Numbered Memo 2020-32

TO:        County Boards of Elections
FROM:      Karen Brinson Bell, Executive Director
RE:        Hand-To-Eye Recount
DATE:      December 4, 2020

This memo provides guidance for the conduct of a hand-to-eye recount, including specific examples of how to determine questions of voter intent.

The second-place candidate in the contest for NC Supreme Court Chief Justice (“the Contest”) has requested a hand-to-eye recount, which will take place in 3% of the voting sites in each county in accordance with state law. Only the NC Supreme Court Chief Justice contest shall be recounted.

In the event the results of the sample hand-to-eye recount differ from the machine recount results within those voting sites such that extrapolating the amount of the change to the entire state (based on the proportion of ballots recounted to the total votes cast for that office) would result in reversing the results, the State Board will order a full statewide hand-to-eye recount in the Contest.

1  Preparation for Recount

1.1  Establish a Schedule

Recounts may begin on Monday, December 7, 2020 and should be completed by the end of the day on Monday, December 14, 2020.

All counting teams should take a 15-minute break after every two hours of counting to avoid fatigue, which may lead to unintended errors. It is recommended that teams take at least a 30-minute meal break after counting periods in both the morning and afternoon.

1.2  Notice the Recount

Prepare and publish notice of the recount meeting at least 48 hours before the meeting. Send notice of the recount to your notice list, county party chairs, attorneys for the two candidates in the Contest, and other interested parties. You should also post it on your website, if possible.

Also, complete the State Board’s survey, which will provide the location and schedule of each county’s recount to the state parties and affected candidates. This will also be posted on the State Board website.
1.3 Secure a Location

Arrange for a space to conduct the recount. This may be your county board office or another location if your office is not sufficiently large. You should arrange the area such that public observers are separated from the area where the hand tallying is occurring. There should also be a designated area for board members to view the recount.

The director or their designee shall be assigned the role of recount captain. Assigning a recount captain helps maintain control over the recount and ensures that ballots and other items are accounted for at all times. The recount captain shall have in their possession a report of the results of the Contest from the election management software.

If a county board uses multiple rooms or locations for a recount, they shall require that a permanent county staff member be assigned at each site and the staff member shall be designated as the recount captain for that location. The county board of elections shall arrange for one person to manage the distribution of the voted ballots for each of the voting sites that are subject to the recount. You may need extra persons to assist or in case of emergencies.

Mass gathering limits due to the pandemic do not apply to elections, as outlined in Numbered Memo 2020-12; however, all participants must socially distance. This may mean you have to limit the number of people who are in the room for the recount. If it is not possible to procure a sufficiently large space for those who may want to attend in person, the county board of elections must include on the meeting notice the number of public attendees allowed, indicate if RSVP is required to secure one of those spots, and broadcast the absentee board meetings via video feed using a service such as WebEx or Microsoft Teams. The county board must allow at least one representative from each of the two candidates in the Contest to attend the recount in person.

The public must be able to see and hear the proceedings without compromising the secrecy of any voter’s ballot. Staff must ensure that the public cannot view any voted ballots or other confidential information, such as voter signature, on the video feed. A staff member should be assigned to monitor the video feed throughout the absentee board meeting to ensure that confidential information is not viewable by the public. County board members and staff must be particularly mindful of ballot secrecy.

1.4 Secure Bipartisan Teams

The county board of elections shall arrange for a bipartisan team of four to conduct the recount as follows:

- A team of two officials (one Democrat and one Republican) to relay the results of each ballot. One person will read the ballot and the other official will ensure the correct vote was read aloud.
- A team of two officials (one Democrat and one Republican) to record the tally of votes for each candidate on paper. Each of the two officials shall separately record the tally. For
every vote for a candidate, each official shall place a vertical line on the tally sheet. After every fifth vote for each candidate, each official shall place a diagonal line across the four vertical lines and state aloud the word “tally.” If the two officials do not state the word “tally” at the same time, the team shall resolve the difference before proceeding.

1.5 Organize Recount Materials

You should place “Quiet Please – Counting in Progress” or other similarly worded signage in the recount location. Tables used for the recount should be clear of all items except for the ballots to be counted, pencils, tally sheets, and any reconciliation or chain of custody documents. Teams should not be permitted to have food or drink near the ballots. The room(s) used for the recount should be cleared of all other ballots, ballot boxes, and other storage items.

The county board shall also ensure that seals and other security materials to secure the ballots following the recount are readily available.

2 Presence of Board Members

Recounts are open to the public and must be performed in the presence of the board or under the supervision of the board. This means that either a quorum of the board (any three members) or a bipartisan team of two board members must be present for the entire recount.

It is not appropriate for board members to participate on the bipartisan recount teams as their role is to supervise the recount proceedings and determine questions of voter intent. See Section 4, Counting of Ballots and Voter Intent.

3 Public Observance

Any person may attend the recount. This includes the candidates, their representatives or legal counsel, media representatives, and any other interested persons. These persons may observe the counting process but may not observe individual ballots. The bipartisan counting teams, members of the county board staff, and the county board members are the only persons who may handle and touch the ballots and other election materials.

The county board of elections shall exercise control over the conduct of the recount to ensure that the bipartisan counting teams do not experience interference from any person observing the recount. All persons who are not under the supervision of the county board of elections are considered observers and shall not impede or disrupt the recount process in any way. If any observer engages in disruptive behavior that in the opinion of the board of elections threatens the orderly conduct of the recount, the board of elections shall issue a warning. If the observer does not cease the offending conduct, the county board shall order the observer’s removal.

All individuals present—including county board staff, board members, party or candidate observers, and members of the public—must wear a mask or face coverings unless an
exception applies. Individuals who do not wear a face covering will be required to leave if they do not wear a face covering upon request.

It is recommended that observers wear badges or nametags identifying themselves and their role (candidate, media, etc.). The county board of elections shall mark observer areas and require that observers remain within those areas unless otherwise permitted by the board of elections. If there is not sufficient room for all observers to view the election materials, preference shall be given to candidates or their designees.

The use of video or still cameras by the public inside the recount room is not permitted because of the statutory prohibition on photographing or videotaping individual ballots. Members of the media are permitted to take photo or videos before or after the recount occurs. The board of elections may enforce reasonable restrictions on items brought into the recount room such as telephones, food, or drink.

### 4 Counting of Ballots and Voter Intent

#### 4.1 Board Must Determine Voter Intent

Voter intent is the governing standard when questions arise about how to adjudicate markings on a ballot. Questions about voter intent can arise during a hand-to-eye recount if a voter marks the ballot in an inappropriate manner, places marks in the wrong location on the ballot, or otherwise marks the ballot in a manner that causes the voter’s choice to be in dispute. This memo supplements Numbered Memo 2019-07, which is still in effect.

Determinations of voter intent must be made by the county board. If the bipartisan counting team encounters a ballot that cannot be clearly identified as a vote for one candidate or another, the ballot must be set aside. All ballots with a potential overvote or undervote shall be adjudicated by the county board at the conclusion of the tallying by the bipartisan team. If the Contest was left blank—meaning there are no marks in the target or candidate area for the Contest—the county board does not need to determine voter intent and the ballot shall not be counted for any candidate.

#### 4.2 Statutory Requirements

Official ballots shall be counted according to the principles and rules contained in G.S. § 163-182.1(a):

1. Only official ballots shall be counted.
2. No official ballot shall be rejected because of technical errors in marking it, unless it is impossible to clearly determine the voter's choice.
3. If it is impossible to clearly determine a voter's choice in a ballot item, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which the voter's choice can be clearly determined.
(4) If an official ballot is marked in a ballot item with more choices than there are offices to be filled or propositions that may prevail, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which there is no overvote and the voter's choice can be clearly determined.

(5) If an official ballot is rejected by a scanner or other counting machine, but human counters can clearly determine the voter's choice, the official ballot shall be counted by hand and eye.

(6) Write-in votes shall not be counted in party primaries or in referenda, but shall be counted in general elections if all of the following are true:

  a. The write-in vote is written by the voter or by a person authorized to assist the voter pursuant to G.S. 163-166.8.

  b. The write-in vote is not cast for a candidate who has failed to qualify under G.S. 163-123 as a write-in candidate.

  c. The voter's choice can be clearly determined.

4.3 Uploading Results

The county board shall reconcile the number of ballots counted at each voting site selected for the hand-to-eye recount with the number of ballots counted at those sites during the machine recount. The results of the hand-to-eye recount are not to be uploaded into your election management system or election night reporting. This is because G.S. § 163-182.2(a)(6) generally provides that, in its canvass, a board of elections shall rely on the mechanical or electronic count of the vote, rather than the hand-to-eye audit or hand-to-eye recount. County boards shall report the results of their recount in a survey that will be provided to collect this information.

Only if there is a material discrepancy between the electronic or mechanical count and a hand-to-eye count or recount will the hand-to-eye count or recount control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count. A material discrepancy is one that changes the outcome of a contest.

Because the contest subject to a recount is statewide, the State Board will determine whether any differences are material. The hand-to-eye results shall be compared to the results of the machine recount. County boards shall retain all media devices in a secure location in the event the State Board directs that the results are to be uploaded into your election management system.

4.4 Retaining Adjudicated Ballots

County boards must separately retain and store all ballots where voter intent was adjudicated by the board. Any such ballots shall be placed in a labeled envelope or container and clearly marked
as ballots for which voter intent was adjudicated. This directive is being provided to ensure that the ballots can later be retrieved in the event of a dispute.

5 Guidelines for Determining Voter Intent

For any printed ballot that is to be counted hand-to-eye, the following guidelines shall be used in determining voter intent. For purposes of this guidance, the following definitions apply:

- “Target area” is the square or oval next to the candidate’s name on the printed ballot.
- “Candidate area” is the area between the lines separating candidate names, or the area that is clearly closer to one candidate’s name than another. “Candidate area” includes the candidate’s name and party affiliation, if listed.

5.1 General Guidelines

5.1.1 Any ballot that is properly marked in the target area for one candidate only shall be designated as a vote for that candidate.

Examples of votes that shall be counted:

![Examples of votes](a.png) ![Examples of votes](b.png) ![Examples of votes](c.png)
5.1.2 If the names of all but one candidate are stricken through, the ballot shall be counted for the one candidate whose name was not stricken through.

Examples of votes that shall be counted for the candidate whose name is NOT stricken through:
5.1.3 If there are identical marks for two or more candidates, clarified by an additional or different mark or marks that appear to indicate support for one candidate, the ballot shall be counted as a vote for the candidate with the additional or different marks.

Examples of votes that shall be counted for the candidate with the additional clarifying mark:
5.1.4 Any ballot that has any other mark or marks in the target area or candidate area for one candidate only, including circling the target area and/or the candidate’s name or making a mark through the target area or candidate’s name, provided no other candidate for that office is similarly marked, shall be counted as a vote for that candidate.

Examples of votes that shall be counted:
President and Vice President of the United States
(You may vote for ONE)

Donald J. Trump
Michael R. Pence
Republican

Joseph R. Biden
Kamala D. Harris
Democrat

Don Blankenship
William Mohr
Constitution

Howie Hawkins
Angela Walker
Green

Jo Jorgensen
Jeremy (Spike) Cohen
Lindertarian

Write-in:

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President and Vice President of the United States
(You may vote for ONE)

Donald J. Trump
Michael R. Pence
Republican

Joseph R. Biden
Kamala D. Harris
Democrat

Don Blankenship
William Mohr
Constitution

Howie Hawkins
Angela Walker
Green

Jo Jorgensen
Jeremy (Spike) Cohen
Lindertarian

Write-in:

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President and Vice President of the United States
(You may vote for ONE)

Donald J. Trump
Michael R. Pence
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Joseph R. Biden
Kamala D. Harris
Democrat

Don Blankenship
William Mohr
Constitution

Howie Hawkins
Angela Walker
Green

Jo Jorgensen
Jeremy (Spike) Cohen
Lindertarian

Write-in:

f

President and Vice President of the United States
(You may vote for ONE)

Donald J. Trump
Michael R. Pence
Republican

Joseph R. Biden
Kamala D. Harris
Democrat

Don Blankenship
William Mohr
Constitution

Howie Hawkins
Angela Walker
Green

Jo Jorgensen
Jeremy (Spike) Cohen
Lindertarian

Write-in:

g

President and Vice President of the United States
(You may vote for ONE)

Donald J. Trump
Michael R. Pence
Republican

Joseph R. Biden
Kamala D. Harris
Democrat

Don Blankenship
William Mohr
Constitution

Howie Hawkins
Angela Walker
Green

Jo Jorgensen
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Lindertarian

Write-in:

h

President and Vice President of the United States
(You may vote for ONE)

Donald J. Trump
Michael R. Pence
Republican

Joseph R. Biden
Kamala D. Harris
Democrat

Don Blankenship
William Mohr
Constitution

Howie Hawkins
Angela Walker
Green

Jo Jorgensen
Jeremy (Spike) Cohen
Lindertarian

Write-in:

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5.1.5 Any ballot that has a mark or marks in the target area or candidate area for one candidate, which extends partially into one or more other target areas or candidate areas, shall be counted as a vote for the candidate so marked only if a majority of the mark is in that candidate’s area or target area, it is readily apparent that the voter intended to vote for that candidate, and no other candidate is similarly marked.

Examples of votes that shall be counted:
5.1.6 Marks extending across more than one candidate’s area may be counted if the lines of the “x” or the bottom point of the check mark clearly lie inside the box or on top of the name or party affiliation or candidate area of one candidate, and no other candidate is similarly marked.

Examples of votes that shall be counted:
5.1.7 Any ballot that has a mark in the target area or candidate area for one candidate, and on which other marks in the target areas or candidate areas for any other candidates have been partially erased, scratched out, or otherwise obliterated, shall be counted as a vote for the candidate for which the mark was not erased, scratched out, or otherwise obliterated, provided no other candidate is similarly marked.

Examples of votes that shall be counted:

5.1.8 Any ballot that has a mark that is clearly next to (either before or after) a candidate's name, or across the name, shall be recognized as a mark for that candidate. Similarly, a mark between or over the "timing marks" of the ballot, that are clearly opposite or next to one candidate's name and not near another candidate's name, shall be recognized as a mark.

Examples of votes that shall be counted:
5.1.9 A mark that is between or across more than one candidate’s name, candidate area, or target area shall not be recognized as a vote.

Examples of votes that shall **not** be counted:
5.1.10 Any writing or comment on the ballot (other than a write-in) that clearly indicates the voter's support for one and only one candidate for the office, and that cannot be interpreted as a comment in favor of any other candidate in that election, shall be counted as a vote for that candidate.

Examples of votes that shall be counted:
5.2 Overvotes

5.2.1 Any ballot that is marked for more than one candidate for the office shall be deemed an overvote and no vote shall be counted for that ballot item.

Examples of votes that shall not be counted:
5.3 Undervotes

5.3.1 Any ballot on which there is no mark under the office, or any other mark or comment indicating support for a candidate for the office, is an undervote and shall not be counted as a vote for any candidate.

Examples of votes that shall not be counted:
5.3.2 A mark that is clearly a negative or extraneous comment, or which indicates the voter's opposition to one or more candidates, shall be considered an undervote, provided the ballot is not so marked to indicate which candidate the voter supports.

Examples of votes that shall **not** be counted:

![Examplea](image1.png)  
![Exampleb](image2.png)  
![Examplec](image3.png)

![Exampled](image4.png)  
![Examplee](image5.png)  
![Examplef](image6.png)
5.3.3 If a substantial part of the candidate’s name is crossed through or stricken out, the mark shall be considered an undervote and shall not be counted.

Examples of votes that shall not be counted:
6 Precinct Sort

County boards shall not conduct the precinct sort until all recounts have been completed. Precinct sorts shall be completed within 30 days of the completion of all recounts.