ELECTORAL EDUCATION
FOUNDATION

Election Integrity for North Carolina

EEF

**RECOMMENDATIONS TO THE NORTH CAROLINA
GENERAL ASSEMBLY TO IMPROVE STATE ELECTION LAWS
FOR THE 2023-2024 SESSION**

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Based on an analysis of voter history data and our personal archives of election data files dating back to the 2020 election, the Electoral Education Foundation suggests making the following changes to election law to improve voting integrity in North Carolina. Then follows a discussion of each recommendation to explain the rationale for each, with tabbed annexes to give supporting examples of why these changes are recommended. Other subjects listed are topics for further inquiry by the Joint Oversight Committee on Elections since they pertain more to the internal processes used by the NCSBE in data management and publication and do not necessarily lend themselves to statutory revision.

<u>RECOMMENDATIONS FOR STATUTORY CHANGES:</u>

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1. Affirm that the Absentee Ballot Application Number declared to be a public record in accordance with current election law, NCGS §163- 228 is published in all relevant election data files:

NCGS §163- 228 requires the NCSBE to make the ballot application number for all absentee ballot requests public. Despite the Legislature declaring this data a matter of public record, the NCSBE has adopted a contrary policy, inconsistently redacting that unique Absentee Ballot Request Identification number from the public record for some elections and publishing it at other points. This inconsistency has been noted since 2016.

In our communications with the SBOE, they have stated that if a ballot application number is made public, anyone in a Canvass meeting could discover how a voter voted when that number is called out, violating the secrecy of that ballot. While that is conceivably true, we believe that such an occurrence would be very infrequent. Furthermore, from a strictly legal perspective, the State Board lacks the authority to make such a unilateral, binding determination via memo that contravenes a General Statute from the Legislature. The emails between the EEF and the NCSBE on this topic are at TAB A.

There are sufficient statutes already that make it a crime for anyone to attempt to discover how any other person voted, and it seems best to use those statutes where warranted instead of the wholesale redaction of information the Legislature has chosen to declare a matter of public record.

We believe the greater harm occurs if the public has no way to discern if records in the data files are true duplicates or clerical errors. In the 2020 election, the ballot application number was published daily in the Absentee Ballot Data File until October 8th, just before the onset of Early Voting and was then redacted from all later versions of that file. With access to ballot application numbers, one could reconcile the voter history to ensure accuracy in the record and validate that no voter had cast more than one ballot.

2. Issue the unique voter NCID numbers in chronological and sequential order.

The NCSBE issues an identification number to each voter in the voter rolls. Known as the NCID#, this number is used to insure that each voter can be identified separately from every other voter and is the means by which their voter history can follow them should they move from one county to another. Traditionally, NCID#s are issued in a very orderly and sequential process of [last number +1]. However, our research has identified multiple cases of numbers being issued in batches that break the chronological sequence. TAB B shows an example of such a batch. The voter on the top line has the lowest NCID# (Column D) among that group with CJ192923 and a registration date of 3/1/2019. The last line at the bottom of that group shows NCID# CJ192942 and a registration date 3 days later.

But what is significant is that the records highlighted in yellow in between those two NCID#s all show a backdated date of registration. These records were also NOT in the voter rolls just three weeks prior in the Nov 26th weekly report. The voter's age in Column AH says they are all now 21 years old, so these were all 16 years old 5 years ago and appear to have pre-registered to vote when they got their initial Drivers License. If they became eligible to vote at 18 years of age, these records should have been in the file during the last 3 years but are not. This is a weakness that lends itself to the fabrication of potentially phantom voters that have the prima facia appearance of legitimacy but may in fact be fictitious voters.

Of the NCID#s skipped over in this sequence of new records, we find that NCID# CJ192924 is found as a registered voter in Vance County since Oct 1, 2019, CJ192932 has been registered in Mecklenburg County since Oct 26th of 2021 and CJ192938 has been registered in Harnett County since Mar 8th of 2022, even though their NCID# prefix (CJxxxxxx) shows their registration originated in Johnston County. This disparity in how and why some of the 16 year old pre-registrants get their registration perfected at one point and others see years of delay in theirs highlights the lack of a consistent system administered by the NCSBE to insure their record matures at the appropriate date.

3. Block entry of additional voter registration data into Absentee Ballot Data Files once the deadline for reporting them to the NCSBE on Election Night has passed:

In North Carolina, a voter can register to vote and vote on the same day during the Early Voting period at One-Stop locations in each County. They are known as Same-Day Registrants (SDRs). We believe that current NCSBE policy requires each County to upload all voting results from Early Voting to them no later than 5 pm on Election Day. This is why we often see in the early returns on Election Night votes being shown for candidates even though it says zero precincts have reported.

What we find to be problematic is that even though the votes from the tabulation machines are reported on Election Night, the Absentee Ballot Data file showing who cast all those votes continues to grow long after Election Day. TAB C reflects a chronology by day from the November 2020 General Election of how many SDRs appeared in the data file each day. What we documented is that of the 114,401 SDRs who cast a ballot in that election, 17,749 of those new voters did not appear in the Absentee Ballot Data file until AFTER Election Day, including 287 that did not appear at all until November 11th, 8 days after Election Day, despite the record saying they had registered and cast their ballot more than a week prior. This large number exceeds the threshold of the 10k vote or greater margin of victory in statewide races needed to avoid an automatic recount at State expense and is of itself greater than the margin of victory in the Attorney General's race.

When we have votes being counted and awarded to candidates and we do not yet know even who the voters are that cast those ballots, this becomes another instance of a discrepancy that can have a high correlation to voter fraud. We recognize that backlogs can occur, but if so, it is a staffing issue that can be addressed and should be well before any election gets underway. But our recommendation more directly addresses the need for substantive documentation of these instances when they occur so that additional records cannot be added to the data without written justification.

4. Prohibit the use of Same-Day Registration provisions as a means of avoiding the casting of a Provisional Ballot during Early Voting:

The EEF has recently detected numerous cases of voters registering as an SDR during Early Voting only to later see the NCID# assigned to them at that point being changed to an NCID# they were previously assigned in the same or a different County. This has become a way to avoid casting a Provisional Ballot based on prior removal or there being no record of a prior registration. Since the prior registrations are later being found, it suggests little to no research is being done at that point at One-Stop to determine if they are properly registered elsewhere and instead simply signing them up with a new NCID#.

Of particular note were two SDRs registered in Robeson County and assigned a new NCID#. Their records reflected campus addresses at Pembroke University, one which proved to be a parking lot and the other, a fictitious address according to mapquest.com. Their Absentee Ballot record remained unchanged and their addresses were coded as "Verified" until just before the Canvass. At that point, their NCID#s were changed to reflect the one previously given to them, one in Mecklenburg County and one in Durham County. Now that Robeson ballot appears in their Voter History in their respective records in the original Counties and there is no longer any record in the voter rolls of them ever having been registered to vote in Robeson County, but those two ballots were still counted and votes awarded to candidates based on them.

We hold that any discrepancies like this we find in our research could be found and known much more timely by the NCSBE staff if they only bothered to look. There is no evidence they screen the data for any such anomalies unless and until some third party files a challenge over it.

5. Prohibit Certification until County and State Results Records are Reconciled:

Our conversations with several County Board of Elections members and County Directors of Elections found no requirement for any County to compare what they have uploaded to the State with what the NCSBE publishes on their behalf to insure accuracy. We recommend an inclusion of this requirement into statute so that the Secretary of State can rely not only on a certification from the NCSBE as to any election outcome but also the individual validation of each County that the published results are in fact accurate. It should also address a process for reconciliation should it be determined that some inaccuracy exists.

6. Prohibit Updates to Previously Certified Election Files without written notice to the Joint Oversight Committee on Elections:

A review of the election data files from past elections in NC has yielded some disturbing results. The listing of files for each election contains the file name, the file size and the date it was last modified. There is considerable evidence that these files are often changed months and years after that election's results were finalized and certified. TAB D shows a listing of Provisional Ballot Data files from a series of past elections, mostly held in 2009. What this listing shows is that in the span of 3 1/2 minutes on the afternoon of May 11th, 2017, someone modified all 16 of those files in exact reverse chronological order by election date. No file was open for more than a few seconds, suggesting they were either replaced by a new file or data was copied and pasted into them. Someone then came back later that same night after normal business hours and modified the history_stats files for 6 past elections.

When data alteration of this nature is allowed to take place with no oversight, then no past election data can be presumed to be currently accurate of what occurred.

The most recent instance took place on the Saturday evening following the November 2020 General Election. At 11:42 PM that night, just before midnight on a weekend, someone modified the Absentee Ballot Data file for the 2016 General Election. We agree that many of the staff were working remotely from home due to the pandemic, but this change bears no relevance to the normal course of processing election data, particularly while another election is underway. If the file had merely been opened and read for some reason, the "date_modified" would not have changed in the system as is shown in the TAB D graphic. This at best gives the appearance of impropriety that data records were being harvested for inclusion in the files of the current election then underway.

On a related note, the County Status Report from the 2020 General Election shows that both Pitt and Stokes Counties were allowed to make amended uploads of their election data in February of 2021, long after the results have been certified. To date, none of the election data files have been updated to reflect what changes were made or why this late amendment to their data was necessary.

7. *Mandate Archiving of Certified Election Results with the Office of State Archives:*

The NC General Assembly should mandate as a matter of law that once an election's results are certified, that those related election data files created and published by the NCSBE, including all interim versions of those files, be transferred and placed under the custody and control of the Office of State Archives. Currently, interim versions of election data files are typically overwritten when the next day's files are posted, obscuring the prior versions from public access and scrutiny. These files should all be maintained as part of the official archive that cannot be later modified in any way, and that they be made available to the public via the Internet. The NCSBE currently rents and utilizes data storage space online from Amazon Web Services according to the URL listed for some files, and that on information and belief, that the server is not even located within the continental United States.

Our experience with purchasing physical hard drives of the size to hold the entire history of files created since 2006 when automation was more fully undertaken to be in the hundreds of dollars, a very affordable option to the ongoing rental costs of CPU time and storage space on a server in a foreign country.

8. *Accountability Needed for Who Conducts Updates to Election Data:*

The EEF believes there are insufficient internal controls enforced by the NCSBE to document who makes changes to election data and voter registration files such as those cited above in Issue #6 at both the County and State levels.

TAB E shows an example of a voter's Absentee Ballot data (last name redacted to protect privacy) as it appeared in each day's report. That report day is in Column B. We appended that date to each line in each day's Absentee Ballot Data file records so that when they were merged, we could then sort the records by NCID# and Report Date to discern how any voter's record changed from one day to the next. As this listing shows for this voter, as reported on Nov 1st, a single One-Stop ballot was cast by this voter as an an SDR (Column AR) and "Accepted" (Column AP) on Oct 15th, 2020 (Column AM). We reasonably conclude at that point that the ballot was fed into a tabulator and counted as the voter departed. However, the following day, Nov 2nd, it now says this voter attempted twice to cast a ballot but both then showed a status of "Conflict" (Column AP) on Oct 15th. These two records remained unchanged until after the Thanksgiving holidays. There was no Absentee Ballot Data file update made by the NCSBE between Nov 25th and Dec 9th. But in the Dec 9th report, it now says one ballot was "Accepted" and the other as "Cancelled" (sp).

Without the unique Absentee Ballot Application Number discussed in Issue #1 above, it is impossible to know if these two entries actually represent two distinct ballots or are a duplication of each other. However it does raise the questions of :

1) which ballot was fed into the tabulator on Oct 15th if there were two,
2) which ballot was fed into the tabulator on or about Dec 9th,
3) where have these two ballots been during the interim period and
4) when were they actually marked by the voter?
5) who made these changes and why?

This ability to insert additional Absentee Ballot records into the data file weeks after an alleged voting attempt took place also has a high correlation to voter fraud if it is abused.

9. *Eliminate the use of "Virtual Precincts" in the tabulation of vote totals:*

Forty-seven of NC's 100 Counties continue to create and define "virtual" precincts to report vote totals by voting method rather than by the actual precinct of the voter. Current statutes require those counties to submit an amended Results report within 30 days after an election that reports all votes by the real precinct of the voter. Our research has revealed that this is necessitated by the limits imposed by the capacity of the older ballot tabulation machines. Those limits in the number of different ballot styles the machines can be programmed to read are easily reached in the larger counties during Early Voting when every ballot style in that county must be programmed into them to accept voted ballots from a voter in any precinct in that county. Wake County is a prime example. Mecklenburg however, now having purchased newer machines since doing away with their older DRE equipment does not have this problem. This issue first arose when we discovered thousands of votes being awarded to candidates in the 2012 General Election on the basis of "Accumulated Ballots". That virtual precinct name was not used in any prior or subsequent election for which automated data files are available.

In September of 2017 when our now Vice-President for Research met with former NCSBE Executive Director Kim Strach and her 5 top Deputies in her office at the NCSBE, no one at that table could explain what an Accumulated Ballot was. We have since identified 588 unique Virtual Precinct names that have been used and rarely are the same names used by a county from one election to the next (e.g. OS-BoE in the Primary and BoE-OS in the General). TAB F shows by County who used them and how many they used in both the Primary and General elections in 2022. Clearly the smaller counties can function fully with the older equipment.

According to machine specifications we found on the ES&S website, those counties who are still using the equipment initially purchased circa 2006 are using machines that run on Intel x386 and x486 processors that were replaced in the market by their Pentium CPU chip in 1995, so they were decade-old technology when they were purchased and are still in use now nearly two more decades later. They will not work with any operating system newer than Windows 7 which Microsoft ceased to support to rectify vulnerabilities several years ago.

We strongly recommend further inquiry by the Legislature into how this issue can be eliminated to include increased funding for the purchase of new equipment that takes advantage of the most modern technology available.

10. Consider revision of who is eligible to file protests and/or challenges to voters and/or ballots, and who has standing to file suit over discrepancies:

Our research reveals that current statutes limit who can challenge a voter or a ballot to any other registered voter in the same County and Precinct as that of the challenged. This law may have been adequate to the times when most voted in-person at their Precinct on Election Day and were inclined to recognize a "stranger" waiting in line to vote. However, in today's election cycles with the different methods and times for casting a ballot, that is no longer an effective remedy.

Discrepancies worthy of review are now often found in the data by private citizens or organizations like our own, given the advances in technology since that time, but are prevented from submission because they lack "standing" before the Courts and/or the NCSBE to do so.

11. Review state law allowing 16-year olds to pre-register to vote: As discussed above in Issue #2*,* the pre-registration of 16 year-olds has presented additional problems in the management of voter rolls and serves no obvious advantage to the voter. The information provided often changes for many of them by the time they turn 18, especially for those who pursue higher education at some distant campus. Removing this opportunity does not disenfranchise anyone and removes an additional burden on the staff of the DMV. We also consider that given the many decisions they are not yet allowed by law to make because of their tender years, perhaps which political party and its Platform they are poised to consider should be among them. We suggest a brief study of secondary education across the state to determine at what grade/age these students actually participate in an appropriate Civics class that would at least give them a basic understanding of our political system before they are called upon to choose between them.

12. Stop the elimination of election data servers at the County level and their migration to "the cloud":

Recent announcements by the NCSBE explain their undertaking of a multi-year project to migrate all County election data server operations to "the cloud" via the Internet at a cost of roughly $3M USD. We find no suitable justification for incurring this additional and recurring expense to remove the custody and control of this privileged data from the Counties to a third-party vendor who then rents the State data storage space on its servers and charges for the CPU time used to manage that data by the Counties.

NCGS § 163-33 insures the Counties remain the primary Master of their own elections, subject to the general rules and regulations promulgated by the NCSBE, but removing their direct control and management of their own data takes them further from it. We also consider the attendant risk of placing the whole of NC election and voter registration data in "the cloud" where it is more susceptible to hackers and other malicious operators that need only to breach one website to gain access to our data as opposed to currently having to hack into each of the county servers independently. We believe the risk is heightened when the failure of a single server would deny the State access to all of its data. Server failure is currently limited to the County level and does not have any effect on the data of the other 99 Counties.

We ask the Legislature to consider instead using that $3M to provide increased data security at the existing County level by providing whatever hardware and software upgrades are needed in each County to elevate their security posture to current industry standards.

RECOMMENDATIONS FOR FURTHER INQUIRY:

13. Create a Master Key to the NCSBE data field codes:

Previous communications between the EEF and the NCSBE have revealed some disparity in what a data field code or label actually means from one County to the next. For example, when we were questioning when Alamance County had ballots printed for the Nov 2021 Municipal election and mailed them out, we were told by the NCSBE that the [date_sent] which is declared by NCGS § 163-228 to be a matter of public record reflecting the date an Absentee By-Mail ballot was mailed to the voter is actually the date the mailing label was printed. Other Counties inform us they use the actual date the ballot was deposited with the USPS for delivery as the data field label implies.

TAB G contains the email exchanges between us in this regard. We find their explanation unsatisfactory since it is inconsistent with the actual data for other By-Mail voters in that election. If their statement is true, then the data says of all the pending By-Mail ballot requests reported as being made prior to that date, the mailing labels were only printed to honor some but not all of those requests pending on that date. Others with the same date of request show their label being printed days later. We find this inconsistency alarming.

We began this inquiry when the Nov 2021 Municipal election data for Alamance County suggested that ballots for it were being printed and mailed out to the voters before the results of the October Municipal Primary election had been certified, determining who would appear on those November ballots. Their County BoE initially responded with undated purchase requests to the ballot printer for the November ballots which we deemed unresponsive. Senator Amy Galey was instrumental in obtaining relevant documentation from the County's Purchasing Department of when the ballots were actually purchased, delivered and available for mailing and we appreciate her assistance in that regard. However that documentation shows that the approval date for that Purchase Order (PO) is after the November election had already been held, so it is impossible to determine if the November ballots contained a premature (and thus unofficial) listing of the winning candidates from the Primary. We invite you to also inquire about the practice of obligating funds without an approved PO, especially where election ballots are concerned. We are prepared to provide you with all relevant documentation at your request.

We believe uniformity among all the Counties to be of paramount importance. Mandating each data element by definition would enhance the ability to compare apples to apples in the data files and insure data declared to be public record by law is provided to the public and not substituted at local discretion.

14. *North Carolina should cease participation in ERIC:*

Recent efforts by the NCSBE to acquire funding for NC's participation as a member of the Electronic Registration Information Center, Inc. (ERIC) subject the State to an elevated risk of disclosure of privileged personal information for each of our voters. Ostensibly, the purpose is to help identify voters registered and voting in more than one state.

The budget request they submitted apparently did not disclose any of the substantial obligations NC would incur as a result of joining ERIC Most notably is that upon joining, NC must migrate its voter registration system to an online-only voter registration platform to "eliminate" wet-signed voter registration applications. This would have a direct and negative impact on any future program of signature matching to validate By-Mail ballots should NC choose to move in that direction. NC would also become obligated to make all state agencies that register our citizens to vote capable of the same online registration functions as is currently available to the DMV. We believe there are 8 other such agencies. Thus the request seemed benign on its face because it did not seek any new appropriations but rather only the approval to spend existing funds for this purpose and did not disclose any of these additional obligations that the NCSBE would be agreeing to on the State's behalf.

ERIC is a 501(C)(3) like our own Foundation with no unique qualifications or standing to have or hold restricted data on our voters. Yet, the Membership Agreement (TAB H) makes clear that in order to accurately match data between voter registration records in the different Member States, the data must include the last 4 of the SSAN, Date of Birth, and State Drivers License Number, all protected from disclosure to 3rd parties by existing NC statutes. With this in mind, our Foundation recently submitted a request to the NCSBE for the same data they would be providing to ERIC and were immediately denied, citing several State and Federal Statutes that precluded them doing so. This email exchange is at TAB I.

Appendix D to that Membership Agreement also details the additional data they are now requesting from the State of Illinois that greatly expands their data harvesting attempts to obtain data from several other State agencies there having little to nothing to do with voter registrations.

Our conclusion is that if the data cannot be provided to the EEF, it cannot be provided to ERIC, and that redaction of privileged data under state law makes our participation in ERIC useless since exact matches then are not possible. Several States that had joined have since resigned. Louisiana has now withdrawn for similar reasons while Alabama and Virginia have taken this issue under review.

15. Insure the Public Notice from each County for the unsealing of Provisional Ballots is posted conspicuously on the NCSBE website:

Currently there is no central resource for candidates, particularly those running for statewide office, to learn when any County BoE has scheduled their meeting(s) to inspect and vote on Provisional Ballots. We believe this would be an essential and valuable tool for candidates of any Party to consult in deciding if they or a representative from their campaign should attend.

We appreciate the Legislature previously including in HB 1169 (SL 2020-17) the requirement that the NCSBE publish the number of outstanding Provisional Ballots pending adjudication by noon on Thursday following an Election Day so that candidates at least have an idea of how many ballots could potentially affect the outcome in their race. However, the Provisional Ballot data files for the November 2022 General Election as posted in compliance with that requirement show that report as having been short by several hundred ballots statewide.

When a system cannot even count ballot envelopes correctly, it calls the integrity of the entire operation into question and serves to undermine public confidence in the accuracy of any report.

16. Inquire why and how DemocracyLive was chosen to manage online voting in NC and why the Absentee Ballot Data does not include codes to indicate which voters are voting via that portal:

Currently, Absentee Ballot Data only indicates if a person requested their ballot in-person, via mail, via email or via fax. This system has been in use now for over two years and appears to be used by our overseas civilian and military voters as well as the disabled and visually handicapped.

We can conclude from the brief period between the ballot request dates and their return dates for overseas voters that the ballots could not have been sent and returned via the USPS since many show being requested, sent and returned on the same day. Most show they were requested via email but that is at best an incomplete reflection of the actual method of voting used.

We strongly recommend that the Legislature require the NCSBE to create not only a relevant code for the ballot request method but also create a fourth 3-letter prefix to the unique Absentee Ballot Request ID# (e.g. CIV, MIL, OVR) to further segregate this additional manner of voting from the other three currently in use.

17. Explore how i3Logix is able to match By-Mail voters with Absentee Ballot Data and verify Dates of Birth via the BallotTrax system they administer on behalf of NC voters:

Our research had revealed that the BallotTrax system currently in use by the NCSBE to allow By-Mail voters to track the status of their ballot online is run by a third-party vendor, i3Logix, Inc of Denver, CO. The BallotTrax website they own and manage requires our voters to provide their full name, County and Date of Birth (DOB) in order to access the status of their ballot. Our question arises as to how they are able to access the DOB in SEIMS to confirm the Requestor's identity since that data is restricted from disclosure as discussed in Recommendation #14 above.

The voter's request is submitted via a link on the NCSBE website that redirects them to the BallotTrax website, so either i3Logix has the NC voter rolls to include the DOB resident on their server or they have direct access to SEIMS to make the comparison. We hold the potential risk to restricted data to be self-evident.

We recommend that the Legislature exercise their oversight authority and review the contract with i3Logix to determine just how this data is being used, what contractual language exists that addresses security concerns and whether this arrangement is actually permissible under relevant NC statutes that restrict what data can be made available to 3rd parties, even via contract language. It is a fundamental premise of both State and Federal contracting statutes that you cannot contract to do something that is otherwise not permissible under law to do.

Our concerns were elevated when we read from the i3Logix website how they were formed in 2008 and began with a lucrative federal contract to track the distribution and administration of the Flu Vaccine. Clearly any company in possession of both personal medical and voting information would be a prime target for exploitation.