must be signed under oath by the challenger. <sup>7</sup> Any available evidence to support the challenge must be attached to the form.
<b>When to file</b>	Must be filed by the voter registration deadline (25 days before Election Day). <sup>8</sup> Challenges relying on generic, non-individualized evidence cannot be brought within 90 days before a federal election. <sup>9</sup>
<b>Why a voter may be challenged</b>	<p>The grounds for a challenge are that the voter:</p> <ul style="list-style-type: none"><li>• is not a resident in the state, county, precinct, or municipality (Note: an allegation that the voter has moved from their residence and should be removed from the county's voter rolls is not a permissible basis for a challenge. See Subsection D below.)</li><li>• is under 18, or if the challenge is made within 60 days of a primary, will not be 18 by next general election</li><li>• is serving a felony sentence (including any probation, post-release supervision, or parole)</li><li>• is dead</li><li>• is not a U.S. citizen</li><li>• is not who they present themselves to be</li></ul>

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<sup>5</sup> G.S. § 163-85(a).

<sup>6</sup> G.S. § 163-85(b).

<sup>7</sup> G.S. § 163-85(b).

<sup>8</sup> G.S. § 163-85(a).

<sup>9</sup> 52 U.S.C. § 20507(c)(2)(A); [N.C. State Conf. of NAACP v. Bipartisan Bd. of Elections & Ethics Enft](#), No. 1:16CV1274, 2018 WL 3748172, at \*12 (M.D.N.C. Aug. 7, 2018).

A voter may only be challenged on these grounds.<sup>10</sup>

## **B. Absentee Ballot Challenge**<sup>11</sup>

### **Who may file**

A voter registered in the same county as the challenged absentee voter.<sup>12</sup>

(The county boards of elections may also challenge absentee voters through procedures addressed in State Board [Numbered Memo 2022-05.](#))

### **Where to file**

File with the county board office or with chief judge of the challenged voter's precinct.<sup>13</sup>

### **What form to use**

Use the [Voter Challenge Form](#), available on the State Board's website. A separate form must be used for each challenged voter and must be signed under oath by the challenger.<sup>14</sup> Any available evidence to support the challenge must be attached to the form.

### **When to file**

By 5 p.m. on the fifth business day after the primary or election.<sup>15</sup>

### **Why a voter may be challenged**

Grounds for a challenge are that the absentee voter:

- is not a resident in the state, county, precinct, or municipality (Note: an allegation that the voter has moved from their residence and should be removed from the county's voter rolls is not a permissible basis for a challenge. See Subsection D below.)
- is under 18, or if the challenge is made within 60 days of a primary, will not be 18 by next general election

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<sup>10</sup> G.S. § 163-85(c).

<sup>11</sup> Absentee ballot challenges may only be used to challenge voters who use the processes for voting absentee under Article 20 (often called absentee-by-mail voting) and Article 21A (military and overseas citizen voting) of Chapter 163 of the General Statutes. Previously, early voting was a type of absentee voting, but as of January 1, 2024, that is no longer the case. *See* N.C. Session Law 2023-140, secs. 1(a)–(c), 27(b).

<sup>12</sup> G.S. § 163-89(a) (S.L. 2023-140, sec. 15).

<sup>13</sup> G.S. § 163-89(d).

<sup>14</sup> G.S. § 163-89(c).

<sup>15</sup> G.S. § 163-89(a) (S.L. 2023-140, sec. 15).

- is serving a felony sentence (including any probation, post-release supervision, or parole)
- is dead
- is not a U.S. citizen
- is not who they present themselves to be
- already voted
- voted the wrong party's ballot (in a partisan primary only)

Perceived deficiencies with an absentee ballot application or container-return envelope, or a photo ID copy or exception form, are not valid bases for a voter challenge, since state law charges the county boards with the responsibility to decide these issues based on the voter's submission during absentee meetings, and the county board's decision to approve an absentee application is not subject to review through a voter challenge.<sup>16</sup>

The qualification for all voters, including absentee voters, are judged as of Election Day.<sup>17</sup>

### C. In Person (Early Voting and Election Day) Ballot Challenge

<b>Who may file</b>	Any voter registered within the same county as the challenged voter. <sup>18</sup>  (The county boards of elections may also challenge early voting ballots during the canvass period through procedures addressed in State Board <a href="#">Numbered Memo 2022-05.</a> )
<b>Where to file</b>	At the voting site where the challenged voter is attempting to cast a ballot. <sup>19</sup>
<b>How to file</b>	Challenges are made directly to the election judges. <sup>20</sup> Any evidence should be presented to the Election Judges at the time of challenge.

<sup>16</sup> G.S. § 163-230.1(e)–(f); 08 NCAC 17 .0109(c); [Arnett v. N.C. State Bd. of Elections](#), No. 20 CVS 570, pp. 5–6 (N.C. Super. Ct. Oct. 22, 2020).

<sup>17</sup> See G.S. §§ 163-55, -59.

<sup>18</sup> G.S. § 163-87.

<sup>19</sup> G.S. § 163-87.

<sup>20</sup> G.S. § 163-87.

Voter Challenge forms can be found in the voting place packets provided to the Election Judges.

**When to file**

At the early voting site or on Election Day before the voter casts a ballot.<sup>21</sup>

**Why a voter may be challenged**

Acceptable grounds for an early voting or Election Day challenge are that the voter:<sup>22</sup>

- is not a resident in the state, county, precinct, or municipality (Note: an allegation that the voter has moved from their residence and should be removed from the county's voter rolls is not a permissible basis for a challenge. See Subsection D below.)
- is under 18, or if the challenge is made within 60 days of a primary, will not be 18 by next general election
- is serving a felony sentence (including any probation, post-release supervision, or parole)
- is dead
- is not a U.S. citizen
- is not who they present themselves to be
- already voted
- is of the wrong party (in a partisan primary only)
- does not present photo ID in accordance with G.S. § 163-166.16 (Note: an alleged a defect in the manner that a voter *presents* ID can be challenged, but not the voter's resemblance or name similarity to the ID, or the voter's claim of an exception to the ID requirement.)<sup>23</sup>

The qualification for all voters, including early voters, are judged as of Election Day.<sup>24</sup>

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<sup>21</sup> G.S. § 163-87.

<sup>22</sup> G.S. § 163-87.

<sup>23</sup> See [Numbered Memo 2023-03](#) at pp. 7–8.

<sup>24</sup> See G.S. §§ 163-55, -59.

## **D. Certain Challenges Prohibited**

### **i. Change of Residence**

Due to a federal court decision based on provisions of the National Voter Registration Act (NVRA), no voter challenges may be based on a voter's change in residency where the remedy sought is removal from the voter rolls or rejection of a ballot.<sup>25</sup> This means a county board may not conduct a hearing on such a challenge. The county board should inform the challenger that the challenge may not be considered by the board pursuant to the court order cited herein and should not send notice of the challenge to the challenged voter.

A voter may be removed from the rolls for a change in address only if (1) the county board has received written confirmation from the voter of a change of residency outside the county, or (2) the county board has already complied with the NVRA's notice requirement and the voter has had no subsequent contact with the county board for two federal election cycles.<sup>26</sup> Challenges claiming that the voter has never lived at the address in question or challenges alleging the voter moved within the same county and needs to have their registration updated are allowed. The remedies for a challenge to an unreported move within the same county are addressed on page 14 of this guide.

### **ii. Non-Individualized Evidence**

When possible, evidence should be reliable, first-hand, and specific to the voter challenged. Generic evidence conveying no information about each challenged voter's specific circumstances may not serve as the basis for a voter challenge within 90 days preceding a federal election unless the challenge is based upon the death or active felon status of the voter.<sup>27</sup> For example, evidence that mail was undelivered to a voter's address is not individualized evidence, nor is information pulled from a public website or database that conveys no information specific to the circumstances of the voter.<sup>28</sup> This means a county board may not conduct a hearing on such a challenge. The county board should inform the challenger that the challenge may not be considered by the board pursuant to the court order cited herein and should not send notice of the challenge to the challenged voter.

### **iii. False Affidavits**

A challenge to a voter must be filed under a sworn statement from the challenger (*i.e.*, under oath).<sup>29</sup> G.S. § 163-90.3 provides: "Any person who shall knowingly make any false affidavit or

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<sup>25</sup> [\*N.C. State Conf. of NAACP v. Bipartisan Bd. of Elections & Ethics Enft.\*](#), No. 1:16-CV-01274, 2018 WL 3748172 at \*12–13 (M.D.N.C. Aug. 7, 2018). See State Board [Numbered Memo 2018-07](#).

<sup>26</sup> [NAACP](#), No. 1:16-CV-01274, 2018 WL 3748172 at \*12.

<sup>27</sup> [NAACP](#), No. 1:16-CV-01274, 2018 WL 3748172 at \*7.

<sup>28</sup> [NAACP](#), No. 1:16-CV-01274, 2018 WL 3748172 at \*7.

<sup>29</sup> G.S. § 163-85(b).

shall knowingly swear or affirm falsely to any matter or thing required by the terms of [Article 8 regarding voter challenges] to be sworn or affirmed shall be guilty of a Class I felony.” If any individual or a county board has reason to believe this provision has been violated, contact the State Board’s Investigations Division.

### **E. Voting Residence**

The requirements for residency of voters are set out in [G.S. § 163-57](#). The following is a summary of the requirements for residency:

- When registering to vote, the voter must use their “fixed” habitation as their voting residence, the place where “whenever that person is absent, that person has the intention of returning.” A voter who relocates temporarily with the intention of returning to their home will maintain their home residence. But if a voter relocates to a new place and intends the move to be permanent, that voter loses their residency at the previous address.
- A voter has one and only one residence for voting purposes.
- Merely owning property or paying taxes somewhere does not establish residency for voting purposes. What matters is where the person’s fixed habitation is.
- To vote in an election, North Carolina law requires a voter to have established the residency they are claiming at least 30 days before the date of the election. The voter registration application requires a voter to attest to having been a resident for this time period prior to an election. If a person moves within 30 days of an election, they should vote based on the residence they are moving from, since that’s where they resided 30 days before the election.
- If a jurisdictional boundary divides a person’s residence, the location of the bedroom or usual sleeping area for that person shall be controlling as to that person’s residency.
- If a person has a non-traditional residence not associated with real property, the location of the usual sleeping area for that person shall be controlling as to the residency of that person. Residence shall be broadly construed to provide all persons with the opportunity to register and to vote, including stating a mailing address different from residence address. A person with a nontraditional residence should list the address that identifies the location of their typical sleeping location on their voter registration form. For example, a homeless person who typically sleeps in a homeless shelter would list the homeless shelter’s address while a homeless person who sleeps under a bridge would list the cross streets that identify the location of the bridge. An individual who lives in an RV would list the address where they typically park the RV.
- A college or university student may register and vote in the county where they go to school if the student is physically present in the school community and does not intend to return to his or her former home after graduation. If the student intends to return to their former home after graduation, the student should remain registered at their home. If the student does not know where he or she will go after college, they may register in their college community.

Court cases and decisions by the State Board of Elections provide additional detail regarding residency issues:

- Residency is a fact-specific inquiry and dependent on the unique circumstances of a particular case.<sup>30</sup>
- A person has a voting residence at a place if the person (1) has abandoned their prior home; (2) has a present intention to make the current place their home; and (3) has no intention presently to leave that place.<sup>31</sup> It is not required that a person intend to remain at their residence permanently. It is sufficient if they intend to remain there indefinitely. “Indefinitely” means that the person does not intend to leave presently; they may intend to leave in the future upon some specified event occurring, such as a student who plans to leave their college town upon graduation.<sup>32</sup>
- A person’s statements about their intent to retain or acquire a residence are relevant. However, when there is a conflict between a person’s declared intent and their actions, “conduct is of greater evidential value than expressions of intent.”<sup>33</sup>
- A person is not required to have legal title to a property or even the legal right to be present there for a place to be considered their voting residence.<sup>34</sup> Additionally, the fact that a person may be forced to by circumstance or choose to live uncomfortably, such as without running water or power, does not mean the person has not established their residence at that place.<sup>35</sup>

Voters with questions about their own voting residence should contact their county board of elections.

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<sup>30</sup> *Hall v. Wake Cty. Bd. Of Elections*, 280 N.C. 600 (1972).

<sup>31</sup> *Lloyd v. Babb*, 296 N.C. 416 (1979).

<sup>32</sup> *Lloyd v. Babb*, 296 N.C. 416 (1979).

<sup>33</sup> *Farnsworth v. Jones*, 114 N.C. App. 182 (1994)

<sup>34</sup> [\*In re Greene\*](#), State Board of Elections (2019); [\*In re Wilkins\*](#), State Board of Elections (2015) (affirming the county board of elections’ determination that a candidate successfully established his residence in living quarters situated above a car wash in violation of a city zoning rule).

<sup>35</sup> *Greene* (reversing the county board’s decision and determining that a sheriff candidate had established his residence in an RV in violation of local ordinances even though he owned a more comfortable house in South Carolina); [\*In re Lilly\*](#), State Board of Elections (2020) (reversing the county board’s decision and determining that a county commissioner candidate had established residence despite evidence that his house lacked running water and he could have instead resided in a more comfortable home owned by his mother).



### 3. CONSIDERATION OF A VOTER CHALLENGE

#### A. Voter Registration Challenge

##### i. Preliminary Hearing

Once a challenge is filed, the county board of elections will need to schedule a preliminary hearing to determine if there is **probable cause** to believe the person is ineligible to vote.<sup>36</sup> Although not required by statute, the county board should provide notice to the challenger and challenged voter. This may be accomplished by mailing them notice of the meeting.

**At the preliminary hearing, the county board must determine whether (1) the challenge was properly filed and (2) there is probable cause that the voter is not properly registered.**

First, when considering whether the challenge is **properly filed**, the county board considers the following factors, which are not exclusive:

- The challenger is registered to vote in the county.
- The challenge form was used, completed, signed, and sworn by the challenger
- Only one voter is challenged on the form.
- A statutory basis for a challenge is selected on the form.
- The challenge was filed by the voter registration deadline (25 days before the election).

The county board shall dismiss the challenge if any of these requirements are not met.

Second, if the above filing requirements are met, the county board must determine whether there is **probable cause** that the voter is not properly registered. The county board shall take testimony under oath and receive other evidence offered by the challenger. The challenged voter does not present evidence at this preliminary stage, which is intended to eliminate challenges that are so deficient they should not advance to a hearing where the voter would be required to defend themselves. The burden of proof is on the challenger.<sup>37</sup> If the challenger does not present affirmative proof the voter is not properly registered, the challenge will be dismissed.<sup>38</sup> What constitutes affirmative proof will vary based on the circumstances, but evidence offered may include things such as deeds, tax records, business records, utility records, etc.

**Probable cause is a commonsense, practical standard: Is the evidence presented by the challenger sufficient for a reasonable and prudent person to believe that the challenged voter**

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<sup>36</sup> G.S. § 163-85(d).

<sup>37</sup> G.S. § 163-85(d).

<sup>38</sup> G.S. § 163-85(d).

**is ineligible?** It does not mean that such a belief is necessarily correct or more likely true than false. A probability of ineligibility is sufficient.<sup>39</sup>

If the board determines there is probable cause that the voter is not properly registered, it must schedule a full evidentiary hearing to consider the challenge.

## **ii. Notice**

If the county board advances the challenge to an evidentiary hearing, the county board must send notice of the hearing via first-class mail to the voter, challenger, and the county party chairs at least 10 days before the hearing.<sup>40</sup> The notice shall succinctly state the grounds asserted for the challenge, and shall state the time and place of the hearing.

## **iii. Evidentiary Hearing**

The county board should hire a court reporter for the hearing. Alternatively, the county board could produce an audio recording of the hearing. Such a recording must be of high enough quality to understand all speakers and witnesses, to facilitate review of the board's decision on appeal.

At the evidentiary hearing, the county board must first explain to the challenged voter the qualifications for registration and voting in this state.<sup>41</sup> The challenged voter shall be placed under the following oath by the board as provided in G.S. § 163-86(c):

You swear (or affirm) that the statements and information you shall give in this hearing with respect to your identity and qualifications to be registered and to vote shall be the truth, the whole truth, and nothing but the truth, so help you, God.

The county board shall then question the voter regarding their qualifications. If the voter insists they are qualified, the board should administer the following oath provided in G.S. § 163-86(c):

You do solemnly swear (or affirm) that you are a citizen of the United States; that you are at least 18 years of age or will become 18 by the date of the next general election; that you have or will have resided in this State and in the precinct for which registered for 30 days by the date of the next primary or election; that you are not disqualified from voting by the Constitution or the laws of this State; that your name is \_\_\_\_, and that in such name you were duly registered as a voter of \_\_\_\_ precinct; and that you are the person you represent yourself to be, so help you, God.

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<sup>39</sup> See *Adams v. City of Raleigh*, 245 N.C. App. 330 (2016).

<sup>40</sup> G.S. § 163-86(b).

<sup>41</sup> G.S. § 163-86(c).

No challenge shall be sustained unless the challenge is substantiated by affirmative proof. In the absence of such proof, the presumption shall be that the voter is properly registered or affiliated.<sup>42</sup>

If the voter is unable to attend, they may be represented by another person who shall deliver an affidavit that the voter “is a citizen of the United States, is at least 18 years of age or will become 18 by the date of the next general election, has or will have resided in this State and in the precinct for which registered for 30 days by the date of the next primary or election, is not disqualified from voting by the Constitution or laws of this State, is named \_\_\_\_ and was duly registered as a voter of \_\_\_\_ precinct in such name, and is the person represented to be by the affidavit.”

The Board may subpoena witnesses and administer oaths during the hearing in order to take testimony of any witnesses.<sup>43</sup>

#### **iv. Remedies**

If the county board finds that the voter is not properly registered or affiliated, the board will cancel or correct the voter registration.<sup>44</sup> If the county board finds the voter is properly registered, the challenge should be overruled.<sup>45</sup>

### **B. Absentee Ballot Challenge**

#### **i. Notice**

For an absentee ballot challenge, the voter whose ballot is being challenged must be notified in advance of the hearing in a manner designed to provide the voter actual notice in advance of the challenge hearing, to ensure the voter is afforded due process guaranteed by the state and federal constitutions. This means the county board must send notice as soon as possible, and certainly within one business day of receiving a challenge that is filed during the canvass period. For

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<sup>42</sup> G.S. § 163-90.1.

<sup>43</sup> G.S. § 163-86(c).

<sup>44</sup> G.S. § 163-90.2.

<sup>45</sup> G.S. § 163-90.2.

challenges that are filed during the canvass period, the county board shall also contact the voter using any email address or phone number in the voter's record.

The notice must include the reason for the challenge and the date and time of the county canvass where the hearing will be held.

## **ii. Hearing**

The board shall hold a hearing on the challenge on the day set for the county canvass.<sup>46</sup> All members of the county board shall attend the canvass and all members shall be present for the hearing of challenges to absentee ballots.<sup>47</sup> The board shall make its decision without opening the container-return envelope or removing the ballot from it,<sup>48</sup> unless the ballot had been approved at a prior meeting and was already separated from the envelope.

The county board should hire a court reporter/transcriptionist for the hearing. Alternatively, the county board could produce an audio recording of the hearing. Such a recording must be of high enough quality to understand all speakers and witnesses, to facilitate review of the board's decision on appeal.

The board shall administer the necessary oaths or affirmations to all witnesses testifying to the qualifications of the voter challenged or to the validity or invalidity of the ballot.<sup>49</sup> Any voter whose ballots have been challenged may, either personally or through an authorized representative, appear before the board at the hearing on the challenge and present evidence as to the validity of the ballot.<sup>50</sup>

No challenge shall be sustained unless the challenge is substantiated by affirmative proof. In the absence of such proof, the presumption shall be that the voter is properly registered or affiliated.<sup>51</sup>

Because the burden is on the challenger to substantiate the challenge "by affirmative proof," and state law requires a person challenging an absentee ballot to present their case at the hearing, the county board must dismiss any challenge if the challenger fails to attend the challenge hearing or present their case.<sup>52</sup>

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<sup>46</sup> G.S. § 163-89(e).

<sup>47</sup> G.S. § 163-89(e).

<sup>48</sup> G.S. § 163-89(e).

<sup>49</sup> G.S. § 163-89(e).

<sup>50</sup> G.S. § 163-89(e).

<sup>51</sup> G.S. § 163-90.1(b).

<sup>52</sup> See G.S. § 163-89(c), (e); G.S. § 163-90.1(b).

### **iii. Remedies**

If an absentee ballot challenge is sustained because the voter is not eligible to vote in the election at all, the envelope will not be opened, and the ballot inside will not be counted.<sup>53</sup> If the ballot has already been tabulated, the county board must retrieve the ballot and deduct ineligible votes from the election results. If the voter was eligible to vote some but not all contests, the board shall deduct the votes cast for any ineligible contest and count the results for eligible contests.<sup>54</sup>

## **C. In-Person (Early Voting and Election Day) Ballot Challenge**

### **i. Hearing**

When a challenge is filed, the chief judge and judges for that voting place shall hear and decide the voter challenge. When the challenge is entered, the judges shall explain to the challenged voter the qualifications for registration and voting in North Carolina and, after placing the voter under oath, question the voter about their qualifications to register and vote.<sup>55</sup> If the challenged voter insists they are qualified, and proves their identity and continued residence in the precinct since they were registered, one of the judges or the chief judge shall tender to them the following oath or affirmation, omitting the portions in brackets if the challenge is heard on the day of an election other than a primary:

You do solemnly swear (or affirm) that you are a citizen of the United States; that you are at least 18 years of age [or will become 18 by the date of the next general election]; that you have [or will have] resided in this State and in the precinct for which registered for 30 days [by the date of the next general election]; that you are not disqualified from voting by the Constitution and laws of this State; that your name is \_\_\_\_\_, and that in such name you were duly registered as a voter of this precinct; that you are the person you represent yourself to be; [that you are affiliated with the \_\_\_\_\_ party]; and that you have not voted in this [primary] election at this or any other voting place. So help you, God.

If the challenged voter refuses to take the oath, the challenge will be sustained.<sup>56</sup> If the challenged voter takes the tendered oath, the precinct officials conducting the hearing may, nevertheless, sustain the challenge unless they are satisfied that the challenged registrant is a legal voter. If they are satisfied that the person is a legal voter, they shall overrule the challenge and allow the person

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<sup>53</sup> G.S. § 163-89(e).

<sup>54</sup> G.S. § 163-90.2(a).

<sup>55</sup> G.S. § 163-88(a).

<sup>56</sup> G.S. § 163-88(a).

to vote. An undeliverable piece of mail may not be considered evidence that the challenged in-person voter is not properly registered.<sup>57</sup>

Election judges shall make note of their decision on the voter challenge form/envelope available at the voting place, which shall be retained with all precinct materials to be returned to the county board at the close of the polls.

## **ii. Remedies**

If the challenge is overruled, the voter must be allowed to vote a regular ballot. If the challenge is sustained, the challenged voter must be allowed to vote on a challenged ballot, which should be placed in the challenge envelope and returned to the county board, to allow for a potential appeal by the voter.<sup>58</sup> In the case of an unreported move within the same county, the voter at early voting must be allowed to vote their proper ballot style on a regular ballot.<sup>59</sup> For election day voters, an unreported move voter can be transferred to the correct precinct, to the transfer precinct, or allowed to vote a provisional ballot which shall be counted for the contests they are eligible to vote for, based on their correct address.<sup>60</sup>

Challenged ballots are sealed in an envelope and preserved for 22 months. If an election is contested during that time, either party to the election protest may request a court to order the sealed envelopes be brought to the county board of elections. If so ordered, the county board of elections will convene and consider each challenged ballot and rule as to which ballots shall be counted.<sup>61</sup>

## **4. APPEAL TO SUPERIOR COURT**

A county board's decisions on any voter challenge may be appealed to the superior court in the county where the board is located. The appeal must be filed within 10 days. The appeal may be filed by the challenged voter or the challenger only.<sup>62</sup>

In conducting the voter challenge, county boards should be mindful that their decision will create the factual record for the case. The Superior Court will act as an appellate court for board decisions. The court may determine whether: (1) the board made any errors of law; (2) procedures specified by law were followed; (3) appropriate due process rights were afforded to the parties, including pre-hearing notice and the right to offer evidence, cross-examine witnesses, and inspect

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<sup>57</sup> G.S. § 163-88(c).

<sup>58</sup> G.S. § 163-88.1.

<sup>59</sup> G.S. § 163-166.11(3).

<sup>60</sup> G.S. §§ 163-82.15(e), -87.

<sup>61</sup> G.S. § 163-88.1.

<sup>62</sup> G.S. § 163-90.2(c).

documents; (4) the county board's decision is supported by competent, material and substantial evidence in the whole record; and (5) the decision is not arbitrary and capricious.<sup>63</sup>

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<sup>63</sup> *Rotruck v. Guilford Cnty. Bd. of Elections*, 267 N.C. App. 260, 265, 833 S.E.2d 345, 349 (2019).