



# NORTH CAROLINA

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## STATE BOARD OF ELECTIONS

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### Numbered Memo 2022-11

**TO:** County Boards of Elections  
**FROM:** Karen Brinson Bell, Executive Director  
**RE:** Court Order Regarding Assistance for Absentee Voters with Disabilities  
**DATE:** August 29, 2022

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On July 11, 2022, a federal court issued an [order](#) invalidating state laws preventing certain individuals from helping disabled voters request, complete, and submit absentee ballots.<sup>1</sup> The court determined that these laws, as applied to disabled voters, violate federal law. Specifically, Section 208 of the Voting Rights Act permits any voter who is blind, disabled, or unable to read or write to request “assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.”<sup>2</sup>

This numbered memo provides guidance for county boards to comply with the court order. It supersedes Numbered Memo 2020-15 and any other prior memo to the extent they provide guidance regarding who may assist an absentee voter who needs assistance due to a disability.

### Assistance for Absentee Voters with Disabilities

Voters who need assistance voting absentee by mail due to their disability may now receive assistance from any person they choose. This could be a friend, relative, or any other person the voter chooses to assist them. A candidate may not witness the ballot of a voter unless the candidate is the voter’s near relative.<sup>3</sup>

### Voters in Covered Facilities

A voter who needs assistance due to a disability and is a patient or resident in a covered facility may receive assistance from any person they choose. They may receive assistance from the staff

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<sup>1</sup> *Disability Rights NC v. State Board of Elections*, 5:21-CV-361-BO, Order on Motion for Summary Judgment (E.D.N.C. July 11, 2022). The specific laws that were invalidated with respect to assisting disabled voters are N.C.G.S. §§ 163-226.3, -230.1, -230.2, -230.3, and -231(b)(1).

<sup>2</sup> 52 U.S.C. § 10508.

<sup>3</sup> However, a voter living in covered care facilities may receive assistance from a candidate if the voter needs assistance due to the voter’s disability.

of the hospital, clinic, nursing home, or rest home where they are a patient or resident. There is no requirement that the facility staff complete a log when they assist a voter, although the facility may choose to do so. Facility staff are not required to assist a voter if they do not wish to do so or are instructed not to do so by the facility. Facility staff may continue to rely on bipartisan assistance team (MAT) members to assist their residents, if that is the facility's preference.

Under the court's order, a voter in a covered facility who needs assistance due to a disability may also receive assistance from an elected official, political party officeholder, or candidate. They may still request and use a MAT, but they are not required to do so.

A voter who is a patient or resident in a covered facility but who does not need assistance due to a disability may request assistance from a near relative, legal guardian, or a MAT. Recall, the court's order changes the rules only for voters who need assistance due to a disability. If a near relative, legal guardian, or MAT is not available within seven calendar days of such a voter's request, the voter may get assistance from anyone EXCEPT:

- An owner, manager, director, or employee of the hospital, clinic, nursing home, or rest home where the voter is a patient or a resident;
- An elected official, candidate, or officeholder in a political party; or
- A campaign manager or treasurer for a candidate or political party.<sup>4</sup>

## Assistance with Absentee Voting

### Absentee Requests

Upon request of a voter who needs assistance due to a disability, any person may assist the voter by:

- Completing the absentee request form, according to the voter's instruction;
- Making the absentee request on the voter's behalf, according to the voter's instruction; and
- Returning the request form, according to the voter's instruction. The assistant may return the request form by mail or in person, or through the State Board's online portal.

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<sup>4</sup> N.C.G.S. § 163-226.3(a)(4).

The assistant must complete Section 9 of the request form, including providing their name and address. The form is invalid if the assistant does not provide information such that the assistant's name and address can be determined.<sup>5</sup>

If the assistant is making the request for the voter (*i.e.*, not just helping to fill out the form, but making the request in lieu of the voter), they must also complete and sign Section 8. As long as the assistant's address is listed in either Section 8 or Section 9, it is not required to be listed twice since the assistant's address can be determined if it is listed once.

### Absentee Container-Return Envelopes

Upon request of a voter who needs assistance due to a disability, any person, including a MAT member, may assist the voter by:

- Completing the absentee container-return envelope, according to the voter's instruction;
- Marking the ballot, according to the voter's instruction;
- Signing the envelope if, due a disability, the voter is unable to sign or make their mark; and
- Returning the ballot, according to the voter's instruction. The assistant may return the ballot by mail or in person to the county board of elections office or a one-stop site in the county.

The assistant must complete the **Voter Assistant Certification** section of the envelope. If a voter is physically unable to sign or make their mark due to disability, the person assisting with the ballot should write in the signature line, "Disabled - cannot sign" and must complete the Voter Assistant Certification located on the back of the ballot return envelope.

The assistant may return a cure certification for a voter who needs assistance due to a disability. See [Numbered Memo 2021-03](#) for information about the cure process for deficient absentee container-return envelopes. **County boards shall keep a log for cure certifications that are hand-delivered to the county board office.**

### Absence for Sickness or Physical Disability

If a voter expects to be unable to go to the voting place to vote in person on Election Day because of that voter's sickness or other physical disability, any of the following people may

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<sup>5</sup> N.C.G.S. § 163-230.2(e1) states: "If a voter is in need of assistance completing the written request form due to blindness, disability, or inability to read or write and there is not a near relative or legal guardian available to assist that voter, the voter may request some other person to give assistance, notwithstanding any other provision of this section. If another person gives assistance in completing the written request form, that person's name and address shall be disclosed on the written request form in addition to the information listed in subsection (a) of this section." (Emphasis added.)

make the request for absentee ballots in person to the board of elections of the county in which the voter is registered after 5:00 p.m. on the Tuesday before the election but not later than 5:00 p.m. on the day before the election:

- The voter;
- The voter's near relative or legal guardian; or
- Any other person, if the voter needs assistance due to a disability.

Upon receipt of a completed request form, the county board shall personally deliver the application and ballots to the voter, near relative, legal guardian, or assistant.<sup>6</sup>

## Assistance with In-Person Voting

The requirements for who may assist a voter voting in person have not changed.

A disabled or illiterate voter who is voting in person may receive assistance from a person of the voter's choice, other than the voter's employer or agent of that employer or an officer or agent of the voter's union.<sup>7</sup> There is no limit on how many voters an assistant may assist, if properly requested.

## Answers to Frequently Asked Questions

### **Q1: May a voter who needs assistance due to a disability receive assistance from a candidate?**

A: It depends. A voter who needs assistance due to a disability may receive assistance from a candidate if the voter is a patient or resident of covered facility.

However, the court order did not enjoin G.S. § 163-237(c), which prevents a candidate from serving as a witness otherwise. Therefore, a voter who is not a patient or resident of a covered facility is prohibited from having a candidate serve as a witness unless the candidate is their near relative.

### **Q2: What is the definition of a disability?**

A: Under the Americans with Disabilities Act, a disability is a physical or mental impairment that causes someone to be substantially limited in a major life activity.<sup>8</sup> This means someone who has substantial limitations on the ability to perform everyday

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<sup>6</sup> N.C.G.S. § 163-230.1(b).

<sup>7</sup> N.C.G.S. § 163-166.8(a)(2).

<sup>8</sup> 42 U.S.C. § 12102(1)(A).

things—such as seeing, hearing, walking, standing, speaking, reading, concentrating, thinking, and writing—as compared to most people in the general population.<sup>9</sup>

Most people living in nursing homes and other congregate care settings need help with at least one aspect of daily living and will generally be considered to have a disability.

Federal law states that public entities are not to engage in demanding tests to determine an individual's level of disability.<sup>10</sup> For the purposes of seeking assistance with absentee voting, however, the disability should substantially impair an activity that pertains to the absentee voting process.<sup>11</sup> All of the examples of everyday activities listed above could pertain to some aspect of the absentee voting process.

**Q3: Is advanced age a reason for assistance (for example, curbside is open to those who due to age or disability are unable to enter the enclosure)?**

A: No, age alone is not a reason the voter may receive assistance under the court order. The voter must need assistance due to a disability, but a disability may be age-related. See the answer to Question 2 for the definition of a disability.

**Q4: How do we know if someone has a disability?**

A: See the answer to Question 2 regarding the definition of a disability. The voter's disability is confirmed through the attestations on the request form and the absentee envelope. These contain language requiring the assistant to attest that the voter asked for help due to the voter's disability. It is not for the county board to inquire into the specifics of a voter's attested-to disability that renders the voter in need of assistance. If the assistance portion of an otherwise valid request form or envelope is properly completed, the county board shall approve it.

If the county board has reason to believe that non-disabled voters are receiving assistance to which they are not entitled, or that disabled voters' wishes are not being respected, they shall forward such evidence the State Board's Investigations Division.

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<sup>9</sup> 42 U.S.C. § 12102(2)(A); 28 C.F.R. § 35.108(c)(1), (d)(1)(v).

<sup>10</sup> 28 C.F.R. § 35.101; *see* 28 C.F.R. §§ 35.108(a)(2)(i), (c)(2)(i)-(ii), (d)(1)(i)-(viii), .

<sup>11</sup> The Voting Rights Act permits a voter to get assistance from a person of their choice if that voter “requires assistance to vote by reason of blindness, disability, or inability to read or write[.]” 52 U.S.C. § 10508 (emphasis added).

**Q5: What if a disabled voter in a covered facility wishes to get assistance from and use as witnesses two staff members in the facility, but the voter’s near relative is concerned about undue influence and has contacted the county board to complain?**

A: A voter who needs assistance due to a disability has the right to select an assistant of their choice under the court order (and federal law). If a family member is concerned that someone has improperly influenced a voter, the county board of elections should refer them to the State Board’s Investigations Division. It is a crime to interfere with a voter when marking their ballot, or to defraud a blind or illiterate voter from marking the ballot selections of their choosing.<sup>12</sup>

**Q6: Is the assistant required to respect the secrecy of the voter’s ballot?**

Yes. Any person who assists a voter must keep the voter’s ballot choices confidential. It is a crime for any person who has access to another person’s ballot to reveal how the person voted.<sup>13</sup>

**Q7: Are there any changes to the requirement that an absentee voter have two witnesses or a notary?**

A: No. An absentee ballot must still be witnessed by two people or one notary public. The witnesses must be at least 18 years old.

**Q8: What is the definition of a covered facility?**

A: A “covered facility” is any facility that provides residential or in-patient healthcare in the State that is licensed or operated pursuant to Chapter 122C, Chapter 131D, or Chapter 131E of the General Statutes, including, for example, a hospital, clinic, nursing home, or adult care home; or by the federal government or an Indian tribe.<sup>14</sup>

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<sup>12</sup> N.C.G.S. §§ 163-273(a)(4) and 163-274(a)(13).

<sup>13</sup> N.C.G.S. § 163-274(b).

<sup>14</sup> 08 NCAC 16 .0101(b).