

North Carolina's 2020 Election Preparations

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This memo examines North Carolina's preparations for the November 2020 elections in response to the COVID-19 pandemic. In June, the state legislature passed new election legislation including many recommendations from the North Carolina State Board of Elections (NCSBE). The legislation encompasses measures aimed at reducing poll worker shortages, loosening restrictions on absentee ballots and requests, and most crucially, it appropriates HAVA and CARES Act funding. Notably for November, in the June 23 special election, poll workers were still in short supply. It remains to be seen whether the measures enacted in HB 1169, such as allowing workers to serve outside their precinct and providing additional funding for safety equipment, will be sufficient to address this shortage.

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I. Introduction

A. Current Status

All registered North Carolina voters are [permitted](#) to vote by absentee ballot without an excuse. Registered voters who choose to vote by mail must complete an absentee ballot request form, which must be returned by mail, fax, email, or in person to the voter's county Board of Elections office. Ballots may also be requested through an online portal. Request forms for absentee ballots must be received by 5 p.m. on the Tuesday before the election. The Board then mails the voter an absentee ballot, which must be completed in the presence of one witness or a notary and returned to the voter's county Board of Elections office. [Historically](#), four to five percent of voters in North Carolina vote by absentee ballot.

Following illegal absentee ballot harvesting in the 2018 9th Congressional District election, the North Carolina legislature passed [Senate Bill 683](#), which restricts who can request and fill out absentee ballot applications. The bill was a [bipartisan effort](#) to both expand early in-person voting and increase criminal penalties for absentee ballot fraud. In 2018, a Republican operative had submitted absentee ballots that his employees had collected from and filled out for voters. In response, the bill tightened identification requirements for absentee ballots. It currently is being challenged in court by Advance North Carolina; see below for further discussion of this lawsuit.

Karen Brinson Bell, the Executive Director of the North Carolina State Board of Elections, [projected that](#) 40% of votes in the November general election will be cast absentee. The state therefore must be prepared to handle ten times more mail-in ballots than in a typical year. As of August 14, there were already more than [eight times](#) as many absentee ballot requests as there were in 2016. As part of preparations for the election, North Carolina [recently loosened](#) its rules surrounding absentee voting. Several lawsuits working through the courts are trying to expand ballot access further. In addition, the state has made it [easier to be a poll worker](#).

North Carolina's presidential primaries took place on March 3, 2020. Over 2.1 million people [voted](#) in several major and minor party nominating contests. 98.8% of those votes were cast in person, whether on Election Day on a conventional ballot, via a provisional ballot, or through the state's "Absentee One-Stop" voting, which took place in the weeks leading up to the election. Despite its name, "[Absentee One-Stop](#)" voting is an in-person early voting procedure analogous to the use of Vote Centers in California and some other states: "Unlike on Election Day, when registered voters can only vote at their specific precinct, one-stop voting allows registered voters to vote at any one-stop absentee voting site in the county. One-stop sites will have all the ballot styles for a given election at each site." Early voting in North Carolina runs from the third Wednesday before an election through the last Friday before it.

To prepare for the November election, the North Carolina legislature has appointed the House Select Committee on COVID-19, Continuity of State Operations Working Group to coordinate changes to state operations. The [Working Group](#) is chaired by House Majority Leader John Bell (House District

10); House Democratic Leader Darren Jackson (House District 39); and Representative David Lewis (House District 53).

B. Special Election - Primary Runoff

The state had scheduled a special election in its 11th Congressional District to replace former Rep. Mark Meadows. The first round of the primary took place on March 3, with a run-off originally set to take place on May 12. The state [delayed](#) this run-off to June 23 due to COVID-19.

[The NCSBE](#) announced the following precautions for the June 23 primary to protect voters and poll workers:

- Masks available for all poll workers and voters who do not bring their own.
- Single-use pens for voters to mark their ballots.
- Single-use cotton swabs for voters using touchscreen voting machines.
- Social distancing for all poll workers and voters, including markings or barriers to prevent voters in line from standing too close together.
- Hand sanitizer for voters and poll workers.
- Face shields and gloves for poll workers.
- Protective barriers between poll workers and voters at check-in tables.
- Special sanitation kits at each precinct to ensure poll worker protection and clean tables, voting booths and voting machines throughout the voting process.
- Thorough cleaning of voting sites before and after the election.

Most of the 17 counties in the 11th District posted this information on their websites.

These precautions were accompanied by polling place closures and precinct consolidation. In Haywood County, for example, 18 of 29 polling places closed. Affected voters were [notified by mail](#), and signage was posted at closed locations indicating where people should vote instead.

Absentee ballot requests [rose](#) for the second primary, though they fell far short of the projections for November. In the March 3 primary, absentee ballots made up about 1% of total ballots. This rose to over 3% for the June 23 runoff, still in line with North Carolina's historical rate of 4-5% absentee voting and far below the expected 40% in November.

Poll workers were [difficult to find](#) for the primary runoff. Many poll workers called in absent on Election Day, creating shortages in some areas. For example, in Buncombe County, poll workers fell from 327 during the 2012 primary runoff down to 240 for the June 23 election.

II. State Innovations

A. NCSBE Recommendations for Absentee Balloting

NCSBE Executive Director Karen Brinson Bell [recommended](#) the following statutory changes to the North Carolina legislature on April 22, 2020 to address the expected increase in absentee votes by mail.

She recommended that these changes be made permanent except where otherwise indicated. Bolded suggestions have been adopted in some form.

Section I:

- **Allow absentee ballot request forms to be submitted by fax or email.** Adopted by HB 1169.
- Provide a limited exception to G.S. § 163-230.2(e)(2) to allow county boards of elections to pre-fill a voter's information on an absentee request form.
- **Reduce the absentee ballot witness requirement to one witness or eliminate the witness requirement.** Adopted by HB 1169.
- **Temporarily amend G.S. § 163-226.3(a)(4) to allow employees of care facilities to assist voters in the facility in requesting, voting, or returning the voter's absentee ballot.** This remains a Class I felony, but HB 1169 allows multi-partisan assistance teams to assist nursing home residents with filling out and returning absentee ballot request forms..
- Temporarily suspend purchase and contract requirements for elections-related supplies and other items.

Section II:

- **Establish an online portal for absentee ballot requests that would fulfill the absentee request form requirement.** Adopted by HB 1169.
- Establish a fund to pay for prepaid postage for absentee ballots. Currently, voters must pay for absentee ballot postage.
- [Amend](#) G.S. § 163-234(2) to provide that absentee ballots received by the Saturday prior to election day must be counted on Election Day and all other absentee ballots that are timely received will be counted during the county canvass. Currently, county election officials must count all absentee ballots received the day before election day on election day.
- [Amend](#) G.S. § 163- 182.5(b) to extend the county canvass for absentee ballots to 14 days after the election. Currently, the county canvass occurs 10 days after the election.

Brinson Bell [recommended](#) that Section I changes be approved by June 15, 2020 to allow for sufficient time to submit printing changes and supply orders for the November general election. She recommended that Section II changes be approved in a timely manner to facilitate a transition to more absentee by-mail voting participation. Some of these recommendations were adopted in HB 1169, discussed later.

B. NCSBE Recommendations for Poll Workers

For the November elections, Brinson Bell and the NCSBE also made [four recommendations](#) to Governor Roy Cooper and the state legislature to increase the number of available poll workers. Bolded suggestions have been adopted in some form.

- First, expand the student poll worker program. Allow students to fill the role of judge or chief judge; reduce the age requirement to 16 instead of 17; and to the requirement that a principal must nominate a student, add an exception to this requirement if the school is closed.
- Second, make Election Day a holiday, or at least provide paid leave for state and county employees to serve as poll workers for the day. These workers tend to be in a lower risk category for COVID-19 than most current poll workers, who are on average around 70 years old.
- Third, increase poll worker pay from its current level at the minimum wage, \$7.25 per hour. While this measure has not been adopted, [SB 217](#) did enact a related suggestion to ensure that **unemployment benefits are not affected by working at the polls.**
- Fourth, **eliminate the requirement that a majority of poll workers reside in precinct.** This would give precincts a greater pool of workers from which to choose. It would also eliminate the need to close and merge polling locations in order to meet the residency requirement.

C. HB 1169

On May 22, a bipartisan group of lawmakers filed [a bill](#) aiming to deal with the problems of holding an election during a pandemic. The bill adopted many of the NCSBE’s recommendations and relates directly to several of the lawsuits previously discussed.

Major provisions for the 2020 elections include:

- **Reducing the witness requirement for absentee ballots from two to one.** However, this one witness is now required to provide their name and address, which was not previously required.
- Requiring that **only one precinct assistant need be a resident of the precinct;** previously a majority were required to reside in the precinct.
- **Permitting individuals trained and authorized by the county board of elections to assist voters with requesting absentee ballots** and to deliver completed request forms for absentee ballots to the county board of elections.
- **Permitting absentee ballots to be delivered in person or by mail, email, or fax** by either the voter, their relatives, their guardians, or “any individual working as part of a multi-partisan team trained and authorized by the county BOE.”
- Tasking the NCSBE to submit a report outlining how county-approved individuals could enter nursing homes, hospitals, and other areas under quarantine in order to help voters request, fill out, or return absentee ballots.

Outside of the NCSBE’s recommendations, HB 1169 expands the kinds of photo ID that can be used to vote. An “identification card issued by a department, agency, or entity of the United States government or this State for a government program of public assistance” will now count as a valid photo ID.

Crucially, the bill also appropriates the matching \$2.2 million in order to receive the \$11 million from the CARES Act. Some of this money will be used to establish an online portal where voters can request absentee ballots. Another portion will be used to recruit poll workers through public advertising campaigns or through pay increases. The bill also appropriates the matching \$2.3 million needed to receive \$11.7 million from the Help America Vote Act (HAVA). Lastly, the bill directs the NCSBE to coordinate the purchase and distribution of PPE to county boards of elections.

HB 1169 does exclude some of the NCSBE's recommendations. Notably, the bill does not address the NCSBE's recommendations regarding pre-filling absentee ballot request forms and pre-paying postage costs, nor does it make Election Day a holiday. Deadlines for receiving and counting absentee ballots also remain unchanged.

Governor Cooper signed HB 1169 into law on June 12.

D. CARES Act

The CARES Act awarded North Carolina \$11 million for administration of the 2020 federal election. HB 1169 allows for North Carolina to access these funds, because it provides the required 20% matching funds (\$2.2 million). The NCSBE [plans to use](#) this money for:

- One-time-use pens and styluses for each voter, or sanitization of reusable supplies
- Hand sanitizer and masks for voters, poll workers, and election staff
- Social distancing tools and protective devices such as face shields, stanchions and plexiglass shields at check-in stations
- Facility rental fees to assist counties in moving to sites large enough to accommodate social distancing, including former department stores or grocery stores, if available
- Facility cleaning fees before, during, and after the election

III. Political Dynamics

For at least a decade, the political parties in the North Carolina Legislature have fought bitterly over questions of election administration and voting rights. North Carolina has been the epicenter of fights over [gerrymandering](#) and [voter identification laws](#) for years. While there is some partisan valence to debates over the response to COVID-19, the rancor may not match what North Carolina has seen in the past.

Democrats [generally support](#) increasing election funding to cover greater election costs and expanding absentee balloting, while Republicans were initially [opposed](#) to such measures. On May 4, Republican House Speaker [Tim Moore](#) announced his opposition to universal vote-by-mail: "I want to make it very clear that this General Assembly will not approve some sort of mass voting by mail or any other scheme like that that is going to be rife with fraud." They later tempered this opposition, with the former National Committeeman of the North Carolina Republican Party [calling](#) voter fraud concerns misguided.

Fraud is not a hypothetical in North Carolina. In the background of many of these debates about fraud is the 2018 9th Congressional District race, when Republican operatives illegally harvested ballots. Some Republicans have [pointed](#) to this episode as evidence for the risks of mail-in balloting.

Struggles over in-person safety measures have been less partisan than those over the more contested vote-by-mail. A group of nonpartisan organizations, including Democracy North Carolina and the NC ACLU, sent a letter to Brinson Bell pushing for additional support for poll workers. The letter [suggested](#) recruiting “younger, more diverse, culturally competent, and tech-savvy” poll workers.

IV. Legal Challenges

A. Challenge to prohibition on assistance with absentee ballot requests

Advance North Carolina v. The State of North Carolina

In March, Advance North Carolina, a “get-out-the-vote group,” sued the state over restrictions on who can assist voters with their absentee ballot requests. The case, which remains active, concerns Senate Bill 683. The bill was passed in 2019 as [a response](#) to the ballot harvesting scandal in the 9th Congressional District. It prohibits anyone other than a voter, their near relative, or a county election official from filling out or delivering the request form (though an exception exists for disabled or illiterate voters without relatives or guardians to assist them). Before the bill was passed, groups like Advance North Carolina were allowed to fill out absentee ballot request forms and deliver them to local BOE offices.

The suit claims that the bill violates the North Carolina Constitution’s guarantees of freedom of speech, freedom of assembly, equal protection, and free and fair elections by imposing severe burdens on the fundamental right to vote, hindering voter turnout efforts, and curtailing absentee voting.

Notably, HB 1169 permits authorized assistance with absentee ballot request forms and delivery. According to the NCSBE, “any member of a multipartisan assistance team, or MAT team, may assist any voter in completing a State Absentee Ballot Request Form.” Those providing assistance must be sanctioned and trained by the county board of elections. Team members are also authorized to deliver the forms and act as witnesses provided that they include their name and address on the form. Third parties may not pre-fill any section of the request forms; a June 11 [press release](#) from the NCSBE found that The Center for Voting Information, a Washington D.C.-based advocacy group, sent invalid, pre-filled request forms to 80,000 North Carolina voters. The NCSBE encouraged election officials to “discard any absentee request form they receive that includes pre-filled voter information.”

B. Objection to use of “ExpressVote” voting machines

NC State Conference NAACP v. NCSBE

In April, the North Carolina NAACP and four NC voters [sued the NCSBE](#) and over twenty North Carolina county boards of elections. The plaintiffs take issue with the “ExpressVote” voting machines from Election Systems & Software, which were first used in North Carolina during this year’s primary. The lawsuit [alleges](#) that properly cleaning the voting machines in between each voter’s use would cause severe delays in the voting process, as well as potential health risks if some of the cleanings are ineffective.

The plaintiffs claim that the machines constitute a violation of the right to free and fair elections and the equal protection clause of the North Carolina Constitution. They [argue](#) that, if they are not properly and thoroughly cleaned, the touchscreen machines can spread COVID-19 to voters. The cleaning process, however, can be “time consuming, difficult, and costly [and] can damage ExpressVote machines,” forcing voters to wait in longer lines and risk greater exposure to the virus. The machines therefore impose “severe burdens on Plaintiff’s right to vote.” According to the plaintiffs, these burdens will be borne by “some voters but not others.” Since some counties are using ExpressVote machines but others are using safer hand-marked paper ballots, ExpressVote violates the right to equal protection under the law.

[C. Lack of state reforms to promote voter accessibility and support absentee system](#)

Stringer v. The State of North Carolina

In early May, Democratic advocacy groups filed [a suit](#) against North Carolina, the North Carolina State Board of Elections, and the Chair of the North Carolina State Board of Elections alleging that the state is “woefully underprepared for the rapid expansion of absentee voters.” The suit, which remains active, argues that the state’s practices infringe on citizens’ right to participate in free and fair elections and place an undue burden on the right to vote, thus violating the NC Constitution. These practices include the lack of pre-paid postage, the deadline by which ballots must be received, the requirement that ballots be signed by in-person witnesses, and the process of rejecting ballots via signature matching.

The suit asks that, 1) the state provide postage for all absentee ballots and applications, 2) the deadline be extended to reflect those that apply to the military, 3) the witness and notary requirements be removed, and 4) election officials be prevented from rejecting ballots through signature matching unless the voter is notified in advance and given “an opportunity to cure the alleged signature defect.”

The NCSBE has [already recommended](#) that there be a “fund to pay for postage for returned absentee ballots.” As noted, HB 1169 has reduced the witness requirement from two down to one, though that one witness is now required to provide their name and address. However, the legislation does not provide for pre-paid postage or change existing absentee ballot deadlines.

In July, [the complaint was amended](#) to include plaintiffs' additional request that the court permit counties to "expand the early voting period by an additional 21 days."

Democracy North Carolina v. NCSBE

In May, Democracy North Carolina and the League of Women Voters of NC [sued](#) the NCSBE, the Department of Health and Human Services (NCDHHS), and the Department of Transportation (NCDOT) over alleged violations of voters' First and Fourteenth Amendment rights. Their claims refer to the undue burden caused by the NCSBE, NCDHHS, and NCDOT due to their failure to amend voter registration laws, vote-by-mail assistance restrictions, the vote-by-mail witness requirement, the poll worker "home precinct requirement," the lack of procedural due process if there is an error in the mail-in ballot, the assumed impact of precinct-consolidation, and the lack of personal protective equipment distribution in light of COVID-19. The Plaintiffs argue that the current voting laws, within the context of the pandemic, will significantly restrict North Carolinians' right to vote in the upcoming election.

The suit asks that the court order the defendants to implement a remedial plan to educate voters on options to register to vote, as well as to obtain and cast a ballot. Additionally, plaintiffs demand that the state amend the 25-day voter registration deadlines, lift restrictions on absentee ballot request assistance, and eliminate the requirement for two witnesses to certify absentee ballots.

As addressed above, HB 1169 reduces the witness requirement from two to one and allows for authorized multi-partisan assistance teams to aid voters in the request and completion of their ballots. While the bill seeks to modify the voting process in the context of the pandemic, it does not address the 25-day voter registration deadline, though voters who are not yet registered in a county may do so via the [Same-Day Registration](#) process.

On August 4, a U.S. District Court judge granted a [preliminary injunction](#) that would enjoin the defendants from rejecting absentee ballots without allowing voters to remediate discrepancies or issues in their voting materials. Some of the plaintiffs' other motions, including a motion for a preliminary injunction against the witness requirement for absentee voting, were denied. Therefore, voters will have a chance to cure issues such as signature mismatch or insufficient witness contact information for the November election (in the March primary, nearly 15% of mail-in ballots were rejected often for those two issues), but voters still cannot request an absentee ballot without a witness.

V. Logistical Challenges

A. State-Level

Some implementation challenges remain for the NCSBE. It must acquire and distribute PPE to the various county BOE's, which must then distribute the equipment to their precincts. Perhaps the biggest challenge will be attracting enough poll workers.

As previewed in the June 23 primary, North Carolina is facing a potentially dramatic shortfall of poll workers. Elderly Americans are already wary of serving as poll workers, and the country may be in the midst of a second wave by the November elections. HB 1169 allows poll workers to serve in precincts besides their own, and SB 217 ensures that their compensation will not affect their unemployment benefits. These incentives need to be publicized, though it is far from clear that they will be sufficient to increase the supply of poll workers. Notably, North Carolina has yet to adopt the NCSBE's recommendation to lower the age requirement for precinct officials.

B. County-Level

Almost no counties have taken any significant steps as of August to prepare for November by themselves. Most county boards of election closed to the public during most of April and May, but they have since reopened. Those that are still closed are accepting voter registration and absentee ballot request forms submitted through physical drop boxes.

Some county websites use Facebook pages to advertise online voter registration and other election-related information. Rowan County, for example, [posted](#) a flyer on its website asking residents to recruit people to be poll workers.

VI. Concluding Thoughts

North Carolina's response to the COVID-19 pandemic has not exhibited the same level of partisan rancor as in other swing states, but the state can still make important strides to prepare for November. Most importantly, the absentee ballot witness requirement remains a barrier for some voters. The NCSBE has made significant and specific requests to expand mail-in balloting and make in-person voting safer, and the state legislature has addressed some of these requests. HB 1169 was written with the NCSBE, but it still ignores many of the NCSBE recommendations. Most importantly, North Carolina has accepted the HAVA and CARES Act money.

While HB 1169 has given policymakers some tools to address the November elections, many NCSBE suggestions remain ignored. A particular area to watch, one that HB 1169 may not have sufficiently addressed, will be the potential shortage of poll workers.