

08 NCAC 02 .0111 ELECTION PROTEST FORM

All persons bringing an election protest under Part 4 of Article 20 shall complete and timely file the following form. For the purposes of this Rule, "timely" means within the time required by G.S. 163A-1177(b). Please note this form shall not be used to challenge the registration of an individual voter or to report an incident other than an irregularity affecting the outcome of an election.

ELECTION PROTEST
(Use of this form is required by G.S. 163A-1177(c))

This form must be filed with the county board of elections within the timeframes set out in G.S. 163A-1177(b)(4). Please print or type your answers. Use additional sheets if needed to answer the below questions fully. Number the pages of all additional sheets. Please note that filings will be a public record. Please redact all confidential information, such as date of birth, Social Security number, and driver's license number.

Respond to all prompts. Failure to complete this form as required may result in the dismissal of your protest. Attach additional sheets as necessary, including all exhibits and supplemental documents. All attachments are deemed incorporated and covered under the Protest Certification.

PROTESTOR

1. Provide your preferred contact information:

Name: Paul Martin Newby ("Protestor") County of Residence: Wake
 Email: paulnewby2020@gmail.com Phone: 919-782-6376
 Mailing Address: 6108 Chowning Court, Raleigh, NC 27612

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 Chief Justice of the Supreme Court of North Carolina
- 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)
<i>Example: Mayor of Townsville</i>	<i>75</i>
Chief Justice of the Supreme Court of North Carolina	<i>842 as of 10:22 a.m. on November 12, 2020</i>
North Carolina Attorney General	<i>13,748 as of 10:22 a.m. on November 12, 2020</i>

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

- X A defect in the manner by which votes were counted or results tabulated sufficient to cast doubt on the apparent results of the election.
- X 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.

North Carolina law requires that election protests concerning the manner in which votes were counted or results tabulated to be filed "before the beginning of the county board of election's canvass meeting." Due to, *inter alia*, the increased number of absentee by mail ("ABM") ballots this year and the State Board of Elections' ("SBOE") decision to allow counties to approve ABMs the day before canvass, candidates are unable to know details about the election results prior to canvass. This protest is being filed in good faith to bring before the Board the violation of election law or other irregularity or misconduct described herein which the Protestor believes, based on the information reasonably available to the protestor at the time of submission of this protest, may be sufficient to cast doubt on the apparent results of the election.

This protest concerns ABM ballots which have been inappropriately approved and tabulated by the New Hanover County Board of Elections ("County Board") that fall into the following categories: First, it appears that at least 3 ABM ballots received after the statutory deadline for the receipt of such ballots of November 6, 2020 ("Statutory Receipt Deadline") may have been approved by the County Board and added to the vote count.

Second, it appears that ABM ballots received after November 3, 2020 without a postmark stamped by the United States Postal Service ("Statutory Postmark Requirement") were approved by the County Board and added to the vote count.

The New Hanover County Board of Elections is in possession of information regarding ballots that violated the Statutory Receipt Deadline and the Statutory Postmark Requirement.

Third, it appears that at least approximately 49 ABM ballots contained in envelopes that do not meet statutory requirements for such ballots ("Noncompliant ABM Votes") were approved by the County Board. The deficiencies range among issues such as, no witness signature, no assistant signature, deficient witness addresses, among others. Information about specific votes can be produced upon request. Because of time limitations and constraints on the County Board of Elections, a review and identification of all deficiencies with ABM Votes may not have been possible. The Protestor reserves the right to modify or supplement this protest as additional information becomes available.

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

a Protestor may call as witnesses certain members and staff of the County Board who participated in or observed the decisions to count the noncompliant ballots. Protestor may call members or staff of the State Board of Elections who also participated in or offered guidance relevant to the decisions to count the noncompliant ballots. The Protestor may call Dalton Temple, who managed the review of ABM ballots referred to in this protest. Protestor may also rely upon the individuals who reviewed the ABM envelopes. A list of such individuals can be produced upon request.

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

U.S. Constitution, 14th Amendment (Equal Protection Clause);
U.S. Constitution, Art. I, §4;
N.C. Constitution, Art. I, § 19;
N.C. Gen. Stat. § 163-231(a)(1)–(6)
N.C. Gen. Stat. § 163(b)(1) and (b)(2)b; and
Orders of the Court in *Democracy NC v. N.C. State Board of Elections*, No. 20CV457 (MDNC (2020)).

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.
- Other _____

The outcome of this protest will change the vote totals for the protested elections. Given that canvass has not occurred yet, it is uncertain whether the outcome of the protest will change the identity of who wins the protested elections. Protestor reserves the right to supplement this answer as additional information comes available from the state and county boards of election.

10. What relief do you seek?

- Correct the vote count
- A new election
- Other: _____

ASSISTANCE

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

Counsel and volunteers with the NCGOP assisted with the preparation of this protest, specifically gathering factual support concerning the ABM envelope deficiencies.

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>Cheri Beasley</u>	<u>434 Fayetteville St., Ste 2020, Raleigh, NC 27601-3006</u>
<u>Josh Stein</u>	<u>434 Fayetteville St., Ste. 2020, Raleigh, NC 27601</u>
<u>North Carolina Democratic Party</u>	<u>220 Hillsborough Street, Raleigh, NC 27603</u>

PROTESTOR CERTIFICATION

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

I, Paul Martin Newby (*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)

PMN I have reviewed the statutes and administrative rules governing election protests, including all deadlines.

PMN My protest must originate with a filing at the county board of elections.

PMN I must timely serve all Affected Parties.

PMN 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.

PMN It is a crime to interfere unlawfully with the conduct and certification of an election.

PMN 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.

PMN 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 163A of the General Statutes. This notice is provided pursuant to S.L. 2013-381, s. 5.4.

Signature of Protestor: Paul Martin Newby Date: 11/12/20
(This signature must be signed in the presence of a notary)

State of North Carolina, County of WAKE

Sworn to (or affirmed) and subscribed before me this the 12th day of NOVEMBER, 2020.



Gregory M. Fornshell
Official Signature of Notary

GREGORY M. FORNSHELL, Notary Public

Printed Name

My commission expires: NOVEMBER 29, 2022

.....
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: Paul Martin Newby
Attorney Name: Roger W. Knight
Attorney Email: roger@rogerknightlaw.com
Attorney Phone: (Knight) 919-414-4807

Protestor County: New Hanover

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: Roger W. Knight, P.A.
Bar Number: 13010

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 163A 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

11/12/20
Date

History Note: Authority G.S. 163A-741; 163A-1177;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004;
Readopted Eff. September 1, 2018.