

# BLUEPRINT FOR A STRONGER DEMOCRACY

BEST PRACTICES AND POLICY PROPOSALS FOR NORTH CAROLINA TO IMPROVE VOTING, COMBAT CORRUPTION, AND PROMOTE GOOD GOVERNMENT



JUNE 2021

INSTITUTE FOR SOUTHERN STUDIES IN PARTNERSHIP  
WITH N.C. VOTERS FOR CLEAN ELECTIONS



WITH CONTRIBUTIONS FROM

Brennan Center for Justice  
Campaign Legal Center  
Common Cause North Carolina  
Democracy North Carolina  
Disability Rights North Carolina  
North Carolina Black Alliance  
Southern Coalition for Social Justice  
Voters' Right to Know

## **ABOUT THE INSTITUTE FOR SOUTHERN STUDIES**

Founded in 1970, the Institute for Southern Studies is a nonprofit media, research and education center based in Durham, North Carolina. The Institute publishes the online magazine Facing South ([facingsouth.org](http://facingsouth.org)).

## **ABOUT NORTH CAROLINA VOTERS FOR CLEAN ELECTIONS**

Founded in 1999, North Carolina Voters for Clean Elections is a coalition of organizations dedicated to improving the vitality of North Carolina elections and defending the independence of the executive, judicial, and legislative branches from special interest influence ([www.ncvce.org](http://www.ncvce.org)).

## **CONTRIBUTING ORGANIZATIONS**

### **Brennan Center for Justice**

[www.BrennanCenter.org](http://www.BrennanCenter.org)

### **Disability Rights North Carolina**

[www.DisabilityRightsNC.org](http://www.DisabilityRightsNC.org)

### **Campaign Legal Center**

[www.CampaignLegal.org](http://www.CampaignLegal.org)

### **North Carolina Black Alliance**

[www.NCBlackAlliance.org](http://www.NCBlackAlliance.org)

### **Common Cause North Carolina**

[www.CommonCause.org/North-Carolina](http://www.CommonCause.org/North-Carolina)

### **Southern Coalition for Social Justice**

[www.SouthernCoalition.org](http://www.SouthernCoalition.org)

### **Democracy North Carolina**

[www.DemocracyNC.org](http://www.DemocracyNC.org)

### **Voters' Right to Know**

[www.VotersRighttoKnow.org](http://www.VotersRighttoKnow.org)

**Report Coordinators:** Benjamin Barber, Billy Corriher, and Chris Kromm, Institute for Southern Studies; Melissa Price Kromm, North Carolina Voters for Clean Elections

**Report Contributors:** Benjamin Barber, Marcus Bass, Mitchell Brown, Billy Corriher, Jay Costa, Corye Dunn, Alissa Ellis, Caroline Fry, Nadia Innab, Caleb Jackson, Katelin Kaiser, Douglas Keith, Chris Kromm, Melissa Price Kromm, Danielle Lang, Tomas Lopez, Aaron McKean, Gino Nuzzolillo, Bob Phillips, Sabine Schoenbach, and La'Meshia Whittington-Kaminski

**Copy Editor:** Sue Sturgis, Institute for Southern Studies

**Design:** Amanda Underwood, Underwood Creative

The report coordinators would like to thank Bob Hall and Olivia Paschal for their assistance with this report. This report was made possible in part due to support from the Mary Reynolds Babcock Foundation and the Piper Fund.

**TO ACCESS THIS REPORT ONLINE, please visit:** [ncforthepeople.com/index.php/report](http://ncforthepeople.com/index.php/report) or [southernstudies.org/ncdemocracyreport](http://southernstudies.org/ncdemocracyreport)

# TABLE OF CONTENTS

INTRODUCTION .....	4
SECTION I: IMPROVE VOTER REGISTRATION AND LIST MAINTENANCE .....	
Election-Day Voter Registration.....	5
Online Voter Registration .....	7
Automatic Voter Registration .....	9
Voter Registration List Maintenance .....	12
ERIC Voter Database .....	14
Registration and Eligibility for Displaced Voters .....	16
SECTION II: ENSURE VOTING ACCESS AND PROTECT VOTING RIGHTS .....	
Student Access to Voting .....	17
Voters with Former Felony Convictions.....	19
Election Day Holiday .....	22
Voter Intimidation .....	23
SECTION III: STRENGTHEN LOCAL ELECTION INFRASTRUCTURE .....	
Resources for Local Elections .....	28
Human Resources and Staffing.....	30
Technical Assistance and Rules Clarity .....	32
Access and Transparency.....	34
SECTION IV: PROMOTE FAIR REDISTRICTING AND EQUAL REPRESENTATION .....	
Fair Maps .....	36
Popular Vote State Compact .....	38
SECTION V: HEIGHTEN TRANSPARENCY AND COMBAT CORRUPTION .....	
Good Government and Disclosure Laws.....	40
Coordination Laws.....	42
Voters' Right to Know Money Behind Elections .....	44
Voter-Owned Elections.....	46
Overturn Citizens United .....	49
SECTION VI: ENSURE FAIR AND IMPARTIAL COURTS .....	
Nonpartisan Judicial Elections .....	51
Judicial Ethics Reform .....	53
Judicial Nominating System .....	56
CONTACTS .....	58
ENDNOTES.....	60

## INTRODUCTION

American democracy has faced unprecedented challenges in the last year. Record numbers of voters turned out in North Carolina and other states, while election officials — in both Democratic and Republican states — scrambled to ensure safe and fair elections for all in the face of a deadly pandemic.

North Carolina has a proud history of leadership in expanding voting access, improving elections, and strengthening our democracy. Two decades ago, our state was at the forefront in the South and country in opening the door to increased voter participation and curbing the influence of special interests in politics. With bipartisan support, state lawmakers implemented pioneering measures such as same-day voter registration during early voting, a robust early voting period, strong disclosure laws for election spending, and voter-owned public financing of council of state and judicial elections.

Unfortunately, over the last decade, North Carolina has lost ground to other states and is no longer viewed as a leader in democracy innovation. Popular and effective programs like same-day registration during early voting and pre-registration for high school teens were temporarily repealed, and only later restored after legal battles. Other time-tested initiatives, such as voter-owned elections, were eliminated and never replaced. Meanwhile, other states in the South and country have continued to innovate and make progress, embracing changes to make their elections more free, fair, and effective.

Today, North Carolina has an opportunity to once again be a leader in strengthening democracy. The following report — a partnership with contributions from 10 leading state and national organizations — outlines a series of policy proposals and recommendations to improve voting, elections, and ethics standards in our state. These initiatives cover a broad range of issues central to our democracy, including:

- Improving voter registration and list maintenance;
  - Ensuring voting access and protecting voting rights;
  - Strengthening local election infrastructure;
  - Promoting fair redistricting and equal representation;
  - Heightening transparency and combating corruption; and,
  - Ensuring fair and impartial courts

The practical, common-sense measures described in this report are considered best practices for voting, elections, and ethical governance. Most have been successfully implemented elsewhere — in Democratic and Republican states, often with bipartisan support — and have a proven track record. Others are forward-thinking ideas that, if carried out in our state, would re-establish North Carolina as a leader in democracy reform. Polling has shown that these measures enjoy broad public support, across partisan and ideological lines.

Now is the time for North Carolina to create a bold vision for a stronger democracy. This report is a collaborative effort, and not all of the individual authors will agree with the details of every policy recommendation. But together, they represent a broad and compelling set of options for lawmakers, advocates, and everyday North Carolinians to consider as we strive to bring our state closer to the ideal of a state truly of, by, and for the people.

*– Benjamin Barber, Billy Corriher, Chris Kromm, Melissa Price Kromm*

## SECTION I: IMPROVE VOTER REGISTRATION AND LIST MAINTENANCE

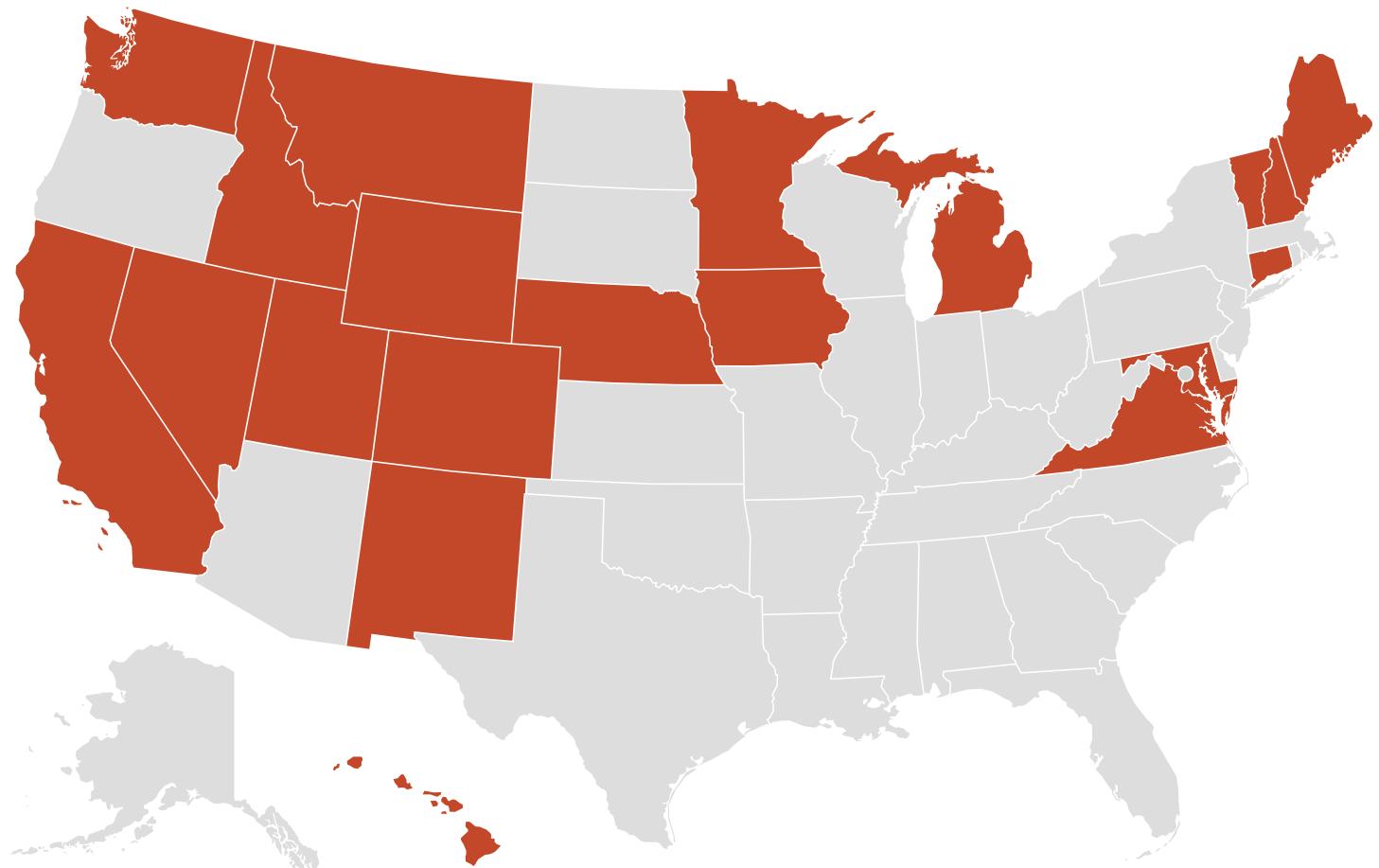
### ELECTION-DAY VOTER REGISTRATION

#### BACKGROUND

Every election cycle, millions of people are unable to participate in the electoral process because of a registration problem. Census data from 2018 found that an estimated 3.6 million voters nationally did not cast a ballot in the midterm election because of a problem with their voter registration.<sup>1</sup> Many voters go to the polls on Election Day planning to cast their ballot, only to find out that their registration is no longer valid because they've recently moved or changed their name. Administrative errors can be a factor, too: In 2020, for example, 11,000 voters in North Carolina were mailed prefilled voter registration forms with incorrect information less than a month before the election, according to the North Carolina State Board of Elections.<sup>2</sup> Voting advocates believe that allowing voters to register and vote at the same time on Election Day will ensure that every eligible voter who wants to participate can.

North Carolina currently allows for same-day voter registration during the early voting period, a reform passed in 2007. Same-day registration has proved to be immensely popular with North Carolina voters: In 2020, more than 114,000 voters used same-day registration, with Democrats, Republicans, and unaffiliated voters using it almost equally.<sup>3</sup>

#### States with Election Day Registration



MAP: Olivia Paschal, Institute for Southern Studies, April 2021 • Source: Facing South

## RECOMMENDATIONS

Building on North Carolina's success with same-day registration during early voting, the state could expand voting access for all eligible voters by implementing same-day registration on Election Day, also known as Election Day Registration (EDR).

As of 2020, a total of 21 states plus the District of Columbia have enacted EDR, according to the National Conference of State Legislatures.<sup>4</sup> The experience of these states have shown that full EDR has many benefits:

- **Increased voter turnout.** States that allow EDR consistently lead the nation in voter participation. Seven of the 10 highest turnout states in 2018 had same-day registration, according to a report by Nonprofit VOTE and the U.S. Elections Project. Average voter turnout was over seven percentage points higher in states with EDR than in other states.<sup>5</sup>
- **Minimizes inaccurate voter rolls.** EDR gives voters a chance to fix problems with their voting eligibility due to moving, administrative errors, and other factors, just as same-day registration does during early voting in North Carolina. This will be especially useful to young voters, low-income voters, and voters of color, who tend to relocate more than other groups.
- **Reduces the need for provisional balloting.** Provisional ballots are offered to voters who believe they are registered, but whose names do not appear on the voter roll. Allowing eligible voters to register and vote on Election Day helps reduce the need for provisional ballots and saves election officials the time and expense of handling and confirming provisional votes.

North Carolina's experience with same-day registration during early voting has shown that allowing eligible voters to register and vote at the same time can be done efficiently, and with proper safeguards to verify voter identity.

North Carolina has already made important strides in boosting voter participation by allowing same-day registration during the early voting period. Expanding this policy to include EDR would be both a practical and significant next step toward ensuring all eligible voters have a fair chance to take part in the democratic process.

*– Benjamin Barber, Institute for Southern Studies*

# IMPROVE ONLINE VOTER REGISTRATION

## BACKGROUND

In recent years, an increasing number of states across the South and nationwide have established Online Voter Registration (OVR) systems, which save money and paperwork, promote efficiency, and improve the accuracy of voter rolls.

As of October 2020, a total of 40 states and D.C. offer OVR, according to the National Conference of State Legislatures<sup>1</sup>; of those online registration states, 10 are in the South.

Electronic registration mitigates many of the common issues that occur when registering to vote with paper registration, including data entry errors and missing information. OVR also reduces the financial burden on states by reducing the need for paper, printing, postage, and staff time. According to a 2015 report from the Pew Charitable Trusts, most states spent less than \$300,000 to establish OVR systems.<sup>2</sup>

Last year, the North Carolina State Board of Elections partnered with the N.C. Department of Motor Vehicles to offer limited OVR services. Voters with a North Carolina driver's license or DMV-issued ID are able to participate in this system. In 2020 alone, 71,576 North Carolinians registered to vote for the first time online.<sup>3</sup>

While successful, advocates noted that North Carolina's online registration experiment was limited because it was available only to those with a state-issued driver's license or photo ID, which disproportionately affected students and people of color.

While OVR has proved to be a popular and effective reform to improve election systems, experiences from other states have highlighted important issues to be aware of in implementing online registration programs.

One of the major concerns of current OVR systems is that they are not accessible to all eligible voters. For example, many households — especially in rural areas — do not have access to fast, reliable internet. Advocates have also noted that not all state online registration websites follow accessibility guidelines for internet users with disabilities. Additionally, not all state websites are available in multiple languages; Alabama's website, for example, is only accessible in English.<sup>4</sup>

Advocates have also brought attention to the fact that many states' online voter registration systems do not capture the same information that paper forms do. For instance, filling out the race, gender, and ethnicity sections on forms is not required to register to vote, but most people tend to fill out these boxes on paper forms, which helps keep track of voter demographic information. Voting rights organizations argue that this has an impact on voter outreach efforts and the ability to make sure that local and state governments are not enacting voting policies that have racial bias.

## RECOMMENDATIONS

North Carolina should expand on its limited but successful implementation of Online Voter Registration in 2020. Various measures could help expand the state's OVR process to ensure it is accessible and more effective, including:

1. Broaden OVR to make it available to everyone who wants to be able to register electronically, without being limited by the DMV or identification requirements.
2. Ensure that the same information that is seen on paper registration forms is included in online registration, so that valuable demographic data can be captured.

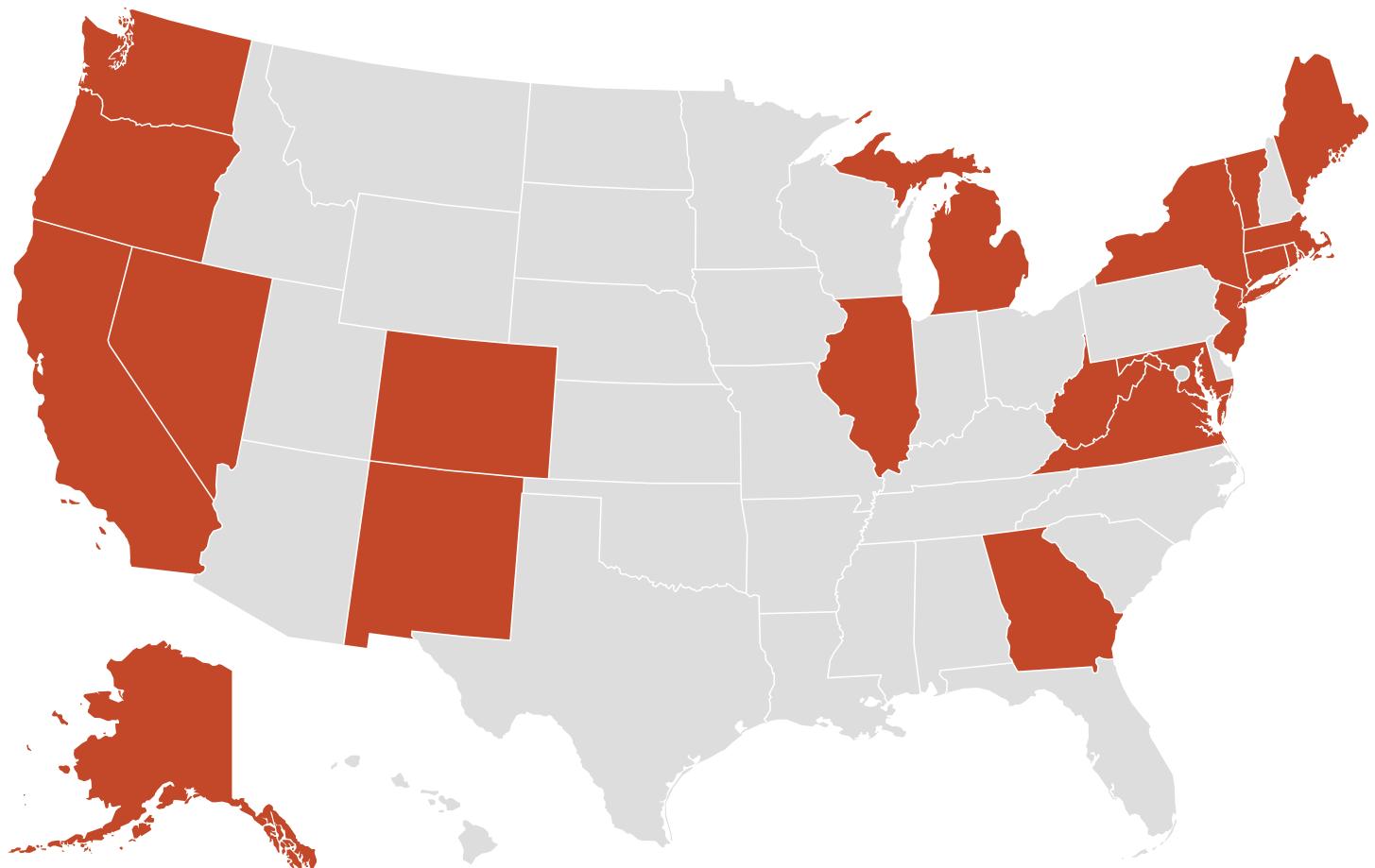
3. Increase efficient data exchange between state election officials and motor vehicles agencies.
  4. Establish OVR portals that are independent of DMV offices.
  5. To ensure online voter registration can be fully implemented, legislation should remove the existing requirement for a "wet ink" signature for voter registration, and allow an electronically captured image of the voter's signature to be considered a valid signature for registration purposes.
  6. The OVR website should be accessible to all users with disabilities and available in multiple languages where appropriate.

The COVID-19 pandemic has revealed how critical it is to have online registration systems that are accessible to all eligible voters. North Carolina's use of OVR in 2020 showed it can be a workable and cost-effective approach to voter registration. The state now has an opportunity to expand on the success of this program and ensure OVR is accessible to all who may want to use it.

*– Benjamin Barber, Institute for Southern Studies*

# IMPLEMENT AUTOMATIC VOTER REGISTRATION

## States with Automatic Voter Registration



MAP: Olivia Paschal, Institute for Southern Studies, April 2021 • Source: Ballotpedia

## BACKGROUND

In addition to Election Day Registration and Online Voter Registration, a third approach to creating a more efficient, cost-effective, and accurate voter registration system is Automatic Voter Registration (AVR).

AVR has two main components. First, all eligible citizens are registered to vote automatically when they interact with a government agency, unless they decline. Second, their voter information is updated whenever they interact with government agencies, such as the DMV.

AVR has rapidly grown in popularity in recent years. Currently, 19 states and Washington, D.C., have enacted AVR,<sup>1</sup> with overwhelmingly positive results. Oregon, the first state to enact AVR in 2016, saw a boost in voter turnout of 4.1 percent between 2012 and 2016,<sup>2</sup> and Georgia added more than 681,000 voters to their rolls in the three years after the state implemented AVR.<sup>3</sup> In Washington, D.C., voter turnout was actually higher among those who were automatically registered.<sup>4</sup>

Increased voter participation and turnout is just one of the benefits of AVR. Other benefits to states include:

- **Saving money.** AVR leads to lower costs and increased efficiency, especially if registration is streamlined and electronic registration is replaced by paper-based systems.

- **More accurate voter rolls.** Records are automatically matched, and information-sharing eliminates the possibility of election officials misreading handwritten information on paper voter registration forms.
- **Up-to-date records.** Voter records are kept current and contain fewer errors, as they are automatically updated whenever citizens change their information at the DMV or other government agencies. In Oregon, more than 265,000 inaccurate records were removed within the first six months of the AVR program.<sup>5</sup>

AVR also promotes election integrity by ensuring that only eligible voters are automatically registered. Most, if not all, AVR interactions will be with agencies that already verify residents' citizenship status, such as the DMV or the Department of Health and Human Services (DHHS). If citizenship status is unknown for any applicants, those voters would be required to affirm their citizenship before inclusion in the AVR process. A similar process would apply for residency and age requirements, which will ordinarily also be established through the agency interaction. Thus, only eligible voters will be included in the AVR pool.

## RECOMMENDATIONS

North Carolina would significantly benefit from joining the growing number of states that use AVR. In deciding on an AVR system, there are two primary considerations: which agencies will be part of AVR, and whether to use a "back-end" or "front-end" approach to registering voters.

### Covered AVR Agencies

The best AVR programs nationally use multiple agencies where citizens can register. In North Carolina, a good starting point would be to include at least the state DMV, which already registers many voters, and the DHHS, which administers Medicaid and SNAP services. The bill can also create a pathway for additional agencies to administer AVR so long as they meet certain requirements, including verification of citizenship status. Colorado has successfully used AVR through its Medicaid offices, which is similar to North Carolina's DHHS office.

### Models for Automatic Voter Registration

There are two primary forms of AVR: "back-end" AVR, and "front-end," also known as "opt-in" AVR. The "back-end" model has the highest rate of proven success, ensures greater participation in the AVR process, and avoids user errors.

**Back-end AVR.** The "back-end" approach automatically begins the voter registration process for all eligible individuals (after excluding those ineligible based on citizenship, age, or residence) interacting with the agency, and gives voters the opportunity to opt out via a mailer. Evidence shows that back-end AVR systems register a higher percentage of eligible voters and result in more accurate records than front-end AVR systems. Oregon, which implemented back-end AVR in 2015, has seen its electorate increase in size and become more diverse. Since implementing the system, Oregon moved from 31st in state rankings for its percentage of people of color registered to vote to the second highest rate in the country.<sup>6</sup> Moreover, back-end systems are designed to primarily rely on agency records rather than voter attestations to determine eligibility, and thus reduce user error.

**Front-end/Opt-in AVR.** The "opt-in" or "front-end" approach requires the voter to "opt-in" to registration at the target agency. Through opt-in AVR, the eligible voter is presented with the opportunity to register to vote during the agency transaction. In front-end AVR systems, the state largely relies on individuals' attestation that they are eligible to vote, unlike back-end AVR systems, where the state checks voters eligibility using information that the state already possesses. The front-end/opt-in AVR system's reliance on an individuals' attestation that they are eligible to vote increases the chance for errors. Front-end AVR also adds a step to the registration process, which many individuals may skip for the sake of time. Back-end AVR avoids that problem.

## **Protecting Abuse Survivors**

In North Carolina, anyone can obtain a voter's registration record, including their address, for a fee.<sup>7</sup> North Carolina's AVR implementation should include an option for survivors of domestic violence to keep their addresses private. North Carolina's voter database includes more personally identifiable information than any other state in the country, so the option to keep that information private should be integrated into the state's AVR process.<sup>8</sup>

The North Carolina Attorney General's Office already has an Address Confidentiality Program in place to keep abusers from discovering the addresses of survivors of sexual assault.<sup>9</sup> More than 990 people currently participate in the program.<sup>10</sup> Lawmakers could take steps to ensure that all of the voter registration information of anyone who participates in the Address Confidentiality Program, including their assigned voter precinct, remains confidential when they register to vote through the state's AVR system.

## **Limitation on Penalties for Automatically Registered Individuals**

Under North Carolina law, a person who is ineligible to register to vote but does so may be charged with a Class I felony.<sup>11</sup> If North Carolina adopts AVR, the law should make clear that unless a person who is ineligible to register to vote intentionally takes voluntary action to do so, knowing they are not eligible, they will not face a criminal penalty if they are registered through the state's AVR system.

– *Danielle Lang and Caleb Jackson, Campaign Legal Center*

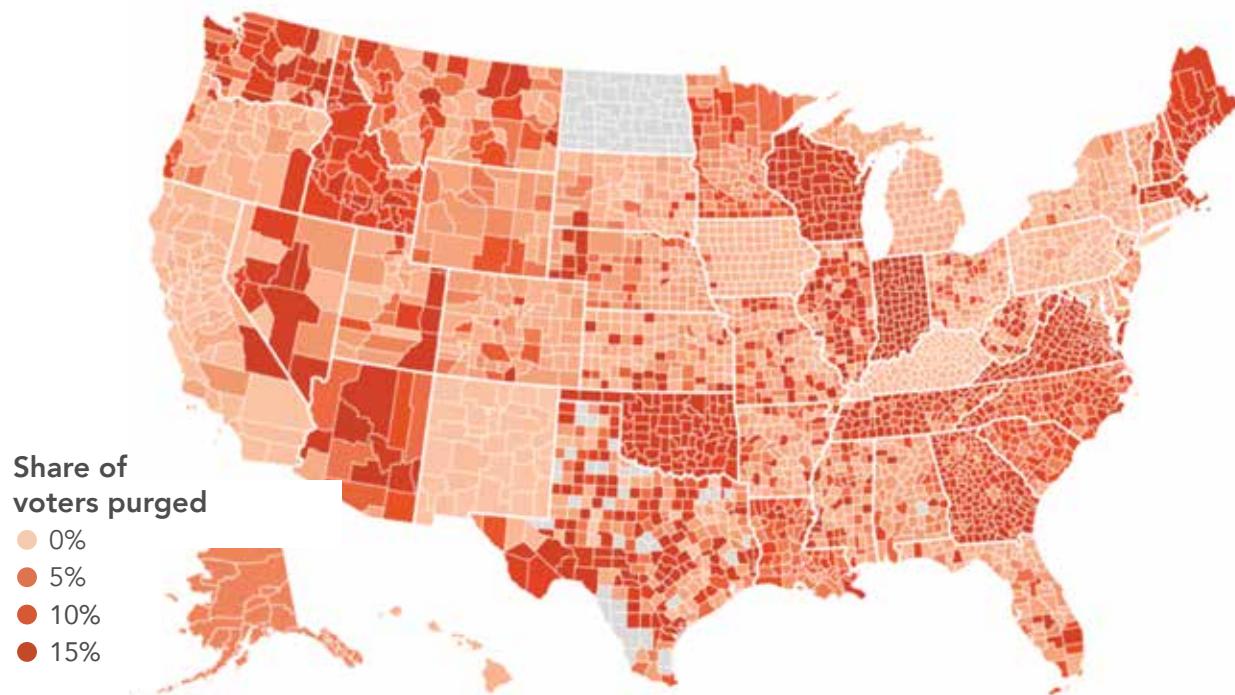
# VOTER REGISTRATION LIST MAINTENANCE: STOP ERRONEOUS VOTER PURGES

## BACKGROUND

Every year, thousands of voters are removed from registration rolls because they're no longer eligible to vote. Some have moved out of state or died, and others have been convicted of a felony. Sometimes voters are erroneously removed, even though they're still eligible. The National Voter Registration Act (NVRA) lays out strict requirements for states that remove inactive voters whom they believe have moved, and it prohibits purges of voter rolls within 90 days of an election.

A recent study examined North Carolina's purges between 2010 and 2016, and it found that people of color were more likely to be erroneously purged than white voters. The study by Kevin Morris, a researcher with the Brennan Center for Justice, found that "imprecise voter list maintenance disproportionately disenfranchises voters of color." Voters who were Black, young, or living in a low-income neighborhoods were more likely to be erroneously purged from the voting rolls.<sup>1</sup>

## Share of Voters Purged, 2016-2018



MAP: Brennan Center for Justice, August 2019 • Source: Election Administration and Voting Survey

## RECOMMENDATIONS

At the federal level, a pending bill would institute new safeguards against erroneous purges. House Resolution 1, known as the For the People Act, would prohibit the purge of inactive voters based solely on their inaction and require those who are purged to be notified and given the option to remedy their registration.<sup>2</sup> It also places strict limits on removing voters using interstate cross-check systems.<sup>3</sup>

The North Carolina legislature can take similar steps to both ensure the integrity of voter registration records and protect the rights of voters.

1. **Don't purge inactive voters.** In every election, thousands of voters arrive at the polls to find that they're no longer registered. In the November 2020 election, more than 5,000 North Carolinians cast a provisional ballot because they had been purged from voting rolls.<sup>4</sup> And in general, the majority of provisional ballots aren't counted by election officials.

Although federal law allows the practice, North Carolina shouldn't revoke a voter's registration based solely on inactivity and the failure to respond to a mailer. The risk of erroneous purges outweighs any benefit to the integrity of elections. Paul Smith of the Campaign Legal Center said that purging inactive voters based on returned mail is "both highly imperfect and entirely unnecessary as a mechanism for keeping voting rolls up to date."<sup>5</sup>

North Carolina election officials can continue to remove voters from the rolls anytime they die or confirm an address change. These officials are informed of deaths and address changes through data provided by the U.S. Postal Service, state agencies, and election officials in other states.

2. **Stop purges based on undeliverable mail.** North Carolina should repeal a state law that opens the door for local election officials to get around the NVRA's protections. The law allows officials to cancel a voter's registration based solely on mail being returned as undeliverable.<sup>6</sup>

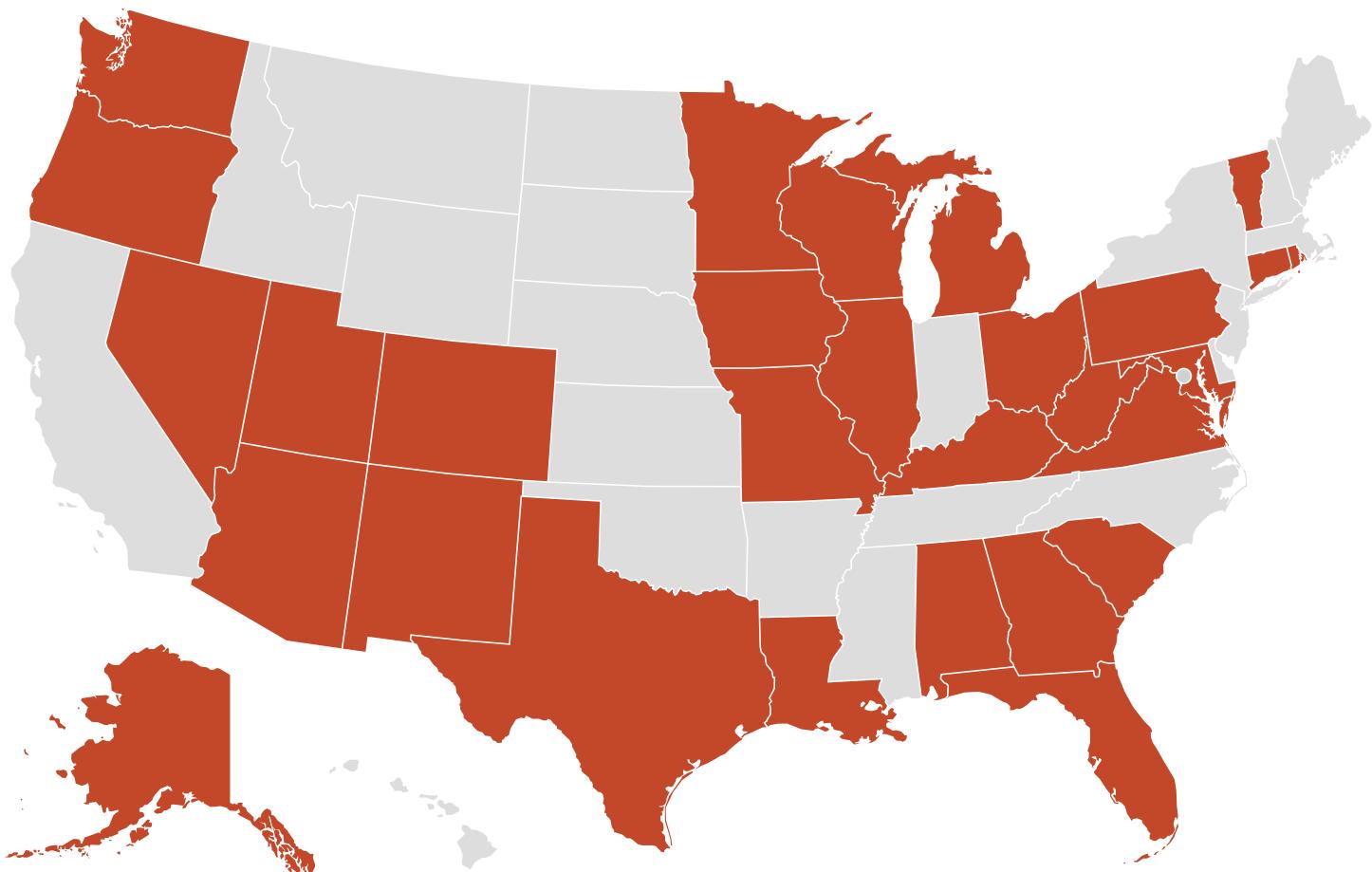
In October 2016, weeks before a critical election, a few citizens filed "challenges" to the eligibility of dozens or thousands of voters, suggesting that they weren't eligible to vote because they hadn't updated their addresses. Election officials canceled the registration of thousands of voters. The vast majority of them were in Cumberland County, where the population is 40 percent Black, and resulted from challenges filed by one person, based on a mass mailing for which some mail was returned as "undeliverable." A few days before the election, a federal judge called the process "insane" and ruled that it violated the NVRA's ban on purges within 90 days of an election.<sup>7</sup>

North Carolina law should be updated to explicitly bar this type of conduct. Legislators should repeal the law that allows for removal of a voters' registration based solely on returned mail.

– *Billy Corriher, Institute for Southern Studies*

## JOIN NATIONAL ERIC VOTER DATABASE

### ERIC Member States



MAP: Olivia Paschal, Institute for Southern Studies, April 2021

### BACKGROUND

Maintaining up-to-date voter registration rolls, and ensuring that eligible voters stay on the rolls, is one of the most important and challenging tasks of election officials. Keeping voter rolls updated with accurate information protects eligible voters from problems at the polls and helps ensure that North Carolina's election systems run efficiently.

Every year, many North Carolinians experience life changes that can affect how and where they vote. For example, the latest Census Bureau data estimates that about 15 percent of North Carolina residents don't live in the same house they did a year ago, and 3 percent of residents have lived in the state for less than a year.<sup>1</sup>

All states have list maintenance processes to keep voter registration records up to date. The 1993 National Voter Registration Act requires states to keep voter lists updated, including removing voters who have died or moved out of state; it also includes important restrictions on how states carry out such maintenance, to ensure eligible voters are not wrongfully removed.<sup>2</sup>

## RECOMMENDATIONS

The Electronic Registration Information Center (ERIC), founded in 2012, is a nonpartisan national data center designed to help states improve the accuracy of their voter registration lists. Member states share their voter information with ERIC, which then compares it with data from the U.S. Postal Service's National Change of Address program, state Department of Motor Vehicles offices, the Social Security Administration, and other sources. ERIC also compares voter and other data from all member states for those voters who have moved across state lines.

Using ERIC data, member states can contact voters who appear to have moved or otherwise are no longer eligible to vote. And states with a new potential voter can reach out and encourage them to register to vote. ERIC, which is run by its member states, anonymizes all voter data at the source, ensuring security.<sup>4</sup>

ERIC has steadily grown in popularity with election officials across the country, especially since the demise of the troubled Interstate Crosscheck program, an unreliable voter-match system that drew widespread criticism for its high error rates<sup>3</sup> and was ultimately shuttered in 2019 after being sued for privacy violations.<sup>5</sup>

Today, 31 states belong to ERIC. Among them are many Southern states where elections are governed by both Democratic and Republican officials, including Alabama, Florida, Georgia, Kentucky, Louisiana, South Carolina, Texas, Virginia, and West Virginia.<sup>6</sup>

North Carolina should join ERIC to improve efficiency and strengthen the integrity of the state's voter rolls.

– **Chris Kromm, Institute for Southern Studies**

## **REGISTRATION AND ELIGIBILITY FOR DISPLACED VOTERS**

## BACKGROUND

In North Carolina, there are two primary methods to register to vote: mailing the state elections board a completed registration application, or registering at the DMV, either in person or the online portal. The National Voter Registration Act also allows state agencies, like the Division of Social Services, to take applications for voter registration. Currently, North Carolina statute mandates that voter registration applications be available in public high schools and libraries. More than a dozen public assistance programs must also provide voter registration forms and transmit completed applications to the appropriate county board of elections office.<sup>1</sup>

However, North Carolina law does not address the systemic barriers of registering to vote faced by eligible voters who become displaced due to a natural disaster, environmental disaster, or pandemic. These barriers came into sharp relief during the 2020 COVID-19 pandemic, as well as Hurricane Matthew in 2016 and Hurricane Florence in 2018, both of which displaced tens of thousands of people and saw election officials and community groups scrambling to ensure residents were able to register and vote.<sup>2</sup>

## RECOMMENDATIONS

With disasters increasingly wreaking havoc in North Carolina – especially in Black, Latinx, and low-wealth communities in vulnerable areas like eastern North Carolina – the state should take steps to ensure displaced people have access to registration and voting.

Expand the list of state agencies that offer and take voter registration applications to include the Department of Environmental Quality and the Office of Recovery and Resiliency. By targeting two key agencies that interact with displaced North Carolina residents, the state can ensure that those who bear the burden of disasters and climate change will not be disenfranchised through no fault of their own. Agencies must take special care to ensure potentially vulnerable and disenfranchised populations such as: the disability community, returning citizens, assisted living facilities and rural communities have full access to voter registration and voting opportunities.

Reform proof of residence requirements for eligible voters who are displaced registers at a new address. When eligible voters are displaced and houseless, they may not have the opportunity to return to their home county to vote due to safety concerns or lack of transportation. These voters may also not have the required proof of residency documents, such as a driver's license or utility bill showing the voter's name and address, to prove where they currently live. Proof of residency should not remove otherwise eligible voters from the political process. If an eligible voter does not have the required proof of residency documents, an option to sign an oath about their residency should suffice.

*– La'Meshia Whittington and Marcus Bass, North Carolina Black Alliance*

## **SECTION II: ENSURE VOTING ACCESS AND PROTECT VOTING RIGHTS**

# INCREASE STUDENT ACCESS TO VOTING



IMAGE: Western Carolina University

## BACKGROUND

Between 2014 and 2018, student voter turnout doubled.<sup>1</sup> Right now, young people are more interested than ever in politics. But this fundamental right is being threatened by policies that attempt to take away young people's right to vote. Despite increasing interest and turnout, young people are still the age demographic with the lowest rates of voting participation and engagement with the political process.<sup>2</sup>

The problem with low voter turnout and engagement among young people is not apathy, but rather a lack of access to information or physical polling locations that older demographics have.<sup>3</sup> Voting has become inaccessible for students on college campuses, especially those in rural areas or those where the closest polling site is far from campus. Without transportation means or money to pay for transportation, students are often forced to withhold their vote. Some students do not have time on Election Day to get to a polling site, further restricting them from voting.

In response to startlingly low student voter rates, some universities have turned to their own resources and funding to provide early voting places on campuses and polling sites on Election Day. The University of North Carolina at Chapel Hill, for example, had its own polling site on campus for the 2020 primaries. While voting advocates highly encourage this approach, which has been successful in boosting turnout, there is no law in North Carolina that standardizes details for what polling stations on campuses should look like, how they should be funded, how many people they will serve, who will coordinate them, etc.<sup>4</sup>

The lack of ready access to voting sites at colleges and universities is especially problematic given the high density of voters on campuses. Nationally, 75 percent of polling sites in the United States serve fewer than 2,000 registered voters, and only 25 percent serve more than 2,000. Given that the average college in North Carolina has between 5,000 and 30,000 students, it seems of the utmost importance that those students have at least one polling site on campus. In fact, if North Carolina colleges were treated like the average community in the United States, they would have anywhere from two to 15 polling sites, depending on how many voters reside on campus. But instead, some campuses don't even have one.

## RECOMMENDATIONS

Other states have adopted or proposed legislation that specifically addresses the needs of student voters, and North Carolina should consider similar measures. In Maryland, for example, House Bill 245 requires that the state's colleges and universities have a voting booth on campus for students to utilize. We are proposing a similar Student Empowerment Voting Act in North Carolina that would mandate that public colleges and universities with a student population of 4,500 or greater have a polling site on campus and encourage boards of elections to request the use of private colleges and universities with a student population over 4,500 or greater.

Given that public colleges and universities rely on funding from the government, it should not be hard to mandate that they have polling booths on campus. For private institutions, North Carolina could issue guidance recommending they similarly provide voting opportunities. While physical infrastructure likely exists to provide for voting sites, additional funding may be necessary for administrative support.

Providing on-campus voting access will prevent students from having to make a choice between attending class and voting, a dilemma they frequently face given that students don't typically get Election Day off from school.

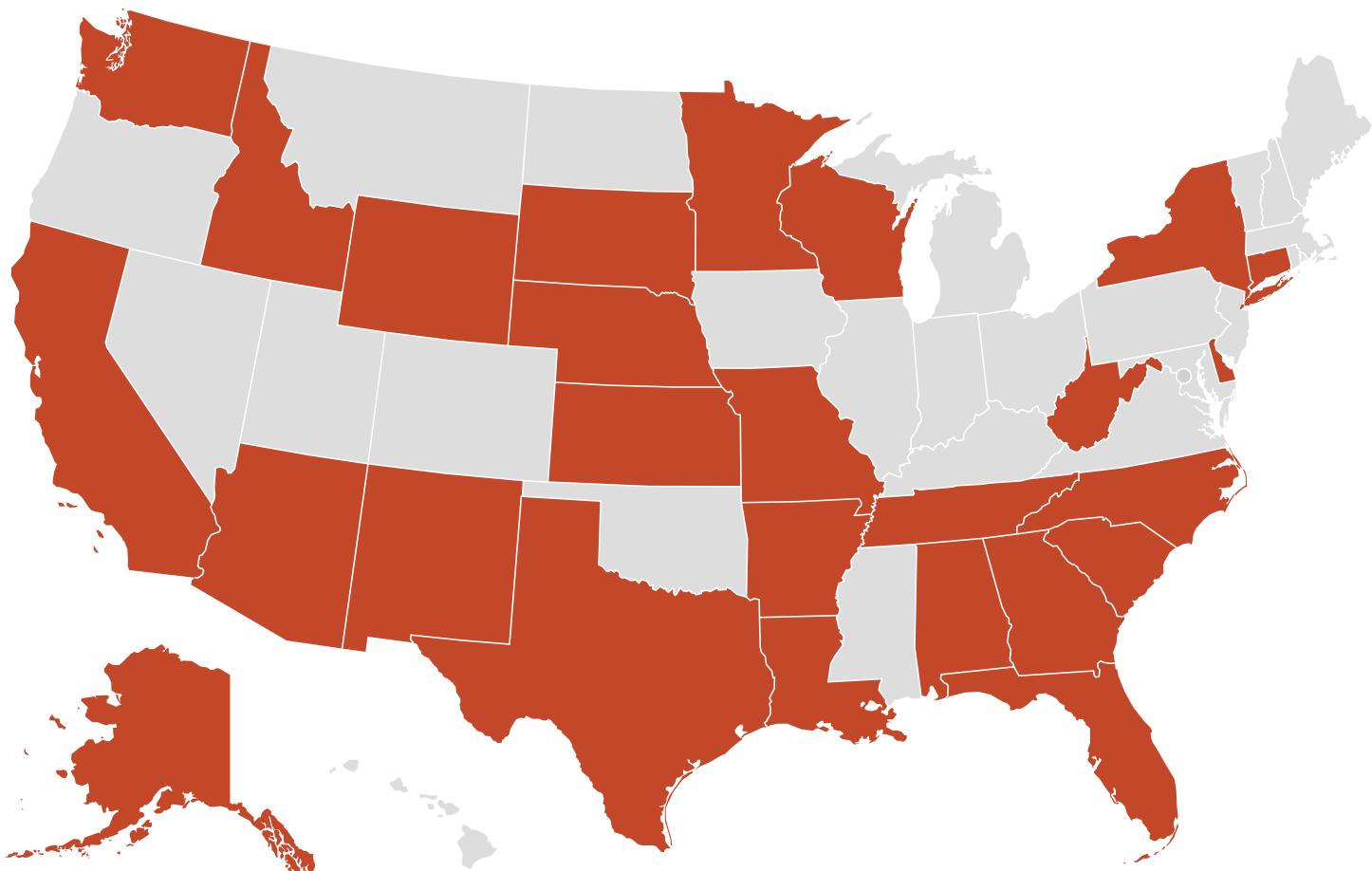
Colleges and universities should also designate a student voting coordinator who will organize student voting efforts on campus and make opportunities for voting more accessible, whether that's access to information or access to a physical space to vote.

Taking steps now to encourage more student voting will not only ensure the voices of North Carolina students are heard, it will pay long-term dividends for the state. Encouraging people to vote at a young age helps them develop the habit of voting, helping them become civically engaged citizens throughout their lives.

*– Nadia Innab and Anna Klingensmith, Duke Hart Leadership Program Students,  
with Student Advisor Melissa Price Kromm, North Carolina Voters for Clean Elections*

## RESTORE VOTING RIGHTS TO THOSE WITH FELONY RECORDS

### States Where People with Felony Convictions Must Pay Court Fees to Regain Voting Rights



MAP: Olivia Paschal, Institute for Southern Studies, April 2021 • Source: Facing South

### BACKGROUND

The right to vote is one of our most important civil rights because it secures, ensures, and preserves all of our other civil rights. However, for many citizens, that right to vote has been stripped simply because of a past felony conviction.

The disenfranchisement of people with felony records is rooted in inequality. In 1875, North Carolina amended its constitution to disenfranchise people with felony records as a backlash to the 14th and 15th Amendments to the U.S. Constitution, with the knowledge that this would disproportionately affect African American voters.

Across the United States, millions of Americans are excluded from participating in the political process due to their criminal convictions and laws that disenfranchise voters with felony records. North Carolina is one of 16 states in which voting rights are restored upon the completion of one's sentence, including prison, parole, probation, and supervised release. In 2016, approximately 2.5 percent of voting-age Americans and 1.2 percent of North Carolina residents were disenfranchised due to current or previous felony convictions. African American North Carolinians, who represent 20 percent of the state's voting population, currently make up approximately 40 percent of those disenfranchised due to the laws that impact voters with felony records.

In North Carolina, voting rights restoration is “automatic” in name only. In order for a person to have their right to vote restored, they must first complete their entire sentence, which requires that they pay and avoid delinquency on all criminal fines, court fees, supervision fees, and restitution.<sup>1</sup> In 2020, a North Carolina court exempted people from having to pay all fines, fees, and restitution before they are able to regain their right to vote, arguing that conditioning the restoration of voting rights on monetary requirements amounts to wealth-based disenfranchisement.<sup>2</sup> People with felony records can be charged anywhere from \$40 to hundreds of dollars a month, and the base cost for a court date is \$198 with the potential to grow to more than \$10,000 in serious cases.<sup>3</sup> If they are unable to pay, they face a penalty fee for nonpayment, increasing their fees and lengthening their probation period.<sup>4</sup> Many people on probation are indigent and therefore will have a tough time paying any of their fines and fees.<sup>5</sup> For thousands of people with felony records who have completed all other terms of their sentence, they remain on probation — and unable to vote — simply because they are low income. The American Civil Liberties Union describes this requirement as creating “two classes of returning citizens: a group wealthy enough to afford their voting rights and another group who cannot afford to vote.”<sup>6</sup>

Even after they have fully completed their sentence, many North Carolinians are unclear about whether or not they are eligible to vote. There is no explicit mandate that probation officers educate returning citizens about regaining their voting rights, and probation officers and the courts often neglect to inform returning citizens of the necessary steps to restore their voting rights.<sup>7</sup> As a result, many individuals with felony records have been prosecuted for voting while ineligible.<sup>8</sup>

Furthermore, North Carolina’s voter prosecution statute is strict liability, meaning that a person can be prosecuted for voting while they are ineligible despite not having any intent to defraud the state of North Carolina. As currently drafted, North Carolina law [N.C.G.S. § 163-275(5)] states that if a person votes while they are ineligible due to a felony conviction, then they are guilty of a separate felony of illegal voting. A person’s simple misunderstanding of their eligibility could lead them to being charged and convicted of a separate felony, and the vicious cycle of voter disenfranchisement begins anew. This policy also exacerbates racial inequality: A 2017 audit found that 441 people voted while they were ineligible due to a felony conviction, and 68% were Black.

## RECOMMENDATIONS

North Carolina has several options to expand voting rights for all of the state’s citizens.

1. **Don’t prosecute honest mistakes.** At a minimum, North Carolina should change state law so that those completing a sentence don’t face felony conviction for simply lacking information or misunderstanding the state’s confusing voting eligibility rules. In 2019, House Bill 819 was brought before the General Assembly to add the statement “with intent to commit a fraud” to N.C.G.S. § 163-275(5). Adding an intent standard, or mens rea requirement, would mandate that those who have voted or attempted to vote did so with full understanding of the law.
2. **Establish “bright-line” rights restoration upon release from incarceration.** A clear way for North Carolina to improve on its current set of confusing eligibility rules and avoid the problem of wealth-based disenfranchisement is to adopt a “bright-line” rule stating that a person’s right to vote is automatically restored once they leave a detention facility. In recent years, other states have passed similar bright-line rules. Nevada enacted Assembly Bill 431 in 2019 giving the right to vote to anyone who has been released from a detention facility, as did Colorado with House Bill 1266.<sup>9</sup>
3. **Full re-enfranchisement regardless of incarceration status.** The most expansive reform North Carolina lawmakers should consider is full re-enfranchisement for all citizens, regardless of their incarceration status. As the COVID-19 pandemic recently demonstrated, incarcerated individuals are acutely affected by decisions made by elected officials, and these citizens should have a voice in choosing the elected officials that create policies that affect them and their families. Currently, Maine and Vermont are the only two states that never disenfranchise people with felony records.

Additionally, the North Carolina legislature should also consider re-evaluating the residency requirements for individuals who are released from a detention facility and experience houselessness or are very transient as they seek housing. These voters should be able to affirm that they are citizens of the county in which they intend to vote, especially if they have not been out of jail or prison for at least 30 days and thus lack proof of residency. This affirmation should suffice for proving their residency.

– *Mitchell Brown, Southern Coalition for Social Justice*

## MAKE ELECTION DAY A HOLIDAY

### BACKGROUND

Voter turnout in the United States lags behind that of other democracies around the world. Nationally, 55.7 percent of voting-age U.S. citizens cast ballots in the 2016 elections, which ranks 30th out of 35 industrialized nations.<sup>1</sup> Even with the record-setting turnout witnessed in 2020, the turnout rate of North Carolina's voting-eligible population stood at 71.5 percent, meaning that one out of four eligible citizens in the state didn't vote.<sup>2</sup>

In the U.S., Election Day takes place on the Tuesday after the first Monday in November, making it hard for many people to get to the ballot box. Even with the growth of early voting, 14 percent of registered voters in 2016 cited "being too busy or having a conflicting schedule" as the primary reason they didn't cast their ballots, according to a Pew Research Center analysis of Census Bureau data.<sup>3</sup>

People who struggle to balance work, school, and other time-consuming obligations have a hard time getting to the polls to cast their ballot during the middle of the week. The pressure of voting during a workweek is especially burdensome for single parents, students, and citizens who work multiple jobs.

Many eligible voters don't participate in the electoral process simply because they don't have the free time to vote. In many places across the country people often have to wait hours in line at polling places to cast a ballot. In 2020 alone, states eliminated nearly 21,000 election polling sites, which contributed to long lines and long wait times.

In some cases, people were forced to wait 11 hours to cast a ballot.<sup>4</sup> And communities of color are most likely to feel the brunt of these problems. For instance, in the 2018 midterm elections, Latino and Black voters waited in line an average of 46 percent and 45 percent longer, respectively, than white voters.<sup>5</sup> And for low-income people, taking time to cast a ballot can become a major financial risk. Time spent trying to cast a ballot, which includes finding transportation to the polling site and waiting in line, could mean employment penalties and a potential loss of wages.

### RECOMMENDATIONS

Establishing Election Day as a state holiday for public employees would relieve the burden of Tuesday voting and help promote civic engagement. Election Day is already a holiday for state employees in more than a dozen states including Delaware, Hawaii, Kentucky, Indiana, Maryland, Michigan, New Jersey, Rhode Island, New York, and Virginia. An Election Day holiday would give voters more time to travel to their polling locations and cast their ballots. This would also turn voting into a celebration of democracy, which would further promote voter turnout. While an Election Day holiday would be helpful for most North Carolinians, it would especially help residents who could be disenfranchised because of physical disabilities, lack of transportation, unpredictable work schedules, or other limitations.

Providing a paid Election Day holiday for state employees could be paired with provisions for paid time off to vote for those in the private sector. Currently in North Carolina there is no law that requires employers to give workers time off to vote, according to analyses from Workplace Fairness.<sup>5</sup> Many front-line workers do not get state holidays off, including many low-income workers in the service and restaurant industry. These workers are at risk of being fired or otherwise penalized if they take time off to vote. North Carolina could join other Southern states in ensuring that workers have provisions that enable them to vote. Texas, Tennessee, and West Virginia have implemented paid time off policies, and Alabama, Arkansas, Georgia, and Kentucky have laws that require employers to give unpaid time off to vote.

Making Election Day a state holiday, paired with laws that enable workers to take leave to vote, would ensure that all North Carolinians — regardless of their income or job demands — have access to the ballot box.

*– Benjamin Barber, Institute for Southern Studies*

## ADDRESS VOTER INTIMIDATION

### BACKGROUND

A voter's right to cast a ballot free from intimidation or coercion is fundamental to the democratic process. Yet, voters — especially in our state's Black and brown communities — continue to face assaults on their right to vote, including in the form of voter intimidation. North Carolina has a long history of incidents of voter intimidation, and today, more than 50 years after the passage of the Voting Rights Act, voter intimidation and deceptive election practices continue to target our state's most historically disenfranchised voters. Federal and North Carolina law protects against voter intimidation, but while some forms are blatant, contemporary manifestations of voter intimidation can be nuanced, subjective, and difficult to prove.

There are far too many recent reports of voter intimidation from our state, and advocates have noted a spike in incidents over the last decade. Some of the recent examples reported:

- On Election Day 2020, an armed supporter of President Trump returned to a Mecklenburg County polling site after being ordered to leave following previous reports of intimidating voters.<sup>1</sup>
- On the final day of early voting in 2020, Alamance County police pepper-sprayed voters peacefully marching to the polls.<sup>2</sup>
- In 2018, groups distributed racist, anti-Semitic mailers depicting Jewish candidates holding wads of cash.<sup>3</sup>
- Also in 2018, a Franklin County poll worker asked several Black voters to spell their names multiple times. She successfully discouraged several voters from voting before being reassigned to office duty.<sup>4</sup>
- A Confederate flag flew over the Uwharrie Fire Department polling station in Montgomery County in 2016.<sup>5</sup>
- North Carolina election officials received numerous reports in 2012 of party supporters breaching and moving barriers in the buffer zone around voting sites as well as engaging in aggressive electioneering, including threats of physical violence.<sup>6</sup>
- That same year, an elected official asked a voter in line at an early-voting site in Wake County whether she was preparing to vote twice.<sup>7</sup>



IMAGE: Jay Phagan / Wikimedia Commons

Deceptive election practices involving the dissemination of false or misleading election information are another form of voter intimidation; this can be unintentional (misinformation) or intentional (disinformation). Misleading information can be an active form of voter suppression and negatively affect voters' perceptions of the election process. Examples of these practices include flyers, robocalls, or social media posts providing misleading or false information about voter registration status, election details (time, location, etc.), political party affiliations, or reports of the presence of law enforcement or immigration enforcement in the voting context. There is a long history of targeting voters, especially people of color, with disinformation to keep them away from the polls. This past election cycle was particularly prone to this form of deception due to last-minute pandemic-related election changes, with social media amplifying and spreading false and confusing messages. Examples reported in the 2020 election cycle include:

- In October, North Carolina voters reported suspicious phone calls that provided misinformation about individuals' voter registration records, prompting the state Board of Elections to investigate.<sup>8</sup>
- On Election Day, Buncombe County residents received robocalls spreading misinformation about voting on that day.<sup>9</sup>

Persons or entities who spread false information in an attempt to suppress the vote may violate both federal and state laws. While these protections are vital, state and local election officials play the most crucial role in addressing deceptive election practices by countering disinformation with the dissemination of correct information as well as considering the proliferation of disinformation as a form of voter intimidation.

The definitions and manifestations of voter intimidation have evolved, but the history of voter intimidation in the U.S. — and North Carolina — is entwined in our history of systemic racism. In a pattern that has repeated itself multiple times since the passage of the 14th and 15th Amendments, Black voters had to endure overt violence as well as legal voter suppression tactics such as poll taxes, literacy tests, and grandfather clauses. These tactics have since been outlawed, but the underlying intent of intimidating Black voters and suppressing their voice still remains all too real today, just in a more modern form.

How does the law define voter intimidation? There is limited case law on the question, though federal courts have found a number of specific activities to constitute unlawful voter intimidation, including false accusations of criminal behavior, economic coercion and character assassination, the selective invocation of trespass laws during voter registration, and the arrest and prosecution of voting rights organizers. Other examples of voter intimidation include aggressively questioning a voter about qualifications to vote, including criminal records or citizenship status; asking voters for documentation when none is needed; or using police officers to threaten or intimidate voters. The North Carolina State Board of Elections issued guidance in 2020 regarding unlawful conduct at the polls and provided a non-exhaustive list of examples, including persons outside the buffer zone wearing "security" insignia informing voters they are monitoring the polling place, individuals blocking the parking lots in the voting location, and individuals intentionally distributing misleading information about the election or candidates.

Both civil and criminal statutes protect against some forms of voter intimidation under both federal and North Carolina law. Further, election officials are required by law and the state elections board to ensure voter access without fear of intimidation. Section 11 of the Voting Rights Act specifically prohibits any "person, whether acting under color of law or otherwise" from "intimidat[ing], threaten[ing], or coerc[ing], or attempt[ing] to intimidate, threaten, or coerce any person for voting or attempting to vote," without requiring proof of discriminatory purpose or intent.<sup>10</sup> The Civil Rights Act of 1957 also prohibits the "intimidation," "threats," and "coercion" of voters, though requiring plaintiffs to prove racial motivation and intent.<sup>11</sup> Section 2 of the Enforcement Act of 1871 — also known as the KKK Act, enacted initially to authorize the president to protect African Americans and allies against vigilante groups — makes it unlawful for "two or more persons to conspire to prevent by force, intimidation, or threat," any voter from casting a ballot for the candidate of their choice.<sup>12</sup>

In addition, multiple federal criminal statutes protect against voter intimidation. It is illegal to intimidate, threaten, coerce a person, or attempt to interfere with that person's right "to vote or to vote as he may choose," as well as to register to vote.<sup>13</sup> It is also a crime "by force or threat of force" to willfully injure, intimidate, or interfere with any person because he or she is voting or has voted, or "in order to intimidate" anyone from voting.<sup>14</sup>

North Carolina statutes do explicitly provide protections within the buffer zone, an area set by the state elections board: "No person or group of persons shall hinder access, harass others, distribute campaign literature, place political advertising, solicit votes or otherwise engage in election-related activity in the voting place or in a buffer zone."<sup>15</sup> North Carolina law, under criminal penalty, prohibits interference with voting, lying to voters in an effort to discourage them, threatening to fire a worker for voting, and other forms of intimidation.<sup>16</sup> Poll workers are also not allowed to ask questions or seek proof of a disability from a voter who presents to vote curbside.

In addition, the chief election judge or one-stop voting site manager is responsible for ensuring voters have unimpeded access into the buffer zone and voting enclosure without fear of harassment or intimidation, and election officials are generally required to ensure peace and "order" at the voting place.<sup>17</sup> North Carolina also empowers election judges to remove any person from the voting place for violation of any provision of election laws; to call upon the sheriff, the police, or other law enforcement officers to aid them in enforcing the law; and to order the arrest of the person if necessary.<sup>18</sup> Police officers are also permitted within the voting enclosure, but only when requested by the county elections board or by the chief judge for the purpose of preventing disorder.<sup>19</sup> Officers can help with parking and traffic issues, but they must be in plain clothes; at sites with heightened and verified security concerns, they may "periodically drive by."<sup>20</sup>

## RECOMMENDATIONS

While robust protections exist under federal and state law to protect all North Carolinians from voter intimidation and disinformation and to protect the integrity of elections, the state should, at a minimum, implement the following statutory and administrative actions and protections:

1. Create a private right of action for individuals to advocate for themselves in the absence of state or federal enforcement, seek immediate redress for their harm, and provide an effective defense against voter intimidation efforts by anyone acting under the color of law or by private individuals and entities. Under current North Carolina law, there is no private civil right of action. North Carolina state courts have infrequently considered claims of voter intimidation not because of the lack of incidents, but due to local officials' failure to prosecute these claims. When law enforcement authorities fail to act, voters who have had their rights violated should be able to hold the offender accountable for voter intimidation.
2. Clearly define "intimidation" from the voter perspective, acknowledging the historical and structural contexts that inform voters' individual experiences, such as racial violence and displacement associated with disasters. This includes specifically addressing racist voter intimidation, including the use of hate symbols and discriminatory voter challenges. The definition should also explicitly include different modes of communication or deceptive practices that might be used for disinformation purposes, including social media, robocalls, and flyers.

Voter intimidation can encompass a wide range of acts, practices, and conduct. A clear definition of voter intimidation along with specific guidance as to which particular actions would constitute a violation is necessary. Without clarifying what conduct is prohibited, voter intimidation may go unreported or unaddressed, thereby potentially disenfranchising North Carolina residents. In 2020, the North Carolina State Board of Elections released Numbered Memo 2020-30, addressing conduct at the polls to ensure a safe voting environment, and a press release addressing voter intimidation. North Carolina can expand on these passive forms of information to provide fuller understanding of what constitutes intimidation, and ensuring this information broadly reaches the public, including steps a voter can take if they see or experience voter intimidation.

3. Expand the definitions of “voting place” and “voting enclosure” to include voting by mail. In 2020, due to the COVID-19 pandemic, more than a million North Carolina residents voted absentee by mail. However, North Carolina law does not explicitly recognize voting by mail in its narrow definitions of voting place and voting enclosure. Including voting by mail in those definitions will extend protections to the physical location of where people are voting by mail, such as their house, military base, or residential living facility.

The location where voters drop off their absentee ballots, like a local election board office, should also be included in this definition. On Sept. 23, 2020, voters dropping off their absentee ballots at the Buncombe County elections office were verbally intimidated by two vehicles of aggressive protesters. Because the election office is not considered a voting place, voters did not have adequate legal protections.

4. Develop a voter intimidation advisory group. The development of an advisory group at a local or statewide level can help meaningfully address systemic causes of voter intimidation as well as new forms of voter intimidation. A voter intimidation advisory group should not only include participation from election officials, community leaders, and racial justice organizations but focus on listening to and integrating voices of communities of color and groups historically impacted by voter intimidation about how to best respond to incidents of voter intimidation.

Laws to hold those who intimidate voters and spread false information accountable are vital, but insufficient to curb the problem. Enforcement is of paramount importance, and state and local election officials have a crucial role to play in addressing voter intimidation and disinformation. But they require resources to build an infrastructure to prepare for these incidents before they occur and to respond in a consistent and meaningful way.

5. Ensure that election officials recognize and respond to the fact that police presence at the voting place may create an unintended consequence of voter intimidation, and educate and train police departments and sheriff's offices about the history of voter intimidation in North Carolina, its contemporary manifestations, and how to appropriately respond to it. Police intimidation was a key tactic in the voter suppression efforts in the Jim Crow South, and police presence continues to serve as a potential mode of intimidation. Volumes of research and the lived experiences of people of color in this country show that inviting intersections between voting and the criminal legal system creates situations in which criminal penalties and outcomes are felt more heavily by Black and brown voters.

In North Carolina, officers at polling places must obey orders from election officials to ensure a safe voting environment.<sup>21</sup> As such, election officials and local law enforcement must be trained on the long history of discriminatory policing and official voter suppression through law enforcement as well as the parameters of the current law, and be instructed to limit law enforcement involvement to specific and articulated situations.

At this time, the North Carolina State Board of Elections advises county election boards or election officials to “immediately contact local law enforcement for assistance” if there appears to be behavior that may unlawfully intimidate voters. The state board also encourages county boards of elections to share information and strategize with local law enforcement to prevent potential disruptions or threats at polling places.<sup>22</sup> However, there are known and documented cases of implicit bias, white supremacy, and racist agendas within police departments and county sheriff's offices, with incidents reported in Alamance County, Wilmington, and Wake County just this past year.<sup>23</sup> To combat racial disparities and discrimination when local law enforcement responds to voter intimidation incidents, NCSBE should explicitly address and provide detailed resources for how police and sheriff's deputies should and should not respond to reported incidents.

6. Prevent voter challenges used in a discriminatory manner and to intimidate voters by keeping accurate voter lists. Although North Carolina law makes it a felony offense for any person to knowingly make a false voter challenge,<sup>24</sup> challenges may occur due to unreliable or inaccurate information because of overly aggressive list maintenance or maintenance based on faulty information. The state must take precautions to avoid disenfranchising people while ensuring accurate data to determine who has moved and who has died. It is also vital for the state to consider populations, such as Black and brown communities, economically disadvantaged communities, and young people, who are at a higher risk of being removed from voter rolls due to frequently moving or not participating in consecutive elections.
7. Mandate data collection on all intimidation incidents and direct uniform reporting standards. County boards are mandated to report any complaint filed by a voter;<sup>25</sup> however, incident report forms are filled out by poll workers, leaving open the door to interpretive action. The North Carolina State Board of Elections should provide a “voter intimidation complaint form” to centralize complaints received by county election boards, and train all county election boards on a customer service model of reporting that prioritizes the voter perspective and experience.
8. Mandate anti-bias as well as situation-based training for all election officials and poll workers. Research has shown the polling places are a particularly fertile ground for unconscious or implicit bias to operate.<sup>26</sup> Poll workers are often charged with making quick decisions in busy environments based on little information. The legal or implied discretion provided to poll workers can lead to race-based discrimination, promotion of ableism, and incidents of voter intimidation. The state should ensure that the North Carolina State Board of Elections provides regular training on implicit bias to all county election board staff and members as well as how to handle instances of voter intimidation at the polls. Each type of voter intimidation may require a different response. As such, county election boards, election officials, and poll workers should have situation-based training to understand how to respond to common forms of voter intimidation.

*– Sabine Schoenbach and Katelin Kaiser, Southern Coalition for Social Justice, with contributions from La'Meshia Whittington-Kaminski and Marcus Bass, North Carolina Black Alliance; Tomas Lopez, Allissa Ellis, and Caroline Fry, Democracy North Carolina; and Corye Dunn, Disability Rights North Carolina*

## SECTION III: STRENGTHEN LOCAL ELECTION INFRASTRUCTURE



### ENSURE ADEQUATE RESOURCES FOR LOCAL ELECTIONS

#### BACKGROUND

In North Carolina, local governments largely shoulder the burden of administering and funding elections within their counties.<sup>1</sup> In 2020, adapting to the challenges of the COVID-19 pandemic posed significant new election costs, including printing and mailing absentee ballots to a record number of voters.<sup>2</sup> Most of these expenses were paid for by one-time federal funds, with additional support from state and private funders.

Although public data is not yet available, the 2020 presidential election was likely the costliest to administer in North Carolina history. More voters cast their ballot by mail in 2020 than ever before. This placed a significant burden on counties to print and mail over 1.35 million absentee ballots.<sup>3</sup> Counties also purchased high-speed scanners, tabulators, and ballot sorting machines to count absentee ballots.<sup>4</sup>

The cost of administering in-person voting was also higher than in previous elections. Counties were required to purchase single-use pens and styluses for each voter, as well as hand sanitizer, masks, plexiglass shields, and sanitation supplies. The need for larger voting sites — which would allow for voters to more easily socially distance — forced counties to pay facility rental fees for larger spaces, including private buildings.<sup>5</sup>

Counties also bore the cost of recruiting, hiring, and training election workers. This included poll workers as well as multipartisan assistance team members who are responsible for helping voters in residential facilities with registering to vote or casting a ballot. After the State Board of Elections required additional early voting sites and hours, even more new employees were needed to staff these sites.<sup>6</sup>

In 2020, there were public and private streams of revenue that helped cover the additional expenses of running elections during the COVID-19 crisis.

Federal Help America Vote Act (HAVA) funds provided \$11,677,441 in federal funding, which was matched with \$2,335,488 in state funding. Each county elections board was eligible for a minimum reimbursement amount of \$10,000 in HAVA funding. Counties could receive up to a maximum reimbursement of \$250,000, on a first-come, first-served basis, until the total funds available were expended.<sup>7</sup> In addition, the Coronavirus Aid, Relief, and Economic Security (CARES) Act provided a one-time award of \$10,947,139 to the state of North Carolina, which was matched by \$2,120,497 in state general funds.<sup>8</sup> Each county elections board was eligible for between \$20,000 and \$30,000 in funding, plus additional funding based on the number of registered voters in the county.<sup>9</sup> CARES funds were required to be spent by Dec. 31, 2020. CARES funds were restricted for COVID-19-related expenses, including providing postage for absentee ballots, ensuring an adequate number of poll workers, launching public awareness campaigns, and promoting the use of bipartisan assistance teams.<sup>10</sup> While HAVA funds historically have been reserved for cyber security, funds in 2020 could be used for COVID-19 response efforts.<sup>11</sup>

In addition to public resources, private donors stepped in to fill the gap. The USC Schwarzenegger Institute,<sup>12</sup> Center for Tech & Civic Life,<sup>13</sup> and the Z. Smith Reynolds Foundation<sup>14</sup> each contributed funds to North Carolina counties. More than one-third of the state's 100 counties, 39 in all, received private election funding.<sup>15</sup>

## RECOMMENDATIONS

Federal, state, and private resources provided essential funding to ensure safe and effective elections in 2020. However, these were all one-time infusions of funding that are not anticipated to be repeated in 2021 and 2022. Although COVID-19 continues to impact our state, there are no dedicated federal or state funds for administering the 2021 municipal elections or any future election. North Carolina must develop new, long-term sources for investing in local election infrastructure.

1. The North Carolina General Assembly should immediately secure funding for 2021 municipal elections. COVID-19 is as much of a health risk in early 2021 as it was in Fall 2020. Funds will once again be needed to conduct safe in-person voting, as well as a robust absentee voting program.
  2. North Carolina should develop new permanent revenue sources for funding elections. Counties should not be solely responsible for shouldering the burden of administering and funding elections or have to rely on sporadic public and private funding.
  3. The North Carolina General Assembly and State Board of Elections should develop ways to make absentee voting safer and more cost-efficient. This includes investing in signature verification software, secure drop boxes, and high-speed scanners.

*- Alissa Ellis, Caroline Fry, and Gino Nuzzolillo, Democracy North Carolina*

## IMPROVE HUMAN RESOURCES AND STAFFING

### BACKGROUND

In 2020, the COVID-19 pandemic required significant changes in human resources and poll-worker recruitment in order to ensure safety and increase the pool of available staffing.

That March, many county elections boards were temporarily forced to close their physical offices. Some counties would continue to shut down operations periodically due to staff outbreaks, inhibiting their ability to process voter paperwork and respond to the public.

Election administrators also had to devote already stretched resources to enhance safety protocols and process a dramatic expansion in requests to vote absentee. Additionally, many regular poll workers, traditionally older and retired, declined to staff polling places this year. County elections boards also responded to an increasing number of voter intimidation concerns.

The North Carolina General Assembly and State Board of Elections responded with necessary measures to support local election administrators, including the North Carolina Bipartisan Elections Act of 2020 (House Bill 1169). Among other measures, H.B. 1169 allowed greater flexibility in filling precinct official positions and provided assistance for voters in congregate living facilities through the creation of multipartisan assistance teams. The legislation also appropriated federal CARES Act funding for poll worker compensation and recruitment, and expanded HAVA reimbursement eligibility to include COVID-19-related expenses.

The State Board of Elections also launched a statewide “Democracy Heroes” program, recruiting over 47,000 poll workers to staff voting locations during One-Stop Early Voting and on Election Day. In early October, the state board issued Numbered Memo 2020-30 providing additional guidance on conduct at the polls and responses to voter intimidation.<sup>1</sup> Nonpartisan groups and philanthropic organizations like Power the Polls, the Center for Tech and Civic Life, and the USC Schwarzenegger Institute also provided crucial assistance to local county election boards. Records indicate that at least 39 counties required external funding support to ensure a fair and efficient election.

### RECOMMENDATIONS

COVID-19 will continue to significantly affect elections in 2021 and 2022. County election boards will need increased staff support to process absentee by-mail ballots and manage an expanded number of voting sites. Increased funding is especially important given nearly 40 percent of North Carolina counties sought external grants to support their operations. Numerous documented instances of voter intimidation and poll worker misconduct necessitate enhanced training for poll workers and elections staff.

The North Carolina General Assembly, State Board of Elections, and county commissions must preserve and expand crucial funding and staffing flexibility for the duration of the pandemic in 2021 and beyond. North Carolina officials can take several steps to build on the successes of 2020, including:

1. Leverage the success of the “Democracy Heroes” program to ensure adequate pools of poll workers in advance of elections in 2021 and 2022.
2. Lower poll worker eligibility age from 17 to 16.
3. Permit poll workers to serve in counties outside their residential address and reallocate surplus poll workers to neighboring counties in need.
4. Increase appropriations to county boards of elections for increased compensation, hazard pay, funding for new permanent staff positions, and the recruitment and retention of county multipartisan assistance team appointees.

5. Increase appropriations for updated technology and internet access to facilitate staff recruitment and greater efficiency in processing voter registrations, absentee ballot requests and returns, and other administrative functions.
6. Establish a standard Poll Worker Code of Conduct and provide for ongoing anti-bias and election administration trainings for county board of elections employees and staff members.

*– Alissa Ellis, Caroline Fry, and Gino Nuzzolillo, Democracy North Carolina*

# ENSURE TECHNICAL ASSISTANCE AND RULES CLARITY FOR LOCAL ELECTION OFFICIALS

## BACKGROUND

The North Carolina State Board of Elections (NCSBE) engages in administrative rulemaking and frequently issues guidance via numbered memos. In 2020, both functions were complicated by political wrangling and a fluid legal landscape. The House Rules Review Committee rejected proposed amendments to the emergency rulemaking process amidst questions surrounding whether the COVID-19 pandemic constituted an “emergency.”<sup>1</sup>

Additionally, the complexities of 2020 necessitated regular guidance in the form of numbered memos to guide local administrators as they interpreted novel legislation governing elections and litigation that created a cure process.<sup>2</sup> It was clear that local election boards were challenged in both the interpretation and application of the NCSBE’s guidance. Counties frequently discussed differing understandings of the state’s guidance in their meetings. At times, counties were reluctant to implement guidance, particularly regarding the cure process for absentee vote by mail ballots.<sup>3</sup> These challenges signal the need for both more technical assistance from the NCSBE and additional accountability to adhere to this administrative guidance from local election boards.

### Technical Assistance | Resource Legislation: CARES, HAVA, and N.C. House Bill 1169

Another key area for additional technical assistance relates to funding and appropriations. In 2020, federal pass-through funding via the Coronavirus Aid, Relief, and Economic Security Act Act and Help America Vote Act created uncertainty for administrators as North Carolina negotiated state-level matching.<sup>4</sup> While federal funding and state matching funds greatly helped local election boards, there was little information or transparency on the process for disbursement of funds and schedule for county-level appropriations. In practice, this meant that many counties did not have a full understanding of their total operating budgets until late summer.<sup>5</sup>

In addition to financial resourcing and appropriations at the state and federal level, there were important human and in-kind resources that were provided to counties in 2020. Many county election boards relied on the NCSBE to provide sanitizer, single-use items such as styluses and pens, and additional personal protective equipment as needed. At least one county board faced a shortage of single-use pens, and the NCSBE provided assistance within a 24-hour period.<sup>6</sup>

Finally, House Bill 1169 created significant changes in poll worker staffing and provided necessary flexibility for poll workers to work outside of their specific precinct.<sup>7</sup> This flexibility allowed county election boards to keep precincts open and move human resources as needed, promoting social distancing and substantially reducing the volume of voters in high-volume precincts during early voting. In addition, the NCSBE created a portal to assist with poll worker recruitment. The combination of recruitment initiatives with added poll worker flexibility eliminated the need for precinct consolidation.

The 2020 general election highlighted a third area where technical assistance is necessary: administrative guidance. There were several areas where key administrative changes were made that presented challenges for county elections boards and staff as they interpreted changing guidance and attempted to implement the guidance to the best of their ability. These included:

- **Absentee ballot processes.** In 2020, the NCSBE issued multiple rounds of clarifying guidance via numbered memos regarding the processing and evaluation of absentee ballots, namely: 1. reiteration that H.B. 1169 reduced the witness requirement to a single witness without a notary; 2. clarification that there is no signature verification required by North Carolina law; and, 3. detailed guidance on the processing of absentee ballot request forms, absentee ballot envelopes, and cure documentation. Based on information gathered from county election board monitoring, counties worked diligently to keep abreast of evolving guidance and to properly administer that guidance. Additional technical assistance from the NCSBE would have benefited some counties that grappled with application of the state-level guidance, particularly the evaluation of incomplete witness address information on the absentee ballot information.<sup>8</sup>

- **Curing absentee ballots.** Several lawsuits were filed against the NCSBE to ensure adequate procedural safeguards for voters to cure deficiencies with their absentee ballots, creating substantive changes to North Carolina's election laws for the 2020 general election.<sup>9</sup> The NCSBE initially issued cure guidance via numbered memo on Aug. 21, 2020, providing detailed information on deficiencies and appropriate methods for cure.<sup>10</sup> This guidance was subsequently updated pursuant to a settlement agreement on Sept. 22, 2020, expanding the deficiencies that could be cured by affidavit.<sup>11</sup> Ultimately, the United States District Court for the Middle District of North Carolina ruled that the expanded category of curable deficiencies circumvented the witness requirement.<sup>12</sup> Based on this ruling, a final revision to Numbered Memo 2020-19 was issued on Oct. 17, 2020.<sup>13</sup> With the administration of the absentee cure process in legal limbo, some counties held absentee ballots with deficiencies without implementing any cure process while other counties separated out absentee ballots with witness signature deficiencies as they awaited final clarity from the courts and associated NCSBE guidance. This confusion on the local level signaled a clear need for a codified cure process, additional administrative guidance to counties, and technical training and assistance to county election boards and their staff.
- **Early voting expansion.** To ensure the safety of both voters and election staff during the pandemic, the NCSBE expanded early voting during the 2020 general election, requiring additional weekend hours and a certain number of sites per county based on voting population. Unfortunately, by the time the NCSBE made the decision, many counties had already finalized their early voting plans, and the institution of a complicated waiver process made it challenging for some counties to opt out.<sup>14</sup> Despite these complications, this administrative change resulted in the institution of a record-breaking 471 early voting sites and a total of 77,887 early voting hours.<sup>15</sup> In the future, the NCSBE should take an earlier and more active role in ensuring early voting meets demand by providing more time for adequate implementation at the county level. In addition the state should also ensure that budget and human resourcing challenges are taken into consideration for counties that may not be equipped to rapidly expand early voting. Funding at the federal and state level coupled with more lead time and assistance from the NCSBE would help alleviate the aforementioned challenges.

## RECOMMENDATIONS

To ensure greater rule clarity and administrative support for local election boards, we recommend the following:

1. Retention of the NCSBE's emergency powers, guidance, and rule-making authority.
2. Codification of the single witness requirement and express language that signature verification is not required by law.
3. Codification of expanded early voting site hours and requirements.
4. Increased technical assistance and training provided by the NCSBE to county boards of elections, particularly regarding absentee vote by mail processes and procedures.
5. Institution of administrative accountability procedures for county boards of elections to ensure compliance with existing administrative rules, guidance, and election laws.

– *Alissa Ellis, Caroline Fry, and Gino Nuzzolillo, Democracy North Carolina*

## PROMOTE ACCESS AND TRANSPARENCY

### BACKGROUND

Historically, North Carolinians have been able to monitor and participate in their county board of elections. For example, the process of choosing early voting sites often includes soliciting community feedback. However, the COVID-19 pandemic posed new challenges to government access. Public agencies struggled to quickly develop remote options for public participation.<sup>1</sup> The ability of the public to meaningfully and safely participate in local government should be a priority in 2021 and beyond.<sup>2</sup>

Per North Carolina statute, county election boards are subject to open meetings requirements, which guarantee the public will be alerted to regular meetings so they can attend.<sup>3</sup> In response to COVID-19, some county election board offices adapted by offering new ways for the public to participate, including offering the option to tune into meetings via telephone or online. While offering a telephonic option for public meetings was recommended by the North Carolina State Board of Elections (NCSBE), it was not required, and as a result not all local boards offered a way for constituents to participate remotely, leaving out those who did not feel safe congregating indoors.<sup>4</sup>

For those local election boards that did offer virtual meetings, sometimes there was no information about how to participate on the boards' websites, and constituents in counties that offered a telephonic option often reported problems with audio quality.<sup>5</sup> Others who could listen to the meetings noted that there was no way to ask questions or submit public comments. Some North Carolinians reported feeling shut out of the early voting planning process entirely.<sup>6</sup> Despite state statutes requiring that county election boards give 48 hours notice before holding a public meeting,<sup>7</sup> community members wishing to participate often struggled to find information about how to attend and/or submit public comment, even in the hours before the meeting.<sup>8</sup>

Another challenge is the immense variance in quality of communication infrastructure used by county election boards. Some counties have invested a significant amount of time and money in building comprehensive, user-friendly websites, but smaller counties with limited staff and resources often cannot make these same investments. These disparities extend to county elections board meetings: While some counties have the ability to offer telephonic and online meetings, many do not, and counties that do not post up-to-date information online about upcoming meetings make public engagement even more difficult.

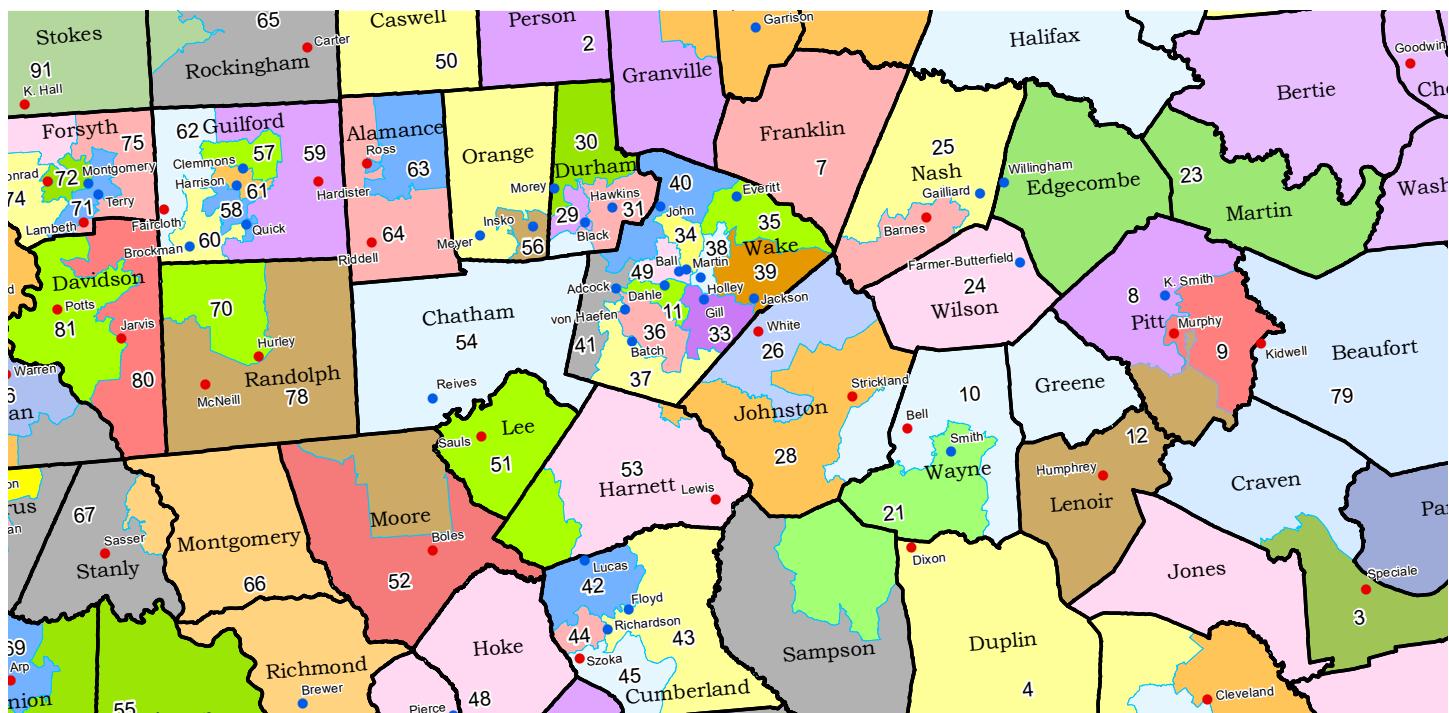
### RECOMMENDATIONS

1. County boards of elections should be required to offer all public meetings in online and telephonic formats. This should include:
  - Streaming all meetings live on an online platform that allows the public to see and hear the meetings;
  - Provide a phone number that people without internet access can call in to listen to the meetings;
  - Require information for how to join and participate in all meetings to be posted on the county elections board website;
  - Allow people to post comments online or submit them by e-mail or text during the public comment period;
  - Have the clerk or another local elections official read aloud comments submitted by e-mail or posted online;
  - Record and publish meetings on the county board of election's website within 48 hours of the meeting;
  - Publish meeting minutes on the county board of election's website within 48 hours.
2. The North Carolina General Assembly should dedicate funds to purchase technology to allow all state and county board of elections meetings to be available via telephone and internet. This may include funds for software (such as Microsoft Teams), microphones, computers, online storage, and other materials.

3. The NCSBE should provide training and support to ensure counties provide public meetings in online and telephonic formats. Offering technological assistance to counties, many of which have limited staff and resources, will be essential for ensuring online meetings are implemented successfully.
4. The NCSBE should provide oversight to ensure that public meetings are properly noticed, implemented, and recorded. There is currently little oversight of county elections boards to ensure that meetings are properly noticed and conducted.

– *Alissa Ellis, Caroline Fry, and Gino Nuzzolillo, Democracy North Carolina*

## SECTION IV: PROMOTE FAIR REDISTRICTING AND EQUAL REPRESENTATION



In 2019, a state court issued a landmark decision in *Common Cause v. Lewis*, ruling that partisan gerrymandering, like racial gerrymandering, violates North Carolina's constitution.<sup>1</sup> As a result, the court ordered new legislative maps to be drawn for the 2020 election in full public view and without using partisan data.

While legislative leaders have been slow to embrace reform, North Carolinians clearly want an end to gerrymandering. Some 62 percent of the state's voters favor nonpartisan redistricting, with just 9 percent opposed, according to an October 2019 survey from Public Policy Polling.<sup>2</sup>

## RECOMMENDATIONS

In the 2019-2020 legislative session, there were a half-dozen redistricting reform bills introduced, including proposals that were co-sponsored by a bipartisan majority of N.C. House members. Although none of those bills got a vote in the General Assembly, it was heartening to see growing support for reform among rank-and-file lawmakers.

The courts have made clear that both racial and partisan gerrymandering are unconstitutional in North Carolina, and the public overwhelmingly wants nonpartisan redistricting. In order to avoid illegal map-rigging, the redistricting process in 2021 must be nonpartisan, with robust public input and full transparency.

We need to enact lasting reform that ultimately takes redistricting power out of the hands of politicians, and entrusts it with a nonpartisan citizens commission that will draw our voting maps without racial or partisan gerrymandering.

Reform comes in different forms. Some states have an advisory commission that recommends plans but the legislature has the final say. Some states have a back-up commission to step up and draw plans only if the legislature cannot agree on a districting plan in a timely fashion. Other states strive for an independent commission wherein legislators sometimes have a role in picking the commissioners but are not able to draw the district lines themselves. Lastly, some states have a politician commission where either legislators or other elected officials sit on the commission but the legislature as a whole is not involved.

One measure, Senate Bill 673 filed in 2019, provides for a constitutional amendment to change how district lines are drawn by creating a N.C. Citizens Redistricting Commission.<sup>3</sup> The commission will draw districts to meet the following criteria: contiguous districts, compactness, electoral impartiality, and minimizing the number of split counties and the number of split municipalities and communities of interest. This legislation would create a 15-member commission comprised of five Democrats, five Republicans, and five from neither of the two largest parties. Eight members are appointed by the leadership of both parties in the N.C. House and Senate from a pool of voters who have applied and been pre-cleared for eligibility. The final seven are chosen at random. Applicants must meet strict criteria to limit partisan influence. The commission has the final say on maps, and thus there is no role for the legislature.

To ensure public inclusion in the process, the commission proposed in this measure holds at least 20 hearings and makes resources available to the public to permit them to draw their own maps, understand the process, and submit comments. Adoption of a plan requires a vote of at least nine members of the commission, including at least three members from each subgroup (Republicans, Democrats, and unaffiliated). If the commission is unable to adopt a plan, it shall hire a special master to draw a plan, which shall be adopted by the commission.

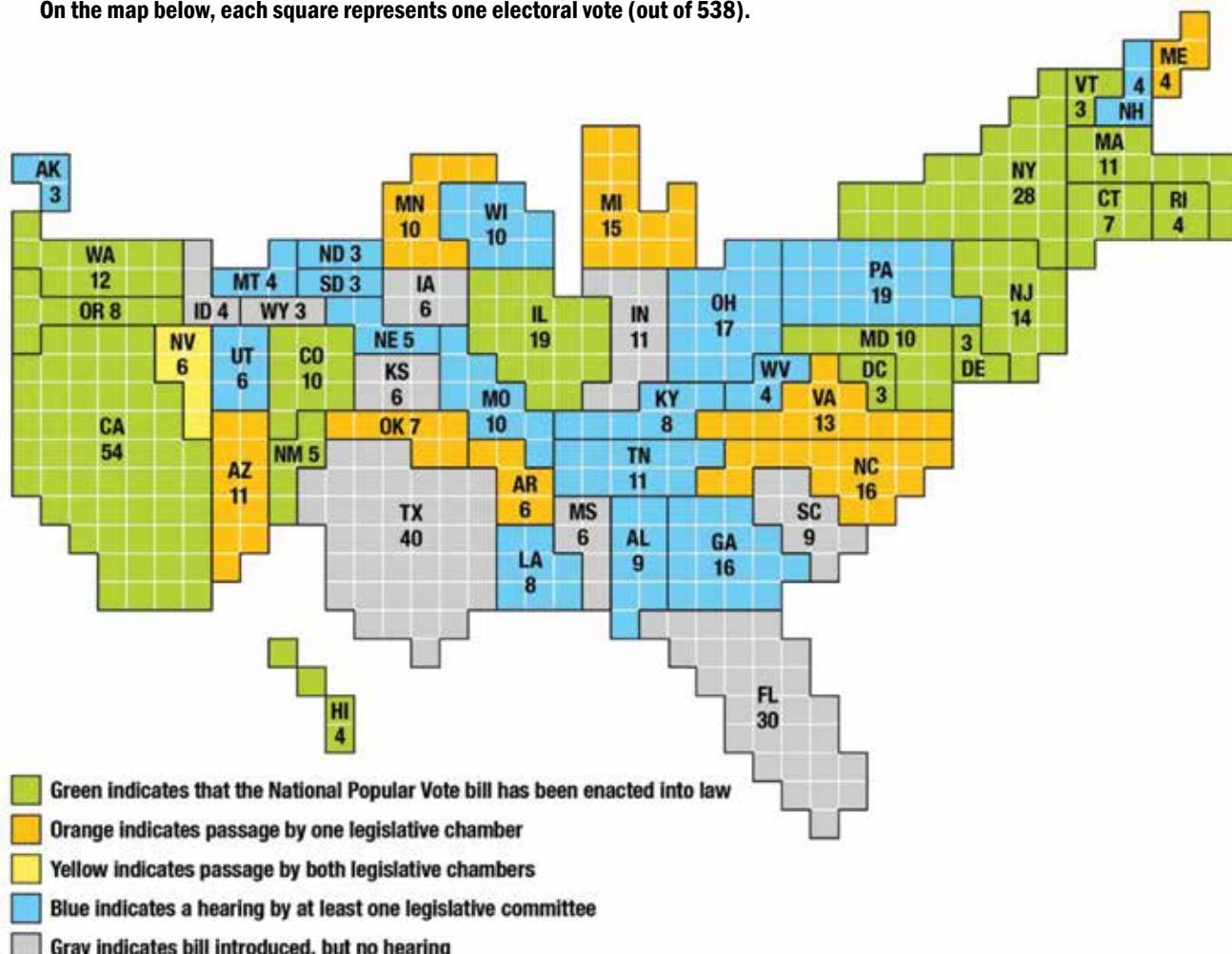
An updated version of Senate Bill 673 was recently filed in 2021, House Bill 437, the Fair Maps Act.<sup>4</sup>

The public is hungry for a solution that ensures voters choose their elected officials, and politicians don't choose their voters. With a new round of map-drawing soon to begin, the time for real redistricting reform is now.

— **Bob Phillips, Common Cause North Carolina**

## REFORM THE ELECTORAL COLLEGE: POPULAR VOTE STATE COMPACT

On the map below, each square represents one electoral vote (out of 538).



MAP: National Popular Vote, 2021

## BACKGROUND

One person, one vote is a fundamental tenet of democracy. However, this principle doesn't apply in the election of the most powerful official in the country, the president of the United States.

The Electoral College system has its roots in inequality. At its founding, the Electoral College counted slaves as "three-fifths" of a person, and they of course couldn't vote themselves. Instead of counting the votes of people, the Electoral College creates a confusing system that removes the vote from the public and privileges a handful of sparsely populated states. It has enshrined a system of minority rule increasingly out of step with the realities of where people live and vote. Today, a majority of U.S. Supreme Court justices were appointed by presidents who lost the popular vote.

## RECOMMENDATIONS

While amending the U.S. Constitution to eliminate the Electoral College would be extremely difficult, there is a step the North Carolina legislature can take to move our state and country closer to one person, one vote.

The National Popular Vote Interstate Compact is an agreement among states and the District of Columbia to award all their electoral votes to whichever presidential candidate wins the overall popular vote in the 50 states and the District of Columbia. The compact is designed to ensure that the candidate who receives the most votes nationwide is elected president, and it would come into effect only when it would be necessary to ensure that outcome.

Currently, the compact has been adopted by 15 states and the District of Columbia. Together, those states represent 196 electoral votes. The compact needs to be adopted by states totaling 270 or more Electoral College votes to go into effect and influence the outcome of the election.

In May 2007, Senate Bill 954, a National Popular Vote by State Compact bill, passed the North Carolina Senate but later died in the North Carolina House. Since then, the North Carolina state legislature has filed similar bills several times, with Senate Bill 104 in 2019 being the most recent.

By joining the National Popular Vote Interstate Compact, North Carolina can put democracy back in the hands of the people.

*– Melissa Price Kromm, North Carolina Voters for Clean Elections*

## SECTION V: HEIGHTEN TRANSPARENCY AND COMBAT CORRUPTION



IMAGE: Sharon McCutcheon / Unsplash / Underwood Creative

### BROADEN DISCLOSURE LAWS AND ENCOURAGE GOOD GOVERNMENT

#### BACKGROUND

North Carolinians deserve an ethical government that works for everyone. We must hold elected leaders accountable to strong ethical and transparency standards, so they serve the people instead of their own self interest. Over the years several good government and transparency reforms proposals have been introduced and advocated for in North Carolina. Recommendations for ensuring a North Carolina where public institutions are accountable and transparent are described herein.

#### RECOMMENDATIONS

1. Close digital disclosure loopholes. It is vital that we protect against foreign spending and influence in American elections. This lack of transparency means that voters are left in the dark about who is attempting to influence them, and there is little accountability for bad actors — including foreign nationals, who are legally barred from spending on U.S. elections. This is how trust in the democratic process erodes. To provide sufficient transparency and accountability to safeguard our political system, we must address these challenges and fix these digital loopholes. Moreover, there is no compelling argument for big-money qualified digital ads to be exempt from existing disclosure laws. By updating campaign finance disclosure laws, we can ensure that voters have the information they need to interpret political messages and make choices in their interests and that reporters and government watchdogs can hold political actors accountable.

In 2019 advocates worked with lawmakers and experts to create legislation to address the digital loophole.<sup>1</sup> This legislation narrowly defined qualified digital ads as those placed with a fee, and it would require most campaign entities supporting or opposing candidates or those engaging in electioneering communication (the mentioning of a candidate in the weeks prior to an election) to place disclaimers on their qualified digital ads and file qualified digital communications disclosure report, in most cases.

Also, the most recent version of the bill adds a \$1,000 threshold for disclosure. This ensures that the law is not overly burdensome to low-dollar candidates or individuals who wish to have their voice heard but are not keenly aware of campaign finance disclosure rules.

2. Increase frequency of campaign finance reports. Citizens are affected every day by the decisions of their democratically elected representatives and have the right to know when a campaign contribution or the access it buys contributed to the introduction of a bill, the tabling of an amendment, or a vote on legislation.

Secret money groups often spend vast sums to influence elections but the source of that money is often not disclosed to the voting public in a timely fashion. By requiring them to file campaign finance reports sooner, voters are provided with a clearer idea of who is funding these organizations before heading to the polls.

Advocates proposed House Bill 919 in 2013 to increase the frequency of secret money disclosure close to an election.<sup>2</sup>

3. Bring campaign finance reporting into the 21st century. Looking toward the future, the State Board of Elections should be directed through legislation to create a better database on their website with electronic disclosures, copies of advertisements from political committees, candidate committees, independent expenditure committees and unregistered outside spending committees making it more accessible for public consumption.

The New York Board of Elections has a better website and is a good model for review.<sup>3</sup> North Carolina would need to provide additional resources and look at cyber protections for uploaded advertisements.

4. Return electioneering communication to 60 days prior to election. North Carolina has regulated electioneering communications since at least 2004 and the trigger date and disclosure regime has changed at different times.

A return to the 2004 trigger date with electioneering communication should start 60 days from the beginning of absentee voting.

5. Revolving door prohibitions. The revolving door is a practice in which former public officials cash in on their government service by becoming lobbyists or strategic consultants after they leave government, then selling their inside connections and knowledge to corporate interests. This revolving door makes it hard to know whether public officials are representing the public interest or corporate interests.

North Carolina law states that no former legislator may register as a lobbyist for six months after leaving office. Advocates argue the mandatory waiting period must be extended from six months to at least two years, if not more. The most recent version of this was filed in 2021, House Bill 318, extending the mandatory waiting period to four years.<sup>4</sup>

North Carolina could also look at how to make this provision more broadly applicable, such as for public appointees or employees of the legislative or executive branches.

6. Increase transparency and predictability at the legislature. Various reforms could make it easier for average citizens to keep track of important policy debates. One bill, The Sunshine Act, was filed in 2019 and includes several provisions that would increase transparency in the legislative branch.<sup>5</sup> This legislation would 1. enact live streaming and searchable archives of the legislative sessions and committee meetings, 2. ensure that agendas for legislative sessions and meetings are made public 24 hours ahead of time, 3. mandate that official legislative business be conducted between the hours of 7 a.m. and 9 p.m., 4. end the practice of “gut and replace bills” with changes that are not germane to the bill’s original author’s intent, and 5. require that budget provisions carry the name of the legislator who requested the provision. This is a strong start to providing more transparency and accountability in our government. However, similar provisions for the executive and judicial branches should be reviewed as well.

*– Melissa Price Kromm, North Carolina Voters for Clean Elections*

## STRENGTHEN COORDINATION LAWS

### BACKGROUND

For our democracy to be effective, candidates and elected officials have to answer to their constituents — not wealthy special interests. Campaign contribution limits reduce the undue influence of wealthy donors, thereby guarding against political corruption and ensuring that officeholders are accountable to the people they represent. Similar to federal law and that in other states, North Carolina applies contribution limits to anyone who contributes directly to a candidate or coordinates their political spending with a candidate. Because coordinated spending is just as valuable to candidates as direct contributions, coordination between outside spenders and their preferred candidates must be regulated to prevent big donors from indirectly bankrolling campaigns while sidestepping contribution limits.

The U.S. Supreme Court's 2010 *Citizens United* decision, as well as subsequent court decisions, opened the floodgates for supposedly independent groups to spend unlimited amounts of money in our elections. As this outside spending has increased, the legal lines separating "independent" and "coordinated" spending have become critically important; however, most state laws have not been updated to reflect the new reality. Many coordination laws focus on particular expenditures and could not have anticipated the sophisticated relationships that exist between campaigns and outside spenders. For example, at the federal level, super PACs may be formed by or hire a candidate's former staff and use that person's knowledge of the candidate's campaign to guide the super PAC's spending in a way that is most beneficial to the candidate.

North Carolina's coordination law is similar to the federal law.<sup>1</sup> A coordinated expenditure occurs when the person "makes an expenditure in concert or cooperation with, or at the request or suggestion of, a candidate, candidate's agent, or party." These coordinated expenditures are considered contributions and are subject to contribution limits.<sup>2</sup> However, the focus on particular expenditures is too narrow and fails to capture the types of activities that should be considered coordinated.

In federal campaigns and in North Carolina, candidates and independent groups have pushed the boundaries of "coordination" and thus avoided contribution limits. These schemes include sharing employees, fundraising efforts, and campaign materials, without a direct agreement between the candidate and the independent group regarding expenditures. Outside groups and candidates may try to evade coordination laws by hiring the same firm for their campaign services, using the common firm to informally coordinate their strategy.<sup>3</sup> At the federal level, candidates have gone so far as to tell the public that a super PAC is their preferred PAC and appear at events, helping the PAC fundraise, even though it is independent. If a candidate can solicit large contributions from a supporter to a supposedly "independent" PAC supporting the candidate, the contribution limit to candidates is eviscerated. Finally, candidates often publish photographs or hours of unedited campaign film that a super PAC can then use in its own ads.<sup>4</sup> No explicit request or suggestion occurs, but the super PAC knows how to use those materials to support its preferred candidate.

North Carolina law should be updated to regulate expenditures made using these schemes and subject the expenditures to contribution limits.

### RECOMMENDATIONS

North Carolina's coordination law should be updated to capture the ways that candidates and ostensibly independent groups work together. These policies shift the focus from particular expenditures to the relationship between a campaign and an outside spender and all of the ways — from fundraising on — in which they may be working together.

First, the law should be amended to provide holistic standards for determining whether expenditures are coordinated and thus subject to contribution limits. Current law refers only to explicit requests or suggestions.

In general, these standards should apply to expenditures by outside groups that have certain connections or contacts with the candidate's campaign. These connections or contacts should include the following:

- A candidate, candidate's family member, or campaign official has a role in forming or managing the group making the expenditure.<sup>5</sup>
- A candidate fundraises for the group making the expenditure or appears at the group's fundraising events.<sup>6</sup>
- The group makes the expenditure relying on nonpublic information about the campaign that is provided by the candidate or others involved in the campaign.<sup>7</sup>
- The group making the expenditure employs a former employee or associate of the candidate, or uses a common vendor also providing services to the campaign.<sup>8</sup>

If a group with these types of connections to a candidate's campaign makes certain types of expenditures to benefit the candidate, the expenditure should be considered coordinated and subject to contribution limits. The types of expenditures covered by an effective coordination law should include partisan voter activity, political advertising, or research and support for these activities that benefit a particular candidate.

Second, when a group "republishes" a candidate's campaign materials by using campaign photos and videos to run ads supporting the candidate, the expenditure should be considered a coordinated expenditure.<sup>9</sup>

Finally, North Carolina law should provide guidelines for how a group can engage in independent spending without running afoul of the coordination law. Groups that implement effective firewall policies should be able to make independent expenditures without their activities being considered coordination.<sup>10</sup>

– Aaron McKean, Campaign Legal Center

## ENSURE A VOTER'S "RIGHT TO KNOW" ABOUT MONEY BEHIND ELECTIONS



### BACKGROUND

Unlimited secret campaign spending has grown to be one of the most pernicious problems in American politics, with more than \$1 billion flowing into our elections over the past decade.

In 2010, the U.S. Supreme Court's decision in *Citizens United v. FEC* gave corporations and unions the ability to spend unlimited amounts of money to influence elections in the form of "independent" expenditures. Underlying this decision was a near unanimous conclusion by the court: that it is within the constitutional purview of legislatures to require transparency of the identities of political spenders and contributors, giving voters the ability to know who is paying for campaigns to influence their decisions at the ballot box. Indeed, in its *Citizens United* ruling, eight of the nine justices joined in affirming that:

"The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."<sup>1</sup>

If voters know who is speaking, so the logic goes, then the risk of corruption, or appearance of corruption, resulting from "independent" spending is reduced.

Unfortunately, in the decade following *Citizens United*, legislatures have largely failed to deliver on the court's affirmation of transparency. Unlimited "independent" spending has grown exponentially, and along with it so has the prevalence of secret money — TV ads and other political spending paid for by front groups, funded by secret, unaccountable donors. Not only is secret money spending not transparent, as a primary engine of attack advertising<sup>2</sup> it promotes divisiveness and polarization in political discourse.<sup>3</sup> What's more, it allows special interests to achieve undue credibility in their campaign communications, giving deceptive, highly targeted

messages more persuasive power by dissociating them from the big-money sources that fund them. Secret money, for example, is a key mechanism by which foreign actors have sought to sway our national elections.<sup>4</sup>

North Carolina has not been immune to the flood of secret money spending in elections. Secret spending was a major force in the 2020 U.S. Senate race,<sup>5</sup> and over the past decade it has played an increasing role in state-level contests. The ability to spend unlimited amounts of money in secret has given an outsize voice to wealthy donors<sup>6</sup> and has even come to shape public opinion in the form of political activism masquerading as journalism.<sup>7</sup>

## RECOMMENDATIONS

There is a common-sense solution to curb the problem of secret money in politics that has gained traction in states from Alaska to Arizona: Give voters a “right to know” who is trying to influence their vote. Eighty-one percent of American voters believe they should have this right. A voters’ “right to know” bill could include measures such as:

- All political advertising expenditures above a state-appropriate threshold must be traced back to their “true” source. A “true” source refers to a source of funding that is: 1. a natural person; or, 2. a corporation whose money comes from revenue obtained in the ordinary course of business. It does not refer to entities spending or contributing money they received from donations or transfers. If money spent on political advertisements is financed using donations or transfers, the true source of those expenditures must be disclosed.
- The true-source identities of the top contributors to a campaign spending above the state threshold must be displayed on any political advertisements seeking to influence the decisions of voters.
- Information about the true sources of political expenditures must be reported in an electronic format that is searchable and easily accessible to the public.
- An independent, nonpartisan agency must be granted the authority to oversee and enforce compliance with rules surrounding the transparency of political spending.

In 2018, North Dakota voters demanded the “right to know” via a citizen-initiated constitutional amendment, requiring all campaign expenditures over \$200 to publicly disclose their true source. In Arizona, the cities of Tempe and Phoenix passed measures to require true-source disclosure with the support of 91 percent and 85 percent, respectively, and a 2020 statewide ballot measure campaign gathered more than 300,000 signatures before it was forced to stop collecting because of the COVID-19 pandemic. In 2020, Alaska voters passed a measure mandating that independent expenditures over \$2,000 disclose their true sources of funding.

North Carolina can join the growing groundswell of public demand for a “right to know” about the special interests secretly influencing politics. To preserve the integrity of our elections, North Carolina can actualize what the U.S. Supreme Court asserted would protect democracy from corruption by unlimited special interest campaign spending: the ability to know who’s really paying for political messages.

– **Jay Costa, Voters Right to Know**

## EXPAND OPPORTUNITY WITH VOTER-OWNED ELECTIONS



## BACKGROUND

The relentless pressure to raise money to finance campaigns distorts every aspect of our democracy. The cost of running for office in North Carolina has steadily increased, posing what amounts to a wealth barrier to serving as an elected official. It's not uncommon for General Assembly candidates to have to raise \$250,000 or more to seek a House or Senate seat. In 2020, candidate fundraising for the North Carolina Supreme Court averaged almost \$1.2 million, and for the North Carolina Court of Appeals, more than \$269,000.<sup>1</sup>

The rising cost of running for office means candidates spend more time dialing for dollars than talking to constituents about the issues. The wealth barrier hurts the diversity of candidates who seek public office, and creates conflicts of interest when elected officials accept money from special interests whose issues they will be making decisions about in the executive, legislative, or judicial branches.

Polls have repeatedly shown that the public believes that Big Money spending and special interest influence is a problem in need of a solution. For example, a 2018 Pew Research poll found that 74 percent of the U.S. public believes big political donors shouldn't have more influence than others, and 64 percent say new laws are needed to decrease the influence of money in politics.<sup>2</sup>

North Carolina has an opportunity to expand political opportunity for all by ensuring that any candidate with a broad base of support — not just those with a lot of money or access to wealthy donors — can run for elected office.<sup>3</sup>

## RECOMMENDATIONS

To expand political opportunity, increase access to public office, and restore trust in our elections, North Carolina should move to passing voter-owned elections. In voter-owned election programs, candidates who are able to raise money from a broad range of small-donor voters are given money from a public fund to run their campaigns.

At different times, North Carolina has had voter-owned election programs for judicial races, select North Carolina Council of State races, and even a pilot program for local officials. All of these programs were widely and successfully used by Democratic and Republican candidates, until they were rescinded after pressure from Big Money interests.<sup>4</sup> North Carolina now has an opportunity to build on the success of past programs, while incorporating new innovations in voter-owned elections programs.

Public financing of elections comes in different forms. A *matching system* offers candidates public funds that multiply the value of small contributions. Another form is *block grants*, that offer candidates a total sum of public money once they qualify, and prohibits them from raising additional private funds. A *voucher system* provides voters with vouchers worth a specified dollar amount to give to the candidates of their choice, who then receive public funds in that amount. Lastly, there are *hybrid programs* that use parts of each system.

States and localities across the country have found many creative ways to fund voter-owned public-financing programs. One researcher identified more than 40 examples of bonds, fees, surcharges, and other creative means to collect resources that can be used for public financing.<sup>5</sup>

There are four key areas where North Carolina can move forward on expanding opportunity through voter-owned elections:

1. Local voter-owned elections. A simple way to start is by allowing North Carolina localities to pass and operate small-donor public financing elections programs, or provide tax credits or rebates for small-donor contributions. Democracy advocates backed House Bill 621 in 2015 which creates authorization for localities with a population of more than 50,000 to implement local voter-owned elections.<sup>6</sup> From here, localities can design and fund their own public financing of elections.
2. Judicial voter-owned elections. Another way to create more political opportunity is to reinstate North Carolina's lauded judicial public financing program for statewide judicial elections. Formerly known as the Voter-Owned Elections Fund, this block grant program can be solely funded through a fee on lawyers and/or include a voluntary tax checkoff. The previous version had both a \$50 fee from lawyers and a \$3 voluntary tax checkoff. Democracy advocates in North Carolina backed House Bill 737 in 2015.<sup>7</sup> Under this measure, candidates would need to raise small dollar qualifying contributions of a set amount in the qualifying period, to show they had the public support to receive public financing. A committee would need to be created to decide fund amounts to candidates which may need to be updated with inflation. The 2015 bill addresses the issue of trigger funds, which are matching grants given to candidates when funds in opposition to the certified candidate or in support of an opponent candidate intervene in an election. Trigger funds were struck down by the U.S. Supreme Court; the 2015 revised bill deals with the lack of trigger funds by increasing total amounts to stay competitive in a post-*Citizens United* environment, when spending by outside committees can alter an election. A hybrid program with an initial block grant to those who qualify, followed by small-donor matching grants, could help create a more level playing field in the current environment.
3. Executive branch voter-owned elections. Another option is to enact full executive branch public financing. This can be done through any combination of general funds, a tax checkoff on voter tax forms, or fee-based mechanisms. The 2007 voter-owned election program for commissioner of insurance, state superintendent, and state auditor was highly successful and is a good model to consider and build on.<sup>8</sup> Similar to judicial

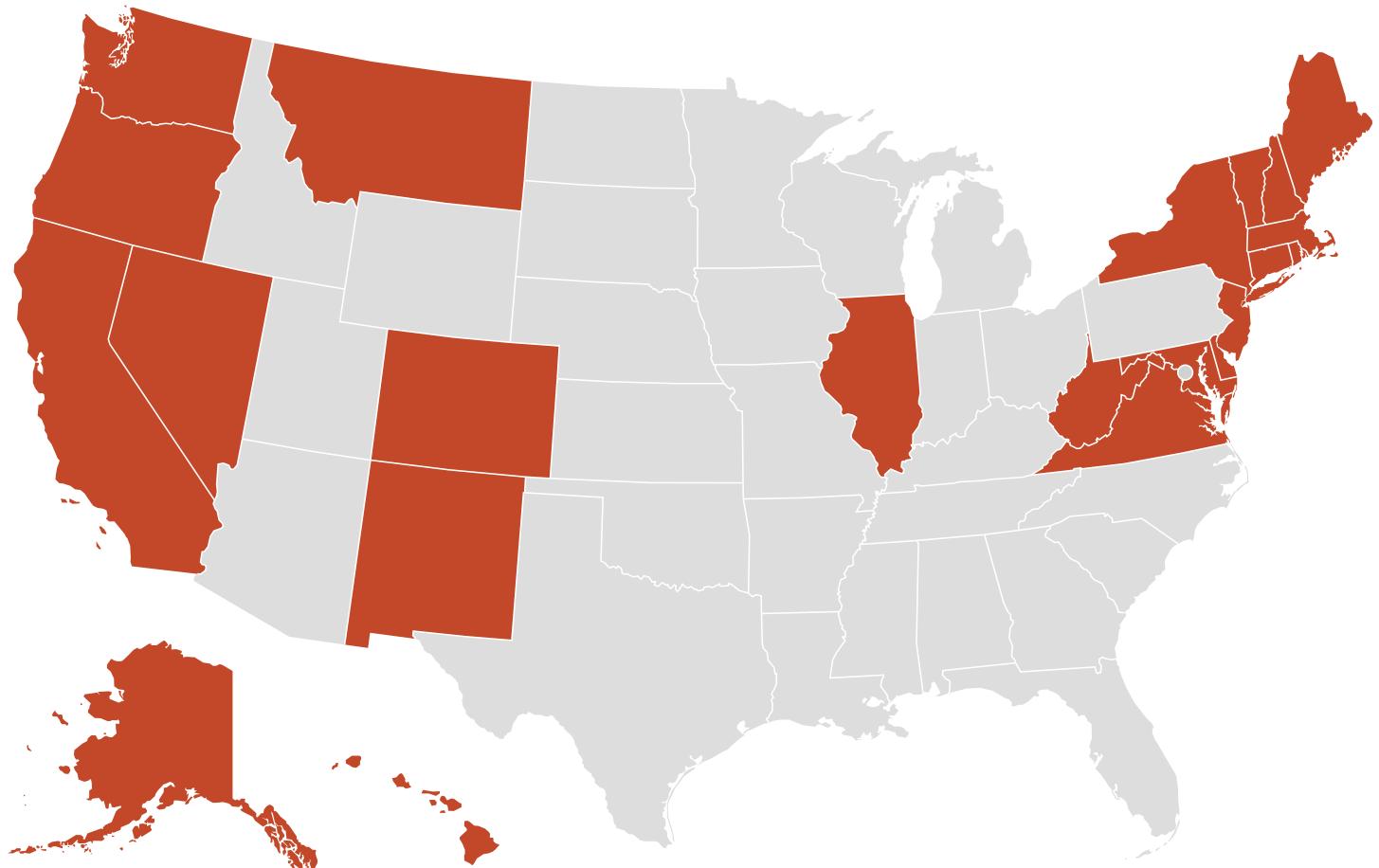
voter-owned elections programs, one refinement would be to address how to provide increased funds in an environment with post-*Citizens United* outside committee spending.

4. Legislative voter owned-elections. Lastly, voter-owned public financing options should be extended to General Assembly races. One model for this program could be the Maine Clean Election Act, passed in 1996 by citizen initiative, and re-affirmed and strengthened in a second citizens' initiative in 2015. Under Maine's program, candidates demonstrate their grassroots support by collecting \$5 Qualifying Contributions from voters in their district (60 for House, 75 for Senate and 3,200 for Governor), and agree not to raise or spend any private money. They are then given public support from the Maine Clean Election Fund to run their campaigns.<sup>9</sup>

*– Melissa Price Kromm, North Carolina Voters for Clean Elections*

## OVERTURN CITIZENS UNITED

### States That Have Called for Overturning *Citizens United*



MAP: Olivia Paschal, Institute for Southern Studies, April 2021 • Source: United for the People

## BACKGROUND

A government “of, by and for the people” is the most basic promise of American democracy – but, in 2010, the U.S. Supreme Court’s *Citizens United* decision eroded this promise by ruling it is unconstitutional to limit the amount of money that corporations can spend on elections. Corporations and special interest institutions should not be able to buy control of our democracy. Elected leaders should work together to take unlimited corporate spending out of politics.

The *Citizens United* ruling has given special interests an unfair advantage over citizens. Corporations are not people, and they should not be able to buy political influence through unlimited advertising, or purchase control over public policies. Before *Citizens United*, corporations could spend money on political activities that took a stance on specific issues and stopped short of directly endorsing or attacking candidates. Direct advocacy had to be done through political action committees, which are subject to more oversight and regulation. Now, corporate interests can funnel contributions directly into groups that don’t have to disclose their donors. These groups, in turn, can buy unlimited amounts of media or other activities directly attacking or supporting candidates. *Citizens United* helped unleash a tidal wave of corporate and special interest spending, including a staggering \$7.35 billion by “outside” independent spending groups in federal elections since 2010 alone.<sup>1</sup>

## RECOMMENDATIONS

North Carolina can join a growing number of states that have voiced opposition to the *Citizens United* decision and its damaging impact on our democracy. The North Carolina legislature can pass a resolution calling on Congress to overturn the Supreme Court's *Citizens United v. FEC* decision. Neighboring Virginia recently became the 22nd state to pass a resolution supporting a constitutional amendment to overturn the *Citizens United* decision.<sup>2</sup> There is already a groundswell of support for such a measure in the state: So far 15 municipalities in North Carolina have joined 800 cities and towns across the country in passing resolutions calling for an amendment to overturn *Citizens United*.

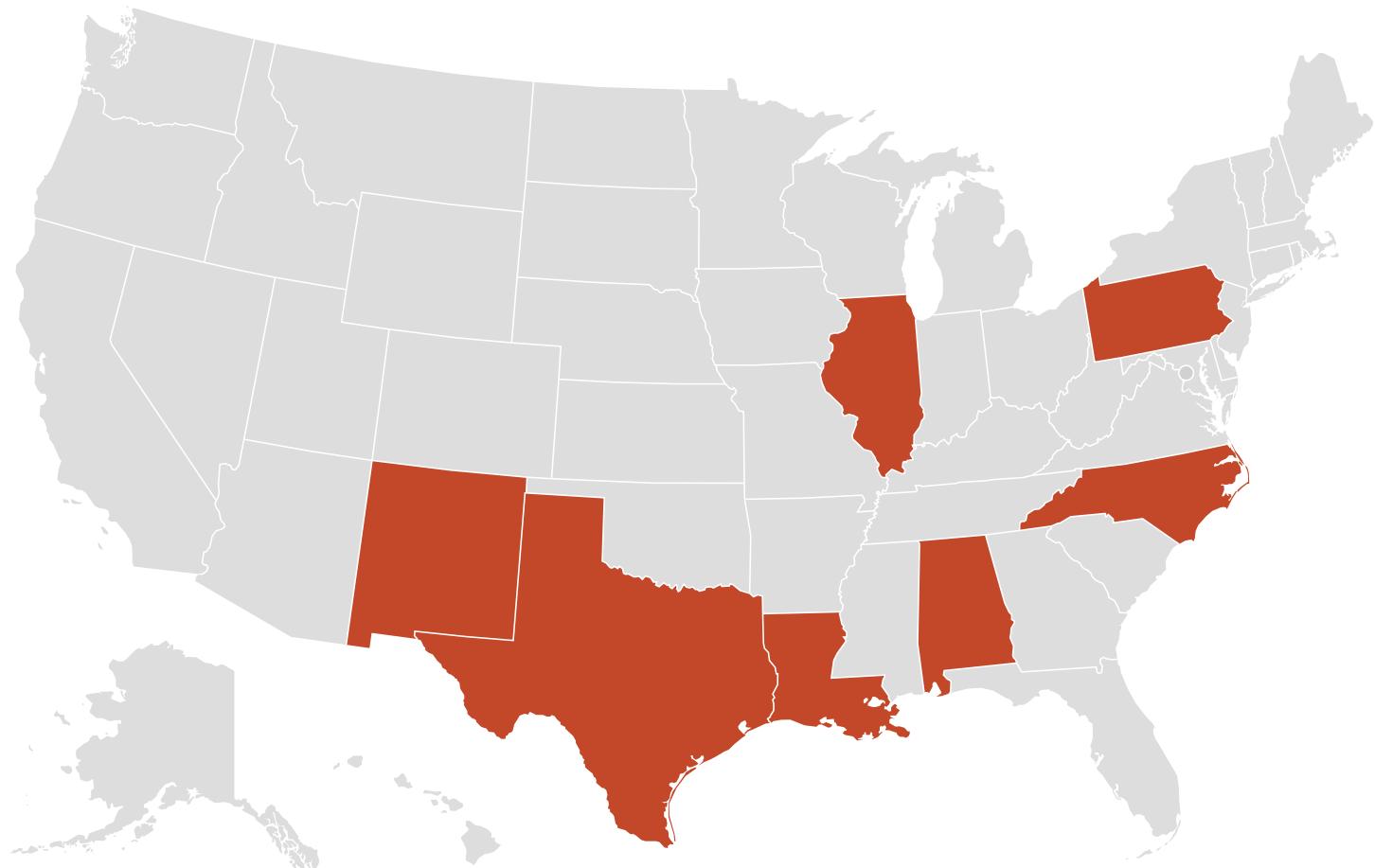
In North Carolina, several legislative resolutions have been filed with the same goal. In 2015, House Joint Resolution 125 was filed at the legislature requesting that Congress amend the U.S. Constitution and overturn the *Citizens United* decision.<sup>3</sup> North Carolina can act now to join the growing movement against skyrocketing special interest spending and return politics to everyday people.

— **Melissa Price Kromm, North Carolina Voters for Clean Elections**

## **SECTION VI: ENSURE FAIR AND IMPARTIAL COURTS**

# RETURN TO NONPARTISAN JUDICIAL ELECTIONS

## States with Partisan Judicial Elections



MAP: Olivia Paschal, Institute for Southern Studies, April 2021 • Source: Brennan Center for Justice, Institute for Southern Studies

## BACKGROUND

During his confirmation hearing for the U.S. Supreme Court in 2017, Justice Neil Gorsuch said, "There's no such thing as a Republican judge or a Democratic judge." In theory, this should be true: Partisan politics has no place in the courtroom. However, in 2016, North Carolina became the first state in almost a century to shift from nonpartisan to partisan judicial elections. The shift has left the state out of the mainstream: Only seven states still use partisan elections for their appellate courts. (Two of those states use a hybrid of partisan and nonpartisan elections).<sup>1</sup>

Judges are not politicians, and making our judicial institutions partisan further threatens the public's trust in fair and impartial courts. We want judges to decide cases based on the law and the facts, and the role of naked political interest in our courts to be minimized. The integrity of our courts depends on the public's perception that the judiciary is not simply another political branch of government, but a fair and impartial decision-maker for all.

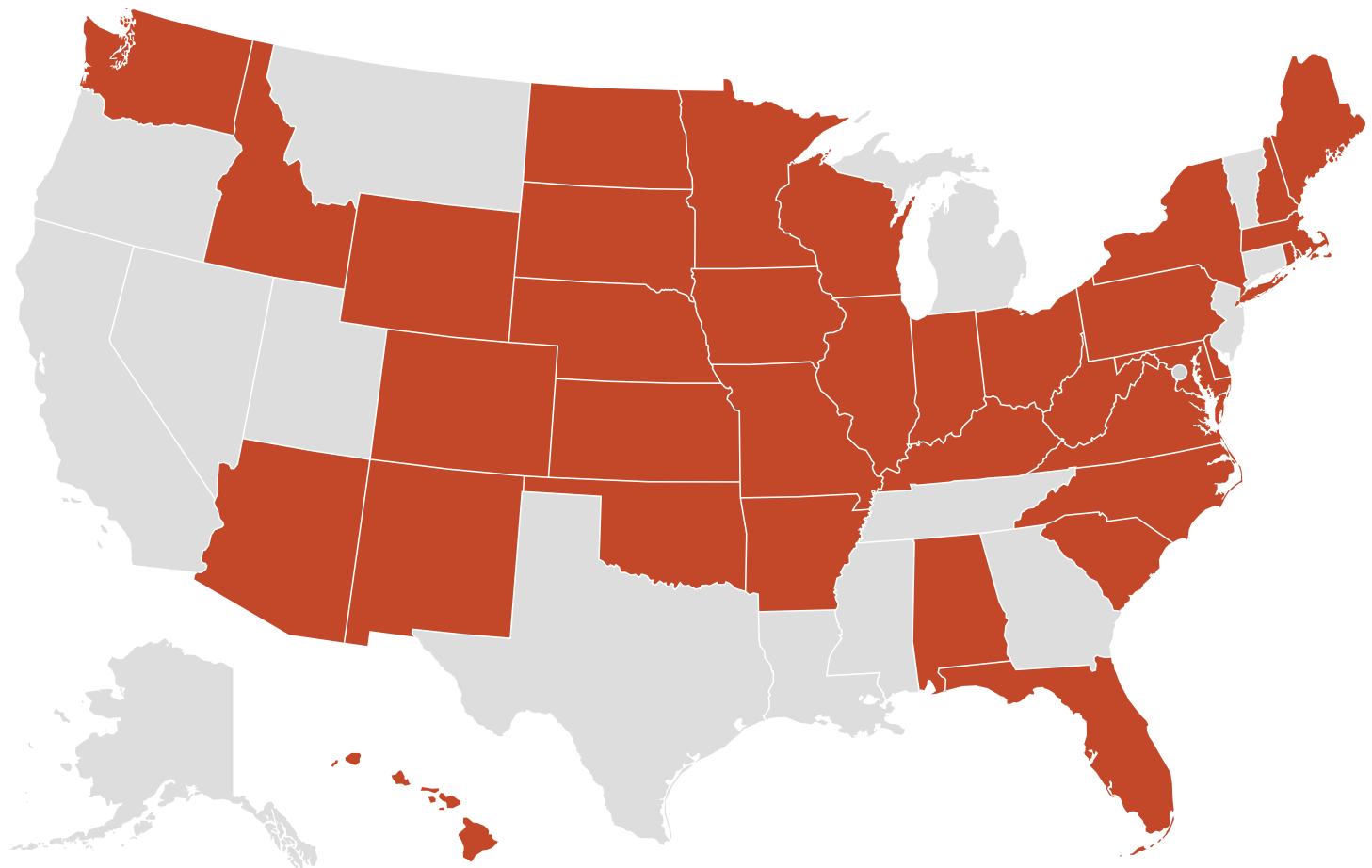
## RECOMMENDATIONS

North Carolina can help restore independence to our courts and bolster public confidence in the judiciary by once again making all judicial elections nonpartisan. Nonpartisan judicial elections will help ensure qualified judges seek to serve on courts, not just political operatives, and better insulate courts from political pressure.

*– Melissa Price Kromm, North Carolina Voters for Clean Elections*

## REFORM JUDICIAL ETHICS RULES TO MINIMIZE THE ROLE OF WEALTHY DONORS

## **States Where Judges Themselves Decide Whether a Conflict of Interest Requires Their Recusal**



MAP: Olivia Paschal, Institute for Southern Studies, April 2021 • Source: Brennan Center for Justice

## BACKGROUND

Elections for the North Carolina Supreme Court have become more politicized and more expensive in recent years. Millions of dollars have poured into these races, as special interest groups in Washington, D.C., spent big. The Brennan Center for Justice found that in the 2017-2018 election cycle, eight of the biggest spenders in state supreme court elections were groups that don't disclose the source of their money.<sup>1</sup>

Until 2013, candidates for North Carolina appellate court elections could rely on public financing. The candidates could receive public funds by raising a certain number of small contributions and pledging not to accept larger donations. But the legislature ended that program in 2013, leaving judicial candidates to again rely on private contributions, even when it presents a clear conflict of interest. Lawyers and businesses with a stake in the court's rulings often fund the justices' campaigns.

In North Carolina, unlike most other states with judicial elections, judges can personally solicit campaign contributions. In 2014, an incumbent justice reportedly told a group of wealthy lawyers and corporate executives at a fundraiser that he "looked forward" to seeing them in court.<sup>2</sup>

These personal appeals for campaign cash can lead the public to wonder whether donors are buying influence in the judicial branch, where judges strive to appear impartial. Personal solicitation can also create pressure on lawyers, whose cases might be heard by the judge, to contribute to campaigns.

Judicial ethics rules haven't been updated to reflect the new reality of politicized, expensive supreme court elections. New laws could strengthen the rules by keeping justices from personally asking wealthy donors for contributions and by improving the court's handling of conflicts of interest, such as when lawyers or businesses have donated to the campaign of a judge hearing the case.

## RECOMMENDATIONS

North Carolina could take several steps to reduce the conflicts of interest and politicization of the courts:

1. Ban personal solicitation of campaign contributions. Appellate judges are elected in 38 states, but they can directly raise money in only nine states. In 29 states, judicial ethics rules prohibit candidates from directly asking potential donors for campaign cash. Instead, judicial candidates establish committees that solicit contributions on their behalf. Many of these states adopted the approach of the American Bar Association's model judicial ethics rules.<sup>3</sup> These rules impose limits on political activities, including the personal solicitation or acceptance of campaign contributions.

The North Carolina legislature should prohibit judicial candidates from personally asking for campaign contributions. The vast majority of states with judicial elections ban personal solicitation due to the risk that the public will perceive judges as beholden to campaign donors.

The bans on personal solicitation have received support from judges across the political spectrum. For example, Justice Ruth Bader Ginsburg and Chief Justice John Roberts both joined the U.S. Supreme Court's 2015 decision to uphold Florida's ban on personal solicitation. Roberts wrote the decision and emphasized that "judges are not politicians." Roberts said, "Judges, charged with exercising strict neutrality and independence, cannot supplicate campaign donors without diminishing public confidence in judicial integrity." He discussed the pressure that lawyers could feel to contribute when "the same person who signed the fundraising letter might one day sign the judgment" in their case.<sup>4</sup>

In upholding Florida's ban, the Court noted judicial candidates are "free to discuss any issue with any person at any time," including through letters, speeches, billboards, and in person. The only thing they cannot say is, "Please give me money."

2. Strengthen conflict-of-interest rules. North Carolina's judicial ethics rules require each judge to sit out all cases "in which the judge's impartiality may reasonably be questioned."<sup>5</sup> In other words, anytime there's a "reasonable question" about potential bias, the judge shouldn't hear the case. But when it comes to the state Supreme Court, the justices themselves decide when the rules require them to sit out a case.

Legislators can pass a law ensuring that requests to sit out a case due to a conflict of interest receive fair and independent consideration. Most importantly, requests for a justice's recusal should be independently reviewed. In other words, someone besides the challenged justice should get to decide whether recusal is appropriate.

Fifteen states allow for independent review of motions to recuse supreme court justices, including Texas, Tennessee, Georgia, Louisiana, and Mississippi.<sup>6</sup> The states have different processes for handling recusal requests. If a party asks a justice of the Texas Supreme Court to step aside, the justice must either remove themselves from the case or submit the matter to the remaining justices.<sup>7</sup> In Alaska, anytime a justice denies a request for their recusal, the request is transferred to the rest of the justices for a final decision.<sup>8</sup>

3. Independent consideration of ethics complaints. For decades, the N.C. Judicial Standards Commission investigated ethics complaints against justices of the state Supreme Court, and a panel of N.C. Court of Appeals judges determined whether the justices violated their ethical obligations. But in 2013, the legislature changed this system to give the state Supreme Court the sole power to decide when judges violated ethics rules.<sup>9</sup> The bill overturned a system that had been unanimously approved by the high court. The justices themselves now decide whether a member of the court violated ethics rules. And unless the court decides to impose a sanction, the process isn't public.<sup>10</sup>

Judge John Martin, who led the commission that regulates judicial ethics, warned lawmakers that the changes would impair the enforcement of ethics rules. "It will create potential conflicts of interest within our judiciary and muddle the transparency and availability of public records related to judicial misconduct," Martin warned. Then-Rep. Rick Glazier (D) warned that the new system threatened "the integrity of the judicial system of the state of North Carolina, and we owe a higher obligation to ourselves and our state than to our politics."<sup>11</sup>

Legislators should repeal the 2013 change and reinstitute the three-judge panel to adjudicate ethics complaints against high court justices. Justices shouldn't be asked to police the ethics of their colleagues.

4. Require attorneys and parties to disclose campaign contributions. In order for conflict-of-interest rules to be effective, lawyers or parties before a judge must be aware of conflicts of interest. Weak disclosure rules make it difficult to know when a lawyer or a party before a judge has spent money to support them. The legislature can pass a law requiring attorneys and parties to disclose this information.

North Carolina law can require attorneys and parties before a judge to file a disclosure affidavit listing any of their campaign contributions, independent expenditures, or contributions to independent spenders to benefit the judge. These disclosures could resemble those that corporations must make in federal court about corporate relationships that may not be immediately apparent.

The Brennan Center for Justice recommends imposing "rigorous disclosure standards on litigants and their counsel" to ensure that judicial ethics rules can prevent conflicts of interest. In a 2011 report, the group provided recommended language for a disclosure affidavit.<sup>12</sup>

– **Billy Corriher, Institute for Southern Studies**

# CREATE A GUBERNATORIAL JUDICIAL NOMINATING SYSTEM FOR VACANCIES

## BACKGROUND

While North Carolina elects judges, appointments are still important. When a judge steps down in the middle of their term, the state constitution empowers the governor to unilaterally fill the vacancy, and many judges first reach the bench via this appointment process. In the 22 states that use contested judicial elections, 45 percent of judges first reached the bench through an appointment.<sup>1</sup> Four of North Carolina's 15 Court of Appeals judges were appointed before running in an election. These appointments have a lasting impact on state law.

North Carolina can take steps toward de-politicizing the judiciary by creating a judicial nominating commission that includes members appointed by all three branches of government. The state's courts have been caught in a political tug-of-war in recent years. A new system for choosing judges could give other elected officials, in addition to the governor, a role in filling vacant judicial seats. And it would ensure that diverse, well-qualified judges reach the bench.

Despite recent progress, North Carolina's courts do not reflect the public they serve. A 2016 study found that North Carolina ranked 37 out of 50 states in terms of how well the bench reflects the racial and gender demographics of the state. While women of color comprise 19 percent of the state population, for example, they made up only 9 percent of judges.<sup>2</sup>

At the highest levels, the bench needs diverse voices and perspectives. For example, the state's most powerful courts lack crucial professional diversity — none of the state's 22 appellate judges has spent time as a public defender.

These perspectives both inform the courts' decisions and are crucial to ensuring the courts are legitimate in the public's eye. While people of color make up 40 percent of the states' population, only two justices of color serve on the seven-member state Supreme Court, and as recently as 2016 the court had only one justice of color.

## RECOMMENDATIONS

A nominating commission with diverse members, empowered to evaluate and recommend judges to the governor, can ensure that governors use their appointment power to build a bench that reflects the public it serves and includes key perspectives. A nominating commission can make the process more transparent and less susceptible to special interests. Thirty-four states and the District of Columbia already use a nominating commission to select at least some of their highest judges.<sup>3</sup>

But the devil is in the details. A poorly designed nominating commission can give the illusion of independence to a selection process that is actually politicized and no more likely to build a more representative bench.

A nominating commission that improves judicial selection in North Carolina should have:

- A meaningful role in the selection process. The nominating commission should be empowered to vet and recommend a short list of applicants to the governor. The commission should be authorized to conduct affirmative outreach to build a more diverse applicant pool, instructed to prioritize diversity, and required to collect demographic data on its applicant pool. Whether the legislature opts to establish a commission by statute or constitutional amendment may determine whether the list is binding, requiring the governor to choose one of the recommended candidates, or merely advisory, leaving the governor the authority to choose from outside the list if they deem it necessary.

- Diffuse appointment power. Dispersing the power to appoint commissioners will ensure the commission is not just an extension of the governor's existing power or dominated by the institutional interests of the legislature. No single person or body (the governor or legislature, for example) should appoint a majority of nominating commissioners. The state bar association and the judicial branch are key voices, though elected officials may appoint a majority of commissioners to ensure democratic input and accountability.
- Bipartisan membership. To avoid single party dominance, representation by both major parties and independents can be achieved by establishing caps on party membership, or by having an application and screening process for commissioners that includes consideration of party affiliation.
- Measures to ensure representation of underrepresented groups. A model nominating commission will have many relevant perspectives at the table. Yet our research shows that when there are no guarantees of professional diversity authorities predominantly appoint lawyers representing powerful financial interests. Appointing authorities should be required to consider race, gender, sexual orientation, and other demographic factors in selecting commissioners. Affinity bar associations and professional associations for key interests, such as public defenders and family law attorneys, for example, should have the power to appoint commissioners. To counter the legal community's self-interest, non-lawyers should comprise a substantial portion of the commission.
- Transparency measures. Because a nominating commission will be unelected and have significant power in the judicial selection process, the commission structure and rules must foster public confidence. There should be an open application process through which the public can apply to be commissioners. Commissioners should serve staggered terms, with term limits, to preserve institutional memory and prevent the formation of voting blocs.

Many states implement some of the elements discussed above, though no state has incorporated all of these best practices. By adopting an exemplary commission, North Carolina can both guarantee the quality of its judicial branch for years to come and serve as a model for the nation.

*– Douglas Keith, Brennan Center for Justice*

## CONTACTS

**Benjamin Barber** is a research associate at the Institute for Southern Studies in Durham, North Carolina.  
*Ben@southernstudies.org*

**Marcus Bass** is the deputy executive director of the North Carolina Black Alliance in Raleigh, North Carolina.  
*Marcus@ncblackalliance.org*

**Mitchell Brown** is the Equal Justice Works fellow at the Southern Coalition for Social Justice in Durham, North Carolina.  
*MitchellBrown@scsj.org*

**Billy Corriher** is a researcher and writer at the Institute for Southern Studies in Durham, North Carolina.  
*Billy@southernstudies.org*

**Jay Costa** is the executive director of Voters Right to Know in San Francisco, California.  
*Jay@votersrighttoknow.org*

**Corye Dunn** is the director of public policy at Disability Rights North Carolina in Raleigh, North Carolina.  
*Corye.Dunn@disabilityrightsnc.org*

**Alissa Ellis** is the advocacy director at Democracy North Carolina in Morrisville, North Carolina.  
*AlissaEllis@democracync.org*

**Caroline Fry** is the Voter Protection Project manager for Democracy North Carolina in Morrisville, North Carolina.  
*Caroline@democracync.org*

**Nadia Innab** is an undergraduate in the Hart Leadership Program at Duke University.  
*Nadia.Innab@gmail.com*

**Caleb Jackson** is a voting rights attorney at the Campaign Legal Center in Washington, D.C.  
*CJackson@campaignlegalcenter.org*

**Katelin Kaiser** is a voting rights legal fellow at Southern Coalition for Social Justice in Durham, North Carolina.  
*Katelin@scsj.org*

**Douglas Keith** is counsel in the Democracy Program at the Brennan Center for Justice in New York, New York.  
*KeithD@brennan.law.nyu.edu*

**Anna Klingensmith** is an undergraduate in the Hart Leadership Program at Duke University.  
*Anna.Klingensmith@gmail.com*

**Chris Kromm** is the executive director of the Institute for Southern Studies in Durham, North Carolina.  
*Chris@southernstudies.org*

**Melissa Price Kromm** is the director of North Carolina Voters for Clean Elections in Raleigh, North Carolina.  
*Melissa@ncvce.org*

**Danielle Lang** is director of the voting rights program at the Campaign Legal Center in Washington, D.C.  
*DLang@campaignlegalcenter.org*

**Tomas Lopez** is the executive director of Democracy North Carolina in Morrisville, North Carolina.  
*Tomas@democracync.org*

**Aaron McKean** is the legal counsel of state and local reform at the Campaign Legal Center in Washington, D.C.  
*AMcKean@campaignlegalcenter.org*

**Gino Nuzzolillo** is a policy fellow at Democracy North Carolina in Morrisville, North Carolina.  
*Gino@democracync.org*

**Bob Phillips** is the executive director of Common Cause North Carolina in Raleigh, North Carolina.  
*BPhillips@commoncause.org*

**Sabine Schoenbach** is the policy analyst at the Southern Coalition for Social Justice in Durham, North Carolina.  
*Sabine@scsj.org*

**La'Meshia Whittington-Kaminski** is the campaigns director of the North Carolina Black Alliance in Raleigh, North Carolina.  
*LaMeshia@ncblackalliance.org*

# ENDNOTES

## SECTION I: IMPROVE VOTER REGISTRATION AND LIST MAINTENANCE

### EXPAND ELECTION-DAY VOTER REGISTRATION

1. "Voting and Registration in the Election of November 2018," United States Census Bureau, April 2019.
2. Katherine Fung, "Around 11,000 North Carolina Voters Mailed Voter Registration Forms With Incorrect Information as Election Approaches," Newsweek, October 6, 2020.
3. Chris Cooper, "Five Take-Aways from North Carolina's 2020 Same-Day Registrations," Old North State Politics, November 2, 2020.
4. "Same Day Voter Registration," National Conference of State Legislatures, October 6, 2020.
5. Nonprofit VOTE, "America Goes to the Polls," March 2019.

### IMPROVE ONLINE VOTER REGISTRATION

1. "Online Voter Registration," National Conference of State Legislatures, October 22, 2020.
2. "Online Voter Registration: Trends in Development and Implementation," The Pew Charitable Trusts, May 2015.
3. "NVRA Registration Statistics," N.C. State Board of Elections, accessed March 26, 2021.
4. Alabama Secretary of State website, accessed February 4, 2021.

### IMPLEMENT AUTOMATIC VOTER REGISTRATION

1. "Automatic Voter Registration, Table 2: States That Have Enacted Automatic Voter Registration," National Conference of State Legislatures, last accessed December 7, 2020.
2. Rob Griffin, et al., "Who Votes With Automatic Voter Registration? Impact Analysis of Oregon's First-in-the-Nation Program," Center for American Progress, June 7, 2017.
3. Mark Niesse, "Automatic Registration Leads to Surge of New Georgia Voters," Atlanta Journal-Constitution, April 29, 2019.
4. Nathaniel Rakich, "What Happened When 2.2 Million People Were Automatically Registered To Vote," FiveThirtyEight, October 10, 2019.
5. Steve LeBlanc, "Advocates Push Automatic Voter Registration in Massachusetts," Boston.com, November 11, 2017.
6. Henry Kraemer, et al., "Millennial Voters Win With Automatic Voter Registration," Center for American Progress, July 19, 2017.
7. N.C.G.S. § 163A-871.
8. "Voter Search," North Carolina State Board of Elections.
9. N.C.G.S. § 15C-4.
10. Address Confidentiality Program, North Carolina Department of Justice, last accessed April 7, 2021.
11. N.C.G.S. § 163-275(1).

### VOTER REGISTRATION LIST MAINTENANCE: STOP ERRONEOUS VOTER PURGES

1. Kevin Morris, "Who votes after their registration is cancelled? Evidence from North Carolina," Brennan Center for Justice, June 22, 2020.
2. H.R. 1, For the People Act of 2021, Subtitle F.
3. H.R. 1, For the People Act of 2021, Part 4.
4. Brennan Doherty, "A look at provisional ballots in North Carolina," Carolina Public Press, January 20, 2021.
5. N.C.G.S. § 163-85(e).
6. North Carolina NAACP v. Board of Elections, No. 1:16CV1274 (N.C. Super. Ct. Nov. 4, 2016); Jonathan Drew and Martha Waggoner, "Judge: North Carolina Voter Challenge Process Seems Insane," Associated Press, November 2, 2016.

### JOIN NATIONAL ERIC VOTER DATABASE

1. "State-To-State Migration Flows," United States Census Bureau, November 12, 2020.
2. See "The National Voter Registration Act of 1993 (NVRA)," United States Department of Justice, accessed February 1, 2021.
3. Electronic Registration Information Center website, accessed February 1, 2021.
4. Christopher Ingraham, "This Anti-Voter-Fraud Program Gets It Wrong 99 Percent of the Time. The GOP Wants to Take It Nationwide," The Washington Post, July 20, 2017.
5. Roxana Hegeman, "Multistate Voter Database Suspended in Lawsuit Settlement," Associated Press, December 10, 2019.
6. Electronic Registration Information Center website, op. cit.

### EXPAND REGISTRATION AND ELIGIBILITY FOR DISPLACED VOTERS

1. North Carolina State Board of Elections, April 2021.
2. Vann R. Newkirk II, "Hurricane Matthew's Voting-Rights Challenge," The Atlantic, October 12, 2016; Sue Sturgis, "Protecting Voting Rights After Hurricane Florence," Facing South, October 9, 2018.

## SECTION II: ENSURE VOTING ACCESS AND PROTECT VOTING RIGHTS

### INCREASE STUDENT ACCESS TO VOTING

1. Jeremy Bauer-Wolf, "Massive Surge in Student Voting," Inside Higher Ed, September 20, 2019.
2. Madeline Pace, "Here's What Students Need to Know About Voting in the Primary Election," UNC-Chapel Hill Communications, February 7, 2020.
3. Emily Brandon, "Why Older Citizens Are More Likely to Vote," U.S. News & World Report, October 5, 2020.
4. Pace, op. cit.

### RESTORE VOTING RIGHTS TO THOSE WITH FELONY RECORDS

1. Cristina Becker, "Court Fines and Fees: Another Barrier to North Carolina's Ballot Box," NC Policy Watch, May 9, 2017.
2. Community Success Initiative v. Moore, No. 19-cv-15941 (N.C. Super. Ct. July 16, 2020).

3. Becker, op. cit.
4. Ibid.
5. Ibid.
6. Merrit Kennedy, "ACLU Sues Over Florida Law That Requires Felons To Pay Fees, Fines Before Voting," National Public Radio, July 1, 2019.
7. North Carolina Conference of District Attorneys, Letter to Former Chief Investigator Joan Fleming, August 22, 2017; Jack Healy, "Arrested, Jailed and Charged with a Felony. For Voting," New York Times, August 2, 2018.
8. Ibid.; Sam Levine, "A Black Woman Faces Prison Because of a Jim Crow-Era Plan to 'Protect White Voters,'" The Guardian, December 16, 2019.
9. Nevada Assembly Bill 431, 2019. Colorado House Bill 19-1266, 2019.

## MAKE ELECTION DAY A HOLIDAY

1. Drew Desilver, "In Past Elections, U.S. Trailed Most Developed Nations in Voter Turnout," Pew Research Center, November 3, 2021.
2. "2020 November General Election Turnout Rates," United States Election Project, December 7, 2020.
3. Gustavo Lopez and Antonio Flores, "Dislike of Candidates or Campaign Issues Was Most Common Reason for Not Voting in 2016," Pew Research Center, June 1, 2017.
4. Drew Desilver, "Turnout Soared in 2020 as Nearly Two-thirds of Eligible U.S. Voters Cast Ballots for President," Pew Research Center, January 28, 2021.
5. Cameron Joseph, "The US Eliminated Nearly 21,000 Election Day Polling Locations for 2020," Vice News October 22, 2020.
6. Hannah Klain, Kevin Morris, Max Feldman, and Rebecca Ayala, "Waiting to Vote: Racial Disparities in Election Day Experiences," Brennan Center for Justice, June 3, 2020.
7. "The Great Service Divide: Occupational Segregation Inequality, and the Promise of a Living Wage in the Seattle Restaurant Industry," Restaurant Opportunities Centers United, July 2020.
8. "State Laws on Voting Rights/Time Off to Vote," Workplace Fairness, accessed February 16, 2021.

## ADDRESS VOTER INTIMIDATION

1. "CMPD: Armed Man Arrested for Trespassing at Polling Place," WCNC, November 3, 2020.
2. Erik Ortiz, "Voter Intimidation Lawsuit Filed After Police Use Pepper-Spray at North Carolina March," NBC News, November 30, 2020.
3. Eli Rosenberg, "Republicans Attack Jewish Candidates Across the U.S. with an Age-Old Caricature: Fistfuls of Cash," The Washington Post, November 6, 2018.
4. Thomas McDonald, "Franklin County Poll Worker Removed Amid Allegations of Voter Intimidation," The News & Observer, October 21, 2018.
5. Jeff Tiberii, "Rural Montgomery County In Confederate Flag Flap," WUNC, September 23, 2016.
6. North Carolina State Board of Elections Numbered Memo 20122-6, October 29, 2012.
7. Lynn Bonner, "NC Candidate and Campaign Manager Accused of Trying to Intimidate Voters," The News & Observer, October 25, 2018.
8. Nick Ochsner, "Investigators Suspect Republican Group Called N.C. Voters Spreading Misinformation," WBTV, October 28, 2020.
9. Kimberly Johnson, "Live NC Election Updates: Robo Calls, Intimidation Complaints," Patch, November 2, 2020.
10. 18 U.S. Code § 594.
11. 52 U.S. Code § 10101(b).
12. 42 U.S. Code § 1985.
13. 18 U.S. Code § 594.
14. 52 U.S. Code § 20511.
15. N.C.G.S. § 163-166.4.
16. N.C.G.S. § 163-271,275.
17. N.C.G.S. § 163-48.
18. Ibid.
19. "2.8.2: Person Permitted Inside Voting Enclosure," North Carolina State Board of Elections.
20. Richard Stradling, "Citing Potential Intimidation, N.C. Elections Board Forbids Stationing Police at Polls," The News & Observer, October 13, 2020.
21. N.C.G.S. § 163-48.
22. Stradling, op. cit.
23. Isaac Groves, "Alamance Commissioners OK \$2.8M ICE Jail Upgrades," Times News, January 23, 2019; Emma Dill, "Wilmington Police Officers Fired for Racist Comments," Wilmington Star, December 27, 2020; Colleen Quigley, "Racial Bias 'Deeply Entrenched' in Apex Police's Culture, Report Says," CBS 17, February 25, 2021.
24. N.C.G.S. § 163-275.
25. N.C.G.S. § 163-291, 293-294.

## SECTION III: STRENGTHEN LOCAL ELECTION INFRASTRUCTURE

### ENSURE ADEQUATE RESOURCES FOR LOCAL ELECTIONS

1. The North Carolina State Board of Elections does not collect data on the expenditures of each county board of elections in North Carolina. This is an area for additional research and data collection. For more on national trends, see National Conference of State Legislatures, "Election Costs: What States Pay," August 3, 2018.
2. "CARES Act Request and Clarification to Recommendations to Address Election Related Issues Affected by COVID-19," North Carolina State Board of Elections, April 22, 2020.
3. "2020 in Review: 20 Ways Election Officials Served Voters in 2020," North Carolina State Board of Elections, December 22, 2020.
4. "CARES Act Request," op. cit.
5. Ibid.
6. "Emergency Order of July 17, 2020, Numbered memo 2020-14," North Carolina State Board of Elections, July 17, 2020.
7. "2020 Coronavirus Aid, Relief, and Economic Security ('CARES') Act Funds & 2020 Help America Vote Act (HAVA) Funds – Election Administration Preparedness for 2020 Federal Elections," North Carolina State Board of Elections, July 15, 2020.
8. Ibid.
9. Ibid.
10. "CARES Act Request," op. cit.
11. Ibid.

12. University of Southern California Schwarzenegger Institute, "Grant Recipients: 2020."
13. "CTCL Program Awards Over 2,500 COVID-19 Response Grants," Center for Tech and Civic Life, October 29, 2020.
14. "ZSR Awards \$50,000 Grant to Forsyth County Board of Elections to Support Fair and Safe Elections," Z. Smith Reynolds Foundation, October 8, 2020.
15. The following North Carolina counties applied for and received CTCL grants for the 2020 general election: Alamance, Alleghany, Beaufort, Brunswick, Buncombe, Camden, Catawba, Clay, Craven, Durham, Edgecombe, Graham, Guilford, Harnett, Hoke, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, McDowell, Mitchell, Moore, Orange, Pamlico, Randolph, Stanly, Surry, Swain, Wake, Warren, Watauga, Wilkes, and Yancey. The following North Carolina counties received Democracy Grants for Voting Access & Election Administration from the Arnold Schwarzenegger Institute: Hertford, Graham, Greene, Haywood, Jackson, McDowell, Onslow, Surry, Swain, and Warren.

#### IMPROVE HUMAN RESOURCES AND STAFFING

1. "Numbered Memo 2020-30 Conduct at the Polls for the 2020 General Elections," North Carolina State Board of Elections, revised October 12, 2020.

#### ENSURE TECHNICAL ASSISTANCE AND RULES CLARITY FOR LOCAL ELECTION OFFICIALS

1. "Emergency Powers of Executive Director," 08 NCAC 01 .0106, March 20, 2020. "Emergency Powers of Executive Director," 08 NCAC 01 .0106, June 18, 2020.
2. "Section on Legal Resources, Numbered Memos," North Carolina State Board of Elections, last visited February 5, 2021.
3. Internal Reports for County Board of Elections Monitoring Program, Democracy NC, unpublished, 2020. Additional information available upon request at info@democracync.org.
4. Coronavirus Aid, Relief, and Economic Security (or CARES) Act of 2020, Pub. L. No. 116-136, 134 Stat. 281; Help America Vote Act (or HAVA) of 2002, Pub. L. No. 107-252, 116 Stat. 1666.
5. CARES (2020). 134 Stat. 300.
6. Democracy NC op cit.
7. Bipartisan Elections Act of 2020, NC SL 2020-17, House Bill 1169.
8. "Numbered Memo 2020-19 Absentee Container Return Envelope Deficiencies," North Carolina State Board of Elections, August 21, 2020, revised September 22 and October 17.
9. Democracy N.C. v. N.C. State Bd. of Elections, No. 20-CV-457 (M.D.N.C. Oct. 30, 2020); N.C. Alliance for Retired Americans (AARP) v. N.C. State Bd. of Elections, No. 20-CVS-8881 (N.C. Sup. Ct.).
10. Ibid. at 25.
11. NC AARP, No. 20-CVS-8881.
12. Democracy NC, No. 20-cv-457.
13. Ibid. at 30.
14. Democracy NC advocated for expanded early voting as litigants and in a letter to the NCSBE on April 20, 2020.
15. "2020 Year End Wrap Up," North Carolina State Board of Elections.

#### PROMOTE ACCESS AND TRANSPARENCY

1. Kate Martin, "Pandemic pulls shades over public's window onto NC local government," Carolina Public Press, August 13, 2020.
2. Democracy NC proffered recommendations to the NCSBE regarding safely conducting elections during the pandemic. Democracy NC to N.C. State Board of Elections, "Re: Recommendations for ensuring election continuity and voting access while responding to COVID-19," March 19, 2020.
3. NCGS § 143-318.10.
4. "Coronavirus (COVID-19) Response," North Carolina State Board of Elections press release, March 15, 2020.
5. Qualitative data provided from Democracy North Carolina's County Board of Election Monitoring program from April - November, 2020. To access the complete data sets please contact info@democracync.org.
6. Ibid.
7. N.C.G.S. § 143-318.10.
8. Ibid. At 20.

### SECTION IV: PROMOTE FAIR REDISTRICTING AND EQUAL REPRESENTATION

#### DRAW FAIR MAPS: REDISTRICTING REFORM

1. Common Cause v. Lewis, No. 18 CVS 014001 (N.C. Sup. Ct. 2019).
2. "Trump Trails Leading Democrats in North Carolina," Public Policy Polling press release, October 9, 2019.
3. S.B. 673 (2019).
4. H.B. 437 (2021).

#### REFORM THE ELECTORAL COLLEGE: POPULAR VOTE BY STATE COMPACT

1. S.B. 954 (2007).
2. S.B. 104 (2019).

### SECTION V: HEIGHTEN TRANSPARENCY AND COMBAT CORRUPTION

#### BROADEN DISCLOSURE LAWS AND ENCOURAGE GOOD GOVERNMENT

1. H.B. 700 (2019).
2. H.B. 919 (2013).
3. New York State Board of Elections, "Independent Expenditure Committees."
4. H.B. 318 (2021).
5. H.B. 341 (2019).

## STRENGTHEN COORDINATION LAWS

1. 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20.
2. N.C.G.S. § 163-278.
3. See, e.g., Mike Spies, "The Mystery Firm that Became the NRA's Top Election Consultant," Politico, July 13, 2018.
4. This is explicitly permitted in North Carolina. N.C.G.S. § 163-278(20).
5. See, e.g., R.I. Gen. Laws § 17-25-23(3) and N.Y. Elec. Law § 14- 107(1)(d)(i).
6. See, e.g., Cal. Code Regs. tit. 2, § 18225.7(d)(5) and Alaska Admin. Code tit. 2, § 50.405(5)(B)(ii).
7. See, e.g., Ariz. Rev. Stat. § 16-922(B)(2); 970 Mass. Code. Regs. 2.21(6)(d); and Mont. Admin. R. 44.11.602(2)(a).
8. See, e.g., Alaska Admin. Code tit. 2, § 50.405(5)(B)(ii); Ariz. Rev. Stat. § 16-922(C)(1); Conn. Gen. Stat. § 9-601c(b)(4); and Mont. Admin. R. 44.11.602(2)(c).
9. See, e.g., Mont. Admin. R. 44.11.602(2)(d) and Conn. Gen. Stat. 9-601c(b)(3).
10. See, e.g., Ariz. Rev. Stat. § 16-922(D)(1) and Cal. Code Regs. tit. 2, § 18225.7(d)(5).

## ENSURE A VOTER'S RIGHT TO KNOW ABOUT MONEY BEHIND ELECTIONS

1. Citizens United v. Federal Election Commission, 558 U.S. 310 (2010).
2. Frank Bass, "'Dark Money' Groups More Likely to Sponsor Attack Ads," MapLight, August 17, 2016.
3. Daniel Chand, "'Dark Money' and 'Dirty Politics': Are Anonymous Ads More Negative?," Business and Politics, April 18, 2017.
4. Joseph Biden and Michael Carpenter, "Foreign Dark Money is Threatening American Democracy," Politico Magazine, November 27, 2018.
5. Frank Kracher, "Big money in play for North Carolina U.S. Senate Race," ABC 13 News, October, 16, 2020.
6. Jane Mayer, "State for Sale," The New Yorker, October 3, 2011.
7. "Dark Money Funded Political Activism Masquerades as Journalism," North State Journal, July 22, 2020.

## EXPAND OPPORTUNITY WITH VOTER-OWNED ELECTIONS

1. Qualitative data retrieved from North Carolina State Board of Elections website. To access the complete data sets, please contact info@ncvce.org.
2. Bradley Jones, "Most Americans Want to Limit Campaign Spending, Say Big Donors Have Greater Political Influence," Pew Research Center, May 8, 2018.
3. See Mark Schmitt, "Political Opportunity: A New Framework for Democratic Reform," Brennan Center for Justice and New America Foundation, 2015.
4. Chris Kromm, "How Art Pope Killed Clean Elections for Judges in North Carolina," Facing South, June 13, 2013.
5. Tracy Weston, "Public Financing of Elections: Where to Get the Money?" Center for Governmental Studies, July 2003.
6. H.B. 621 (2015).
7. H.B. 737 (2015).
8. H.B. 1517 (2007).
9. Maine Citizens for Clean Elections, "The Maine Clean Elections Act."

## OVERTURN CITIZENS UNITED

1. "Total Outside Spending By Election Cycle, Excluding Party Committees," OpenSecrets website, accessed March 15, 2020.
2. Virginia HJ 599, "Commending the Virginia Chapter of American Process and Take Back Our Republic," January 2021.
3. United for the People website.

## SECTION VI: ENSURE FAIR AND IMPARTIAL COURTS

### RETURN TO NONPARTISAN JUDICIAL ELECTIONS

1. "Judicial Selection: An Interactive Map," Brennan Center for Justice, website accessed March 15, 2021.

### REFORM JUDICIAL ETHICS RULES TO MINIMIZE THE ROLE OF WEALTHY DONORS

1. Patrick Berry, Douglas Keith, and Eric Velasco, "The Politics of Judicial Elections, 2017-18," Brennan Center for Justice, December 11, 2019.
2. James Oliphant, "When Judges Go Courting," National Journal, October 18, 2014; Billy Corriher, "NC Must Help Affirm that Judges are Not Politicians," The News & Observer, May 4, 2015.
3. "Model Code of Judicial Conduct," American Bar Association, Canon 4.
4. Williams-Yulee v. Florida Bar, 135 S.Ct. 1656 (2015).
5. The North Carolina Code of Judicial Conduct, February 12, 2021.
6. Matthew Menendez and Dorothy Samuels, "Judicial Recusal Reform: Towards Independent Consideration of Disqualification," The Brennan Center for Justice, 2016.
7. Texas Rules of Appellate Procedure, Rule 16.3(b).
8. A.S. § 22.20.020(c).
9. H.B. 652 (2013).
10. Sharon McCloskey, "Behind Closed Doors: North Carolina Creates a 'Star Chamber' for Wayward Judges," NC Policy Watch, July 31, 2013.
11. Ibid.
12. Andrew Wilver and Adam Skaggs, "Promoting Fair and Impartial Courts Through Recusal Reform," The Brennan Center for Justice, August 7, 2011.

### CREATE A GUBERNATORIAL JUDICIAL NOMINATING SYSTEM FOR VACANCIES

1. Kate Berry and Cathleen Lisk, "Appointed and Advantaged," The Brennan Center for Justice, May 5, 2017.
2. "The Gavel Gap," American Constitution Society; Cathleen Lisk, "The 'Gavel Gap,' America's Judges Don't Look Like Its People," The Brennan Center for Justice, July 1, 2016.
3. "Judicial Selection: An Interactive Map," The Brennan Center for Justice.

# BRENNAN CENTER FOR JUSTICE

CLC  
ADVANCING  
DEMOCRACY  
THROUGH LAW



NCCE

