



VIA EMAIL (rulemaking.sboe@ncsbe.gov)

March 11, 2026

TO: North Carolina State Board of Elections

Francis X. De Luca, Chair

Stacy "Four" Eggers IV, Secretary

Jeff Carmon, Member

Angela Hawkins, Member

Siobhan O'Duffy Millen, Member

CC: Sam Hayes, Executive Director

Tim Hoegemeyer, General Counsel

Adam Steele, Deputy General Counsel

Re: Public Comment on Non-Citizen List Maintenance Proposed Rules

Dear Mr. Chair, Mr. Secretary, and Members Carmon, Hawkins, and Millen,

I write on behalf of Democracy North Carolina, a non-partisan, non-profit voter advocacy organization, to submit public comment on the proposed permanent rules related to voter roll list maintenance on the basis of non-citizenship (Proposed 08 NCAC 23 .0101-0104, hereafter the "Proposed Rules").¹ Democracy North Carolina has spent decades working to ensure that every eligible North Carolinian can register, vote, and have their vote counted. We have seen firsthand how well-intentioned administrative procedures, when poorly designed, can strip eligible citizens of their most fundamental constitutional right. These Proposed Rules, in their current form, present exactly that risk, and this Board has both the authority and the obligation to remedy them.

The freedom to vote is not a privilege to be forfeited because a flawed federal database returns an erroneous match. It is a constitutional right that demands procedural safeguards commensurate with its importance. The comments below identify five critical deficiencies in the Proposed Rules and call upon this Board to correct them before these rules take effect.

1. The State Board Must Not Initiate Voter Challenges Based on Unreliable Data.

The foundation of any lawful voter list maintenance program is accuracy. Stripping a citizen of their voting rights based on knowingly unreliable data is unacceptable. Yet the Proposed Rules

¹See Rulemaking, N.C. State Bd. of Elections, https://www.ncsbe.gov/about-elections/legal-resources/rulemaking#list_maintenance (last visited Jan. 20, 2026).



contemplate using the federal SAVE system—a database this Board has previously acknowledged is “not a reliable indicator that a person is not a U.S. citizen because the database is not always updated in a timely manner and individuals who derived citizenship from their parents through naturalization or adoption may show up as non-citizens in SAVE”—as the trigger for challenging and potentially removing registered voters.²

The evidence of SAVE’s unreliability is not speculative. In St. Louis County, Missouri, approximately 35 percent of individuals initially flagged by the SAVE tool were confirmed to have been registered at naturalization ceremonies, meaning they were unambiguously citizens.³ A 35 percent error rate is not a minor administrative inconvenience. It is a systematic mechanism for disenfranchising lawful voters and North Carolina must not import that failure.

Before any individual is designated a “presumptive non-citizen”—a label that triggers a formal challenge to their voting rights—this Board must take meaningful steps to verify the accuracy of that designation. Specifically, the Board must:

1. Make the procedures for identifying any “presumptive non-citizen” fully public and open for comment before implementation;
2. Require staff to exhaust all available information indicating citizenship—including DMV records, HAVA documentation, photo ID records, and prior citizenship verifications in any county in the state—before transmitting any name to county officials as a “presumptive non-citizen;” and
3. Track the source of non-citizenship information and whether voters subsequently provided proof of citizenship, in order to assess and refine the reliability of SAVE system comparisons over time and update voter records to prevent repeated, unnecessary challenges.

2. The Proposed Rules Must Comply with the NVRA’s 90-Day Prohibition on Systematic Removals.

Federal law is unambiguous: states may not conduct systematic removal programs within 90 days of a federal primary or general election (52 U.S.C. § 20507(c)(2)(A)). Congress enacted this prohibition precisely because large-scale, data-matching-driven removals are prone to error—and because removing an eligible voter shortly before an election effectively denies them

²See N.C. State Bd. of Elections, Post-Election Audit Report - General Election 2016, app. 1 at 2 (Apr. 21, 2017), https://dl.ncsbe.gov/sboe/Post-Election%20Audit%20Report_2016%20General%20Election/Post-Election_Audit_Report.pdf.

³See Alexandra Berzon & Nick Corasaniti, Initial Review Finds No Widespread Illegal Voting by Migrants, Puncturing a Trump Claim, N.Y. Times (Jan. 14, 2026), <https://www.nytimes.com/2026/01/14/us/politics/noncitizen-voters-save-tool.html>; see also Jude Joffe-Block, Trump’s SAVE tool is looking for noncitizen voters. But it’s flagging U.S. citizens too, NPR (Dec. 10, 2025), <https://www.npr.org/2025/12/10/nx-s1-5588384/save-voting-data-us-citizens> (reporting similar issues in Texas).



the right to vote, even if the error is later discovered and corrected. As the U.S. Court of Appeals for the Eleventh Circuit has held, this 90-day protected period exists because “the risk of disenfranchising eligible voters is the greatest” in the period immediately preceding an election.⁴

A systematic database matching program like the one contemplated by these Proposed Rules falls squarely within the NVRA’s prohibition. The acronym SAVE itself stands for Systematic Alien Verification for Entitlements. Under the U.S. Court of Appeals for the Fourth Circuit’s reasoning, the fact that election staff may conduct additional research or that some voters may respond to notice does not save a mass data-matching process from being “systematic” for purposes of the NVRA. The inclusion of a person’s name on a list electronically compared to other agency databases is itself sufficient to trigger removal if no information comes to light and the voter never responds.⁵

The Proposed Rules, in their current form, contain no safeguard ensuring compliance with this statutory mandate. That omission is not a technicality, but rather a violation of federal law that could expose North Carolina to litigation and, far more importantly, cause eligible voters to lose their registration on the eve of an election with no realistic opportunity to seek redress.

This Board must add an explicit provision making clear that no removal under these rules shall take effect within 90 days of any election, absent a request from the voter themselves.

3. The Rules Must Protect Citizens Who Face Structural Barriers to Proving Their Citizenship.

The Proposed Rules define “documentation of citizenship” in a manner that will predictably exclude two large classes of indisputably eligible voters: people who have changed their names and derived citizens. This Board should expect both groups to appear frequently in any SAVE-matching process as the rules as written offer them no adequate path to demonstrate their eligibility.

More than 2.3 million female citizens of North Carolina have changed their names and may not possess citizenship documents that match their current voter registration.⁶ A rule that demands documentary proof without accounting for name changes is a rule that will systemically

⁴See *Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1346 (11th Cir. 2014); *id.* at 1344 (finding Florida list maintenance program was “systematic” when it used “a mass computerized data-matching process to compare the voter rolls with other state and federal databases, followed by the mailing of notices. Certainly, it is telling that the database that [the Secretary of State] used before the general election—SAVE—stands for Systematic Alien Verification for Entitlements.” (emphasis in original)).

⁵See *Va. Coal. for Immigrant Rts. v. Beals*, 2024 U.S. App. LEXIS 27584, No. 24-2071, at *12–13 (4th Cir. Oct. 27, 2024).

⁶See *The SAVE Act Would Disenfranchise Millions of Citizens*, tables, Ctr. For Am. Progress, <https://www.americanprogress.org/wp-content/uploads/sites/2/2025/01/SAVEact-tables.pdf> (table “Female U.S. citizens without a valid birth certificate, by state”).



disenfranchise women at scale. This Board already administers a workable name-matching standard under the voter photo ID rules, which require only that a name be “substantially equivalent” to the name in registration records and directs election officials to construe all evidence in the light most favorable to the voter.⁷ There is no principled reason not to apply the same standard here.

Derived citizens, those who acquired citizenship automatically through a parent’s naturalization, face a different but equally serious barrier.⁸ They may have no individual naturalization paperwork and no DHS record of their citizenship status. Obtaining formal documentation requires navigating a federal bureaucratic process that can cost between \$1,335 and \$1,385 in filing fees for a Certificate of Citizenship and takes a median of 2.9 months to process—and that is before accounting for mailing time.⁹ The Proposed Rules, as written, offer no pathway for these citizens to establish their eligibility without undertaking that expensive, time-consuming process.

The law does not permit a state to condition the exercise of the right to vote on a citizen’s ability to produce expensive or inaccessible documentation on demand. This Board must amend the definition of “documentation of citizenship” to: (1) expressly include evidence of derived citizenship, such as documentation of a parent’s naturalization and the parental relationship; and (2) specify that names need only be substantially equivalent to registration records, applying the same process already used for photo ID administration.

4. Due Process Demands Meaningful Notice Before Any Voter’s Registration Is Placed at Risk.

The constitutional guarantee of due process requires that before the government deprives a person of a significant interest, and the right to remain on the voter rolls is unquestionably such an interest, it must provide notice reasonably calculated to actually reach that person and afford them a genuine opportunity to respond. The Proposed Rules fall short of this standard in several critical respects.

⁷See N.C. State Bd. of Elections, Numbered Memo 2023-03, at 8 (Oct. 11, 2024), <https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2023/Numbered%20Memo%202023-03%20Photo%20ID%20and%20In-Person%20Voting.pdf> (addressing comparison of name on photo ID with name in registration records); 08 NCAC 17.0101(a)(3).

⁸See I am the Child of a U.S. Citizen, U.S. Citizenship and Immigr. Servs., <https://www.uscis.gov/citizenship/learn-about-citizenship/i-am-the-child-of-a-us-citizen>.

⁹The fee for a Certificate of Citizenship is \$1,335 or \$1,385 depending on how the application is filed; a replacement Certificate of Citizenship or Naturalization costs \$505 or \$555. See <https://www.uscis.gov/g-1055?form=n-600>; <https://www.uscis.gov/g-1055?form=n-565>. A first-time passport costs \$165 plus \$60 for optional expedited processing; renewal costs \$130. See <https://travel.state.gov/content/travel/en/passports/need-passport/apply-in-person.html>.



Notice that arrives only in English, only by mail, and only once is not “meaningful” notice for a state as linguistically and geographically diverse as North Carolina. USPS service disruptions – which are expected to increase, particularly in rural communities, as a result of recent nationwide administrative changes – further undermine the reliability of mail-only notification.¹⁰ A voter who never learns their registration is under challenge cannot defend it. A voter who receives a notice they cannot read or understand is in no better a position.

The Board must amend the notice provisions to require, at minimum:

1. All notices to be written in plain language and provided in multiple languages, including Spanish, French, Arabic, Chinese, Vietnamese, Korean, Hindi, and Urdu;
2. Notice by email and by phone, in addition to mail, using all contact information on file for the challenged voter;
3. Forwardable mailings, with a second notice sent within one business day of any undeliverable return and the preliminary hearing rescheduled from the time of the second mailing; and
4. Continuance of the preliminary hearing when a voter demonstrates they have requested citizenship documentation from a government agency and are awaiting its arrival—a process that USCIS data shows can take nearly three months for Certificates of Citizenship and nearly five months for replacement naturalization certificates, and for which no voter should be penalized.¹¹

5. No Voter’s Registration May Be Canceled Without Independent Confirmation of Non-Citizenship.

The most alarming provision in the Proposed Rules is Subsection .0104(c)(5), which provides that if a challenged voter does not appear at their challenge hearing and has submitted no documentation, the notice of non-citizenship “shall be treated by the county board as affirmative proof necessary to sustain the challenge” under G.S. 163-90.1(b). As written, this provision authorizes the permanent removal of a registered voter from the rolls based on nothing more than a single, unverified SAVE database match. If enacted, it is very likely that a voter could lose their right to vote simply because that voter failed to appear at a hearing they may never have known was scheduled.

¹⁰See Postal Service Implements Nationwide Changes to Mail Service, Postal Regul. Comm’n (Apr. 29, 2025), <https://prc.gov/postal-service-implements-nationwide-changes-mail-service>.

¹¹According to USCIS, the median processing time in 2025 was 2.9 months for Certificates of Citizenship and 4.9 months for requests for replacement certificates of naturalization or citizenship. See <https://egov.uscis.gov/processing-times/historic-pt>. Processing time is 4–6 weeks for passports and 4–8 weeks for replacement Consular Reports of Birth Abroad, not including mailing time. See <https://travel.state.gov/content/travel/en/passports/how-precisionply/processing-times.html>.



This is not a neutral administrative default. It is a provision that will, with almost surgical precision, remove citizens from the voter rolls. And it stands in direct contradiction to the standard this Board has itself applied in the past: that removal is not appropriate “absent independent confirmation” that a voter is not a citizen.¹² What was sound policy in 2016 is a legal and moral imperative now. The Board cannot, in good conscience, abandon it.

This Board must amend the Proposed Rules to:

1. Prohibit the sustaining of any challenge, including by default, absent independent confirmation that the challenged voter is not currently a citizen; and
2. Require the county board to continue the challenge hearing and undertake further investigation and outreach efforts before any removal is ordered, rather than treating a voter’s non-response as proof of ineligibility.

* * *

Democracy North Carolina urges this Board to take these comments seriously and adopt the amendments described above. The stakes are not abstract, but real North Carolinians. Naturalized citizens, derived citizens, women who have changed their names, rural voters who depend on a postal system under strain, all of whom could lose their freedom to vote if these rules are implemented as written. This Board has the authority to prevent that outcome and the obligation to do so.

We respectfully call upon the Board to act accordingly. Democracy North Carolina is prepared to provide any additional information, data analysis, or testimony that would assist the Board in its deliberations.

Respectfully submitted,

Brian Kennedy

Senior Policy Analyst

Democracy North Carolina

¹²See N.C. State Bd. of Elections, Post-Election Audit Report - General Election 2016, app. 1 at 2 (Apr. 21, 2017) (disallowing removals of registered voters flagged as potential noncitizens "absent independent confirmation that they are not citizens").