

WRITTEN COMMENTS
CHERIE POUCHER, DIRECTOR OF ELECTIONS
WAKE COUNTY, NORTH CAROLINA
IMPLEMENTATION AND USE OF PROVISIONAL VOTING

Provisional voting provides a mechanism to ensure that all citizens have a chance to vote and at the same time maintains the integrity of the election process. North Carolina began utilizing provisional voting in 1995 to comply with the National Voter Registration Act.

In 1993 the General Assembly enacted legislation to comply with NVRA, effective for elections beginning in 1995. Provisional voting allowed voters who had moved and not reported their new addresses to go directly to the new precinct and vote. Previously these “unreported moves” voters were required to go to their former precinct, obtain an Election Day transfer and then go to the new precinct and vote putting the ballot in the tabulator. The transfer removed their names from the old precinct, eliminating the possibility of voting twice. Under the new legislation, unreported moves voters retained the option of returning to their old precinct, obtaining an Election Day transfer and voting regularly in the new precinct, but most have opted to not make this round trip. Further, the complexity of verifying such voter’s registration, without their returning to the old precinct and obtaining a “transfer” form, has caused many counties to vote these “unreported moves” using a provisional ballot in the new precinct. Other reasons for voting a provisional ballot include: correcting an administrative error, a jurisdictional dispute and allowing voters previously removed under the prior purge requirements to vote.

If the voter was not in the correct precinct, the voter was informed of the correct polling place. However, if the voter insisted on voting in the wrong precinct, the voter was allowed to vote the provisional ballot. As part of the verification process of the provisional ballots, the Board of Elections’ staff determined the voter’s correct precinct and the voter’s correct ballot style based on the voter’s residence. Under additional legislation, including statutes implementing the federal Help America Vote Act (HAVA), if the voter voted in any district he/she was not eligible to vote, the Board of Elections counts the contests the voter was eligible to vote and does not count the contests the voter was not eligible to vote.

The voters appreciated the fact that they were allowed to vote and the precinct officials appreciated the fact that they no longer had to tell a person that they could not vote in that precinct. It alleviated angry responses to the official and decreased the number of calls into the Board of Elections office.

In 2003, the General Assembly enacted legislation containing a number of changes to the North Carolina Election Laws. The changes were designed to bring North Carolina into compliance with the provisions of HAVA. The main intent of the legislation was to have one set of election laws that would comply with HAVA rather than having two separate laws – one for Federal elections and one for State elections.

The use of provisional ballots cast in Wake County has continued to increase.

ELECTION YEAR	PROVISIONAL BALLOTS COUNTED
1998	2,614
2000	9,339
2002	3,370
2004	10,915

The majority of Wake County’s provisional voters are unreported moves. Others include:

- Voters who think they are registered but either registered after deadline (25 days prior to an election), were registered in another County or State and had not registered in Wake County, were removed through regular list maintenance procedures and had not reregistered, or simply had failed to register. North Carolina at this time does not allow Election Day registration.
- Voters who attempted to register at a DMV office but whose registration applications were not received by the Board of Elections from the DMV. The counties receive a weekly list of voters who attempt to register at the DMV. If the voter’s name appears on this list the provisional ballot is counted.
- Voters whose registrations could not be processed due to missing information and who had not responded to letters seeking the required information. Examples would be registration applications not signed, those on which the date of birth missing or where the address given was not a residence address. These registrations are held in a reject file and treated as completed registrations when the voter completes a provisional ballot, if the required information is included on the provisional envelope.

HAVA compliant voter registration application forms require the registrant to check a box answering the question: “Are you a citizen of the United States of America?” (There was an increase in provisional voters due to the increased number of incomplete registrations held until the registrant returned the letter requesting an answer to the citizenship question) Many registrants neglected to answer this question when completing their applications. This created an increase in the number of incomplete registrations held in the reject file waiting for registrants to return a letter requesting an answer to the citizenship question. Many letters were not returned in a timely manner resulting in an increase in the number of provisional voters.

The HAVA stipulation that all voters must be allowed to vote in their “jurisdiction” led to a great deal of discussion in early 2004. The General Assembly enacted NCGS 163-166.11, which states: “If an individual seeking to vote claims to be a registered voter in a **jurisdiction** and though eligible to vote in the election does not appear on the official list of eligible registered voters in the voting place, that individual may cast a provisional official ballot as follows...”

NCGS 163-182.2(a)(4) states...”If the county board finds that an individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the Board shall not count the official ballot in those items, but shall count the official ballot in any ballot items for which the individual is eligible to vote.”

The General Assembly interpreted **jurisdiction** to mean county. The county boards were then directed by the State Board, “...that provisional ballots should be offered to any individual who appears at the polls. Precinct officials should not make any determination on their own regarding a person’s eligibility to vote.”

Wake County has a separate training for the precinct officials responsible for administering the procedures for the provisional ballots. The training has been very effective in guaranteeing that the officials are aware of the correct procedures for provisional voting. Due to the anticipated high turnout in the 2004 election, two officials in each precinct plus the Chief Judge were trained in provisional balloting. We refer to the area for provisional voting as the Verification Table.

A major emphasis during not only the verification training but all precinct official training was that you never deny the person the right to vote – you allow them to vote a provisional ballot and the office will research the eligibility of the voter. The process of researching Wake County’s more than 13,000 provisional ballots for the 2004 General Election required approximately 12 staff members eight long days to complete. Attached is a copy of the process we use to research the provisional ballots.

Wake County had a 75% voter turnout for the November 2004 election with 359,429 ballots cast. Included in that number is the 10,915 provisional ballots counted.

One promising innovation, piloted through a HAVA grant, in Guilford County, North Carolina, during the 2004 general election, was providing each Election Day precinct with an “electronic poll book”. This enabled precinct officials to confirm the registration of any registered voter who appeared at their polling place and to process “unreported moves” as transfer voters, providing them with a regular ballot rather than a provisional ballot. Of Guilford County’s 201,500 voters, fewer than 2,000 cast provisional ballots with 1,291 ultimately being counted. These numbers were substantially lower than the other larger counties in North Carolina where electronic poll books were not available.

The Superintendent of Public Instruction election outcome is still in the courts. After the election, one of the candidates for Superintendent of Public Instruction filed an election protest and eventually a lawsuit asserting that out-of-precinct provisional ballots should not be counted. The contention was that these ballots should not be counted under Article VI, Section 2 of the NC Constitution.

This section of the Constitution states in part “Any person who has resided ...in the precinct, ward, or other election district for 30 days next preceding an election, and possesses the other qualifications set out in this Article, shall be entitled to vote at any election held in this State.”

The North Carolina Supreme Court eventually ruled, based on statutory grounds rather than constitutional grounds, that 11,310 out-of-precinct provisional votes counted statewide should not have been counted. The case has now been sent back to the lower court for remedial action and this will be heard on March 2, 2005.

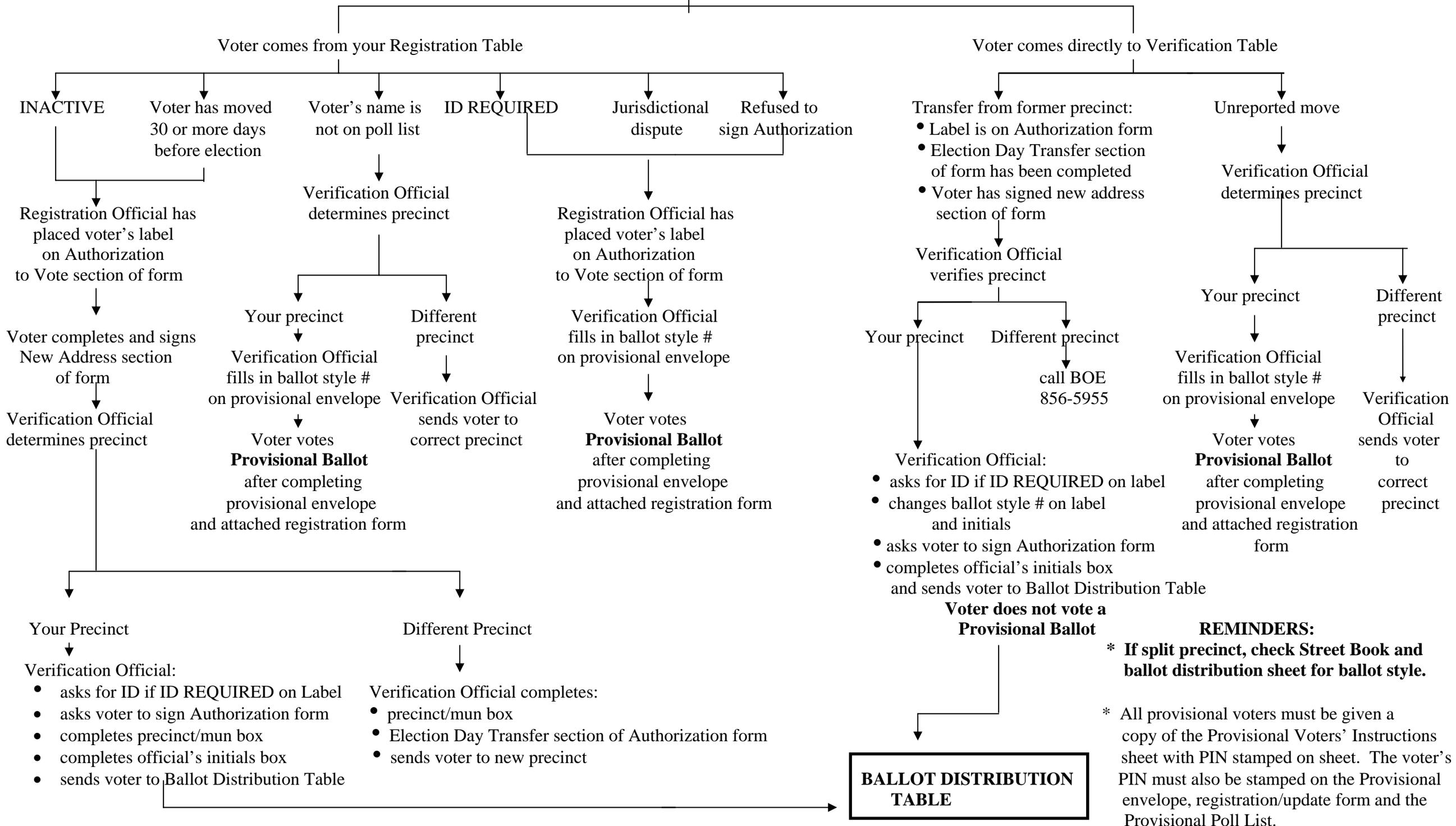
Because of the Supreme Court ruling, Senate Bill 133 has been filed in the North Carolina General Assembly to “clarify” the legislative intent that “out-of-precinct” provisional ballots be counted for all contests for which the voter was eligible to vote. Section 1 (1) of the bill states: “...The “jurisdiction” in which a voter in North Carolina registers to vote is the county.”

Section 6 of the above referenced bills states: “The State Board of Elections shall make recommendations by April 15, 2005, for consideration by the 2005 General Assembly on administration of provisional voting in the future, taking into account the relevant experience in the 2004 elections in this and other states.”

There is another bill in the General Assembly to authorize the State Board of Elections to conduct a pilot program in which the methods of one-stop (early) voting would continue through Election Day as the predominant voting method. If enacted, this would allow any voter properly registered in the county to vote at any of the sites; thereby eliminating a large number of unreported moves provisional ballots cast and effectively eliminating all “out-of-precinct” ballots.

The provisional ballot is a wonderful tool allowing all citizens who feel they are eligible to vote to cast a ballot. It places the burden of determining voter eligibility on the Boards of Election who have at hand all the information necessary to make a decision. The voter is not disenfranchised and the local precinct official does not have the final say. Standardization of the use and implementation of the provisional ballot in each state should be our goal.

VERIFICATION TABLE



REMINDERS:

- * If split precinct, check Street Book and ballot distribution sheet for ballot style.
- * All provisional voters must be given a copy of the Provisional Voters' Instructions sheet with PIN stamped on sheet. The voter's PIN must also be stamped on the Provisional envelope, registration/update form and the Provisional Poll List.

PROVISIONAL BALLOT ENVELOPE

Voter's PIN: _____

THE VOTER MUST COMPLETE THIS FORM AND THE ATTACHED VOTER REGISTRATION/UPDATE FORM PRIOR TO VOTING. ALL PROVISIONAL BALLOT ENVELOPES MUST BE STAMPED WITH THE VOTER'S PIN AND SEQUENTIALLY NUMBERED.

I, (please print your full name) _____ do hereby affirm that: (Check appropriate box)

- 1. I am an unreported move. I am currently registered to vote in Wake County and have moved within the county. I did not report my new address to the Board of Elections. I have not voted in this election in the precinct where I am currently registered and hereby request that I be permitted to vote in this election in my new precinct.
- 2.(A) I completed a voter registration application in Wake County at _____ (please indicate the office at which you completed the voter registration application – for example, Drivers License Office, Social Services, etc.*) on or about the ____ day of _____, _____ and that I should be entitled to vote today .
If you registered at a DMV office please give your: Drivers License Number _____ Date of Issuance _____
**This information will be used only to determine your eligibility to vote in this election and will remain confidential.*
- 2.(B) I completed and mailed to the Wake County Board of Elections a voter registration application on or about the ____ day of _____, _____ and that I should be entitled to vote today.
- 3. I have been removed from the Poll List, but I have not moved from Wake County since I registered to vote. I have not registered in any other County or State. My name should be on the poll list and I should be entitled to vote today.
- 4. I do not believe my voting district(s) or municipality is listed correctly. To the best of my knowledge my current residence address is within the following voting district(s) _____ and that I should be entitled to vote in that district's election today.
- 5. Other Reason: i.e. Disputes party; Needs ID; Refuses to sign Authorization to Vote; Voting after Hours.

Signature of Voter (Required)

Date

VOTER SEALS BALLOT IN ENVELOPE

DO NOT PLACE BALLOT IN TABULATOR

VERIFICATION TABLE

PROVISIONAL BALLOT VOTERS AS LISTED ON THE PROVISIONAL ENVELOPE

These categories correspond to the numbers on the Provisional Envelope.

- 1. Unreported Move Voter:** The voter who states that he/she is a registered voter in Wake County and has moved into your precinct 30 or more days prior to the election but did not notify the Wake County Board of Elections of his/her new address.

- 2A and 2B. Unlisted Voter:** The voter who states he/she registered to vote either at DMV or other designated agency or by mail prior to the registration deadline, and should be on your Poll List, but is not listed.

- 3. Previous Removed Voter:** The voter whose name is not on your Poll List who states that he/she has been registered to vote in Wake County and has not moved from the county since completing that registration.

- 4. Jurisdictional Dispute Voter:** The voter who claims his residence is within a certain district or municipality but the Poll List does not indicate he/she is within that district or municipality.

- 5. Other Reason: i.e.**
 - * Party Dispute Voter:** The voter who, in a primary, claims to be affiliated with a party other than that shown on the Poll List.
 - * ID Required Voter:** The voter designated as ID REQUIRED who did not provide identification at the Registration Table.
 - * Signature Dispute Voter:** The voter who refuses to sign the Authorization to Vote/New Address/Election Day Transfer form.
 - * Special Provisional Voter:** The voter voting during Court or Board of Elections ordered extended hours.

PROVISIONAL BALLOT
**VOTER TRANSFERRING INTO YOUR
PRECINCT WITHOUT AN AUTHORIZATION
TO VOTE/NEW ADDRESS/ELECTION DAY
TRANSFER FORM
AN UNREPORTED MOVE (#1)**

- The Verification Official uses the Street Book to verify that the voter is in the correct precinct. **Pay close attention to the *Even/Odd* numbers.** (If the street address is not listed in the Street Book or the new precinct cannot be determined, call the Board of Elections office).

✪ **If the voter is in the correct precinct:**

- ✎ The voter must complete the information on the Provisional Ballot Envelope and the attached Registration Application/Update form. Remind the voter **not** to separate the envelope and the form.
- ✎ The Verification Official stamps and completes the voter's PIN on the **Provisional Ballot Envelope** (09201-01P 1)
- ✎ Voters' PINs should be consecutively numbered (example: 09201-01P 1; 09201-01P 2; etc).
- ✎ The Verification Official stamps and completes the voter's PIN on the **attached registration form.**
- ✎ The Verification Official stamps and completes the voter's PIN on a **copy of the Provisional Voters' Instruction sheet** listing the number the voter may call to ascertain whether the provisional ballot was counted, partially counted or not counted.

- ✎ The Verification Official writes the voter's name, address, telephone number, date of birth and stamps and completes the voter's PIN on the **Election Day Provisional Poll List Sheet**. The provisional voter's number must match the number on the voter's provisional ballot envelope, the attached registration form and the Provisional Voters' Instruction sheet.
- ✎ The Verification Official fills in the ballot style issued and signs the Provisional Ballot Envelope.
- ✎ The Verification Official hands the voter a ballot and instructs the voter to vote the ballot, fold it and seal it in the Provisional Ballot Envelope and return the sealed envelope to the Verification Official, with the completed Registration/Update form attached.
- ✎ The Verification Official hands the Provisional Voters' Instruction sheet to the provisional voter. The voter's PIN must be stamped and completed on the instruction sheet.
- ✎ The Verification Official does not separate the envelope and the Registration Application/Update form.

THE VOTER MUST RETURN THE SEALED ENVELOPE TO THE VERIFICATION OFFICIAL. DO NOT ALLOW THE VOTER TO INSERT A PROVISIONAL BALLOT INTO THE TABULATOR.

- ✎ The Verification Official places the sealed Provisional Ballot Envelope with the Registration Application/Update form attached into the Provisional Ballot Case (purple canvas bag).
- 🗳️ **If the voter is in the wrong precinct:**
- ✎ The Verification Official determines the voter's correct precinct using the Street Book and directs the voter to the correct precinct or to the Board of Elections office. (If the street address is not listed in the Street Book or the new precinct cannot be determined, call the Board of Elections office).

PROVISIONAL BALLOT **“ID REQUIRED” VOTER (#5)**

- The voter brings the Authorization to Vote/New Address/Election Day Transfer form, with label affixed, from your precinct’s Registration Table to the Verification Table.

- ⊛ **If the voter is in the correct precinct, BUT “ID REQUIRED” is designated on the label and voter did not show ID at Registration Table:**
 - ✎ The voter must complete the information on the Provisional Ballot Envelope and the attached Registration Application/Update form. Remind the voter **not** to separate the envelope and the form.

 - ✎ The Verification Official stamps and completes the voter’s PIN on the **Provisional Ballot Envelope (09201-01P_1)**

 - ✎ Voters’ PINs should be consecutively numbered (example: 09201-01P 1; 09201-01P 2; etc).

 - ✎ The Verification Official stamps and completes the voter’s PIN on the **attached registration form.**

 - ✎ The Verification Official stamps and completes the voter’s PIN on a copy of the **Provisional Voters’ Instruction sheet** listing the number the voter may call to ascertain whether the provisional ballot was counted, partially counted or not counted.

 - ✎ The Verification Official writes the voter’s name, address, telephone number, date of birth and stamps and completes the voter’s PIN on the **Election Day Provisional Poll List Sheet**. The provisional voter’s number must match the number on the voter’s provisional ballot envelope, the attached registration form and the instruction sheet.

 - ✎ The Verification Official fills in the ballot style issued and signs the Provisional Ballot Envelope.

- ✎ The Verification Official places the Authorization to Vote/New Address/Election Day Transfer form, with label affixed, in the Provisional Ballot Envelope.
- ✎ The Verification Official hands the voter a ballot and instructs the voter to vote the ballot, fold it and seal it in the Provisional Ballot Envelope and return the sealed envelope to the Verification Official, with the completed Registration/Update form attached.
- ✎ The Verification Official hands the **Provisional Voters' Instruction sheet** to the provisional voter. The voter's PIN must be stamped and completed on the **Provisional Voter Call-In instruction sheet**.
- ✎ The Verification Official does not separate the envelope and the Registration Application/Update form.

THE VOTER MUST RETURN THE SEALED ENVELOPE TO THE VERIFICATION OFFICIAL. DO NOT ALLOW THE VOTER TO INSERT A PROVISIONAL BALLOT INTO THE TABULATOR.

- ✎ The Verification Official places the sealed Provisional Ballot Envelope with the Registration Application/Update form attached into the Provisional Ballot Case (purple canvas bag).

PROVISIONAL BALLOT
**JURISDICTIONAL DISPUTE (#4) OR PARTY
AFFILIATION DISPUTE (#5)**

- The voter brings the Authorization to Vote/New Address/Election Day Transfer form, with label affixed, from your precinct's Registration Table to the Verification Table.

⊛ **If the voter is in the correct precinct, BUT the voter claims to reside within a certain district or municipality other than that shown on the Poll List; or in a primary, the voter claims to be affiliated with a political party other than that shown on the Poll List:**

- ✎ The voter must complete the information on the Provisional Ballot Envelope and the attached Registration Application/Update form. Remind the voter **not** to separate the envelope and the form.
- ✎ The Verification Official stamps and completes the voter's PIN on the **Provisional Ballot Envelope (09201-01P_1)**
- ✎ Voters' PINs should be consecutively numbered (example: 09201-01P_1; 09201-01P_2; etc).
- ✎ The Verification Official stamps and completes the voter's PIN on the **attached registration form.**
- ✎ The Verification Official stamps and completes the voter's PIN on a copy of the **Provisional Voters' Instruction sheet** listing the number the voter may call to ascertain whether the provisional ballot was counted, partially counted or not counted.
- ✎ The Verification Official writes the voter's name, address, telephone number, date of birth and stamps and completes the voter's PIN on the **Election Day Provisional Poll List Sheet**. The provisional voter's number must match the number on the voter's provisional ballot envelope, the attached registration form and the instruction sheet.

- ✎ The Verification Official fills in the ballot style issued and signs the Provisional Ballot Envelope.
- ✎ The Verification Official places the Authorization to Vote/New Address/Election Day Transfer form, with label affixed, in the Provisional Ballot Envelope.
- ✎ The Verification Official hands the voter a ballot and instructs the voter to vote the ballot, fold it and seal it in the Provisional Ballot Envelope and return the sealed envelope to the Verification Official, with the completed Registration/Update form attached.
- ✎ The Verification Official hands the Provisional Voters' Instruction sheet to the provisional voter. The voter's PIN must be stamped and completed on the Provisional Voters' Instruction sheet.
- ✎ The Verification Official does not separate the envelope and the Registration Application/Update form.

THE VOTER MUST RETURN THE SEALED ENVELOPE TO THE VERIFICATION OFFICIAL. DO NOT ALLOW THE VOTER TO INSERT A PROVISIONAL BALLOT INTO THE TABULATOR.

- ✎ The Verification Official places the sealed Provisional Ballot Envelope with the Registration Application/Update form attached into the Provisional Ballot Case (purple canvas bag).

Wake County Board of Elections

337 S. SALISBURY STREET
POST OFFICE BOX 695
RALEIGH, NORTH CAROLINA 27602-0695
(919) 856-6240

CANVASS

PROVISIONAL BALLOT PROCEDURES:

1. Remove provisional ballots and provisional ballot poll sheets from the sealed purpose Provisional Ballot case. Verify names on envelopes with names entered on poll sheets.
2. Check to be sure PIN was stamped on both sides of provisional envelope and on provisional poll list and that provisional numbers match. If PIN is not stamped, mark the precinct in which the provisional ballot was voted on top of the envelope and number envelope and provisional poll list. The voter's provisional number must match on envelope and poll list.
3. Search name on each envelope to verify the voter is registered. If registered, write the VRN number on the envelope. Verify party registration indicated by voter on the envelope, if a primary election.
4. Search updated address to verify voter voted the provisional ballot in his/her correct new precinct, noting if updated address is within municipality or appropriate districts as applicable.
5. Check color and/or style of ballot sealed in envelope to verify the correct ballot was given to the voter. If updated address is outside municipality, verify voter was not given municipal ballot, if precinct has municipal election or bond and "in" and "out" voters.
6. Mark in Voter View all voters voting provisional ballots where it has been determined that the voter is duly registered, voted in correct precinct and was given the ballot he/she was eligible to vote.
7. Print report listing all voters marked provisional -- by the precinct in which they are currently registered (old precinct).
8. Check this list against poll lists returned from the polls to verify the provisional ballot voter did not also vote in his/her old precinct.

9. If a provisional ballot voter appears to have voted in his/her old precinct, search authorizations to vote from the old precinct. If a provisional ballot voter has a completed and numbered authorization to vote, set the provisional ballot and Authorization to Vote aside for Board consideration.
10. Seal all provisional ballots cast by voters who are registered, voted in correct new precinct, voted only ballots they are eligible to vote and were verified not to have also voted in their old precinct in a locked container. Count these ballots when the Board authorizes provisional ballots to be inserted into the provisional universal tabulator.
11. Search canceled voter files, DMV lists, after deadline, reject and denied files for all provisional ballot voters who are not listed as registered voters in Voter View.
12. Add ballots of any provisional ballot voters found on a DMV list to ballots to be considered by the Board for counting.
13. Pull cards of provisional voters who were listed in canceled files. Determine why canceled and set aside for Board consideration.
14. Pull information from reject file for any provisional voters found there and set aside for Board consideration.
15. Set aside for Board consideration any provisional ballots where it was determined the voter voted in the wrong precinct or voted an incorrect ballot. Note ballot style # voter actually voted and style voter should have voted. Note if the ballot or any ballot items were the same for both precincts. Those items voter was eligible to vote should be counted (NCGS 182.2 (4)).
16. Set aside for Board consideration any provisional ballots for which no registration documentation could be located.
17. Have all information ready and documented when the Board convenes after the election to review provisional ballots. .



**Board of
Elections**

TEL 919 856 6240
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P.O. Box 695 • Raleigh, NC 27602-0695
www.co.wake.nc.us

PROVISIONAL VOTERS' INSTRUCTIONS:

**BEGINNING ON THE EIGHTH DAY AFTER THE ELECTION
YOU MAY:**

Call 1-866-522-4723

or

Visit www.sboe.state.nc.us

**TO FIND OUT WHETHER YOUR BALLOT WAS COUNTED,
PARTIALLY COUNTED OR NOT COUNTED.**

**IF PARTIALLY COUNTED OR NOT COUNTED, A REASON FOR THE
DECISION WILL BE GIVEN.**

**YOU WILL BE ASKED FOR YOUR FULL NAME, DATE OF BIRTH AND
PERSONAL IDENTIFICATION NUMBER (PIN).**

**If you are voting provisionally because you did not show required identification
at the Registration Table, your ballot cannot be counted until the Board of Elections
receives acceptable proof of Identification:**

1. Copy of current and valid photo identification or
2. Copy of current utility bill, bank statement, government check, paycheck or other government document that shows your name and address.

**You may mail, fax or hand deliver your proof of identification to the Wake County
Board of Elections office. It must be received **no later than 11:00 am on the
Tuesday following the Election.****

PTO: Stamp Pin Number Here: _____