



Major Dave Goetze <majordave@electoraleducationfoundation.com>

### Request For Unredacted Public Election Data

18 messages

Major Dave Goetze <majordave@electoraleducationfoundation.com>

Mon, Jan 24, 2022 at 5:18 AM

To: Patrick Gannon <Patrick.Gannon@ncsbe.gov>

Cc: Allison Dahle <Allison.Dahle@ncleg.gov>, Bill Rabon <Bill.Rabon@ncleg.gov>, Dan Blue <Dan.Blue@ncleg.gov>, Dennis Riddell <Dennis.Riddell@ncleg.gov>, Destin Hall <Destin.Hall@ncleg.gov>, Grey Mills <Grey.Mills@ncleg.gov>, Jeff Zenger <Jeff.Zenger@ncleg.gov>, Jim Perry <Jim.Perry@ncleg.gov>, John Szoka <John.Szoka@ncleg.gov>, Jon Hardister <Jon.Hardister@ncleg.gov>, Kathy Harrington <Kathy.Harrington@ncleg.gov>, Larry Pittman <Larry.Pittman@ncleg.gov>, Michael Garrett <Michael-Garrett@ncleg.gov>, Paul Newton <Paul.Newton@ncleg.gov>, Pricey Harrison <Pricey.Harrison@ncleg.gov>, Ralph Hise <Ralph.Hise@ncleg.gov>, Shelly Willingham <Shelly.Willingham@ncleg.gov>, Warren Daniel <Warren.Daniel@ncleg.gov>, Wiley Nickel <Wiley.Nickel@ncleg.gov>, lawyerstevenwalker@gmail.com, Electoral Education Foundation <hello@electoraleducationfoundation.com>, Keith Kidwell <Keith.Kidwell@ncleg.gov>, Jeffery McNeely <Jeffery.McNeely@ncleg.gov>, Bobby Hanig <Bobby.Hanig@ncleg.gov>, "Bell, Karen B" <Karen.Bell@ncsbe.gov>, Bob Steinburg <Bob.Steinburg@ncleg.gov>, Ted Alexander <Ted.Alexander@ncleg.gov>, John.Bell@ncleg.gov

Mr. Gannon,

Our research has uncovered what appears to be duplicate Absentee Ballot data records for hundreds of voters from the November 3rd, 2020 General Election in your data files found here: [https://dl.ncsbe.gov/index.html?prefix=ENRS/2020\\_11\\_03/](https://dl.ncsbe.gov/index.html?prefix=ENRS/2020_11_03/)

On the 8th of October, 2020, just a week before Early Voting began, the NCSBE curiously ceased reporting the unique Absentee Ballot Application ID# in that daily file despite it having been reported daily by you for over a month up to that point, consistent with it being declared a matter of public record pursuant to NCGS §163-228 (attached), and then claiming some unspecified need for "confidentiality" in doing so. Clearly any need for confidentiality has long since abated. We believe that having that number now will help us to discriminate between true clerical (duplicate) errors and other reasons for multiple ballot records for the same voter.

We respectfully request that you publish an un-redacted version of that file in the same directory online (appropriately titled so as not to overwrite the existing file) that includes each Absentee ballot application ID# so that we may download it and continue with our research. Please notify us by return email when that file is available. Your prompt response to this request is greatly appreciated.

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David W. Goetze  
Vice President For Research  
Electoral Education Foundation  
(919) 616-4601

§ 163-228. (b) Upon receipt of absentee requests, applications, and ballots received, a public records requestor may request the county board of elections to make available to the public the following information:  
(1) Names of voters for whom applications and ballots are being prepared, such as applicable, the name and address of the voter whose name is used to register voters who prepared the applications and ballots, the date and time of receipt of the applications and ballots, and the date and time of receipt of the ballots.  
(2) The date and time of receipt of the applications and ballots.  
(3) The date and time of receipt of the ballots.  
(4) The date and time of receipt of the ballots.  
(5) The date and time of receipt of the ballots.  
(6) The date and time of receipt of the ballots.  
(7) The date and time of receipt of the ballots.  
(8) The date and time of receipt of the ballots.  
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(11) The date and time of receipt of the ballots.  
(12) The date and time of receipt of the ballots.  
(13) The date and time of receipt of the ballots.  
(14) The date and time of receipt of the ballots.  
(15) The date and time of receipt of the ballots.  
(16) The date and time of receipt of the ballots.  
(17) The date and time of receipt of the ballots.  
(18) The date and time of receipt of the ballots.  
(19) The date and time of receipt of the ballots.  
(20) The date and time of receipt of the ballots.

**163-228 - Absentee Ballot Request # is Public Record.jpg**  
219K

Gannon, Patrick <Patrick.Gannon@ncsbe.gov>

Wed, Jan 26, 2022 at 12:40 PM

To: Major Dave Goetze <majordave@electoraleducationfoundation.com>

Cc: Allison Dahle <Allison.Dahle@ncleg.gov>, Bill Rabon <Bill.Rabon@ncleg.gov>, Dan Blue <Dan.Blue@ncleg.gov>, Dennis Riddell <Dennis.Riddell@ncleg.gov>, Destin Hall <Destin.Hall@ncleg.gov>, Grey Mills <Grey.Mills@ncleg.gov>, Jeff Zenger <Jeff.Zenger@ncleg.gov>, Jim Perry <Jim.Perry@ncleg.gov>, John Szoka <John.Szoka@ncleg.gov>, Jon Hardister <Jon.Hardister@ncleg.gov>, Kathy Harrington <Kathy.Harrington@ncleg.gov>, Larry Pittman <Larry.Pittman@ncleg.gov>, Michael Garrett <Michael-Garrett@ncleg.gov>, Paul Newton <Paul.Newton@ncleg.gov>, Pricey Harrison <Pricey.Harrison@ncleg.gov>, Ralph Hise <Ralph.Hise@ncleg.gov>, Shelly Willingham <Shelly.Willingham@ncleg.gov>, Warren Daniel <Warren.Daniel@ncleg.gov>, Wiley Nickel <Wiley.Nickel@ncleg.gov>, "lawyerstevenwalker@gmail.com" <lawyerstevenwalker@gmail.com>, Electoral Education Foundation <hello@electoraleducationfoundation.com>, Keith Kidwell <Keith.Kidwell@ncleg.gov>, Jeffery McNeely <Jeffrey.McNeely@ncleg.gov>, Bobby Hanig <Bobby.Hanig@ncleg.gov>, "Bell, Karen B" <Karen.Bell@ncsbe.gov>, Bob Steinburg <Bob.Steinburg@ncleg.gov>, Ted Alexander <Ted.Alexander@ncleg.gov>, "John.Bell@ncleg.gov" <John.Bell@ncleg.gov>

Mr. Goetze,

We are reviewing this request and will respond as soon as possible.

Thanks,

Pat

**Patrick Gannon**

*Public Information Director*

O: (919) 814-0765

M: (984) 204-0767





Gannon, Patrick <Patrick.Gannon@ncsbe.gov>

Tue, Feb 8, 2022 at 3:00 PM

To: Major Dave Goetze <majordave@electoraleducationfoundation.com>

Cc: Allison Dahle <Allison.Dahle@ncleg.gov>, Bill Rabon <Bill.Rabon@ncleg.gov>, Dan Blue <Dan.Blue@ncleg.gov>, Dennis Riddell <Dennis.Riddell@ncleg.gov>, Destin Hall <Destin.Hall@ncleg.gov>, Grey Mills <Grey.Mills@ncleg.gov>, Jeff Zenger <Jeff.Zenger@ncleg.gov>, Jim Perry <Jim.Perry@ncleg.gov>, John Szoka <John.Szoka@ncleg.gov>, Jon Hardister <Jon.Hardister@ncleg.gov>, Kathy Harrington <Kathy.Harrington@ncleg.gov>, Larry Pittman <Larry.Pittman@ncleg.gov>, Michael Garrett <Michael-Garrett@ncleg.gov>, Paul Newton <Paul.Newton@ncleg.gov>, Pricey Harrison <Pricey.Harrison@ncleg.gov>, Ralph Hise <Ralph.Hise@ncleg.gov>, Shelly Willingham <Shelly.Willingham@ncleg.gov>, Warren Daniel <Warren.Daniel@ncleg.gov>, Wiley Nickel <Wiley.Nickel@ncleg.gov>, "lawyerstevenwalker@gmail.com" <lawyerstevenwalker@gmail.com>, Electoral Education Foundation <hello@electoraleducationfoundation.com>, Keith Kidwell <Keith.Kidwell@ncleg.gov>, Jeffery McNeely <Jeffery.McNeely@ncleg.gov>, Bobby Hanig <Bobby.Hanig@ncleg.gov>, "Bell, Karen B" <Karen.Bell@ncsbe.gov>, Bob Steinburg <Bob.Steinburg@ncleg.gov>, Ted Alexander <Ted.Alexander@ncleg.gov>, "John.Bell@ncleg.gov" <John.Bell@ncleg.gov>

Mr. Goetze,

The longstanding interpretation of the State Board of Elections is that the retrievable ballot identifier associated with an absentee ballot (also sometimes called the CIV number) is confidential. See [Numbered Memo 2016-25](#) and [Numbered Memo 2020-25](#) on this topic. The identifier must therefore be redacted prior to disclosing documents or data files that contain it.

The solemn obligation to protect the secrecy of how voters voted is of utmost importance to the State Board. Elections officials are required to protect the secrecy of ballots and electronic records of individual ballots. Knowing disclosure of how a voter voted is a misdemeanor. [G.S. § 163-165.1\(e\)](#) provides:

(e) Voted ballots and paper and electronic records of individual voted ballots shall be treated as confidential, and no person other than elections officials performing their duties may have access to voted ballots or paper or electronic records of individual voted ballots except by court order or order of the appropriate board of elections as part of the resolution of an election protest or investigation of an alleged election irregularity or violation. Voted ballots and paper and electronic records of individual voted ballots shall not be disclosed to members of the public in such a way as to disclose how a particular voter voted, unless a court orders otherwise. Any person who has access to an official voted ballot or record and knowingly discloses in violation of this section how an individual has voted that ballot is guilty of a Class 1 misdemeanor.

The retrievable ballot identifier of a voter's absentee-by-mail application is part of the official absentee register. [G.S. § 163-228\(a\)\(2\)](#). The register is initially confidential, but becomes a public record at the time of the opening of the polls on Election Day. [G.S. § 163-228\(c\)](#). However, because it is not possible to always prevent a voter's retrievable ballot identifier from being associated with how the voter voted, the State Board treats the identifier as continuing to be confidential even after the election. For example, county boards at times must duplicate ballots at a meeting to allow proper tabulation, and this requires that a voter's selections on the ballot be called out by the duplication team. The CIV number on such a ballot is often either visible or is called out as part of this process. There may also be instances when a provisional ballot or absentee ballot is counted at a board meeting, and the CIV number is either visible or is called out as part of this process. If the identifier were released to the public in a way that were associated with a particular voter, it would be possible to determine how the particular voter voted based on how the vote tabulation changed. These meetings may take place before or after Election Day, and are closely monitored by members of the public, political parties, and the media, and are sometimes recorded. Therefore, releasing the identifier in a way that associates it with a particular voter at any time could allow the public to determine how a voter voted.

Provisions addressing the disclosure of records cannot trump provisions mandating the secrecy of an individual's ballot, which are enforced through the criminal code.

Thanks,

Pat

**Patrick Gannon**

*Public Information Director*

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M: (984) 204-0767



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Major Dave Goetze <majordave@electoraleducationfoundation.com>

Mon, Feb 14, 2022 at 2:52 PM

To: Patrick Gannon <Patrick.Gannon@ncsbe.gov>

Cc: Allison Dahle <Allison.Dahle@ncleg.gov>, Bill Rabon <Bill.Rabon@ncleg.gov>, Dan Blue <Dan.Blue@ncleg.gov>, Dennis Riddell <Dennis.Riddell@ncleg.gov>, Destin Hall <Destin.Hall@ncleg.gov>, Grey Mills <Grey.Mills@ncleg.gov>, Jeff Zenger <Jeff.Zenger@ncleg.gov>, Jim Perry <Jim.Perry@ncleg.gov>, John Szoka <John.Szoka@ncleg.gov>, Jon Hardister <Jon.Hardister@ncleg.gov>, Kathy Harrington <Kathy.Harrington@ncleg.gov>, Larry Pittman <Larry.Pittman@ncleg.gov>, Michael Garrett <Michael-Garrett@ncleg.gov>, Paul Newton <Paul.Newton@ncleg.gov>, Pricey Harrison <Pricey.Harrison@ncleg.gov>, Ralph Hise <Ralph.Hise@ncleg.gov>, Shelly Willingham <Shelly.Willingham@ncleg.gov>, Warren Daniel <Warren.Daniel@ncleg.gov>, Wiley Nickel <Wiley.Nickel@ncleg.gov>, Steven Walker <lawyerstevenwalker@gmail.com>, Electoral Education Foundation <hello@electoraleducationfoundation.com>, Keith Kidwell <Keith.Kidwell@ncleg.gov>, Jeffery McNeely <Jeffrey.McNeely@ncleg.gov>, Bobby Hanig <Bobby.Hanig@ncleg.gov>, "Bell, Karen B" <Karen.Bell@ncsbe.gov>, Bob Steinburg <Bob.Steinburg@ncleg.gov>, Ted Alexander <Ted.Alexander@ncleg.gov>, John.Bell@ncleg.gov

Mr. Gannon,

We have reviewed your response of Feb 8th to our request for the Absentee Ballot Application ID#s and still believe your position is inconsistent with state law. We would like to address several of the statements you made and pose additional questions we believe were not answered or appear to be contrary to state law.

In the first instance, you claim a "longstanding interpretation" of NCGS §163-165.1(e) by the NCSBE as justification for overriding the requirement in NCGS §163-228(c), that the Absentee Ballot Application Number be treated as a matter of public record. We have reviewed Numbered Memo 2016-25 you cited as a basis for treating that number as "confidential" and find it interesting that it was published on November 16th, 2016 just 8 days after the November 2016 General Election. We would like to know if this was a unilateral decision made and authored by the Executive Director based on some event arising out of that election, or was it issued on the basis of deliberation and a vote by the actual State Board of Election members? If it is the latter, may we be provided with an electronic copy of the Minutes of such meeting(s) as may have been held in that regard? We are not aware of any effort by the NCSBE to address this issue with the Legislature at any point in the last 5 1/2 years to resolve what you portray as an equally "longstanding" conflict of statutory requirements.

Our reading of NCGS §163-165.1(e) says it applies only to electronic records that contain the actual votes of the voter and not to the electronic record of the ballot application itself, but agree it is less than clear on that point since we both read it differently. We will stipulate that while the statutes do not specifically mandate the NCSBE to publish the data, we believe that in the interest of maximum transparency in election data reporting, which we believe you also support, that anything mandated by statute to be published by the County would necessarily extend to the NCSBE.

We also reviewed the existing Absentee Ballot data files for each election going back to 2016 and find that in most instances, the Absentee Ballot Application Number was not publicly reported at any point with the exception of both the first and second Primaries of 2020 and in the November 2020 General Election up until October 7th, just a week before the onset of Early Voting. This inconsistent application of policy from one election to the next is clear cause for concern, especially in light of the claimed "longstanding" policy. Is there a reason an exception was made for those elections, and if so, what was it?

Publication of the Absentee Ballot application number as we requested would only pose a potential risk in the rare event that any person or organization sought access to the actual voted Absentee ballots. We seek no such access and have no plans to request such in the future. That potential risk would also evaporate 22 months after the election when ballots are destroyed pursuant to 52 USC 20701. We specifically request that these application numbers be retained so at the latest, they can be provided to us once the ballots are destroyed beginning in September of this year when no compromise of ballot secrecy is then possible.

We can continue to go back and forth over this, but besides the specific questions asked above, we would strongly encourage you in the alternative to further discussion between us, to take this matter before the Joint Legislative Oversight Committee on Elections at your earliest opportunity since they have the ultimate authority and duty to resolve this issue of conflicts between statutes.

Respectfully,

Hal C. Weatherman  
President, Electoral Education Foundation

[Quoted text hidden]