

**Burgos, Alexander N**

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**Subject:** FW: [External] FW: Comments on the proposed Rules on Challenges to Poll Observers

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**From:** Jane Hopkins <[JaneHop@hotmail.com](mailto:JaneHop@hotmail.com)>

**Sent:** Thursday, January 25, 2024 3:03 PM

**To:** rrc.comments <[rrc.comments@oah.nc.gov](mailto:rrc.comments@oah.nc.gov)>

**Cc:** Wakely, Lindsey <[Lindsey.Wakely@ncsbe.gov](mailto:Lindsey.Wakely@ncsbe.gov)>

**Subject:** [External] FW: Comments on the proposed Rules on Challenges to Poll Observers

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Dear rules committee,

Please submit my comments about this issue. I have been through the poll observer training. And, also been a greeter at the polling sites many times.

**Regarding the Proposed Rule- 08 NCAC 20 .0101 (Challenge to the Appointment of an Observer)**

- If a poll observer is being challenged or removed, and he is scheduled for additional days that election cycle, he should be able to observe on those subsequent days, unless there is another challenge to his being there.
- If there is a challenge, to be successful, does it take a majority vote from the judges, or will it require a unanimous decision? Please outline.
- This rule doesn't say what grounds there are for challenging a poll observer's appointment, as previously stated in the old rules.
- I think the challenge hearing should be prior to the scheduled period if at all possible when people are scheduled to be poll observers. If not, they might miss their time slot. Or if done on site by some action done by the observer, the party of the challenged observer needs to be able to replace the observer.
- I don't think that there should be one rule for Bd of Election members AND Judges. I think they should be kept separate, like they were in the previous document, in order to have separate procedures.

**Proposed Rule- 08 NCAC 20 .0102 (Appeal of Removal of an Observer from a Voting Site)**

- Removing a poll observer leaves the party unaware to what is going on inside the voting facility. Therefore, some kind of expedite is needed to give the (removed) party the coverage they need, THAT DAY. My husband and I were poll observers a few years ago, the prior observer was removed and we were told that our party was not allowed inside for the rest of the day. I don't think that should be allowed. ONE person's actions should not reflect on the poll observers for that party for the rest of the day.
- In other words, if three judges at a voting facility have removed a poll observer, the party that observer was from should have some way to replace them, the same day.
- If the ruling on a poll observer is not unanimous, that observer should not be removed from the polling facility, my opinion.
- I see no reason or benefit for a poll observer to appeal, after he has been removed from the voting site. If the observer is also scheduled for the next day, the removal should not affect the next day. That should be a separate case.
- Whenever a poll observer is removed during the hearing, it should be documented, and signed off by all judges at the voting facility, and copied to appointing authority.
- At early voting, there should be a member of the Elections Office, a member of the Board of Elections, or local Bd of Elections office on call in case there are no judges present for issues of observer challenges. The early voting site administrator should have the job of judging and reporting to the proper office.
- According to the statute, a poll observer is only removed for one day, then that days removal has no bearing on subsequent days he would be scheduled for.

**Proposed Rule- 08 NCAC 20 .0103 (Identification of Observers)**

- According to the statute, poll observers do not have to have their name displayed on their body, or a statement of party affiliation. However they should wear ID as to what their role as "observer"
- Poll observers only need to provide ID to the Chief Judge upon arriving to serve at the polling facility.

Thank you for asking for comments,

Jane Hopkins  
Registered Republican Voter, Wake County.

## Burgos, Alexander N

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**From:** Agnes Puzak <puzak@sbcglobal.net>  
**Sent:** Tuesday, January 30, 2024 9:02 AM  
**To:** Wakely, Lindsey; rrc.comments  
**Subject:** [External] Proposed rule 08 NCAC 20.0103

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I agree that poll observers should wear some identification showing their role in the polling place, i.e. "Poll Observer". However, that identification should not include the poll observer's name, party affiliation or candidate affiliation; this extra information is superfluous to voters and could subject the poll observer to opposition from other parties. I recommend that this temporary rule be deleted.

Sent from my iPad

## Burgos, Alexander N

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**From:** JR JR <jroanbrooks@gmail.com>  
**Sent:** Monday, January 29, 2024 9:59 PM  
**To:** rrc.comments; Liebman, Brian R  
**Subject:** [External] PROPOSED TEMPORARY RULES

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In regard to:

### **Proposed Rule- 08 NCAC 20 .0103 (Identification of Observers):**

163.45.1 Observers (d) states "The chief judge at each voting place may use reasonable methods to verify the identity of individuals appearing at the voting place to serve as an observer. The State Board may require an observer to wear an identification tag or badge to make voters and election officials aware of the observer's role in the voting place."

The statute DOES NOT indicate the Observer be required to identify and verify their identity by name and/or party affiliation to ANYONE but the chief judge. The Board IS given the right to require said Observer to wear an identification tag or badge indicating the observer's ROLE in the voting place. Any other designation is NOT indicated in the statute.

Requiring the Observer's name and or party affiliation to be made known is unnecessary for the function as an Observer; can create unnecessary friction between other workers and Observers, specifically regarding political affiliation; and opens the Observer to potential unnecessary harrasment by voters and others of an opposite affiliation.

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### **Proposed Rule- 08 NCAC 20 .0101 (Challenge to the Appointment of an Observer)**

163.45.1 Observers (f) states: "The county board of elections or a chief judge of a voting place shall only challenge the appointment of an observer pursuant to this section for good cause, which shall include evidence that the observer could impact the conduct of the election."

The statute gives no other specific information regarding a Challenge to the Appointment of an Observer. The Proposed rule indicates: "good cause" may include one or more previous instances where the observer's conduct led to their removal from the voting site, factoring in how long ago this occurred."

Because this interpretation is not specified in the language of the statute, the proposed rule requires deletion of this language and insertion of language to the effect of "**good cause determined by the chief judge's discretion having observed conduct determined to be impactful to the conduct of the election.**" Any other language is an imagined situation without substantiation of any actual occurrence.

As well, the Proposed Rule fails to specify how the challenge will be adjudicated, only stating: "The county board shall promptly decide the challenge, providing notice to the party that appointed the observer and an opportunity for that party to be heard in opposition to the challenge." There is no criterion given for the Boards of Election to use in challenges and fails to indicate what procedures are required i.e., unanimous vote or a majority vote, required to uphold the challenge.

Thank you for your time and consideration.

Respectfully,

Joan Roan Brooks  
Ashe County, North Carolina

## **Burgos, Alexander N**

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**From:** Suzanne2916 <Suzanne2916@protonmail.com>  
**Sent:** Monday, January 29, 2024 9:36 AM  
**To:** rrc.comments; Wakely, Lindsey  
**Subject:** [External] S747 on Poll Observers- Comments

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Having read the newly proposed temporary rules, I find them to be hastily reviewed and in need of clarification. Please accept my comments regarding S747.

### **Proposed Rule- 08 NCAC 20 .0101 (Challenge to the Appointment of an Observer)**

Due to the unique nature of challenge rulings by BOE members and judges, there should be separate procedures for each.

Specific grounds for challenging a poll observer appointment must be made clear.

In the interest of due process for a challenge, I believe the hearing must be held before the poll observation service.

It should be determined whether a BOE vote is required to be unanimous or by a majority vote, Rules should be made clear as to what would be the criteria for permanent removal or the handling of more than one challenge of a poll observer. When can a poll observer return to duty?

### **Proposed Rule- 08 NCAC 20 .0102 (Appeal of Removal of an Observer from a Voting Site)**

We need poll observers to insure election integrity. The decision to remove an observer should be made by representatives from more than one party to be fair.

The removal of an observer should allow for immediate replacement with another approved observer to insure election integrity.

Once again, the reasons for removal must be made clear and the process for the resolution of the situation must be clear and carried out in a timely manner.

### **Proposed Rule- 08 NCAC 20 .0103 (Identification of Observers)**

Once a chief judge verifies an observer through proper ID the process should be considered finished. A poll observers identity must be protected from being heard by the voting public to avoid controversy.

Therefore, this rule is unnecessary.

Thank you for considering my thoughts on these issues.

Suzanne Bresson  
2610 Oldgate Dr. #201  
Raleigh, NC 27604

Sent with [Proton Mail](#) secure email.

## Burgos, Alexander N

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**From:** Melissa Martin <mmvinculum14@proton.me>  
**Sent:** Sunday, January 28, 2024 9:32 PM  
**To:** rrc.comments  
**Subject:** [External] Comments on 08NCAC 20.0101 and 02

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To whom it may concern:

Regarding 08NCAC 20.0101- the challenge to the appointment of a poll observer:

1. There should be separate and unique rules for specific, unique procedures. Not a blanket rule.
2. There needs to be a set of criteria for Boards of Election to use in adjudicating challenges.
3. It needs to specify whether it requires a unanimous or majority vote to uphold the challenge.
4. Specify what constitutes reasonable grounds for challenging the appointment.
5. The hearing should be convened in advance of the scheduled poll service.
6. Put a safeguard in place to prevent abuse of the poll observer challenge process.
7. Put a procedure in place to deal with returning previously removed or challenged poll observers.

Regarding 08NCAC 20.0102:

1. Put in place an escalation process that serves due process and election integrity.
2. Have three judges to prevent partisan bias.
3. Make it a unanimous vote to remove the observer.
4. Prevent abuse of the privacy of the poll observer by not divulging the party affiliation or sharing it with voters in the enclosure.

For Liberty,

**Melissa Martin**

NC District Team HD 81, Piedmont Regional Team Member, Telepatriot  
Convention of States Action

Sign the petition to put the Federal Government back into its box. Article V is the solution as big as the problem.

<http://conventionofstates.com/?ref=69355>

*"In all our associations; in all our agreements let us never lose sight of this fundamental maxim- that all power was originally lodged in, and consequently is derived from, the people." We should wear it as a breastplate, and buckle it on as armour."*

*George Mason*

Sent with [Proton Mail](#) secure email.



## Burgos, Alexander N

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**From:** Joanne Empie <joanne.empie@gmail.com>  
**Sent:** Sunday, January 28, 2024 8:18 PM  
**To:** rrc.comments  
**Cc:** Wakely, Lindsey  
**Subject:** [External] Comments on SBE temporary rules - RRC Jan 31 meeting

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My comments follow.

### 08 NCAC 20 .0103 IDENTIFICATION OF OBSERVERS

#### 1. Identification badge

The law states that the badge is for identifying the observer's role. No further clarification is needed in a rule. The badge should indicate "Observer". The Judge has been provided the person's name and party and has checked their identity when they present themselves. The public does not need that information. What is the purpose of providing the name of the political party?

References

#### SESSION LAW 2023-140 SENATE BILL 747

(d) The chief judge at each voting place may use reasonable methods to verify the identity of individuals appearing at the voting place to serve as an observer. The State Board may require an observer to wear an identification tag or badge to make voters and election officials aware of the observer's role in the voting place.

**08 NCAC 20 .0103 IDENTIFICATION OF OBSERVERS** Every appointed observer serving at a voting site pursuant to G.S. 163-45.1 shall wear an identification tag to make voters and elections officials aware of the observer's role in the voting site. The tag shall read "Observer ~~for [Name] Party~~" or "~~Observer for Candidate [Name]~~" with the "~~[Name]~~" being the ~~name of the political party or the candidate, as applicable.~~

### 08 NCAC 20 .0101 ~~ELECTION OBSERVERS~~ CHALLENGE TO THE APPOINTMENT OF AN OBSERVER

#### 1. Lack of definition of "Good Cause"

The temporary rules lack a definition of what the criteria for challenging an observer would be. Having a definition would streamline the process.

References

#### SESSION LAW 2023-140 SENATE BILL 747

G.S. 163-45.1 (f) The county board of elections or a chief judge of a voting place shall only challenge the appointment of an observer pursuant to this section for good cause, which shall include evidence that the observer could impact the conduct of the election.

### 08 NCAC 20 .0101 ~~ELECTION OBSERVERS~~ CHALLENGE TO THE APPOINTMENT OF AN OBSERVER

The challenge shall contain the following information: (1) the name of the observer; (2) the party or unaffiliated candidate that appointed the observer; and (3) the basis for the challenge pursuant to G.S. 163-45.1(f).

## **2. Time frame for challenge**

Challenges must be resolved before the observer is scheduled for duty, so there are not hours during the election without observers.

Reference

### **08 NCAC 20 .0101 ~~ELECTION OBSERVERS~~ CHALLENGE TO THE APPOINTMENT OF AN OBSERVER**

(b) Hearing of Challenges. Upon receiving a challenge pursuant to Paragraph (a) of this Rule, the county board of elections shall hold a hearing and decide the challenge as expeditiously as possible but no later than two days after the challenge is filed.

## **3. Voting on the Challenge**

If the majority of the board members are unable to attend the meeting to consider the challenge, the county board members in attendance shall be unanimous in their vote to remove an Observer. The decision should not be left to one individual.

Reference

### **08 NCAC 20 .0101 ~~ELECTION OBSERVERS~~ CHALLENGE TO THE APPOINTMENT OF AN OBSERVER**

(b) Hearing Challenges

If a majority of board members is unable to attend the meeting to consider the challenge, the chair of the county board of elections shall act on behalf of the county board of elections and decide on the challenge.

## **4. Appeals on Challenge**

Appeals at the county level should be resolved at the county level, by a vote of the county board rather than the State Board of Election.

Reference

### **08 NCAC 20 .0101 ~~ELECTION OBSERVERS~~ CHALLENGE TO THE APPOINTMENT OF AN OBSERVER**

(c) Appeals on Challenges. The decision by a county board of elections on a challenge to the appointment of an observer pursuant to Paragraph (b) of this Rule may be appealed by the political party or candidate that appointed the observer. The county board's decision shall not be stayed pending appeal. The appeal shall be filed with the State Board of Elections via email to [legal@ncsbe.gov](mailto:legal@ncsbe.gov)...

## **08 NCAC 20 .0102 APPEAL OF REMOVAL OF AN OBSERVER FROM A VOTING SITE**

### **1. Law referenced is not applicable to filing an appeal regarding Observers**

Section § 150B-51. Scope and standard of review refers to "courts". This reference is not applicable for an appeal to removing observers by judges and boards of elections.

References

### **08 NCAC 20 .0102 APPEAL OF REMOVAL OF AN OBSERVER FROM A VOTING SITE**

The appeal shall contain an argument explaining why the chief judge's decision should be reversed on account of one or more of the grounds listed in G.S. 150B-51(b).

**G.S. 150B-51 Scope and standard of review.**

(b) The court reviewing a final decision may affirm the decision or remand the case for further proceedings. It may also reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the findings, inferences, conclusions, or decisions are: ...

**2. Timeliness of appeals and hearings**

This section should refer only to removal of an Observer. The appeal for an Observer who has already been removed is not relevant because they can no longer perform their functions and the appeal is not timely enough to bring them back. The removal of an Observer needs to be evaluated immediately at the place where the incident occurred and with the individuals involved at that location. A unanimous decision of all the judges should be needed to remove an Observer. If the Observer is removed, the decision with all judge signatures should be documented. The appointing authority should be notified, provided the documentation and have the option to replace the Observer.

For Local Election offices serving as voting sites, the Site Supervisor and Assistants would evaluate the removal.

Please confirm receipt of this email. Thank you.

Joanne Empie

## Burgos, Alexander N

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**From:** Jim Womack <james.k.womack@gmail.com>  
**Sent:** Sunday, January 28, 2024 4:30 PM  
**To:** rrc.comments  
**Subject:** [External] Comments for Consideration at 31 January RRC Meeting- NCSBE Temporary Rules

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Dear Sir or Madam;

The following comments are being submitted for your consideration at the upcoming Rules Review Commission monthly meeting. They pertain to the NCSBE's proposed temporary rules numbered: 08 NCAC 20 .0101 (Challenge to the Appointment of an Observer); 08 NCAC 20 .0102 (Appeal of Removal of an Observer from a Voting Site); and 08 NCAC 20 .0103 (Identification of Observers). Each of these proposed rules fails to follow the spirit and intent of Session Law 2023-140. It is my recommendation that all three rules be remanded back to the agency with instructions not to exceed statutory authority or guidance in implementing S.L. 2023-140. Each objection below was provided to the agency, but not addressed in their final submission to the RRC.

### **Proposed Rule- 08 NCAC 20 .0101 (Challenge to the Appointment of an Observer)**

\*This rule inappropriately consolidates the challenge rule for Board of Election members and Judges into one rule instead of separate rules with unique procedures for each entity.

\* The rule fails to articulate what constitutes specific reasonable grounds for challenging a poll observer's appointment as outlined in § 163-45.1 (f) of S.L. 2023-140. This leads to inconsistent, arbitrary and capricious challenges by judges across the 100 counties.

\* For a challenge hearing to follow due process and to comport with the intent of § 163-45.1 (c), the hearing must be convened in advance of the scheduled period of poll observation service.

\*The rule fails to establish criterion for Boards of Election to use in adjudicating challenges and fails to indicate whether a unanimous vote or a majority vote is required to uphold the challenge.

\* It seems appropriate for the NCSBE only to adjudicate appeals of challenges to state party- or statewide candidate-appointed poll observers. Appeals from county level are superfluous.

\*The proposed rule lacks discussion of permanent or persistent challenge of a poll observer; nor are there any criteria for preventing a challenged poll observer from returning for poll observer duties on a subsequent day or at an alternative site during the same election cycle. This failure will lead to inconsistent, arbitrary and capricious implementation among the 100 counties.

### **Proposed Rule- 08 NCAC 20 .0102 (Appeal of Removal of an Observer from a Voting Site)**

\*The removal of an appointed poll observer is a serious step that potentially leaves a party or candidate blind to the activities inside a voting enclosure, observations that are statutorily prescribed in NCGS 163-45.

\*This rule should prescribe an escalation process that serves due process and maintains election integrity.

\*The rule should first establish a process for an informal hearing by all three judges present to prevent partisan influence on the decision to expel an observer, short of law enforcement action (which is always an option at the discretion of the Chief Judge).

\*The appointing authority should be notified the poll observer has allegedly violated statutory guidelines and will be subject to an immediate informal hearing in or near the voting enclosure, away from the voting process.

\* If all three judges at a precinct or early voting site concur that removal is the appropriate recourse, then the local appointing authority should be afforded the ability to replace the observer.

\*If a ruling is not unanimous to remove an observer during the informal hearing, the observer should be allowed to remain on-site, subject to close observation by the judges.

\* If a poll observer is removed during the hearing, a written record of the removal should be documented, signed off by all judges at the voting site, with a copy provided to the appointing authority.

\* Appeals of a poll observer's removal past beyond the informal hearing are fruitless in that the removal has already occurred and cannot be timely reversed.

\*At early voting sites located within the local Election Office, where there are no judges present, the challenge of a poll observer should come from the Site Administrator, member of the Elections Office, or a member of the Board of Elections.

\*In poll observer challenges at BOE Early Voting sites, the informal hearing should be adjudicated by the Site Administrator, a senior member of the Elections Office, and one member of the local Board of Elections, available on-call for such purposes. (Per S.L. 2023-140, Judges are only resident at Early Voting Sites away from the BOE.)

\*Nowhere in the proposed rule is there discussion of the possibility for permanent or indefinite removal of a poll observer; nor are there any criteria for preventing a removed poll observer from returning for poll observer duties on a subsequent day or at an alternative site during the same election cycle.

\*The proposed rule should prescribe any criteria that would prevent a removed poll observer from being rescheduled for subsequent duties. (There is little doubt that candidates or political parties will seek to reinstate any removed poll observers as soon as possible.)

\*The citation in 08 NCAC 20 .0102 (a) referring to NCGS 150B-51(b) grounds for appealing a challenge of poll observer is inappropriate- NCGS 150B-51(b) is only suitable for judicial hearings by a court of law.

\* In S.L. 2023-140, the NCGA did not provide grounds for challenging poll observers because of past performance. Some past "mistakes" or "removals" may well have been correctable or may have been improperly actioned. NCSBE should consider codifying a reasonable threshold of "law enforcement action taken" or "conviction of election violation" as being more appropriate standards for indefinite or permanent removal, or for challenge to a poll observer's service.

### **Proposed Rule- 08 NCAC 20 .0103 (Identification of Observers)**

\*The statute clearly indicates the Chief Judge may use reasonable methods to verify the identity of individuals appearing at the voting place to serve as an observer; but the verification of identity process ends when the observer has produced a valid ID for the Chief Judge upon arrival. The statute does not prescribe further required identity of the poll observer beyond check-in.

\*There should be no requirement for the poll observer to identify his or her name or political party within the voting enclosure. Doing so leads to targeting of the poll observer, a violation of 18 U.S. Code 245.

\*This rule should be deleted as the statute is already clear that Poll Observers are to be identified by their position or role in the voting enclosure- not by their name or political party.

Thank you for your kind consideration of these proposed corrections to NCSBE's proposed rules.

Warm Regards/

Jim Womack

President, North Carolina Election Integrity Team

1615 Boone Trail Rd., Sanford, NC 27330

Tel. (919) 770-4783



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## Burgos, Alexander N

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**From:** Jane Bilello <jane.bilello@gmail.com>  
**Sent:** Sunday, January 28, 2024 3:43 PM  
**To:** rrc.comments; Wakely, Lindsey  
**Cc:** Senator Tim Moffitt; Rep. Jake H. Johnson; Jennifer.Balkcom@ncleg.gov; Senator Warren Daniel  
**Subject:** [External] Opposition to Proposed Rule-08 NCAC 20.0103 (Identification of Observers)

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[rrc.comments@oah.nc.gov](mailto:rrc.comments@oah.nc.gov)

[lindsey.wakely@ncsbe.gov](mailto:lindsey.wakely@ncsbe.gov)

Jane Bilello

218 Vincent Place

Hendersonville, NC 28739

Dear Rules and Ms. Wakely:

**Proposed Rule- 08 NCAC 20 .0103 (Identification of Observers) is an overreach by the NCSBE of the law as stated in [S747](#). Identifying poll observers by name and party makes them targets of opposing partisans. Judges and site supervisors are responsible for the safety of all in the voting enclosure including poll observers. This rule clearly puts them at risk.**

The statute clearly indicates the Chief Judge may use reasonable methods to verify the identity of individuals appearing at the voting place to serve as an observer; but the verification of identity process ends when the observer has produced a valid ID upon arrival. The statute is clear: observers are to be identified only by their position or role in the voting enclosure. The judges and the Board of Elections already know who these individuals are. Unlike election workers, observers are unpaid volunteers. Why are you disregarding the statute and making observers targets? This only further erodes our faith in our voting process. Observers are there to offer objectivity, transparency, and to verify that our laws are being followed.

So, unless you want to be responsible for the verbal or physical abuse of an observer that may result in you violating the statute, it would be wise to delete the rule and follow the statute.

Thank you.

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Jane Bilello 209 986 3845  
[jane.bilello@gmail.com](mailto:jane.bilello@gmail.com)

Freedom is never more than one generation away from extinction. We didn't pass it to our children in the bloodstream. It must be fought for, protected, and handed on for them to do the same. Ronald Reagan



## Burgos, Alexander N

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**From:** James F. Davis <jamesfdavis@brmemc.net>  
**Sent:** Sunday, January 28, 2024 12:18 PM  
**To:** rrc.comments  
**Subject:** [External] My Comments on NCSBE Proposed New Temporary Rules Concerning Poll Observers by the NCSBE

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FYI: I, James F. Davis, was a poll observer in past elections and am presently on the Board of Elections of Clay County.

My Comment on "Proposed Rule-08 NCAC 20.0101 (Challenge to the Appointment of an Observer)" are below:

1) This rule puts APPLES AND ORANGES in the same basket. Judges and Poll Observers are chosen for completely different reasons and criteria. They should not be lumped together.

2) The rule gives the NCSBE the POWER TO REJECT any poll observer in ANY COUNTY in the state FOR ALMOST ANY REASON and requires NO SPECIFIC GROUNDS FOR REJECTION of appointment. There is nothing in the legislation that supports this.

3 The rule does not indicate timing, i.e., WHEN a challenge must be made, thus it could be made on election day with no ability or time to gather evidence that the denial was politically motivated or any other reasons. Under existing laws, challenges must be made with enough time in advance so that the challenged party can get a hearing to provide evidence of the unfairness of being denied.

4) The rule DOES NOT SPECIFY whether a unanimous VOTE is REQUIRED to reject, or a majority vote to reject, one vote to reject, or a tie vote to reject the observer. Again a mockery of judicial fairness.

In summary, this is another example of the NCBOE trying to make rules that are the opposite of the intent of legislation passed. The NCBSE has already been spanked by the courts for trying to nullify poll observers-at-large legislation (FYI, I filed a complaint when the NCBOE passed a rule to limit the ability of "At Large" Poll Observers to do the job which resulted in the courts ruling that the NCBOE arbitrary rule did not follow the law). Poll observers are not the enemy of fair elections. They are an accessory to poll workers to help make sure we have fair elections.

My comments on "Proposed Rule- 08 NCSBE .0102 (Appeal of Removal of an Observer from a Voting Site)"

**Burgos, Alexander N**

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**Subject:** FW: [External] Comments on Temporary Rules for Elections

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**From:** [oddsandends592@gmail.com](mailto:oddsandends592@gmail.com) <[oddsandends592@gmail.com](mailto:oddsandends592@gmail.com)>

**Sent:** Tuesday, January 30, 2024 4:56 PM

**To:** rrc.comments <[rrc.comments@oah.nc.gov](mailto:rrc.comments@oah.nc.gov)>; Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>

**Cc:** [oddsandends592@gmail.com](mailto:oddsandends592@gmail.com)

**Subject:** [External] Comments on Temporary Rules for Elections

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To Whom it May Concern:

Please find here my comments on the following proposed rule:

**Proposed Rule – 08 NCAC 20.0101 (Challenge to Appointment of an Observer)**

The rule as proposed is very vague in terms of the challenge criteria, as well as the appeal criteria and standard for upholding or reversing an appeal. Also, the rule combines both a board of election and judge’s challenge, which could be confusing. Recommend separating these. The timelines for the appeal are also unrealistic given a judge’s challenge appears to occur in real time. There should be a more expedited process for a judge challenging an observer’s presence at the polls. Bottom line, as currently written the rule introduces a significant amount of ambiguity into the process rather than clarity. This kind of ambiguity could be used to improperly exclude a poll observer and should be re-drafted with standards, exclusion criteria, and more realistic timelines.

**Proposed Rule – 08 NCAC 20.0102 (Appeal of Removal of an Observer from a Voting Site)**

This rule suffers from many of the same ambiguities and unrealistic timelines as the foregoing rule. Consideration should be given to less formal methods of removing an observer that provides due process and maintains the confidence of the electorate that observers are not being expelled for partisan purposes. For example, a challenge could first go to the 3 judges present to determine whether the observer should be expelled, escalating only if the judges do not come to a majority or even unanimous decision. Also, this rule should include criteria and standard of review (e.g. – judges determine that more likely than not the poll observer violated some established criteria for removal).

**Proposed Rule – 08 NCAC 20.0203 (Identification of Observers)**

This rule does not seem to add anything to the statutory requirement for poll observer identification and should be eliminated as superfluous.

Thank you for taking the time to consider these comments.

Respectfully,

Lauren Miller

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## Burgos, Alexander N

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**From:** Peaslee, William W  
**Sent:** Tuesday, January 30, 2024 2:33 PM  
**To:** Burgos, Alexander N  
**Subject:** FW: [External] Input on proposed rule changes to 08 NCAC 20 .0101, 0102, .0103

William W. Peaslee  
Rules Review Commission Counsel / Legislative Liaison Office of Administrative Hearings  
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-----Original Message-----

From: rrc.comments <rrc.comments@oah.nc.gov>  
Sent: Tuesday, January 30, 2024 2:32 PM  
To: Peaslee, William W <bill.peaslee@oah.nc.gov>  
Subject: FW: [External] Input on proposed rule changes to 08 NCAC 20 .0101, 0102, .0103

Brian Liebman  
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-----Original Message-----

From: Steve Bryant <smbsab79@yahoo.com>  
Sent: Tuesday, January 30, 2024 1:09 PM  
To: rrc.comments <rrc.comments@oah.nc.gov>  
Cc: Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>  
Subject: [External] Input on proposed rule changes to 08 NCAC 20 .0101, 0102, .0103

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All concerned parties,

I am a concerned citizen and was previously selected as a Poll Observer in previous elections.

The Challenge to the Appointment of an Observer is lacking any recourse for the observer that is challenged. I am against this. The individual must be told why they are being challenged in writing and should be advised how they can timely dispute this before the early voting begins or as early as is reasonable. They should not be discriminated against due to their political class.

Appeal of Removal of an Observer from a Voting Site should only be by unanimous decision of all 3 judges. Otherwise, the observer should be given a verbal warning and allowed to remain. If all 3 judges are in agreement then the appointing party should be notified in writing so the individual can be replaced.

I feel that the current law sufficiently addresses the identification of the observers. No additional expansion of the identifying the individual is needed, especially by their chosen political party affiliation.

Thank you for your time and consideration of my input.

If you have additional questions or clarification I can be reached at the information provided below:

Steve Bryant  
14448 NC 210 Hwy  
Angier, NC 27501  
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smbsab79@yahoo.com

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- 1) Due process requires a hearing by all judges and interested parties, not the whim of just one person.
  
- 2) The process should be specific enough to insure election integrity and fairness and that a political party or candidate is not left without an observer.
  
- 3) All three judges should agree to the removal in writing.
  
- 4) Rules should be specific as to how much time the party of the removed observer has to find a replacement.
  
- 5) Reason for removal should be part of existing legislation, documented, and specific. A copy of the removal with explanation should be given to the political party that recommended the poll observer's appointment for their action/response.
  
- 6) The NCSBE should list the grounds for removal by police and cite the violations of election law and/or behavior that support their action.
  
- 7) The ruling should define whether the banishment is temporary or permanent and under what specific law's language gives it the authority to do so.
  
- 8) If no judges are present in early voting, the person heading the poll worker team and a director of the local BOE of each political party should be in unanimous agreement to remove the poll observer.

Proposed Rule- 08 NCAC20 .0103 (Identification of Observer)

- 1) Judges and poll workers are not required to wear name tags and party affiliation. So why should a poll observer? Their names and party affiliation are given to the Chief Judge before the elections and he or she has more ways to verify the identity of the poll observer than voters are required to give to vote, especially via absentee ballot.

2) This rule will discourage people to volunteer to be poll observers. Intimidation tactics are regularly used by certain partisan protesters to intimidate voters, officials, and poll observers. Having access to poll observer names and party affiliation makes it more likely that there could be retribution against the Poll Observers. If anyone is hurt as a result of perpetrators using such information, legal suits could result in the NCSBE having to pay huge fines and/or settlements.

3) The legislation is clear that Poll Observers need to be identified only by their purpose at the voting site, just like election workers and officials. There is nothing in the legislation that requires or suggests they have to display their name and party affiliation when working at an election site and they should not under any circumstance be required to so.

Respectfully submitted,

James F. Davis

828 347 3867

## Burgos, Alexander N

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**From:** Robert Appel <robert.appel81@gmail.com>  
**Sent:** Saturday, January 27, 2024 3:45 PM  
**To:** rrc.comments  
**Cc:** Wakely, Lindsey  
**Subject:** [External] Proposed rules

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To whom it may concern:

As a registered NC voter, I'd like to comment regarding the proposed rules governing poll observers.

Regarding Rule 08 NCAC 20.0101, no specific grounds are enumerated for challenging an observer's appointment. It fails to establish criteria for the BOE to use in adjudicating challenges. Does the vote for removal have to be unanimous? Is there any criteria for preventing a removed observer from returning on another day or to another polling site?

Regarding proposed rule 08 NCAC 20.0102, governing the removal of a poll observer, the rule should first establish a process for informal hearing by all 3 judges to prevent partisan influence on a decision for removal. If expelled, the local appointing authority should have the ability to replace the removed observer.

If a removal occurs, all three judges should be required to sign off and leave a permanent record of their decision.

Thanks for your consideration.

Robert Appel



## Burgos, Alexander N

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**From:** GinA Moffitt <gypsytoto@gmail.com>  
**Sent:** Saturday, January 27, 2024 1:50 PM  
**To:** rrc.comments; Wakely, Lindsey  
**Subject:** [External] S747 on Poll Observers

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Please note my comments, as a past Poll Observer, who plans to be in the polls again observing during the Primary:

### **Proposed Rule- 08 NCAC 20 .0101 (Challenge to the Appointment of an Observer)**

\* This combines the challenge rule for Board of Election members and Judges into one rule. I do not find this appropriate at all. There should be separate rules with their own procedures.

\* This fails to explain what makes up reasonable grounds for challenging my appointment as a poll observer as outlined in § 163-45.1 (f) of S.L. 2023-140.

\* For a challenge hearing to follow my rights to due process and to comply with the intent of § 163-45.1 (c), the hearing should be convened in advance of the scheduled period of my service as a poll observer.

\*This fails to establish criteria for the BOE to use in adjudicating challenges and it does not indicate whether a unanimous vote or a majority vote is required to uphold the challenge.

\* Only the NCSBE should adjudicate appeals of challenges to state party- or statewide candidate-appointed poll observers. Appeals from the county level are a waste of time.

\*The proposed rule lacks criteria for preventing a challenged poll observer from returning to their poll observer duties on subsequent days or at alternative sites during the same election cycle.

### **Proposed Rule- 08 NCAC 20 .0102 (Appeal of Removal of an Observer from a Voting Site)**

\*The removal of a poll observer is a step that might leave a party or candidate blind to the activities inside a voting enclosure. We often may only have one poll observer available in the voting enclosure.

\*This rule should contain an escalation process that serves due process to maintain election integrity.

\*The rule should establish a process for an informal hearing by all three judges present to prevent partisan influence on the decision to expel an observer, short of law enforcement action (which is always an option at the discretion of the Chief Judge).

\*The appointing authority should be advised immediately that the poll observer has allegedly violated statutory guidelines and will be subject to an immediate informal hearing in or near the voting enclosure, away from the voting process.

\* If all three judges at the voting site concur that removal is the appropriate recourse, then the local appointing authority must be afforded the ability to replace the observer immediately.

\*If a ruling is not unanimous to remove an observer during the informal hearing, the observer should be allowed to remain on-site, subject to close observation by the judges.

\* If a poll observer is removed during the hearing, a written record of the removal should be created, signed off by all judges at the voting site, with a copy provided to the appointing authority.

\* Appeals of a poll observer's removal are fruitless since the removal has already occurred and cannot be timely reversed.

\*At early voting sites located within the local Election Office, where there are no judges present, the challenge of a poll observer should come from the Site Administrator, member of the Elections Office, or a member of the Board of Elections.

\*In poll observer challenges at BOE Early Voting sites, the informal hearing should be adjudicated by the Site Administrator, a senior member of the Elections Office, and one member of the local Board of Elections, available on-call for such purposes.

\*Nowhere in the statute is there discussion of the possibility for permanent or indefinite removal of a poll observer. There is no criteria in the statute for preventing a removed poll observer from returning for poll observer duties on a subsequent day or at an alternative site during the same election cycle.

\*The proposed rule should prescribe any criteria that would prevent a removed poll observer from being rescheduled for subsequent duties. (There is little doubt that candidates or political parties will seek to reinstate any removed poll observers as soon as possible. Volunteers are difficult to fund and recruit.)

\*NCSBE should consider setting a threshold of “law enforcement action taken” or “conviction of election violation” as being standards for indefinite or permanent removal of a poll observer.

\*Just because a person was challenged for removal on one occasion should not be justified grounds for his removal for the duration of an election cycle. What if a person was removed because of the party's failure to properly appoint him to serve the first time? Or what if a person is removed because of an illness one day, but is healthy for his next scheduled duty?

### **Proposed Rule- 08 NCAC 20 .0103 (Identification of Observers)**

\*The statute clearly indicates the Chief Judge may use reasonable methods to verify the identity of individuals appearing at the voting place to serve as an observer; but the verification of identity process ends when the observer has produced a valid ID upon arrival. As a Poll Observer, why are we being treated differently than a voter that presents their valid ID?

\*There should be no requirement for me, as a poll observer, to identify my name or political party in a manner visible to voters within the voting enclosure. Doing so makes me vulnerable to targeting by opposing partisans for political gain. This makes me very afraid to be a Poll Observer. As a Poll Observer, I would feel like I was wearing a target.

\*This rule should absolutely be deleted as the statute is already clear that Poll Observers are to be identified only by their position or role in the voting enclosure- not by their name or political party. This reminds me of what happened last year when I was put behind a chain and not allowed to move about, much like a criminal instead of a citizen.

Georgina G. Moffitt, Henderson County, NC

## Burgos, Alexander N

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**From:** Jane Hopkins <JaneHop@hotmail.com>  
**Sent:** Thursday, January 25, 2024 3:03 PM  
**To:** rrc.comments  
**Cc:** Wakely, Lindsey  
**Subject:** [External] FW: Comments on the proposed Rules on Challenges to Poll Observers

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Dear rules committee,

Please submit my comments about this issue. I have been through the poll observer training. And, also been a greeter at the polling sites many times.

### **Regarding the Proposed Rule- 08 NCAC 20 .0101 (Challenge to the Appointment of an Observer)**

- If a poll observer is being challenged or removed, and he is scheduled for additional days that election cycle, he should be able to observe on those subsequent days, unless there is another challenge to his being there.
- If there is a challenge, to be successful, does it take a majority vote from the judges, or will it require a unanimous decision? Please outline.
- This rule doesn't say what grounds there are for challenging a poll observer's appointment, as previously stated in the old rules.
- I think the challenge hearing should be prior to the scheduled period if at all possible when people are scheduled to be poll observers. If not, they might miss their time slot. Or if done on site by some action done by the observer, the party of the challenged observer needs to be able to replace the observer.
- I don't think that there should be one rule for Bd of Election members AND Judges. I think they should be kept separate, like they were in the previous document, in order to have separate procedures.

### **Proposed Rule- 08 NCAC 20 .0102 (Appeal of Removal of an Observer from a Voting Site)**

- Removing a poll observer leaves the party unaware to what is going on inside the voting facility. Therefore, some kind of expedite is needed to give the (removed) party the coverage they need, THAT DAY. My husband and I were poll observers a few years ago, the prior observer was removed and we were told that our party was not allowed inside

for the rest of the day. I don't think that should be allowed. ONE person's actions should not reflect on the poll observers for that party for the rest of the day.

- In other words, if three judges at a voting facility have removed a poll observer, the party that observer was from should have some way to replace them, the same day.
- If the ruling on a poll observer is not unanimous, that observer should not be removed from the polling facility, my opinion.
- I see no reason or benefit for a poll observer to appeal, after he has been removed from the voting site. If the observer is also scheduled for the next day, the removal should not affect the next day. That should be a separate case.
- Whenever a poll observer is removed during the hearing, it should be documented, and signed off by all judges at the voting facility, and copied to appointing authority.
- At early voting, there should be a member of the Elections Office, a member of the Board of Elections, or local Bd of Elections office on call in case there are no judges present for issues of observer challenges. The early voting site administrator should have the job of judging and reporting to the proper office.
- According to the statute, a poll observer is only removed for one day, then that days removal has no bearing on subsequent days he would be scheduled for.

**Proposed Rule- 08 NCAC 20 .0103 (Identification of Observers)**

- According to the statute, poll observers do not have to have their name displayed on their body, or a statement of party affiliation. However they should wear ID as to what their role as "observer"
- Poll observers only need to provide ID to the Chief Judge upon arriving to serve at the polling facility.

Thank you for asking for comments,

Jane Hopkins  
Registered Republican Voter, Wake County.