

Formal Opposition to Proposed Rule 08 NCAC 17 .0101 Verification of Photo Identification During In-Person Voting

Dear Members of the North Carolina State Board of Elections,

I am writing to formally oppose the proposed amendments to 08 NCAC 17 .0101. While the amendments also align certain deadlines with statutory language and re-order the listing of provisional voting options, the change I object to in the strongest terms is this: the rule would lower the threshold required for a county board of elections to discard a provisional ballot submitted with a voter ID exception affidavit — from a unanimous vote to a simple majority vote. This same reduction — unanimous to majority — also narrows the threshold that triggers a voter's right to advance notice and an opportunity to be heard before their ballot is thrown out, from "one less than all members" of the board down to a bare majority.

There Is No Evidence Justifying This Change

There are no reported cases of exception forms being wrongfully accepted, and no documented pattern of abuse that would warrant lowering the threshold for rejecting them. What has been documented is the opposite problem: county boards second-guessing voters' stated, sworn reasons for using the form rather than simply evaluating whether those reasons are truthful. That is not the standard the law requires, and this rule change makes it easier, not harder, for that kind of second-guessing to result in a discarded ballot.

This is not a hypothetical concern. Independent, non-partisan election monitors who observed the 2024 General Election documented poll workers in multiple counties incorrectly turning voters away rather than offering them the ID Exception Form they were entitled to. In Alamance County, a voter with an unexpired driver's license and active registration was turned away and told to go home and find mail with an updated address, without ever being offered a provisional ballot or an ID Exception Form. In Nash County, a voter who identified as having a disability was told that ID Exception Forms were not even available at her polling location.¹ These are not examples of the exception process being abused — they are examples of eligible voters being wrongly denied a safeguard the law already guarantees them. Lowering the vote

¹2024 CBOE Monitoring Report, Democracy North Carolina, Common Cause North Carolina, Southern Coalition for Social Justice, League of Women Voters of North Carolina, and Blueprint NC (updated Sept. 2025), at 9-10 (documenting reports to the 888-OUR-VOTE hotline of poll workers in Mecklenburg, Alamance, and Nash Counties incorrectly turning voters away or telling a voter that ID Exception Forms were unavailable at her polling location).

threshold required to discard a completed affidavit addresses a problem the evidence does not show exists, while leaving the documented problem of wrongful denial untouched.

The unanimous-vote requirement exists precisely to prevent partisan interference in this process — ensuring that discarding a legitimate ballot requires genuine bipartisan consensus, not a party-line vote. All 100 county boards of elections in North Carolina are currently controlled by one political party. There is no bipartisan check standing behind a majority-vote threshold. The same political forces behind a voter ID law that a federal appellate court found was enacted with racially discriminatory intent now have unchecked power to reject the ballots of voters who have no other path to the polls.

The Disparate Racial Impact of Voter ID Requirements

Voter ID requirements do not fall evenly across the electorate, and neither will this rule change. Black voters make up 23% of registered voters in North Carolina but 34% of those without a qualifying photo ID. That gap is not an accident; it reflects decades of unequal access to transportation, government services, healthcare, and economic opportunity — and even a "free" ID carries real costs in the time and wages required to obtain the underlying documents and travel to a DMV office. This rule change deepens that inequity rather than addressing it.

This disparity is well documented in the research. A Brennan Center for Justice compendium of national research on voting restrictions found that strict voter ID laws disproportionately reduce turnout among voters of color², and that the racial turnout gap widens specifically in the counties and states that enact these laws.³ A peer-reviewed study focused specifically on North Carolina found that the state's strict photo ID law had a durable, differential deterrent effect on voters — meaning it discouraged eligible voters, and voters of color in particular, from turning out even after the law had been enjoined by the courts.⁴ Separate research cited in the same

²Brennan Center for Justice, "The Great Voter Purge" and related research compendium on the disproportionate impact of voting restrictions on voters of color, <https://www.brennancenter.org/>.

³Brennan Center for Justice research compendium, citing county-level turnout studies showing the racial turnout gap widens after states enact strict voter ID laws, <https://www.brennancenter.org/>.

⁴Durable, Differential Deterrent Effects of Strict Photo Identification Laws, Political Science Research and Methods, Cambridge University Press, <https://www.cambridge.org/core/journals/political-science-research-and->

compendium found that North Carolina voters without proper identification saw reduced turnout that persisted even after the law was repealed.⁵

This pattern is not unique to North Carolina. A study of Texas's court-ordered "Reasonable Impediments Declaration" process — a remedy allowing voters without qualifying ID to cast a ballot — found that the voters who would otherwise have been turned away were disproportionately Black and Latino.⁶ Nationwide survey research has similarly found that voters of color are consistently less likely than white voters to possess the specific forms of identification that strict voter ID laws require.⁷ Every one of these studies points to the same conclusion: strict ID requirements, and the mechanisms used to enforce them, do not burden the electorate equally.

Voter ID Confusion Deters Voters Even When the Law Is Not in Effect

Voter ID law in North Carolina has a documented history of confusing and discouraging eligible voters, whether or not the law is actually in force at the time. Voter ID was not a requirement to vote in North Carolina before 2013. Since then, the General Assembly has attempted to enact such a requirement multiple times, and each iteration has generated confusion among voters about whether ID is required, which forms of ID qualify, and what happens if they show up without one. Research shows this confusion has a real cost: strict photo ID laws have continued to depress turnout even in periods after they were struck down by the courts, because the public memory of the requirement outlasts its legal enforceability.

This matters directly for the rule change at hand. A voter using an ID exception affidavit is, by definition, a voter who has already navigated that confusion and is attempting to exercise their

[methods/article/abs/durable-differential-deterrent-effects-of-strict-photo-identification-laws/E97B3308FDA75972A6374EDCD26333BF](https://www.brennancenter.org/methods/article/abs/durable-differential-deterrent-effects-of-strict-photo-identification-laws/E97B3308FDA75972A6374EDCD26333BF).

⁵Brennan Center for Justice research compendium, citing study of North Carolina voters lacking proper identification and the law's continued turnout effects even after repeal, <https://www.brennancenter.org/>.

⁶Brennan Center for Justice research compendium, citing study of Texas's Reasonable Impediments Declaration process showing voters who would otherwise be barred from voting are disproportionately Black and Latino, <https://www.brennancenter.org/>.

⁷Brennan Center for Justice research compendium, citing survey-based research showing voters of color nationwide are less likely to possess IDs that meet strict voter ID requirements, <https://www.brennancenter.org/>.

right to vote despite a barrier to obtaining qualifying ID. Making it easier for a county board to discard that voter's ballot compounds a burden that already falls unevenly on the electorate.

Who Bears the Burden: Specific Populations at Risk

The voters most affected by this change are the same voters who have always faced the greatest barriers to voting:

Elderly voters, who are more likely to have retired from driving, let a driver's license lapse, or lack easy transportation to a DMV office to obtain a replacement ID.

Voters with disabilities, for whom travel to a government office to obtain qualifying ID can present significant logistical and financial barriers.

Low-income voters, for whom the underlying documents needed to obtain a "free" voter ID — birth certificates, proof of address, proof of residency — are often not free, and for whom the time and lost wages required to obtain an ID represent a real cost.

Rural voters, who often live far from the nearest DMV office and have fewer transportation options to reach one.

Voters displaced by Hurricane Helene, particularly in western North Carolina counties, many of whom lost identification documents, birth certificates, and proof-of-residency paperwork in the storm and are still working to replace them while rebuilding their homes and lives. The Natural Disaster exception exists precisely for these voters, and 2024 election data shows it working as intended when properly applied: of the provisional ballots cast under that exception in the 2024 General Election, the large majority — 228 of 279 — were approved, and only 15 rejections were actually based on the Exception Form itself rather than some other, unrelated factor.⁸

For every one of these voters, the ID exception affidavit exists as the safety valve Congress and the General Assembly intended: a sworn statement, made under penalty of law, that allows an otherwise-eligible voter to cast a ballot despite a genuine barrier to obtaining ID. Lowering the vote threshold required to discard that sworn statement — from unanimous to majority — narrows that safety valve precisely for the voters who rely on it most.

⁸2024 CBOE Monitoring Report, *supra*, at 10 (of 279 provisional ballots cast under the Natural Disaster exception in the 2024 General Election, 228 were approved and 51 were rejected, though only 15 of those rejections were based on the Exception Form itself rather than some other disqualifying factor).

Documented Impact: Hotline Reports and Election Data

This is not a hypothetical concern. In 2024, voter ID was the second most common problem raised by callers to North Carolina's Election Protection Hotline (888-OUR-VOTE).⁹ Independent election monitors' analysis of the state's own provisional ballot data confirms the scale of the problem: of voters who cast a provisional ballot because they lacked photo ID and did not submit an ID Exception Form, 74% failed to return with acceptable identification before canvass, resulting in 1,643 rejected ballots and only 564 approved.¹⁰ These are not abstractions — they are members of our communities whose voices were silenced by the existing process. This rule change will make it easier to silence more of them, by making it easier for a county board to reject the sworn affidavits of voters trying to use the one remaining path available to them.

North Carolina's History with Discriminatory Voter ID Laws

This is not North Carolina's first experience with a discriminatory voter ID law. The U.S. Court of Appeals for the Fourth Circuit found that the state's 2013 voter ID law was passed with racially discriminatory intent and had a racially discriminatory effect.¹¹ In 2018, North Carolina voters approved a constitutional amendment requiring voter ID, but the General Assembly did not provide voters with clear information on how the law would be implemented or which forms of ID would qualify, and voter ID was not required in the 2020 election. The current photo ID requirement stems from the North Carolina Supreme Court's April 28, 2023 decision in *Holmes v. Moore*, which reversed a prior finding that the 2018 law was unconstitutional and racially

⁹Democracy North Carolina, analysis of 888-OUR-VOTE Election Protection Hotline data (2024).

¹⁰2024 CBOE Monitoring Report, *supra*, at 9-10 (of voters who cast a provisional ballot with no ID Exception Form and were required to return to the County Board office with acceptable photo ID before canvass, 74% failed to do so, resulting in 1,643 rejected ballots and only 564 approved).

¹¹North Carolina State Conference of the NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); see also Brennan Center for Justice case summary, <https://www.brennancenter.org/our-work/court-cases/north-carolina-naacp-v-mccrory>.

discriminatory.¹² For further background on implementation concerns, see Democracy North Carolina's written testimony to the NC House Oversight and Reform Committee.¹³

The Stakes

With razor-thin margins deciding local and statewide races across North Carolina, every discarded ballot has the power to change an outcome. This is not a procedural footnote — it is a mechanism that will determine whose voices count in this state's elections.

I urge the Board to reject this proposed change and preserve the unanimous-vote requirement for discarding a voter's provisional ballot submitted with an ID exception affidavit.

Respectfully submitted,

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¹²Holmes v. Moore, 384 N.C. 426 (N.C. 2023).

¹³Democracy North Carolina, written testimony to the NC House Oversight and Reform Committee regarding Voter ID implementation, <https://democracync.org/research/democracy-nc-testimony-voter-id-absentee/>.