

## NORTH CAROLINA

# ABSENTEE-BY MAIL-VOTER CHALLENGE GUIDE

## What Happens in a Voter Challenge to an Absentee Ballot in North Carolina?

A registered voter from your county files a challenge either with the County Board of Elections office or the chief judge of your precinct by 5pm on Nov. 13, 2024.

The County Board of Elections initiates its own challenge to your ballot based on its own review of records in its possession by 5pm on Nov. 13, 2024.

County Board of Elections must send you notice as soon as possible before the hearing date. The notice should include the **reason** for the challenge and the **date and time for the hearing**.

On the day of county canvass (Nov. 15, 2024), the County Board of Elections will hold a hearing on the challenge. During the hearing, you or a representative you authorize may present evidence and/or sworn testimony supporting your qualification to vote and the validity of your ballot. The Board can also hear from the challenger and witnesses. The board must rule in your favor if there is not affirmative proof.

County Board of Elections will decide the challenge:

**Decide for voter**

Ballot will count. Challenger may appeal to Superior Court within 10 days.

**Decide against voter**

The ballot will not be counted (or, if you were eligible for some of the races on the ballot, only the races for which you were eligible will be counted). You may appeal to Superior Court within 10 days.

**Challenger doesn't attend hearing or present case**

CBOE must rule in the voter's favor.

**Was your ballot challenged? You can call the North Carolina Election Protection Hotline at 888-OUR-VOTE ((888)-687-8683) to report your experience, ask any questions, and get assistance.**

Potential grounds for challenge are that you: (1) are not a resident of the state/county/ precinct/municipality; (2) are under 18; (3) are serving a felony sentence (including probation, post-release supervision or parole); (4) are dead; (5) are not a U.S. citizen; (6) are not who you present yourself to be; or (7) already voted in this election.

Your ballot cannot be challenged and rejected based on a change in residency. Similarly, a challenge by another voter cannot be based on perceived issues with your mail-in ballot application or return envelope or an ID Exception Form if you use one—those are up to the County Board of Elections to review during their normal process.

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A voter challenge questions “the right of any person to register, remain registered or vote” in the county. Absentee-by-mail ballot challenges may be used to challenge voters who use absentee-by-mail voting (also known as vote by mail or mail-in voting), or who use military and overseas citizen voting.

### Who can challenge a mail-in ballot?

Mail-in ballots may be challenged by either (1) a voter registered in the same county as the challenged voter, or (2) the county board of elections.

When a voter challenges a mail-in ballot, they must do so with the county board of elections, or with the chief judge of the challenged voter’s precinct. They will use the [voter challenge form](#) from the State Board’s website. The challenger must sign the form under oath and attach any evidence supporting the challenge.

The county board should only initiate a challenge when it learns information about a voter’s eligibility based on its own research or review of records. Board-initiated challenges cannot be based on lists provided by outside individuals or organizations.

Challenges must be made by 5:00 PM on the fifth business day following the election (5:00 PM on November 13, 2024 for the 2024 General Election).

### On what grounds can a challenge to a mail-in ballot be made?

Mail-in ballot challenges may be made by voters or the county board on the grounds that the challenged voter:

- Is not a resident in the state, county, precinct, or municipality;
  - May not be based on the voter moving from their residence
  - May be based on voter never living at that residence
- Is under 18;
- Is serving a felony sentence, or any period of probation, post-release supervision, or parole;

- Is dead;
- Is not a U.S. citizen;
- Is not who they presented themselves to be;
- Already voted; or
- Voted the wrong party’s ballot, if in a partisan primary.

Challenges to mail-in ballots cannot be made based on:

- Deficiencies with an absentee-by-mail ballot application;
- Deficiencies with a ballot container-return envelope;
- Deficiencies with photo ID copies or exception forms; or
- A county board’s decision to approve an absentee-by-mail ballot application.

### What is the hearing process when the county board receives a challenge to a mail-in ballot, or initiates a challenge itself?

When the county board receives notice of a mail-in ballot challenge, it must provide notice to the challenged voter of the challenge hearing as soon as possible. For challenges received during the canvass period, notices must be sent within one business day, and the voter must be contacted using any email address or phone number in the voter’s record. The notice itself must include the reason for the challenge, and the date and time of the county canvass where the challenge hearing will occur.

All members of a county board must be present for the hearing of mail-in ballot challenges. The county board should also hire a court reporter for the hearing, or alternatively provide a high-quality audio recording so that the board’s decision can be reviewed on appeal.

The county board will administer oaths to all witnesses testifying to the qualifications of the challenged voter and/or the validity of the ballot.

The challenged voter may present evidence to the board, either personally or through an authorized representative.

## How are challenges to mail-in ballots decided? What can the county board consider?

A challenge to a mail-in ballot can only be sustained if it is substantiated by affirmative proof; in the absence of proof, there is a presumption that the voter is properly registered. The burden of proof is on the challenger, and the challenger must present their case at the challenge hearing. If the challenger fails to appear or present their case, the challenge must be dismissed.

Non-individualized, generic evidence cannot serve as the basis for a mail-in ballot challenge within 90 days of a federal election, unless the challenge is based on the death or active felon status of the challenged voter. A mailing sent to a voter that returns as undeliverable is not individualized evidence that can form the basis of a challenge.

The board will make its decisions without opening the mail-in ballot container-return envelope or removing the ballot, unless the ballot had been approved at a prior meeting.

## What happens if a challenge to a mail-in ballot is sustained?

If a challenge to a mail-in ballot is sustained because the voter is not eligible to vote in the election, the challenged voter's ballot container-return envelope will not be opened, and the ballot will not be counted. If the ballot was already counted, then the county board must retrieve it and deduct ineligible votes from the election results. If the voter was eligible to vote in some of the contests (i.e. because of residency), then the board must still count the results for eligible contests.

## Is the county board's decision on a mail-in ballot challenge final?

A county board's decision on an mail-in ballot challenge may be appealed to the superior court in the county where the board is located. The appeal must be filed within 10 days, and can only be filed by the challenged voter or the challenger.

The superior court will consider whether (1) the board made any errors of law; (2) procedures specified by law were followed; (3) appropriate due process rights were afforded to the parties, including pre-hearing notice and the right to offer evidence, cross-examine witnesses, and inspect documents; (4) the county board's decision is supported by competent, material and substantial evidence in the whole record; and (5) the decision is not arbitrary and capricious.

### County Board of Elections Contact Information



### Information from:

N.C.G.S. §§ 163-87, -88, -88.1, -90.2, and the N.C. State Board of Elections Voter Challenge Guide



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