§ 163-89. Procedures for challenging absentee ballots.

(a) Time for Challenge. – The absentee ballot of any voter received by the county board of elections pursuant to G.S. 163-231(b)(1) may be challenged no later than 5:00 P.M. on the fifth business day after the primary or general election or county bond election. The absentee ballot of any voter received by the county board of elections pursuant to G.S. 163-231(b)(2) may be challenged no later than 5:00 P.M. on the next business day following the deadline for receipt of such absentee ballots.

(b) Who May Challenge. – Any registered voter of the same county as the absentee voter may challenge that voter's absentee ballot.

(c) Form and Nature of Challenge. – Each challenged absentee ballot shall be challenged separately. The burden of proof shall be on the challenger. Each challenge shall be made in writing and, if they are available, shall be made on forms prescribed by the State Board of Elections. Each challenge shall specify the reasons why the ballot does not comply with the provisions of this Article or why the absentee voter is not legally entitled to vote in the particular primary or election. The challenge shall be signed by the challenger.

(d) To Whom Challenge Addressed; to Whom Challenge Delivered. – Each challenge shall be addressed to the county board of elections. It may be filed with the board at its offices or with the chief judge of the precinct in which the challenger and absentee voter are registered. If it is delivered to the chief judge, the chief judge shall personally deliver the challenge to the chairman of the county board of elections on the day of the county canvass.

(e) Hearing Procedure. – All challenges filed under this section shall be heard by the county board of elections on the day set for the canvass of the returns. All members of the board shall attend the canvass and all members shall be present for the hearing of challenges to absentee ballots.

Before the board hears a challenge to an absentee ballot, the chairman shall mark the word "challenged" after the voter's name in the register of absentee ballot applications and ballots issued and in the pollbook of absentee voters.

The board then shall hear the challenger's reasons for the challenge, and it shall make its decision without opening the container-return envelope or removing the ballots from it.

The board shall have authority to administer the necessary oaths or affirmations to all witnesses brought before it to testify to the qualifications of the voter challenged or to the validity or invalidity of the ballot.

If the challenge is sustained, the chairman shall mark the word "sustained" after the word "challenged" following the voter's name in the register of absentee ballot applications and ballots issued and in the pollbook of absentee voters; the voter's ballots shall not be counted; and the container-return envelope shall not be opened but shall be marked "Challenge Sustained." All envelopes so marked shall be preserved intact by the chairman for a period of six months from canvass day or longer if any contest then is pending concerning the validity of any absentee ballot.

If the challenge is overruled, the absentee ballots shall be removed from the container-return envelopes and counted by the board of elections, and the board shall adjust the appropriate abstracts of returns to show that the ballots have been counted and tallied in the manner provided for unchallenged absentee ballots.

If the challenge was delivered to the board by the chief judge of the precinct and was sustained, the board shall reopen the appropriate ballot boxes, remove such ballots, determine how those ballots were voted, deduct such ballots from the returns, and adjust the appropriate abstracts of returns.

Any voter whose ballots have been challenged may, either personally or through an authorized representative, appear before the board at the hearing on the challenge and present evidence as to the validity of the ballot. (1939, c. 159, ss. 8, 9; 1945, c. 758, s. 8; 1953, c. 1114;

1963, c. 547, s. 8; 1965, c. 871; 1967, c. 775, s. 1; 1973, c. 536, s. 4; 1993 (Reg. Sess., 1994), c. 762, s. 29; 2009-537, s. 8(c); 2014-111, s. 15(d); 2017-6, s. 3; 2018-146, s. 3.1(a), (b); 2023-140, s. 15.)