

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION**

SELF ADVOCACY SOLUTIONS N.D.,
LEAGUE OF WOMEN VOTERS OF
NORTH DAKOTA, MARIA FALLON
ROMO,

Plaintiffs,

v.

ALVIN JAEGER, in his official capacity as
Secretary of State, DEBBIE NELSON, in her
official capacity as County Auditor of Grand
Forks County,

Defendants.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Case No. _____

Plaintiffs, by and through their undersigned attorneys, allege as follows:

INTRODUCTION

1. As the COVID-19 crisis stretches into its second month, it is becoming increasingly clear that this pandemic represents not only a threat to our health, but to the health of our democracy. Recognizing the danger of in-person voting, on March 26, 2020, Governor Burgum authorized upcoming elections be held entirely by mail, suspending the requirement that North Dakota counties offer at least one in-person polling location. To date, every county in North Dakota has embraced this safety measure and plans to conduct their June 9, 2020 elections exclusively by mail.

2. As more North Dakotans rely on absentee ballots to exercise their fundamental right to vote, however, they face a growing risk of being disenfranchised by North Dakota's error-prone signature matching verification process. Under this system, election officials must compare the

signature on a voter's absentee ballot with the one on the voter's absentee ballot application to determine whether the signatures "correspond." If the official—who is provided no training in signature verification or document examination—believes that the signatures do not match, the ballot is rejected and the vote is not counted. The voter is never informed their ballot is impaired or given an opportunity to resolve the issue and have their vote counted.

3. The State rejects hundreds of ballots cast by eligible North Dakota voters every election because of this unreliable ballot verification process, disproportionately disenfranchising voters prone to signature variability, specifically people with disabilities, non-native English speakers, and both young and elderly voters.

4. North Dakota's failure to inform these voters that their ballots are impaired or provide them any opportunity to cure the impairment deprives them of their fundamental right to vote in violation of the First and Fourteenth Amendments to the United States Constitution and of their right to due process of law in violation of the Fourteenth Amendment to the United States Constitution. Plaintiffs bring this action to prevent North Dakota from further disenfranchising eligible voters for benign signature issues before the upcoming June 9, 2020 state elections and future elections.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

6. This Court has personal jurisdiction over Defendants, who reside in this district, in their official capacities.

7. Venue lies in this district pursuant to 28 U.S.C. § 1391(b) and in the Eastern Division pursuant to Local Rule 1.1 because Plaintiff Romo resides in Grand Forks County,

Plaintiff Self Advocacy Solutions N.D. is based in Grand Forks County, and Plaintiff League of Women Voters of North Dakota is based in Cass County, all in this Division.

8. This Court has jurisdiction to grant both declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

PARTIES

Plaintiffs

9. Plaintiff Maria Fallon Romo is a Grand Forks, North Dakota resident and U.S. citizen. She has lived in Grand Forks for approximately thirty years. She has been an active voter for many years and votes regularly. Ms. Romo is a special education paraeducator.

10. Although Ms. Romo has typically voted in person, in 2018, Ms. Romo chose to vote by absentee ballot for the first time believing it would be easier and more convenient for her. She followed the instructions to submit the absentee ballot application, received her absentee ballot in the mail, and submitted her absentee ballot on October 16, 2018, well in advance of the deadline.

11. Since then, she has assumed that her vote was counted. It was not. Instead, because local election officials determined that her signatures did not “correspond,” her ballot was rejected without providing her any notice or opportunity to confirm her signature.

12. Ms. Romo was diagnosed with multiple sclerosis (“MS”) in 1997. As a result of her MS, it is difficult for her to write neatly or consistently. Difficulty with writing and changes in handwriting are common side effects of MS.

13. Ms. Romo did not know that a signature on her ballot application that did not “correspond” with the one provided on her ballot could invalidate her ballot, particularly without any notice to her beforehand. She only recently discovered that her 2018 ballot was not counted. She has reviewed her absentee ballot application and voter affidavit, and has confirmed that the

ballot reviewed by the Grand Forks election officials was her own. If she had received *any* notice of the alleged mismatched signature on her voter affidavit, she would have taken all steps necessary to confirm her signature and ensure her ballot was counted.

14. Ms. Romo wishes to vote in the June 9 election in North Dakota. In order to do so, she will have to vote by mail because Grand Forks, in light of the ongoing pandemic, has shifted to an exclusively vote-by-mail election. On June 9, in addition to the statewide primary contests, her city of Grand Forks is having an election for mayor. She also wishes to vote in future elections, and would likely do so by absentee ballot if she had some assurance her ballot would not be rejected without any notice or opportunity to cure.

15. Ms. Romo now fears that she will be disenfranchised yet again if she votes by mail and an election official determines that her signatures do not “correspond.”

16. Plaintiff Self Advocacy Solutions N.D. (“SAS”) is a nonprofit organization based in Grand Forks, North Dakota with members living across the state. SAS’s mission is to promote human and civil rights for people with disabilities. SAS empowers people with disabilities to advocate for their rights to ensure equal opportunities, access, and inclusion as full members of society. SAS encourages its members to exercise their right to vote in North Dakota elections, and has advocated for its members to vote by absentee ballot.

17. Many SAS members have disabilities that affect their ability to sign their name, and many SAS members’ signatures are not visually consistent across time as a result of their disability. As a result, SAS members are at particular risk of having their absentee ballot signatures deemed to not “correspond” with their absentee ballot applications.

18. Plaintiff League of Women Voters of North Dakota (“LWVND”) is a nonpartisan political organization based in Fargo, North Dakota with members living throughout the state.

LWVND's mission is to encourage informed and active participation in government, work to increase understanding of major public policy issues, and influence public policy through education and advocacy. LWVND is an affiliate of the League of Women Voters of the United States which has over 700 state and local Leagues across all 50 states, the District of Columbia, Puerto Rico, Virgin Islands, and Hong Kong.

19. LWVND conducts its activities through two local chapters, one serving the greater Fargo region and another serving Bismarck-Mandan. LWVND encourages its members and the public to exercise their right to vote in North Dakota elections. LWVND also educates its members and the public about how to vote by absentee ballot, at public meetings, online, and during programming on community access channels.

20. LWVND has members whose signatures may not be visually consistent over time, including elderly voters and voters with disabilities, who are at risk of having their absentee ballot signatures deemed not to "correspond" with their absentee ballot application.

Defendants

21. Defendant Alvin Jaeger is the North Dakota Secretary of State and is sued in his official capacity. The North Dakota Secretary of State is the State's supervisor of elections. The Office of the North Dakota Secretary of State is responsible for "supervis[ing] the conduct of elections," "implement[ing] uniform training programs for all election officials," "publish[ing] . . . a manual on election procedures," and "assur[ing] uniform voting opportunities throughout the state." N.D.C.C. §§ 16.1-01-01(1), (2)(a), (2)(c), (3).

22. Defendant Debbie Nelson is the County Auditor of Grand Forks County, North Dakota, and is sued in her official capacity. The County Auditor is the "county administrator of elections" and "is responsible to the secretary of state for the proper administration within the

auditor's county of state laws, rules, and regulations concerning election procedures." *Id.* § 16.1-01-01(4). Before each primary and general election, the County Auditor must conduct "training sessions on election laws and election procedures for election officials in the county," including all election board members and poll clerks. *Id.* § 16.1-05-03(2). The County Auditor must also sit on the county canvassing board, which makes the final determination on ballots rejected due to a signature mismatch. *Id.* § 16.1-15-15.

FACTS

Absentee and Mail Ballots are Crucial to Voter Access in North Dakota

23. The option to vote an absentee ballot has become a crucial means by which North Dakotans cast their ballots. All eligible voters in North Dakota may vote by absentee ballot. *Id.* § 16.1-07-01. In 2018, nearly thirty percent of all North Dakota voters cast their ballots via absentee ballot. Likewise, in 2016 and 2014, absentee ballots accounted for approximately one-fourth of ballots cast.

24. North Dakota has authorized counties to conduct elections by mail ballot so long as counties maintain one polling place open for in person voting on Election Day. *Id.* § 16.1-11.1-01. In such elections, the county auditor sends an application for a mail ballot to each voter listed in the Central Voter File. *Id.* § 16.1-11.1-02. Mail ballot elections largely follow the same rules and procedures as the ordinary absentee ballot process, including the form of application and ballot and the manner of verification of ballots. *Id.* §§ 16.1-11.1-01, *et seq.* Many North Dakota counties take advantage of this provision to conduct mail ballot elections with very limited in-person voting options.

25. During the national emergency due to the COVID-19 pandemic, voters' access to and confidence in mail ballots is crucial. In light of social distancing guidelines, in-person voting

at the same levels as ordinary elections will not be safe in upcoming elections, particularly for those most vulnerable to the virus.

26. On March 26, 2020, in response to the COVID-19 crisis, Governor Burgum authorized counties to conduct upcoming elections *solely* by mail by suspending the ordinary requirement that counties conducting mail ballot elections maintain at least one in-person polling location.¹ And to further encourage voting by mail, he ordered the Secretary of State to send mail ballot application forms, instructions, and a return envelope to all individuals listed in the state's Central Voter File. In his executive order, Governor Burgum also noted that 33 of North Dakota's 53 county commissions had authorized mail ballot elections, and strongly encouraged the remaining counties to follow suit.

27. As of April 23, all counties have authorized mail ballot elections for June 9.²

28. Grand Forks County, where Plaintiff Romo resides, will only offer absentee voting for the June 2020 primary, and will have no in-person voting option available.³

29. The Governor's executive order will remain in place "for the duration of the declared emergency." Even after the end of the "declared emergency," social distancing guidelines and precautions for those most vulnerable will remain of the utmost importance.

30. As such, elections in 2020 will see a substantial increase in vote by mail in North Dakota.

¹ The order requires counties to maintain at least one assistive ballot marking device in the county courthouse during normal hours of operation. Exec. Order 2020-13 (Mar. 26, 2020), <https://www.governor.nd.gov/sites/www/files/documents/executive-orders/Executive%20Order%202020-13%20Elections.pdf>.

² North Dakota Health, *North Dakotans to Receive Ballots by Mail for June Election* (Apr. 23, 2020), <https://www.health.nd.gov/news/north-dakotans-receive-ballots-mail-june-election>.

³ Grand Forks County Auditor, *June 9, 2020 Primary Election*, <http://gfcounty.nd.gov/sites/default/files/pdf/June%209%202020%20Primary%20Election.pdf> (last visited Apr. 24, 2020).

Absentee Voting Process in North Dakota

31. At any time in an election year, any qualified elector may apply—in person or via facsimile or electronic mail—for an absentee ballot. N.D.C.C. § 16.1-07-05(1). The applicant can choose to apply for all statewide elections in the calendar year or only the next proximate election. *Id.*

32. There is no deadline to apply for an absentee ballot, but it must be submitted “in a timely manner so as to allow the applicant to receive, complete, and mail the absentee ballot before the day of the election.” *Id.* § 16.1-07-05(3).

33. The absentee ballot application collects, *inter alia*, the following information: the applicant’s name, current residential address, mailing address, telephone number (if applicable), date of birth, and identification number from one of the applicant’s valid forms of identification. *Id.* § 16.1-07-06. Except where the applicant is unable to do so,⁴ the application must be signed by the applicant. *Id.*

34. Upon receipt of a valid and complete absentee ballot application, the appropriate election official—ordinarily the county auditor—must send or personally deliver the voter an absentee ballot along with a return envelope, secrecy envelope, and set of instructions. *Id.* § 16.1-07-07.

35. The return envelope for an absentee ballot includes a voter affidavit that requires the voter’s precinct, name, residential address, and voter’s signature. *Id.*

36. Absentee ballots must be postmarked by the day before Election Day *and* received before the county canvassing board meets on the sixth day after Election Day. *Id.* §§ 16.1-07-09,

⁴ In this case, the voter can place a mark on the application and a disinterested individual must sign as a witness to the application. *Id.* § 16.1-07-06(2).

16.1-15-17.

37. For absentee ballots received by the close of polls on Election Day, the election board members and poll clerks of the relevant precinct, or any designated absentee ballot precinct, must “compare the signature on the application for an absent voter’s ballot with the signature on the voter’s affidavit . . . to ensure the signatures correspond.” *Id.* § 16.1-07-12. The statute provides no instruction or guidance for how to determine if the signatures “correspond.”

38. If the signatures do not “correspond,” “the vote may not be allowed” and the election inspector or election judge is instructed to mark the ballot as rejected and forward to the county canvassing board for a final determination. *Id.* §§ 16.1-07-12, 16.1-15-19. If the canvassing board agrees that the signatures do not “correspond,” the ballot is rejected. As a practical matter, this additional “check” by the canvassing board often provides no winnowing effect. For example, in Kidder County, seven ballots cast in the 2018 election were sent to the canvassing board for mismatched signatures; all of them were rejected by the canvassing board. In that election, the canvassing boards in at least three more counties—McKenzie, McLean, and Traill—also rejected every mismatched signature ballot sent to the canvassing board for a final determination.

39. For absentee ballots received after the close of polls on Election Day but received before the canvassing board meets, the ballots are forwarded to the canvassing board and if they are timely (i.e. postmarked by the day before Election Day), the canvassing board determines whether “the signatures on the absentee ballot application and the voter’s affidavit were signed by the same person before allowing the ballot to be tallied.” N.D.C.C. § 16.1-07-09. The statute provides no instruction or guidance for how to determine if the signatures “were signed by the same person.” *Id.* In 2018, the McLean County canvassing board declared 6 of the 52 late-arriving ballots—over ten percent—void due to alleged signature mismatch.

40. Defendant Jaeger’s Election Officials’ Manual provides no further guidance on the signature matching process. Indeed, the sum total of its guidance on this process is as follows: “Compare the signature on the application for the absentee ballot with the signature on the back of the absentee ballot envelope (the voter’s affidavit) to ensure the signatures match.” Ex. A (2018 Election Officials’ Manual).

41. Upon information and belief, election officials receive *no* training on signature matching, and the process is entirely unregulated from county to county. For example, training materials developed by McKenzie County simply instruct election officials to “compare signatures.”

42. Some county canvassing boards consider the voter’s “situation and history” in assessing signatures, leaving the voter’s ballot at the discretion and personal knowledge of the county canvassing board officials. For example, according to 2018 minutes of the Dickey County canvassing board, the board rejected two ballots outright for mismatched signatures, but for at least one other ballot, considered the “situation and history” of the voter, including the fact that the voter was “a long-term care resident that had signed on the application in June.” Because the board happened to know and recall extrinsic facts about that particular voter, the ballot was accepted.

43. When an absentee ballot is flagged due to any perceived signature “mismatch,” the election board and/or the canvassing board do not use the available contact information to notify the voter of the problem. Therefore, the voter is given no opportunity to confirm their signature and ensure their ballot is counted. Indeed, the voter is *never* notified of the rejection, even after the final canvassing.

44. Nothing on the absentee ballot application warns voters that the signature on the application must match the signature on their voter affidavit. *See* Ex. B (absentee ballot

application). Likewise, nothing on the voter affidavit warns the voter that their signature must “correspond” with their signature on the absentee ballot application in order for their ballot to count. *See* Ex. C (voter affidavit). Likewise, nothing in the Secretary of State’s instructions for absentee voting alerts voters to this disenfranchising danger. Ex. D (Secretary of State Absentee Voting Instructions).

North Dakota’s Flawed Signature Matching Procedure Deprives a Significant Number of Voters of Their Right to Vote and Procedural Due Process

45. Reliance on signature verification is an inherently flawed means of determining whether an absentee or mail ballot was fraudulently or inappropriately cast. No two signatures are identical, even if provided by the same signer. Indeed, courts and experts agree that a person’s signature will vary from one signing (i.e., the absentee ballot application) to another (i.e., the voter affidavit) for any number of intentional or unintentional reasons, including factors like age, change in physical or mental condition, disability, stress, and means of signing. *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 205 (D.N.H. 2018). Digital signatures or those provided with a stylus, for example, will often appear different from a “wet-ink” signature done by hand. But such to-be-expected variations are difficult to discern from fraudulent variations even for a trained and certified Forensic Document Examiner (“FDE”), especially where the reviewer has only two exemplars to compare.

46. This is particularly so for untrained and lay evaluators like election officials with no expertise in forensic handwriting analysis. Laypersons—as compared to FDEs—have a significantly higher rate of error in determining whether signatures are genuine. Lay elections officials are more likely than trained examiners to make an incorrect signature-comparison determination and are especially likely to incorrectly decide that the signatures do not “correspond.” According to one study, laypeople are more than 3 ½ times more likely than FDEs

to deem authentic signatures to be non-genuine.

47. As a result of this flawed process, year after year, election after election, hundreds of North Dakotans are disenfranchised without their knowledge. As described above, Plaintiff Romo is one such voter. Kourtney Culver is another such voter. Ms. Culver was born and raised in North Dakota and started voting in the state as soon as she turned 18. Although she has since moved out of state for work, in 2018, Ms. Culver was a North Dakota resident who attended school out-of-state. As such, she sought to vote by mail. She submitted an absentee ballot application, received her ballot, and returned it on time. But her vote was not counted. Ms. Culver did not discover that her vote did not count until this year. She has reviewed her absentee ballot application and voter affidavit and confirmed her signature on both.

48. In 2018, according to the Election Administration and Voting Survey (“EAC Survey”) conducted by the Election Assistance Commission,⁵ 334 North Dakota ballots were rejected for an alleged signature mismatch.⁶ This accounted for over 60 percent of *all* rejected absentee ballots. And rejection rates varied significantly across counties; while many reported no signature match issues and others rejected less than .25% of ballots for signature issues, Morton County rejected 1.14% of its absentee ballots for alleged signature mismatches, and Nelson County rejected 1.74% of its absentee ballots for alleged signature mismatches. *Id.*

49. It is not uncommon for elections in North Dakota to be decided by far fewer votes

⁵ The Election Administration Commission is a federal agency created by the Help America Vote Act in 2002. It is charged with, among other things, studying election issues and providing resources to states for election administration. It also conducts a biennial survey of all 50 states to collect data on their elections. *See About the U.S. EAC*, <http://eac.gov/about-the-useac>.

⁶ The EAC Survey is based on self-reported survey data from each county. Based on a comparison of county-level canvassing minutes in some counties to the EAC survey data, it appears that some of the reported survey data may be underinclusive. Therefore, these figures may underreport the actual number of votes affected.

than those rejected for signature match in the November 2018 election. In the same November 2018 election, Senate District 25 was decided by 21 votes; House District 43 was decided by 35 votes; House District 27 was decided by 189 votes;⁷ a Rolette County Commissioner race was decided by 31 votes;⁸ and a Grand Forks County Commissioner race was decided by 49 votes.⁹ In June 2018, a West Fargo School Board race was decided by fewer than *twenty* votes.¹⁰ In 2016, the Senate District 46 race was decided by fewer than *forty* votes.¹¹ Likewise, in 2004 and 1996, the statewide Commission of Agriculture election was decided by a mere 122 votes and 283 votes, respectively.¹²

CAUSES OF ACTION

Count I: Denial of Procedural Due Process in Violation of the Fourteenth Amendment, 42 U.S.C. § 1983

50. Plaintiffs reallege and incorporate by reference the allegations in the preceding paragraphs.

⁷ ND Voices, Official 2018 General Election Results, Legislative District Results (Dec. 11, 2019), <https://results.sos.nd.gov/resultsSW.aspx?text=Race&type=LG&map=DIST>.

⁸ ND Voices, Official 2018 General Election Results, Rolette County (Dec. 11, 2019), <https://results.sos.nd.gov/resultsSW.aspx?text=All&type=CTYSPEC&map=CTY&cty=40&name=Rolette>.

⁹ ND Voices, Official 2018 General Election Results, Grand Forks County (Dec. 11, 2019), <https://results.sos.nd.gov/resultsSW.aspx?text=All&type=CTYSPEC&map=CTY&cty=18&name=Grand%20Forks>.

¹⁰ Danielle Church, *West Fargo School Board Could Be Doing An Election Recount*, KVRr Local News (June 13, 2018), <https://www.kvrr.com/2018/06/13/west-fargo-school-board-could-be-doing-an-election-recount>.

¹¹ ND Voices, Official 2016 General Election Results, Legislative District Results (Nov. 18, 2016), <https://results.sos.nd.gov/ResultsSW.aspx?text=Race&type=LG&map=DIST&eid=292>.

¹² State Canvassing Board, *North Dakota's Official Abstract of Votes Cast at the General Election Held on November 2, 2004*, <https://vip.sos.nd.gov/pdfs/Abstracts%20by%20Year/2000%20through%202008%20Statewide%20Election%20Results/2004/General%20Election%2011-02-2004.pdf>; State Canvassing Board, *Official Abstract of Votes Cast at the General Election Held November 5, 1996*, <https://vip.sos.nd.gov/pdfs/Abstracts%20by%20Year/1990%20through%201998%20Statewide%20Election%20Results/1996/General%20Election%2011-05-1996.pdf>.

51. An individual has a liberty interest in the fundamental right to vote that is protected by the doctrine of procedural due process. *See, e.g., Cook v. Randolph Cty.*, 573 F.3d 1143, 1152 (11th Cir. 2009) (noting that “[t]he Constitution guarantees procedural and substantive due process when a liberty interest is at stake,” including “the right to vote”); *Barefoot v. City of Wilmington*, 306 F.3d 113, 124 n.5 (4th Cir. 2002) (“The right to vote . . . is certainly a protected liberty interest.”).

52. And North Dakotans have a statutorily protected liberty interest in voting by mail. *See Wilkinson v. Austin*, 545 U.S. 209, 221 (2005) (“A liberty interest may arise from the Constitution itself . . . or it may arise from an expectation or interest created by state laws or policies.”).

53. At an absolute minimum, where a protected interest is at stake, due process requires notice and the opportunity to be heard. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950) (“[T]here can be no doubt that at a minimum [Due Process] require[s] that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing.”).

54. And notice and opportunity to be heard must be *pre-deprivation*. *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53 (1993); *see also Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985).

55. That is particularly true when the deprivation will result in irreparably injury. *See Winegar v. Des Moines Indep. Comm. Sch. Dist.*, 20 F.3d 895, 901 (8th Cir. 1994); *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014); *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012).

56. North Dakota’s use of an inherently flawed system of signature verification to determine the validity of mail-in ballots without *any* notice or *any* opportunity to cure fails the

most basic requirements of procedural due process.

57. In order to determine how much process is due in any given situation, a court must consider and balance three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

58. Here, the "private interest" is nothing less than the fundamental right to vote, "preservative of all rights." *Reynolds v. Sims*, 377 U.S. 533, 562 (1964).

59. The risk of erroneous deprivation because of benign signature discrepancies or technical errors is significant. Election officials are not trained handwriting experts; many intentional and unintentional factors lead to benign signature discrepancies; and the standardless process is designed to disenfranchise voters due to nothing more than poor penmanship.

60. Implementing procedures to provide absentee voters with notice and an opportunity to cure would not impose an undue burden on the State. Defendant and local boards of elections already maintain records during the ordinary course of business, including in the Central Voter File, that contain voter contact information, including addresses, phone numbers, and e-mail addresses. Indeed, all this information is included on the absentee ballot application that officials compare when assessing signatures. The additional burden to provide voters with timely notice that their absentee ballot may be rejected, and an opportunity to cure the error, is minimal.

61. North Dakota's current signature verification procedure denies North Dakota voters procedural due process in violation of the Fourteenth Amendment.

Count II: Deprivation of the Fundamental Right to Vote in Violation of the First Amendment and Fourteenth Amendments, 42 U.S.C. § 1983.

62. Plaintiffs reallege and incorporate by reference the allegations in the preceding paragraphs.

63. “There is no right more basic in our democracy than the right to participate in electing our political leaders.” *McCutcheon v. FEC*, 134 S. Ct. 1434, 1440-41 (2014). The Supreme Court has recognized that “voting is of the most fundamental significance under our constitutional structure.” *See Burdick v. Takushi*, 504 U.S. 428, 433-44 (1992).

64. When analyzing the constitutionality of a restriction on voting, the Court “must weigh ‘the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate’ against ‘the precise interests put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’” *Burdick*, 504 U.S. at 434 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

65. Defendant’s flawed and standardless signature verification process rejects a significant number of validly cast ballots every election cycle as a result of benign discrepancies or technical errors. Defendant denies these individuals the right to vote without any pre-deprivation notice or opportunity to confirm their ballots. Such a system imposes a severe burden on voters’ fundamental right to vote.

66. The severity of this burden is exacerbated by voters’ increasing need to rely on mail ballots to effectively cast a ballot while safeguarding their health. Voters should not be required to risk their health or lives to cast a ballot they can be confident will count.

67. Defendant can proffer no justification for this standardless and procedurally deficient system that can outweigh the injury of the rejection of thousands of ballots each election

without any assurance those ballots were fraudulent or improper.

68. North Dakota's signature verification system is not designed to carefully ferret out fraud but rather is set up to sweep hundreds of eligible voters into its net. Each time a county board of elections—comprised of laypersons with no expertise in handwriting analysis—subjectively believes there is a mismatch between the signature accompanying the voter's absentee ballot and the signature in the voter's file, that ballot is not counted, notwithstanding the many benign factors that can cause signature variation. And those factors—which may include age, disability, national origin, or educational background—can place particularly vulnerable voters at heightened risk.

69. North Dakota's current signature verification procedure unduly burdens the right to vote in violation of the First and Fourteenth Amendments.

REQUESTED RELIEF

WHEREFORE, Plaintiffs request that this Court:

1. Enter a declaratory judgment that N.D.C.C. §§ 16.1-07-09, 16.1-07-12—insofar as they mandate a signature verification process for mail-in ballots without providing voters with notice and opportunity to cure—deprive voters of procedural due process in violation of the Fourteenth Amendment to the Constitution of the United States;
2. Enter a declaratory judgment that N.D.C.C. §§ 16.1-07-09, 16.1-07-12—insofar as they mandate a signature verification process for mail-in ballots without providing voters with notice and opportunity to cure—imposes an undue burden on the right to vote in violation of the First and Fourteenth Amendments to the Constitution of the United States;
3. Enter preliminary and permanent injunctions enjoining Defendants, their agents,

employees, and successors, and all those persons acting in concert or participation with them from rejecting voters' ballots on the basis of signature verification failure without providing affected voters with adequate and meaningful notice and an opportunity to cure; and requiring Defendant Jaeger to issue guidance to North Dakota's county election officials instructing them to provide all voters with adequate and meaningful notice and opportunity to cure before rejection on the basis of signature verification;

4. Award Plaintiffs their costs and reasonable attorneys' fees incurred in this action; and
5. Grant such other relief the Court may deem just and proper.

Dated: May 1, 2020

Respectfully submitted,

Mark Gaber*

Danielle Lang*

Dana Paikowsky*

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Exhibit A

2018

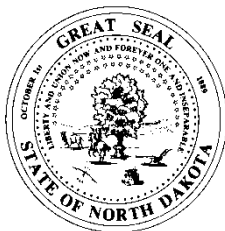
ELECTION OFFICIALS' MANUAL

Revised October 2018

North Dakota



✓otes 2018



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FOREWORD

According to North Dakota Century Code ([NDCC](#)) [§ 16.1-05-03](#), the Secretary of State is required to provide an instruction manual detailing the responsibilities of election officials. This 2018 Election Officials' Manual is intended to fulfill the requirements of the law by providing comprehensive instructions and procedures for election officials to look to for guidance in conducting elections in North Dakota after September 24, 2018.

CONTACT

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This website contains election publications, connections to other helpful election websites, and state election forms, which can be completed online before printing and signing.

DISCLAIMER

The following excerpts and summaries of North Dakota law are taken or derived from the NDCC and pertain to elections, election procedures, and the duties and responsibilities assigned to election officials. Although every attempt has been made for accuracy, the reprint, summarizations, or paraphrasing of these laws does not carry the same authority as the actual NDCC and should not be equated with the official NDCC. This compilation is intended as a helpful resource and reference for consolidated election related laws. For official and legal purposes, the official NDCC should be used.

The following excerpts of North Dakota law do not contain the material found in the legal notes following the various sections contained in the NDCC. These notes found in the NDCC may contain temporary provisions and effective dates along with valuable summaries of applicable court rulings.

Section 1 – Polling Places and Poll Workers

Polling Places: Upon a decision by the county commissioners, a county may utilize multiple precinct polling places. The county commissioners may also decide, if it is in the best interest of the county, to use one election board to supervise all or a portion of the precincts voting in the same polling place even if the precincts fall within different legislative districts so long as each district chairperson of each qualified political party is given the opportunity to have representation on the election board if desired. ([NDCC §§ 16.1-04-02](#) and [16.1-05-01](#))

Inspectors: The county auditor, with county commissioners' approval, shall appoint election inspectors, except in polling places containing city precincts only established by [NDCC Chapter 16.1-04](#) where the city governing board appoints the inspectors. The inspector selection is to be made on the basis of the inspector's knowledge of the election procedure. Appointments must be made forty days before the election. ([NDCC § 16.1-05-01](#)) Inspectors serve as the polling place supervisor. ([NDCC § 16.1-05-04](#))

Judges: The election judges for each precinct or polling place are appointed in writing by the district chairs representing the two political parties that cast the most votes in the state's last general election. For special elections involving only no-party offices, the election official responsible for the administration of the election, with the approval of the majority of the members of the applicable governing body, shall appoint the election judges for each polling location. ([NDCC § 16.1-05-01](#)) The inspector or judges initial and deliver ballots to the voters and the judges perform other responsibilities assigned by the inspector. ([NDCC § 16.1-13-22](#))

Composition of the Election Board: The election board for each precinct or polling place must consist of an inspector and at least two election judges. ([NDCC § 16.1-05-01](#))

Clerks: The election official responsible for the administration of the election, with the approval of the majority of the members of the applicable governing body, shall appoint the poll clerks for each polling place. ([NDCC § 16.1-05-01](#)) Clerks manage the pollbook, verify voters' identification, update incorrect pollbook information, and other ministerial duties assigned by the inspector. ([NDCC §§ 16.1-05-04](#) and [16.1-05-07](#))

County Auditor May Appoint Judges if Forty Day Notice Not Received: If the district political party chair fails to appoint the judges forty days before the election, the county auditor shall appoint the judges. If the county auditor has exhausted all practicable means to select judges from within the voting precinct and vacancies still remain, the county auditor may select election judges who reside outside of the voting precinct, but who reside within the precinct's legislative district. If vacancies still remain, the county auditor may select election judges who reside outside of the legislative district but who reside within the county. ([NDCC § 16.1-05-01](#))

County Auditor May Request an Additional Judge: In polling places in which over one thousand votes were cast in any election, the county auditor may request each district political party chairperson to appoint an additional election judge. ([NDCC § 16.1-05-01](#))

Qualifications of Election Board and Poll Clerks: Inspectors, judges, and clerks must be qualified voters of the polling places in which they are assigned to work unless the county auditor has exhausted all means to appoint election judges from precincts within the polling place according to [NDCC § 16.1-05-01](#). No individual may serve as a member of the election board or as a poll clerk who has anything of value bet or wagered on the result of an election. ([NDCC § 16.1-05-02](#))

Student Poll Clerks: A student sixteen years of age or older enrolled in a high school or college in this state is eligible to serve as a poll clerk if the student meets the following qualifications:

- ☐ Is a United States citizen or will be a citizen at the time of the election;
- ☐ Is a state resident residing in the precinct at least thirty days before the election; and
- ☐ Is a student in good standing.

A student appointed as a clerk may be excused from school attendance during the hours that the student is serving as a clerk, including training sessions, if the student submits a written request to be absent from school signed by the student's parent or guardian and by the school administrator and a certification from the county auditor stating the hours during which the student will serve as a poll clerk. A student excused from school attendance in this manner may not be recorded as being absent on any date for which the excuse is operative. No more than two students may serve as clerks in a single precinct.

An individual sixteen years of age or older having graduated from high school or obtained a general education degree from an accredited educational institution is eligible to be appointed as a poll clerk if the individual meets the qualifications stated above. ([NDCC § 16.1-05-02](#))

Candidates and Relatives Not Allowed on Election Board: An individual may not serve as a member of the election board or as a poll clerk if the individual is a candidate in the election at which the person is serving, or who is the husband, wife, father, mother, father-in-law, mother-in-law, son, daughter, son-in-law, daughter-in-law, brother, or sister, whether by birth or marriage, of the whole or the half blood, of any candidate in the election at which the person is serving. ([NDCC § 16.1-05-02](#))

Removal of Judges or Clerks: If at any time before or during an election, it appears to an election inspector, by the affidavit of two or more qualified voters of the precinct, that any election judge or clerk is not qualified, the inspector shall remove that judge or clerk at once and fill the vacancy by appointing a qualified individual of the same political party. If the disqualified judge or clerk had taken the oath of office, the inspector shall place the oath or affidavit before the state's attorney of the county. ([NDCC § 16.1-05-01](#))

Training Sessions for Poll Workers: Attendance at an election training session conducted by the county auditor is mandatory for members of the election board and for poll clerks.

An election official, at the option of the county auditor, may be excused from attending a third training session on election laws within a twelve-month period. If an election official has attended a training session within six months preceding a special election, the election official must be compensated at the pay appropriate for those having attended a training session for that election as provided in [NDCC § 16.1-05-05](#). ([NDCC § 16.1-05-03](#))

Compensation of Poll Workers: The county shall pay at least the state minimum wage to the relevant election officials. Members of the election board and poll clerks who attend the training sessions must be paid at least the state minimum wage for the hours in attendance in the session in addition to necessary expenses and mileage. Members of election boards who attend the training sessions provided before primary and general elections must be paid at least 25% more than the state minimum wage during the time spent in the performance of their election duties. Members of the election board and poll clerks who attend a training session within the six months prior to a special election must be paid at least 25% more than the state minimum wage during the time spent in the performance of their election duties in addition to necessary mileage and expenses. ([NDCC §§ 16.1-05-03](#) and [16.1-05-05](#))

Section 2 – Election Worker Responsibilities Before Polls Open

Failure of Election Board Member to Appear: If a member of the election board fails to appear for the opening of the polls, the remainder of the board shall select an individual to serve in the absent individual's place. If a judge fails to appear at the opening of the polls, the remainder of the board shall select an individual of the absent individual's political party if such a person is reasonably available. Any qualified individual without regard to political affiliation may fill the office of inspector or clerk. ([NDCC § 16.1-05-02\(5\)](#))

Failure of Entire Election Board to Appear: If no members of the election board appear for the opening of the polls, the qualified voters present shall call the county auditor, city auditor, or school business manager, as appropriate, for instructions and then orally elect a board conforming as nearly as possible to the provisions for a regular board. ([NDCC § 16.1-05-02\(5\)](#))

Oath of Office: Before assuming the duties, each member of the election board and each poll clerk shall take and subscribe an oath in the following form:

I do solemnly swear (or affirm as the case may be), that I will perform the duties of inspector, judge, or clerk according to law and to the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

The oath may be taken before any officer authorized by law to administer oaths (e.g. county auditor, deputy county auditor, county commissioner, notary public). If no such officer is present at the opening of the polls, the inspector or election judges shall administer the oath to each other and to the poll clerks. The individual administering the oath shall cause an entry thereof to be made, subscribed by that individual and prefix it to the pollbook. ([NDCC § 16.1-05-02\(3\)](#))

Inspector to Supervise Conduct of the Election: The election inspector shall supervise the conduct of the election to ensure all election officials are properly performing their duties at the polling place. The election inspector shall assign duties so as to equally and fairly include both parties represented on the election board. ([NDCC § 16.1-05-04\(1\)](#))

Inspector to Assign Ministerial Duties to Poll Clerks: The election inspector shall assign ministerial duties to poll clerks, who shall carry out the ministerial duties assigned by the election inspector. ([NDCC § 16.1-05-04\(2\)](#))

Inspector to Deliver Pollbooks to Clerks: The election inspector shall deliver the pollbooks to the clerks in the inspector's precinct or polling location on Election Day prior to the opening of the polls. ([NDCC § 16.1-06-21](#))

Voting Booths or Compartments – Number Required: The inspector of elections shall provide a sufficient number of voting booths or compartments in the polling place to enable the elector to mark his or her ballot screened from observation. The number of booths or compartments in precincts may not be less than one for each one hundred fifty electors or fraction thereof in the precinct. One electronic voting system device must be provided in each precinct. ([NDCC § 16.1-13-29](#))

Voting Instructions to be Posted in Each Polling Place: Cards printed in large type containing full instructions to voters on obtaining and preparing ballots and a copy of [NDCC § 16.1-01-12](#) (Election Offenses) shall be posted in each polling place. ([NDCC § 16.1-06-19](#))

Complete Text of Measures to be Posted: At least five copies of the complete text of any constitutional amendment or initiated or referred measure must be delivered to the inspector by the county auditor at

the time of delivering the ballots. One copy must be posted conspicuously in the polling place on the morning of the election. ([NDCC § 16.1-06-19](#))

Post Precinct Maps: Four copies of a map showing the election precinct's boundaries must be posted prior to the opening of the polls; one at the entry to the polling place and the remaining three in other conspicuous places around the polling place. ([NDCC § 16.1-06-19](#))

Date and Time: The election inspector shall, before the opening of the polls, post information regarding the date of the election and the hours during which polling places will be open. ([NDCC § 16.1-06-19](#))

Post Diagram of Electronic Voting System and Ballots: The election inspector shall post in a conspicuous manner at the voting place, one facsimile diagram of the electronic voting device and should post three copies of the official ballot used with electronic voting devices. The election inspector and judges shall provide adequate instruction on the use of the electronic voting device to each voter before the voter enters the voting booth. ([NDCC §§ 16.1-06-17](#) and [16.1-06-20](#))

Ensure Ballot Box is Empty: Before declaring the polls open, the inspector and the election judges shall inspect the ballot box to make sure that it is empty. The ballot box must then be locked. While the polls are open, the ballot box must remain locked except as may be necessary to clear a ballot jam or to move voted ballots to a separate locked ballot box to make room for additional ballots. ([NDCC § 16.1-13-20](#))

Opening Ballots on Election Day: Upon arrival at the poll of all election board members, or at the latest, upon the opening of the poll, the inspector of election shall produce the sealed package of official ballots and publicly open them. ([NDCC § 16.1-13-21](#))

Flag Displayed in or Near Every Polling Location on Election Days: Federal law states that the United States flag should be displayed in or near every polling location on election days.

Section 3 - Voter ID

Poll Clerks to Maintain the Pollbooks: A complete residential address for voting purposes may include a street, rural route address, city, and state. The use of a mailing address or Post Office Box number that is not the person's residential address is not considered sufficient for voting purposes.

Voter Qualifications

A qualified voter of the state is a person who: (all must apply)

- ☐ Is a citizen of the United States;
 - ☐ Is 18 years of age or older on the day of the election;
 - ☐ Is a resident of this state and of the precinct at least thirty days next preceding any election;
 - ☐ Is able to meet the identification requirements specified in sections [16.1-01-04.1](#) and [16.1-07-06](#); and
- Is not presently serving a term of actual incarceration as a convicted felon ([NDCC § 16.1-01-04](#) and [NDCC § 12.1-33-01](#)).

The following rules for voting eligibility also apply:

- ☐ Every qualified elector of the state may only have one voting residence.
- ☐ A person's voting residence must be determined in accordance with the rules for determining residency as provided in [NDCC § 16.1-01-04.2](#). (See following subsection entitled **Residency Determined**.)
- ☐ According to [Section 2 of Article II of the ND Constitution](#), voting by persons convicted and incarcerated for a felony must be limited according to [NDCC Chapter 12.1-33](#).
- ☐ No person who has been declared mentally incompetent by order of a court (with specific findings on the right to vote) or other authority having jurisdiction, which order has not been rescinded, shall be qualified to vote. ([Section 2 of Article II of the ND Constitution](#), and [NDCC § 30.1-28-04\(3\)](#))

Residency Determined: [NDCC § 16.1-01-04.2](#)

- ☐ Every qualified elector may have only one residence, shown by an actual fixed permanent dwelling, establishment, or any other abode to which the individual returns when not called elsewhere for labor or other special or temporary purposes.
- ☐ The street address verified by the individual as provided in section [16.1-01-04.1](#) when requesting a ballot to vote must be the address of residence for the individual.
- ☐ An individual retains a residence in this state until another has been gained.
- ☐ The acts of residing at a new address for thirty days and updating the ID to be used for voting with that address constitute a change in the individual's voting residence.

Voter Identification and Pollbooks ([NDCC § 16.1-01-04.1](#))

Voters Obtaining Ballots (Quick Definition) Individuals may receive, vote, and cast an election ballot by showing an approved form of identification with a name, residential address, and date of birth to the poll clerks.

Voters Obtaining Ballots (Expanded Definitions)

1. **Voter Identification:** When a voter appears at the polling location, state law requires the poll clerk to ask the voter to provide identification to verify eligibility.
 - a. **Residential Address:** An acceptable form of identification must include the voter's name, residential address (a PO Box number is not acceptable), and date of birth.
 - b. **Acceptable forms of identification at the polls include a valid North Dakota:**
 - ☐ Current driver's license or non-driver's identification card.

- ☐ Tribal government issued form of identification.*
 - ☐ Long-term care certificate (provided by ND facility).
- c. **Supplemental documentation:** If an individual's valid form of identification does not include all the information required or the information on the identification is not current, the identification must be supplemented by presenting any of the following issued to the individual which provides the missing or outdated information:
1. A current utility bill;
 2. A current bank statement;
 3. A check issued by a federal, state, local, or tribal government (including those issued by BIA for a tribe located in North Dakota, any other tribal agency or entity, or any other document that sets forth the tribal member's name, date of birth, and current North Dakota residential address);
 4. A paycheck; or
 5. A document issued by a federal, state, local, or tribal government (including those issued by BIA for a tribe located in North Dakota, any other tribal agency or entity, or any other document that sets forth the tribal member's name, date of birth, and current North Dakota residential address).
- d. **Voters without valid ID:** If the person's identification does not verify his or her qualifications, or the individual is not able to show a valid form of identification, but he or she asserts qualifications as an elector in the precinct, the individual may mark a ballot that must be securely set aside in a sealed envelope. (See Page 10)
- e. **Intent of ID Requirement:** The purpose for this requirement is not to deter people from voting, but to ensure that the voter is:
1. Old enough to vote,
 2. A U.S. citizen, **and**
 3. A resident of the precinct in which he or she desires to vote.
- Qualified electors have the right to know that the votes are being cast by only those voters qualified to do so.
- f. **Directing Individuals to Correct Precincts:** The county auditor shall provide each election board with a precinct map or precinct finder to assist in determining whether an address is located in that precinct and for determining which precinct and polling location to direct an individual who may be attempting to vote in the wrong precinct. ([NDCC § 16.1-05-08](#)) Poll clerks are authorized to direct an individual to his or her correct polling place if the individual's current identification proves that he or she is in the wrong polling place.

*Tribal ID may be an official form of identification issued by a tribal government; the Bureau of Indian Affairs; any other tribal agency or entity, or any other document, letter, writing, enrollment card, or other form of tribal identification issued by a tribal authority

Section 4 – Election Worker Responsibilities After Polls Open

Voting Procedure

1. As an individual enters the polling location and approaches the poll clerks' table, the required maps of the precinct, copies of the voter's bill of rights, voting procedure diagrams and descriptions, copies of election offenses, copies of official ballots, copies of complete text of measures, and diagrams of electronic voting systems posted or displayed in the polling location must be readily available for review by the voter.
2. The poll clerk shall ask for the individual's name and identification. (See pages 7-8 for acceptable forms of identification.)
3. If an individual's valid form of identification does not include the North Dakota residential address or date of birth, or the North Dakota residential address is not current, the individual may supplement the identification with a current utility bill; a current bank statement; a check or a document issued by a federal, state, local, or tribal government (including those issued by BIA for a tribe located in North Dakota, any other tribal agency or entity, or any other document that sets forth the tribal member's name, date of birth, and current North Dakota residential address); or a paycheck. After the poll clerk verifies the individual's qualifications and the pollbooks are checked or updated, an election judge shall give the voter an initialed ballot within a secrecy sleeve. (Make sure to update all incorrect information contained in the pollbook.)
 - a. If the name does not agree with the preprinted pollbook due to a name change, the poll clerk shall correct the pollbook if the individual is still a resident of the precinct.
 - b. If the individual has inadvertently come to the wrong precinct, the poll clerk is to direct the individual to the correct precinct using the precinct finder or map provided by the county auditor for just such purpose.
4. If the person's identification does not verify his or her qualifications, or the individual is not able to show a valid form of identification, but he or she asserts qualifications as an elector in the precinct, the individual may mark a ballot that must be securely set aside in a sealed envelope. (See page 10)
5. Ballot in hand, the voter is to move to an open poll booth and mark his or her votes in secret.
 - a. The poll worker should make the voter aware of the AutoMARK ballot-marking device since every voter is welcome to use it.
 - b. It is important to allow any voter to use the AutoMARK due to the fact some voters may not want to divulge a hidden disability, such as illiteracy or dyslexia.
6. Voters shall ask for a new ballot if they fill an unwanted oval by accident.
7. After the ballot is marked, a voter shall insert his or her ballot into the secrecy sleeve, bring it to the optical scan ballot tabulator, and insert the ballot into the machine for tabulation.
8. If the ballot has been marked incorrectly, the machine will identify the problem and give the voter an opportunity for second chance voting. ([NDCC § 16.1-13-23](#))
 - a. The poll worker, standing at a discrete distance, may assist the voter (if requested) in either returning the ballot to the voter for second chance voting or in casting the ballot as is – two ballots may be spoiled before the third must be cast as is.
 - b. If the voter chooses to cast the ballot as is, the election judge must tell the voter that the portion of his or her ballot marked with a conflict will not be counted.
 - c. If the voter still desires to cast the ballot as is, the voter is to press the "accept" button on the optical scan ballot counter.
9. The ballot is immediately counted by the machine before it is deposited by the machine directly into the locked ballot box below.
10. Ballots containing write-in votes will be automatically separated by the machine to the right side of the ballot box for easier counting of write-in votes after the polls close.
11. Throughout Election Day, members of the election board shall remain in the polling place to prevent fraud and to maintain order. Clerks, however, may work split shifts.

Set Aside Ballot Process

If an individual's identification does not verify his or her qualifications, or an individual is not able to show a valid form of identification but asserts qualifications as an elector in the precinct, he or she may mark a ballot that must be securely set aside in a sealed envelope.

1. **Clerk's Station:** The clerk shall:
 - a. Confirm that the address provided by the individual is located in a precinct assigned to the polling place.
 - b. Give the individual the set aside outer and secrecy envelopes and instruct him or her to complete the applicable portions of the outer envelope. The individual may be asked to step aside until finished.
 - c. Review the outer envelope for completeness and accuracy.
 - d. Complete the "Issuing Election Official Use Only" portion of the envelope, but does not enter the individual into the pollbook.
 - e. Return the envelopes to the individual and send them to the judge's station.
2. **Judge's Station:** The judges shall:
 - a. Issue the individual an appropriate ballot without initialing the ballot.
 - b. Issue the individual a notice containing information on how, when, and where the individual may verify his or her identification.
 - c. Inform the individual that after marking the ballot he or she is to:
 - i. Place the ballot into the secrecy envelope,
 - ii. Return to the judge's station where the judges verify that the ballot is in the secrecy envelope
 - iii. Seal the secrecy envelope in the outer envelope,
 - iv. Return the sealed envelope to the judges, and
 - v. Be reminded that the ballot will be counted by the canvassing board upon timely verification of the individual's identification, per the information on the notice.
 - d. Securely store the envelopes containing set aside ballots in a manner that is accessible in case the voter returns to the polling place with identification verification.
3. **Voter Returns While Polling Place is Still Open:** If an individual who has marked a set aside ballot returns to the polling place with valid identification, a clerk or the inspector will usher the individual to the judge's station and notify the judges that the individual has returned to verify their identification. The judges retrieve the set aside ballot and ensure that the information on the identification matches that which the individual provided on the outer envelope. If it does, the judge completes the "Verifying Election Official" portion of the outer envelope and instructs the voter to sign the "Voter Signature Upon Verification" portion. The voter is informed that the ballot will be counted by the canvassing board, and the judge returns the ballot to the secure storage.

Other Election Worker Duties While Polls are Open

Poll List Kept by Clerks of Election: The poll clerks shall keep one list of the names of all persons voting at each election. The list of names must contain the full name, including first and last name, the individual's identification number, and the complete residential address of each person voting at the precinct. A complete residential address for voting purposes includes a street address, city, and state. The use of a mailing address or PO Box number is not considered sufficient for voting purposes. Each clerk shall return the pollbook, which must be a part of the records and filed with other election returns. ([NDCC § 16.1-11-32](#), [NDCC § 16.1-05-04](#) and [NDCC § 16.1-02-13](#))

Pollbook Correction: If the voter's residential or mailing address within the precinct has changed, the poll clerk shall record the appropriate changes, if the voter's name is preprinted.

Voting by Qualified Voter Moving From One Precinct to Another: If a qualified elector moves from one precinct to another precinct within this state, the elector is entitled to vote in the precinct from which the elector moved until the elector has established a new residence pursuant to [NDCC § 16.1-01-04](#). A

person must reside in the precinct thirty days immediately prior to any election in order to be eligible to vote within that precinct. ([NDCC § 16.1-01-05](#))

Delivering Ballot to Elector – Initialing: An election board member shall deliver ballots to the qualified voters within a secrecy sleeve. The inspector or judge shall inform each voter that if an election official does not initial the ballot, it will be invalidated. To protect the voter's right to vote, the voter should verify that the ballot has been initialed. Ballots are still considered valid if the judge or inspector initials the ballot outside the space provided for such. ([NDCC § 16.1-13-22](#))

Secrecy Sleeves Required: Ballots are to be given to the voters within a secrecy sleeve. ([NDCC § 16.1-13-23](#))

Warning Voters Not to Split Votes in the Primary Election: At primary elections, the judge or inspector shall inform **each** elector before voting, that voting for candidates of more than one party will cause the voter's party ballot to be rejected. ([NDCC § 16.1-11-22](#))

One Person Allowed in Voting Booth – Time Limit in Booth: Only one person may occupy a voting booth at one time except when receiving lawful assistance. No person shall remain in the booth longer than necessary to vote. ([NDCC § 16.1-13-30](#))

Assisting Voter in the Voting Booth: A voter may request and receive the assistance of any person of the voter's choice in marking the voter's ballot, except for the voter's employer, officer or agent of the voter's union, a candidate running in that election, or relative of the candidate. ([NDCC § 16.1-13-27](#))

Voter to Receive Assistance of Both Judges: If the voter requests the assistance of a member of the election board, the voter shall receive the assistance of both election judges in the marking of the voter's ballot. ([NDCC § 16.1-13-27](#))

Person Assisting Voter May Not Request Voter to Vote in Certain Manner: Any person chosen to assist a voter may not request the voter to vote for or against any candidate or any issue. ([NDCC § 16.1-13-28](#))

Voters May Not Divulge Voting Intentions: No voter, other than one who is unable to mark a ballot, may divulge to anyone within the polling place the name of any candidate for whom the elector intends to vote. ([NDCC § 16.1-13-27](#))

No Write-in Stickers: Write-in stickers are not allowed on ballots in North Dakota elections.

Second Chance Voting:

1. **Second-Chance Voting Prior to Casting Ballot:** Since ballots are to be marked by the voter with a pen provided by the election board, unwanted choices or marks cannot be erased. Rather than crossing out unwanted choices or attempting to erase them, the voter should ask an election judge for a new ballot to mark his or her votes. A voter may obtain up to two new ballots for these reasons. Ballots returned to an election judge by an elector must be considered spoiled.
2. **Second-Chance Voting as Voter Attempts to Cast Own Ballot:** After marking the votes on the ballot, the elector shall place the ballot back in the provided secrecy sleeve so it is concealed and so the endorsement of the inspector or election judge may be seen. The elector then shall deposit the ballot in the optical scanning device and wait to determine if the ballot is deposited into the ballot box or if the optical scanning device has indicated a possibility for a second-chance voting condition. If a second-chance voting condition is indicated, a poll worker, standing at a discrete distance from the voter, shall ask the voter if he or she desires help in either having the ballot returned to the voter to mark his or her votes on a new ballot (the incorrect ballot is to be returned to the judge to be marked as spoiled) or the voter may choose to cast the ballot as the voter has marked it even though it is incorrect. If the voter chooses to cast the incorrectly marked ballot, the judge must first inform

the voter that the portion of the ballot that has been marked incorrectly will not be counted. Voters requiring assistance may ask a judge or inspector to cast the ballot provided the ballot is in the secrecy sleeve. ([NDCC § 16.1-06-14\(3\)](#) and [NDCC §§ 16.1-13-23](#))

3. **Securing New Ballot Upon Spoiling of Others:** A voter spoiling a ballot may obtain others successively, one at a time, not exceeding three in total, upon returning each spoiled ballot. Each paper ballot returned must be spoiled immediately and, together with those not distributed to the voters, must be preserved and secured in sealed packages and returned to the county recorder. ([NDCC § 16.1-13-32](#))

Removal of Ballot from Polling Place before Closing: No person may take a ballot from a polling place before the polls close. ([NDCC § 16.1-13-31](#))

Voters in Line at Poll Closing: All voters standing in line to vote at the time the polls close must be allowed to vote. Election officials must establish procedures to determine who arrived in time to vote. ([NDCC § 16.1-01-03](#))

Processing Absentee Ballots Delivered to Precincts

Absentee Ballots Delivered to Polls: The county auditor or his or her designee may deliver absentee ballots to the inspector of the precinct in which the absent voters reside. ([NDCC § 16.1-07-11](#))

Opening the Absentee Ballots: At any time beginning on the day before Election Day and the closing of polls on Election Day, the election clerks and board members of the relevant polling place shall do the following:

1. Compare the signature on the application for the absentee ballot with the signature on the back of the absentee ballot envelope (the voter's affidavit) to ensure the signatures match.
2. If the applicant is a qualified elector of the precinct and has not voted in the election, the election worker shall open the absent voter's envelope in such a manner as not to destroy the affidavit printed on the envelope. The election worker shall take out the secrecy envelope with the ballot(s) without unfolding or permitting the ballots to be opened or examined and indicate in the pollbook that the elector has voted.
3. Election workers not participating in the comparing of signatures and entering voters into the pollbook shall remove the ballot(s) from the secrecy envelope, unfold and initial the same, and deposit in the proper ballot box for tabulation.

If the affidavit on the outer envelope of a returned absentee ballot is found to be insufficient, the signatures on the application and affidavit do not match, or the applicant is not a qualified elector of the precinct, the vote may not be allowed. Without opening the absent voter's envelope, the election inspector or election judge shall mark across the face thereof "rejected as defective" or "rejected as not an elector", as the case may be.

The death of an absentee voter after having voted by absentee ballot does not constitute grounds for rejecting such ballot.

The votes from these cast ballots may not be tallied and the tabulation reports may not be generated until the polls have closed on Election Day. ([NDCC § 16.1-07-12](#))

Rejected Absentee Ballots: Rejected absentee ballots are to be handed over to the county canvassing board for final determination of acceptance or rejection. ([NDCC § 16.1-07-12](#))

Absentee Ballots Sent to Wrong Precinct or Sent Too Late to be Counted: Any absentee ballot sent to the wrong precinct or any absentee ballot received by the inspector too late to be counted at the precinct must be returned to the county auditor and must be tallied by the county canvassing board. ([NDCC § 16.1-07-11](#))

Section 5 – Election Worker Responsibilities After Polls Close

Manner of Canvassing the Election: ([NDCC § 16.1-15-02](#))

- ❑ After the polls are closed, the inspector of elections and the judges shall immediately generate the canvass report from the optical scan voting system.
- ❑ The ballots counted by the optical scan ballot tabulator must be equal in number with the names on the poll clerks' list. If the numbers are not equal, the pollbook is to be rechecked to find the discrepancy.
- ❑ The canvass shall continue until completed and must be open to the public.
- ❑ Except under crucial circumstances, the canvass shall occur at the polling place.
- ❑ If good and substantial reasons exist for the removal of the ballots and election records to another location for canvass, the other location must be in the same precinct and the removal must be approved by the election board.
- ❑ In no case may the ballots be moved to another location prior to generating the canvass report after the ballot boxes have been opened. Upon approval of a change of location by the election board as provided in [NDCC § 16.1-15-02](#), the approximate time and location of the canvass must be prominently posted on the main entrance to the polling place, the ballots and records must be moved in the presence of the election board, and the canvass as provided in NDCC Chapter 16.1-15 must proceed immediately upon arrival at the alternate location.

Manner of Canvassing Write-in Votes: ([NDCC § 16.1-12-02.2](#))

- ❑ The optical scan ballot tabulator (M-100) used in every polling location automatically separates the ballots with write-in votes to the right side of the ballot box. It does this by finding any ovals darkened next to a write-in line on the ballot.
- ❑ From the ballots on the right side of the ballot box, canvass the votes for the individual write-in candidates in all races the county auditor instructs the precincts to canvass. (These races are likely to be those for which there are no printed names on the ballot or in which write-in candidates are likely to be nominated or elected.)
- ❑ In all other races, the county canvassing board will complete the canvass of the votes for the write-in candidates in those races for which the write-in votes constitute more than five percent of the votes cast by the voters for the candidate receiving the most votes for that office, except in the case of a primary election where enough votes were cast as write-in votes to qualify a name for the general election ballot. This percentage is to be calculated based on the total number of write-in votes tabulated by the voting equipment in the precincts of the county in which that office was on the ballot.
- ❑ All ballots containing write-in votes must be wrapped and sealed prior to delivery to the county recorder so that these ballots can be delivered by the county recorder to the meeting of the county canvassing board if these votes were not canvassed by the polling place election board on election night. ([NDCC § 16.1-15-08](#))

Primary Election Reports: The judges of a primary election in each precinct shall run a separate report for each political party or principle, containing the names of all persons voted for at the primary election, the number of votes cast for each candidate, and for which office. The report must be subscribed by the election judges and must be filed with the returns in the office of the county auditor. ([NDCC § 16.1-11-33](#))

Canvass Report Prepared: The election board shall generate at least one canvass report from the electronic voting system. The ballots may not be sealed, nor may the canvass report be signed, by the election board or poll clerk until the counts in the poll clerks' book and in the canvass report show the same totals for ballots cast. Section 5 of this manual describes the procedures for closing of special precincts known as early voting, absentee, and vote by mail. ([NDCC § 16.1-15-04](#))

Contents of Duplicate Reports: ([NDCC § 16.1-15-09](#))

- ❑ Election officers shall generate reports of votes counted on electronic counting machines for all candidates and for any measure in the same manner as provided for other ballots.

- ❑ Optical scan counting systems must generate a printed record at the beginning of its operation, which verifies that the tabulating elements for each candidate position and each question and the public counter are all set at zero. The tabulating equipment must also generate a printed record of the total number of ballots tabulated and the total number of votes cast for each candidate and measure on the ballot. The election board must certify both printed records.

Oath Required Upon Completion of Canvass – Contents: At the conclusion of the canvass of the votes, each member of the election board shall sign an affidavit to the effect that the ballots have been counted, the votes were canvassed as provided in NDCC Chapter 16.1-15 and the returns as disclosed by the canvass reports agree with the number of ballots cast and are true and correct of the member's own knowledge. ([NDCC § 16.1-15-05](#))

Wrapping and Returning Ballots – Void and Spoiled Ballots: ([NDCC § 16.1-15-08](#))

- ❑ The election board shall place each kind of ballot cast at the election in a suitable wrapper to form a complete wrapper for the ballots.
- ❑ The ballots and wrappers must then be tightly secured at the outer end to completely envelop and hold the ballots together.
- ❑ Set aside ballots must be secured in a separate wrapper and must be marked "set aside."
- ❑ Void ballots must be secured in a separate wrapper and must be marked "void." Void ballots are ballots that are not endorsed with the initials of an election board member.
- ❑ Ballots that are spoiled must be separately secured and marked "spoiled." Spoiled ballots are those returned by the voter in exchange for another because the voter has made a non-correctable error on the returned ballot.
- ❑ In sealing ballots, the various classes (cast, spoiled, void) must be kept separate.
- ❑ Each wrapper must be endorsed with the names or numbers of the precincts and the date on which the election was held.
- ❑ The wrappers must be sealed securely so the wrappers cannot be opened without an obvious and permanent breaking of the seal.
- ❑ The ballots, together with those found void or spoiled, and the opened envelopes from voted absentee ballots and the unopened envelopes of absentee ballots rejected as defective, must be returned in person to the county recorder.
- ❑ All ballots containing write-in votes must be wrapped and sealed prior to delivery to the county recorder so that these ballots can be delivered by the county recorder to the meeting of the county canvassing board.

Reports and Pollbooks Sent to County Auditor: Immediately following the canvass, except in cases of emergency or inclement weather, the inspector of elections, or one of the judges appointed by the inspector of elections, personally shall deliver the signed canvass report provided for in [NDCC § 16.1-15-04](#) to the county auditor. The report, carefully sealed under cover, accompanied by the pollbook provided for in [NDCC §§ 16.1-02-13](#) and [16.1-06-21](#) with the oaths of the inspector and poll clerks affixed thereto, must be delivered properly to the county auditor. ([NDCC § 16.1-15-06](#))

Voters Casting Ballots After Regular Poll Closings – Provisional Ballots: An individual who votes after the regular poll closing time in an election in which a federal office appears as a result of a federal or state court order or any other order extending the time established for closing the polls under state law in effect ten days before the date of that election may only vote in that election by casting a provisional ballot. The ballot must be marked as a provisional ballot and must be separated and held apart from other ballots cast by those not affected by the order. The secretary of state shall approve the form of any provisional ballot and may prescribe any procedures the secretary of state determines to be necessary to facilitate the casting, secrecy, and counting of provisional ballots. ([NDCC § 16.1-13-34](#))

Section 6 – Special Precincts (Early Voting, Absentee, Vote By Mail)

Absentee Ballot Precinct: ([NDCC § 16.1-07-12.1](#))

1. For any primary, general, or special statewide, district, or county election, the board of county commissioners may create a special precinct, known as an absentee ballot precinct, for the purpose of counting all absentee ballots cast in an election in that county. The election board of the absentee ballot precinct must be known as the absentee ballot counting board. The county auditor shall supply the board with all necessary election supplies as provided in [NDCC Chapter 16.1-06](#).
2. If the board of county commissioners chooses to establish an absentee ballot precinct according to paragraph #1 above, the following provisions apply:
 - ❑ The county auditor shall appoint the absentee ballot counting board that consists of one independent representative to act as the inspector and an equal number of representatives from each political party represented on an election board in the county, as set forth in [NDCC § 16.1-05-01](#), to act as judges. Each official of the board shall take the oath required by [NDCC § 16.1-05-02](#) and must be compensated as provided in [NDCC § 16.1-05-05](#).
 - ❑ The county auditor shall have the absentee ballots delivered to the inspector of the absentee ballot counting board with the election supplies, or if received later, then prior to the closing of the polls.
 - ❑ The absentee ballot counting board shall occupy a location designated by the county auditor, which must be open to any individual for the purpose of observing the counting process.
 - ❑ Absentee ballots must be opened and handled as required in [NDCC § 16.1-07-12](#). The county auditor shall designate a location for the closing, counting, and canvassing process under [NDCC Chapter 16.1-15](#), which location must be open to any person for the purpose of observing. The board shall comply with the requirements of [NDCC §§ 16.1-15-04](#) through [16.1-15-12](#), as applicable. See Processing Absentee Ballots on page 11 of this manual.
 - ❑ If the work of the election board is completed prior to the close of the polls on election day in an absentee ballot, early voting, or a mail ballot precinct, the election board shall create and sign a statement consisting of a reconciliation of the number of voters recorded in the pollbook and the number of ballots processed through the tabulators. The voting system shall then be secured in a manner prescribed by the county auditor that will protect the system and ballots from tampering. Prior to generating the canvass reports from one of these 3 types of precincts, an election judge representing each political party, or 2 election judges in the case of an election that does not include a political party contest, shall verify that the system and ballots remain secure and the statement created by the election board is still accurate. [NDCC § 16.1-15-04](#)

Early Voting Precinct: ([NDCC § 16.1-07-15](#))

1. For any primary, general, or special statewide, district, or county election, the board of county commissioners may, before the sixty-fourth day before the day of the election, create a special precinct, known as an early voting precinct, to facilitate the conduct of early voting in that county according to [NDCC Chapters 16.1-13](#) and [16.1-15](#). At the determination of the county auditor, more than one voting location may be utilized for the purposes of operating the early voting precinct. The election board of the early voting precinct must be known as the early voting precinct election board. The county auditor shall supply the board with all necessary election supplies as provided in [NDCC Chapter 16.1-06](#).
2. If the board of county commissioners establishes an early voting precinct according to paragraph #1 above, the following provisions apply:
 - ❑ Early voting must be authorized during the fifteen days immediately before the day of the election. The county auditor shall designate the business days and times during which the early voting election precinct will be open and publish notice of the early voting center locations, dates, and times in the official county newspaper once each week for three consecutive weeks immediately before the day of the election.

- ❑ The county auditor shall appoint the early voting precinct election board for each voting location that consists of one independent representative to act as the inspector and an equal number of representatives from each political party represented on an election board in the county, as set out in [NDCC § 16.1-05-01](#), to act as judges. Each official of the board shall take the oath required by [NDCC § 16.1-05-02](#) and must be compensated as provided in [NDCC § 16.1-05-05](#).
- ❑ The county auditor, with the consent of the board of county commissioners shall designate each early voting location in a public facility, accessible to the elderly and the physically disabled as provided in [NDCC § 16.1-04-02](#). With respect to polling places at early voting precincts, “election day” as used in [NDCC §§ 16.1-10-03](#) and [16.1-10-06.2](#) includes any time an early voting precinct polling place is open.
- ❑ At the close of each day of early voting, the inspector and judges on the election board shall secure all election related materials, including:
 1. The pollbook and access to any electronically maintained pollbook.
 2. The ballot boxes containing voted ballots.
 3. Any void, spoiled, and non-voted ballots.
- ❑ Ballot boxes containing ballots cast at an early voting location may not be opened until the day of the election except as may be necessary to clear a ballot jam or to move voted ballots to a separate locked ballot box in order to make room for additional ballots.
- ❑ Each early voting location may be closed, as provided in [NDCC Chapter 16.1-15](#), at the end of the last business day designated for early voting in the county. Results from the early voting precinct may be counted, canvassed, or released under [NDCC Chapter 16.1-15](#) as soon as any precinct within the county, city, or legislative district closes its polls on the day of the election. The county auditor shall designate a location for the closing, counting, and canvassing process under [NDCC Chapter 16.1-15](#), which must be open to any person for the purpose of observing.
- ❑ The early voting precinct election board shall comply with the requirements of NDCC Chapters [16.1-05](#), [16.1-13](#), and [16.1-15](#), as applicable.

Section 7 – Frequently Asked Questions and Answers

1. What do I do if a voter cannot or will not provide identification?

Answer: If the individual asserts qualifications as an elector in the precinct, they may be issued a set aside ballot. The set aside ballot will be tabulated by the canvassing board after the individual returns to the appropriate election official in a timely manner (see page 10).

2. What do I do if a voter asks for help with voting?

Answer: If the AutoMARK ballot marking device is not an option the voter chooses to use, then the two election judges from opposite political parties may assist the voter. Assistance is to be limited to reading the ballot to the voter, marking the voter's choices for the contests, and depositing the voter's ballot into the ballot scanner if the voter is unable to perform this function on his or her own or if the voter would rather not complete this part of the voting process. A voter may also choose to have a friend or relative assist the voter in reading, marking, and/or casting his or her ballot so long as this person is not a candidate on the ballot, a relative of a candidate, the voter's employer, or the voter's union representative.

3. What do I do if a voter asks me the names of write-in candidates for an office?

Answer: Inform the voter that he or she is free to write the name of anyone the voter so desires as a write-in candidate, but that some contests may require specific forms to be filed by the candidate in order for write-in votes be counted on the candidate's behalf and the law does not permit election workers to divulge information about candidates to voters in the polling place. It would be wise to remind the voter to darken the oval next to a write-in candidate.

4. What do I do when I am running low on ballots?

Answer: Call the county auditor, city auditor, or school business manager (whichever is appropriate for the election) **as soon** as you believe you might run short of ballots.

5. What do I do if a person is disrupting the polling location?

Answer: If the person is causing a serious disruption (your judgment is needed here) and the person will not leave when requested to do so, you may call the police and ask for assistance. You may also call the county auditor and ask for assistance.

6. What if we notice some posters hanging in the polling place on Election Day for a candidate?

Answer: Remove any candidate posters in the polling place prior to the opening of the polls.

7. What time will the auditor bring lunch?

Answer: Unless your auditor specifically tells you that lunch will be provided, you should be prepared to provide your own meals. Since the election board is not allowed to leave the polling place while the polls are open, this means that you need to bring your meals prior to the start of the day or have them delivered by a friend or local restaurant.

8. What do I do if someone brings an absentee ballot and turns it in at the precinct?

Answer: The law does not allow you to accept an absentee ballot from a voter on Election Day. However, you may tell the voter that you would be willing to spoil his or her absentee ballot and allow the voter to vote a new ballot at the precinct. You must remember to make a note of this for the county auditor's records.

9. What do I do if I need to use the restroom?

Answer: Restroom breaks are allowed.

Section 8 – Prohibitions, Crimes, and Election Offenses

Service of Civil Process on Election Day: During any primary, general, or special election held in this state, civil process may not be served on any person entitled to vote at the election within 100 feet from the outermost entrance leading into the building or facility in which a polling place is located and open for voting. ([NDCC § 1-08-09](#))

Interference with Elections: No person may injure, intimidate, or interfere with another person who is or has been voting for any candidate or issue or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as an election official or an election observer, in any primary, special, or general election. No person may injure, intimidate, or interfere with another person to prevent that person or any other person from voting for any candidate or issue or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as an election official or an election observer, in any primary, special, or general election. ([NDCC § 12.1-14-02](#))

Safeguarding Elections: No person may:

- ❑ Make or induce any false voter registration;
- ❑ Offer, give, or agree to give anything of pecuniary value, including alcoholic beverages, to another as consideration for the recipient's voting or withholding his or her vote or voting for or against any candidate or issue or for such conduct by another;
- ❑ Solicit, accept, or agree to accept anything of pecuniary value, including alcoholic beverages, as consideration for conduct prohibited by the two bullet points above; **or**
- ❑ Otherwise obstruct or interfere with the lawful conduct of an election or registration. ([NDCC § 12.1-14-03](#))

Election Offenses: The following election offenses are a crime and are subject to prosecution. It is unlawful for a person to:

- ❑ Fraudulently alter another person's ballot or substitute one ballot for another, or to otherwise defraud a voter of his or her vote.
- ❑ Obstruct a qualified voter on the way to a polling place.
- ❑ Vote more than once in any election.
- ❑ Knowingly vote in the wrong election precinct or district.
- ❑ Disobey the lawful command of an election officer.
- ❑ Knowingly exclude a qualified voter from voting or knowingly allow an unqualified person to vote.
- ❑ Knowingly vote when not qualified to do so.
- ❑ Willfully fail to perform any duty of an election officer after having accepted the responsibility of being an election officer by taking the oath.
- ❑ Willfully violate any rule adopted by the secretary of state pursuant to the election laws of North Dakota.
- ❑ Willfully make any false canvass of votes, or make, sign, publish, or deliver any false return of an election, knowing the same to be false, or willfully deface, destroy, or conceal any statement or certificate entrusted to his or her care.
- ❑ Destroy ballots, ballot boxes, election lists, or other election supplies except as provided by law. ([NDCC § 16.1-01-12](#))

Electronic Voting Systems – Violations – Penalty: Any person who tampers with or injures any electronic voting system or device to be used or being used in any election, or who prevents the correct operation of any such system or device is guilty of a class A misdemeanor. ([NDCC § 16.1-06-25](#))

Political Badge, Button, or Insignia Prohibited at Election: No individual may buy, sell, give, or provide any political badge, button, or any insignia within a polling place or within 100 feet from the entrance to the room containing the polling place while it is open for voting. No such political badge, button, or insignia may be worn within that same area while a polling place is open for voting. ([NDCC § 16.1-10-03](#))

No Electioneering Within Boundary of an Open Polling Place: No person may in any manner try to induce or persuade any voter from voting for or against any candidate, candidates, or ticket of any political party or organization, or any measure within a polling place or within one hundred feet from the entrance to the room containing a polling place while it is open for voting. Bumper stickers or other moveable signs containing a political message that are not readily removable from vehicles are allowed within the restricted area only for as long as it takes the operator of the vehicle to complete the act of voting ([NDCC § 16.1-10-06](#))

No person may pay another person for:

- ☐ Any loss or damage due to attendance at the polls;
- ☐ Registering;
- ☐ The expense of transportation to or from the polls; **or**
- ☐ Personal services to be performed on the day of a caucus, primary election, or any election which tend in any way, directly or indirectly, to affect the result of such caucus or election. ([NDCC § 16.1-10-06.1](#))

No Sale or Distribution at Polling Place: Solicitation is not allowed in a polling place or within one hundred feet of any entrance leading into a polling place while it is open for voting. ([NDCC § 16.1-10-06.2](#))

Person Assisting Voter May Not Request Voter to Vote in Certain Manner: Any person chosen to assist a voter may not request the voter to vote for or against any candidate or any issue. ([NDCC § 16.1-13-28](#))

Only One Person Allowed in Voting Booth – Time Limit in Booth: Only one person may occupy a voting booth at one time except when receiving lawful assistance. No person shall remain in the booth longer than necessary to vote. ([NDCC § 16.1-13-30](#))

Removal of Ballot from Polling Place before Closing: No person may take a ballot from a polling place before the polls close. ([NDCC § 16.1-13-31](#))

Section 9 – Voters With Disabilities

(This is adapted from various sources. Special thanks to the Arlington, VA Election Board)

Common-Sense Guidelines That Apply to All Voters

1. Be courteous and respectful. If you want to address the voter by name, use “Mr.” or “Mrs./Ms.” and the voter’s last name. Do not address a voter by his or her first name unless you know the voter personally and know he or she prefers this address.
2. Do not underestimate people with disabilities. A disability DOES NOT equal lessened intellectual capability.
3. Be considerate of extra time it may take for a person who is disabled or elderly to accomplish tasks.
4. Give unhurried attention to a person who has difficulty speaking.
5. Always speak directly to the voter, and not to a companion, aide, or sign language interpreter. Remember that any voter with a disability may be accompanied by, and receive assistance from, another person of his or her choice in the voting booth, unless the person is an employer, officer or agent of the elector’s union, a candidate running in that election, or a relative of a candidate.
6. Ask before you help. The person may not want assistance. Do not insist – take “no” for an answer if that is the voter’s wish.
7. Do not be shy about offering assistance. Your courtesy will be appreciated.
8. If your polling place is in a building with several routes through it, be sure that sufficient signs are in place to direct a person to the most accessible route to the polling location.

Voters with Mobility Impairment

1. Do not push or touch another person’s wheelchair or equipment without consent. People using adaptive equipment often consider the equipment their personal space. You might also break or damage a wheelchair or piece equipment if you are not familiar with it.
2. Ask before helping. Grabbing someone’s elbow may just throw a person off balance. Allow the person to take your elbow.
3. A person with mobility impairment might lean on a door while opening it. Quickly opening the door might cause the person to fall.
4. Either fasten mats and throw rugs down securely or move them out of the way. A person with mobility impairment could trip.
5. Keep floors dry as possible on rainy or snowy days.
6. Keep the ramps and wheelchair-accessible doors to the polling place unlocked and free of clutter.

Voters with Speech or Hearing Impairments

1. A voter who cannot speak can give his or her name and address simply by providing identification to the pollbook officer. The officer will read the name and address aloud, and the voter can provide physical confirmation (such as nodding his or her head) that the information is correct.
2. Follow the voter’s cues to determine whether speaking, gestures, or writing are the most effective means of communication.
3. If speaking, speak calmly, slowly, and directly to the voter. Do not shout. Your facial expressions, gestures, and body movements help in understanding. Face the voter at all times and keep your face in full light (not backlit), if possible.
4. Rephrase, rather than repeat, sentences that the voter does not understand.

Voters with Visual Impairment

1. Identify yourself and state that you are an election official as soon as you come in contact with a voter who has a visual impairment. Greet the individual by letting the person know who and

where you are. When offering walking assistance, allow the person to take your arm and tell him or her when you are approaching inclines or steps, or turning right or left.

2. If guiding a voter, offer your arm to the voter, rather than taking the voter's arm.
3. If a voter has a guide dog, walk on the opposite side of the voter from the dog. Do not pet or otherwise distract a guide dog without permission from the owner. Be aware that service animals that assist persons with disabilities should be allowed into all buildings. Such animals are highly trained and need no special care other than that provided by the owner. Do not interfere with the animal's responsibilities by talking or playing with it.
4. When giving directions to navigate the polling place, be as specific as possible and point out obstacles in the path of travel.
5. Let the voter know when you leave his or her presence.

Checklists for Election Day

Before the Polls Open

- ☐ Election board and clerks take and subscribe the oath.
- ☐ Inspector assigns duties fairly and equally to both parties on election board.
- ☐ Review ballots and materials to make sure they are correct for the polling location.
- ☐ Post voting instructions and copy of [NDCC § 16.1-01-12](#) (Election Offenses).
- ☐ Post official ballots, copies of the complete text of the measures, map of the precinct boundaries, and diagram of the voting system appropriately in the polls.
- ☐ Post the date and hours the polling location will be open on the door.
- ☐ Inspector and judges inspect ballot box to make sure it is empty and lock it.
- ☐ Open the sealed package of official ballots.
- ☐ Perform other duties as the county auditor may prescribe.
- ☐ Display the United States Flag.
- ☐ Open polls at the designated time.

After the Polls Open

- ☐ Clerks keep and correct a poll list as voters approach to vote.
- ☐ Ask each voter to show valid identification.
- ☐ Ask each voter if they are a United States citizen and whether they have resided in the precinct for at least thirty days.
- ☐ Direct voters to correct polling location if in wrong place.
- ☐ Provide instruction and assistance to voters, including information about the AutoMARK.
- ☐ Inspector or judge to distribute ballots to voter within a secrecy sleeve.
- ☐ Warn voters to check for initials.
- ☐ No write-in stickers allowed.
- ☐ Warn voters not to split votes between parties in the primary election.
- ☐ Provide additional ballots (up to two) if voter spoils a ballot.
- ☐ Cancel spoiled ballots immediately.
- ☐ Allow voters to place own ballots in optical scan ballot tabulator.
- ☐ Process absentee ballots if delivered to polling location.
- ☐ Do not allow ballots out of the polling place before polls close.
- ☐ Allow voters standing in line at closing time to vote.

After the Polls Close

- ☐ Run canvass reports of the votes from the optical scan ballot tabulator.
- ☐ Compare ballots counted by the optical scanner with pollbooks.
- ☐ In optical scan precincts, judges and inspectors shall verify the initial print record is at zero.
- ☐ Canvass the write-in votes for those races instructed to the board by the county auditor.
- ☐ The election board or all of the poll workers as the case may be sign the generated reports.
- ☐ In primary elections, copies of the reports must be given to each political party.
- ☐ Election board shall take oath at conclusion of canvass.
- ☐ Wrap and return ballots to county recorder as instructed.
- ☐ Reports, pollbooks, oaths, and other required materials delivered to the county auditor.

NOTES

Exhibit B



ABSENTEE/MAIL BALLOT APPLICATION

SECRETARY OF STATE
SFN 51468 (08-2015)

For Office Use Only

Precinct Part

For reference, see North Dakota Century Code, Chapter 16.1-07.

Application must be for at least one of the following elections:

☐ June (Primary) Election

☐ November (General) Election

OR

☐ All Statewide Elections
(only check if ballot delivery
address will be the same for
all elections)

☐ City Election

☐ School Election

☐ Special Election

Applicant Information: (ALL FIELDS REQUIRED)

Voter's Name	Date of Birth	Daytime Telephone Number
--------------	---------------	--------------------------

North Dakota ID Type Used: (check one)

☐ Driver's License ☐ Non-driver's ID

☐ Long Term Care Certificate
(include with application)

☐ Tribal ID

☐ Passport or Military ID (only for voters outside the United States)

☐ Applicant Without ID*

ID Number (required only if driver's license, non-driver's ID, tribal ID, passport or military ID is selected above)

Residential Address	City	State	ZIP Code
Ballot Delivery Address (if different from residential address)	City	State	ZIP Code

I do solemnly affirm that I have resided or will reside in the precinct, where my residential voting address is located, for at least thirty days next preceding the election and will be a qualified elector of the precinct.

Signature (required)

Date

Applicant Unable to Sign:

If the applicant is unable to sign the applicant's name, the applicant shall mark ☒ or use the applicant's signature stamp on the application in the presence of a disinterested individual. The disinterested individual shall print the name of the individual marking the "X" or using the signature stamp below the "X" or signature and shall sign the disinterested individual's own name following the printed name together with the notation "witness to the mark."

☐ Voter's Mark	Printed Name of Person Making Mark or Voter's Signature Stamp
	Signature of "Witness to the Mark"

*Applicant Without ID:

If the applicant does not possess or cannot secure an approved form of identification due to a disability with which the individual lives and which prevents the individual from traveling to obtain, another qualified elector of the state may attest that the applicant is a qualified elector of that precinct by signing below and providing his or her approved North Dakota identification number. **NOTE:** A qualified elector may not attest the qualifications of more than four applicants in an election.

Printed Name of Attester	Driver's / Non-driver's / Tribal ID Number	
Signature of Attester	Date	Daytime Telephone Number

Active Military and Overseas Voter:

Check **ONE** (if applicable):

☐ Citizen living outside of the United States

☐ Uniformed service or family member living away from the voter's residence, yet **within** the United States

☐ Uniformed service or family member living away from the voter's residence, yet **outside** the United States

If one of the check boxes above applies to you, please indicate your preferred ballot delivery method:

☐ Mail ☐ Email (provide email address): _____ ☐ Fax (provide fax number): _____

Mail or Submit to Burleigh County Auditor, PO Box 5518, Bismarck ND 58506

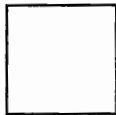
Exhibit C

VOTER AFFIDAVIT

Under penalty of possible criminal prosecution for making a false statement, I swear that I am a U.S. citizen, a ND resident and have resided in my precinct for thirty (30) days preceding this election, and this is the ONLY ballot I will cast in this election.

Voter Signature _____

OR*



Voter's Name

Date: _____

20

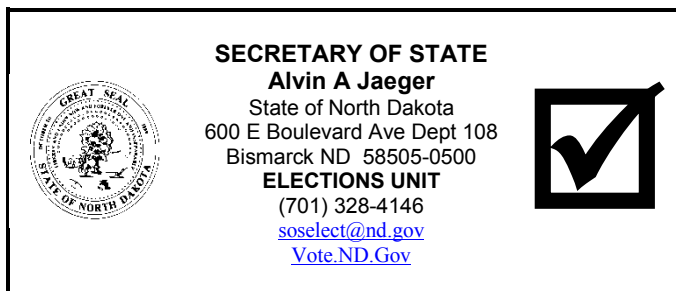
Witness to the Mark

**If the absent voter is unable to sign the voter's name, the voter shall mark (X) or use the applicant's signature stamp on the affidavit in the presence of a disinterested individual. The disinterested individual shall print the name of the individual marking the X or using the signature stamp below the X or signature stamp and shall sign the disinterested individual's own name following the printed name together with the notation "witness to the mark."*

Instructions: Seal your ballot in this envelope • Fill out and sign this affidavit • Mail or deliver to County Auditor

NDRE

Exhibit D



North Dakota Residents Choosing to Vote Absentee or by Mail

In North Dakota, voting is made easy through absentee and mail ballots. Please use the following information to make your voice heard through voting.

Al Jaeger
North Dakota Secretary of State
The State's Chief Election Official

☒ Voter Qualifications

North Dakota does not have voter registration. However, in order to vote in North Dakota, a voter must be:

- A citizen of the United States;
- Eighteen years or older on the day of election;
- A resident of North Dakota; and
- A resident who has resided in the precinct at least thirty days immediately preceding any election; and
- Able to provide a valid form of identification such as a North Dakota driver's license, nondriver ID, or tribal ID that includes your current residential address and date of birth; or you complete a [Voter's Affidavit](#) on which you attest to your qualifications as a voter. If an individual's valid form of identification does not include all the information required in 16.1-01-04.1(2) of the North Dakota Century Code, or the information is not current, the identification must be supplemented by presenting any of the documents as outlined in section 16.1-01-04.1(3)(b) of the North Dakota Century Code

☒ Residence for voting – Rules for determining

To determine residence for voting, the conditions from the North Dakota Century Code Section 16.1-01-04.2 must be met.

- Every qualified elector may have only one residence, shown by an actual fixed permanent dwelling, establishment, or any other abode to which the individual returns when not called elsewhere for labor or other special or temporary purposes.
- The street address verified by the individual as provided in section 16.1 - 01 - 04.1 when requesting a ballot to vote must be the address of residence for the individual.
- An individual retains a residence in this state until another has been gained.
- The acts of residing at a new address for thirty days and verifying that address as provided under section 16.1 - 01 - 04.1 constitute a change in the individual's voting residence.

☒ Voting Absentee or by Mail

All eligible North Dakotans have the option to request a ballot before the day of an election in a process known as absentee voting. You do not need to provide a reason for why you are requesting an absentee; however, you will be required to complete an application and sign an affidavit. You may submit an application anytime during the calendar year of an election; however, ballots are not available until the fortieth day before an election. Your application may be mailed, faxed, or personally delivered to your county auditor's office.

Revised July 2019

You may live in a county using mail ballot elections (at least one polling place must be open on Election Day). In such counties a mail ballot application is required to be sent to every active voter between the 50th and 40th day before the election. The application is also to be printed in the County Official Newspaper for two consecutive weeks. Furthermore, applications may be requested from the auditor's office or accessed online.

Whether you vote absentee or by mail ballot your return envelope **must** be postmarked no later than the day before the election. If you are unable to meet this deadline then you will have to go to your appropriate polling place on Election Day to cast your ballot.

☒ Application

Applications for absentee ballots may be submitted anytime within the calendar year of an election. The simplest method to apply is to electronically fill out and print the absentee application for submittal by clicking here [Absentee Ballot Application Wizard](#). Additionally, election officials of the county, city, or school district will furnish absentee ballot applications to qualified electors upon request.

The application will request the following information from each voter desiring to vote absentee:

- voter's name;
- voter's current or most recent ND residential address;
- voter's mailing address;
- voter's current contact telephone number;
- the election for which the ballot is being requested;
- the date of the request;
- the voter's affirmation of residence in the precinct for at least thirty days immediately prior to the election;
- voter's signature;
- the voter's status as a citizen living outside the United States, a uniformed service member living away from the voter's North Dakota residence, or a family member of the uniformed service member living away from the voter's North Dakota residence;
- voter's birth date and year;
- The identification number from one of the applicant's valid forms of identification, a copy of the applicant's long-term care certificate, and, if necessary, a copy of the applicant's supplemental identification under section 16.1-01-04.1.
- voter's fax number (if voting materials are to be sent using this manner of transmission)
- voter's email address (if voting materials are to be sent using this manner of transmission)

Absentee ballot applications are to be delivered to the appropriate election official by mail, in person, by fax or as a scanned attachment to an email. Uniformed service members stationed away from home and citizens living outside the United States may also receive and return voted ballots by fax or electronic means according to North Dakota law. For more information, please read the information for [Military Voters](#) and for [Overseas Voters](#).

According to North Dakota law, absentee ballots are to be made available by the 40th day before the election. Returned absentee ballots must have an official postmark or date stamp on the envelope, email, or fax by the day before the election.

☒ ND Absentee Ballot Application

[Absentee Ballot Application Wizard](#)

☒ ND County Auditors

[North Dakota Local Election Officials](#)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Self Advocacy Solutions N.D., League of Women Voters of North Dakota, Maria Fallon Romo

(b) County of Residence of First Listed Plaintiff Grand Forks

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Braaten Law Firm
109 North 4th Street, Suite 100, Bismarck, ND 58501
(701) 221-2911

DEFENDANTS

Alvin Jaeger, in his official capacity as Secretary of State; Debbie Nelson, in her official capacity as Auditor of Grand Forks County

County of Residence of First Listed Defendant Burleigh

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☒ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
First and Fourteenth Amendments, 42 U.S.C. § 1983

Brief description of cause:

The signature verification procedure unduly burdens citizens' right to vote and deprives citizens of due process.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 05/01/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Derrick Braaten

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____