

Article 11B.

Challenge to Candidacy.

**§ 163-127.1. Definitions.**

As used in this Article, the following terms mean:

- (1) Board. – State Board of Elections.
- (2) Candidate. – A person having filed a notice of candidacy under the appropriate statute for any elective office in this State.
- (3) Challenger. – Any qualified voter registered in the same district as the office for which the candidate has filed or petitioned.
- (4) Office. – The elected office for which the candidate has filed or petitioned. (2006-155, s. 1; 2006-259, s. 48(a); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

**§ 163-127.2. When and how a challenge to a candidate may be made.**

(a) When. – A challenge to a candidate may be filed under this Article with the board of elections receiving the notice of the candidacy or petition no later than 10 business days after the close of the filing period for notice of candidacy or petition.

(b) How. – The challenge must be made in a verified affidavit by a challenger, based on reasonable suspicion or belief of the facts stated. Grounds for filing a challenge are that the candidate does not meet the constitutional or statutory qualifications for the office, including residency.

(c) If Defect Discovered After Deadline, Protest Available. – If a challenger discovers one or more grounds for challenging a candidate after the deadline in subsection (a) of this section, the grounds may be the basis for a protest under G.S. 163-182.9. (2006-155, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

**§ 163-127.3. Panel to conduct the hearing on a challenge.**

Upon filing of a challenge, a panel shall hear the challenge, as follows:

- (1) Single county. – If the district for the office subject to the challenge covers territory in all or part of only one county, the panel shall be the county board of elections of that county.
- (2) Multicounty but less than entire State. – If the district for the office subject to the challenge contains territory in more than one county but is less than the entire State, the State Board shall appoint a panel within two business days after the challenge is filed. The panel shall consist of at least one member of the county board of elections in each county in the district of the office. The panel shall have an odd number of members, no fewer than three and no more than five. In appointing members to the panel, the State Board shall appoint members from each county in proportion to the relative total number of registered voters of the counties in the district for the office. If the district for the office subject to the challenge covers more than five counties, the panel shall consist of five members with at least one member from the county receiving the notice of candidacy or petition and at least one member from the county of residency of the challenger. The State Board shall, to the extent possible, appoint members affiliated with different political parties in proportion to the representation of

those parties on the county boards of elections in the district for the office. The State Board shall designate a chair for the panel. A meeting of the State Board to appoint a panel under this subdivision shall be treated as an emergency meeting for purposes of G.S. 143-318.12.

- (3) Entire State. – If the district for the office subject to the challenge consists of the entire State, the panel shall be the State Board. (2006-155, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

#### **§ 163-127.4. Conduct of hearing by panel.**

(a) The panel conducting a hearing under this Article shall do all of the following:

- (1) Within five business days after the challenge is filed, designate and announce the time of the hearing and the facility where the hearing will be held. The hearing shall be held at a location in the district reasonably convenient to the public, and shall preferably be held in the county receiving the notice of the candidacy or petition. If the district for the office covers only part of a county, the hearing shall be at a location in the county convenient to residents of the district, but need not be in the district.
- (2) Allow for depositions prior to the hearing, if requested by the challenger or candidate before the time of the hearing is designated and announced.
- (3) Issue subpoenas for witnesses or documents, or both, upon request of the parties or upon its own motion.
- (4) Render a written decision within 20 business days after the challenge is filed and serve that written decision on the parties.

(b) Notice of Hearing. – The panel shall give notice of the hearing to the challenger, to the candidate, other candidates filing or petitioning to be elected to the same office, to the county chair of each political party in every county in the district for the office, and to those persons who have requested to be notified. Each person given notice shall also be given a copy of the challenge or a summary of its allegations.

Failure to comply with the notice requirements in this subsection shall not delay the holding of a hearing nor invalidate the results if the individuals required by this section to be notified have been notified.

(c) Conduct of Hearing. – The hearing under this Article shall be conducted as follows:

- (1) The panel may allow evidence to be presented at the hearing in the form of affidavits supporting documents, or it may examine witnesses. The chair or any two members of the panel may subpoena witnesses or documents. The parties shall be allowed to issue subpoenas for witnesses or documents, or both, including a subpoena of the candidate. Each witness must be placed under oath before testifying. The State Board shall provide the wording of the oath to the panel.
- (2) The panel may receive evidence at the hearing from any person with information concerning the subject of the challenge, and such presentation of evidence shall be subject to Chapter 8C of the General Statutes. The challenger shall be permitted to present evidence at the hearing, but the challenger shall not be required to testify unless subpoenaed by a party. The panel may allow evidence to be presented by a person who is present.

(3) The hearing shall be recorded by a reporter or by mechanical means, and the full record of the hearing shall be preserved by the panel until directed otherwise by the State Board.

(d) Findings of Fact and Conclusions of Law by Panel. – The panel shall make a written decision on each challenge by separately stating findings of facts, conclusions of law, and an order.

(e) Rules by State Board. – The State Board shall adopt rules providing for adequate notice to parties, scheduling of hearings, and the timing of deliberations and issuance of decisions. (2006-155, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

#### **§ 163-127.5. Burden of proof.**

(a) The burden of proof shall be upon the candidate, who must show by a preponderance of the evidence of the record as a whole that he or she is qualified to be a candidate for the office.

(b) If the challenge is based upon a question of residency, the candidate must show all of the following:

- (1) An actual abandonment of the first domicile, coupled with an intent not to return to the first domicile.
- (2) The acquisition of a new domicile by actual residence at another place.
- (3) The intent of making the newer domicile a permanent domicile. (2006-155, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

#### **§ 163-127.6. Appeals.**

(a) Appeals from Single or Multicounty Panel. – The decision of a panel created under G.S. 163-127.3(1) or G.S. 163-127.3(2) may be appealed as of right to the State Board by any of the following:

- (1) The challenger.
- (2) A candidate adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel serves the written decision on the parties. The written appeal must be delivered or deposited in the mail to the State Board by the end of the second business day after the written decision was filed by the panel. The State Board shall prescribe forms for filing appeals from a panel's decision in a challenge. The State Board shall base its appellate decision on the whole record of the hearing conducted by the panel and render its opinion on an expedited basis. From the final order or decision by the State Board under this subsection, appeal as of right lies directly to the Court of Appeals. Appeal shall be filed no later than two business days after the State Board files its final order or decision in its office.

(b) Appeals from Statewide Panel. – The decision of a panel created under G.S. 163-127.3(3) may be appealed as of right to the Court of Appeals by any of the following:

- (1) The challenger.
- (2) A candidate adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel files the written decision. The written appeal must be delivered or deposited in the mail to the Court of Appeals by the end of the second business day after the written decision was filed by the panel. (2006-155, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)