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Elections

In 2002 the General Assembly convened an extra session to redraw district lines for the state House and Senate, and, in an historic move, to postpone the 2002 primaries from May to September. During the regular session, the lawmakers also passed legislation providing for the nonpartisan election of appellate judges and created a wide-ranging public financing plan for appellate judge races.

Redistricting

Every ten years after the federal census, the state legislature must undertake the politically grueling task of redrawing district lines for the United States House of Representatives, the state Senate, and the state House of Representatives. It does so by passing statutes delineating the district lines. These statutes then face two tests. First, in accordance with the federal Voting Rights Act of 1965, all laws affecting elections—including redistricting statutes—must be submitted to the U. S. Department of Justice for review. If the Department of Justice, in the words of the Voting Rights Act, “interposes an objection” to a redistricting statute, then that statute and its districts cannot go into effect. The statute has not, in common terminology, been “precleared.” In the early 1990s, the redistricting acts pertaining to North Carolina’s Congressional seats were not precleared and the General Assembly was required to redraw the associated district lines. In 2001, however, all the statutes setting the district lines for the U. S. House of Representatives, the state Senate, and the state House of Representatives received the necessary Department of Justice preclearance, passing this Voting Rights Act test.

The second test involves lawsuits challenging the constitutionality of one or more of the redistricting statutes. While such lawsuits are not a certainty, in recent times they have become more likely. In the 1990s federal courts found North Carolina’s Congressional districts to be in violation of the United States Constitution and voided them. In 2002, however, the lawsuit challenging the constitutionality of the new districts pertained to the state House and state Senate (rather than Congressional) districts and was based on provisions of the North Carolina (rather than the federal) Constitution.

Judge-Drawn Districts for 2002

On April 30, 2002, the North Carolina Supreme Court struck down both the state House and state Senate districts and returned the lawsuit to the superior court for further action. The superior court judge handling the case gave the General Assembly the first opportunity to redraw the districts.

The General Assembly convened an extra session for that purpose. In May it passed S.L. 2002-1 Extra Session (H 4), setting new state House and state Senate districts. On May 31 the superior court judge rejected those districts and issued his own maps with new district lines. The North Carolina Supreme Court agreed to hear an appeal of the superior court judge's action, but not before the 2002 election. Thus the districts drawn by the superior court judge were the ones used in that election.

Delay of the 2002 Primaries

Normally in even-numbered years, North Carolina holds elections for federal, state, and county offices. The primary is in May, the second primary in any race (when it is necessary) is in June, and the general election is in November. Because of the April 30 supreme court action striking down the state House and state Senate districts, the May primaries for those offices could not be held. The State Board of Elections decided to postpone all primaries for all offices so that all the primary elections could be held on the same date.

In its redistricting extra session, the General Assembly enacted S.L. 2002-21 Extra Session (S 2), setting the primary date for all elections for September 10, 2002. That date was so near the date of the November general election that the legislature eliminated the second primary altogether, providing that the candidate receiving a plurality of votes in the primary would be the nominated candidate. Both measures—scheduling the primary for September and eliminating the second primary—were effective for the 2002 elections only. S.L. 2002-21 Extra Session also created a new filing period so that candidates for the state House and state Senate could file notices of candidacy in the new districts.

Delay of Constitutional Amendment Vote

By action in an earlier session, the General Assembly had set a statewide referendum on a highly technical constitutional amendment concerning the procedures by which government-owned land could be transferred to the State Nature and Historic Preserve for the primary election date in 2002. In S.L. 2002-3 Extra Session (H 3) the legislature postponed the referendum until the November 2002 general election.

Nonpartisan Appellate Judge Elections

In 1996 the General Assembly enacted Article 25 of G.S. Chapter 163, changing superior court judge elections from partisan to nonpartisan, effective with the 1998 elections. In 2001 it did the same thing for district court judge elections. Effective with the 2004 elections, S.L. 2002-158 (S 1054) does likewise for elections of judges to the North Carolina Supreme Court and the North Carolina Court of Appeals.

Public Financing of Appellate Judge Elections

S.L. 2002-158 affects appellate judge elections in two ways. First, it makes these elections nonpartisan, as described above. Second, it creates the North Carolina Public Campaign Financing Fund and provides for public financing of campaign costs incurred by appellate judge candidates who choose to participate.

Participation

An individual who wishes to become a candidate for the North Carolina Supreme Court or the North Carolina Court of Appeals may choose whether to participate in public financing through the fund. To participate, the individual must not have raised or spent more than \$10,000 for campaign expenditures after January 1 in the year before the election. He or she must file a notice of intent to participate and obtain contributions from at least 350 registered voters as a demonstration of support. The total of these contributions must equal at least thirty times the filing fee for the office (currently, a total of \$33,000 for court of appeals judgeships and \$34,500 for supreme court judgeships) and no more than sixty times the filing fee (\$66,000 and \$69,000, respectively). These contributions are in addition to any the candidate may have received (below the \$10,000 threshold, of course) before filing the notice of intent.

A candidate may revoke his or her decision to participate within the time constraints set by the act.

Limited Spending through the Primary

Up through the primary, a participating candidate may spend no more than the maximum qualifying amount of contributions (\$66,000 and \$69,000 for court of appeals and supreme court, respectively), plus any funds up to \$10,000 collected before filing the notice of intent. After filing the notice of intent, candidates may contribute up to \$1,000 of their own money and may accept up to \$1,000 each from their spouses, parents, children, brothers, or sisters, as long as the maximum qualifying amount is not exceeded. These funds may be expended for campaign-related purposes only.

As discussed below, under certain conditions rescue funds may be made available to participating candidates, permitting them to spend more than the maximum qualifying amount.

Nonparticipation

A candidate who chooses not to participate is not bound by the rules detailed above and will receive no money from the fund.

Receipt of Fund Money

Up through the primary, a participating candidate receives no money from the fund (except possibly rescue funds, as described below). Before the primary he or she may make expenditures from (1) the qualifying funds raised, only up to the maximum qualifying amount (as described above); (2) any of the amount up to \$10,000 raised before filing the notice of intent; and (3) any rescue funds provided.

A participating candidate will receive fund money after the primary and up to a contested general election. A court of appeals candidate will receive 125 times the filing fee (currently, a total of \$137,500) and a supreme court candidate, 175 times the filing fee (currently, a total of \$201,300). No funds are provided for uncontested elections. If the amount of money in the fund is insufficient to fully subsidize all participating candidates at these amounts, then each candidate will receive a pro rata share. Participating candidates may not make campaign expenditures from any sources other than fund receipts.

Rescue Funds for the Primary

The participating candidate receives no money from the fund up through the primary unless a “trigger” for rescue funds is released. In other words, *rescue funds* can become available when

1. An opponent’s campaign expenditures or contributions exceed a certain amount. Any nonparticipating candidate in an election contest with a participating candidate must notify the State Board of Elections within twenty-four hours when the total amount of

campaign expenditures made or campaign funds contributed or borrowed exceeds 80 percent of the maximum qualifying amounts described above (currently \$66,000 and \$69,000 for court of appeals and supreme court, respectively). Afterward he or she must report all subsequent expenditures and contributions regularly and frequently according to a schedule set by the board. If those expenditures and contributions exceed the maximum qualifying amount, the fund will give the participating candidate an amount equal to the excess, up to twice the maximum qualifying amount.

2. Campaign expenditures made by entities other than candidates exceed a certain amount. Any entity making independent expenditures in support of a nonparticipating candidate or in opposition to a participating candidate must report its expenditures when they reach 50 percent of the maximum qualifying amounts. When the total of all expenditures by all such entities exceeds the maximum qualifying amounts, rescue funds will be made available to the participating candidate.

Rescue Funds for the General Election

The participating candidate receives money from the fund for the general election, up to the amounts described above (currently, \$137,500 for court of appeals races and \$201,300 for supreme court races). When the expenditures and contributions made by a nonparticipating candidate or the expenditures made by a noncandidate entity exceed these amounts, rescue funds are released for the general election. In that case, a participating candidate will receive from the fund an amount equal to the excess, up to twice the amounts candidates are normally eligible to receive from the fund for the general election (\$137,500 and \$201,300, as discussed above).

Administration

The North Carolina Public Campaign Financing Fund is to be administered by the State Board of Elections, which is to adopt rules and issue opinions to ensure the fund's effective administration. The Executive Director of the State Board of Elections will make initial decisions regarding qualifications, certification of participating candidates, and distribution of money from the fund, and appeals may be taken to the board for hearing.

The statute also creates an Advisory Council for the Public Campaign Financing Fund. The council will provide guidance to the State Board of Elections and will evaluate and report on the administration of the fund every two years.

The statute provides civil penalties for violations of the fund's provisions.

Voter Guide

S.L. 2002-158 directs the State Board of Elections to publish a Judicial Voter Guide, which will contain information concerning all court of appeals and supreme court candidates. This information will be supplied by the candidates themselves in a format provided by the board. The guide will also explain the functions of the appellate courts, the laws governing the election of appellate judges, the purpose and operation of the fund, and the laws concerning voter registration.

Fund Sources

The Campaign Financing Fund will have several sources for its money.

1. Tax payment allocations. Individual taxpayers will have the option of checking a box on their income tax returns allotting to the fund \$3 of the tax that they otherwise owe. Tax liability will remain the same regardless of the option chosen. An old entity called the North Carolina Candidates' Financing Fund, which had employed a similar (but rarely used) check-off option, is abolished.

2. Attorney contributions. Attorneys paying their annual privilege license taxes will be given the opportunity to donate an extra \$50 to the fund. This donation will not be mandatory.
3. Voluntary donations.

Limitations on Contributions to Candidates

G.S. 163-278.13 generally provides that no one may contribute more than \$4,000 to an election candidate. S.L. 2002-158 adds new G.S. 163-278.13(e2), which reduces these amounts for court of appeals and supreme court candidates to \$1,000. Exceptions are provided for candidates' parents, children, brothers, and sisters, who may contribute up to \$2,000 each. (Once a candidate has filed a notice of intent to become a participating candidate, this family limit is \$1,000.) In addition, if a nonparticipating candidate in one of these races has an opponent who is participating in the fund, the nonparticipating candidate may not accept contributions in the final twenty-one days before the general election.

Miscellaneous

S.L. 2002-159 (S 1217) provides a number of relatively minor changes to the elections statutes.

New Parties on Ballots

The elections statutes provide for the creation of new political parties through a petition process. Once the State Board of Elections certifies a new party, the party is eligible to have its candidates on the ballot. For the new party to remain certified, its candidates must receive certain minimum percentages of votes, which are specified in the statutes. If the candidates fail to receive those percentages, the party is decertified and must repeat the petition process if it is to again have its candidates appear on the ballot.

G.S. 163-98 has provided that in the first general election after the new party is certified, the party is entitled to have its candidates appear on ballots for state and national, but not local, offices. S.L. 2002-159 incorporates the holding of a fourteen-year-old federal court decision, providing that the new party's candidates may appear on ballots for local office as well.

Verification of Certain Petitions

One of the responsibilities that county boards of elections generally shoulder is that of verifying the signatures on various petitions related to elections. This is an appropriate responsibility for boards of elections because usually the verifications concern whether petition signatures are actually those of properly registered voters. The statutes provide, however, that in some limited circumstances petitions are to be signed by a certain proportion of "resident freeholders" rather than registered voters. S.L. 2002-159 amends two of these statutes—G.S. 130A-48, concerning petitions for incorporation of sanitary districts, and G.S. 69-25.1, concerning petitions for creating fire protection districts—to clarify that in these cases the responsibility for verifying the petitions falls to the county tax office rather than to the board of elections.

Campaign Contributions by Credit Card; Account Numbers

G.S. 163-278.14 provides that contributions in excess of \$100 may not be in the form of cash but must be made by check, draft, or money order. S.L. 2002-159 amends the statute to make clear that contributions may also be made by credit card and that the associated credit card numbers are not public record. A companion amendment, to G.S. 163-278.7(b), clarifies that campaign

treasurers may keep account numbers related to campaign donations confidential, except as necessary for an audit or investigation. However, disclosure of these numbers does not subject the treasurer to a lawsuit unless such disclosure is the result of gross negligence, wanton conduct, or intentional wrongdoing.

Incorporation of Political Committees

The campaign finance statutes generally prohibit corporations from making campaign contributions. Sometimes groups organized as political committees (which may make campaign contributions) wish to organize as corporations to protect their members from certain kinds of liability unrelated to elections. S.L. 2002-159 amends G.S. 163-278.19 to permit such organizations, as long as the incorporating committee clearly states in its incorporation documents that the only purpose for which the corporation can be organized is “to accept contributions and make expenditures to influence elections as a political committee.” Having done so the corporation may then apply to the State Board of Elections for certification as a political committee.

Confidentiality of Voted Ballots

S.L. 2002-159 amends G.S. 163-165.1, clarifying that voted ballots are to be treated as confidential. No one other than elections officials performing their duties may have access to voted ballots except by court order or order of the appropriate elections board in connection with an election protest or investigation of alleged elections wrongdoing.

Precinct Changes

The ongoing legislative districts lawsuit necessitates keeping current voting precincts in place in case new districts must be drawn. To address this need, S.L. 2002-159 amends G.S. 163-132.3 to effect a moratorium on precinct boundary changes. The statute does provide for changing current districts that do not conform to the 2000 census block boundaries.

Absentee Ballot Requests

Previously the statutes have not required any particular format for absentee ballot requests, and some independent entities, including political parties, have devised their own request forms. S.L. 2002-159 adds new G.S. 163-230.2 to specify that a request for an absentee ballot must be either written entirely by the requester personally or be on a form generated by the county board of elections and signed by the requester. Provision is made for a requester who cannot meet these requirements because of illiteracy or disability. G.S. 230.1 is amended to conform to this change.

On-Line Voting Commission Study

S.L. 2002-180 (S 98) creates a nineteen-member On-Line Voting Commission Study to examine the state of technology with regard to

- on-line voting,
- other states’ experiences with on-line voting,
- the comprehensibility of the on-line voting process to the average voter,
- the disparity of access to the Internet,
- privacy and security concerns, and
- the potential cost of an on-line voting system.

The commission is to report to the 2003 General Assembly.

Address Confidentiality

S.L. 2002-171 (H 1402) creates a government-wide Address Confidentiality Program to permit government agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, sexual offense, or stalking. It allows the state Attorney General to provide, for the use of government agencies generally, a substitute address for a person participating in the program. A special provision of the statute, new G.S. 15C-8(e), directs county boards of elections to use a program participant's actual address for all election-related purposes and to keep the address confidential [as already provided for in the elections law, at G.S. 163-82.10(d)]. Use of the participant's actual address on letters placed in the mail by the elections board is not a breach of the Address Confidentiality Program. The substitute address provided by the Attorney General is not to be used for voter registration or verification purposes.

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