

March 15, 2019

Katelyn Love, Deputy General Counsel
Bipartisan State Board of Elections & Ethics Enforcement
430 N. Salisbury Street, 3rd Floor
Raleigh, NC 27603

Dear Ms. Love:

Democracy North Carolina writes to offer comment on temporary rules 08 NCAC 17.0107 and 08 NCAC 17.0108 promulgated by the State Board of Elections (SBOE) as part of its implementation of Session Law 2018-144, the photo voter ID law.

While we offer detailed recommendations for clarifying the temporary rules as written, particularly 08 NCAC 17.0107, we also note broader concerns about the practicability of the underlying statutes that the draft temporary rules are intended to implement. Both are detailed below.

08 NCAC 17.0107 Voter Photo Identification Card

We recommend the following changes to the draft temporary rule and S.L. 2018-144:

In (a), add “The request may be made of State Board of Elections outreach staff conducting outreach events in a county, if this authority is granted by an affirmative vote of the county board.”

S.L. 2018-144 requires SBOE to engage in an “aggressive voter education program” to inform North Carolina voters about the new photo ID requirement, including holding at least two seminars in each county prior to September 1, 2019. It also provides SBOE with additional funding for outreach staff – once fully staffed, SBOE will have a seven person outreach team whose job it is to execute this statutorily mandated voter education program. In contrast, few if any, counties have dedicated outreach staff who can take time away from their regular duties to reach out to voters. Allowing county BOEs to take advantage of SBOE’s robust outreach team is an important opportunity for SBOE to support counties in implementing North Carolina’s latest strict photo ID law on a tight timeline.

In (a), add “The county board shall not refuse to issue a card because the voter registration does not contain the last four digits of the voter’s Social Security number or does not contain a complete date of birth. If the information does not match, the voter may change the registration record in a manner prescribed by state law.”

This language remedies any confusion that may arise from incomplete “Legacy” records: voter registration records for many older registered voters in North Carolina do not have a full date of birth, or have a January 1 placeholder, such as 1/1/1939. It also provides an opportunity to update the voter’s record if it is missing key information, which helps both election officials and the voter. Moreover, this

change reflects the way a neighboring state with a similar law, Virginia, has implemented county elections agencies' issuance of voter photo ID.¹

Either as part of (a) or in a new subsection, add "A voter may receive assistance in completing the request form without any need to complete any additional declaration of assistance; however, the voter shall sign or place his or her mark in the attestation portion of the request form when physically able."

This change would ensure that voters who are unable to read or write, whether because of a disability or for other reasons, would be able to request and receive assistance without the barrier of completing an additional form. This is similar to Mississippi's requirements for voters receiving a free photo voter ID from local elections agencies,² and is also in keeping with the spirit of N.C.G.S. § 163A-1139(a)(2)(c) and (d), which allows for voters who have difficulty reading – whether for literacy reasons or because of disability – to receive assistance in voting from the person of their choice (except for their employer or union agent) without completing any additional paperwork.

*After (d) add a new subsection, **"Temporary card.** If the county board is unable to produce the identification card immediately due to equipment, software, or other issues, the county board shall print a temporary paper identification card with a black and white photo and an expiration date of 45 days after it is issued. Within 30 days the county board will send the official identification card to the mailing address provided by the voter at the time the temporary card was issued. The voter may change the voter's mailing address in the registration record in a manner prescribed by law."*

Although Democracy NC applauds the spirit of the requirement that free photo voter ID cards be issued "immediately," we have concerns about its practicability. This additional text anticipates the possibility of equipment breakdown and also reflects possible delays in SEIMS processing or access that would mean that a registration number for a new registrant may not be available to be placed on a card "immediately."

In subsections (e) and (f), include a sentence that allows a voter requesting a replacement card or making a name change to update their mailing address in the registration record in the manner prescribed by law before the card is sent.

This addition will ensure that replacement or updated cards will not be sent to an incorrect mailing address, whether due to a voter's failure to update their record, administrative error in processing a voter registration update, or voter confusion about the process for updating. (For example, many voters are under the misimpression that filing a change of address with the U.S. Postal Service will function to update their voter registration record.)

At the end of (e), add "A voter may request a new photo identification card in accordance with (a) if the voter believes the photo does not reflect a substantial change in the voter's appearance."

Allowing voters to update their photos in cases of a substantial change in appearance will help election officials and poll workers tasked with assessing what is a "reasonable resemblance," and reduce any possible delays in the voting process or voter frustration caused by an outdated photo.

In (g)(3), add "The voter's statewide voter registration number."

¹ 1 Va. Admin. Code § 20-40-90(b). Virginia's rule reads: "Any voter applying for the voter photo identification card whose record in the voter registration system is materially inaccurate or incomplete will be issued a card after the information has been corrected and updated within the system."

² Miss. Code R. § 1-16-3.5(D).

Since county voter registration numbers can be the same for voters in different counties, it is important to specify that a voter's unique voter registration number would be the state-assigned number.

After (h), add new subsection clarifying that the voter photo identification request form is not a public record under N.C.G.S. § 132-1.2(4).

In order to facilitate transparency without violating the voter's privacy, the SBOE shall instead provide as a public record a list of the names and registration numbers of voters who requested a photo ID under N.C.G.S. § 163A-869.1.

Recommendation for Statutory Change: Centralize issuance of permanent, plastic photo voter IDs.

While we understand that statutory changes are out of the SBOE's purview, we cannot offer comment on the draft temporary rules without also noting those aspects of S.L. 2018-144 that pose significant challenges to effective implementation. One of those is the requirement that makes county Boards of Elections (BOEs) responsible for the printing and issuance of permanent, plastic voter photo IDs. Counties already bear disproportionate responsibility for the running of North Carolina's elections—responsibility that is executed at varying levels of excellence, depending on county government's ability and willingness to fully fund county BOEs. The new statutory mandate gives these agencies significant additional responsibility without commensurate funding, staffing, or resource guarantees. Instead, Democracy North Carolina urges SBOE and the North Carolina General Assembly to adopt a centralized approach, where county BOEs receive applications from voters for the free county photo voter IDs and issue temporary paper IDs, with the permanent plastic ID mailed to the voter from SBOE or a state-contracted vendor.

Based on our research, this is the practice in all other Southeastern states where county elections agencies issue free photo voter IDs – Georgia, South Carolina, Virginia, Alabama and Mississippi. Additionally, it mirrors the way that the NC Division of Motor Vehicles issues its special non-operator IDs and drivers licenses.

In addition to reducing the burden on county BOEs, such a change would provide a brief “grace period” for voter registration to be confirmed, in the case of new registrants, and would also make it easier for county BOEs to receive and issue temporary IDs in locations outside of the county BOE office, such as community festivals, university and college campuses, churches, etc., since no special equipment – other than a black & white printer and camera – would be required.

08 NCAC 17.0108 Requests for Approval of Student Identification Cards and Employee Identification Cards

Democracy North Carolina does not propose any substantive changes to the draft temporary rule. However, we recommend the following changes to S.L. 2018-144 in order to make the law practicable to as many of North Carolina's universities, colleges, community colleges, and local government employers as possible.

Eliminate the requirement for schools to attest to confirming citizenship status through their enrollment process. The current language of S.L. 2018-144 has caused significant confusion among North Carolina universities, colleges, and community colleges. Based on our conversations with school administrators, and as shown in the correspondence between SBOE and the University of North Carolina system,³ many

³ E-mail from Kim Westbrook Strach, Executive Director, North Carolina State Board of Elections to Tom Shanahan, Senior Vice President and General Counsel, University of North Carolina System (Feb. 28, 2019) (on file with authors). E-mail from Kim Westbrook Strach, Executive Director, North Carolina State Board of Elections to Tom Shanahan, Senior Vice President

campuses have read this requirement to mean that they are responsible for ensuring that any person with a student ID must also be eligible to vote. Of course, the photo ID is required only to prove a voter's identity; not to confirm eligibility for voting, which remains the responsibility of election officials. But, this incorrect reading is pervasive – virtually every campus we contacted misunderstood the law as written and had to seek clarity either from SBOE staff or advocacy groups – and has been a deterrent to campuses attempting compliance with S.L. 2018-144. In order to eliminate confusion and maximize the number of campuses that are able to make their student IDs viable for voting in 2020, this extraneous requirement should be eliminated.

Eliminate the requirement for school ID photographs to be “taken by the university or college or its agents or contractors.” Through our outreach to campuses, we have learned that some of North Carolina's largest higher education institutions allow for students to upload their own pictures for student IDs, rather than having staff or contractors take the pictures. This is a sensible, modern, cost-saving adaptation for these campuses, but one that prevents them from complying with S.L. 2018-144 as written. A simple change in the statutory language – from “taken” to “obtained,” for example – would fix this issue and allow more of North Carolina's campuses to comply with the law, without having to revert back to an unnecessarily expensive 20th century procedure for producing student IDs.

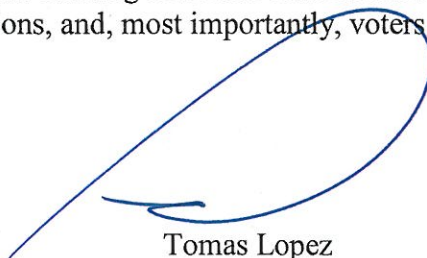
Extend the deadline for institutions from March 15, 2019 to September 16, 2019. The existing statutory deadline of March 15 for SBOE to determine which IDs from North Carolina universities, colleges, community colleges, local government employers and tribes will work for voting in 2020 is unnecessarily early, at best. Even if SBOE staff time and attention following the December 2018 passage of S.L. 2018-144 had not been diverted from the short timeline for photo ID implementation by the intensive NC09 investigation, we can imagine no compelling administrative reason to require these institutions to decide whether they are able to comply with the law a full 20 months out from what is likely to be a high-interest presidential election. Now that the requirement to present photo ID to vote has been postponed until 2020, this deadline is even more superfluous. Moreover, this unnecessarily tight deadline in combination with the confusion over the law's requirements detailed above has further limited campuses' ability to attempt compliance with S.L. 2018-144. For the many schools that needed clarification about the citizenship status requirement in the law, and did not benefit from the high profile attention and support that the UNC system received, they simply did not have enough time to determine whether their institutions would be able to comply ahead of the March 15 deadline.

Thank you for considering our recommendations for strengthening and clarifying the draft temporary rules and improving the practicability of the processes for issuing free photo voter IDs and approving student and employee IDs for voting use. We hope you will find them useful both in administering the current photo voter ID requirement and in offering technical corrections to the N.C.G.A. that will improve the ability of counties, institutions, and, most importantly, voters to comply with the law.

Sincerely,



Isela Gutiérrez
Research and Policy Director



Tomas Lopez
Executive Director