



March 20, 2026

VIA EMAIL

North Carolina State Board of Elections
430 N. Salisbury St.
Raleigh, NC 27603-1362

Re: Secondary Recount in 2026 Republican Primary for SD26

Members of the State Board of Elections,

I, Phil Berger, am a candidate in the Republican primary for Senate District 26. At the conclusion of the initial machine recount for SD26, the margin in the contest remains 23 votes, which is less than 0.01% of the votes cast. Under the law, if the initial recount is not conducted hand-to-eye, I have a statutory right to a hand-to-eye recount conducted in a sample of precincts. N.C. Gen. Stat. § 163-182.7A(a). With this letter, I am exercising my statutory right to demand a second recount on a hand-to-eye basis in a sample of precincts in the Senate District 26 Republican primary election.

In addition to my statutory right to demand a sample hand-to-eye recount, I ask the State Board to order a hand-to-eye recount of all ballots in the SD26 contest or, at the very least, all ballots that machines have deemed to be overvotes or undervotes.

The State Board of Elections has the discretion to order recounts “when necessary to complete the canvass in an election.” *Id.* § 163-182.7(a). This discretion includes the power to order a hand-to-eye recount in a contest. Indeed, the statutes recognize that, in some instances, the initial recount itself could be a discretionary hand-to-eye recount ordered by the State Board or county boards. *See id.* § 163-182.7A(a) (“if the initial recount is not hand-to-eye . . .”). The Board’s own rules acknowledge that a secondary recount can also be a hand-to-eye recount of all votes. *See* 08 NCAC 09.0110 (“The board of elections . . . shall schedule any [secondary] hand-to-eye recount to being within two business days of the demand for a hand-to-eye recount, whether that [secondary] recount is a sample recount *or a full recount.*” (emphasis added)).

In such a close election, we must be certain that every lawful vote is counted. The machines did not count 222 ballots that were labeled as overvotes or undervotes. Those uncounted ballots, which could include discernible votes for candidates, are nearly ten times the margin in this contest. If the machines have misread just a fraction of those ballots, then the current results of the election could be incorrect.

Review by hand not only eliminates the potential of a machine error, but such review is also imperative to ensure these ballots are treated uniformly in this contest. The initial machine recount

revealed that some ballots were not treated uniformly. In Guilford County, at least two ballots that were apparently readable in the original tabulation were rejected by the tabulators as unreadable during the initial machine recount; they were labeled as undervotes and not counted. In Rockingham County, the scenario was handled differently: elections officials determined voter intent, darkened the marks on the ballot, and re-ran the ballot so that the vote would be counted. Treating such ballots differently runs afoul of the Equal Protection Clauses of the United States and North Carolina Constitutions. It also undermines confidence in the recount totals. In contrast, a hand-to-eye review of ballots that were labeled by the machines as overvote and undervotes ensures that all such ballots are treated the same.

It is the mission of the State Board to ensure that every legal vote is counted, and a hand-to-eye recount of all ballots cast, including the undervotes and overvotes, is required to accomplish that mission. Because the fate of this close election could turn on the over 220 ballots rejected by machines as overvotes or undervotes, I am asking for a hand-to-eye recount. Although I believe a hand-to-eye recount of all the ballots is warranted here, I ask that, at the very least, the State Board order a hand-to-eye recount of ballots that were read by the tabulators as having overvotes and undervotes.

Sincerely,

A handwritten signature in dark ink, appearing to read "Philip E. Berger". The signature is fluid and cursive, with a large initial "P" and "B".

Philip E. Berger

CC: Sam Hayes, Executive Director
Brian LiVecchi, Chief of Staff
Tim Hoegeymeyer, General Counsel
Adam Steele, Deputy General Counsel
Counsel for Sam Page