

N.C. State Board of Elections Rulemaking: SCSJ Comments on Rules sent for Legislative Review

Background: In 2026, the North Carolina State Board of Elections considered and approved several administrative rules impacting elections. *See generally* https://www.ncsbe.gov/about-elections/legal-resources/rulemaking. During the rulemaking process, SCSJ submitted several comment letters requesting changes to proposed rules and expressing concerns about specific provisions. Following comment and final approval by the State Board of Elections, various election rules were sent for legislative review pursuant to N.C.G.S. § 150B-21.3(b2), and following objections filed by the public, including SCSJ. *See* https://southerncoalition.org/scsj-objects-to-new-election-rules-asks-for-legislative-review/.

If no legislative action is taken to disapprove (or, potentially, alter the law relevant to) these rules, they will come into effect automatically on the earlier of the 31st legislative day or after adjournment of the next regular session, anticipated for January 2026. *See* N.C.G.S. § 150B-21.3(b1).

Below, we have listed those issues that remain of concern to SCSJ in the final rules approved by the State Board of Elections and sent for legislative review:

1. Photo ID Exception Form Rules (amended 08 NCAC 17.0101 and 17.0109)
   - These rule amendments would eliminate the requirement that a county board of elections must vote *unanimously* in order to disapprove a Photo ID Exception Form (and discount the corresponding ballot). The proposed rule would convert this to a simple majority vote.
   - This change risks the possibility that Photo ID Exception Forms and corresponding ballots will be rejected along partisan lines, raising election security and equal protection concerns.
   - As outlined in detail in SCSJ's public comment letter, and noted in SCSJ's Photo ID Rules Objection Letter, the unanimity requirement was relied upon by legislators in defending the constitutionality of the Photo ID law, and has been crucial in protecting eligible ballots when county board members unlawfully question the "reasonableness" (and not merely the falsity, as permitted) of stated impediments.
   - Issues observed in various counties during the 2026 general election (including Guilford, Onslow, and Mecklenburg) underscore the importance of the unanimous vote requirement to protecting eligible voters.

2. Voting Site Rules (proposed 08 NCAC 10C .0101-.0104)
    - These rules would impermissibly and unnecessarily constrain protected activities outside of polling locations, including restricting electioneering to limited areas instead of allowing them outside of the protected buffer zone, and making categorical bans on amplified sound that would increase the potential for discriminatory unwarranted constraints on voter outreach.
    - As outlined in SCSJ and ACLU's public comment letter, and noted in our Voting Site Rules Objection Letter, these rules run afoul of federal First Amendment protections.
    - Conservative think tank John Lock Foundation raised similar concerns in its public comment as well.
    - The lack of systemic issues in the 2026 general election underscores that current statutory and administrative guidance currently in place is sufficient to address issues at the polling place, and allows chief judges to maintain peace and good order at polling locations.

3. Absentee Ballot Envelope Rules (proposed 08 NCAC 18 .0201, .0501–.0505)
    - These rule changes would codify the controversial and harmful changes to how absentee ballot envelope issues are treated, which were adopted in early September by the State Board of Elections in its administrative Numbered Memo guidance. These changes likely caused a significant increase in the number of ballots rejected during the 2026 general election. *See* https://www.nytimes.com/2026/10/21/us/politics/north-carolina-senate-mail-ballot-rejections.html.
    - Specifically, these rule changes require election staff to reject ballots that are transmitted in a sealed outer return envelope if the inner ballot-container envelope is not sealed. Prior guidance had accepted ballots if contained in a sealed outer return envelope, pursuant to the requirement in N.C.G.S. § 163-230.1(d) that "the absentee ballots [be] sealed in the container-return envelope." The use of a second inner ballot-container envelope was created only after the state's Photo ID requirement came into force.
    - As noted in SCSJ's Absentee Rules Objection Letter, this guidance unnecessarily increases burdens on voter and election administrators with no appreciable benefit to election security.

4. Non-citizen List Maintenance Rules (proposed 08 NCAC 23 .0101-0104)
    - These rules would direct the state board of elections to use federal databases to challenge the registration of voters identified as "potential non-citizens" in a challenge process. This followed the State Board of Elections' decision to enter into a Memorandum of Understanding to use the federal SAVE system to identify potential non-citizens and to compare North Carolina's voter rolls to the SAVE system in April 2026. *See* https://www.ncsbe.gov/about-elections/maintaining-accurate-voter-rolls.
    - As SCSJ pointed out in December 2025, there are well-documented issues of the federal SAVE database erroneously flagging naturalized and derived citizen as non-citizens. North Carolina's own experience confirms this: the State Board of Elections identified over 200 individuals to date that were flagged by the SAVE system as potential non-citizens but whom its own research identified were in fact citizen, eligible voters. *See* https://www.ncsbe.gov/news/press-releases/2026/10/13/ncsbe-send-letter-potential-non-citizens-voter-rolls (noting research of North Carolina's nearly 1,600 SAVE matches reduced the number of potential non-citizens to 1,392 registered voters, who were then sent letters notifying them of potential non-citizen status).
    - While the State Board of Elections did implement several improvements to the proposed challenge process consistent with SCSJ's Comment Letter, the final rule still allows for challenges to be sustained solely based upon SAVE matches. See proposed 08 NCAC 23.0104(d). Given the reliability issues with the federal SAVE database, the rule should state clearly that "the county board may not sustain a challenge absent independent confirmation that the challenged voter is not currently a citizen."