

Burgos, Alexander N

Subject: FW: Board of Elections RFC May 2026

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Thursday, May 21, 2026 7:00 PM
To: Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>
Cc: LiVecchi, Brian P <brian.livecchi@ncsbe.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: Board of Elections RFC May 2026

Lindsey,

I've reviewed your updated submission.

With regards to the incorporation in 08 NCAC 23 .0101, these need to include links where the document is available, per recent RRC guidance. Additionally, I do not think it makes sense to incorporate subsequent versions of a repealed statute. Here is language I recommend on lines 29 and 30:

"8 U.S.C. 1431 is incorporated by reference, including subsequent amendments and editions, and is available for free at <https://www.govinfo.gov/app/details/USCODE-2024-title8/USCODE-2024-title8-chap12-subchapIII-partII-sec1431>. 8 U.S.C. 1432 (repealed effective February 27, 2001) is incorporated by reference, excluding subsequent amendments and editions, and is available for free at <https://www.govinfo.gov/app/details/USCODE-1999-title8/USCODE-1999-title8-chap12-subchapIII-partII-sec1432>."

With regards to "official government records and databases" in 08 NCAC 23 .0101 on p.2 lines 1 and 2, I think it is a close call whether this is sufficiently clear as written. Would you consider adding examples, i.e. "official government records and databases and which identifies a registered voter as not being a United States citizen, such as records related to obtaining a driver's license or databases maintained by U.S. Citizenship and Immigration Services."? I don't think you need an exhaustive list, just something to help the reader follow.

Your response regarding 08 NCAC 23 .0102 addresses the concern I had.

As you are likely aware, we have already started receiving public comments and request to speak in opposition to the rule. I am still working through these and expect we will continue to receive more. At this point, it is my plan to summarize the issues relevant to the RRC raised by the public in my presentation of the rules, but let the comments and speakers speak for themselves. Two issues raised by the public that we have not already corresponded on:

1. Will these rules impact local funds or have a substantial economic impact such that a fiscal note was necessary?
2. Did the agency "consider fully all written and oral comments received" as required by G.S. 150B-21.2?

I raise those here in case you want to respond in writing, although I imagine you will also be prepared to discuss them at the meeting should the Commission have questions.

If you'd like, I'm happy to set up a time to discuss any of this with you tomorrow.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings
(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>
Sent: Tuesday, May 19, 2026 4:30 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: LiVecchi, Brian P <brian.livecchi@ncsbe.gov>
Subject: RE: Board of Elections RFC May 2026

Good afternoon Seth,

Attached, please find our responses and revised rule 08 NCAC 23 .0101. I've made an attempt that the incorporation of the repealed statute. Please let us know if you have any suggestions on other approaches.

As always, if you have any questions, please let me know.

Sincerely,

Lindsey Wakely
Campaign Finance Director and Counsel
O: (919) 814-0729



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From: Wakely, Lindsey
Sent: Tuesday, May 19, 2026 2:56 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: LiVecchi, Brian P <brian.livecchi@ncsbe.gov>
Subject: FW: Board of Elections RFC May 2026

Hi Seth,

Since we're getting close to 5pm, I will follow up by phone as well, but wanted to start with an email. On 08 NCAC 23 .0101. and the incorporation of the Immigration and Nationality Act - I'm trying to make sure we approach correctly. We can easily include citations to 8 U.S.C. 1431 and 8 U.S.C. 1432, but 8 U.S.C. 1432 was repealed in 2000. It still applies because citizenship isn't revoked after repealing or changing a citizenship law. Do you have any suggestions on how best to word that?

Thanks,

Lindsey Wakely
Campaign Finance Director and Counsel
O: (919) 814-0729



E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

1 08 NCAC 23 .0101 is adopted with changes as published in 40:14 NCR 1195-1196 as follows:

2
3 CHAPTER 23 – LIST MAINTENANCE

4
5 SECTION .0100 – NON-CITIZEN LIST MAINTENANCE

6
7 **08 NCAC 23 .0101** **DEFINITIONS**

8
9 For purposes of this Section:

- 10 (1) “Chair” means a member appointed to be the chair of a county board of elections pursuant to G.S.
11 163-30.
- 12 (2) “Challenge” means a challenge entered by a county board under Rule .0102 of this Section.
- 13 (3) “Challenge hearing” means the hearing conducted under Rule .0104 of this Section.
- 14 (4) “Challenged voter” means a ~~presumptive~~ potential noncitizen whose eligibility to remain
15 registered to vote has been challenged pursuant to the procedures in this Section.
- 16 (5) “Director of elections” means the county director of elections for a county appointed pursuant to
17 G.S. 163-35.
- 18 (6) “Documentation of citizenship” means an original or copy of a document issued by a state,
19 federal, or tribal government showing the citizenship of the person to whom the document was
20 issued. Documentation of citizenship shall include, but is not limited to, a birth certificate, a
21 document showing place of birth issued by a vital records office, a passport or passport card issued
22 by the United States Department of State, a consular report of birth abroad issued by the United
23 States Department of State, ~~or~~ a certificate of citizenship or naturalization issued by the
24 Department of Homeland Security’s United States Citizenship and Immigration Services.
25 Documentation of citizenship shall also include documentation showing the citizenship of a
26 parent, when provided with documentation indicating the parental relationship to the person
27 presenting the documentation, to demonstrate citizenship derived from a parent pursuant to the
28 applicable provisions of 8 U.S.C. 1431 and 8 U.S.C. 1432 of the federal Immigration and
29 Nationality Act. 8 U.S.C. 1431 and 8 U.S.C. 1432 (repealed effective February 27, 2001) are
30 incorporated by reference, including subsequent amendments and editions.
- 31 (7) “Notice of non-citizenship” means a written notice sent by the State Board of elections to a county
32 board of elections identifying a registered voter in the county as a ~~presumptive~~ potential
33 noncitizen. The notice of non-citizenship shall include the source of the information used to
34 identify the registered voter as a potential noncitizen.
- 35 (8) “Preliminary hearing” means the hearing conducted under Rule .0103 of this Section.
- 36 (9) ~~“Presumptive~~ “Potential noncitizen” means a registered voter who has been identified by the State
37 Board of Elections as potentially not being a United States citizen based on information obtained

1 by the State Board from official government records and databases and which identifies a
2 registered voter as not being a United States citizen. A potential noncitizen does not mean a
3 registered voter for whom the State Board has in its possession or control any information or
4 documents demonstrating that the voter has previously provided documentation of citizenship, nor
5 does it mean a registered voter who has previously been found to be a United States citizen by a
6 county board of elections.

7
8 *History Note:* Authority G.S. 163-22; 163-82.14; 163-82.26; 163-85; 163-86;
9 Eff. ~~May~~ June 1, 2026.

Request for Changes Pursuant to N.C. Gen. Stat. § 150B-21.10

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

Note the following general instructions:

1. You must submit the revised rule via email to oah.rules@oah.nc.gov. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
 - Wrong: “~~a~~Association”
 - Right: “~~association~~ Association”
6. Treat punctuation as part of a word. For example:
 - Wrong: “day;; and”
 - Right: “~~day,~~ day, and”
7. Formatting instructions and examples may be found at:
<https://www.oah.nc.gov/rule-format-examples>

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

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

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 23 .0101

DEADLINE FOR RECEIPT: May 19, 2026

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:

On line 28, “applicable provisions of the federal Immigration and Nationality Act” is not sufficiently clear. Several changes relate to this issue:

“Applicable” usually requires the rule to explain how you would determine what applies. Are there specific provisions you intend not to apply? You may be able to just delete “applicable provisions of the” without changing your meaning.

If state and county boards are determining the application of the Immigration and Nationality Act to specific people, the portions of the law you intend to apply will need to be incorporated. See G.S. 150B-21.6 and relevant RRC guidance.

Alternatively, if state and county boards are applying, a determination made by some other organization (a federal entity for example) that needs to be specified, but the law may not need to be incorporated into your rule.

Either way, providing a U.S. code cite for the federal law you are referring to would also be helpful.

Agency Response: The specific federal statutes in the Immigration and Nationality Act that may apply would depend on when the voter was under the age of 18 years. If that was before February 27, 2001, then 8 U.S.C. §§ 1431 or 1432 would apply. If that was on or after February 27, 2001, then only 8 U.S.C. § 1431 would apply. The agency will clarify that “the applicable provisions” are those specific cites. The agency will also add text about incorporating those two provisions by reference. Please note that 8 U.S.C. 1432 was repealed in 2000, however, the repeal does not impact the citizenship status of those who obtained it pursuant to the law.

On line 36, what “official government records and databases” are you referring to? The only specific one referenced in statute is the jury recusal record referenced in G.S. 9-6.2. Are there others? What others?

Seth Ascher

Commission Counsel

Date submitted to agency: May 5, 2026

Agency Response: There are various sources of citizenship information available to the agency, both from State and federal government agencies. For instance, the N.C. Division of Motor Vehicles receives documentation of citizenship when a person applies for a driver's license. See e.g., [N.C. REAL ID Requirements](#). There is also the federal SAVE database operated by U.S. Citizenship and Immigration Services (USCIS), which is used by many state and local agencies for the purposes of checking citizenship status. See [About SAVE](#). SAVE includes citizenship information from USCIS, the Social Security Administration, and the U.S. Department of State.

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

Seth Ascher
Commission Counsel
Date submitted to agency: May 5, 2026

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

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 23 .0102

DEADLINE FOR RECEIPT: May 19, 2026

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:

Regarding paragraph (a), lines 9 through 12, what is the State Board of Elections authority to direct the director of elections for the County to challenge a voter's eligibility?

Agency Response: Under the agency's primary list maintenance statute, N.C.G.S. § 163-82.14, subsection (a) provides as follows: "In accordance with this section, the State Board and county boards of elections shall maintain the list of eligible voters in the State by providing for the following: (1) The removal of the names of ineligible voters from the official lists of eligible voters. (2) Updates to the addresses and other necessary data of persons who remain on the official lists of eligible voters." Subsection (a1) provides that "The State Board, in addition to the methods set forth in this section, may use other methods toward the ends set forth in subsection (a) of this section[.]" As such, the State Board is authorized to use "other methods" to conduct list maintenance and remove the names of ineligible voters from the voter rolls, even if the steps for that method are not spelled out in the list maintenance statute. The State Board has also been given the statutory authority to adopt rules regarding registration and list maintenance. *See* N.C.G.S. § 163-82.26 ("The State Board of Elections shall promulgate rules necessary to implement the provisions of [Article 7A]"). Finally, under N.C.G.S. § 163-82.14(e), "[t]he State Board has the authority to perform list maintenance under this section with the same authority as a county board."

The State Board has long utilized the challenge process when there are ineligible voters on the voter rolls and who cast ballots. In some instances, a statute directs the challenge process to occur, as is the case in some provisions of the list maintenance statute. In other instances, that direction comes from directives of the State Board. One such example is a directive issued as a numbered memo, specifically [Numbered Memo 2022-05](#). That memo directs counties on issuing what are viewed as administrative challenges to ineligible ballots, which then follow the statutory processes for hearing the challenge to the ballot. And when a ballot challenge is for a registration-related reason, it results in the voter's registration being cancelled as

Seth Ascher

Commission Counsel

Date submitted to agency: May 5, 2026

well. *See* N.C.G.S. § 163-90.2(a). As part of that process, directors often perform the administrative task of entering the challenge, which is fully within their duties as the director of elections for the county. *See* N.C.G.S. § 163-35(d).

Therefore, the State Board can appropriately direct a county director of elections to enter an administrative challenge in order to carry out the shared duty to maintain the list of eligible voters in the State using “other methods towards” the “removal of the names of ineligible voters from the official lists of eligible voters.”

Regarding line 11, G.S. 163-85 gives “registered voters of the county” the right to challenge a voter’s registration. Since the State Board is not a “registered voter” of any county, how is this the appropriate mechanism for the State Board to challenge a voter’s registration?

Agency Response: See response above. The legislature has also indicated that the challenge process is an appropriate one to remove a non-citizen from the voter rolls. See N.C.G.S. § 163-85(c)(7); see also N.C.G.S. § 163-82.14(c1).

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

Burgos, Alexander N

From: Steele, Adam
Sent: Sunday, May 17, 2026 10:58 PM
To: Ascher, Seth M
Cc: Burgos, Alexander N; Wakely, Lindsey; LiVecchi, Brian P; Hoegemeyer, Timothy J
Subject: RE: Board of Elections RFC May 2026

Seth,

Thanks for your email. I will be out of the office for the next couple of weeks without any access to email, so I have copied our other rulemaking coordinator, Lindsey Wakely, on this email. She should be providing responses to your request for changes and is aware of the May 19 deadline to do so.

I have also copied our chief of staff, Brian LiVecchi, and general counsel, Tim Hoegemeyer. I expect that at least one of them will request to make an oral statement on behalf of the agency in support of the rules, or at least respond to any statements offered in opposition to the rules, in accordance with 26 NCAC 05 .0105.

Thanks,

Adam Steele | Deputy General Counsel

North Carolina State Board of Elections

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[Direct: 919.814.0654](#)

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Tuesday, May 5, 2026 4:41 PM
To: Steele, Adam <adam.steele@ncsbe.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Board of Elections RFC May 2026

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Board of Elections for the May 2026 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, May 28, 2026, at 10:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite should be sent to you as we get close to the meeting. If there are any other representatives from your agency who want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

Attached is my initial Request for Changes Pursuant to G.S. 150B-21.10. Please submit your responses, the revised Rules, and forms to me via email, no later than 5 p.m. on May 19, 2026.

Please let me know if you have any questions or concerns.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

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