

Date: June 22, 2023

To: North Carolina House Oversight and Reform Committee, Rep. Jake Johnson, Rep. Harry Warren

From: Jonathan Andrew (Andy) Jackson

Re: Testimony on North Carolina state voting laws and practices

I thank the members of the House Oversight and Reform Committee for the opportunity to present this written testimony. I apologize for being unable to attend the June 22 hearing in person.

My name is Andy Jackson. I am the Director of the Civitas Center for Public Integrity at the John Locke Foundation in Raleigh, North Carolina. As part of my work at Locke, I promote election integrity by advocating for election law reforms and investigating possible violations of election laws or other misconduct by election officials, campaigns, or political groups. That work aims to make North Carolina's democratic institutions more trustworthy and thereby increase public faith in those institutions.

The year 2020 was a stress test of North Carolina's election system. I worked with Jim Stirling and other colleagues to produce a review of that election in 2022 entitled "[What Happened in 2020?: How 2020 Altered North Carolina Elections and What We Can Do To Fix It.](#)" Much of the information in this testimony derives from that work and subsequent research.

In this testimony, I will limit myself to three broad topics: Voter registration and list maintenance, the role of election observers and the State Board of Elections' actions against them, and election data maintenance and post-election audits. I will provide relevant information and policy recommendations for each topic.

Voter Registration and List Maintenance

As a growing state, North Carolina has seen a significant rise in the number of voter registrations. Over the last fifteen years, the number of voter registrations in North Carolina has risen by 1,609,074 to 7,272,193, an increase of 22 percent.

The ease and variety of ways to register to vote in North Carolina mean that registration is not a significant barrier to voting. The most common way for voters to register is online through the North Carolina Department of Motor Vehicles (DMV) website. Others register by other means, such as through voter registration drives by partisan or civic organizations, by mailing in voter registration cards, or by filling out forms in-person at DMV offices while there on other business.

An essential function of county election boards is voter roll list maintenance. The North Carolina State Board of Elections (SBE) stated in a [January 2021 press release](#) that list maintenance "is important because it ensures ineligible voters are not included on poll books, reduces the possibility for poll worker error and decreases opportunities for fraud."

County election boards must remove registrations once registrants die, are convicted of a felony, or move out of the county. However, election officials are only sometimes notified when someone registered to vote in their county has moved away or has died, especially if that person died outside of North Carolina. To mitigate that problem, county boards perform biennial list maintenance. It is a two-step process. First, registered voters are put on an inactive list if they have not voted at any point during

two federal election cycles and cannot be reached by election officials. Inactive voters can still vote. Those registrations are removed if the voter does not vote for two more federal election cycles.

Despite list maintenance, North Carolina's voter rolls are clogged with the names of people who have died, moved out of the county where they are registered, or are otherwise ineligible to vote. The most famous recent example of the problem was former Congressman Mark Meadows. Meadows was registered to vote in Macon County as late as April 2022, even though he had moved to Virginia and voted there in 2021. His registration was [removed](#) only after election officials learned from media accounts of his move.

North Carolina had [1.2 million inactive voter registrations](#) in 2019. That large number of inactive voter registrations triggered an April 2020 lawsuit from Judicial Watch, a national watchdog group. It alleged that voter rolls in North Carolina, especially in Guilford and Mecklenburg counties, were "too high to be compatible with compliance with the NVRA" (National Voter Registration Act of 1993). Judicial Watch agreed to settle the lawsuit after the number of inactive voters in North Carolina dropped to about 765,000 in 2021.

The State Board of Elections and county boards can take several actions to clean the state's voter rolls while complying with the National Voter Registration Act of 1993 and ensuring they do not remove eligible voters from voter rolls. They include:

- Check registration addresses against tax records and other lists to ensure they are not commercial properties or vacant lots.
- Participate in an appropriate interstate data-sharing program to help identify and remove registrations of people who have permanently moved out of North Carolina or died outside the state.

The Electronic Registration Information Center (ERIC) is currently the only such interstate data-sharing program. Unfortunately, several states have left ERIC over the past year due to concerns about data security and how the program is run. In a letter [announcing Florida's withdrawal](#) from ERIC, Florida Secretary of State Cord Byrd noted that the organization has resisted reforms that would have "eliminated concerns about ERIC's potential partisan leanings, and made the information shared with ERIC more secure."

Two things should happen before North Carolina joins ERIC. First, ERIC must address the concerns that caused member states to withdraw from the program.

Second, the General Assembly should protect the privacy of those identified as eligible to vote but unregistered (EBUs), whether discovered by ERIC or other means, by preventing the SBE from sharing EBU data with outside political groups. That can be accomplished by amending G.S. § 163-82.14(a) with, for example, the following language: "Any information on individuals not registered to vote in North Carolina acquired through data-sharing agreements shall be confidential and not a public record."

In addition, the General Assembly should also again pass a bill requiring the North Carolina court system to share data with election boards on people disqualified from jury duty because they are not citizens. Senate Bill 747 contains such a provision.

The Role of Election Observers and the State Board of Elections' Actions Against Election Observers

States first enacted laws for election observers (called poll watchers in some states) as part of Progressive Era [reforms](#) to “promote the integrity of the election process by providing practical deterrents against voter fraud and election official misconduct.”

Observers are an essential part of ensuring transparency in our elections. Under [North Carolina law](#), they can be appointed by any recognized parties to watch the voting process at early voting sites and election day precinct polling places. They are empowered to report any irregularities they find and collect lists of people who have voted so far that day from precinct election officials.

The SBE has publicly recognized the significance of election observers. An October 2022 SBE press release declared that “party-appointed election observers play an important role in the elections process.” The SBE’s actions over the past several years belie that recognition, however.

Parties may legally appoint up to two location-specific observers to serve at any early voting site or precinct polling place at any one time. Those observers may “be relieved during the day of the primary or election after serving no less than four hours” (G.S. § 163-45). That means parties may appoint up to six observers on a typical day of early voting and eight on election day.

In 2021, the SBE sought to use rulemaking to change the maximum number of voting place-specific observers from two every four hours to two per day, in an evident contraction of the law (see [page 10 of 26](#) of these proposed rules for adoption):

All observers, whether precinct-specific or at-large, may be relieved after serving no less than four ~~hours~~ hours; however, the total number of observers from each party per day cannot exceed three total observers: two precinct-specific observers and one county or State at-large observer.

The SBE persisted in that attempt until a public hearing in which their general council, Katelyn Love, was confronted with broad [condemnation](#) of the proposal, including threats of lawsuits, forcing them to [back down](#).

The SBE’s attempt to overturn state law on observers was not an innocent mistake. Love was made aware of the law on election observers in October 2020 when asked by Trump campaign attorney Heather Ford to [clarify the SBE rule](#) on observers. In response, Love emailed election directors (see [page two](#)) on October 29, 2020, stating that observer lists “may contain more than two names.”

The SBE further attempted to [make several changes](#) to regulations in 2022 that would have limited who could serve as observers and the ability of observers to perform their duties far beyond any restrictions on observers authorized by state law. The Rules Review Commission [rejected](#) the changes.

Those actions highlight the need for vigorous oversight of the SBE. In addition, the General Assembly can enact several reforms to clarify and modernize the role of election observers and support election integrity more broadly:

- The current law on election observers was written when most voters voted on election day. The General Assembly should update relevant statutes so that they explicitly state the rights and

roles of observers during early voting. They should include observing opening and closing procedures during each day of early voting.

- The proposal in Senate Bill 747 clarifying that observers may serve more than one four-hour shift and observe at more than one location per voting day would also help parties fully staff observers, especially during busier times.
- Another part of Senate Bill 747 that would help “promote the integrity of the election process by providing practical deterrents against voter fraud and election official misconduct” (while not specifically about observers) is the section requiring that officials at one-stop voting sites be allocated on a bipartisan basis, as they are currently allocated for precinct polling places.

Election Data Maintenance and Post-Election Audits

Ballot tabulation and reporting in North Carolina are generally good. North Carolina reports the vast majority of ballot tabulations on election night. Ahead of the 2020 election, the SBE said they expected to report “[97 percent](#) or more of all ballots cast in North Carolina.” North Carolinians can reasonably expect to know the winners of all but the closest races on the night of the election.

Most other states also report their results on election night. People in some other states, however, only know the results of their elections days later. For example, California [counted less than half](#) of its ballots by election night in the 2022 primary.

G.S. § 163-182.12A requires the SBE to report the results of a post-election audit to the Joint Legislative Elections Oversight Committee and the Joint Legislative Oversight Committee on General Government. G.S. § 163-182.1.(b)(1) further mandates a sample hand-to-eye count in every county, a requirement the SBE satisfies by having every county conduct counts in two “randomly selected samples.” Those samples can be election-day precincts, one-stop sites, or a county’s entire batch of absentee-by-mail ballots.

Another helpful factor is that county boards of elections are legally required to sort all ballots — including mail, one-stop, and provisional ballots — by precinct within 30 days of the election. That requirement helps with independent analysis of results, especially detecting results that vary widely from past elections in those precincts.

There is still room for improvement, however.

The legally mandated audit the SBE submits to the General Assembly should be expanded to include a procedural audit of voter registration, election operations, and verifiable paper trails. Those audits would be similar to what some have called “forensic audits” and what professors Andrew Appel and Philip Stark called “compliance audits” in their 2019 report [Evidence-Based Elections: Create a Meaningful Paper Trail, Then Audit](#).

County elections boards already do much of the work required for such audits. They match information across several categories, including, for example, the total number of ballots issued with the total number of ballots cast within each voting location. Election officials complete reconciliation forms at the end of each day of voting. However, preparing that and other information for a procedural audit would take additional work.

The SBE has begun experimenting with [risk-limiting audits](#) (RLAs), which use statistical techniques to allow them to examine fewer ballots than the current system. RLAs would enable election boards to audit several races with the same resources they currently use to audit just two precincts (which can include an early voting location or all of a county's mail ballots) in just one race. However, Appel and Stark state that any RLA "must ascertain voter intent manually — directly from the human-readable marks on the paper ballots the voters had the opportunity to verify." It would require the eleven counties currently using ballot-marking devices to switch to hand-marked paper ballots (other than as needed to comply with the Americans with Disabilities Act) before the state can change to RLAs.

There is an inherent conflict when organizations audit themselves and their work. While self-audits are an essential part of helping officials discover and correct problems in election administration, an independent organization should conduct at least some sample audits. That organization could be housed in another state government body, such as the Office of the State Auditor or the Office of the Secretary of State.

One conflict between the General Assembly and the SBE has been over inspecting voting machines. Legislators have a legitimate concern about the veracity of assurances by Election Systems & Software (ES&S) that none of the systems they sold in North Carolina have modem capacity, especially after SBE board member Stella Anderson [noted the company's](#) "submission of inaccurate and misleading information at multiple points in the process" of certifying one of their systems.

Likewise, election officials have legitimate concerns about nonexperts potentially damaging or otherwise compromising voting systems.

A reasonable compromise would be to hire a laboratory accredited by the U.S. Election Assistance Commission to conduct inspections of voting systems. One such laboratory, Alabama-based Pro V&V, [audited voting machines in Georgia](#) after the 2020 election.

Conclusion

There is much that goes well in North Carolina elections. There are still numerous aspects of our election system in need of reform, however. This testimony highlighted some of those areas and provided a sample of possible reforms. Through exercising oversight and enacting reforms, the General Assembly can make our elections more secure.

Please contact me with any questions or if you wish to follow up on anything in this testimony.

Thank you.

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