

Democracy North Carolina

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June 30, 2015

North Carolina State Board of Elections
c/o George McCue, Rulemaking Coordinator

SENT BY EMAIL

Dear Mr. McCue:

Democracy North Carolina applauds the State Board's decision to hold nine public hearings across the state to receive comments on the proposed photo identification rules. We particularly thank you for adding the hearing in Tarboro, which drew a full room of citizens from several counties in eastern North Carolina.

Like many of the citizens who spoke at the hearings, we oppose the voter identification law as burdensome, discriminatory, and a waste of public resources. In the context of that opposition, we think the Board's proposed rules will help reduce (1) the potential for legitimate voters being turned away from the polls and (2) the inconsistent enforcement of the law by poll workers.

Given those two primary concerns, we agree with the proposed language about "reasonable resemblance," but we offer the following recommendations:

** Include the additional language offered by William Gilkeson for 08 NCAC 17.0101(c)(1) through (c)(4) that says, "The election official shall make this decision based on the totality of the circumstances, construing all evidence, along with any explanation or documentation voluntarily proffered by the person presenting to vote, in the light most favorable to that person."

** Also as recommended by Mr. Gilkeson, add this phrase at the end 08 NCAC 17.0101(c)(4)(B): "or use of a non-customary variation if the person provides an explanation."

** Simplify the wording in 08 NCAC 17.0101(e) and avoid the very real potential of a poll worker rejecting an ID as not current because the address does not match the voter's registration address by changing this section to read (edited text in bold): "(e) Differences between the address appearing on the photo identification meeting the requirements of Subparagraph (c)(1) of this Rule and the address contained in the registration record shall not be construed as evidence **that the photo identification is invalid in any way.**" The address should not be used to determine either "reasonable resemblance" or the validity of an identification document listed in G.S. 163-166.13(e).

** Change 08 NCAC 17.0101(d) to recognize the new alternatives in Session Law 2015-103 and to give the voting site's judges (rather than the election official) the decision about offering one of those alternatives to the voter in the case of a voter's face being covered, so the last sentence could read (edited text in bold): "If the face of the person presenting to vote is covered such that the election official cannot render a determination under Subparagraph (c)(3) of this Rule, then the election official shall inform **the voting site's judges of election and the person presenting to vote** that the election official cannot affirmatively determine that the person bears any reasonable resemblance to the photo identification."

** Change 08 NCAC 17.0101(f)(2) to incorporate the alternatives presented in S.L. 2015-103, so it ends (edited text in bold): "then the election official shall **explain the options specified in G.S. 163-166.13(c) that the person presenting to vote with information about mail-in absentee voting and the reasonable impediment declaration and how to use each of them.**"

** Similarly, change 08 NCAC 17.0102(d)(2) to incorporate the alternatives in S.L. 2015-103.

** Similarly, change the first sentence of 08 NCAC 17.0103 to read, “An election official assisting curbside voters shall require identification of curbside voters pursuant to G.S. 163-166.9(b) or **G.S. 163-166.13(c)**.”

** Change 08 NCAC 17.0104 to read “pursuant to Rule .0101, .0102 or .0103” in order for curbside voters who cast a regular ballot to be covered by this rule.

** Regarding changes to a registration record at the polls, we are concerned that the new option of presenting the last four digits of a Social Security Number is meaningless unless the voter has the opportunity to present their name as it appears in the records of the Social Security Administration, which we understand requires a perfect or near perfect match for verification. Therefore, the voter should be given the option of updating his or her name on the registration record or providing a name that bears a “reasonable resemblance” to the voter next to the SSN digits on the appropriate form to indicate that is the name to use for SSN verification purposes. We ask for your response to this recommendation – is this proposal acceptable in some manner?

** We are also concerned about the small but significant number of instances where digits on a birth date are transposed or mistyped. How will the State Board of Elections accommodate this reality that county election officials can attest does occur? We suggest this issue be addressed in the guidance to the county boards about how to confirm or “not confirm the voter’s registration using that information.” G.S. 163-182.1B(a)(3).

** Following the written comments by Michael Burns of Fair Elections Legal Network, dated June 16, 2015, change the language in 08 NCAC 17.0102(e) to include not only the time and voting site of the determination of reasonable resemblance, but also include all of the elements required for the record, as set forth in G.S. 163-166.14(g), in each case that the judges are required to make a determination:

“The county board of elections shall cause to be made a record of all voters subject to subsection (c) of this section. The record shall include all of the following:

- (1) The name and address of the voter.
- (2) The name of the local election official under subsection (a) of this section.
- (3) The names and a record of how each judge of election voted under subsection (b) of this section.
- (4) The date of the determinations under subsections (a) and (b) of this section.
- (5) A brief description of the photo identification presented by the voter.”

** Following up the recommendations of voters at the public hearings, the State Board of Elections should provide a uniform reporting form that each county board of elections is required to have at all voting locations for the recording of complaints by voters regarding the behavior of poll workers, the review of the voter’s ID, adequacy of voting machines, or other aspects of their voting experience. The State Board should also provide uniform guidance for the use and retention of this complaint form and specify that copies should be forwarded to the State Board within a fixed number of days after Election Day.

We appreciate your consideration of these recommendations.

Sincerely,

s/

Bob Hall

Executive Director

s/

Isela Gutierrez

Associate Research Director