

Fact Sheet: The Truth about the State Board of Election's Work to Protect Voters During COVID-19

In *Democracy North Carolina v. State Board of Elections*, the Court held that the plaintiffs had demonstrated a likelihood of success that lack of a cure process for correcting material defects in absentee ballots, such as a signature mismatch or deficient witness information, violates the Due Process Clause of the U.S. Constitution.

The Court observed that when a ballot is rejected for a reason that is curable, like incomplete witness information or a signature mismatch, and the voter is not given notice or an opportunity to be heard on this deficiency, it is a deprivation of the right to vote and violates the Constitution.

Below are a series of claims that have been made about the SBOE's work:

FALSE CLAIM:

The actions in the proposed consent decree represent wholesale changes to NC elections laws that flout state law and court decisions.

TRUTH:

These proposed actions comply with a federal court order and respond to the coronavirus pandemic in a limited way that respects NC law.

The federal court ordered the State Board to create a cure process for absentee-ballot errors, including the witness requirement, which this settlement does.

The touchless handoff at ballot delivery requires the person delivering the absentee ballot to provide the same information as required by law – the person's name and relationship with the voter – as previously but orally rather than in writing. The pen remains with the elections official rather than going back and forth between the elections official and the voter.

All mail in ballots must be postmarked by November 3rd – just as before. But they will be counted if received by November 12, the date North Carolina law already permits for mail in ballots from servicemembers. This is in response to the USPS's communications that it cannot guarantee that a ballot postmarked on November 3rd will get to the county board of elections in time.

FALSE CLAIM:

These changes will allow anonymous drop boxes for ballot harvesters, which was at the heart of the Republican election fraud in the Congressional 9th election in 2018.

TRUTH:

There is no ballot harvesting. There are no anonymous drop boxes.

The person dropping off a ballot must still identify themselves and their relationship to the voter just as before but orally rather than in writing to reduce the risk of transmission of COVID-19 between the elections worker and the person.

None of the aspects of the proposed consent judgment change any of the laws passed after the 2018 investigation to prevent absentee ballot fraud. These laws will be enforced.

Unmanned drop boxes are NOT permitted.

The proposed consent judgment is designed to implement a federal court order and respond to the problems caused by COVID-19 in elections administration to ensure that every eligible North Carolinian's vote counts, not impact the results one way or another.

MYTH: The proposed consent decree allows for unmanned anonymous absentee drop boxes.

FACT: No early voting site or county board office may have unmanned drop boxes for absentee ballots. Every absentee ballot that is dropped off is logged by an elections official. The county board decides whether to approve a ballot in accordance with the factors specified in State Board agency regulations. None of these factors have been modified by the proposed consent decree.

FALSE CLAIM:

This settlement is a collusive deal among Democrats and the Board Members were not briefed about its details.

TRUTH:

The settlement was a response to a number of outstanding lawsuits concerning the administration of elections during a public health pandemic—lawsuits in which the Attorney General has actively defended, and is continuing to defend, the State Board of Elections.

The Board made a reasoned determination to settle some claims while rejecting others in order to achieve certainty and to structure the modifications in a manner consistent with law and secure administration of elections.

The decision by the Board was unanimous and bipartisan and made after lengthy deliberation, notwithstanding the revisionist history by the two Board members.

FALSE CLAIM:

This settlement eliminates the witness requirement.

TRUTH:

The settlement does NOT eliminate the witness requirement.

In response to the federal court order to allow a voter to cure a mail in ballot with errors, the settlement fulfills the purpose of the witness requirement – to confirm that the person voting the ballot is the right person. The cure process achieves this by having the actual voter later confirm that the ballot was his or hers.

FALSE CLAIM:

Allowing ballots to be counted that are postmarked by Election Day will enable fraud.

TRUTH:

The state already counts absentee ballots that arrive after 3 days after the election when they are mailed by service people.

While the vast majority of ballots postmarked on or before Election Day will arrive within three days of the election, federal courts have found that the operational changes made by USPS came "at the cost of service" and mail delivery has slowed down. *Mondaire v. USPS*, No. 20 CV 6516 (S.D.N.Y.) Decision and Order at 26. The voter can only control whether he or she mails the ballot by election day; he or she cannot control the post office. There is no reason to penalize a voter who met the statutory requirement by having ballot postmarked on or before Election Day when the elections administration already process ballots that arrive up to 9 days after the election.