

STATE OF NORTH CAROLINA  
WAKE COUNTY

BEFORE THE STATE BOARD OF ELECTIONS

IN RE: REFERRAL OF ELECTION )  
PROTEST OF DURON BURNEY AND ) **ORDER**  
APPEAL OF CAROLINE SUMPTER )  
)

THIS MATTER CAME BEFORE THE STATE BOARD OF ELECTIONS for hearing on December 17, 2025, on the Robeson County Board of Elections (“county board”) referral of the election protest of Duron Burney (“Burney”) in the Red Springs mayoral contest in the November 4, 2025, election, and on the appeal of Caroline Sumpter (“Sumpter”) of the county board’s decision.

Burney and Sumpter, through counsel, were present and provided argument regarding the referral and appeal. Having considered the written and oral arguments, the record from the county board, including the transcript and its order, the written appeal, and the relevant statutes and rules, the State Board, by a 5-0 vote, remanded the matter to the county board for further proceedings, and hereby orders as follows:

**BACKGROUND**

1. Burney timely filed a protest regarding the Red Springs mayoral contest with the county board on November 14, 2025.
2. The results of the contest were as follows:

NAME ON BALLOT	BALLOT COUNT	PERCENT
Caroline Sumpter	360	49.86%
Duron Burney	358	49.58%
Write-In (Miscellaneous)	4	0.55%

3. Burney alleged in the protest that there was improper assistance given to voters located in a care facility who voted by absentee ballot in the election, and that such improper assistance either affected the results of the contest or compromised the integrity of the process. The protest further alleged that certain voters were legally declared to be incompetent. The relief sought by Burney in the protest is a correction of the vote count after invalidating any absentee ballots that were not requested, completed, and returned in accordance with applicable law.

4. After the county board conducted a preliminary consideration of the protest pursuant to N.C.G.S. § 163-182.10(a), the county board advanced the protest to an evidentiary hearing. The hearing was held on November 21, 2025, in accordance with N.C.G.S. § 163-182.10(c). At the hearing, the county board received testimony and evidence, and it heard arguments on the applicable laws that govern the allegations raised in Burney’s protest. At the conclusion of the evidentiary hearing, the county board did not make a final decision on the protest but instead voted to refer the matter to the State Board pursuant to N.C.G.S. § 163-182.10(d)(3).
5. The county board filed its written decision in the county board office on November 26, 2025. In its decision, the county board included a recitation of the evidence presented at the hearing and stated the following conclusion: “there is a conflict between N.C.G.S. 163-226.3 and Disability Rights North Carolina v. North Carolina State Board of Elections and therefore this Board is unable to determine which one is applicable.” As a result, the county board referred the matter to the State Board to “take all appropriate action as they deem just and proper.”
6. On November 26, 2025, Sumpter timely noticed her appeal with the county board and delivered her appeal to the State Board office.
7. In her appeal, Sumpter contends the county board should have dismissed the protest rather than refer the matter to the State Board because Burney has failed to present substantial evidence necessary to sustain his protest. Sumpter contends that Numbered Memo 2022-11 already provides the law that the county board is to apply, and that Burney failed to present any evidence that the voters who were adjudicated incompetent were not qualified to vote in the election and did not have the capacity to vote.
8. Sumpter requested that the State Board add a court opinion and numbered memo to the record. Burney requested that additional documentation pertaining to the voters, as well as two affidavits, be added to the record.

#### ANALYSIS

1. The State Board has jurisdiction over this matter pursuant to N.C.G.S. §§ 163-182.10 and -182.11.
2. Under N.C.G.S. § 163-182.10(d)(3), if a county board is unable to determine what law is applicable to its findings of fact made after an evidentiary hearing, the county board “may send its findings of fact to the State Board for it to determine the applicable law.” When such a referral is made, the usual course is for the State Board to 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. Similarly, under N.C.G.S. § 163-182.11(b), when the State Board considers an appeal of a county board decision on a protest, the State Board may choose to remand the matter back to the county board for further proceedings.

3. Here, the county board was unable to determine what law applies when voters in a care facility receive assistance in the voting process. Assistance for absentee voters in care facilities is addressed in Numbered Memo 2022-11.<sup>1</sup> That memo was issued to provide guidance to the county boards of elections on how to implement a 2022 federal court order in *Disability Rights NC v. State Board of Elections* regarding who may provide assistance to voters with disabilities.<sup>2</sup> While N.C.G.S. § 163-226.3, one of the statutes subject to the court’s ruling, was revised by the legislature in 2023, those changes did not act to somehow supersede the court’s ruling.<sup>3</sup> The law and guidance as stated in the *Disability Rights NC v. State Board of Elections* court order and Numbered Memo 2022-11 remains current law.
4. Additionally, the county board may have been unclear on what law applies when it comes to a voter’s qualifications to vote when they have been adjudicated incompetent. This question was addressed in an August 23, 1973, opinion by the Attorney General’s office.<sup>4</sup> As explained in that opinion, incompetency itself has no effect on a person’s eligibility to vote in North Carolina, because our constitution does not make competency a qualification for voting nor does it make incompetency a disqualification. The law as stated in that opinion, and which is reflected in N.C.G.S. § 35A-1117(b)(5), remains current law.
5. On remand, the county board should also bear in mind that the court’s order in *Disability Rights NC v. State Board of Elections* did not change that a voter must still request that assistance be provided. And an assistant may not unduly influence the voter when the voter is deciding what selections to make on their ballot. *See* N.C.G.S. §§ 163-273(a)(4) and 163-274(a)(13).
6. Burney has alleged that the assistance provided to the voters in question may not have complied with the law and has raised concerns that the nature of assistance may have crossed the line into being improper. For his protest to be meritorious, it remains Burney’s burden on remand to prove the existence of any irregularities or misconduct, and if proven, that they were sufficiently serious to cast doubt on the results of the election. *See Appeal of Ramseur*, 120 N.C. App. 521, 525 (1995); *see generally* N.C.G.S. § 163-182.10(d)(2).

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<sup>1</sup> Available at [https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2022/Numbered%20Memo%202022-11\\_Court%20Order%20re%20Disabled%20Absentee%20Voters.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2022/Numbered%20Memo%202022-11_Court%20Order%20re%20Disabled%20Absentee%20Voters.pdf). *See also Assistance for Absentee Voters in Nursing Homes, Rest Homes, Hospitals, and Clinics (“Care Facilities”)* (Sept. 2022), available at [https://s3.amazonaws.com/dl.ncsbe.gov/Legal/Care\\_facility\\_guidance%202022.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/Legal/Care_facility_guidance%202022.pdf).

<sup>2</sup> Available at <https://s3.amazonaws.com/dl.ncsbe.gov/sboe/39%20Order%20granting%20MSJ%20and%20mtn%20to%20expedite.pdf>.

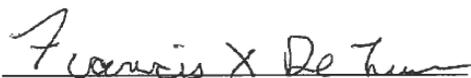
<sup>3</sup> *See* N.C. Sess. Laws 2023-140 § 35 (revising the statute to remove references to early voting).

<sup>4</sup> Available at <https://s3.amazonaws.com/dl.ncsbe.gov/Legal/AG%20Opinion%20on%20Incompetent%20Voters.pdf>.

7. Accordingly, the county board shall reconvene the evidentiary hearing on Burney's protest and shall issue a written decision on the protest as follows:
- a. The county board shall give notice of the reconvened hearing in accordance with N.C.G.S. § 163-182.10(b) and 08 NCAC 02 .0110(d).
  - b. The county board shall conduct the reconvened hearing in accordance with the procedures in N.C.G.S. § 163-182.10(c) and 08 NCAC 02 .0110(e). At the reconvened hearing, the county board may hear additional witness testimony and receive additional evidence to be added to the record.
  - c. The county board shall consider any new testimony or evidence along with the testimony and evidence already in the record from its November 21, 2025, evidentiary hearing when making new findings of fact on the protest. In making its findings of fact under N.C.G.S. § 163-182.10(d)(1), the county board's findings shall be a determination of what the facts are in this matter, not mere recitations of the evidence. The county board shall make specific findings including, but not limited to, the following: whether the care facility requested a multipartisan assistance team and whether one was provided by the county board; whether the voters in question requested any assistance and, if so, the nature of the assistance provided; and, whether there was any undue influence on the voters.
  - d. In making its conclusions of law under N.C.G.S. § 163-182.10(d)(2), the county board shall apply the law as directed in this order. Before making its conclusions and a final decision, the county board shall hear argument from the parties as to how to apply the relevant law to the factual findings of the county board.
  - e. The county board shall issue an order on the protest in accordance with N.C.G.S. § 163-182.10(d). The written decision on the protest shall be filed and served in accordance with 08 NCAC 02 .0110(e)(2).

IT IS THEREFORE ORDERED that this matter, including the appeal, is remanded to the Robeson County Board of Elections for further proceedings in compliance with this order.

This the 31st day of December, 2025.



Francis X. De Luca, Chair

STATE BOARD OF ELECTIONS

CERTIFICATE OF SERVICE

I, Adam Steele, Associate General Counsel for the State Board of Elections, today caused the forgoing document to be served on the following individuals via FedEx and email:

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Jessica Davis (email only)  
Director, Robeson County Board of Elections  
jessica.davis@robesoncountync.gov

This 31st day of December, 2025.



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Adam Steele