



BERTIE COUNTY BOARD OF ELECTIONS

Canvass

Friday, May 24, 2024

11:00 am

The Bertie County Board of Elections held Canvass for the Second Primary Election on Friday, May 24, 2024 at 11:00 am. The meeting was held at 210 W. Watson Street, Windsor, NC.

The meeting was called to order by Chairman Wm. Michael Freeman. Mrs. Pamela Staneski gave the invocation.

Present were Wm. Michael Freeman, Timothy Davis, James Lee, LaToya R. Peele, Synesta P. Freeman and Angela M. Watson.

Mrs. Staneski attended the meeting virtually.

Business

Pre-Canvass

Review Provisional Ballot

Director Peele presented a Provisional Ballot to the Board for review. The Provisional Voter, Shirley Dowell Pennington, voted out of precinct on Election Day.

Upon Board review and discussion, a Motion was made by Mrs. Staneski to reject the Provisional Ballot for Shirley Dowell Pennington. Chair Freeman Second the motion.

Review Supplemental Absentee by Mail Ballot

Director Peele presented a Supplemental Absentee Ballot to the Board for review. The Absentee Voter, Elizabeth Lassiter Bowman's ballot was timely and returned by mail on Election Day.

Upon review, a Motion was made to approve the Supplemental Ballot by Mr. Davis. The motion was Second by Mr. Lee.

Conduct Canvass

Director Peele uploaded the Canvass Results and printed off the Canvass Materials for the Board to sign.

Director's Report:

Voter History

Director Peele informed the Board that Voter History for the Second Primary would be completed next week.

Next Board Meeting

Chair Freeman stated we will not have a Board meeting June. The next Board meeting would be Tuesday, July 2nd

Public Comment

There were no public comments.

With no other business, the meeting was adjourned.

Respectfully submitted,

Wm. Michael Freeman, Chairman



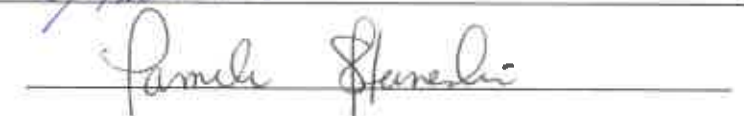
Timothy Davis, Secretary



James Lee, Member



Pamela Staneski, Member



Vacant, Member



LaToya Peele

From: Cox, Paul
Sent: Thursday, May 23, 2024 2:21 PM
To: SBOE_Grp - Legal
Subject: Legal Memo - ATTACH TO CANVASS FILES
Attachments: Legal Memo - Abstracts and Ballot Secrecy - May 2024.pdf
Importance: High

Directors (via BCC):

Please find attached a legal memo which you should retain with your original copy of your canvass documents, to ensure that it is consulted for any future public records requests for abstracts from this election.

Please also include a copy of this memo as a cover page to the abstracts that you provide to the clerk of superior court.

Best regards,

Paul Cox
General Counsel
NORTH CAROLINA STATE BOARD OF ELECTIONS
ALEIGH, NC 27611
919.814.0700
www.ncsbe.gov



NORTH CAROLINA STATE BOARD OF ELECTIONS

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Memorandum

TO: County Boards of Elections, Clerks of Superior Court
FROM: Paul Cox, General Counsel, State Board of Elections
RE: Abstracts for the May 14, 2024, Second Primary Election as Public Records
DATE: May 23, 2024

Please retain a copy of this memorandum with the abstract filed for the May 14, 2024, second primary.

Memo Summary

- **State Board of Elections legal staff concludes that, to comply with North Carolina's ballot secrecy laws and public records laws, it may be necessary to redact portions of the official abstracts for the May 14, 2024, second primary before disclosing those records, or copies of those records, to the public.**
- **Election abstracts are public records, as defined by G.S. § 132-1, and therefore may be requested by any member of the public. However, to comply with the requirement that "records of individual voted ballots shall not be disclosed to members of the public in such a way as to disclose how a particular voter voted," G.S. § 163-165.1(e), State Board legal staff advises that abstracts viewed by, or copies of abstracts provided to, any member of the public must be redacted to ensure the secrecy of any individual's voted ballot.**

Analysis

This memorandum provides the interpretation of the legal staff of the State Board of Elections with respect to any public records requests for official abstracts for the May 14, 2024, second primary election. The county boards of elections and the clerks of superior court are encouraged to consult their own counsel, as needed, to address any questions related to requests for records they receive.

State Board legal staff concludes that, to comply with North Carolina's ballot secrecy laws and public records laws, it may be necessary to redact portions of the official abstracts for the May

14, 2024, second primary before disclosing those records, or copies of those records, to the public.

Under North Carolina's election laws, the county boards of elections are required to certify the official abstract of the votes for all items on the ballot in an election conducted within the county. G.S. §§ 163-182(1), 163-182.5, 163-182.6(a). General Statute section 163-182(1) defines an abstract as follows:

"Abstract" means a document signed by the members of the board of elections showing the votes for each candidate and ballot proposal on the official ballot in the election. The abstract shall show a total number of votes for each candidate in each precinct and a total for each candidate in the county. It shall also show the number of votes for each candidate among the absentee official ballots, among the provisional official ballots, and in any other category of official ballots that is not otherwise reported.

North Carolina election law also requires the preservation of the secrecy of a voter's ballot selections. General Statute section 163-165.1(e) states:

Voted ballots and paper and electronic records of individual voted ballots shall be treated as confidential, and no person other than elections officials performing their duties may have access to voted ballots or paper or electronic records of individual voted ballots except by court order or order of the appropriate board of elections as part of the resolution of an election protest or investigation of an alleged election irregularity or violation. Voted ballots and paper and electronic records of individual voted ballots shall not be disclosed to members of the public in such a way as to disclose how a particular voter voted, unless a court orders otherwise. Any person who has access to an official voted ballot or record and knowingly discloses in violation of this section how an individual has voted that ballot is guilty of a Class 1 misdemeanor.

The State Board and county boards of elections make available and publish records showing which voters cast ballots in any given election. This information appears on "voter history" files, and absentee and provisional voting files, that are posted on the State Board's website, and it is information that can be obtained through other public records such as applications to vote that voters complete before receiving a ballot in an election. These public records can identify the method a voter used to vote (*e.g.*, absentee, early voting, election day, provisional), the date on which a voter voted, and the precinct to which the voter belongs.

Voter turnout in the May 14, 2024, Second Primary was so low that, in many cases, it would be possible to identify how a particular voter voted, using these records and the abstract produced by the relevant county. This would be the case where all voters who voted at a particular voting site, or used a particular voting method, cast a ballot for the same candidate. This occurred often across the state in this election.

Nonetheless, under state law as noted above, the abstract produced by each county board of elections must include vote totals by precinct and by voting method. And State Board legal staff do not believe that a county board may redact an abstract before providing it to the clerk of superior court. That office is designated by statute to be an official repository of certified election records—in this case, one of the “triplicate originals” of the abstract. *See* G.S. § 163-182.6(a).

Finally, election abstracts are public records, as defined by G.S. § 132-1, and therefore may be requested by any member of the public. However, to comply with the requirement that “records of individual voted ballots shall not be disclosed to members of the public in such a way as to disclose how a particular voter voted,” G.S. § 163-165.1(e), State Board legal staff advises that abstracts viewed by, or copies of abstracts provided to, any member of the public must be redacted to ensure the secrecy of any individual’s voted ballot, where applicable, as follows:

- For any vote totals per voting method or precinct on an abstract that show every voter for that voting method or precinct having selected any single candidate, those results should be redacted.
- Vote totals for multiple voting methods or precincts would need to be redacted so that the voters for a single voting method or precinct cannot be identified as having voted the same way through simple subtraction (*i.e.*, if a member of the public were to subtract from the sum total the votes for a candidate in all reported voting groups except for a single redacted group, that member of the public could determine the votes for that candidate in the redacted group). For example, if all provisional votes were all cast for one candidate, you would need to redact provisional vote counts and perhaps the absentee vote counts to preserve ballot secrecy.
- Total aggregated results per county for any contest should not need to be redacted.

State Board legal staff advises that an explanatory cover letter should be included where such redacted abstracts are provided to a member of the public. That letter could state, for example, “Certain ballot groups were redacted from the attached records to preserve the secrecy of the ballot for certain voters, pursuant to G.S. § 163-165.1.”

If you or your counsel have any questions, please refer them to legal@ncsbe.gov or 919-814-0700.