

VIA EMAIL (rulemaking.sboe@ncsbe.org)

July 14, 2026

TO: North Carolina State Board of Elections
Francis X. De Luca, Chair
Stacy “Four” Eggers IV, Secretary
Jeff Carmon, Member
Siobhan O’Duffy Millen, Member
Angela Hawkins, Member

Re: **Public Comment Opposing Proposed Amendments to Photo ID Rules 08
NCAC 17.0101 and 08 NCAC 17.0109**

Dear Members of the State Board of Elections:

The Brennan Center for Justice at New York University School of Law¹ appreciates the opportunity to provide public comment on the proposed revisions to Rules 08 NCAC 17.0101 and 08 NCAC 17.0109, which would replace the current requirement that a county board unanimously find an ID exception affidavit false before rejecting it, with a majority vote standard. For over thirty years, the Brennan Center’s nonpartisan expertise has informed policies that foster a stronger democracy, including pro-voter policies at the state, local, and federal levels.

There are significant consequences to lowering the threshold for county boards to reject an ID exception affidavit. North Carolina law allows voters who cannot present a photo ID for a valid reason to cast a provisional ballot after completing an ID exception affidavit.² The exceptions are broad and include, but are not limited to, a reasonable impediment to obtaining a photo ID, such as a disability or illness, a religious objection, or the loss of an ID due to a natural disaster.³ North Carolina’s exception affidavit is among the most protective in the country, and it exists to ensure all eligible voters can exercise their right to vote. These proposed rules, however, threaten the very purpose of accommodating a broad list of reasons why voters may not have photo ID.

¹ The Brennan Center is a nonpartisan public policy and law institute that focuses on the fundamental issues of democracy and justice. This comment does not reflect views, if any, of the NYU School of Law.

² N.C. Gen. Stat. § 163-166.16(c)-(d).

³ N.C. Gen. Stat. § 163-166.16(d).

The Brennan Center formally opposes the proposed rules. First, the shift from the current unanimity requirement to a majority vote invites partisan mischief and weakens public confidence in North Carolina’s elections. Second, the change will fall hardest on the very voters that the ID exception affidavit was designed to protect. For these reasons, we urge the State Board to revise the proposed rules and preserve the unanimity requirement.

The Proposed Rules Invite Partisan Mischief and Weakens Public Confidence in North Carolina’s Elections

The unanimity requirement serves as an important bipartisan check. North Carolina law gives a county board the authority to determine whether an ID exception affidavit is truthful, but that authority is intentionally limited.⁴ It does not allow a board to reject an affidavit based on the belief that the reasons stated in the affidavit are not reasonable or legitimate. David Thompson, representing Republican members of the General Assembly in *Holmes v. Moore*, made this point clear, emphasizing “the legislature did not allow local officials to second-guess the validity of these reasonable impediment forms,” and that the only basis for rejection is a unanimous, bipartisan five-member commission finding of falsity: “[a]s long as the person filling out the reasonable impediment provision doesn’t lie, the ballot counts.”⁵ The proposed changes fly in the face of the legislative intent. Since North Carolina’s voter ID law went into effect in 2023 following a North Carolina State Supreme Court decision, some county board members have attempted to reject a voter’s ID affidavit on grounds outside that narrow authority.⁶ In those cases, the unanimity requirement protected eligible voters from unlawful disenfranchisement.

The unanimity requirement ensures no single party can unilaterally decide the fate of a voter’s ballot – a protection that is especially important in deterring both actual and perceived partisan mischief. Following a recent law that shifted the authority to appoint the chairs of county boards from the governor to the state auditor, all county boards in North Carolina are led by a chair from the same party as the state auditor. This has given a single party an effective 3-2 majority on every board in the state. Under the proposed rules, that majority alone could reject a voter’s sworn affidavit over the objection of the board’s minority party members. The unanimity requirement helps to guarantee a fair

⁴ N.C. Gen. Stat. Ann. § 163-166.16(f) (“the county board of elections shall find that the provisional ballot is valid unless the county board has grounds to believe the affidavit is false.”).

⁵ Opening Statement of David Thompson, counsel for North Carolina Legislature, at 53:5-12, *Holmes v. Moore*, 8 CVS 15292 (N.C. Super. Ct. July 10, 2019).

⁶ Jeffrey Loperfido et al., “Public Comment on Proposed Amendments to Photo ID Rules 08 NCAC 17.0101 and 08 NCAC 17.0109,” Southern Coalition for Social Justice, May 26, 2026, https://southerncoalition.org/wp-content/uploads/2026/05/SCSJ-Public-Comment-re-Photo-ID-Proposed-Rule-Change_With-Exhibits.pdf.

process that ensures no eligible vote is discarded without full confidence in that decision by board members from more than one party.

Lowering the threshold to a simple majority also raises the risk of coordinated pressure campaigns from outside groups. A rule that allows any 3-2 majority to reject an affidavit gives outside groups an incentive to pressure board members to vote along party lines, since a single party's majority would be sufficient to reject a ballot. When elections in North Carolina are regularly determined by narrow margins, any external pressure to reject ballots can have a significant impact on the outcome of an election. Unanimity removes the risk of partisan interference by requiring the agreement of the entire board, regardless of party.

Confidence in the electoral process is already fragile in North Carolina, and is declining. A recent poll by Elon University found that only 38% of North Carolinians said they believe this year's election will produce a fair and accurate count of the votes cast nationwide, down from 48% in August 2024.⁷ Adopting a rule that makes it easier for single-party board majorities to reject affidavits, without any evidentiary basis for doing so, risks deepening that erosion of trust rather than restoring it.

The Proposed Rules Will Harm Eligible North Carolinian Voters that the Exception Was Designed to Protect

The exception affidavit exists to address a broad variety of personal and structural barriers that keep voters from obtaining a photo ID in the first place, from conflicts with religious belief to lack of access to reliable transportation, to the impact of natural disasters. Voter ID was among the most common issues raised on North Carolina's Election Protection Hotline in 2024.⁸ Voters with disabilities, voters without reliable transportation, and voters affected by natural disasters may struggle to obtain an ID and depend on the affidavit to have their ballot counted.⁹

The disparate impact of the voter ID requirement on vulnerable communities is well documented. Even a technically free ID carries real costs, such as navigating transportation or time off work, and will fall hardest on voters who can least afford

⁷ Elon University News Bureau, "Elon Poll: Cooper Maintains Wide Name Recognition Lead in NC Senate Race," Today at Elon, April 2, 2026, <https://www.elon.edu/u/news/2026/04/02/elon-poll-cooper-maintains-wide-name-recognition-lead-in-nc-senate-race/>.

⁸ Democracy NC, "NCSBE Proposed Rules on Voter ID Exception Forms, Amplified Sound and Absentee Ballots," May 15, 2026, <https://democracync.org/research/ncsbe-proposed-rules-on-voter-id-exception-forms-amplified-sound/>.

⁹ North Carolina State Board of Elections, "Voter ID," accessed July 13, 2026, <https://www.ncsbe.gov/voting/voter-id>.

them.¹⁰ Voter ID laws also disproportionately harm Black communities. Black North Carolinians make up 23% of registered voters but 34% of voters without a photo ID.¹¹ Statewide, Black voters are 39% more likely than white voters to lack a qualifying ID.¹² The exception affidavit operates as a safeguard against these systemic barriers, and any attempt to minimize its impact will not fall evenly across the electorate.

The structural barriers to obtaining an ID are also exacerbated for voters with disabilities. The South has the highest disability rate in the country, and nationally, one in five people with a disability lacks a driver's license.¹³ The ID exception affidavit helps address these inequities. For many of these voters, the exception affidavit may be the only way for them to cast a ballot. Removing the unanimity requirement means a single party could reject that affidavit without persuading a single member of the other party, leaving these populations most exposed to the concentrated power of a single party.

As the recent experience with Hurricane Helene made clear, natural disasters can put any North Carolina voter in a similar position overnight, and the proposed change would leave that voter exposed to partisan manipulation at a time when they can least protect themselves.¹⁴ The exception affidavit's natural disaster provision recognizes that a qualifying ID can be lost at a moment's notice through no fault of the voter.¹⁵ Under the proposed rules, the victims of natural disasters would be at even greater risk of disenfranchisement.

¹⁰ Democracy North Carolina, "North Carolina's Voter ID Law," accessed July 13, 2026, <https://democracync.org/research/north-carolinas-voter-id-law/>.

¹¹ Democracy North Carolina, "North Carolina's Voter ID Law," accessed July 13, 2026, <https://democracync.org/research/north-carolinas-voter-id-law/>.

¹² Robyn Sanders, "North Carolina Supreme Court Upholds Voter ID Law 5 Months After Striking," State Court Report, May 8, 2023, <https://statecourtreport.org/our-work/analysis-opinion/north-carolina-supreme-court-upholds-voter-id-law-5-months-after-striking>.

¹³ Katrina Crankshaw, "The South Had Highest Disability Rate Among Regions in 2021," U.S. Census Bureau, June 26, 2023, <https://www.census.gov/library/stories/2023/06/disability-rates-higher-in-rural-areas-than-urban-areas.html>; see also Lynn Bonner, "Helping People with Disabilities in NC Obtain IDs for Voting," NC Newline, February 29, 2024, <https://ncnewline.com/briefs/helping-people-with-disabilities-in-nc-obtain-ids-for-voting/>.

¹⁴ North Carolina State Board of Elections, "Resolution Regarding the Scheduling of Absentee Board Meetings for the 2024 General Election in 25 Counties Identified in the Federal Disaster Declaration," September 30, 2024, https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2024-09-30/DRAFT%20September%2030%202024%20SBE%20Emergency%20Resolution.pdf.

¹⁵ Lucas Thomae, "The Vote Must Go On. Planning Elections in a Disaster Area," Carolina Public Press, September 30, 2024, <https://carolinapublicpress.org/65809/voting-nc-disaster-areas-helene-emergency-flexibility/>.

North Carolina's exception affidavit is among the most protective in the country, and it operates to ensure vulnerable voters can exercise their right to vote. It also protects against attempts at partisan mischief and helps restore faith in our election systems. The strength of North Carolina's elections rests on public trust, and a rule that empowers a single party majority in every county to reject a voter's ballot puts that trust at risk. The State Board should withdraw the proposed amendments to 08 NCAC 17.0101 and 08 NCAC 17.0109 and preserve the unanimity requirement currently in place.

Respectfully submitted,

Yasmin Abusaif, Counsel
Brooke Kessler, Legal Intern
BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW