

SUBMISSION INFORMATION ON AMENDMENT TO THE NORTH CAROLINA CONSTITUTION PURSUANT TO 28 C.F.R., PART 51

The following information is submitted pursuant to 28 C.F.R., Part 51.27 regarding an Amendment to the North Carolina Constitution, Session Law 2010-49.

(a) A copy of any ordinance, enactment, order, or regulation embodying a change affecting voting.

Session Law 2010-49, enacted by the General Assembly on July 1, 2010, provided for the submission of Section I of House Bill 1307 to a vote of the people in the November 2, 2010 statewide general election. S.L. 2010-49, § 2. If approved, the Amendment will amend Section 2 of Article VII of the North Carolina Constitution by adding this sentence:

No person is eligible to serve as Sheriff if that person has been convicted of a felony against this State, the United States, or another state, whether or not that person has been restored to the rights of citizenship in the manner prescribed by law. Convicted of a felony includes the entry of a plea of guilty; a verdict or finding of guilt by a jury, judge, magistrate, or other adjudicating body, tribunal, or official, either civilian or military; or a plea of no contest, nolo contendere, or the equivalent.

A copy of the Session Law is included as **Attachment 1**.

(b) A copy of any ordinance, enactment, order, or regulation embodying the voting practice that is proposed to be repealed, amended, or otherwise changed.

Article VII of the North Carolina Constitution requires the General Assembly to create cities, counties and towns and establish their powers and duties. Section 2 of Article VII requires election of a Sheriff in each county. Section 2 of Article VII of the North Carolina Constitution presently contains no specification as to the eligibility of a person to serve as Sheriff. A copy of Art. VII of the North Carolina Constitution is included as **Attachment 2**. Section 6 of Article VI the North Carolina Constitution contains a qualification generally qualifying every 21 year old qualified voter in North Carolina for election to office. In addition, Section 8 of Article VI of the North Carolina Constitution disqualifies anyone ineligible to vote for an office from running for the office. A copy of Art. VI of the North Carolina Constitution is included as **Attachment 3**.

(c) If the change affecting voting either is not readily apparent on the face of the documents, provided under paragraphs (a) and (b) of this section or is not embodied in a document, a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting.

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Not applicable.

(d) The name, title, address, and telephone number of the person making the submission.

This submission is being made on behalf of North Carolina Secretary of State Elaine F. Marshall by:

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(e) The name of the submitting authority and the name of the jurisdiction responsible for the change, if different.

Pursuant to N.C. Gen. Stat. § 120-30.9D, the Secretary of State is the state official with the responsibility for submitting for preclearance acts of the General Assembly that amend the North Carolina Constitution and which constitute a change affecting voting under § 5 of the Voting Rights Act. A copy of N.C. Gen. Stat. § 120-30.9D is included as **Attachment 4**. The North Carolina Secretary of State is:

The Honorable Elaine F. Marshall
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The name of the jurisdiction responsible for the change is the North Carolina General Assembly. The Amendment is a proposed constitutional amendment which will be effective statewide. The Amendment is being submitted by Secretary Marshall on behalf of the State of North Carolina. The State of North Carolina has forty (40) counties covered by § 5 of the Voting Rights Act.

(f) If the submission is not from a State or county, the name of the county and State in which the submitting authority is located.

Not applicable.

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(g) Identification of the person or body responsible for making the change and the mode of decision (e.g., act of State legislature, ordinance of city council, administrative decision by registrar).

The Amendment was enacted by the State legislature, the North Carolina General Assembly. In the North Carolina general election on November 2, 2010 qualified North Carolina voters will determine whether to ratify the amendment. If ratified by the voters, the amendment will become effective upon certification by the State Board of Elections ("SBOE").

(h) A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to follow in deciding to undertake the change.

Under Article XIII, § 4 of the North Carolina Constitution, an amendment to the Constitution may be initiated by the General Assembly by adopting an act submitting the proposal to the voters for ratification or rejection. A copy of Article XIII, § 4 is included as **Attachment 5**. House Bill 1307, which provides for the amendment and the statewide referendum, S.L. 2010-49, was filed in the General Assembly, processed in committee, and enacted by a three-fifths vote of the members of each house as required by Article XIII, § 2. A copy of the legislative history, official bill explanation by legislative staff, and of the roll call votes is included as **Attachment 6**.

On July 2, 2010, the North Carolina State Board of Elections ("SBOE") submitted a preclearance request regarding the date of the election. A copy of the SBOE preclearance request is enclosed as **Attachment 7**. On August 18, 2010, the SBOE received preclearance for the election date from the US Department of Justice ("USDOJ"). A copy of the preclearance letter from USDOJ is included as **Attachment 8**.

As required by N.C. Gen. Stat. § 147-54.8 – 147-54.10, the North Carolina Constitutional Amendments Publication Commission met on August 12, 2010 to prepare an explanation of the amendment in simple and commonly used language. A copy of the statutes is included as **Attachment 9**. That explanation was provided to each of the 100 county boards of election along with a press release. A copy of the press release and list of the elections boards is included as **Attachment 10**.

(i) The date of adoption of the change affecting voting.

As required by Section 2 of Session Law 2010-49, ratified on July 1, 2010, the Amendment will go before the voters at the next general election on November 2, 2010.

(j) The date on which the change is to take effect.

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If ratified by the voters at the November 2, 2010 election, the Amendment will become effective upon certification of the election by the State Board of Elections.

(k) A statement that the change has not yet been enforced or administered, or an explanation of why such a statement cannot be made.

The provisions of the Amendment have not yet been enforced or administered because it has not been approved by the voters and voter approval has not been certified by the State Board of Elections. In addition, preclearance has not yet been granted by the United States Department of Justice.

(l) Where the change will affect less than the entire jurisdiction, an explanation of the scope of the change.

Not applicable.

(m) A statement of the reasons for the change.

The office of county Sheriff is a constitutional office established in Article VII, Section 2 of the Constitution of North Carolina. The powers and duties of Sheriff include, among others, serving as the chief law enforcement officer of the county, operating the jail, transporting prisoners, maintaining security in the courtroom, acting as the bailiff in court, and serving civil process.¹

There was general concern among the public and members of the General Assembly expressed this year that six (6) convicted felons ran for Sheriff in different counties in the May 2010 primary elections. None won. The reason for the proposed Amendment is to allow the voters to address the issue.

(n) A statement of the anticipated effect of the change on members of racial or language minority groups.

The election in which the proposed Amendment will be voted upon will be a general election permitting full participation by members of racial or language minority groups.

If there is a disproportionate number of members of racial or language minority groups who are felons and if the Amendment is ratified by the voters, it is conceivable that there could be some possible impact on members of such groups. On the other hand, as noted in the supplemental materials, all minority members of the General Assembly voted in favor of the Amendment.

¹ From "Law Enforcement," *County and Municipal Government in North Carolina*, edited by David Lawrence. UNC-Chapel Hill School of Government. 2007. Online at: <http://www.sog.unc.edu/pubs/cm9/cm929.pdf>.

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(o) A statement identifying any past or pending litigation concerning the change or related voting practices.

Not presently known to be applicable.

(p) A statement that the prior practice has been precleared (with the date) or is not subject to the preclearance requirement and a statement that the procedure for the adoption of the change has been precleared (with the date) or is not subject to the preclearance requirement, or an explanation of why such statements cannot be made.

The General Assembly of North Carolina first tasked the Department of the Secretary of State with submitting constitutional amendments for preclearance in 1985. The Department has no information as to whether the 1971 Constitution of the State of North Carolina, voted on by the qualified voters of North Carolina in a general election on November 3, 1970, was submitted for preclearance to the US Department of Justice.