

GRIEVANCE RELATED TO THE ELECTIONS FOR HOUSE DISTRICT 57

Pursuant to Section 9.06 of the North Carolina Democratic Party Plan of Organization (the “Plan”), the undersigned persons (collectively, the “Grievants”) submit the following grievance concerning certain actions related to the proceedings involving the selection of the replacement for the State House Representative for NC House District 57.

The Grievance is structured as follows:

- I. Jurisdiction of the Council of Review (p. 1)
- II. Summary of Issues for Grievance (p. 1)
- III. Required Contents of Grievance (p. 2-12)
 1. Factual Grounds (p. 2-4)
 2. Dates Upon Which the Violations Occurred (p. 4)
 3. Dates When the Grievants First Learned That the Violations Occurred (p. 5)
 4. The manner in Which the Grievants were Adversely Affected (p. 5)
 5. Specific Provisions of Plan that Were Violated (p. 5-11)
 6. Relief Sought from the Council of Review (p. 12)

I. JURISDICTION

The Council of Review has jurisdiction under Section 9.06(a) of the Plan as this matter involves a dispute over an alleged violation of the Plan by persons subject to its provisions. Specifically, the Grievants allege that the Guilford County Democratic Party (“GCDP”) Chair Kathy Kirkpatrick (“GCDP Chair”) violated the Plan and the North Carolina General Statutes (the “General Statutes”) from the period beginning at least as early as July 16, 2024, and continuing through the date of this Grievance as more fully set forth below.

II. SUMMARY OF BASIS FOR GRIEVANCE

On August 3, 2024, the GCDP held two elections (the “Elections”) to replace Rep. Ashton Clemmons (“Rep. Clemmons”) as the House 57 Representative in the North Carolina House of Representatives. The first Election was to select her replacement for the remainder of her current term, and the second Election was to select her replacement as the Democratic candidate for House 57 on the November ballot.

The Grievance is based on the following three primary issues:

1. Whether the appropriate committee voted in the Elections as required by the General Statutes and the Plan.
2. Whether the proper voting procedures were followed as required by the General Statutes and the Plan.
3. Whether the Elections were valid where the effective date for Rep. Clemmons’s resignation had not occurred.

III. REQUIRED CONTENTS OF A GRIEVANCE

Section 9.06(f) of the Plan sets forth the required contents of a grievance:

Any grievance submitted to the Council of Review to invoke its jurisdiction shall be in writing and signed by the requisite number of active Democrats and must:

- (1) describe in detail the factual grounds for believing that the respondent or respondents have violated the Plan of Organization or the Code of Conduct or that grounds for removal exist,
- (2) specify the date upon which the alleged violation or grounds for removal occurred,
- (3) specify the date upon which the grievant/s first learned that the alleged violation occurred or grounds for removal had come into existence,
- (4) describe how the grievant/s were adversely affected by the alleged violation or grounds for removal,
- (5) recite the specific provision of the Plan of Organization or Code of Conduct that the respondent allegedly violated or the specific ground for removal that allegedly exists; and
- (6) state the relief that the grievant/s wishes to obtain from the Council of Review.

1. FACTUAL GROUNDS

The relevant facts are as follows:

- a. On July 15, 2024, Rep. Clemmons publicly announced her resignation from the NC House of Representatives. Her announcement did not identify an effective date for her resignation.
- b. On July 16, 2024, the GCDP Chair emailed the GCDP's initial notice of Rep. Clemmons's announced resignation which was addressed to the Guilford County Executive Committee members who lived in House District 57. The notice set August 3, 2024, as the date to select her replacement even though Rep. Clemmons had yet to announce an effective date for her resignation. The notice also confirmed that there would be two Elections: (1) one to select her replacement for the remainder of the current term which would consist of precincts from the "old district" and (2) a second vote to select her replacement on the November ballot consisting of precincts from the "new district". A true and accurate copy of the initial notice is attached hereto as **Exhibit A**.

- c. Later on July 16, 2024, multiple news sources confirmed that Rep. Clemmons had not selected an effective date for her resignation. The Associated Press reported that “Clemmons didn’t reveal a specific August resignation date. She said Tuesday [July 16] she would wait until her successor is selected to do so.” A true and accurate copy of the Associated Press article is attached hereto as **Exhibit B**.
- d. On July 25, 2024, the GCDP Chair emailed the candidates that she had changed her interpretation and both votes would be unweighted. In her email the GCDP Chair: (1) thanked Catherine Magid for “following up on this” and (2) acknowledged that she had been “told by multiple sources that the vote was going to be weighted by precinct. That info was incorrect. It will be one person one vote.” A true and accurate copy of the email communication referenced in subsections d, e, and f of this section is attached hereto as **Exhibit C**.
- e. On July 27, 2024, the GCDP Chair replied to the candidates that “Section 3.13 applies to this situation since it is a partial county House election. I was originally told by both the House Coordinator and an NCDP parliamentarian it would be the weighted vote, but that had been corrected to the non-weighted vote rules.”
- f. On July 28, 2024, Catherine Magid responded to the candidates stating the joint interpretation she purported to have reached with Plan of Organization Chair Vinod Thomas. Upon information and belief, the GCDP Chair relied on their opinion in determining that unweighted voting should apply.
- g. From July 29 through July 31, 2024, several of the Grievants had conversations with the GCDP Chair, various state party officials, and former officials to voice concerns about the change in the GCDP Chair’s interpretation to require unweighted voting. There were also multiple pleas from the Grievants and others to postpone the Elections to provide time to fully review the issues surrounding weighted voting. In support of the need for the delay, the Grievants noted that there had been multiple different interpretations in favor of both weighted and unweighted voting from various current and former state and local party officials, including two different opinions from a former NCDP parliamentarian on July 31, 2024, alone.
- h. Later on July 31, 2024, the GCDP Chair communicated to some Grievants that she had made a final determination that the voting would be unweighted, that the Elections would proceed, and that there would be no further discussion.
- i. On August 2, 2024, the GCDP African American Caucus (“GCDP AAC”) released a public statement formally requesting that the Election be postponed on various

grounds. A true and accurate copy of the public statement from the GCDP AAC is attached hereto as **Exhibit D**.

- j. Later on August 2, 2024, the GCDP Chair rejected the request of the GCDP AAC to postpone the Elections.
- k. On August 3, 2024, the GCDP Chair held two Elections to select the replacements for Rep. Clemmons. During the election, the GCDP Chair: (1) stated that she believed unweighted voting was unfair, but that she believed that was what the Plan required; (2) stated that the Plan did not prevent filling a vacancy before the vacancy had actually occurred; (3) called for a motion for a vote of the GCDP County Executive Committee to resolve itself into the State House of Representatives District Executive Committee in each of the Elections; and (4) presided over both Elections.
- l. Later on August 3, 2024, the GCDP AAC Chair requested the official audit and results for the Elections. On August 5, 2024, the GCDP Chair responded that she would provide the information in a few days. As of the date of this Grievance, the GCDP AAC Chair has not received the requested information.

2. **DATES UPON WHICH THE VIOLATIONS OCCURRED**

The violations herein primarily occurred on the following dates:

- a. July 16, 2024 – GCDP Chair’s initial notice of announced resignation of Rep. Ashton Clemmons and August 3, 2024, as the date for the Elections.
- b. July 25, 2024 – The GCDP Chair first informed the candidates that she changed her opinion, and that unweighted voting would apply to all voters (including precinct officers) for both Elections.
- c. July 31, 2024 – Communication by GCDP Chair of final determination that voting would be unweighted for all voters (including precinct officers) for both Elections.
- d. August 3, 2024 – Date of Elections to select the replacement for Rep. Clemmons for the remainder of the existing term and on the November ballot.
- e. Continuing through today’s date – GCDP’s failure to respond in full to requested information for audit from the GCDP AAC Chair.

3. DATES UPON WHICH THE GRIEVANTS FIRST LEARNED THAT THE VIOLATIONS OCCURRED

The Grievants first learned that the primary violations had occurred on the following dates:

1. July 25, 2024 – The date that the GCDP Chair first informed the candidates that she changed her opinion, and that unweighted voting would apply to all voters for both Elections including precinct officers.
2. August 3, 2024 – Date of the Elections. Until the actual day of the Elections, the undersigned remained optimistic that the GCDP Chair would revisit the interpretations on which she was relying. The Grievants first learned of Rep. Clemmons effective date of resignation during the Elections. Following the Elections, the GCDP AAC Chair requested the official audit and results for the Elections which he has not received as of the date of this Grievance

4. DESCRIBE MANNER IN WHICH GRIEVANTS WERE ADVERSELY AFFECTED

Four of the Grievants were the four African-American candidates who at some point sought to be selected to replace Rep. Clemmons for the remainder of her term and/or to replace her on the November ballot as the Democratic nominee for House District 57. One of the Grievants who was a candidate withdrew his candidacy due to the determination of unweighted voting. The three remaining African-American candidates were adversely impacted because the determination of unweighted votes disproportionately negatively impacted predominantly minority precincts which tend to have higher proportions of Democratic voters. Precinct chairs and vice chairs within the majority-minority precincts generally voiced their support for at least one of the candidates who has signed onto this Grievance. Therefore, the proportion of votes each of the African-American candidates received was significantly decreased due to the improper decision to require unweighted voting. Other Grievants are current members of the GCDP County Executive Committee and registered Democrats in Guilford County who are concerned about the precedent that will be set if the violations of the Plan are allowed to stand unchallenged and if unweighted voting is deemed to apply in scenarios such as the immediate matter.

5. SPECIFIC PROVISIONS OF THE PLAN THAT WERE VIOLATED

The violations of the Plan and North Carolina General Statutes relate to three primary issues: (a) Appropriate Committee; (b) Weighted Voting and (c) Determination of Vacancy. The

section will proceed with (i) setting forth the relevant statutes from the North Carolina General Statutes, (ii) identifying the relevant provisions from the Plan, and (iii) applying the Statutes and Plan to the facts of the immediate matter.

a. Relevant Statutes.

The relevant statutes from the North Carolina General Statutes are N.C.G.S. §§ 163-11(a), 163-11(c), 163-11(d), and 163-114.

i. N.C.G.S. § 163-11(a) provides the following (emphasis added):

If a vacancy shall occur in the General Assembly by death, resignation, or otherwise than by expiration of term, the Governor shall immediately appoint for the unexpired part of the term the person recommended **by the political party executive committee provided by this section. The Governor shall make the appointment within seven days of receiving the recommendation of the appropriate committee.** If the Governor fails to make the appointment within the required period, he shall be presumed to have made the appointment and the legislative body to which the appointee was recommended is directed to seat the appointee as a member in good standing for the duration of the unexpired term.

ii. N.C.G.S. § 163-11(c) states the following (emphasis added):

If the district consists solely of one county but includes less than all of the county, the Governor shall appoint the person recommended by the county executive committee of the political party with which the vacating member was affiliated when elected, it being the **county executive committee** of the county which the vacating member was resident, provided that in voting **only those county executive committee members who reside in the district shall be eligible to vote.**

iii. N.C.G.S. § 163-11(d) states the following in the relevant part (emphasis added):

If the district consists of more than one county, the Governor shall appoint for the unexpired portion of the term the person recommended by the State House of Representatives district committee or the Senatorial district committee of the political party **with which the vacating member was affiliated when elected.**

iv. N.C.G.S. § 163-114(a) provides the following (emphasis added):

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Member of State House Representatives in a single county representative district

County Executive Committee of the political party in **which vacancy occurs**, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, **only those members of the county executive committee who reside within that district shall vote**

b. Relevant Provisions from the Plan

The relevant provisions from the Plan are Sections 2.02, 3.12, 3.10, and 12.08.

i. Section 2.02 sets forth the voting policies for the County Executive Committee:

No individual members can vote in more than one capacity, nor shall any individual member be entitled to cast more than one (1) vote even though the individual may be serving in multiple capacities under the county executive committee structure.

County Executive Committee Officers, Presidents of County Chapters of State Auxiliary Organizations, and Ex-officio Members.

Members not provided for below shall be entitled to one vote each.

Precinct Officers.

The several precinct chairs and vice chairs shall be entitled, as members of the county executive committee, to cast for their precinct

one vote for each one hundred (100) votes, or a major fraction thereof, cast by their precinct for the Democratic nominee for Governor at the last preceding gubernatorial election, provided that each precinct chair and vice chair together shall be entitled to cast for their precinct a minimum of one vote.

- ii. Section 3.12 (Partial County) states in the relevant part that (emphasis added):

Should any prosecutorial, state senatorial or state house of representatives district be composed of only one county, but includes less than all of that county, then the county executive committee of said county shall be the prosecutorial, state senatorial or state house of representatives district executive committee for the respective district, but only those county executive members who reside in the district shall be eligible to vote, and for the purpose of determining a quorum, those persons eligible to vote shall be considered as the members of the committee. If the county chair does not reside in the district, he or she may still preside but shall have no vote.

Upon convening, **the members of the county executive committee who reside in the applicable district shall resolve themselves into the prosecutorial, state senatorial or state house of representatives executive committee for the respective district; each member in attendance shall have one vote.**

- iii. Section 3.10 provides the following concerning voting procedures for State House of Representatives District Executive Committees (emphasis added):

Voting

The two (2) members on a state house of representatives district executive committee shall be entitled to cast, for their county, **one (1) vote for each three hundred (300) persons, or major fraction thereof**, residing within the county, based upon the last decennial census, or in the case where less than the whole county is in the district, one (1) vote for each three hundred (300) persons or major fraction thereof residing in that part of the district within the county based upon the last decennial census. In the event that the two members should disagree on how their county's votes will be cast, then each member shall cast exactly one-half of the votes which their county is entitled to cast. If only one representative of a county is present at a meeting of this

committee and the other member from the county on this committee has not designated a proxy (see Section 12.05), or such proxy is not present, then such representative shall be entitled to cast all of the votes which the county is entitled to cast.

iv. Section 12.08 sets forth the relationship between the Plan and the NC General Statutes (emphasis added):

Vacancies in elected office and in nomination for elected office shall be filled as prescribed by this Plan of Organization, **consistent with North Carolina General Statutes.**

c. *Analysis*

i. The County Executive Committee is the Appropriate Committee and Weighted Voting Should Apply

House District 57 consists solely of one county (i.e., “Guilford County”), but includes less than all of Guilford County; therefore, N.C.G.S. § 163-11(c) is the applicable statute for the replacement of Rep. Clemmons for the remainder of the existing term and N.C.G.S. § 163-114 (single district county, but not all of the county is in one district) is the applicable statute for the replacement of Rep. Clemmons on the November ballot. Both of these statutes clearly identify the County Executive Committee as the appropriate committee to select the replacement to fill a vacancy for a State House Representative. As shown in N.C.G.S. § 163-11(d), the General Assembly knew how to reference the State House of Representatives District Committee when it wanted to designate it as the appropriate committee. It intentionally did not designate the State House of Representatives District Committee as the appropriate committee when a House District consists solely of one county, but less than all of the county.

On August 3, 2024, the County Executive Committee for each Election specifically voted to resolve itself into the State House of Representatives District Executive Committee and then proceeded to vote for the replacement for Rep. Clemmons. A State House of Representatives District Executive Committee has no authority under the NC General Statutes to make a recommendation to the Governor of filling a vacancy unless the House District is in more than one county, which is not the case for House District 57.

While Section 3.12 of the Plan states that County Executive Committees should resolve themselves into State House of Representatives District Executive Committees for the purposes of filling vacancies, this provision as applied in the immediate case violates N.C.G.S. § 163-11(c), N.C.G.S. § 163-114, and Section 12.08 of the Plan because it is clearly inconsistent with the NC General Statutes.

As the State House of Representatives District Executive Committee had no authority to hold an Election or make a recommendation to the Governor on the replacements for House District 57, the undersigned hereby request that the Council of Review (i) vacate the results of the Elections on August 3, 2024, and (ii) require new elections for both the interim appointment and the replacement of Rep. Clemmons on the November ballot. Moreover, because the County Executive Committee is the appropriate committee for selecting the replacements, the voting procedures set forth in Section 2.02 of the Plan must apply which include a weighted vote for precinct officers. This result is consistent with the Plan's requirement in Section 12.08 that the filling of vacancies must be consistent with North Carolina law.

The impact of proceeding with unweighted voting for all eligible County Executive Committee voters in the Elections including precinct officers was significant. In an unweighted voting scenario, a precinct in which the Governor did not receive a single vote would receive the same number of votes as a precinct in which the Governor received every vote. Additionally, the vote of the precinct officers who each represent precincts with thousands of voters in their respective precincts was treated no differently than any other member of the County Executive Committee. An unweighted vote in this context is not truly reflective of the will of the constituents and disproportionately negatively impacts ethnic minority communities which tend to vote overwhelmingly in favor of Democratic candidates. Unweighted voting for the Elections was not only contrary to the plain language of the General Statutes and the Plan but was also against basic principles of equity, justice, and fairness which the Democratic Party advocates for daily.

ii. *In the Alternative, Weighted Voting is Required by Sections 3.10 and 3.12 of the Plan*

Should the Council of Review somehow determine that it was proper for the County Executive Committee to resolve itself into the State House of Representatives District Executive Committee for both votes, it must still vacate the results of both Elections due to Plan violations.

In determining that unweighted voting would apply, the GCDP Chair relied exclusively on language in Section 3.12 that "each member in attendance shall have one vote" without giving any effect to Section 3.10. This was in error. In determining the rules governing the committee, the GCDP Chair must review all relevant provisions. State House of Representatives District Executive Committees are governed by Section 3.10 of the Plan which requires weighted voting based upon population. Neither of the Elections on August 3, 2024, were conducted in compliance with Section 3.10.

When one fails to review the Plan in its entirety, it can often lead to misinterpretations. For example, a strict reading of the provision from Section 3.12 could lead one to conclude that it would prohibit proxy votes, as a proxy is not "a member in attendance." Such a position would be contrary to the Plan as proxies are permitted by Section 12.05 of the Plan. Similarly, resolving

the County Executive Committee into the State House of Representative District Executive Committee, but then not complying with the Section of the Plan governing such committees constitutes a violation of the Plan.

Additionally, a review of other sections within the Plan shows that “one vote” does not necessitate that the vote must be unweighted. Section 2.02 provides that “no individual member shall have more than one vote” and then proceeds to outline weighted voting for precinct officers. The Plan is clear that “one vote” is intended to convey that a voter cannot split his/her vote among multiple candidates and that he/she may not vote in more than one capacity; it does not necessarily mean that the vote is unweighted. To make that determination, one must review all relevant provisions from the Plan. When reading Sections 3.12 and 3.10 together, it becomes clear that the weighted voting formula set forth in Section 3.10 must be used if the Council of Review determines the decision to allow the County Executive Committee to resolve itself into the State House of Representatives District Executive Committee is determined to have been proper.

Due to the failure to incorporate the voting procedures specifically applicable to State House of Representatives District Executive Committees, the Council of Review is hereby requested to (i) vacate the results of the elections on August 3, 2024, and (ii) require new elections for both the interim appointment and the replacement of Rep. Clemmons on the November ballot.

iii. *The Election was Improper as there was no Vacancy at the time of the Election*










The NC General Statutes require that a vacancy must “occur” to trigger the requirement to select a replacement. It is generally accepted that a vacancy commences on the effective date of the resignation. In other words, no vacancy has “occurred” under the General Statutes or “created” under the Plan until the resignation’s effective date has passed; otherwise, an elected official could announce his/her resignation and retract it if they disagree with the person selected as his/her successor.

As further proof that no vacancy had occurred at the time of the Elections, please note that Rep. Clemmons continued to attend official meetings of the General Assembly after the announcement of her resignation and stated publicly she would wait to resign until her successor was selected. Upon information and belief, the GCDP did not announce Rep. Clemmons’s effective date of resignation as August 5, 2024, until the meeting on August 3, 2024. Therefore, at the time of the vote, no vacancy had occurred under state law, and the vote was improper. As a result, the Council of Review is hereby requested to (i) vacate the results of the elections on August 3, 2024, and (ii) require new elections for both the interim appointment and the replacement of Rep. Clemmons on the November ballot.

6. RELIEF SOUGHT FROM THE COUNCIL OF REVIEW

Based on the foregoing, the undersigned requests that the Council of Review vacate the results of both Elections from August 3, 2024, and reschedule new elections consistent with the North Carolina General Statutes and the Plan as set forth above.¹

Respectfully submitted this on the 8th day of August 2024.

 DS	Irving David Allen	CEC Candidate for NC House 57
 DS	Lisa Mcmillan	CEC Candidate for NC House 57
 DS	Linda Wilson	CEC Candidate for NC House 57
 DS	Blake Odom	CEC Candidate for NC House 57
 DS	Elizabeth Paulsen	CEC Member/Precinct Vice Chair G27
 DS	Frankie Jones	CEC Member/ Resident H57/ County B.O.C.
 DS	Melvin Alston	CEC Member/ Chair of County B.O.C.
 DS	Deena Hayes Greene	CEC Member/ Chair of County School Board
 DS	Byron Gladden	CEC Member/ President of County A.A.C.

¹ In addition to the three primary grounds for reversal of the results of the Elections, the Grievants also note the following concerns: (1) Certain candidates received wrong contact information for the County Executive Committee members in the District from the GCDP; (2) Upon information and belief, some of the precincts which voted in the Elections were not properly organized. Specifically, some of the precincts do not appear to have elected the three officers (Chair, Vice Chair, and Secretary) as required by Section 1.02 of the Plan; (3) The CEC meeting announcement dated July 18, 2024, stated that eligible voting members of the County Executive Committee would receive mail notice in addition to email notice, but, upon information and belief, not all eligible voting members received mail notice; (4) as of the date of this Grievance, the GCDP Chair has not provided the official audit and results for NC House 57 requested by the GCDP AAC Chair on August 3, 2024; and (5) One of the Grievants serves as a precinct vice chair and was just informed on August 8, 2024 (after multiple attempts to contact the GCDP Chair both during and after the meeting) that her votes in the Elections on August 3, 2024, were not counted.

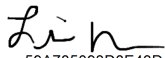
SIGNATURE PAGE

DocuSigned by:



69132256AE78499...

DocuSigned by:



59A785093D8E43D...

DocuSigned by:

LINDA WILSON

8B86348A2319405...

DocuSigned by:



DF4FD9D1EBEE472...

DocuSigned by:



6CFFD1969E2648C...

DocuSigned by:

Frankie T Jones Jr

7EDCFDFE3B164DE...

DocuSigned by:

Melvin Alston

9CAE22E5FB94414...

DocuSigned by:

Dena Hayes Greene

E1C21AAC89544D8...

DocuSigned by:

Byron Gladden

A49EDB741ECA442...