

## **Witness & Voter Signature Verification**

February 2021 - Alissa Ellis, Democracy NC<sup>1</sup>

North Carolina saw historic vote by mail participation in the 2020 General Election. According to data provided by the North Carolina State Board of Elections, voters statewide requested 1,475,700 absentee ballots in the 2020 general election – 20% (1 in 5) of all registered voters. Significant attention was paid to North Carolina’s witness requirement in 2020. This memo outlines recommendations regarding witness and voter signature verification requirements for mailed absentee ballots.

**Witness Signature Verification** | Witness signature verification is not required under North Carolina law and should not be imposed administratively or legislated into effect.

- There is no standard procedure for counties in North Carolina to verify witness signatures or information: the North Carolina State Board of Elections (NCSBE) leaves this to the discretion of the county boards. Furthermore, this is true of all other states that require witness signatures on absentee ballots.<sup>2</sup>
- There is no method for election officials to verify this information, as witnesses do not have to be residents of the state in which that ballot is cast.<sup>3</sup> As is noted by South Carolina election officials and experts (listed below in “Selected State Survey”), the witness requirement is extraneous and prohibitive.
- Although North Carolina county boards of elections do check that a signature and address for the witness is listed on the absentee ballot certification field, they are practically and functionally unable to verify the accuracy of that information in decisions over whether to accept or reject the ballot. Historically, some select North Carolina counties did verify the signatures of the voter, but not the witness, prior to clarifying guidance from the NCSBE.<sup>4</sup>
- Across states, the only standardized procedures for verifying signatures exist for the voter themselves. The states that require a notary or witness signature on absentee ballots include: Alabama, Alaska, Louisiana, Minnesota, Mississippi, Missouri, North Carolina, Oklahoma, Rhode Island, South Carolina, Virginia, and Wisconsin.<sup>5</sup>

**Voter Signature Verification** | Voter signature verification should not be imposed as it is a burdensome and complex election administration process that would not increase election security in a state with witness requirements. If the witness requirement is removed, signature verification

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<sup>1</sup> Significant assistance in initial drafting from Chloe Dennison (2020 Summer Research Fellow, Democracy NC).

<sup>2</sup> Candidates for elected office cannot be witnesses for absentee ballot completion, unless they are a close relative. It is unclear how county boards of elections verify that witnesses are not candidates for office.

<sup>3</sup> NCGS § 163-231(a), sets forth that the threshold that a witness is a "person over 18" who is not disqualified on specific grounds, with no express residency requirement.

<sup>4</sup> North Carolina State Board of Elections (2020, August 21, revised September 22, further revised October 17). *Numbered Memo 2020-19 Absentee Container Return Envelope Deficiencies* [Memorandum]. Retrieved from [https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2020/Numbered%20Memo%202020-19\\_Absentee%20Deficiencies.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2020/Numbered%20Memo%202020-19_Absentee%20Deficiencies.pdf).

<sup>5</sup> Verification of Absentee Ballots. National Conference of State Legislators. Jan. 21, 2020.

should be implemented.<sup>6</sup>

- North Carolina saw historic vote by mail participation in the 2020 General Election. Over 1,000,000 voters chose to vote by mail. This was an unprecedented increase in vote by mail and a significant change in voter behavior. Voters greatly benefited from a streamlined process that only required a single witness signature.
- Many voters were successfully able to vote by mail due in large part to the following: (1) the simplification of a single witness signature, (2) robust voter education initiatives by advocacy groups, (3) an effective cure process for errors with absentee ballots, and (4) guidance issued by the NCSBE.
- Local administrators benefited from a simplified single witness requirement and associated guidance from the NCSBE. It would be a significant burden on administrators to return to a double witness requirement or single witness signature with an associated notary requirement. Continuity in the single witness requirement will assist county board of elections as they navigate a complex municipal election cycle.<sup>7</sup>
- The single witness requirement has not created any increase in voter fraud and manipulation of the vote by mail process, which has largely been absent at the both national and state level.<sup>8</sup>
- A majority of voters successfully navigated the single witness requirement during the current election cycle, despite the challenges posed by the pandemic.<sup>9</sup> The underlying challenges posed by the pandemic will still affect many voters, necessitating the retention of the single witness requirement for those remaining at home and following public health guidance.

**Worst Case Scenario** | If signature verification is codified in this legislative session, clear expectations and procedures should be articulated, so that the process is standardized and accountable.

**1. A standardized signature verification process must be implemented statewide.**

A standard software program should be implemented statewide that scans ballots to compare signatures to those already on file. Secondly, signatures that are not approved should follow a standardized process: first, signature evaluation by election workers who have received a special, uniform training and, if necessary, a secondary evaluation by election workers. This significantly reduces the potential for incorrect rejections of absentee ballots.

Colorado's process of verifying signatures is a helpful model for standardization, as there are detailed guidelines governing the process for rejecting signatures and the utilization of software that simplifies the process. Colorado uses two levels of comparison; if a signature

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<sup>6</sup> If HR1 passes, it will ban the witness requirement and establish a uniform system for signature verification.

<sup>7</sup> Data come from Democracy NC's County Board of Elections Monitoring programs. Data is available via [advocacy@democracync.org](mailto:advocacy@democracync.org).

<sup>8</sup> See NCSBE 2015 – 2020 NCSBE Referred Cases. Updated on January 15, 2021.

<https://s3.amazonaws.com/dl.ncsbe.gov/Investigations/NCSBE%20Referred%20Cases%202015-2020.pdf>

<sup>9</sup> Data come from Democracy NC's Election Protection programs. Data is available via [advocacy@democracync.org](mailto:advocacy@democracync.org).

passes the first level, it is unnecessary to evaluate the secondary characteristics. The first level of verification compares broad traits of a signature, including the type and speed of writing, proportions and size, and spelling and punctuation. If these traits are unable to be matched, second-level characteristics (which are more local), including internal spacing, loops/curves, and pen lifts, are matched to the signature.

Standardization is essential for signature verification. Particularly to avoid pitfalls as noted below (“Selected State Survey”), which states issues with California’s process with "limited statewide uniform criteria" for counting a signature and "what 'counts' as a matching signature varies enormously from county to county."

**2. Implementation of signature verification must include training and clear guidance.**

Beyond standardizing the methods of comparison for signatures, the verification process must also be implemented in a responsible manner to ensure that there are no inadvertent abuses of power and to mitigate disproportionate ballot rejection rates across populations.

If voter signature verification is statutorily mandated, North Carolina should adopt the following model currently in place in Florida to establish appropriate accountability measures with such a sensitive requirement:

- a. All county board of elections members and supervisors of elections are required to undergo formal signature matching training before they are permitted to evaluate the validity of any signature.
- b. Before any signature can be rejected, the county board of elections must hold a majority vote asserting that the signature in question is illegitimate “beyond a reasonable doubt.” This system ensures that the signatures are reviewed by a multitude of officials, so that signatures are fairly evaluated before being rejected.

Additionally, we should incorporate the requirement adopted by California, which prioritizes expertise in its evaluation of signatures. For California’s system of signature verification, only the senior-most staff are able to reject questioned signatures, as the signature in question is moved through tiers of authority for review. This hierarchy ensures that only those appropriately trained in signature verification are authorized to reject them, preventing inexperience from obstructing someone’s right to vote.

Finally, a voter whose ballot has been rejected due to signature verification must be given an opportunity to remedy.

It is essential that the system of signature verification be implemented fairly, so that North Carolina is able to carefully protect every voter’s ballot. By prioritizing uniformity and accountability, North Carolina county boards of elections will be able to execute absentee ballots in elections more justly.

## **Selected State Survey |** Overview of signature verification requirements in other states.

### **California**

Counties are able to create their own processes of signature verification, creating widespread variation across the state. Typically, the ballot return ID envelope signature is compared to the signatures the voter has on file. Many counties have tiered systems, wherein only the senior-most staff is able to reject a challenged signature. Some counties use software to automatically compare signatures to those on file, but the vast majority use a series of staff members to find matches between signatures. “California law requires election officials to visually inspect any ballot return envelopes or signatures that are challenged by the automated scanners.” However, each county differs in the exact process it employs to verify signatures.<sup>10</sup>

### **Colorado**

Voter signatures are saved in the Statewide Colorado Registration and Election (SCORE) program database and are used as the sole point of reference in verifying signatures. The first level of comparison analyzes broad characteristics of the signature, including the type of writing (cursive or print), speed of writing, overall spacing, overall size and proportions, position of the signature (slanted or straight), and the spelling and punctuation. If those broad characteristics are not clearly consistent with the returned ballot, local characteristics (including internal spacing, size or proportions of a letter or letter combination, curves/loops/cross-points, presence or absence of pen lifts, and the beginning and ending strokes) are then evaluated.<sup>11</sup>

No witness signature is required for ballots in Colorado, unless the voter forgoes their own signature for a mark. If a voter uses a mark, a witness must also provide their signature; however, “[n]o signature verification is required for the witness signature or the mark.”

If a ballot is returned with only a witness signature and no voter mark or signature, the witness signature is treated as the voter signature, and is subject to verification against the voter’s signature records.<sup>12</sup>

In Denver, voter signatures are first verified through software that matches with existing records. Those signatures that are not initially confirmed are flagged for evaluation by a bipartisan team of judges that have been trained in basic signature verification. However, not all jurisdictions are able to utilize this software. Furthermore, many election officials lack the necessary training for

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<sup>10</sup> Roxana Arjon, Ali Haley Phillips Bloomgarden, Benjamin C. Hattem, Garrett Jens Jensen, Zahavah Levine, Mike Norton, Megha Nanaki Parwani, Emily Postman, Ashwin Ramaswami, Grace Rybak, Emily Wilson, Will Janover, Tom Westphal, Nathaniel Persily & Luciana Herman, Signature Verification and Mail Ballots: Guaranteeing Access While Preserving Integrity, Stanford Law School Law and Policy Lab, Spring 2019-2020 (Policy Practicum: Every Vote Counts (Law 806Z)).

<https://law.stanford.edu/publications/signature-verification-and-mail-ballots-guaranteeing-access-while-preserving-integrity/>

<sup>11</sup> Signature Verification Guide. Version 2.1. Colorado Secretary of State. September 13, 2018. <https://www.sos.state.co.us/pubs/elections/docs/SignatureVerificationGuide.pdf>

<sup>12</sup> Id.

signature verification, rendering software more accurate and just (as it lacks partisan bias) in accepting or rejecting ballots.<sup>13</sup>

## Florida

“Rather than enumerating specific procedures for comparing signatures, the Florida legislature ‘left it to the canvassing boards to make determinations using their collective best judgment as to what constitutes a signature match.’ The result is a crazy quilt of conflicting and diverging procedures.”<sup>14</sup> SB 7066, passed in 2019, rectified some of these issues by creating standard guidelines for county boards to follow.

SB 7066 requires that formal signature matching training be provided to supervisors of elections and county canvassing board members. It also requires that signatures for absentee ballots be compared against the voter signature on file in the registration books. To reject a signature as mismatched, the canvassing board must have a majority vote that the signature is invalid “beyond a reasonable doubt.”<sup>15</sup>

## Mississippi

The signature on the absentee ballot envelope is compared with the signature on the absentee ballot application to determine its validity.<sup>16</sup>

## South Carolina

The Executive Director of the South Carolina Election Commission, Marci Andino, recently wrote: “While election officials check the voter’s signature, the witness signature offers no benefit to election officials as they have no ability to verify the witness signature.”<sup>17</sup>

“[Dale Ho, director of the ACLU’s Voting Rights Project] said the requirements also don’t seem to serve much purpose. ‘They’re not relied on by the state in any way to try to verify the authenticity of someone’s vote,’ Ho said of the South Carolina rules. ‘It just seems like a hoop that they force people to jump through.’

Even South Carolina election officials have admitted that the witness requirement is more of a burden than a help. ‘That witness signature doesn’t do a lot for us, and it does a lot of harm to voters,’ state election commission spokesman Chris Whitmire told NPR earlier this year.”<sup>18</sup>

## Texas

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<sup>13</sup> Susie Armitage. Handwriting Disputes Cause Headaches for Some Absentee Voters. ProPublica. Nov. 5, 2018. <https://www.propublica.org/article/handwriting-disputes-cause-headaches-for-some-absentee-voters>

<sup>14</sup> Fla. Democratic Party v. Detzner, No. 4:16CV607-MW/CAS, 2016 WL 6090943 (N.D. Fla. Oct. 16, 2016).

<sup>15</sup> § 101.68, Fla. Stat. (2019). <https://m.flsenate.gov/Statutes/101.68>

<sup>16</sup> Verification of Absentee Ballots. National Conference of State Legislators. Jan. 21, 2020. <https://www.ncsl.org/research/elections-and-campaigns/verification-of-absentee-ballots.aspx>

<sup>17</sup> Rhodes Bailey, Robert Wehrman, South Carolina Democratic Party, and DCCC v. South Carolina State Election Commission and Marci Andino as Executive Director of the State Election Commission, Exhibit 1, April 22, 2020, <https://www.democracydocket.com/wp-content/uploads/sites/41/2020/04/2020-04-22-South-Carolina-COVID-19-Petition-Complaint-and-Notice-of-Return-TO-RESPONDENTS.pdf>.

<sup>18</sup> Pam Fessler. Need A Witness For Your Mail-In Ballot? New Pandemic Lawsuits Challenge Old Rules. WUNC: NPR. June 1, 2020. <https://www.npr.org/2020/06/01/865043618/need-a-witness-for-your-mail-in-ballot-new-pandemic-lawsuits-challenge-old-rules>

A voter's signature can be compared with two or more signatures kept on file with the voter registrar, county clerk, or elections administrator within the preceding six years. If a witness signs on behalf of a voter, their signature is not compared.<sup>19</sup>

### **Virginia**

An absentee ballot cannot be rejected for failing to include the witness's address or date of signature.<sup>20</sup>

### **Wisconsin**

If a witness fails to provide a signature or address, as required for all absentee ballots, they may appear at the polls in person with the voter to cure the ballot. Without curing the ballot or providing a complete signature or address, the ballot is rejected.<sup>21</sup>

The witness must list a complete address on the absentee ballot certificate. If the witness address is missing or incomplete (without a street number, street name, and municipality), the absentee ballot will be rejected.<sup>22</sup>

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<sup>19</sup> Early Voting Ballot Board and Signature Verification Committee. Handbook for Election Judges and Clerks 2020. The Office of the Texas Secretary of State, Elections Division. <https://www.sos.state.tx.us/elections/forms/ballot-board-handbook.pdf>

<sup>20</sup> Chapter 7: Absentee Voting. The Handbook. Virginia Department of Elections. June 2019. [https://www.elections.virginia.gov/media/grebhandbook/individual-chapters/7\\_AbsenteeVoting2019.pdf](https://www.elections.virginia.gov/media/grebhandbook/individual-chapters/7_AbsenteeVoting2019.pdf)

<sup>21</sup> Meagan Wolfe. Updated Absentee Witness Signature Requirement Guidance. Wisconsin Elections Commission. April 5, 2020. [https://elections.wi.gov/sites/elections.wi.gov/files/2020-04/Post%207th%20Circuit%20Absentee%20Witness%20Guidance%204.7.2020\\_0.pdf](https://elections.wi.gov/sites/elections.wi.gov/files/2020-04/Post%207th%20Circuit%20Absentee%20Witness%20Guidance%204.7.2020_0.pdf)

<sup>22</sup> Quick Guide to Processing Absentee Ballots. Clerk's Office, City of Madison. April 2019. <https://www.cityofmadison.com/clerk/documents/election/Quick%20Guide%20to%20Processing%20Absentee%20Ballots.pdf>