



# NORTH CAROLINA GENERAL ASSEMBLY

## Legislative Services Office

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CONFIDENTIAL

To: Sen. Bill Rabon, Chair, Senate Select Committee on Nominations  
Julie Bradburn, Counsel to the Committee on Rules and Operations of the Senate  
Shelly Smyk, Office of the President Pro Tempore and Office of Senator Rabon

From: Brian Gwyn, Staff Attorney and Legislative Analyst, Legislative Analysis Division  
Drupri Chauhan, Principal Attorney and Legislative Analyst, Legislative Analysis Division

Re: Legal Qualifications of Nominees for the Senate Election for the Board of Governors of The University of North Carolina

The following is a listing of the Senate nominees for the Board of Governors of The University of North Carolina. We have reviewed the applications that were submitted and have indicated the statutory disabilities of each nominee, if any. G.S. 116-7 prohibits members of the General Assembly, officers or employees of the State, officers or employees of The University of North Carolina or officers or employees of any constituent institution from serving on the Board of Governors. G.S. 116-7 also prohibits the spouses of the following from being members of the Board of Governors: members of the General Assembly; officers or employees of The University of North Carolina; or officers or employees of any constituent institution. In addition, Section 9 of Article VI of the North Carolina Constitution provides that a person shall not hold concurrently two offices in this State that are filled by election of the people or "any two or more appointive offices... or any combination of elective and appointive offices... except as the General Assembly shall provide by general law." G.S. 128-1.1 allows an individual to concurrently hold two appointive offices in State or local government, or one elective and one appointive State or local office. (In that section, "elective" means filled by an election of the people.) Finally, the legal doctrine of incompatibility of offices prohibits dual-office holding where one office is subordinate because another office has the power to appoint to it.

As for "public office" or "public officer," there are no uniform statutory definitions that apply in all situations. Some statutes will define the terms just for the purposes of those statutes. The North Carolina courts have found that an office is a delegation to an elected or appointed individual of some of the sovereign functions of the government to be exercised for the benefit of the public. State ex rel. Wooten v. Smith, 145 N.C. 476 (1907). When courts are asked to determine if an individual is a public officer, the criteria used in making the determination include whether:

- The position was created by election or appointment and not by a contract of employment.
- The individual is required to take an oath.
- Executive, legislative, or judicial functions have been delegated to the individual and the exercise of these powers will bind the rights of others.
- The individual is largely independent of the control of others and has the power of direction, supervision, and control.

Our opinion as to whether any nominee has a statutory disability is based **solely** upon the information provided in the nominee's nomination form that we received from the Senate Principal Clerk's Office. Each nominee has certified that the information provided in the nomination form is correct.

Nominee	Sponsor(s)	Statutory Disability	Offenses/Unpaid Tax Disclosures	Curriculum Vitae Submitted
Harry C. Brown	Sen. Rabon	Possibly. <sup>1</sup>	None.	X
Jim Cohen	Sen. Ford	None. <sup>2</sup>	None.	X
Joel D. Ford	Sen. Ford	None. <sup>3</sup>	None.	X
Martin L. Holton, III	Sen. Krawiec	None.	When responding to the question "Has the nominee ever been arrested, given a written warning, taken into custody, or accused, formally or informally, of the violation of a law for any offense?", nomination form indicates "No" and states "other than traffic/parking citations".	X
O. Temple Sloan, III	Sen. Jackson	None. <sup>4</sup>	None.	X
Harvey N. Walker, Jr.	Sen. Sanderson	Possibly. <sup>5</sup>	None.	X
Haywood E. White, III	Sen. Lee	None.	None.	X
Michael L. Williford	Sen. Perry	None. <sup>6</sup>	None.	X

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<sup>1</sup> Mr. Brown's vitae indicates that he is on the NC State Board of Visitors. Depending on the functions and appointment method for this position, it could possibly be considered an office of a constituent institution in violation of G.S. 116-7 or a violation of dual office-holding because of incompatibility of offices. However, Mr. Brown has indicated that he would resign from any position that would conflict with service on the UNC Board of Governors.

<sup>2</sup> Mr. Cohen indicated that he served on the Strategic Curriculum Planning Committee for the Rowan-Salisbury School System. It is unclear whether he still serves on that committee. It is possible that this could be considered a local appointive office, but under G.S. 128-1.1, an individual may concurrently hold one elective and one appointive office in State and local government.

<sup>3</sup> Mr. Ford is a current member of the UNC Board of Governors and is eligible for re-election.

<sup>4</sup> Mr. Sloan is a current member of the UNC Board of Governors and is eligible for re-election.

<sup>5</sup> Mr. Walker indicated that he is a current city council member for Morehead City but under G.S. 128-1.1, an individual may concurrently hold one elective and one appointive office in State and local government. Mr. Walker's vitae also indicated that he is a member of the Carteret County Consolidated Health Department Board. This could be considered a local appointive office, which would put him at the limit of elective and appointive offices in State and local government. However, Mr. Walker has indicated that he would resign from any position that would conflict with service on the UNC Board of Governors.

Mr. Walker indicated that he is currently a member of the Board of Trustees of Elizabeth City State University, which would be an office of a constituent institution in violation of G.S. 116-7 and a violation of dual office-holding because of incompatibility of offices. However, Mr. Walker has indicated that he would resign from any position that would conflict with service on the UNC Board of Governors.

<sup>6</sup> Mr. Williford is a current member of the UNC Board of Governors and is eligible for re-election.