



NORTH CAROLINA

State Board of Elections

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NUMBERED MEMO 2016-09

TO: County Boards of Elections Kim
FROM: Strach, Executive Director
RE: **URGENT:** Canvass Procedures
DATE: June 6, 2016 (revised June 7, 2016)

Dear County Board Members and Directors:

This Numbered Memo sets forth the required procedures for canvassing the June 7th primary. It is essential that all of these procedures are followed statewide during this election. Recent events have highlighted the need to ensure that the critical responsibilities of canvassing an election are as uniform across the state as our polling place procedures.

CANVASS PROCEDURES

Canvass is the board's responsibility — Article 15A

Board members are ultimately responsible for ensuring the accuracy and integrity of election results; *canvass* is how they carry out that duty.

Statute provides that *canvass* is more than a pro forma meeting, nor is it a rubber-stamping by the board staff's preparatory work. Rather *canvass is*:

[T]he entire process of determining that the votes have been counted and tabulated correctly, culminating in the authentication of the official election results. (G.S. § 163-182.5)

In support of this process, a board of elections conducting a canvass has the authority to send for papers and persons, and to examine such documents or question such persons for the purpose of making determinations as to the legality of disputed ballots.

The county canvass date and time are set by statute: *11:00 a.m. on the tenth day after a general election and on the seventh day after every other election.* At that meeting the board's purpose is:

to complete the canvass of votes cast and to authenticate the count in every ballot item by determining that all votes have been counted and tabulated correctly. If, despite due diligence by election officials the initial counting of all the votes has not been completed by the statutory date, the county board may hold the canvass meeting at a reasonable time thereafter. The canvass meeting shall be at the county board of elections office, unless the county board, by unanimous vote of by three members, designates another site within the county.” (G.S. § 163-182.5)

Ensuring the integrity of every election is our primary responsibility. County board members have a critical role in this process. Ultimately, county board members will sign the certification documents that authenticate and certify that the election results are true and accurate.

The following procedures shall occur as part of an election canvass:

Public Notice — G.S. § 143-318.10

County board of elections members shall take no action outside a meeting for which there has not been proper public notice. See G.S. § 163-143-318.10 and 143-318.12(b).

The county board shall issue public notice of any meeting involving the counting of ballots. In addition to being posted in public, the notice lists for a canvass meeting shall include all individuals and institutions that usually receive notice of meetings. It is best practice to notify leadership of recognized political parties with a presence in the county (Libertarian, Democrat, and Republican).

Any voter of the county or other member of the public shall be permitted to attend the meeting and allowed to observe the counting process, provided that no one shall interfere with the election officials as they count the ballots or are engaged in the discharge of their other duties. If media are present and filming or photographing proceedings, it is best practice to remind those present that it is not permitted to capture the image of a voted ballot. (G.S. § 163-166.3(b).

Reconciliation

One of the most important tasks conducted during canvass process is reconciliation. Many levels of reconciliation take place before the final certification of results are concluded. The process begins with early voting, and continues through precinct reconciliation, and until final canvass.

Please ensure that initial reconciliations are completed. If any issues are identified, they must be immediately addressed. If you do not address reconciliation issues initially, the issues will carry forward throughout your canvass process. We will implement audits to assist you identify issues during your canvassing, but there are reconciliation processes that are not captured in electronic data. For example, we do not have data that captures the physical number of provisional ballots you receive from the polling location. Therefore, it is imperative that the reconciliation process you conduct includes comparing the physical number of provisional ballots to the provisional module application and any poll books. If there is a discrepancy, you must investigate, identify and document the reason for the discrepancy.

Any staff reconciliation process that is conducted must include documentation that is signed by two staff members. This documentation must be maintained and available for county board members during their canvassing meetings.

Counting of Absentee Ballots on Election Day —G.S. § 163-234¹

The county board of elections shall meet at 5:00 p.m. (or earlier if a resolution is adopted at least two weeks before the date of the election) on Election Day in the board office or other public location for the purpose of counting all absentee ballots, except those:

- challenged before 5:00 p.m. on Election Day, or
- received after 5:00 p.m. on the day prior to Election Day. [*Note*: The legislature has not updated G.S. § 163-234(1) to include proper internal citations].

The counting of absentee ballots shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable necessity.

As each ballot envelope is opened, the board shall check-off the name of the absentee voter. For the preservation of secrecy, the ballots shall be placed in the appropriate ballot box or container for tabulation. After all ballots have been placed in the boxes, the counting process shall begin.

Documents to be prepared and signed by the county board

The following documents shall be prepared for the county board of elections' review and signatures:

¹At each of the absentee meetings prior to Election Day, it is permissible for the Board, after approval of each absentee ballot, to cause staff to take preparatory steps and remove those ballots from their envelopes and have them read by an optical scanning machine, without printing the totals.

1. The poll book of absentee voters. As soon as the absentee ballots have been counted on Election Day, the board members and assistants employed to count the absentee ballots, shall each sign the *poll book of absentee voters*, with the signature to be affixed immediately beneath the last absentee voter's name. The county board of elections shall be responsible for the safekeeping of the poll book of absentee voters.
2. The results tapes of electronic absentee ballot count. When absentee ballots are counted electronically, the members of the board present shall sign the results tape, which shall be retained for purposes of review and examination at the official county canvass proceeding.
3. The absentee abstract. The board members shall cause the results of the tally to be entered on the *absentee abstract*. The abstract shall be signed by the members of the board in attendance and shall then be scanned and uploaded electronically to the State Board of Elections.
4. The chain of custody report(s). Voted ballots shall be properly secured and a documented chain of custody shall be maintained for the ballots, tapes, poll book and other documentation/media related to tabulation.

Counting of write-in Votes — GS § 163-182.2(2)

If write-in votes are not counted at the precinct after the close of polls, any write-in votes cast at the county board of elections office shall be conducted in the presence or under the supervision of the bipartisan county board. Write-in votes shall be recorded on a write-in tally sheet, which shall be signed by the members of the county board of elections.

Counting of Additional Absentee Ballots Returned by Mail — G.S. §§ 163-232.1 and 163-234(10)

County boards of election shall have an additional meeting following the day of the election and prior to the date of the county canvass to consider absentee ballots received by mail after 5:00 p.m. on the day prior to Election Day that are deemed timely. Civilian absentee ballots received by mail after Election Day are timely if they are postmarked on or before Election Day and received by 5:00 p.m. on the third day following Election Day. Military and overseas ballots that are received by mail after Election Day are timely if they are received no later than 5:00 p.m. on the last business day prior to the county canvass. These additional absentee ballots shall be counted on the day of the county canvass.

At least one board member of each political party shall be present for the counting of absentee ballots. This fact shall be publically declared and entered in the official minutes of the absentee board meeting. The county may use assistants in the counting of the official ballots, but the

county board members are responsible for observing and supervising the opening and tallying of the ballots.

Documents to be prepared and signed by the Board

The following documents shall be prepared for the county board of elections' review and signatures:

1. The results tape for electronically counted absentee ballots. When absentee ballots are counted electronically, the members of the board present at the canvass meeting shall sign the results tape, which shall be retained for purposes of review and examination at the official county canvass proceeding, along with the Election Day absentee results tape.
2. The civilian and military-overseas certified lists of executed absentee ballots returned on or after Election Day. The county board of elections staff shall prepare these lists in triplicate and the board shall sign all three originals of each list. One signed original of each list shall be electronically uploaded to the State Board of Elections.
3. The supplemental absentee abstract. The county board members shall cause the results of the tally to be entered on *the supplemental absentee abstract*. The abstract shall be signed by the members of the board in attendance and the original Election Day *absentee abstract* and the *supplemental absentee abstract* shall be mailed immediately to the State Board of Elections.
4. The poll book of absentee voters. The board shall sign the final *poll book of absentee voters* at this time.
5. The chain of custody report(s). Voted ballots shall be properly secured and a documented chain of custody shall be maintained for the ballots, tapes, poll book and other documentation/media related to tabulation.

Hearing On Absentee Ballot Challenges — G.S. § 163-89

The following must be heard by the county board of elections on the day of the county canvass:²

- A challenge to an absentee ballot that was properly challenged on the day of any primary or election; and
- a challenge to an absentee ballot that was timely mailed by election day and received by the county board of elections after election day, and was properly challenged no later than the time set by statute.

²Challenges to absentee ballots may not be heard any sooner than the day and time set for the county canvass.

Notice must be provided to all challenged voters. All members of the board of elections shall attend the canvass and must be present for the hearing of the challenges to an absentee ballot.

Counting of Provisional Ballots — G.S. § 163-182.2(a)(4)

The county board of elections shall meet before canvass and make a determination as to each provisional official ballot. A meeting before canvass may include a meeting on the day of canvass, but such a meeting must occur before 11:00 a.m.

Under no circumstances shall any elections officials open a provisional envelope or tabulate results before the county board members have made their official determination on the provisional ballot application.

In making its determination, the county board of elections may rely on the provisional research conducted by county board of elections staff. When conducting provisional research, county board of elections staff shall at a minimum review the following resources:

- the voter's provisional voting application
- the county's voter registration database (active, inactive, removed and denied voters)
- pending voter registration applications, including applications in the incomplete or review queue
- the non-public access to statewide voter registration information (intranet site)
- DMV provisional research results
- any other relevant resource of information

If a voter was properly registered to vote in the election by the county board, no mistake of an election official in giving the voter a ballot or in failing to comply with G.S. § 163-82.15 or G.S. § 163-166.11 shall serve to prevent the counting of the vote on any ballot item for which the voter was eligible by registration and qualified by residency to vote. **A county board of elections shall never discount a voter's provisional ballot due to an administrative error on the part of an election official.**

Every effort shall be made by county boards of elections to correct administrative errors well before the board meets to consider and count the provisional official ballots. Staff shall review provisional voting applications soon after Election Day to determine if more information is needed from a provisional voter to assist the county board of elections in making the proper determination as to whether to count a person's ballot. Such administrative efforts may include, for example, following up with a voter in order to:

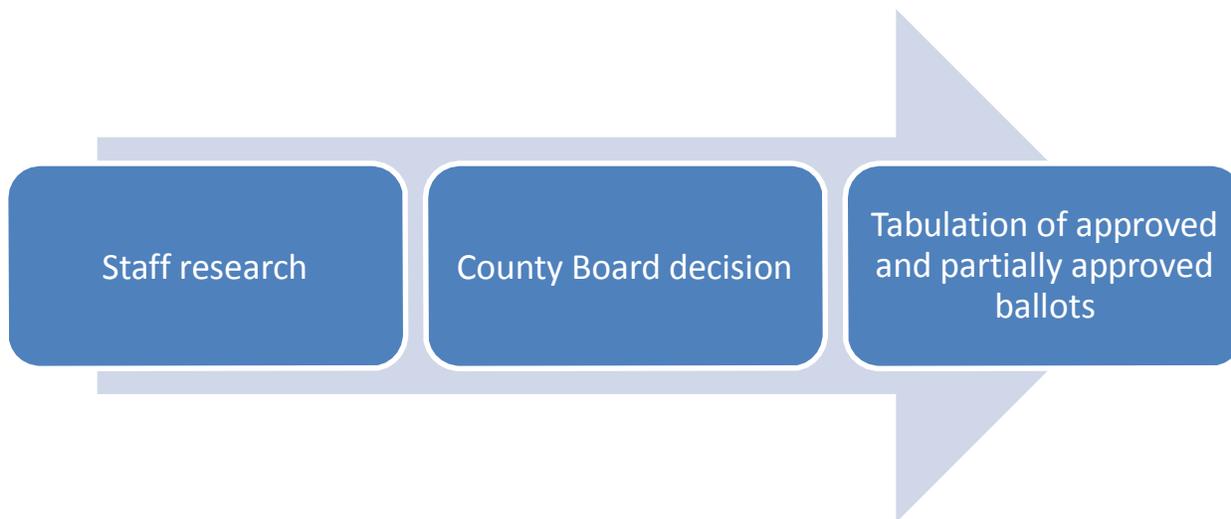
- have the voter sign the provisional voting application, if it was not signed

- have the voter sign a *reasonable impediment declaration*, if the voter cast a provisional official ballot due to lack of acceptable photo ID and claimed a reasonable impediment
- have the voter provide a *reason* on the *reasonable impediment declaration* if the voter claims not to have acceptable photo ID due to some impediment or barrier (*See* Numbered Memo 2016-01)
- have a voter who claims to have registered at the NC DMV, but for whom no record of registration was found, provide his or her driver license number if it was not provided on the provisional voting application.

If, in the course of reviewing provisional applications, a staff member suspects that improper instructions were given by a precinct official or finds that information is missing on the application, he or she shall make every effort to ensure that the voter is given the opportunity to provide the required information.

It is essential that the process for handling provisional ballots is followed. County boards should be making decisions as to the disposition of provisional ballots based on information presented from staff research.

Again, no provisional envelopes shall be opened and tabulated prior to the county board voting on the disposition of a provisional ballot. The opening and tabulation of approved ballots shall be done in the presence and under the supervision of board members. [NOTE: *Before a provisional ballot is separated from its envelope, county board staff shall ensure that the election official wrote the correct PCT/VTD number on the ballot; if not, the correct PCT/VTD shall be written on the ballot before the ballot is tabulated (and thus becomes no longer identifiable with a voter). The 60-day sort cannot be successfully conducted without this information being included on ballots.*]



Partial-Count Procedures

With respect to ballots that must be partially counted, the county board of elections shall have a process to count the contests for which the voter is eligible. The county board of elections shall select one of the following processes to count eligible contests:

- *ballot duplication* – Either the county board members or a bi-partisan team shall assemble to duplicate the original provisional official ballot. The team must obtain a blank ballot of the same style that was cast by the provisional voter, even if the board determines that the voter was not eligible to cast that ballot style. The team shall mark the blank ballot for all contests which the voter is eligible to vote. The board shall annotate the blank ballot by some indication or marking that the ballot is a *duplicate* of the original ballot, minus the contests that cannot be tabulated. When using this method, one team member shall call-out the voter's ballot choice and the other team member shall mark the blank ballot. Ideally, a third person will then review and compare the original ballot to the duplicated ballot, or, in the absence of a third person, the two-person team can switch ballots and roles and permit the caller to review the ballot marked by the first person, and vice versa. The duplicated ballot shall then be tabulated along with fully counted provisional official ballots.
- *hand-tally* – Either the county board of elections or a bipartisan team of election officials shall assemble to hand-tally the votes cast for all eligible contests and ballot choices. When using this method, one team member shall call-out the voter's ballot choice and the other team member shall mark a tally sheet. A third person shall observe the team's actions of calling and marking the tally sheet.

Once the county board of elections has made a final determination as to the provisional official ballots for the election, the county board of elections staff shall prepare a report and final disposition report for the board of elections members to review and sign. Once signed, the ballots that are to be counted (fully or partially approved) shall be tabulated. Regardless of whether the ballots are electronically tabulated with the use of certified and tested voting equipment, or are instead hand-tallied, the results of the tabulation shall be signed by the county board of elections members or the bi-partisan team of election officials who participated in the count.

The final disposition report and the counted official provisional ballots shall be sealed together and maintained as part of the official documentation of the election. The signed results tapes shall be retained for purposes of review and examination at the official county canvass proceeding.

Documents to be prepared and signed by the Board

The following documents shall be prepared for the county board of elections' review and signatures:

1. The report of “*provisional voters by precinct voted*”
2. The results tapes. When provisional ballots are counted electronically, the results tape must be signed by the members of the board present at the canvass meeting. Board members shall sign the tape before the tabulation begins (the “zero tape”) and then again after the tabulation is complete. These signed results tapes shall be retained for purposes of review and examination at the official county canvass proceeding.
3. Chain of custody report(s). Voted ballots shall be properly secured and a documented chain of custody must be maintained for the ballots, tapes, poll book and other documentation/media related to tabulation.

Final Canvass Proceedings

To complete the canvass of votes cast and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly, the county board of elections must:

- examine the returns from all election day precincts
- examine the returns from absentee official ballots
- examine the sample hand-to-eye paper ballot counts
- examine the returns from provisional official ballots

After examining the returns, the board shall conduct the canvass and sign the official abstract of results.

Unity

The process of reading PCMCIA cards or entering manual results into the Unity tabulation software shall include the following security measures:

- At no time shall results be read or manually entered into the Unity terminal without county board supervision.
- If any manual edits are made into the tabulation software, paper documentation that has been signed by appropriate election officials must match those edits. The documentation shall be maintained and secured as part of the tabulation documentation.

Documents to be prepared and signed by the Board

1. county canvass abstract cover sheet
2. block style canvass report (Unity)
3. county canvass precinct report
4. county canvass contest report