



NORTH CAROLINA

State Board of Elections

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KIM WESTBROOK STRACH
Executive Director

NUMBERED MEMO 2016-11

TO: County Boards of Elections
FROM: Kim Strach, Executive Director
RE: One-stop Early Voting in November 2016 General Election
DATE: August 4, 2016
ENCL.: Order issued July 29, 2016
Revised G.S. § 163-227.2

Following Friday's decision in *NAACP, et al. v. McCrory, et al.*, U.S. District Court Judge Thomas Schroeder issued the attached order permanently enjoining contested portions of [S.L. 2013-381](#) regarding photo ID (Part 2), preregistration (Part 12), same-day registration (Part 16), early voting (Part 25), and out-of-precinct voting (Part 49). All other provisions of S.L. 2013-381 remain in effect (ex. elimination of straight party ticket voting).

This Numbered Memo sets out administrative procedures necessary to effectuate Judge Schroeder's order regarding one-stop early voting. The version of G.S. § 163-227.2 now in effect is attached for your reference. It requires, among other things, that county boards of elections offer one-stop early voting during a 17-day early voting period, beginning on the third Thursday before the election (October 20). At minimum, early voting must occur during regular business hours at the county board of elections office and until 1 p.m. on the last Saturday of the one-stop period (November 5).

The so-called "hours-matching" requirement and other changes contained in Part 25 of S.L. 2013-381 are no longer enforceable. Unfortunately, plans submitted to the State Board of Election on or before Friday, July 29 were drawn against the backdrop of now-void criteria. Therefore, consistent with our effort to enforce Judge Schroeder's order, this agency revokes all approvals issued regarding one-stop plans and will take no action on pending hours-reductions requests.

County boards will not be required to have additional sites, nor will they be required to have any additional sites open the same number of hours and days. However, we *strongly encourage* county boards of elections to be mindful of expected turnout and historical use of one-stop early voting in

their respective counties. Statewide historical data indicates that roughly **56% of all voters this election** will use one-stop early voting, which will reduce lengthy lines on Election Day.

You may submit your early voting schedule based upon your county board's selection from the following options:

- A. Extend previously-submitted hours for October 27-November 5 to the entire 17-day early voting period. If cost is a concern, please note that state law requires county commissioners to ensure adequate funding for elections administration. We recommend that you make every effort to provide ample voting opportunities through this option. See G.S. 163-37.**
- B. Keep previously-submitted hours for October 27-November 5, and add early voting at the county board office (or nearby alternative site in lieu of the CBE office) for the remainder of the early voting period.**
- C. Adopt a new plan for early voting at the county board office (or nearby alternative site in lieu of the county board office) and additional sites.**
- D. Adopt a new plan for early voting at the county board office (or nearby alternative site in lieu of the county board office) only, but with extended hours and/or weekend hours. County boards are required to open on the last Saturday until 1 p.m. (November 5). See G.S. § 163-227.2(b). A county board may vote to remain open on the last Saturday until 5 p.m.**
- E. If a county board does not take action to vote on a plan, all one-stop early voting will take place only during regular business hours at the county board office and on the last Saturday until 1 p.m. (November 5).**

County boards of election must transmit information regarding the locations and times of early voting in their county no later than **close of business August 19**. Submissions must be made using a unique link sent to each county board in a separate email.

We will discuss these options and the entire one-stop early voting process at the conference next week. There will be time at the conference to discuss any questions or issues you may have. Thank you for your service.

§ 163-227.2. Alternate procedures for requesting application for absentee ballot; "one-stop" voting procedure in board office

(a) Any voter eligible to vote by absentee ballot under G.S. 163-226 may request an application for absentee ballots, complete the application, and vote under the provisions of this section and of G.S. 163-82.6A, as applicable.

(a1) Deleted by S.L. 2001-337, § 2, eff. Jan. 1, 2002.

(b) Not earlier than the third Thursday before an election, in which absentee ballots are authorized, in which a voter seeks to vote and not later than 1:00 P.M. on the last Saturday before that election, the voter shall appear in person only at the office of the county board of elections, except as provided in subsection(g) of this section. A county board of elections shall conduct one-stop voting on the last Saturday before the election until 1:00 P.M. and may conduct it until 5:00 P.M. on that Saturday. That voter shall enter the voting enclosure at the board office through the appropriate entrance and shall at once state his or her name and place of residence to an authorized member or employee of the board.

In a primary election, the voter shall also state the political party with which the voter affiliates and in whose primary the voter desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party under G.S. 163-119, the voter shall state the name of the authorizing political party in whose primary he wishes to vote. The board member or employee to whom the voter gives this information shall announce the name and residence of the voter in a distinct tone of voice. After examining the registration records, an employee of the board shall state whether the person seeking to vote is duly registered. If the voter is found to be registered that voter may request that the authorized member or employee of the board furnish the voter with an application form as specified in G.S. 163-227. The voter shall complete the application in the presence of the authorized member or employee of the board, and shall deliver the application to that person.

(c) If the application is properly filled out, the authorized member or employee shall enter the voter's name in the register of absentee requests, applications, and ballots issued and shall furnish the voter with the ballots to which the application for absentee ballots applies. The voter thereupon shall vote in accordance with subsection (e) of this section.

All actions required by this subsection shall be performed in the office of the board of elections, except that the voting may take place in an adjacent room as provided by subsection (e) of this section. The application under this subsection shall be signed in

the presence of the chair, member, director of elections of the board, or full-time employee, authorized by the board who shall sign the application and certificate as the witness and indicate the official title held by him or her. Notwithstanding G.S. 163-231(a), in the case of this subsection, only one witness shall be required on the certificate.

(d) Only the chairman, member, employee, or director of elections of the board shall keep the voter's application for absentee ballots in a safe place, separate and apart from other applications and container-return envelopes. If the voter's application for absentee ballots is disapproved by the board, the board shall so notify the voter stating the reason for disapproval by first-class mail addressed to the voter at that voter's residence address and at the address shown in the application for absentee ballots; and the board shall enter a challenge under G.S. 163-89.

(e) The voter shall vote that voter's absentee ballot in a voting booth in the office of the county board of elections, and the county board of elections shall provide a voting booth for that purpose, provided however, that the county board of elections may in the alternative provide a private room for the voter adjacent to the office of the board, in which case the voter shall vote that voter's absentee ballot in that room. A voter at a one-stop site shall be entitled to the same assistance as a voter at a voting place on election day under G.S. 163-166.8. The State Board of Elections shall, where appropriate, adapt the rules it adopts under G.S. 163-166.8 to one-stop voting.

(e1) If a county uses a voting system with retrievable ballots, that county's board of elections may by resolution elect to conduct one-stop absentee voting according to the provisions of this subsection. In a county in which the board has opted to do so, a one-stop voter shall cast the ballot and then shall deposit the ballot in the ballot box or voting system in the same manner as if such box or system was in use in a precinct on election day. At the end of each business day, or at any time when there will be no employee or officer of the board of elections on the premises, the ballot box or system shall be secured in accordance with a plan approved by the State Board of Elections, which shall include that no additional ballots have been placed in the box or system. Any county board desiring to conduct one-stop voting according to this subsection shall submit a plan for doing so to the State Board of Elections. The State Board shall adopt standards for conducting one-stop voting under this subsection and shall approve any county plan that adheres to its standards. The county board shall adhere to its State Board-approved plan. The plan shall provide that each one-stop ballot shall have a ballot number on it in accordance with G.S. 163-230.1(a2), or shall have an equivalent identifier to allow for retrievability. The standards shall address

retrievability in one-stop voting on direct record electronic equipment where no paper ballot is used.

(e2) A voter who has moved within the county more than 30 days before election day but has not reported the move to the board of elections shall not be required on that account to vote a provisional ballot at the one-stop site, as long as the one-stop site has available all the information necessary to determine whether a voter is registered to vote in the county and which ballot the voter is eligible to vote based on the voter's proper residence address. The voter with that kind of unreported move shall be allowed to vote the same kind of absentee ballot as other one-stop voters.

(f) Notwithstanding the exception specified in G.S. 163-36, counties which operate a modified full-time office shall remain open five days each week during regular business hours consistent with daily hours presently observed by the county board of elections, commencing with the date prescribed in G.S. 163-227.2(b) and continuing until 5:00 P.M. on the Friday prior to that election and shall also be open on the last Saturday before the election. A county board may conduct one-stop absentee voting during evenings or on weekends, as long as the hours are part of a plan submitted and approved according to subsection (g) of this section. The boards of county commissioners shall provide necessary funds for the additional operation of the office during that time.

(g) Notwithstanding any other provision of this section, a county board of elections by unanimous vote of all its members may provide for one or more sites in that county for absentee ballots to be applied for and cast under this section. Every individual staffing any of those sites shall be a member or full-time employee of the county board of elections or an employee of the county board of elections whom the board has given training equivalent to that given a full-time employee. Those sites must be approved by the State Board of Elections as part of a Plan for Implementation approved by both the county board of elections and by the State Board of Elections which shall also provide adequate security of the ballots and provisions to avoid allowing persons to vote who have already voted. The Plan for Implementation shall include a provision for the presence of political party observers at each one-stop site equivalent to the provisions in G.S. 163-45 for party observers at voting places on election day. A county board of elections may propose in its Plan not to offer one-stop voting at the county board of elections office; the State Board may approve that proposal in a Plan only if the Plan includes at least one site reasonably proximate to the county board of elections office and the State Board finds that the sites in the Plan as a whole provide adequate coverage of the county's electorate. If a county board of elections has considered a proposed Plan or Plans for Implementation and has been unable to reach unanimity in favor of a Plan, a

member or members of that county board of elections may petition the State Board of Elections to adopt a plan for it. If petitioned, the State Board may also receive and consider alternative petitions from another member or members of that county board. The State Board of Elections may adopt a Plan for that county. The State Board, in that plan, shall take into consideration factors including geographic, demographic, and partisan interests of that county.

(g1) The State Board of Elections shall not approve, either in a Plan approved unanimously by a county board of elections or in an alternative Plan proposed by a member or members of that board, a one-stop site in a building that the county board of elections is not entitled under G.S. 163-129 to demand and use as an election-day voting place, unless the State Board of Elections finds that other equally suitable sites were not available and that the use of the sites chosen will not unfairly advantage or disadvantage geographic, demographic, or partisan interests of that county. In providing the site or sites for one-stop absentee voting under this section, the county board of elections shall make a request to the State, county, city, local school board, or other entity in control of the building that is supported or maintained, in whole or in part, by or through tax revenues at least 90 days prior to the start of one-stop absentee voting under this section. The request shall clearly identify the building, or any specific portion thereof, requested the dates and times for which that building or specific portion thereof is requested and the requirement of an area for election related activity. If the State, local governing board, or other entity in control of the building does not respond to the request within 20 days, the building or specific portion thereof may be used for one-stop absentee voting as stated in the request. If the State, local governing board, or other entity in control of the building or specific portion thereof responds negatively to the request within 20 days, that entity and the county board of elections shall, in good faith, work to identify a building or specific portion thereof in which to conduct one-stop absentee voting under this section. If no building or specific portion thereof has been agreed upon within 45 days from the date the county board of elections received a response to the request, the matter shall be resolved by the State Board of Elections.

(h) Notwithstanding the provisions of G.S. 163-89(a) and (b), a challenge may be entered against a voter at a one-stop site under subsection (g) of this section or during one-stop voting at the county board office. The challenge may be entered by a person conducting one-stop voting under this section or by another registered voter who resides in the same precinct as the voter being challenged. If challenged at the place where one-stop voting occurs, the voter shall be allowed to cast a ballot in the same way as other voters. The challenge shall be made on forms prescribed

by the State Board of Elections. The challenge shall be heard by the county board of elections in accordance with the procedures set forth in G.S. 163-89(e).

(i) At any site where one-stop absentee voting is conducted, there shall be a curtained or otherwise private area where the voter may mark the ballot unobserved.

Added by Laws 1973, c. 536, § 1. Amended by Laws 1975, c. 844, § 12; Laws 1977, c. 469, § 1; Laws 1977, c. 626, § 1; Laws 1979, c. 107, § 14; Laws 1979, c. 799, §§ 1 to 3; Laws 1981, c. 305, § 2; Laws 1985, c. 600, § 4; Laws 1987, c. 583, § 4; Laws 1989, c. 520, § 1; Laws 1989 (Reg. Sess., 1990), c. 991, § 2; Laws 1993 (Reg. Sess., 1994), c. 762, § 53, eff. Jan. 1, 1995; Laws 1995, c. 243, § 1, eff. Jan. 1, 1996; Laws 1995, c. 509, §§ 117, 118, eff. July 29, 1995; Laws 1995 (Reg. Sess., 1996), c. 561, § 4; S.L. 1997-510, § 2, eff. Sept. 17, 1997; S.L. 1999-455, § 6; S.L. 2000-136, § 2, eff. July 17, 2000; S.L. 2001-319, §§ 5(a) to 5(c); S.L. 2001-337, § 2, eff. Jan. 1, 2002; S.L. 2001-353, § 9, eff. Aug. 10, 2001; S.L. 2003-278, § 11, eff. June 27, 2003; S.L. 2005-428, § 5(a), eff. Jan. 1, 2006; S.L. 2005-428, §§ 6(a), 7, eff. Sept. 22, 2005; S.L. 2007-253, § 3, eff. Oct. 9, 2007; S.L. 2007-391, § 34(a), eff. Jan. 1, 2008; S.L. 2009-541, § 23, eff. Aug. 28, 2009.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

“Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.” [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Laws 1995, c. 243, § 1, provides:

“Wherever the term ‘supervisor’ appears in the General Statutes of North Carolina or in any local act in reference to the county supervisor of elections as provided in G.S. 163-35, the term is changed to read ‘director.’”

Laws 1995, c. 561, § 5, provides:

“This act becomes effective with respect to elections conducted on or after January 1, 1997.”

Laws 1995, c. 717, §§ 1 to 3, provide:

“Section 1. (a) Notwithstanding the provisions of G.S. 163-227.2, if the county uses a system with retrievable

ballots, after the voter casts the ballot under G.S. 163-227.2, the voter shall deposit the ballot in the ballot box or voting system in the same manner as if such box or system was in use in a precinct on election day. At the end of each business day, or at any time when there will be no employee or officer of the board of elections on the premises, the ballot box or system shall be secured in accordance with rules adopted by the State Board of Elections, which shall include verifying that no additional ballots have been placed in the box or system.

“(b) Voting under this section shall be under rules approved by the State Board of Elections. The ballot shall have the ballot number on it in accordance with G.S. 163-230(3)a. so that it is retrievable.

“Section 2. This act applies only to Wake, Durham, Watauga, and Randolph counties.

“Section 3. This act is effective upon ratification.”

S.L. 1999-455, § 24 provides:

“This act applies to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.”

Subsecs. (f1) and (f2) were redesignated as (g) and (h) by the Revisor of Statutes.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA STATE CONFERENCE)
OF THE NAACP; EMMANUEL BAPTIST)
CHURCH; COVENANT PRESBYTERIAN)
CHURCH; BARBEE'S CHAPEL MISSIONARY)
BAPTIST CHURCH, INC.; ROSANELL)
EATON; ARMENTA EATON; CAROLYN)
COLEMAN; JOCELYN FERGUSON-KELLY;)
FAITH JACKSON; MARY PERRY; and)
MARIA TERESA UNGER PALMER,)

Plaintiffs,)

v.)

1:13CV658

PATRICK LLOYD MCCRORY, in his)
official capacity as Governor of)
North Carolina; KIM WESTBROOK)
STRACH, in her official capacity)
as Executive Director of the)
North Carolina State Board of)
Elections; RHONDA K. AMOROSO,)
in her official capacity as)
Secretary of the North Carolina)
State Board of Elections; JOSHUA)
D. MALCOLM, in his official)
capacity as a member of the North)
Carolina State Board of Elections;)
JAMES BAKER, in his official)
capacity as a member of the North)
Carolina State Board of Elections;)
and MAJA KRICKER, in her official)
capacity as a member of the North)
Carolina State Board of Elections,)

Defendants.)

LEAGUE OF WOMEN VOTERS OF NORTH)
CAROLINA; A. PHILIP RANDOLPH)
INSTITUTE; UNIFOUR ONESTOP)
COLLABOARATIVE; COMMON CAUSE NORTH)
CAROLINA; GOLDIE WELLS; KAY)
BRANDON; OCTAVIA RAINEY; SARA)
STOHLER; and HUGH STOHLER,)

Plaintiffs,
and
LOUIS M. DUKE; ASGOD BARRANTES;
JOSUE E. BERDUO; CHARLES M. GRAY;
NANCY J. LUND; BRIAN M. MILLER;
BECKY HURLEY MOCK; MARY-WREN
RITCHIE; LYNNE M. WALTER; and
EBONY N. WEST,

Plaintiff-Intervenors,

v.

THE STATE OF NORTH CAROLINA;
JOSHUA B. HOWARD, in his official
capacity as a member of the State
Board of Elections; RHONDA K.
AMOROSO, in her official capacity
as a member of the State Board of
Elections; JOSHUA D. MALCOLM, in
his official capacity as a member
of the State Board of Elections;
PAUL J. FOLEY, in his official
capacity as a member of the State
Board of Elections; MAJA KRICKER,
in her official capacity as a
member of the State Board of
Elections; and PATRICK L.
MCCRORY, in his official capacity
as the Governor of the State of
North Carolina,

Defendants.

1:13CV660

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF NORTH CAROLINA;
THE NORTH CAROLINA STATE BOARD
OF ELECTIONS; and KIM W. STRACH,

1:13CV861

in her official capacity as)
Executive Director of the North)
Carolina State Board of Elections,)
)
Defendants.)
_____)

JUDGMENT AND INJUNCTION

In accordance with the Memorandum Opinion, Judgment, and Mandate of the Fourth Circuit Court of Appeals entered this date,

IT IS ORDERED AND ADJUDGED that Defendants in the above-captioned cases, their officers, agents, servants, employees, and attorneys, as well as any other person acting in active concert or participation with the Defendants are **ENJOINED** from implementing Session Law 2013-381's and Session Law 2015-103's requirements for photo ID and changes to early voting, same-day registration, out-of-precinct voting, and preregistration:

- The photo ID requirement contained in Part 2 of Session Law 2013-381, as amended by Session Law 2015-103, is enjoined, with the provision in effect prior to Session Law 2013-381's enactment to be in full force;
- The removal of preregistration contained in Part 12 of Session Law 2013-381 is enjoined, with the provision in effect prior to Session Law 2013-381's enactment to be in full force;
- The elimination of same-day registration contained in Part 16 of Session Law 2013-381 is enjoined, with the provision in effect prior to Session Law 2013-381's enactment to be in

full force;

- The changes to early voting contained in Part 25 of Session Law 2013-381 are enjoined, with the provision in effect prior to Session Law 2013-381's enactment to be in full force;
- The elimination of out-of-precinct voting contained in Part 49 of Session Law 2013-381 is enjoined, with the provision in effect prior to Session Law 2013-381's enactment to be in full force.

Any motion for recovery of costs and/or attorneys' fees shall be governed by the Federal Rules of Civil Procedure, this court's Local Rules, and any other applicable rule.

 /s/ Thomas D. Schroeder
United States District Judge

July 29, 2016