

## Burgos, Alexander N

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**Subject:** FW: Rule 08 NCAC 17 .0101  
**Attachments:** 08 NCAC 17 .0106 - revisions to RRC 071723.docx; 08 NCAC 17 .0105 - revisions to RRC 071723.docx;  
08 NCAC 17 .0102 - revisions to RRC 071723.docx; 08 NCAC 17 .0103 - revisions to RRC 071723.docx;  
08 NCAC 17 .0109 - revisions to RRC 071723.docx; 08 NCAC 17 .0101 - revisions to RRC 071723.docx

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**From:** Cox, Paul <paul.cox@ncsbe.gov>  
**Sent:** Monday, July 17, 2023 3:34 PM  
**To:** Peaslee, William W <bill.peaslee@oah.nc.gov>  
**Cc:** Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: Rule 08 NCAC 17 .0101

Bill,

I'm responding in this message to the emails from you between Friday and today, including with the attached updated rule drafts.

You are correct that if the voter has completed the affidavit as in GS 163-166.16(d) and is otherwise eligible to vote, the only basis to reject the provisional ballot would be for a finding that the affidavit is false, per GS 163-166.16(f). Outside of the photo ID context, provisional ballots are rejected only if the voter is not determined to be eligible (including, per your example, if the voter has already voted). So if a person is eligible to vote and their affidavit is complete, the only decision before the board would be the truth/falsity of the affidavit.

We appreciate the suggested wording, but we're worried that the framing, while logically consistent with the legislature's intent, flips the instructive language in the statute, and could confuse the practical application of the rule which, for the run-of-the-mill case, is likely going to be a noncontroversial approval of the ballot for an eligible voter with a completed affidavit. For that matter, the existing language in the rule could be modified to more closely track the legislature's intent here. In GS 163-166.16(f), the clear intent is that if the voter is otherwise eligible to vote and is casting a provisional ballot because of an ID exception and they have provided an exception affidavit, then the only grounds to reject that ballot is for falsity of the affidavit. We've suggested a rewording in line 32 to more closely track the statute's framing, and we've added an explanation of "complete" in lines 30-31 per your suggestion in the email about the lack of clarity of that word.

On the items you wrote about on Friday, below I've reattached your questions with responses in green.

In Rule .101, (d)(3), Page 4, Line 23: Would not the one-stop "judges" also hear the challenges under (a)(3)? This line appears to limit them to "reasonable resemblance" under (a)(2)? *Yes, thank you for spotting that. The intent is to have all judges who are hearing challenges under this Subparagraph to have the same scope of matters for decision, whether this is occurring on election day or during one-stop. The agency is proposing clarifying language in line 23, so that the provision on how one-stop judges are designated is not misinterpreted as somehow limiting the scope of a challenge hearing under this Subparagraph.*

In Rule .101, (e)(2)(C), Page 5, Line 27: Should not "determination" be "recommendation"? *Yes, that's fine. The agency proposes to accept that suggestion.*

Regarding your email today about the history note on the rules, those have been updated in the attached drafts, as best we can tell what we should include here. For that, we proceeded as follows:

- 150B-21.1(d) provides that “A temporary rule becomes effective on the date specified in G.S. 150B-21.3.”
- 150B-21.3(a) says that “[a] temporary rule or an emergency rule becomes effective on the date the Codifier of Rules enters the rule in the North Carolina Administrative Code.”
- 150B-21.1(b) provides that if the RRC approves of the temporary rule, it must “deliver the rule to the Codifier of Rules within two business days of approval. The Codifier of Rules must enter the rule into the North Carolina Administrative Code on the sixth business day following receipt from the Commission or its designee.”

So, we went with August 1 based on the combined 8 business days. But if the Codifier receives the rules earlier than that second business day, I suppose the effective date could be earlier.

Please let me know if we need to talk through any of these items.

Paul

1 08 NCAC 17 .0101 is amended under temporary procedures **with changes**, and **additional changes** in response to Rules  
2 Review Commission staff suggestions, as follow:

3  
4 **08 NCAC 17 .0101** **DETERMINATION OF REASONABLE RESEMBLANCE/VERIFICATION OF**  
5 **PHOTO IDENTIFICATION DURING IN-PERSON VOTING/AT CHECK IN**

6 (a) ~~When a person presenting to vote checks in at a voting site, An election official shall check the registration status~~  
7 ~~of all persons presenting to vote in person on election day or during one stop early voting pursuant to G.S. 163-166.7,~~  
8 ~~and shall require that all persons presenting to vote provide an election official shall ask the voter to show photo~~  
9 ~~identification in accordance with G.S. 163-166.16 and this Rule, one of the forms of photo identification listed in G.S.~~  
10 ~~163-166.13(e), subject to the exceptions outlined in Paragraph (b) of this Rule. If a person not satisfying the exceptions~~  
11 ~~described in Paragraph (b) of this Rule does not provide any photo identification, the election official shall inform the~~  
12 ~~person presenting to vote of applicable options specified in G.S. 163-166.13(e). If the person presenting to vote wishes~~  
13 ~~to choose the option of voting a provisional ballot, the election official shall provide the person presenting to vote with~~  
14 ~~information on the provisional voting process and the address of the county board of elections office.~~

15 (b) ~~The election official shall not require photo identification of a person who has a sincerely held religious objection~~  
16 ~~to being photographed and meets the requirements of G.S. 163-166.13(a)(2), or who is the victim of a natural disaster~~  
17 ~~and meets the requirements of G.S. 163-166.13(a)(3). Persons falling within any exception listed in this Paragraph~~  
18 ~~shall be allowed to proceed pursuant to G.S. 163-166.7.~~

19 (e) The election official shall ~~inspect~~examine any photo identification provided by the person presenting to vote and  
20 shall determine the following:

21 (1) ~~That the~~The photo identification is of the type acceptable for voting purposes pursuant to ~~G.S.~~  
22 ~~163-166.13(e), G.S. 163-166.16(a).~~ A valid United States passport book or a valid United States  
23 passport card is acceptable pursuant to ~~G.S. 163-166.13(e); G.S. 163-166.16(a)(1)c.~~

24 (2) ~~That the photo identification is unexpired or is otherwise acceptable pursuant to G.S. 163-166.13(e);~~

25 (2)(3) ~~That the~~The photograph appearing on the photo identification ~~depicts~~bears a reasonable  
26 resemblance to the person presenting to vote. A reasonable resemblance is a similarity in appearance  
27 such that an ordinary person would conclude that the photograph on the identification is more likely  
28 than not the person presenting to vote. The election official shall make this determination based on  
29 the totality of the circumstances, construing all evidence, along with any explanation or  
30 documentation voluntarily proffered by the person presenting to vote, in the light most favorable to  
31 that person person, and bearing in mind that there are many reasons that a person's appearance could  
32 change (such as, for illustrative purposes only, changes in hair, facial hair, or weight; or the effects  
33 of medical conditions, aging, or medical treatment). The election official shall also be guided by the  
34 purpose of the photo identification requirement, which is to confirm the person presenting to vote  
35 is the registered voter on the voter registration records. ~~Perceived differences of the following~~  
36 ~~features shall not be grounds for the election official to find that the photograph appearing on the~~  
37 ~~photo identification fails to depict the person presenting to vote:~~

- 1 (A) ~~weight;~~
- 2 (B) ~~hair features and styling, including changes in length, color, hairline, or use of a wig or~~
- 3 ~~other hairpiece;~~
- 4 (C) ~~facial hair;~~
- 5 (D) ~~complexion or skin tone;~~
- 6 (E) ~~cosmetics or tattooing;~~
- 7 (F) ~~apparel, including the presence or absence of eyeglasses or contact lenses;~~
- 8 (G) ~~characteristics arising from a perceptible medical condition, disability, or aging;~~
- 9 (H) ~~photographic lighting conditions or printing quality.; and~~

10 (3)(4) ~~That the~~The name appearing on the photo identification is the same as or substantially  
 11 equivalent to the name contained in the voter's voter registration record. The election official shall  
 12 make this determination based on the totality of the circumstances, construing all evidence, along  
 13 with any explanation or documentation voluntarily ~~proffered~~ offered by the person presenting to  
 14 vote, in the light most favorable to that person. The election official shall consider the name  
 15 appearing on the photo identification shall to be considered substantially equivalent to the name  
 16 contained in the registration record if differences are attributable to a reasonable explanation  
 17 explanation, which shall include but is not limited to ~~or~~ one or more of the following reasons:

- 18 (A) Omission or inclusion of one or more parts of the name (such as, for illustrative purposes  
 19 only, Mary Beth Smith versus Beth Smith, or Patrick Todd Jackson, Jr. versus Patrick Todd  
 20 Jackson, or Maria Guzman-Santana versus Maria Guzman);
- 21 (B) Use of a variation or nickname rather than a formal name (such as, for illustrative purposes  
 22 only, Bill versus William, or Sue versus Susanne);
- 23 (C) Use of an initial in place of one or more parts of a given name (such as, for illustrative  
 24 purposes only, A.B. Sanchez versus Aaron B. Sanchez);
- 25 (D) Use of a former name, including maiden names (such as, for illustrative purposes only,  
 26 Emily Jones versus Emily Gibson), or a variation that includes or omits a hyphenation or  
 27 hyphen (such as, for illustrative purposes only, Chantell D. Jacobson-Smith versus Chantell  
 28 D. Jacobson); Jacobson or Chantell D. Jacobson Smith), an accent (such as, for illustrative  
 29 purposes only, José Muñoz versus Jose Munoz), or an apostrophe (such as, for illustrative  
 30 purposes only, Andrea D'Antonio versus Andrea Dantonio);
- 31 (E) Ordering of names (such as, for illustrative purposes only, Maria Eva Garcia Lopez versus  
 32 Maria E. Lopez-Garcia); or
- 33 (F) Variation in spelling or typographical errors (such as, for illustrative purposes only,  
 34 Dennis McCarthy versus Denis McCarthy, or Aarav Robertson versus Aarav Robertsson).

35 (b)(4) The election official examining photo identification provided by a person presenting to vote shall not require  
 36 the voter to provide any additional evidence outside the four corners of the photo identification. The election official  
 37 shall not require that any person remove apparel for the purposes of ~~rendering a determination~~ determining reasonable

1 resemblance under Paragraph (e) Subparagraph (a)(2) of this Rule. If the face of the person presenting to vote is  
2 covered to such an extent such that the election official cannot ~~render a determination under Subparagraph (e)(3),~~  
3 determine reasonable resemblance, then the election official shall offer the voter the options to vote by provisional  
4 ballot in accordance with Paragraph (e) of this Rule. ~~give the person the opportunity to remove the covering but shall~~  
5 not require that removal. If the person declines to remove the covering, the election official shall inform the person  
6 presenting to vote that he or she may cast a provisional ballot, which shall be counted in accordance with G.S. 163-  
7 182.1A, or, if applicable, may complete a written request for an absentee ballot as set out in G.S. 163-166.13(e)(3),  
8 and shall inform the voting site's judges of election that the election official cannot affirmatively determine that the  
9 person bears any reasonable resemblance to the photo identification. G.S. 163-166.16.

10 ~~(c)(e)~~ Differences between the address appearing on the photo identification of a person presenting to vote meeting  
11 the requirements of Subparagraph (e)(1) and the address contained in the registration record of that person shall not  
12 be construed considered as evidence that the photographic identification ~~does not bear any reasonable resemblance~~  
13 pursuant to Subparagraphs (e)(3) and (e)(4) of this Rule, nor shall it be construed as evidence that the photographic  
14 identification does not otherwise fails to meet the requirements of any other provision of Paragraph (C). G.S. 163-  
15 166.16 or this Rule.

16 ~~(d)(f)~~ The election official examining photo identification provided by a person presenting to vote shall construe all  
17 evidence, along with any explanation or documentation voluntarily proffered offered by the person presenting to vote,  
18 in the light most favorable to that person, person, and shall be guided by the purpose of the photo identification  
19 requirement, which is to confirm the person presenting to vote is the registered voter on the voter registration records.

20 After examining the photo identification according to an examination performed in the manner set out in Paragraphs  
21 (a) through (c)(d) of this Rule, the election official shall proceed as follows:

- 22 (1) If the election official determines that the photo identification meets all the requirements of  
23 Paragraph ~~(a)(e)~~, of this Rule, then the election official shall allow the person presenting to vote  
24 shall be allowed to proceed vote pursuant to G.S. 163-166.7 and 163-166.13(b); or G.S. 163-166.7.
- 25 (2) If the election official determines that the photo identification is not an acceptable type of photo  
26 identification under does not meet all of the requirements of Subparagraphs (e)(1) and (e)(2)  
27 Subparagraph (a)(1) of this Rule, the election official shall inform the person presenting to vote of  
28 the reasons for ~~that such~~ determination (such as, for illustrative purposes only, that the photo  
29 identification is expired when that type of acceptable photo identification requires an expiration  
30 date) and shall invite the person to provide any other acceptable photo identification that is  
31 acceptable under Subparagraph (a)(1) of this Rule that the person he or she may have. If the person  
32 presenting to vote does not produce photo identification that meets all the requirements of  
33 Subparagraph (a)(1) of this Rule, (e)(1) and (e)(2), then the election official shall inform the person  
34 presenting to vote of ~~applicable~~ the options specified in Paragraph (e) of this Rule. ~~G.S. 163-~~  
35 ~~166.13(e).~~ If the person presenting to vote wishes to choose the option of voting a provisional ballot,  
36 the election official shall provide the person presenting to vote with information on the provisional  
37 voting process and the address of the county board of elections office.

1 (3) If the election official determines that the photo or name on the photo identification do not satisfy  
2 Subparagraphs (a)(2) and (a)(3) of this Rule, does not meet all the requirements of Subparagraphs  
3 (e)(3) and (e)(4), the election official shall enter a challenge pursuant to G.S. 163-87 and  
4 immediately notify the voting site's judges of election of the challenge, that the person presenting  
5 to vote does not bear any reasonable resemblance to the photo identification. The judges of election  
6 shall then conduct a challenge hearing, in accordance with the procedures in G.S. 163-88. At the  
7 conclusion of the hearing, the judges of election shall vote on whether the photo identification of  
8 the person presenting to vote bears a reasonable resemblance to that person person, or whether the  
9 name appearing on the photo identification is the same as or substantially equivalent to the name  
10 contained in the voter's voter registration record, applying the same standards as the election official  
11 initially reviewing the identification under Subparagraphs (a)(2) and (a)(3), and eachEach judge  
12 shall record theirthe judge's findings in writing on a challenge form provided by the State Board. In  
13 making this determination, the judges of election are subject to the requirements of this Rule in the  
14 same manner as the election official initially examining the photo identification. Only if the judges  
15 of election unanimously find that the photo identification does not bear a reasonable resemblance to  
16 the person presenting to vote, or that the name appearing on the photo identification is not the same  
17 as or substantially equivalent to the name contained in the voter's voter registration record, the voter  
18 shall be offered the options to vote by the person shall vote with a provisional ballot in accordance  
19 with Paragraph (e) of this Rule. Absent such a unanimous finding, the person shall vote with a  
20 regular ballot pursuant to G.S. 163-166.7. To the extent the General Statutes do not specifically  
21 address judges of election at one-stop sites, forFor the purposes of this Subparagraph, "judges of  
22 election" includes a group of three one-stop officials designated by the county board to hear a  
23 challenge to a voter's photo identification reasonable resemblance, not all of whom are affiliated  
24 with the same political party. When the judges of election conduct a challenge hearing under this  
25 Rule and the challenge is to a curbside voter, to ensure the voting enclosure remains properly  
26 attended, the judges may separately visit the curbside location to review the evidence.

27 (e) A person presenting to vote who does not present acceptable photo identification in accordance with this Rule shall  
28 be offered the following options:

29 (1) To vote by provisional ballot with an affidavit claiming an exception to the identification  
30 requirement, pursuant to G.S. 163-166.16(d). If the voter has completed the affidavit as required in  
31 G.S. 163-166.16(d) and is otherwise eligible to vote, to help ensure impartiality, the county board  
32 shall count the provisional ballot unless may reject the provisional ballot only if the county board  
33 unanimously finds that the affidavit is false. The county board shall substantiate any finding of  
34 falsity with grounds recorded in a written decision. Before making a final finding of falsity, the  
35 county board shall provide the voter notice and an opportunity to be heard at a meeting of the county  
36 board prior to completion of the canvass on any grounds that the county board is considering  
37 considers regarding the falsity of the affidavit. Notice of the grounds for falsity and the opportunity

1 for a hearing shall be provided by U.S. mail and by any email address or phone number that the  
2 county board possesses for the voter means designed to ensure it is received by the voter in advance  
3 of the board's final decision on the affidavit.

4 (2) To vote by provisional ballot and then bring to the office of the county board identification  
5 acceptable under G.S. 163-166.16 and this Rule before the end of business on the business day  
6 before county canvass. The county board shall count the provisional ballot of a voter who presents  
7 such identification to the office of the county board in a timely manner. If the voter brings photo  
8 identification to the office of a county board in a timely manner, a county board staff member shall  
9 examine the photo identification in accordance with Paragraphs (a), (b), and (c) Paragraph (d) of  
10 this Rule. After examining the photo identification, the staff member shall proceed as follows:

11 (A) If the staff member determines that the photo identification meets all the requirements of  
12 Paragraph (a) of this Rule, the staff member shall recommend approval of the provisional  
13 ballot to the county board a report of this determination shall be included with the voter's  
14 provisional ballot for county board action.

15 (B) If the staff member determines that the photo identification is not an acceptable type of  
16 photo identification under Subparagraph (a)(1) of this Rule, then the staff member shall  
17 inform the voter of the reasons for that determination determination, while the voter is at  
18 the county board office, and invite the voter to provide an acceptable photo identification  
19 in accordance with Subparagraph (d)(2) of this Rule. If the voter does not timely provide  
20 acceptable identification by the end of business on the business day prior to the  
21 canvass identification, then county board staff shall recommend disapproval of the  
22 provisional ballot to the county board shall not count the provisional ballot.

23 (C) If the staff member determines that the photo or name on the photo identification do not  
24 satisfy Subparagraphs (a)(2) and (a)(3) of this Rule, then the staff member shall  
25 recommend disapproval of the provisional ballot to the county board. documentation of  
26 this determination shall be included with the provisional envelope containing the voter's  
27 ballot. While the voter is at the county board office, The the staff member shall immediately  
28 inform the voter of the recommendation determination and provide notice to the voter of  
29 the county board meeting at which the voter's provisional ballot will be reviewed and  
30 considered by the county board. If the voter appears at that meeting and desires to be heard  
31 on whether their photo identification is acceptable under this Rule. In reviewing a photo  
32 identification to make a final decision on a provisional ballot subject to this Subparagraph,  
33 the county board members are subject to the requirements of this Rule in the same manner  
34 as a staff member initially examining a voter's photo identification, and shall vote on  
35 whether the photo identification presented satisfies Subparagraphs (a)(2) and (a)(3) of this  
36 Rule.

1 If the voter brings photo identification that is an acceptable type of photo identification under  
2 Subparagraph (a)(1) of this Rule to the county board office before the end of business on the business  
3 day prior to the canvass, the county board shall count the provisional ballot unless the county board  
4 unanimously decides the photo identification presented does not satisfy Subparagraphs (a)(2) and  
5 (a)(3) of this Rule, in which case the county board shall record in writing the grounds for its decision.

6  
7 *History Note:* Authority *G.S. 163-22; 163-82.6A; 163-82.15; 163-166.7; NAACP v. McCrory, 831 F.3d 204*  
8 *(4<sup>th</sup> Cir. 2016); 163A-1145.1; S.L. 2018-144, s. 3.1(e); 163-166.11; 163-166.16;*  
9 *Eff. January 1, 2016;*  
10 *Temporary Amendment Eff. August 23, 2019;*  
11 *Temporary Amendment Expired Eff. June 12, 2020, 2020;*  
12 *Temporary Amendment Eff. August 1, 2023.*  
13



1 08 NCAC 17 .0102 is repealed under temporary procedures as follows:

2

3 **08 NCAC 17 .0102 DETERMINATION OF REASONABLE RESEMBLANCE BY JUDGES OF ELECTION**

4

5 *History Note:* Authority G.S. 163-166.7; 163-82.6A; 163-82.15; 163-88.1; 163-166.7; NAACP v. McCrory, 831  
6 F.3d 204 (4<sup>th</sup> Cir. 2016); 163A-1145.1; S.L. 2018-144, s. 3.1(e);

7 Eff. January 1, 2016;

8 Temporary Amendment Eff. August 23, 2019;

9 Temporary Amendment Expired Eff. June 12, 2020;

10 ~~Repealed Eff. Temporary Repeal Eff. August 1, 2023.~~

11



1 08 NCAC 17 .0103 is repealed under temporary procedures as follows:

2

3 **08 NCAC 17 .0103 IDENTIFICATION REQUIRED OF CURBSIDE VOTERS**

4

5 *History Note: Authority NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); S.L. 2018-144, s. 3.1(d);*

6 *Eff. January 1, 2016;*

7 *Temporary Repeal Eff. August 23, 2019;*

8 *Temporary Repeal Expired Eff. June 12, 2020;*

9 ~~*Repealed Eff. Temporary Repeal Eff. August 1, 2023.*~~

10

1 08 NCAC 17 .0105 is repealed under temporary procedures as follows:

2

3 **08 NCAC 17 .0105           DECLARATION OF RELIGIOUS OBJECTION TO PHOTOGRAPH**

4

5 *History Note:*     *Authority NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); S.L. 2018-144, s. 3.1.(a),(e), (h);*  
6                     *Eff. January 1, 2016;*  
7                     *Temporary Repeal Eff. August 23, 2019;*  
8                     *Temporary Repeal Expired Eff. June 12, 2020;*  
9                     ~~*Repealed Eff. Temporary Repeal Eff. August 1, 2023.*~~

10

1 08 NCAC 17 .0106 is repealed under temporary procedures as follows:

2

3 **08 NCAC 17 .0106 SIGNAGE NOTIFYING ONE-STOP VOTERS OF THE OPTION TO REQUEST**  
4 **AN ABSENTEE BALLOT**

5

6 *History Note: Authority NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); S.L. 2018-144, s. 3.1.(j);*

7

*Eff. March 1, 2016;*

8

*Temporary Repeal Eff. August 23, 2019;*

9

*Temporary Repeal Expired Eff. June 12, 2020;*

10

~~*Repealed Eff. Temporary Repeal Eff. August 1, 2023.*~~

11

1 08 NCAC 17.0109 is adopted under temporary procedures with changes, and additional changes in response to  
2 Rules Review Commission staff suggestions, as follows:

3  
4 **08 NCAC 17.0109 PHOTO IDENTIFICATION FOR ABSENTEE-BY-MAIL BALLOTS**

5 ~~(a) Definitions. The following definitions apply to this Rule:~~

6 ~~(1) "Readable" means the name on the identification can be read and the photograph depicts a person,~~  
7 ~~as opposed to displaying, for example, a mere shadow or outline of a person.~~

8 ~~(2) "Copy" means a duplicate of an original document, including a photographic copy of the original~~  
9 ~~document.~~

10 ~~(a)(b)~~ Identification Requirement for Absentee-by-Mail Ballots. Photo identification accompanying a voter's absentee  
11 ballot pursuant to G.S. 163-230.1(f1) is acceptable if it is a photocopy of a type of photo identification acceptable for  
12 voting purposes under 08 NCAC 17 .0101(a)(1), is readable, and the name appearing on the identification is the same  
13 as or substantially equivalent to the name contained in the voter's voter registration record in accordance with 08  
14 NCAC 17 .0101(a)(3). As used in this Rule, "readable" means that, on the photocopy of identification required by this  
15 Rule, the name on the identification can be read and the photograph depicts a person, as opposed to displaying, for  
16 example, a mere shadow or outline of a person. A photo identification shall not be rejected due to differences between  
17 the address appearing on an absentee voter's photo identification and any address contained in the voter's absentee  
18 request form, absentee ballot application, or registration record. A copy of photo identification that is acceptable under  
19 this Rule need include only the side of the identification (or, if the identification is a booklet, the page of the  
20 identification) where the person's name and photo appears.

21 ~~(b)(e)~~ Initial Review by County Board Staff. County board staff shall, upon receipt of a voter's absentee ballot  
22 application, determine whether the application is accompanied by a photocopy eopy of photo identification that is  
23 readable and is of a type of photo identification acceptable for voting purposes under 08 NCAC 17 .0101(a)(1), or, if  
24 the application is accompanied by an affidavit claiming an exception to the identification requirement pursuant to G.S.  
25 163-166.16(d), determine whether the affidavit includes the affirmations required by G.S. 163-166.16(d) for that  
26 exception is complete. If staff identify any deficiency, they shall send mail written notice of the deficiency to the voter  
27 within one business day of identifying the deficiency, informing the voter that the voter, the voter's verifiable legal  
28 guardian or near relative, or a person of the voter's choice if the voter needs assistance due to the voter's disability,  
29 may provide a photocopy eopy of the voter's acceptable photo identification or a completed affidavit claiming an  
30 exception to the county board by the deadline specified in G.S. 163-166.16(c). Staff shall additionally notify the voter  
31 by telephone or email, using any telephone number or email address contained in the voter's voter registration record  
32 or provided by the voter when requesting an absentee ballot. ~~if the voter provided their telephone number or email~~  
33 ~~address when registering to vote.~~

34 ~~(c)(d)~~ Final Review by County Board. The county board shall, at the first meeting held pursuant to G.S. 163-230.1(f)  
35 after the application and ballot is received, proceed as follows:

- 36 (1) If the voter has submitted a photocopy eopy of their photo identification, the county board shall  
37 make its determination whether the identification is acceptable under Paragraph ~~(a)(b)~~ of this Rule.

1 ~~To help ensure impartiality, a~~ final determination that the ~~photocopy copy~~ of photo identification  
2 is not acceptable under Paragraph ~~(a)(b)~~ of this Rule shall require a unanimous vote by the county  
3 board. ~~If the county board makes a final determination that a voter's photocopy copy of photo~~  
4 ~~identification is not acceptable, staff shall notify the voter as provided in Paragraph (b)(e) of this~~  
5 ~~Rule.~~

6 (2) If the voter has completed an affidavit claiming an exception to the identification requirement  
7 pursuant to G.S. 163-166.16(d), and is otherwise eligible to vote, ~~to help ensure impartiality~~ the  
8 county board may reject that person's ballot only if the county board unanimously finds that the  
9 affidavit is false. The county board shall substantiate any finding of falsity with grounds recorded  
10 in a written decision. Before making a finding of falsity, the county board shall provide the voter  
11 notice and an opportunity to be heard ~~at a meeting of the county board prior to the completion of~~  
12 ~~the canvass~~ on any grounds that the county board ~~is considering~~ ~~considers~~ regarding the falsity of  
13 the affidavit. ~~Notice of the grounds for falsity and the opportunity for a hearing shall be provided~~  
14 ~~by U.S. mail and by any email address or phone number that the county board possesses for the~~  
15 ~~voter.~~

16 (3) If a voter's ~~photocopy copy~~ of photo identification or ~~alternative affidavit~~ ~~affidavit claiming an~~  
17 ~~exception to the identification requirement pursuant to G.S. 163-166.16(d)~~ is deemed deficient under  
18 Paragraph ~~(b)(e)~~ of this Rule, the county board shall reserve its final decision on the approval of the  
19 absentee application until the next official meeting after the deficiency is cured or the county  
20 canvass, whichever occurs first.

21 ~~(d)(e)~~ Exception for Military and Overseas Voters. A covered voter who is casting a ballot pursuant to G.S. 163,  
22 Article 21A, Part 1 is not required to submit a ~~photocopy copy~~ of acceptable photo identification under Paragraph  
23 ~~(a)(b)~~ of this Rule or claim an exception under G.S. 163-166.16(d).

24 ~~(c)(f)~~ Return of Original Form of Identification. If a voter sends their original form of photo identification in the  
25 container-return envelope, ~~or if a voter~~ ~~hand-delivers an absentee ballot to the county board of elections that is not~~  
26 ~~accompanied by a photocopy of the voter's photo identification and the voter has a type of photo identification~~  
27 ~~acceptable for voting purposes under 08 NCAC 17.0101(a)(1) on hand,~~ the county board shall make a photocopy of  
28 the identification, which shall serve as an acceptable photo identification accompanying the voter's absentee  
29 ~~ballot, ballot, and mail the original form of identification back to the voter.~~ The county board shall notify the voter ~~by~~  
30 ~~mail and by any email address or phone number that the county board possesses for the voter~~ that the original photo  
31 ~~identification will be returned to the voter and shall use a method of return that documents receipt of the photo~~  
32 ~~identification.~~

33  
34 *History Note:* Authority G.S. 163-22; 163-166.7; 163-166.16; 163-229; 163-230.1;  
35 *Temporary Adoption Eff. August 23, 2019; January 1, 2020;*  
36 *Temporary Rule Expired Eff. October 11, 2020-2020;*  
37 *Temporary Adoption Eff. August 1, 2023.*

## **Burgos, Alexander N**

---

**Subject:** FW: Board of Elections Temp Rule

---

**From:** Peaslee, William W <bill.peaslee@oah.nc.gov>

**Sent:** Friday, July 14, 2023 1:22 PM

**To:** Cox, Paul <paul.cox@ncsbe.gov>

**Cc:** Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Subject:** RE: Board of Elections Temp Rule

In Rule .101, (d)(3), Page 4, Line 23: Would not the one-stop “judges” also hear the challenges under (a)(3)? This line appears to limit them to “reasonable resemblance” under (a)(2)?

In Rule .101, (e)(2)(C), Page 5, Line 27: Should not “determination” be “recommendation”?

Please reply to this email no later than COB Monday, July 17.

**William W. Peaslee**

**Rules Review Commission Counsel / Legislative Liaison**

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

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## **Burgos, Alexander N**

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**From:** Cox, Paul  
**Sent:** Friday, July 14, 2023 12:31 PM  
**To:** Peaslee, William W  
**Cc:** Wakely, Lindsey; Burgos, Alexander N  
**Subject:** RE: Board of Elections Temp Rule  
**Attachments:** 08 NCAC 17 .0101 - revisions to RRC 071423.docx; 08 NCAC 17 .0109 - revisions to RRC 071423.docx

Bill,

Please find attached revised rules that address the following points:

- In 0101, page 2, line 17, revision to state “shall include but is not limited to,” to avoid any misunderstanding that the list that follows is exclusive. As we discussed by phone, clarification of “reasonable explanation” could either be by definition or by reference to examples. The intent with this revision is to clarify “reasonable explanation” with reference to the examples of reasonable explanations that follow, not to define the term as only encompassing those items.
- In 0101, page 5, line 35, revision to reverse indent the last sentence of that division. With the edits for clarification of (e)(2)(C), especially the deletions in lines 30 and 31, the agency realized that the last statement could be misread as applying only to the situation when a county board staff person recommends disapproval of the provisional ballot, or, even more narrowly, when a voter appears to content that recommendation of disapproval to the county board. The intent was to require the unanimous decision to discount the provisional ballot whenever a voter returns with an acceptable form of ID to the county board office, which would provide for consistency in analogous decisions to approve or disapprove of an ID with a ballot for in-person voting (by the judges of election), absentee voting, and the approval of a provisional where the ID is attempted to be cured.
- In 0109, in response to your clarification about the “completeness” of the affidavit, the agency proposes to rephrase to confirm that the staff is reviewing to determine that the elements of the affidavit that are enumerated as requirements in GS 163-166.16(d) are present. That is what was meant by “complete.”
- In 0109, we noticed that with the elimination of the original Paragraph (a), we needed to update some internal references, which we have done on page 1, line 37, and page 2, lines 2, 4, 18, 23

Please let me know if any of these items, or others pertaining to these rules, require further discussion or clarification.

Best regards,

**Paul Cox**  
General Counsel  
NORTH CAROLINA STATE BOARD OF ELECTIONS  
RALEIGH, NC 27611  
919.814.0700  
[www.ncsbe.gov](http://www.ncsbe.gov)

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**From:** Cox, Paul  
**Sent:** Thursday, July 13, 2023 2:57 PM  
**To:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Cc:** Wakely, Lindsey <[Lindsey.Wakely@ncsbe.gov](mailto:Lindsey.Wakely@ncsbe.gov)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: Board of Elections Temp Rule

Thank you for that clarification, Bill. The point is to make sure the affidavit meets the statutory requirements. We can work on something to address this. There were a couple other things from the suggested modifications yesterday that we noticed may need cleaning up to avoid misinterpretation, so I'll get back to you with this and those items ASAP.

Paul

---

**From:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Sent:** Thursday, July 13, 2023 2:53 PM  
**To:** Cox, Paul <[paul.cox@ncsbe.gov](mailto:paul.cox@ncsbe.gov)>  
**Cc:** Wakely, Lindsey <[Lindsey.Wakely@ncsbe.gov](mailto:Lindsey.Wakely@ncsbe.gov)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: Board of Elections Temp Rule

Good afternoon Paul,

In 08 NCAC 17 .0109, Page 1, Line 25: While I appreciate the Board providing me with the definition of "complete," an affidavit can have "all necessary parts, elements, or steps" to be an affidavit (i.e., a signature, sworn to, notarization, etc.) yet still the affidavit might not satisfy all of the requirements of G.S. 163-166.16(d) for the ballot to be counted. In other words, the paper offered could be an affidavit yet still be deficient. Is the County Board staff opining whether the paper is an affidavit or whether it satisfies the requirements of G.S. 163-166.16(d)? Thus, my question, what does the Board mean by "complete."

I believe that the Board intends the review by staff to be whether, in the staff's opinion (but not ultimate determination which is reserved for the Board), the "affidavit" satisfies G.S. 163-166.16(d). But you tell me. As written, it is unclear.

Please respond no later than COB Friday, July 14, 2023. Thank you.

**William W. Peaslee**  
**Rules Review Commission Counsel / Legislative Liaison**  
Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh NC, 27609  
(984) 236-1939  
[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

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**From:** Cox, Paul <[paul.cox@ncsbe.gov](mailto:paul.cox@ncsbe.gov)>  
**Sent:** Wednesday, July 12, 2023 6:24 PM

**To:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>

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

**Subject:** RE: Board of Elections Temp Rule

Good afternoon, Bill.

Please find attached the agency's responses to the requests for changes, with new copies of the two rules at issue with highlighting to show proposed changes based on the requests. We welcome any further thoughts or questions prior to the Commission's consideration.

Best regards,

**Paul Cox**

General Counsel

NORTH CAROLINA STATE BOARD OF ELECTIONS

RALEIGH, NC 27611

919.814.0700

[www.ncsbe.gov](http://www.ncsbe.gov)

---

**From:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>

**Sent:** Friday, June 30, 2023 3:20 PM

**To:** Cox, Paul <[paul.cox@ncsbe.gov](mailto:paul.cox@ncsbe.gov)>

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

**Subject:** Board of Elections Temp Rule

Good afternoon Paul.

I am the attorney who was assigned to review the Board of Elections Temporary rule filed today. The Rules Review Commission will consider the rules at its July 20 meeting.

Attached please find the request for changes. Please reply by July 12, 2023. Also, please provide me with the contact information for the chairman of the Board of Elections which was missing from the filing form. (Please see G.S. 150B-21.1(b1))

As always, if you have any questions or concerns please do not hesitate to contact me.

I hope you have a safe and happy Independence Day.

**William W. Peaslee**

**Rules Review Commission Counsel / Legislative Liaison**

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

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1 08 NCAC 17 .0101 is amended under temporary procedures **with changes**, and **additional changes** in response to Rules  
2 Review Commission staff suggestions, as follow:

3  
4 **08 NCAC 17 .0101** **DETERMINATION OF REASONABLE RESEMBLANCE/VERIFICATION OF**  
5 **PHOTO IDENTIFICATION DURING IN-PERSON VOTING/AT CHECK IN**

6 (a) When a person presenting to vote checks in at a voting site, An election official shall check the registration status  
7 of all persons presenting to vote in person on election day or during one stop early voting pursuant to G.S. 163-166.7,  
8 and shall require that all persons presenting to vote provide an election official shall ask the voter to show photo  
9 identification in accordance with G.S. 163-166.16 and this Rule, one of the forms of photo identification listed in G.S.  
10 163-166.13(e), subject to the exceptions outlined in Paragraph (b) of this Rule. If a person not satisfying the exceptions  
11 described in Paragraph (b) of this Rule does not provide any photo identification, the election official shall inform the  
12 person presenting to vote of applicable options specified in G.S. 163-166.13(e). If the person presenting to vote wishes  
13 to choose the option of voting a provisional ballot, the election official shall provide the person presenting to vote with  
14 information on the provisional voting process and the address of the county board of elections office.

15 (b) ~~The election official shall not require photo identification of a person who has a sincerely held religious objection~~  
16 ~~to being photographed and meets the requirements of G.S. 163-166.13(a)(2), or who is the victim of a natural disaster~~  
17 ~~and meets the requirements of G.S. 163-166.13(a)(3). Persons falling within any exception listed in this Paragraph~~  
18 ~~shall be allowed to proceed pursuant to G.S. 163-166.7.~~

19 (e) The election official shall ~~inspect~~examine any photo identification provided by the person presenting to vote and  
20 shall determine the following:

21 (1) ~~That the~~The photo identification is of the type acceptable for voting purposes pursuant to ~~G.S.~~  
22 ~~163-166.13(e), G.S. 163-166.16(a).~~ A valid United States passport book or a valid United States  
23 passport card is acceptable pursuant to ~~G.S. 163-166.13(e); G.S. 163-166.16(a)(1)c.~~

24 (2) ~~That the photo identification is unexpired or is otherwise acceptable pursuant to G.S. 163-166.13(e);~~

25 (2)(3) ~~That the~~The photograph appearing on the photo identification ~~depicts~~bears a reasonable  
26 resemblance to the person presenting to vote. A reasonable resemblance is a similarity in appearance  
27 such that an ordinary person would conclude that the photograph on the identification is more likely  
28 than not the person presenting to vote. The election official shall make this determination based on  
29 the totality of the circumstances, construing all evidence, along with any explanation or  
30 documentation voluntarily proffered by the person presenting to vote, in the light most favorable to  
31 that person person, and bearing in mind that there are many reasons that a person's appearance could  
32 change (such as, for illustrative purposes only, changes in hair, facial hair, or weight; or the effects  
33 of medical conditions, aging, or medical treatment). The election official shall also be guided by the  
34 purpose of the photo identification requirement, which is to confirm the person presenting to vote  
35 is the registered voter on the voter registration records. ~~Perceived differences of the following~~  
36 ~~features shall not be grounds for the election official to find that the photograph appearing on the~~  
37 ~~photo identification fails to depict the person presenting to vote:~~

- 1 (A) ~~weight;~~
- 2 (B) ~~hair features and styling, including changes in length, color, hairline, or use of a wig or~~
- 3 ~~other hairpiece;~~
- 4 (C) ~~facial hair;~~
- 5 (D) ~~complexion or skin tone;~~
- 6 (E) ~~cosmetics or tattooing;~~
- 7 (F) ~~apparel, including the presence or absence of eyeglasses or contact lenses;~~
- 8 (G) ~~characteristics arising from a perceptible medical condition, disability, or aging;~~
- 9 (H) ~~photographic lighting conditions or printing quality.; and~~

10 (3)(4) ~~That the~~The name appearing on the photo identification is the same as or substantially  
 11 equivalent to the name contained in the voter's voter registration record. The election official shall  
 12 make this determination based on the totality of the circumstances, construing all evidence, along  
 13 with any explanation or documentation voluntarily ~~proffered~~ offered by the person presenting to  
 14 vote, in the light most favorable to that person. The election official shall consider the name  
 15 appearing on the photo identification shall to be considered substantially equivalent to the name  
 16 contained in the registration record if differences are attributable to a reasonable explanation  
 17 explanation, which shall include but is not limited to ~~or~~ one or more of the following reasons:

- 18 (A) Omission or inclusion of one or more parts of the name (such as, for illustrative purposes  
 19 only, Mary Beth Smith versus Beth Smith, or Patrick Todd Jackson, Jr. versus Patrick Todd  
 20 Jackson, or Maria Guzman-Santana versus Maria Guzman);
- 21 (B) Use of a variation or nickname rather than a formal name (such as, for illustrative purposes  
 22 only, Bill versus William, or Sue versus Susanne);
- 23 (C) Use of an initial in place of one or more parts of a given name (such as, for illustrative  
 24 purposes only, A.B. Sanchez versus Aaron B. Sanchez);
- 25 (D) Use of a former name, including maiden names (such as, for illustrative purposes only,  
 26 Emily Jones versus Emily Gibson), or a variation that includes or omits a hyphenation or  
 27 hyphen (such as, for illustrative purposes only, Chantell D. Jacobson-Smith versus Chantell  
 28 D. Jacobson); Jacobson or Chantell D. Jacobson Smith), an accent (such as, for illustrative  
 29 purposes only, José Muñoz versus Jose Munoz), or an apostrophe (such as, for illustrative  
 30 purposes only, Andrea D'Antonio versus Andrea Dantonio);
- 31 (E) Ordering of names (such as, for illustrative purposes only, Maria Eva Garcia Lopez versus  
 32 Maria E. Lopez-Garcia); or
- 33 (F) Variation in spelling or typographical errors (such as, for illustrative purposes only,  
 34 Dennis McCarthy versus Denis McCarthy, or Aarav Robertson versus Aarav Robertsson).

35 (b)(4) The election official examining photo identification provided by a person presenting to vote shall not require  
 36 the voter to provide any additional evidence outside the four corners of the photo identification. The election official  
 37 shall not require that any person remove apparel for the purposes of ~~rendering a determination~~ determining reasonable

1 resemblance under ~~Paragraph (e) Subparagraph (a)(2) of this Rule~~. If the face of the person presenting to vote is  
2 covered ~~to such an extent such~~ that the election official cannot ~~render a determination under Subparagraph (e)(3),~~  
3 ~~determine reasonable resemblance~~, then the election official shall ~~offer the voter the options to vote by provisional~~  
4 ~~ballot in accordance with Paragraph (e) of this Rule.~~ ~~give the person the opportunity to remove the covering but shall~~  
5 ~~not require that removal. If the person declines to remove the covering, the election official shall inform the person~~  
6 ~~presenting to vote that he or she may cast a provisional ballot, which shall be counted in accordance with G.S. 163-~~  
7 ~~182.1A, or, if applicable, may complete a written request for an absentee ballot as set out in G.S. 163-166.13(e)(3),~~  
8 ~~and shall inform the voting site's judges of election that the election official cannot affirmatively determine that the~~  
9 ~~person bears any reasonable resemblance to the photo identification. G.S. 163-166.16.~~

10 ~~(c)(e) Differences between the address appearing on the photo identification of a person presenting to vote meeting~~  
11 ~~the requirements of Subparagraph (e)(1) and the address contained in the registration record of that person shall not~~  
12 ~~be construed considered~~ as evidence that the photographic identification ~~does not bear any reasonable resemblance~~  
13 ~~pursuant to Subparagraphs (c)(3) and (c)(4) of this Rule, nor shall it be construed as evidence that the photographic~~  
14 ~~identification does not otherwise fails to meet the requirements of any other provision of Paragraph (C). G.S. 163-~~  
15 ~~166.16 or this Rule.~~

16 ~~(d)(f) The election official examining photo identification provided by a person presenting to vote shall construe all~~  
17 ~~evidence, along with any explanation or documentation voluntarily proffered offered by the person presenting to vote,~~  
18 ~~in the light most favorable to that person, person, and shall be guided by the purpose of the photo identification~~  
19 ~~requirement, which is to confirm the person presenting to vote is the registered voter on the voter registration records.~~

20 After ~~examining the photo identification according to an examination performed in the manner set out in Paragraphs~~  
21 ~~(a) through (c)(d) of this Rule~~, the election official shall proceed as follows:

22 (1) If the election official determines that the photo identification meets all the requirements of  
23 Paragraph ~~(a)(e)~~, of this Rule, then ~~the election official shall allow~~ the person ~~presenting to vote~~  
24 ~~shall be allowed to proceed vote~~ pursuant to G.S. 163-166.7 and 163-166.13(b); or G.S. 163-166.7.

25 (2) If the election official determines that the photo identification is ~~not an acceptable type of photo~~  
26 ~~identification under does not meet all of the requirements of Subparagraphs (e)(1) and (e)(2)~~  
27 ~~Subparagraph (a)(1) of this Rule~~, the election official shall inform the person presenting to vote of  
28 the reasons for ~~that such~~ determination (such as, for illustrative purposes only, that the photo  
29 identification is expired ~~when that type of acceptable photo identification requires an expiration~~  
30 ~~date~~) and shall invite the person to provide any other ~~acceptable~~ photo identification ~~that is~~  
31 ~~acceptable under Subparagraph (a)(1) of this Rule~~ that ~~the person he or she~~ may have. If the person  
32 presenting to vote does not produce photo identification that meets all the requirements of  
33 Subparagraph ~~(a)(1) of this Rule, (e)(1) and (e)(2)~~, then the election official shall inform the person  
34 presenting to vote of ~~applicable~~ the options specified in Paragraph (e) of this Rule. ~~G.S. 163-~~  
35 ~~166.13(e). If the person presenting to vote wishes to choose the option of voting a provisional ballot,~~  
36 ~~the election official shall provide the person presenting to vote with information on the provisional~~  
37 ~~voting process and the address of the county board of elections office.~~

1 (3) If the election official determines that the photo or name on the photo identification do not satisfy  
2 Subparagraphs (a)(2) and (a)(3) of this Rule, ~~does not meet all the requirements of Subparagraphs~~  
3 ~~(e)(3) and (e)(4)~~, the election official shall enter a challenge pursuant to G.S. 163-87 and  
4 immediately notify the voting site's judges of election of the challenge, ~~that the person presenting~~  
5 ~~to vote does not bear any reasonable resemblance to the photo identification.~~ The judges of election  
6 shall then conduct a challenge hearing, in accordance with the procedures in G.S. 163-88. At the  
7 conclusion of the hearing, the judges of election shall vote on whether the photo identification of  
8 the person presenting to vote bears a reasonable resemblance to that person ~~person~~, or whether the  
9 name appearing on the photo identification is the same as or substantially equivalent to the name  
10 contained in the voter's voter registration record, applying the same standards as the election official  
11 initially reviewing the identification under Subparagraphs (a)(2) and (a)(3), and each judge  
12 shall record ~~their~~ the judge's findings in writing on a challenge form provided by the State Board. In  
13 making this determination, the judges of election are subject to the requirements of this Rule in the  
14 same manner as the election official initially examining the photo identification. Only if the judges  
15 of election unanimously find that the photo identification does not bear a reasonable resemblance to  
16 the person presenting to vote, or that the name appearing on the photo identification is not the same  
17 as or substantially equivalent to the name contained in the voter's voter registration record, the voter  
18 shall be offered the options to vote by the person shall vote with a provisional ballot in accordance  
19 with Paragraph (e) of this Rule. Absent such a unanimous finding, the person shall vote with a  
20 regular ballot pursuant to G.S. 163-166.7. To the extent the General Statutes do not specifically  
21 address judges of election at one-stop sites, for the purposes of this Subparagraph, "judges of  
22 election" includes a group of three one-stop officials designated by the county board to hear a  
23 challenge to a voter's reasonable resemblance, not all of whom are affiliated with the same political  
24 party. When the judges of election conduct a challenge hearing under this Rule and the challenge is  
25 to a curbside voter, to ensure the voting enclosure remains properly attended, the judges may  
26 separately visit the curbside location to review the evidence.

27 (e) A person presenting to vote who does not present acceptable photo identification in accordance with this Rule shall  
28 be offered the following options:

29 (1) To vote by provisional ballot with an affidavit claiming an exception to the identification  
30 requirement, pursuant to G.S. 163-166.16(d). If the voter has completed the affidavit and is  
31 otherwise eligible to vote, ~~to help ensure impartiality~~, the county board may reject the provisional  
32 ballot only if the county board unanimously finds that the affidavit is false. The county board shall  
33 substantiate any finding of falsity with grounds recorded in a written decision. Before making a final  
34 finding of falsity, the county board shall provide the voter notice and an opportunity to be heard at  
35 a meeting of the county board prior to completion of the canvass on any grounds that the county  
36 board is considering considers regarding the falsity of the affidavit. Notice of the grounds for falsity  
37 and the opportunity for a hearing shall be provided by U.S. mail and by any email address or phone



1 ~~number that the county board possesses for the voter means designed to ensure it is received by the~~  
2 ~~voter in advance of the board's final decision on the affidavit.~~

3 (2) To vote by provisional ballot and then bring to the office of the county board identification  
4 acceptable under G.S. 163-166.16 and this Rule before the end of business on the business day  
5 before county canvass. ~~The county board shall count the provisional ballot of a voter who presents~~  
6 ~~such identification to the office of the county board in a timely manner.~~ If the voter brings photo  
7 identification to the office of a county board in a timely manner, a county board staff member shall  
8 examine the photo identification in accordance with Paragraphs (a), (b), and (c) Paragraph (d) of  
9 this Rule. After examining the photo identification, the staff member shall proceed as follows:

10 (A) If the ~~staff member determines that the~~ photo identification meets all the requirements of  
11 Paragraph (a) of this Rule, ~~the staff member shall recommend approval of the provisional~~  
12 ~~ballot to the county board a report of this determination shall be included with the voter's~~  
13 ~~provisional ballot for county board action.~~

14 (B) If the ~~staff member determines that the~~ photo identification is not an acceptable type of  
15 photo identification under Subparagraph (a)(1) of this Rule, then the staff member shall  
16 inform the voter of the reasons for that ~~determination~~ determination, while the voter is at  
17 the county board office, and invite the voter to provide an acceptable photo identification  
18 in accordance with Subparagraph (d)(2) of this Rule. If the voter does not ~~timely~~ provide  
19 acceptable identification by the end of business on the business day prior to the  
20 canvass, ~~identification,~~ then county board staff shall recommend disapproval of the  
21 provisional ballot to the county board ~~shall not count the provisional ballot.~~

22 (C) If the ~~staff member determines that~~ the photo or name on the photo identification do not  
23 satisfy Subparagraphs (a)(2) and (a)(3) of this Rule, then ~~the staff member shall~~  
24 ~~recommend disapproval of the provisional ballot to the county board. documentation of~~  
25 ~~this determination shall be included with the provisional envelope containing the voter's~~  
26 ~~ballot. While the voter is at the county board office, The the staff member shall immediately~~  
27 ~~inform the voter of the determination and provide notice to the voter of the county board~~  
28 ~~meeting at which the voter's provisional ballot will be reviewed and considered by the~~  
29 ~~county board. If the voter appears at that meeting and desires to be heard on whether their~~  
30 ~~photo identification is acceptable under this Rule. In reviewing a photo identification to~~  
31 ~~make a final decision on a provisional ballot subject to this Subparagraph, the county board~~  
32 ~~members are subject to the requirements of this Rule in the same manner as a staff member~~  
33 ~~initially examining a voter's photo identification, and shall vote on whether the photo~~  
34 ~~identification presented satisfies Subparagraphs (a)(2) and (a)(3) of this Rule.~~

35 If the voter brings photo identification that is an acceptable type of photo identification under  
36 Subparagraph (a)(1) of this Rule to the county board office before the end of business on the business  
37 day prior to the canvass, the county board shall count the provisional ballot unless the county board

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unanimously decides the photo identification presented does not satisfy Subparagraphs (a)(2) and (a)(3) of this Rule, in which case the county board shall record in writing the grounds for its decision.

*History Note:* Authority G.S. ~~163-22; 163-82.6A; 163-82.15; 163-166.7; NAACP v. McCrory, 831 F.3d 204 (4<sup>th</sup> Cir. 2016); 163A-1145.1; S.L. 2018-144, s. 3.1(e); 163-166.11; 163-166.16;~~  
*Eff. January 1, 2016; Temporary Amendment Eff. August 23, 2019; Temporary Amendment Expired Eff. June 12, 2020-2020; Temporary Amendment Eff.*

1 08 NCAC 17.0109 is adopted under temporary procedures with changes, and additional changes in response to  
2 Rules Review Commission staff suggestions, as follows:

3  
4 **08 NCAC 17.0109 PHOTO IDENTIFICATION FOR ABSENTEE-BY-MAIL BALLOTS**

5 ~~(a) Definitions. The following definitions apply to this Rule:~~

6 ~~(1) "Readable" means the name on the identification can be read and the photograph depicts a person,~~  
7 ~~as opposed to displaying, for example, a mere shadow or outline of a person.~~

8 ~~(2) "Copy" means a duplicate of an original document, including a photographic copy of the original~~  
9 ~~document.~~

10 ~~(a)(b)~~ Identification Requirement for Absentee-by-Mail Ballots. Photo identification accompanying a voter's absentee  
11 ballot pursuant to G.S. 163-230.1(f1) is acceptable if it is a photocopy of a type of photo identification acceptable for  
12 voting purposes under 08 NCAC 17 .0101(a)(1), is readable, and the name appearing on the identification is the same  
13 as or substantially equivalent to the name contained in the voter's voter registration record in accordance with 08  
14 NCAC 17 .0101(a)(3). As used in this Rule, "readable" means that, on the photocopy of identification required by this  
15 Rule, the name on the identification can be read and the photograph depicts a person, as opposed to displaying, for  
16 example, a mere shadow or outline of a person. A photo identification shall not be rejected due to differences between  
17 the address appearing on an absentee voter's photo identification and any address contained in the voter's absentee  
18 request form, absentee ballot application, or registration record. A copy of photo identification that is acceptable under  
19 this Rule need include only the side of the identification (or, if the identification is a booklet, the page of the  
20 identification) where the person's name and photo appears.

21 ~~(b)(e)~~ Initial Review by County Board Staff. County board staff shall, upon receipt of a voter's absentee ballot  
22 application, determine whether the application is accompanied by a photocopy eopy of photo identification that is  
23 readable and is of a type of photo identification acceptable for voting purposes under 08 NCAC 17 .0101(a)(1), or, if  
24 the application is accompanied by an affidavit claiming an exception to the identification requirement pursuant to G.S.  
25 163-166.16(d), determine whether the affidavit includes the affirmations required by G.S. 163-166.16(d) for that  
26 exception is complete. If staff identify any deficiency, they shall send mail written notice of the deficiency to the voter  
27 within one business day of identifying the deficiency, informing the voter that the voter, the voter's verifiable legal  
28 guardian or near relative, or a person of the voter's choice if the voter needs assistance due to the voter's disability,  
29 may provide a photocopy eopy of the voter's acceptable photo identification or a completed affidavit claiming an  
30 exception to the county board by the deadline specified in G.S. 163-166.16(c). Staff shall additionally notify the voter  
31 by telephone or email, using any telephone number or email address contained in the voter's voter registration record  
32 or provided by the voter when requesting an absentee ballot. ~~if the voter provided their telephone number or email~~  
33 ~~address when registering to vote.~~

34 ~~(c)(d)~~ Final Review by County Board. The county board shall, at the first meeting held pursuant to G.S. 163-230.1(f)  
35 after the application and ballot is received, proceed as follows:

- 36 (1) If the voter has submitted a photocopy eopy of their photo identification, the county board shall  
37 make its determination whether the identification is acceptable under Paragraph ~~(a)(b)~~ of this Rule.

1 ~~To help ensure impartiality, a~~ final determination that the ~~photocopy copy~~ of photo identification  
2 is not acceptable under Paragraph ~~(a)(b)~~ of this Rule shall require a unanimous vote by the county  
3 board. If the county board makes a final determination that a voter's photocopy copy of photo  
4 identification is not acceptable, staff shall notify the voter as provided in Paragraph (b)(e) of this  
5 Rule.

6 (2) If the voter has completed an affidavit claiming an exception to the identification requirement  
7 pursuant to G.S. 163-166.16(d), and is otherwise eligible to vote, ~~to help ensure impartiality~~ the  
8 county board may reject that person's ballot only if the county board unanimously finds that the  
9 affidavit is false. The county board shall substantiate any finding of falsity with grounds recorded  
10 in a written decision. Before making a finding of falsity, the county board shall provide the voter  
11 notice and an opportunity to be heard at a meeting of the county board prior to the completion of  
12 the canvass on any grounds that the county board is considering ~~considers~~ regarding the falsity of  
13 the affidavit. Notice of the grounds for falsity and the opportunity for a hearing shall be provided  
14 by U.S. mail and by any email address or phone number that the county board possesses for the  
15 voter.

16 (3) If a voter's ~~photocopy copy~~ of photo identification or ~~alternative affidavit~~ affidavit claiming an  
17 exception to the identification requirement pursuant to G.S. 163-166.16(d) is deemed deficient under  
18 Paragraph ~~(b)(e)~~ of this Rule, the county board shall reserve its final decision on the approval of the  
19 absentee application until the next official meeting after the deficiency is cured or the county  
20 canvass, whichever occurs first.

21 ~~(d)(e)~~ Exception for Military and Overseas Voters. A covered voter who is casting a ballot pursuant to G.S. 163,  
22 Article 21A, Part 1 is not required to submit a ~~photocopy copy~~ of acceptable photo identification under Paragraph  
23 ~~(a)(b)~~ of this Rule or claim an exception under G.S. 163-166.16(d).

24 ~~(c)(f)~~ Return of Original Form of Identification. If a voter sends their original form of photo identification in the  
25 container-return envelope, or if a voter hand-delivers an absentee ballot to the county board of elections that is not  
26 accompanied by a photocopy of the voter's photo identification and the voter has a type of photo identification  
27 acceptable for voting purposes under 08 NCAC 17.0101(a)(1) on hand, the county board shall make a photocopy of  
28 the identification, which shall serve as an acceptable photo identification accompanying the voter's absentee  
29 ~~ballot, ballot, and mail the original form of identification back to the voter.~~ The county board shall notify the voter by  
30 mail and by any email address or phone number that the county board possesses for the voter that the original photo  
31 identification will be returned to the voter and shall use a method of return that documents receipt of the photo  
32 identification.

33  
34 *History Note: Authority G.S. 163-22; 163-166.7; 163-166.16; 163-229; 163-230.1;*  
35 *Temporary Adoption Eff. August 23, 2019; January 1, 2020;*  
36 *Temporary Rule Expired Eff. October 11, 2020.*

## **Burgos, Alexander N**

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**Subject:** FW: Board of Elections Temp Rule

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**From:** Cox, Paul <[paul.cox@ncsbe.gov](mailto:paul.cox@ncsbe.gov)>  
**Sent:** Thursday, July 13, 2023 2:57 PM  
**To:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Cc:** Wakely, Lindsey <[Lindsey.Wakely@ncsbe.gov](mailto:Lindsey.Wakely@ncsbe.gov)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: Board of Elections Temp Rule

Thank you for that clarification, Bill. The point is to make sure the affidavit meets the statutory requirements. We can work on something to address this. There were a couple other things from the suggested modifications yesterday that we noticed may need cleaning up to avoid misinterpretation, so I'll get back to you with this and those items ASAP.

Paul

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**From:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Sent:** Thursday, July 13, 2023 2:53 PM  
**To:** Cox, Paul <[paul.cox@ncsbe.gov](mailto:paul.cox@ncsbe.gov)>  
**Cc:** Wakely, Lindsey <[Lindsey.Wakely@ncsbe.gov](mailto:Lindsey.Wakely@ncsbe.gov)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: Board of Elections Temp Rule

Good afternoon Paul,

In 08 NCAC 17 .0109, Page 1, Line 25: While I appreciate the Board providing me with the definition of "complete," an affidavit can have "all necessary parts, elements, or steps" to be an affidavit (i.e., a signature, sworn to, notarization, etc.) yet still the affidavit might not satisfy all of the requirements of G.S. 163-166.16(d) for the ballot to be counted. In other words, the paper offered could be an affidavit yet still be deficient. Is the County Board staff opining whether the paper is an affidavit or whether it satisfies the requirements of G.S. 163-166.16(d)? Thus, my question, what does the Board mean by "complete."

I believe that the Board intends the review by staff to be whether, in the staff's opinion (but not ultimate determination which is reserved for the Board), the "affidavit" satisfies G.S. 163-166.16(d). But you tell me. As written, it is unclear.

Please respond no later than COB Friday, July 14, 2023. Thank you.

**William W. Peaslee**  
**Rules Review Commission Counsel / Legislative Liaison**  
Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh NC, 27609  
(984) 236-1939  
[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

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## Burgos, Alexander N

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**Subject:** FW: Board of Elections Temp Rule  
**Attachments:** RRC Request for Changes - 07.2023 - SBE responses.docx; 08 NCAC 17 .0101 - revisions to RRC 071223.docx; 08 NCAC 17 .0109 - revisions to RRC 071223.docx

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**From:** Cox, Paul <[paul.cox@ncsbe.gov](mailto:paul.cox@ncsbe.gov)>  
**Sent:** Wednesday, July 12, 2023 6:24 PM  
**To:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Cc:** Wakely, Lindsey <[Lindsey.Wakely@ncsbe.gov](mailto:Lindsey.Wakely@ncsbe.gov)>  
**Subject:** RE: Board of Elections Temp Rule

Good afternoon, Bill.

Please find attached the agency's responses to the requests for changes, with new copies of the two rules at issue with highlighting to show proposed changes based on the requests. We welcome any further thoughts or questions prior to the Commission's consideration.

Best regards,

**Paul Cox**  
General Counsel  
NORTH CAROLINA STATE BOARD OF ELECTIONS  
RALEIGH, NC 27611  
919.814.0700  
[www.ncsbe.gov](http://www.ncsbe.gov)

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**From:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Sent:** Friday, June 30, 2023 3:20 PM  
**To:** Cox, Paul <[paul.cox@ncsbe.gov](mailto:paul.cox@ncsbe.gov)>  
**Cc:** Wakely, Lindsey <[Lindsey.Wakely@ncsbe.gov](mailto:Lindsey.Wakely@ncsbe.gov)>  
**Subject:** Board of Elections Temp Rule

Good afternoon Paul.

I am the attorney who was assigned to review the Board of Elections Temporary rule filed today. The Rules Review Commission will consider the rules at its July 20 meeting.

Attached please find the request for changes. Please reply by July 12, 2023. Also, please provide me with the contact information for the chairman of the Board of Elections which was missing from the filing form. (Please see G.S. 150B-21.1(b1))

As always, if you have any questions or concerns please do not hesitate to contact me.

I hope you have a safe and happy Independence Day.

**William W. Peaslee**  
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REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 17 .0101

**DEADLINE FOR RECEIPT: July 12, 2023**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Page 1, Lines 24-25: G.S. 163-166.16(b) directs the precinct officials to “verify that the photograph is that of the person seeking to vote”. Explain the Board’s authority to alter the standard to be applied by the precinct official to the “reasonable resemblance” standard which the statute requires to be applied by the “judges of the election”.*

The State Board is not altering a statutory standard in the referenced text. It is filling the gaps left in the statutory language, which provides no standard for the verification decision, to ensure that the statute can be implemented uniformly and in an orderly fashion.

The statute’s requirement for the check-in official to “verify that the photograph is that of the person seeking to vote” is a statement of the decision that the election official is to make. It does not provide a standard for the official to make that decision. In other words, an instruction to “verify” that one’s ID is that of the person tells you what you need to decide, it does not tell you how you are to go about deciding that (*i.e.*, the standard for the decision). The standard for that decision is provided in the “reasonable resemblance” instruction to the judges of election, which the State Board has determined should apply to all election officials making the verification determination. That makes sense—you wouldn’t want the appellate decision to be applying a different substantive standard than the initial decision. From a practical perspective, the thousands of lay persons who will be making this determination at polling sites in the state will need some guidance on what standard to apply for verifying an ID. Absent such an explanation in rule, the agency will either have to provide instructive guidance to local officials in a non-rule, or the State will be applying differing standards throughout the state for determining whether someone can have their vote counted, thereby risking liability under the federal constitution. *See Bush v. Gore*, 531 U.S. 98, 104–06 (2000).

Providing this standard for the verification decision falls within the State Board’s authority to “promulgate rules for the process of voting”—rules which “shall

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Commission Counsel

Date submitted to agency: June 30, 2023

emphasize the appearance as well as the reality of dignity, good order, impartiality, and the convenience and privacy of the voter.” G.S. § 163-166.7(c). Providing a uniform standard for thousands of check-in officials to verify a voter’s ID will ensure “good order” at the voting site. Having unpredictable and divergent standards for poll worker decisions on voters’ ID would not display good order. And having a uniform standard of decision will contribute to the “impartiality” of the verification decisions, since it should narrow the variation of the decisions that poll workers will be making to voters under similar circumstances.

This rule text also falls within the State Board’s authority “to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of this Chapter.” G.S. § 163-22(a). Providing a standard to poll workers on how they are to “verify” an ID—through a “reasonable resemblance” inquiry—cannot be claimed to conflict with the statute’s text under any reasonable interpretation of “conflict.” Instead, it is providing a workable mode of decision for the verification. The State Board’s determination that the reasonable resemblance standard should be used in making the verification decision was “deem[ed] advisable” by the agency. The agency’s determination on the advisability of a rule should be deferred to, as a rule’s advisability concerns “the quality or efficacy of the rule.” G.S. § 150B-21.9(a).

For additional context, the State Board adopted this standard and the Commission accepted this standard for the check-in official twice before—once in 2016 as the permanent rule and again as a temporary amendment in 2019. Given the permanent adoption in 2016, this is the existing standard now in the Administrative Code. See page 3, line 36.

*Page 1, Lines 24-25: What does the Board consider a “reasonable resemblance”? Consider, “A reasonable resemblance is a likeness and similarity in appearance such that an ordinary person would conclude that the photograph on the identification is more likely than not the person presenting to vote.”*

The agency proposes to adopt a variation of this suggestion: “A reasonable resemblance is a similarity in appearance such that an ordinary person would conclude that the photograph on the identification is more likely than not the person presenting to vote.”

*Page 1, Lines 25-30: G.S. 163-166.16(b) directs the precinct official to “compare the photograph contained on the required identification with the persons presenting to vote.” Explain the Board’s authority to expand the examination by precinct officials beyond the four corners of the photograph. It appears that the General Assembly intended for the precinct official to simply examine the photograph and leave any supplementary evidence to be offered to and considered by the election judges.*

The Commission has approved this language, which is in the existing permanent rule, twice before. The agency does not believe the plain language of the statute displays a clear legislative intent to limit the election official’s consideration of only the photograph and the voter. Such a conclusion would be an inference that the statute’s

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Date submitted to agency: June 30, 2023

text does not necessarily support. The statute first instructs the precinct official to “compare the photograph contained on the required identification with the person presenting to vote.” G.S. § 163-166.16(b). The statute then goes on, in a separate sentence, to state, “The precinct official shall verify that the photograph is that of the person seeking to vote.” *Id.* Nothing in the statute’s text or in the rules of grammar compels a conclusion that the verification instruction in the second sentence is necessarily limited by the parameters of the comparison instruction in the first sentence. Such a conclusion would be compelled by, for example, an unbroken sentence that read, “compare the photograph contained on the required identification with the person presenting to vote and, based on this comparison alone, verify that the photograph is that of the person seeking to vote.” But that is not the choice the legislature made. The draft therefore falls within the State Board’s rulemaking authority in G.S. § 163-166.7(c) and G.S. § 163-22(a).

Nevertheless, **the agency proposes** a revision to this section of the Rule to accommodate this suggestion, removing reference to explanations or other evidence. This revision also incorporates a response to the suggested change to Page 3, Lines 5-10, to incorporate an instruction to the poll worker to bear in mind the purpose of the photo identification requirement as communicated in G.S. § 163-166.16(g). Although this reiterates a statutory provision, this is reasonably necessary, in the agency’s assessment, because it ensures that the rule comprehensively addresses all the legal requirements a poll worker needs to bear in mind when verifying photo identification, rather than requiring poll workers to rely on multiple legal sources to determine their responsibilities.

*Page 1, Line 27: The rule requires the precinct official to “construe” all evidence, including “explanations” “in the light most favorable” to the person presenting to vote. Explain the Board’s authority to require precinct officials to not only receive evidence outside of the photograph but additionally requiring the precinct officials to accept the evidence, including “explanations,” as true?*

See prior response. The **agency’s proposed revision** should address the suggestion.

The agency disagrees, however, with the characterization that the proposed rule text would require any evidence to be accepted as true, and the original draft falls within the State Board’s rulemaking authority in G.S. § 163-166.7(c) and G.S. § 163-22(a). *See also South Carolina v. United States*, 898 F. Supp. 2d 30, 36 (D.D.C. 2012) (Kavanaugh, J.) (approving of South Carolina’s attorney general and chief elections official interpreting that state’s nearly identical voter ID law in a similar manner, in favor of the voter). Moreover, this portion of the rule is a portion of the permanent rule that the Board has not proposed to amend. The Commission lacks the authority to object, when considering a temporary rule amendment, to permanent rule text that is not being proposed for amendment. *See* G.S. § 150B-21.8(c) (granting the Commission such authority only with respect to “permanent” rule amendments).

*Page 2, Line 7: Is not “considering” a clearer word than “construing”?*

The **agency’s proposed revision** should address the suggestion.

William W. Peaslee  
Commission Counsel

Date submitted to agency: June 30, 2023

*Page 2, Line 9: The rule requires the precinct official to “construe” all evidence, including “explanations” “in the light most favorable” to the person presenting to vote. Explain the Board’s authority to require the precinct officials to accept the evidence, including “explanations,” as true?*

The Commission has approved this language, which is in the existing permanent rule, twice before. The Commission lacks the authority to object, when considering a temporary rule amendment, to permanent rule text that is not being proposed for amendment. *See* G.S. § 150B-21.8(c) (granting the Commission such authority only with respect to “permanent” rule amendments).

The agency disagrees with the characterization that the proposed rule text would require any evidence to be accepted as true. It requires a voter-friendly construction of the evidence before the election official, which falls within the State Board’s rulemaking authority in G.S. § 163-166.7(c) and G.S. § 163-22(a). *See also South Carolina v. United States*, 898 F. Supp. 2d 30, 36 (D.D.C. 2012) (Kavanaugh, J.) (approving of South Carolina’s attorney general and chief elections official interpreting that state’s nearly identical voter ID law in a similar manner, in favor of the voter).

It is important to bear in mind that the statute doesn’t require a comparison of names at all—only the photograph to the person. The Board added this requirement so that the comparison of the ID made sense in light of the purpose of the ID requirement in G.S. § 163-166.16(g). Accordingly, because the statute does not speak to how the agency should be comparing names at all, it is within the agency’s discretion to require a voter-friendly assessment in making this comparison. The Board has this authority under G.S. § 163-166.7(c) and § 163-22(a), as discussed further below. If the Commission objects to the Board’s ability to set a standard for decision on a requirement that is not, itself, explicitly stated in statute, the Commission is essentially objecting to the Board’s authority to impose that requirement to begin with, because there is no alternative standard for decision for this as prescribed in statute.

Providing this standard for the verification decision falls within the State Board’s authority to “promulgate rules for the process of voting”—rules which “shall emphasize the appearance as well as the reality of dignity, good order, impartiality, and the convenience and privacy of the voter.” G.S. § 163-166.7(c). Requiring a construction of evidence in favor of the exercise of the franchise and minimizing the second-guessing of voters on changes to their names promotes dignity and good order at the polls, and it promotes the convenience and, potentially, the privacy of voters, given that there may be very personal reasons for name changes.

This rule text also falls within the State Board’s authority “to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of this Chapter.” G.S. § 163-22(a). Providing a standard to poll workers on how they are to construe evidence about name variation on an ID does not conflict with the any provision of

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Commission Counsel

Date submitted to agency: June 30, 2023

Chapter 163. The State Board “deem[ed] advisable” such a construction of evidence, and the advisability of a rule should be deferred to, as a rule’s advisability concerns “the quality or efficacy of the rule.” G.S. § 150B-21.9(a).

*Page 2, Line 11: Define or remove “reasonable explanation”.*

This portion of the rule is a portion of the permanent rule that the Board has not proposed to amend. The Commission lacks the authority in statute to object, when considering a temporary rule amendment, to permanent rule text that is not being proposed for amendment. *See* G.S. § 150B-21.8(c) (granting the Commission such authority only with respect to “permanent” rule amendments). Additionally, “reasonable” and “explanation” are commonly understood words that require no further elaboration.

Nevertheless, **the agency proposes** a revision to this section of the Rule to accommodate this suggestion, explicitly tying the list of typical name variations in the Rule to the “reasonable explanation,” so the election official has some guideposts for this assessment.

*Page 2, Lines 32-33, 35: Please see the inquiry to Page 1, Lines 24-25 and Page 1, Lines 25-30.*

**The agency addressed this in the referenced inquiry.**

*Page 3, Lines 5-10: Why is Paragraph (c) necessary pursuant to G.S. 150B-21.9 when G.S. 163-166.16(g) ably addresses this topic?*

Although this reiterates a statutory provision, this is reasonably necessary, in the agency’s assessment, because it ensures that the rule comprehensively addresses all the legal requirements a poll worker needs to bear in mind when verifying photo identification, rather than requiring poll workers to rely on multiple legal sources to determine their responsibilities.

*Page 3, Line 7: Is not “considered” a clearer word than “construe”?*

**The agency proposes** to accept this suggestion.

*Page 3, Line 11-13: Are these lines redundant to the examination of the photograph on the identification pursuant to (a)(2)? The lines appear to set a standard but do not identify that for which the election official is looking.*

The agency agrees that these provisions are redundant to provisions in (a)(2) and (a)(3) and **proposes to delete them.**

*Page 3, Lines 13-14: It is unclear what the Board is requiring the election official to do when the rule directs the election official “to be guided by the purpose of the photo identification requirement.” It should be noted that “the purpose” of subsection (a) of*

William W. Peaslee  
Commission Counsel

Date submitted to agency: June 30, 2023



*G.S. 163-166.16 is the only purpose established by the General Assembly. See 163-166.16(g).*

Per the response to the inquiry to Page 1, Lines 25-30, the **agency proposes** to move this discussion to (a)(2). Although this reiterates a statutory provision, this is reasonably necessary, in the agency's assessment, because it ensures that the rule comprehensively addresses all the legal requirements a poll worker needs to bear in mind when verifying photo identification, rather than requiring poll workers to rely on multiple legal sources to determine their responsibilities.

*Page 3, Line 25: Is "acceptable" defined? Adding a reference to the statute or rule would resolve this. Consider, "shall invite the person to provide any photo identification that meets the requirements of Subparagraph (a)(1) of this Rule."*

**The agency proposes** to repeat the language used at the beginning of the subparagraph and instead state, "photo identification that is acceptable under Subparagraph (a)(1) of this Rule . . ."

*Page 4, Lines 2 and 8: Define "reasonable resemblance".*

This is addressed in lines 5 through 7, but **the agency proposes** to rearrange to make this clearer. We can delete the comma in line 2 and add to the end of the sentence at line 4: ", applying the same standards as the election official initially reviewing the identification under Subparagraphs (a)(2) and (a)(3)." We could then delete the sentence in lines 5 through 7. We do not think it would be necessary to again incorporate this clarification in line 8, which just refers to the ultimate finding that the judges are already instructed to make under the standards of Subparagraphs (a)(2) and (a)(3).

*Page 4, Lines 3 and 9: Define "substantially equivalent".*

**The previous change would address this.**

*Page 4, Line 5: By what rule or statute have the contents or substantive requirements of this form been prescribed? See G.S. 150B-2(8a) d.*

The agency merely wants the judges to record their findings. **The agency proposes** striking "on a challenge form provided by the State Board" and insert instead "in writing."

*Page 4, Lines 5-7: Please see the note regarding Page 1, Line 27 regarding "light most favorable".*

Please see response to that note. Although this is within the State Board's rulemaking authority under G.S. § 163-166.7(c) and § 163-22(a), the proposed change to (a)(2) addresses this note.

William W. Peaslee  
Commission Counsel

Date submitted to agency: June 30, 2023

*Page 4, Lines 7-11: G.S. 163-166.16(b) requires a unanimous vote of the election judges to find that a photo on a photo identification does not bear a reasonable resemblance. The other question before the election judges during the G.S. 163-88 hearing would regard the substantial equivalence of the name on the photo identification. The General Assembly did not opine on the standard for this question. Whereas most challenge hearings are determined by majority vote, explain the Board's authority to make unanimity the standard for substantial equivalence questions before the election judges.*

It is important to bear in mind that the statute doesn't require a comparison of names at all—only the photograph to the person. The Board added this requirement so that the comparison of the ID made sense in light of the purpose of the ID requirement in G.S. § 163-166.16(g). Accordingly, because the statute does not speak to how the agency should be comparing names at all, it is within the agency's discretion to require a voter-friendly method of decision in making this comparison. The Board has this authority under G.S. § 163-166.7(c) and § 163-22(a), as discussed above.

If the Commission objects to the Board's ability to set a method of decision on a requirement that is not, itself, explicitly stated in statute, the Commission is essentially objecting to the Board's authority to impose that requirement to begin with, because there is no alternative method decision for this as prescribed in statute.

As discussed, G.S. § 163-166.16 does not address the required vote tally for judges of election to reject an ID on the basis of a name mismatch, because it does not address name mismatch. The State Board's proposed unanimity requirement is authorized by the agency's authority to promulgate rules for the process of voting that "shall emphasize the appearance as well as the reality of dignity, good order, impartiality, and the convenience and privacy of the voter." G.S. § 163-166.7(c). A majority vote to reject an ID for a name mismatch would permit a vote along party lines. Requiring unanimity "emphasize[s] . . . the reality of . . . impartiality," because it ensures that any vote to reject a voter's ID due to a finding of a name mismatch would be required to be bipartisan. Finally, this rule also maintains the dignity of the voting process. Refusing to allow a voter to cast a regular ballot, even when one of the judges of election present believes they are fully eligible, would diminish voter confidence in the voting process and would not exhibit due respect for the voter.

This is also within the State Board's authority "to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of this Chapter." G.S. § 163-22(a). Nothing in Chapter 163 conflicts with a requirement of unanimity in a decision by the judges of election to reject an ID for a name mismatch—so there is no conflict. Some decisions addressed in Chapter 163 require unanimity by statute, e.g. G.S. §§ 163-41(c), 163-227.6, while others require a simple majority vote by statute, e.g. G.S. §§ 163-25, 163-35(b) & (d), 163-82.18(b). Unlike those examples, this particular decision's vote tally is not prescribed either way in statute. The State Board's determination that the decision to reject an ID for a name mismatch should be guaranteed, as best as possible, to be impartial, is something the agency "deem[ed] advisable," G.S. § 163-22(a), and a rule's advisability concerns "the quality or efficacy

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Commission Counsel

Date submitted to agency: June 30, 2023

of the rule,” G.S. § 150B-21.9(a). Additionally, this is a policy determination by the State Board that recognizes that there is some degree of subjectivity in the name match decision, and the outcome of a mixed vote in this regard should favor the exercise of the franchise. *See South Carolina v. United States*, 898 F. Supp. 2d 30, 36 (D.D.C. 2012) (Kavanaugh, J.) (approving of South Carolina’s attorney general and chief elections official interpreting that state’s nearly identical voter ID law in favor of the voter). Such a policy determination is for the rulemaking agency to decide.

*Page 4, Line 23: “Completed the affidavit” sounds like the Board is providing a form. Is that the case? If so, is the person presenting to vote in this instance required to use the form?*

Yes, please see G.S. § 163-166.16(d) and (e), which prescribe the contents of the form. *See* G.S. § 150B-2(8a)d.

*Page 4, Line 24: “To ensure impartiality” is unnecessary. This is a reason for this portion of the rule and places no requirement on anyone.*

The agency proposes to remove this, as it is merely a reference to the State Board’s rulemaking authority in G.S. § 163-166.7(c) to require a unanimous decision.

*Page 4, Line 24-25. G.S. 163-166.16(b) requires a unanimous vote of the election judges to find that a photo on a photo identification does not bear a reasonable resemblance. Explain the Board’s authority to make unanimity the standard for matters determined pursuant to G.S. 163-166(f).*

G.S. § 163-166.16(f) does not address the required vote tally to arrive at a decision to reject an affidavit for falsity. As the text of this sentence alludes to, this requirement is authorized by the State Board’s authority to promulgate rules for the process of voting that “shall emphasize the appearance as well as the reality of dignity, good order, impartiality, and the convenience and privacy of the voter.” G.S. § 163-166.7(c). A majority vote to reject an affidavit for falsity would permit a vote along party lines. Requiring unanimity “emphasize[s] . . . the reality of . . . impartiality,” because it ensures that any vote to reject a voter’s ballot due to a finding of a false affidavit would be required to be bipartisan. Finally, this rule also maintains the dignity of the voting process. Refusing to cast a voter’s ballot due to a simple majority finding of falsity, when one or possibility two members of the county board of elections believe the voter is telling the truth, could diminish voter confidence in the voting process and would not exhibit due respect for the voter.

This is also within the State Board’s authority “to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of this Chapter.” G.S. § 163-22(a). Nothing in Chapter 163 conflicts with a requirement of unanimity in a county board decision to reject a ballot under G.S. 163-166.16(f). Some decisions addressed in Chapter 163 require unanimity by statute, *e.g.* G.S. §§ 163-41(c), 163-227.6, while others require a simple majority vote by statute, *e.g.* G.S. §§ 163-25, 163-35(b) & (d), 163-82.18(b). Unlike those examples, this particular decision’s vote tally

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is not prescribed either way in statute. The State Board’s determination that the county board decision to reject a ballot upon a finding of falsity should be guaranteed, as best as possible, to be impartial, is something the agency “deem[ed] advisable,” G.S. § 163-22(a), and a rule’s advisability concerns “the quality or efficacy of the rule,” G.S. § 150B-21.9(a). Additionally, this is a policy determination by the State Board that recognizes that there is some degree of subjectivity in the falsity determination, and the outcome of a mixed vote in this regard should favor the exercise of the franchise. *See South Carolina v. United States*, 898 F. Supp. 2d 30, 36 (D.D.C. 2012) (Kavanaugh, J.) (approving of South Carolina’s attorney general and chief elections official interpreting that state’s nearly identical voter ID law in favor of the voter). Such a policy determination is for the rulemaking agency to decide.

Additionally, the leaders of the North Carolina General Assembly specifically relied on the prior State Board rule’s unanimity requirement for finding falsity when arguing to North Carolina courts that the photo identification requirement was constitutional. *See* Legis. Defs’ Opening Br. at 12–13, *Holmes v. Moore*, No. COA22-16 (N.C. Ct. of Appeals & Sup. Ct. of N.C. Feb. 7, 2022) (“The only basis for rejecting a reasonable impediment affidavit is falsity, and county boards of elections—which are statutorily mandated to be bipartisan—must unanimously find an impediment false in order not to count the ballot, see 08 NCAC 17.0101(b).” (internal citations omitted) (see also pp. 2–3)); Legis. Defs’ Resp. to Bypass Pet. at 13, *Holmes v. Moore*, No. 34P19-2 (Sup. Ct. N.C. Jan. 27, 2022) (“The only basis for rejecting a reasonable impediment affidavit is falsity, N.C.G.S. § 163-166.16(f), and a bipartisan county board of elections must unanimously vote that a reasonable impediment ballot is false for it not to be counted, see 08 NCAC 17.0101(b), Photo Identification.”); Legis. Defs’ Proposed Findings of Fact and Conclusions of Law at 114–15, *Holmes v. Moore*, No. 18 CVS 15292 (N.C. Super. Ct. May 14, 2021) (“Under S.B. 824, by contrast, a County Board may reject a provisional ballot accompanied by a reasonable impediment declaration only if the Board has grounds to believe that the declaration ‘is false.’ Furthermore, per the State Board’s proposed regulations, the County Boards may reject a provisional ballot accompanied by a reasonable impediment declaration only if the County Board unanimously determines that the declaration is false.” (internal citations omitted) (see also pp. 142–43, 165)); Legis. Defs’ Mot. for Reh’g En Banc at 8–9, *Holmes v. Moore*, No. 19-762 (N.C. Ct. of Appeals Feb. 25, 2020) (comparing the current photo ID requirement favorably to the prior photo ID requirement in that “its implementing regulations did not require a finding to be unanimous; a simple majority of a county board (two members of the then-three-member county board) could decide to not count a ballot. By contrast, S.B. 824 allows county boards to deny a reasonable impediment ballot only if the affidavit is found to be ‘false’—a finding that by regulation requires a unanimous vote of a bipartisan county board, which today has five members.” (internal citations omitted)); Oral Argument Transcript at 39:58, *Holmes v. Moore*, No. 19-762 (N.C. Ct. of Appeals Jan. 22, 2020) (“[E]very other court to consider this matter has regarded the reasonable impediment exception as a virtue. And here it is generous and protective of the franchise. The only reason under this statute the reasonable impediment can be denied is for falsity, and the falsity has to be found by five members, bipartisan, unanimous—unanimous bipartisan five members of the county board have to all conclude that a ballot is false.”); Legis. Defs’ Appellee Br. at 22, *Holmes v. Moore*, No. 19-762 (N.C. Ct. of Appeals Nov. 12, 2019)

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(“But S.B.824 states that a reasonable impediment ballot must be counted unless the CBOE finds that the affidavit is false, and implementing regulations require this finding to be unanimous.”).

*Page 4, Line 28: “Notice” of what?*

The agency proposes to clarify this section.

*Page 4, Line 28-30: This is unclear and ambiguous. If the Board requires notice, the Board should be able to define how notice is given.*

See above.

*Page 4, Line 36: Paragraph (d) to which the rule refers is unclear and ambiguous. Accordingly, Paragraph (e)(2) is unclear and ambiguous.*

The agency proposes to revise this to read “in accordance with Paragraphs (a), (b), and (c) of this Rule.”

*Page 5, Lines 4 and 10: The Board’s use of the word “determines” is unclear. Is the Board stating that the staff member’s determination is dispositive and thus removing the issue from the County Board? Or does the Board intend that the staff member shall provide the staff member’s opinion to the person?*

The agency proposes revisions to (A), (B), and (C) to clarify these procedures.

*Page 5, Line 13: Here the Board is requiring the staff member to provide the staff member’s “determination” to the person. Is the staff member’s opinion dispositive?*

See above.

*Page 5, Line 8: What does “timely” mean?*

Timely is defined by G.S. § 163-166.16(c), but the agency proposes to revise this to restate the statutory language.

*Page 5, Line 14: Is the time and manner of “notice” defined anywhere?*

The agency proposes to clarify this, along with the notes above.

*Page 5, Lines 15-19: Explain the Board’s authority to require the County Boards to apply the same analysis as the initial election official.*

The agency proposes to revise and clarify this section. Since the county board’s assessment of an ID cure that is provided to county board staff at another time is not exactly analogous to the in-person review of the person and their ID at the polls, the agency proposes to limit these instructions to a situation where the voter appears and the county board has the voter and their ID in front of the board for the board’s

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assessment. In that instance, requiring the same mode of decision as the officials at the voting site falls within the State Board's authority to "promulgate rules for the process of voting"—rules which "shall emphasize the appearance as well as the reality of dignity, good order, impartiality, and the convenience and privacy of the voter." G.S. § 163-166.7(c). Providing a uniform standard for assessing a photo ID's compliance with the statutory requirements, whether at the voting site or in the county board office, promotes dignity in that it does not subject voters to disparate standards. It promotes good order for the same reason. Having a uniform standard of decision will contribute to the "impartiality" of the verification decisions, since it should narrow the variation of the decisions that poll workers versus county board members will be making to voters under similar circumstances.

This rule text also falls within the State Board's authority "to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of this Chapter." G.S. § 163-22(a). Providing a uniform standard for poll workers and county board members on how they are to assess an ID's compliance cannot be claimed to conflict with the photo ID statute's text. Instead, it is providing a workable mode of decision for the verification of compliance with the statute. The State Board's determination in this regard was "deem[ed] advisable" by the agency. The agency's determination on the advisability of a rule should be deferred to, as a rule's advisability concerns "the quality or efficacy of the rule." G.S. § 150B-21.9(a).

Finally, the rule text falls within the State Board's authority to establish guidelines for the verification of provisional ballots. *See* G.S. § 163-166.1(5) ("At the close of the polls, election officials shall transmit the provisional official ballots cast at that voting place to the county board of elections for prompt verification according to guidelines and procedures adopted by the State Board of Elections." (emphasis added)).

*Page 5, Line 17: The Rule states that the members of the County Board are subject to the requirements of this Rule in the same manner as a staff member "initially examining" a voter's identification. Is the Board referring to the election official from Page 1, Line 7 or the staff member from Page 4, Line 35? Does the Board mean that the County Board members shall determine whether the identification satisfies the requirements of G.S. 163-166.16 and Paragraph (a) of this Rule?*

See **revisions** and explanations above.

*Page 5, Lines 17-19: Please see the note regarding Page 1, Line 27 regarding "light most favorable".*

See **revisions** and explanations above.

*Page 5, Lines 19-22: G.S. 163-166.16(b) requires a unanimous vote of the election judges to find that a photo on a photo identification does not bear a reasonable resemblance. This is inapplicable to the County Board. Explain the Board's authority to impose the unanimity standard upon the County Boards of Election.*

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See **revisions** and explanations above, and especially the explanations in connection with the note regarding Page 4, Line 24-25, explaining the State Board's authority to require a unanimous decision and the legislative leadership's reliance on this protection to voters in the courts.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 17 .0109

**DEADLINE FOR RECEIPT: July 12, 2023**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Generally, to the rule: Consider adding a definition of "Acceptable photo identification" and then use that term to shorten the rule.*

Adding a definition of "acceptable photo ID" would not be necessary in light of the proposed changes described below, which include removing the definition of "copy" and moving the definition of "readable" to paragraph (b).

*Page 1, Line 5: What "identification"? Consider adding a reference to the rule or statute that answers this question.*

The "identification" is in reference to the identification required to be submitted with an absentee-by-mail ballot pursuant to the rule: a photocopy of identification acceptable for voting purposes under 08 NCAC 17 .0101(a)(1). **To clarify this point, see proposed change** below in response to the second comment regarding Page 1, Line 7.

*Page 1, Lines 5-6: Consider: "and the photograph depicts discernable facial features such that the depicted person could be identified if he or she appeared in person."*

The definition of readable in the rule sets a minimum readability standard for the photo to ensure that the photo ID does contain a photo of a person, but the photo does not need to be of the same quality as a photo ID presented by a voter voting in person for two reasons. First, the photo ID submitted with an absentee-by-mail ballot is a photocopy of the photo ID that will be made with a wide variety of at-home printers.

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Requiring the same or similar clarity of the photo on a copy as that on the original photo ID would be an unnecessary burden on the voter. Second, no reasonable resemblance determination is made with an absentee-by-mail ballot—the county board staff and members reviewing the copy of the photo ID have no need to review the voter’s facial features. Instead, a county board need only ensure that the photo ID is an acceptable form of photo ID that does indeed have a photo of a person.

*Page 1, Lines 5-6: Is the Board requiring the identification or the copy of the identification to be readable and with a proper depiction?*

The Board is requiring the name and photograph of the photo ID to be readable when that name and photograph is displayed on a photocopy of a photo ID that accompanies an absentee-by-mail ballot. The rule, in paragraphs (a) and (b), refers to the photo ID rather than the copy of photo ID because G.S. § 163-230.1(g) directs the Board to “adopt rules to provide for the forms of identification that shall be included with returned application and voted ballots.” Moreover, G.S. § 163-230.1(g)(1) requires the rules to include “[a]cceptable photocopies of forms of readable identification[.]” But in consideration of the fact that it is only a photocopy of an ID that is received and reviewed by the county board, **the agency proposes** moving the definition of readable to paragraph (b) and revising the definition of “readable” as shown below in the response to the comment regarding Page 1, Line 7.

*Page 1, Line 7: The General Assembly uses the word “photocopy” while the rule states “photographic copy”. Is there a difference? If so, what is the difference? If not, the term should be consistent.*

**The agency proposes** to revise so the language is consistent, as the phrase “photographic copy” is the same as the word “photocopy.”

*Page 1, Line 7: G.S. 163-230.1(f1) requires a “photocopy”. What is the Board’s authority to require a “duplicate of an original”? Or is the Board attempting to define “photocopy”?*

Although G.S. § 163-230.1(f1) states that each absentee-by-mail ballot must be accompanied by “a photocopy of identification,” sub-section (g) directs the Board to “adopt rules to provide for the forms of identification that shall be included with returned application and voted ballots.” Subdivision (g)(1) goes on to provide that these rules must include “[a]cceptable photocopies of forms of readable identification[.]” The rule establishes what form of identification must be included: a duplicate of an original document (*i.e.*, photo ID). But in consideration of the fact that it is only a photocopy of an ID that is reviewed by the county board, **the agency proposes** to remove the definition of “copy” in paragraph (a) of the rule and further revise the Rule to make clear it is the photocopy of ID that is provided by the voter and reviewed by the county board.

*Page 1, Line 10: Consider: “...is acceptable if it is listed in G.S. 166-166.16(a), is readable, and the name...”*

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This rule refers to 08 NCAC 17 .0101(a)(1) rather than G.S. § 163-166.16(a) because that provision of that rule specifies that a valid United States passport book or passport card is acceptable as a “United States passport” as stated in G.S. § 163-166.16(a)(1)c. If the rule was revised as suggested, it would be less clear as to what qualifies as a “United States passport” when a passport is used as identification for absentee voting.

*Page 1, Line 22: What does the Board mean by “complete”?*

The Board means “complete” in the ordinary definition of the word: “having all necessary parts, elements, or steps.” Merriam-Webster, <https://www.merriam-webster.com/dictionary/complete> (last visited July 9, 2023) (“Complete”).

*Page 1, Line 22: By “send” does the Board mean “mail”?*

The agency proposes changing “send” to “mail” as requested.

*Page 1, Lines 22-28: What happens if the County Board staff fails to do this? Does the ballot then count? Would this create a cause to overturn an election if the margins are close enough?*

The county board has the statutory duty to pass upon the absentee applications pursuant to G.S. § 163-230.1(f), and there is no authority for an incomplete application to be automatically counted. Instead, the county board would consider the absentee-by-mail application with an uncured deficiency, in this case a deficient copy of photo ID, at canvass. This is the process described in subparagraph (d)(3) of the rule.

An election protest could be filed by a registered voter or a candidate if a county board does not comply with the requirements of a rule and that failure was outcome-determinative. This is no different than any other purported deviation from the election laws that has an outcome-determinative effect, and naturally, the closer the vote margin, the greater chance of an outcome-determinative event in a contest. This rule does not change the requirements for county boards when considering election protests under G.S. § 163-182.10 or for the Board when considering whether to order a new election under G.S. § 163-182.13.

*Page 1, Lines 33-34: “To help ensure impartiality” is a reason for the rule but does not impose any substantive requirement. It is unnecessary.*

The agency proposes to remove this phrase from the rule, as it merely communicates the rulemaking authority for the unanimous vote requirement.

*Page 1, Line 35: Explain the Board’s authority to require a unanimous vote of the County Boards of Elections.*

The Board is required by statute, specifically G.S. § 163-166.7(c), to “promulgate rules for the process of voting” and that such “rules shall emphasize the appearance as well

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as the reality of . . . impartiality[.]” A requirement of unanimity in a county board decision regarding the acceptability and readability of the copy of a voter’s photo ID submitted with an absentee ballot is one way to emphasize both the appearance and reality of impartiality.

Furthermore, G.S. § 163-230.1(g) states that “[t]he State Board, by rule or by instruction to the county board of elections, shall establish procedures to provide appropriate safeguards in the implementation of this section” and that the rules must include “[a]cceptable photocopies of forms of readable identification[.]” Requiring unanimity in the county board’s decision as to whether a photocopy of an ID is “acceptable” and “readable” is a procedure that provides an “appropriate safeguard” in the implementation of the photo identification requirement for absentee voting—namely, it is a safeguard to protect the voter from a potentially partisan decision on whether to count their ballot. The “appropriate[ness]” of that safeguard is a decision for the agency to make. *See* G.S. § 150B-21.9(a).

This rule text also falls within the State Board’s authority “to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of this Chapter.” G.S. § 163-22(a). Nothing in Chapter 163 conflicts with a requirement of unanimity in a county board decision to reject an absentee ballot due to an arguably insufficient ID photocopy. Some decisions addressed in Chapter 163 require unanimity by statute, *e.g.* G.S. §§ 163-41(c), 163-227.6, while others require a simple majority vote by statute, *e.g.* G.S. §§ 163-25, 163-35(b) & (d), 163-82.18(b). Unlike those examples, this particular decision’s vote tally is not prescribed either way in statute. The State Board’s determination that the county board decision to reject a ballot upon a finding that the identification is unacceptable should be guaranteed, as best as possible, to be impartial, is something the agency “deem[ed] advisable,” G.S. § 163-22(a), and a rule’s advisability concerns “the quality or efficacy of the rule,” G.S. § 150B-21.9(a).

*Page 2, Line 2: “To help ensure impartiality” is a reason for the rule but does not impose any substantive requirement. It is unnecessary.*

The agency proposes to remove this phrase from the rule, as it merely communicates the rulemaking authority for the unanimous vote requirement.

*Page 2, Line 3: Explain the Board’s authority to require a unanimous vote of the County Boards of Elections.*

See response above regarding the comment to Page 1, Line 35, and the response regarding the comment to Rule .0101 Page 4, Lines 24-25, explaining the State Board’s authority to require a unanimous decision and the legislative leadership’s reliance on this protection to voters in the courts.

*Page 2, Line 6: Define “notice” or cite to a statute or rule defining notice. When, what, where, how?*

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The agency proposes to clarify lines 5-7 in a similar manner to the clarification proposed above in the response regarding Rule .0101 Page 4, Line 28.

*Page 2, Lines 13-15: Explain the Board's authority to exempt covered voters.*

The legislature exempted covered voters, as was appropriate, because federal law governs absentee voting procedures for uniformed and overseas voters. The photo ID requirement for absentee voting appears in Article 20 of Chapter 163, *see* G.S. § 163-230.1, governing absentee voting for “civilian” voters, whereas the procedures governing absentee voting for covered voters appear in Article 21A, which directly implements the federal law requirements.

Federal law, specifically 52 USC §§ 20301-20311, as implemented through Article 21A of Chapter 163, governs the process for a UOCAVA voter to submit a ballot. Specifically, under 52 USC § 20302(a)(3) and (4), a state is required to permit UOCAVA voters to use the Federal write-in absentee ballot in general elections for federal office and use the official post card form as an absentee ballot application. These federally prescribed forms do not include a requirement to include a photocopy of photo identification, neither in federal or state law. Furthermore, as provided in 52 USC § 20304(a), it is the responsibility of “[t]he Presidential designee” to “establish procedures for collecting marked absentee ballots of absent overseas uniformed services voters in regularly scheduled general elections for Federal office, including absentee ballots prepared by States and the Federal write-in absentee ballot.” The Board is not aware of any authority to place additional, state-level requirements on UOCAVA-covered voters casting a ballot by methods ultimately provided and governed by federal law. And under the Supremacy Clause of the federal Constitution (and even under our state constitution), any such effort would be of doubtful validity U.S. Const. art. VI, cl. 2; *see* N.C. Const. art. I, § 5 (“Every citizen of this State owes paramount allegiance to the Constitution and government of the United States, and no law or ordinance of the State in contravention or subversion thereof can have any binding force.”).

*Page 2, Lines 17-18: How can the county board make a photocopy of that which it does not have? I believe the Board intends for staff to request photo identification which meets the of G.S. 163-166.16(a) and (b). Must the copy made by the county board staff meet the requirements of the rule?*

When a voter hand-delivers the absentee ballot to the county board of elections, county board staff conduct an initial review of the absentee container-return envelope for completeness, and this will include checking whether the voter has included a copy of the photo ID with the voter’s absentee ballot envelope. Therefore, the absence of the required identification will be ascertained when the voter is present at the county board of elections office and hand-delivering their ballot. While it is true that the county board will not possess the voter’s photo ID at the very moment in which the voter delivers their absentee ballot, the county board staff receiving the absentee ballot will possess the means to make a copy of the photo ID at that time. The agency proposes revisions to this section to make clear that staff shall make a photocopy if the voter has “on hand” a type of photo ID that is acceptable under the rules. This

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provision is merely designed to ensure the photocopy is included with the ballot for the county board to review where the voter has ID they are ready and able to provide.

*Page 2, Lines 20-22: Must the County Board notify the voter and then send the identification? How must the voter be notified? To what address?*

As stated in the rule, the notification to the voter is that the original photo ID “will be returned” to the voter. This phrasing speaks to a future event, rather than referring to a past occurrence with language such as “has been returned” or “was mailed” to the voter. Accordingly, the county board notifies the voter first before sending the voter their original photo ID. To clarify how the voter is notified, **the agency proposes** revising this provision.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

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Date submitted to agency: June 30, 2023

1 08 NCAC 17 .0101 is amended under temporary procedures **with changes**, and **additional changes** in response to Rules  
2 Review Commission staff suggestions, as follow:

3  
4 **08 NCAC 17 .0101** **DETERMINATION OF REASONABLE RESEMBLANCE/VERIFICATION OF**  
5 **PHOTO IDENTIFICATION DURING IN-PERSON VOTING/AT CHECK IN**

6 (a) When a person presenting to vote checks in at a voting site, An election official shall check the registration status  
7 of all persons presenting to vote in person on election day or during one stop early voting pursuant to G.S. 163-166.7,  
8 and shall require that all persons presenting to vote provide an election official shall ask the voter to show photo  
9 identification in accordance with G.S. 163-166.16 and this Rule, one of the forms of photo identification listed in G.S.  
10 163-166.13(e), subject to the exceptions outlined in Paragraph (b) of this Rule. If a person not satisfying the exceptions  
11 described in Paragraph (b) of this Rule does not provide any photo identification, the election official shall inform the  
12 person presenting to vote of applicable options specified in G.S. 163-166.13(e). If the person presenting to vote wishes  
13 to choose the option of voting a provisional ballot, the election official shall provide the person presenting to vote with  
14 information on the provisional voting process and the address of the county board of elections office.

15 (b) ~~The election official shall not require photo identification of a person who has a sincerely held religious objection~~  
16 ~~to being photographed and meets the requirements of G.S. 163-166.13(a)(2), or who is the victim of a natural disaster~~  
17 ~~and meets the requirements of G.S. 163-166.13(a)(3). Persons falling within any exception listed in this Paragraph~~  
18 ~~shall be allowed to proceed pursuant to G.S. 163-166.7.~~

19 (e) The election official shall ~~inspect~~examine any photo identification provided by the person presenting to vote and  
20 shall determine the following:

21 (1) ~~That the~~The photo identification is of the type acceptable for voting purposes pursuant to ~~G.S.~~  
22 ~~163-166.13(e), G.S. 163-166.16(a).~~ A valid United States passport book or a valid United States  
23 passport card is acceptable pursuant to ~~G.S. 163-166.13(e); G.S. 163-166.16(a)(1)c.~~

24 (2) ~~That the photo identification is unexpired or is otherwise acceptable pursuant to G.S. 163-166.13(e);~~

25 (2)(3) ~~That the~~The photograph appearing on the photo identification ~~depicts~~bears a reasonable  
26 resemblance to the person presenting to vote. A reasonable resemblance is a similarity in appearance  
27 such that an ordinary person would conclude that the photograph on the identification is more likely  
28 than not the person presenting to vote. The election official shall make this determination based on  
29 the totality of the circumstances, construing all evidence, along with any explanation or  
30 documentation voluntarily proffered by the person presenting to vote, in the light most favorable to  
31 that person person, and bearing in mind that there are many reasons that a person's appearance could  
32 change (such as, for illustrative purposes only, changes in hair, facial hair, or weight; or the effects  
33 of medical conditions, aging, or medical treatment). The election official shall also be guided by the  
34 purpose of the photo identification requirement, which is to confirm the person presenting to vote  
35 is the registered voter on the voter registration records. ~~Perceived differences of the following~~  
36 ~~features shall not be grounds for the election official to find that the photograph appearing on the~~  
37 ~~photo identification fails to depict the person presenting to vote:~~

- 1 (A) ~~weight;~~
- 2 (B) ~~hair features and styling, including changes in length, color, hairline, or use of a wig or~~
- 3 ~~other hairpiece;~~
- 4 (C) ~~facial hair;~~
- 5 (D) ~~complexion or skin tone;~~
- 6 (E) ~~cosmetics or tattooing;~~
- 7 (F) ~~apparel, including the presence or absence of eyeglasses or contact lenses;~~
- 8 (G) ~~characteristics arising from a perceptible medical condition, disability, or aging;~~
- 9 (H) ~~photographic lighting conditions or printing quality.; and~~

10 (3)(4) ~~That the~~ The name appearing on the photo identification is the same as or substantially  
11 equivalent to the name contained in the voter's voter registration record. The election official shall  
12 make this determination based on the totality of the circumstances, construing all evidence, along  
13 with any explanation or documentation voluntarily ~~proffered~~ offered by the person presenting to  
14 vote, in the light most favorable to that person. The election official shall consider the name  
15 appearing on the photo identification shall to be considered substantially equivalent to the name  
16 contained in the registration record if differences are attributable to a reasonable explanation  
17 explanation, which shall include or one or more of the following reasons:

- 18 (A) Omission or inclusion of one or more parts of the name (such as, for illustrative purposes  
19 only, Mary Beth Smith versus Beth Smith, or Patrick Todd Jackson, Jr. versus Patrick Todd  
20 Jackson, or Maria Guzman-Santana versus Maria Guzman);
- 21 (B) Use of a variation or nickname rather than a formal name (such as, for illustrative purposes  
22 only, Bill versus William, or Sue versus Susanne);
- 23 (C) Use of an initial in place of one or more parts of a given name (such as, for illustrative  
24 purposes only, A.B. Sanchez versus Aaron B. Sanchez);
- 25 (D) Use of a former name, including maiden names (such as, for illustrative purposes only,  
26 Emily Jones versus Emily Gibson), or a variation that includes or omits a hyphenation or  
27 hyphen (such as, for illustrative purposes only, Chantell D. Jacobson-Smith versus Chantell  
28 D. Jacobson); Jacobson or Chantell D. Jacobson Smith), an accent (such as, for illustrative  
29 purposes only, José Muñoz versus Jose Munoz), or an apostrophe (such as, for illustrative  
30 purposes only, Andrea D'Antonio versus Andrea Dantonio);
- 31 (E) Ordering of names (such as, for illustrative purposes only, Maria Eva Garcia Lopez versus  
32 Maria E. Lopez-Garcia); or
- 33 (F) Variation in spelling or typographical errors (such as, for illustrative purposes only,  
34 Dennis McCarthy versus Denis McCarthy, or Aarav Robertson versus Aarav Robertsson).

35 (b)(4) The election official examining photo identification provided by a person presenting to vote shall not require  
36 the voter to provide any additional evidence outside the four corners of the photo identification. The election official  
37 shall not require that any person remove apparel for the purposes of ~~rendering a determination~~ determining reasonable

1 resemblance under ~~Paragraph (e)~~ Subparagraph (a)(2) of this Rule. If the face of the person presenting to vote is  
2 covered ~~to such an extent such~~ that the election official cannot ~~render a determination under Subparagraph (e)(3),~~  
3 ~~determine reasonable resemblance,~~ then the election official shall ~~offer the voter the options to vote by provisional~~  
4 ~~ballot in accordance with Paragraph (e) of this Rule.~~ ~~give the person the opportunity to remove the covering but shall~~  
5 ~~not require that removal. If the person declines to remove the covering, the election official shall inform the person~~  
6 ~~presenting to vote that he or she may cast a provisional ballot, which shall be counted in accordance with G.S. 163-~~  
7 ~~182.1A, or, if applicable, may complete a written request for an absentee ballot as set out in G.S. 163-166.13(e)(3),~~  
8 ~~and shall inform the voting site's judges of election that the election official cannot affirmatively determine that the~~  
9 ~~person bears any reasonable resemblance to the photo identification. G.S. 163-166.16.~~

10 (c)(e) Differences between the address appearing on the photo identification ~~of a person presenting to vote meeting~~  
11 ~~the requirements of Subparagraph (e)(1) and the address contained in the registration record of that person shall not~~  
12 ~~be construed considered~~ as evidence that the photographic identification ~~does not bear any reasonable resemblance~~  
13 ~~pursuant to Subparagraphs (c)(3) and (c)(4) of this Rule, nor shall it be construed as evidence that the photographic~~  
14 ~~identification does not otherwise fails to meet the requirements of any other provision of Paragraph (C). G.S. 163-~~  
15 ~~166.16 or this Rule.~~

16 (d)(f) ~~The election official examining photo identification provided by a person presenting to vote shall construe all~~  
17 ~~evidence, along with any explanation or documentation voluntarily proffered offered by the person presenting to vote,~~  
18 ~~in the light most favorable to that person, person, and shall be guided by the purpose of the photo identification~~  
19 ~~requirement, which is to confirm the person presenting to vote is the registered voter on the voter registration records.~~

20 After examining the photo identification according to ~~an examination performed in the manner set out in Paragraphs~~  
21 (a) through (c)(d) of this Rule, the election official shall proceed as follows:

- 22 (1) If the election official determines that the photo identification meets all the requirements of  
23 Paragraph ~~(a)(e), of this Rule,~~ then ~~the election official shall allow the person presenting to vote~~  
24 ~~shall be allowed to proceed vote~~ pursuant to G.S. 163-166.7 and 163-166.13(b); or G.S. 163-166.7.
- 25 (2) If the election official determines that the photo identification ~~is not an acceptable type of photo~~  
26 ~~identification under does not meet all of the requirements of Subparagraphs (e)(1) and (e)(2)~~  
27 ~~Subparagraph (a)(1) of this Rule,~~ the election official shall inform the person presenting to vote of  
28 the reasons for ~~that such~~ determination (such as, for illustrative purposes only, that the photo  
29 identification is expired ~~when that type of acceptable photo identification requires an expiration~~  
30 ~~date)~~ and shall invite the person to provide any other ~~acceptable~~ photo identification ~~that is~~  
31 ~~acceptable under Subparagraph (a)(1) of this Rule~~ that ~~the person he or she~~ may have. If the person  
32 presenting to vote does not produce photo identification that meets all the requirements of  
33 Subparagraph ~~(a)(1) of this Rule, (e)(1) and (e)(2),~~ then the election official shall inform the person  
34 presenting to vote of ~~applicable~~ the options specified in Paragraph (e) of this Rule. ~~G.S. 163-~~  
35 ~~166.13(e).~~ If the person presenting to vote wishes to choose the option of voting a provisional ballot,  
36 the election official shall provide the person presenting to vote with information on the provisional  
37 voting process and the address of the county board of elections office.

1 (3) If the election official determines that the photo or name on the photo identification do not satisfy  
2 Subparagraphs (a)(2) and (a)(3) of this Rule, does not meet all the requirements of Subparagraphs  
3 (e)(3) and (e)(4), the election official shall enter a challenge pursuant to G.S. 163-87 and  
4 immediately notify the voting site's judges of election of the challenge, that the person presenting  
5 to vote does not bear any reasonable resemblance to the photo identification. The judges of election  
6 shall then conduct a challenge hearing, in accordance with the procedures in G.S. 163-88. At the  
7 conclusion of the hearing, the judges of election shall vote on whether the photo identification of  
8 the person presenting to vote bears a reasonable resemblance to that person ~~person,~~ or whether the  
9 name appearing on the photo identification is the same as or substantially equivalent to the name  
10 contained in the voter's voter registration record, applying the same standards as the election official  
11 initially reviewing the identification under Subparagraphs (a)(2) and (a)(3), and eachEach judge  
12 shall record ~~their~~the judge's findings in writing on a challenge form provided by the State Board. In  
13 making this determination, the judges of election are subject to the requirements of this Rule in the  
14 same manner as the election official initially examining the photo identification. Only if the judges  
15 of election unanimously find that the photo identification does not bear a reasonable resemblance to  
16 the person presenting to vote, or that the name appearing on the photo identification is not the same  
17 as or substantially equivalent to the name contained in the voter's voter registration record, the voter  
18 shall be offered the options to vote by the person shall vote with a provisional ballot in accordance  
19 with Paragraph (e) of this Rule. Absent such a unanimous finding, the person shall vote with a  
20 regular ballot pursuant to G.S. 163-166.7. To the extent the General Statutes do not specifically  
21 address judges of election at one-stop sites, forFor the purposes of this Subparagraph, "judges of  
22 election" includes a group of three one-stop officials designated by the county board to hear a  
23 challenge to a voter's reasonable resemblance, not all of whom are affiliated with the same political  
24 party. When the judges of election conduct a challenge hearing under this Rule and the challenge is  
25 to a curbside voter, to ensure the voting enclosure remains properly attended, the judges may  
26 separately visit the curbside location to review the evidence.

27 (e) A person presenting to vote who does not present acceptable photo identification in accordance with this Rule shall  
28 be offered the following options:

29 (1) To vote by provisional ballot with an affidavit claiming an exception to the identification  
30 requirement, pursuant to G.S. 163-166.16(d). If the voter has completed the affidavit and is  
31 otherwise eligible to vote, ~~to help ensure impartiality,~~ the county board may reject the provisional  
32 ballot only if the county board unanimously finds that the affidavit is false. The county board shall  
33 substantiate any finding of falsity with grounds recorded in a written decision. Before making a final  
34 finding of falsity, the county board shall provide the voter notice and an opportunity to be heard ~~at~~  
35 a meeting of the county board prior to completion of the canvass on any grounds that the county  
36 board ~~is considering~~ considers regarding the falsity of the affidavit. Notice of the grounds for falsity  
37 and the opportunity for a hearing shall be provided by U.S. mail and by any email address or phone

1 ~~number that the county board possesses for the voter means designed to ensure it is received by the~~  
2 ~~voter in advance of the board's final decision on the affidavit.~~

3 (2) To vote by provisional ballot and then bring to the office of the county board identification  
4 acceptable under G.S. 163-166.16 and this Rule before the end of business on the business day  
5 before county canvass. ~~The county board shall count the provisional ballot of a voter who presents~~  
6 ~~such identification to the office of the county board in a timely manner.~~ If the voter brings photo  
7 identification to the office of a county board in a timely manner, a county board staff member shall  
8 examine the photo identification in accordance with Paragraphs (a), (b), and (c) Paragraph (d) of  
9 this Rule. After examining the photo identification, the staff member shall proceed as follows:

10 (A) If the ~~staff member determines that the~~ photo identification meets all the requirements of  
11 Paragraph (a) of this Rule, ~~the staff member shall recommend approval of the provisional~~  
12 ~~ballot to the county board a report of this determination shall be included with the voter's~~  
13 ~~provisional ballot for county board action.~~

14 (B) If the ~~staff member determines that the~~ photo identification is not an acceptable type of  
15 photo identification under Subparagraph (a)(1) of this Rule, then the staff member shall  
16 inform the voter of the reasons for that ~~determination~~ determination, while the voter is at  
17 the county board office, and invite the voter to provide an acceptable photo identification  
18 in accordance with Subparagraph (d)(2) of this Rule. If the voter does not ~~timely~~ provide  
19 acceptable identification by the end of business on the business day prior to the  
20 canvass ~~identification~~, then county board staff shall recommend disapproval of the  
21 provisional ballot to the county board ~~shall not count the provisional ballot.~~

22 (C) If the ~~staff member determines that~~ the photo or name on the photo identification do not  
23 satisfy Subparagraphs (a)(2) and (a)(3) of this Rule, then ~~the staff member shall~~  
24 ~~recommend disapproval of the provisional ballot to the county board. documentation of~~  
25 ~~this determination shall be included with the provisional envelope containing the voter's~~  
26 ~~ballot. While the voter is at the county board office. The the staff member shall immediately~~  
27 ~~inform the voter of the determination and provide notice to the voter of the county board~~  
28 ~~meeting at which the voter's provisional ballot will be reviewed and considered by the~~  
29 ~~county board. If the voter appears at that meeting and desires to be heard on whether their~~  
30 ~~photo identification is acceptable under this Rule. In reviewing a photo identification to~~  
31 ~~make a final decision on a provisional ballot subject to this Subparagraph, the county board~~  
32 ~~members are subject to the requirements of this Rule in the same manner as a staff member~~  
33 ~~initially examining a voter's photo identification, and shall vote on whether the photo~~  
34 ~~identification presented satisfies Subparagraphs (a)(2) and (a)(3) of this Rule. The county~~  
35 ~~board shall count the provisional ballot unless the county board unanimously decides the~~  
36 ~~photo identification presented does not satisfy Subparagraphs (a)(2) and (a)(3) of this Rule,~~  
37 ~~in which case the county board shall record in writing the grounds for its decision.~~

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*History Note:* Authority G.S. 163-22; ~~163-82.64~~; ~~163-82.15~~; ~~163-166.7~~; ~~NAACP v. McCrory~~; ~~831 F.3d 204~~  
(~~4<sup>th</sup> Cir. 2016~~); ~~163A-1145.1~~; ~~S.L. 2018-144, s. 3.1(e)~~; 163-166.11; 163-166.16;  
*Eff. January 1, 2016; Temporary Amendment Eff. August 23, 2019; Temporary Amendment Expired*  
*Eff. June 12, 2020-2020; Temporary Amendment Eff.*

1 08 NCAC 17.0109 is adopted under temporary procedures with changes, and additional changes in response to  
2 Rules Review Commission staff suggestions, as follows:

3  
4 **08 NCAC 17.0109 PHOTO IDENTIFICATION FOR ABSENTEE-BY-MAIL BALLOTS**

5 ~~(a) Definitions. The following definitions apply to this Rule:~~

6 ~~(1) "Readable" means the name on the identification can be read and the photograph depicts a person,~~  
7 ~~as opposed to displaying, for example, a mere shadow or outline of a person.~~

8 ~~(2) "Copy" means a duplicate of an original document, including a photographic copy of the original~~  
9 ~~document.~~

10 ~~(a)(b)~~ Identification Requirement for Absentee-by-Mail Ballots. Photo identification accompanying a voter's absentee  
11 ballot pursuant to G.S. 163-230.1(f1) is acceptable if it is a photocopy of a type of photo identification acceptable for  
12 voting purposes under 08 NCAC 17 .0101(a)(1), is readable, and the name appearing on the identification is the same  
13 as or substantially equivalent to the name contained in the voter's voter registration record in accordance with 08  
14 NCAC 17 .0101(a)(3). As used in this Rule, "readable" means that, on the photocopy of identification required by this  
15 Rule, the name on the identification can be read and the photograph depicts a person, as opposed to displaying, for  
16 example, a mere shadow or outline of a person. A photo identification shall not be rejected due to differences between  
17 the address appearing on an absentee voter's photo identification and any address contained in the voter's absentee  
18 request form, absentee ballot application, or registration record. A copy of photo identification that is acceptable under  
19 this Rule need include only the side of the identification (or, if the identification is a booklet, the page of the  
20 identification) where the person's name and photo appears.

21 ~~(b)(e)~~ Initial Review by County Board Staff. County board staff shall, upon receipt of a voter's absentee ballot  
22 application, determine whether the application is accompanied by a photocopy eopy of photo identification that is  
23 readable and is of a type of photo identification acceptable for voting purposes under 08 NCAC 17 .0101(a)(1), or, if  
24 the application is accompanied by an affidavit claiming an exception to the identification requirement pursuant to G.S.  
25 163-166.16(d), determine whether the affidavit is complete. If staff identify any deficiency, they shall send mail  
26 written notice of the deficiency to the voter within one business day of identifying the deficiency, informing the voter  
27 that the voter, the voter's verifiable legal guardian or near relative, or a person of the voter's choice if the voter needs  
28 assistance due to the voter's disability, may provide a photocopy eopy of the voter's acceptable photo identification  
29 or a completed affidavit claiming an exception to the county board by the deadline specified in G.S. 163-166.16(c).  
30 Staff shall additionally notify the voter by telephone or email, using any telephone number or email address contained  
31 in the voter's voter registration record or provided by the voter when requesting an absentee ballot. ~~if the voter~~  
32 ~~provided their telephone number or email address when registering to vote.~~

33 ~~(c)(d)~~ Final Review by County Board. The county board shall, at the first meeting held pursuant to G.S. 163-230.1(f)  
34 after the application and ballot is received, proceed as follows:

- 35 (1) If the voter has submitted a photocopy eopy of their photo identification, the county board shall  
36 make its determination whether the identification is acceptable under Paragraph (b) of this Rule. Te  
37 help ensure impartiality, a Δ final determination that the photocopy eopy of photo identification is



1 not acceptable under Paragraph (b) of this Rule shall require a unanimous vote by the county board.  
2 If the county board makes a final determination that a voter's photocopy copy of photo identification  
3 is not acceptable, staff shall notify the voter as provided in Paragraph (c) of this Rule.

- 4 (2) If the voter has completed an affidavit claiming an exception to the identification requirement  
5 pursuant to G.S. 163-166.16(d), and is otherwise eligible to vote, ~~to help ensure impartiality~~ the  
6 county board may reject that person's ballot only if the county board unanimously finds that the  
7 affidavit is false. The county board shall substantiate any finding of falsity with grounds recorded  
8 in a written decision. Before making a finding of falsity, the county board shall provide the voter  
9 notice and an opportunity to be heard at a meeting of the county board prior to the completion of  
10 the canvass on any grounds that the county board is considering ~~considers~~ regarding the falsity of  
11 the affidavit. Notice of the grounds for falsity and the opportunity for a hearing shall be provided  
12 by U.S. mail and by any email address or phone number that the county board possesses for the  
13 voter.

- 14 (3) If a voter's photocopy copy of photo identification or ~~alternative affidavit~~ affidavit claiming an  
15 exception to the identification requirement pursuant to G.S. 163-166.16(d) is deemed deficient under  
16 Paragraph (c) of this Rule, the county board shall reserve its final decision on the approval of the  
17 absentee application until the next official meeting after the deficiency is cured or the county  
18 canvass, whichever occurs first.

19 ~~(d)~~(e) Exception for Military and Overseas Voters. A covered voter who is casting a ballot pursuant to G.S. 163,  
20 Article 21A, Part 1 is not required to submit a photocopy copy of acceptable photo identification under Paragraph (b)  
21 of this Rule or claim an exception under G.S. 163-166.16(d).

22 ~~(e)~~(f) Return of Original Form of Identification. If a voter sends their original form of photo identification in the  
23 container-return envelope, or if a voter hand-delivers an absentee ballot to the county board of elections that is not  
24 accompanied by a photocopy of the voter's photo identification and the voter has a type of photo identification  
25 acceptable for voting purposes under 08 NCAC 17.0101(a)(1) on hand, the county board shall make a photocopy of  
26 the identification, which shall serve as an acceptable photo identification accompanying the voter's absentee  
27 ~~ballot, ballot, and mail the original form of identification back to the voter.~~ The county board shall notify the voter by  
28 mail and by any email address or phone number that the county board possesses for the voter that the original photo  
29 identification will be returned to the voter and shall use a method of return that documents receipt of the photo  
30 identification.

31  
32 *History Note: Authority G.S. 163-22; 163-166.7; 163-166.16; 163-229; 163-230.1;*  
33 *Temporary Adoption Eff. August 23, 2019; January 1, 2020;*  
34 *Temporary Rule Expired Eff. October 11, 2020.*

## **Burgos, Alexander N**

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**Subject:** FW: photo ID rules

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**From:** Peaslee, William W <bill.peaslee@oah.nc.gov>  
**Sent:** Tuesday, July 11, 2023 2:35 PM  
**To:** Cox, Paul <paul.cox@ncsbe.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: photo ID rules

Thank you for our telephone conversation. This email is to memorialize our conversation.

We spoke today about:

- Suggestions regarding the procedures for verifying name matches. We discussed that, while the statute does not require examination of the name on the identification specifically, given the purpose of stated in GS 163-166.16(g), the Board added this requirement for the statutory scheme to meet its stated purpose. Rule 101(a)(4)
- Suggestion regarding whether there's a need to reiterate the limitation on address matching. We discussed reasonable necessity pursuant to GS 150B-21.9.
- What is meant by the comment about the purpose of the photo ID requirement being the only purpose required by the General Assembly. We discussed that as the purpose of the stated in the rule is the same as the purpose stated 163-166.16(g) is the same, the Board is not exceeding its authority and this portion of the rule merely provides guidance to the officials to keep the statutory prescribed purpose in mind. Rule 101(d)
- Process concerns regarding the review of IDs brought to the county board after a voter casts a provisional ballot without ID in person. We discussed that the CBOE staff are making recommendations to the CBOE regarding provisional ballots and the voters attempt to cure by presentation of identification. The staff member is not making the final determination on the provisional ballot. Rule 101 (e)(2)(A)-(C).
- Process clarifications about a voter hand delivering their absentee ballot and the county board's instruction to make a photocopy of ID. We discussed in Rule 109(f) that if the voter hand delivers to the CBOE their absentee ballot application without a copy of acceptable, the staff is required to request the identification, make a copy of it, and return the original.

If you feel I am missing anything, please let me know.

**William W. Peaslee**  
**Rules Review Commission Counsel / Legislative Liaison**  
Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh NC, 27609  
(984) 236-1939  
[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

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## Burgos, Alexander N

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**Subject:** FW: photo ID rules

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**From:** Cox, Paul <[paul.cox@ncsbe.gov](mailto:paul.cox@ncsbe.gov)>  
**Sent:** Tuesday, July 11, 2023 10:19 AM  
**To:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: photo ID rules

That works. Talk to you then.

---

**From:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Sent:** Tuesday, July 11, 2023 10:16 AM  
**To:** Cox, Paul <[paul.cox@ncsbe.gov](mailto:paul.cox@ncsbe.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: photo ID rules

No worries. How about 1:30?

**William W. Peaslee**  
**Rules Review Commission Counsel / Legislative Liaison**  
Office of Administrative Hearings  
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(984) 236-1939  
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**From:** Cox, Paul <[paul.cox@ncsbe.gov](mailto:paul.cox@ncsbe.gov)>  
**Sent:** Tuesday, July 11, 2023 10:10 AM  
**To:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: photo ID rules

Bill, I'm sorry, I read your email too quickly. 11-12 is one of the times I am not available. Are you free another time today other than the ones I listed below?

The items I wanted to talk through specifically were:

- Suggestions regarding the procedures for verifying name matches
- Suggestion regarding whether there's a need to reiterate the limitation on address matching
- What is meant by the comment about the purpose of the photo ID requirement being the only purpose required by the General Assembly

- Process concerns regarding the review of IDs brought to the county board after a voter casts a provisional ballot without ID in person
- Process clarifications about a voter hand delivering their absentee ballot and the county board's instruction to make a photocopy of ID

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**From:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Sent:** Tuesday, July 11, 2023 9:59 AM  
**To:** Cox, Paul <[paul.cox@ncsbe.gov](mailto:paul.cox@ncsbe.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: photo ID rules

Anything in particular I should look at before the call?

**William W. Peaslee**  
**Rules Review Commission Counsel / Legislative Liaison**  
Office of Administrative Hearings  
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## Burgos, Alexander N

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**From:** Cox, Paul  
**Sent:** Tuesday, July 11, 2023 9:47 AM  
**To:** Peaslee, William W  
**Cc:** Burgos, Alexander N  
**Subject:** RE: photo ID rules

Sounds good. I'll call you then.

---

**From:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Sent:** Tuesday, July 11, 2023 9:20 AM  
**To:** Cox, Paul <[paul.cox@ncsbe.gov](mailto:paul.cox@ncsbe.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: photo ID rules

Good morning Paul.

As you may know the OAH strongly prefers email communication between RRC counsel and agencies in the interests of transparency. Most telephone communication of this sort will need to be memorialized.

However, given the importance of these rules and the upcoming municipal elections, I agree to a telephone conference. Let's do 11-12.

Thanks.

**William W. Peaslee**  
**Rules Review Commission Counsel / Legislative Liaison**  
Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh NC, 27609  
(984) 236-1939  
[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

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---

**From:** Cox, Paul <[paul.cox@ncsbe.gov](mailto:paul.cox@ncsbe.gov)>  
**Sent:** Tuesday, July 11, 2023 9:11 AM  
**To:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Subject:** photo ID rules

Hi Bill,

Do you have some availability today to discuss the photo ID rules? I wanted to chat to clarify some items before we submitted our responses to your suggestions. I'm free other than 11-12, 1-1:30, 2-3, and 3:30-4.

Best,

**Paul Cox**

General Counsel

NORTH CAROLINA STATE BOARD OF ELECTIONS

RALEIGH, NC 27611

919.814.0700

[www.ncsbe.gov](http://www.ncsbe.gov)

## **Burgos, Alexander N**

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**Subject:** FW: Board of Elections Temp Rule  
**Attachments:** 07.2023 Board of Elections Temp Rules.docx

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**From:** Peaslee, William W  
**Sent:** Friday, June 30, 2023 3:20 PM  
**To:** Cox, Paul <[paul.cox@ncsbe.gov](mailto:paul.cox@ncsbe.gov)>  
**Cc:** Wakely, Lindsey <[Lindsey.Wakely@ncsbe.gov](mailto:Lindsey.Wakely@ncsbe.gov)>  
**Subject:** Board of Elections Temp Rule

Good afternoon Paul.

I am the attorney who was assigned to review the Board of Elections Temporary rule filed today. The Rules Review Commission will consider the rules at its July 20 meeting.

Attached please find the request for changes. Please reply by July 12, 2023. Also, please provide me with the contact information for the chairman of the Board of Elections which was missing from the filing form. (Please see G.S. 150B-21.1(b1))

As always, if you have any questions or concerns please do not hesitate to contact me.

I hope you have a safe and happy Independence Day.

**William W. Peaslee**  
**Rules Review Commission Counsel / Legislative Liaison**  
Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh NC, 27609  
(984) 236-1939  
[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

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