



## Introduction

Center for Election Confidence, Inc. (“CEC”) is a non-profit organization recognized as a key “civil society group”<sup>1</sup> that promotes ethics, integrity, and professionalism in the electoral process. CEC works to ensure that all citizens can vote freely within an election system of reasonable procedures that promote election integrity, prevent vote dilution and disenfranchisement, and instill public confidence in election systems and outcomes.

CEC submits these comments concerning the proposed 08 NCAC 23 .0103 to the North Carolina State Board of Elections (“NCSBE” or “State Board”) in response to the Notice of Proposed Rules published at 40:14 *North Carolina Register* 1195-96 (Jan. 15, 2026).

CEC’s interest in this proposed rule relates directly to its purpose of “advancing the role of ethics, integrity, and legal professionalism in the electoral process, including safeguarding the right of eligible voters to vote” by undertaking efforts that “increas[e] confidence in election results and election systems”.<sup>2</sup>

## Support for Proposed Rule

CEC supports the adoption of 08 NCAC 23 .0103 as part of the State Board’s larger efforts to ensure that only eligible American citizens resident in North Carolina are included on the state’s voter registration list. CEC offers the included suggestions to ensure that the proposed rule accurately reflects the substantive requirements of North Carolina statutory law and is consistent with other rules proposed to amend Title 08 of the NCAC.

## Sworn Testimony Requirement

With respect to preliminary hearings, the proposed rule holds that “the official entering the challenge shall not be required to present sworn testimony”, yet G.S. § 163-85 requires that the relevant county board of election “take such testimony under oath”. It is not clear that G.S. § 163-85 or other sections allow for a distinction between an “official *entering* a challenge” (emphasis added) and a person “challeng[ing] the right of any person to register, remain registered or vote in such primary.” The proposed rule seems to treat the official’s actions as ministerial, yet the underlying statute appears to require *some person* to file a challenge to initiate the review process: *sua sponte* “challenges” do not appear to receive different treatment or follow separate rules.

To the extent these two provisions are not in conflict, CEC recommends that the State Board include clarifying language to make this distinction express. However, to the extent that the sworn testimony language in G.S. § 163-85 controls, CEC recommends that the State Board remove the offending provision from the proposed rule. In general, CEC believes that any challenger—but especially one acting with the imprimatur of a government official—should be subject to the penalty of perjury when filing any challenge. This requirement would serve as important barrier to entry against the filing of unsupported or frivolous challenges and support the meaningful execution of G.S. § 163-90.1 that “in the absence of [affirmative] proof, the presumption shall be that the voter is properly registered.”

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<sup>1</sup> Elena Patel, Brookings Institute (Dec. 30, 2025), <https://www.brookings.edu/articles/when-a-postmark-no-longer-tracks-mailing/>.

<sup>2</sup> *About CEC*, Center for Election Confidence, <https://electionconfidence.org/about/>.

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### **Evidentiary Status of Notice of Non-Citizenship**

The proposed rule would require a county board of elections to base its determination of probable cause, among other factors, upon the notice of non-citizenship prepared by the State Board. Proposed Section .0101 defines “notice of non-citizenship” as “a written notice sent by the State Board of elections to a county board of elections identifying a registered voter in the county as a presumptive noncitizen.”

CEC does not dispute the utility of the notice of non-citizenship to the examining county board of elections; however, CEC recommends that the State Board modify the proposed rule to treat the notice of non-citizenship not as evidence but as part of the challenge filing—in other words, as a document that alleges certain facts supporting the overall challenge against the voter in question. Including the notice of non-citizenship as part of the body of evidence to be considered raises questions of due process because the notice, an unproven document, was created for the purpose of alleging the facts in question against the challenged voter and would be used itself as evidence of those allegations.

Rather, the proposed rule should require that the county board of elections consider only (1) “official government documents and information from official government records and databases obtained by the county board” (to include written decisions of previous challenges to the voter’s citizenship status); and (2) “any documentation of citizenship or information that can be used to determine the challenged voter’s citizenship that is submitted to the county board by the challenged voter” as relevant evidence for its consideration of the challenge against the voter.

### **Applicability to Challenges on Primary or Election Day**

The State Board should either clarify applicability of this proposed rule to challenges filed on Primary or Election Day pursuant to G.S. § 163-87 or engage in a separate rulemaking to promulgate similar rules to govern such challenges.

### **Conclusion**

The Center for Election Confidence urges the State Board to take the necessary steps to implement the proposals contained in this Comment for the benefit of North Carolina voters’ confidence in the state’s elections.

Respectfully submitted this 16th day of March 2026,

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