

RULE-MAKING PETITION

Pursuant to NC General Statute 150B-20, the undersigned registered voter and resident of Orange County submits this rule-making petition ("Petition") to the State Board of Elections ("Board").

According to NCGS 163-22(a), the Board has "authority to make reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of this Chapter." In Article 22A of Chapter 163, regarding the regulation of political campaigns, NCGS 163-278.21 says the Board "shall have the responsibility . . . for promulgating all regulations necessary for the enforcement and administration of this Article and to prevent the circumvention of the provisions of this Article."

This Petition requests the Board to adopt the rule below under its authority to make reasonable rules and in order to fulfill its responsibility to prevent the circumvention of key provisions of Article 22A.

08 NCAC XX .XXXX LIMITATIONS ON PAYMENTS FOR RESIDENTIAL PROPERTY

Allowable expenditures under G.S. 163-278.16B do not include payments for the purchase, lease, reimbursement or rental of residential real property that is owned directly or indirectly by the candidate or one or more members of the candidate's family described in subdivision (a)(3) of that section.

Statement of Support for Proposed Rule

Several provisions in NCGS 163-278.16B indicate that a candidate campaign committee may not use funds to benefit the candidate or candidate's family personally. For example, NCGS 163-278.16B(a)(3) says funds may not be donated to a non-profit organization that employs the candidate or members of the candidate's family. NCGS 163-278.16B(c) says a candidate campaign committee's "funds" do not become part of the candidate's estate. NCGS 163-278(a)(1) and (a)(2) restrict the use of campaign payments to "expenditures" for specific activities of the candidate; payments to acquire real property or assets are investments and not expenditures under basic accounting principles. In addition, a recent Advisory Opinion (November 12, 2019) clarifies that self-serving payments are not permitted by NCGS 163-278.16B. That Advisory Opinion concludes, "There is no part of NCGS 163-278.16B that authorizes a candidate to pay himself or herself for his or her own 'services' to the campaign (his or her own physical or mental efforts for the campaign or for holding office)."

The language in NCGS 163-278.16B(c) also provides important guidance for how the NC General Assembly envisioned the use of campaign contributions. First, this subsection makes clear that the funds of a candidate committee should not enrich or become part of

the candidate's estate. Second, subsection (c) focuses entirely on "funds," or money, as the only asset that a candidate campaign committee would have for disposition after "payment of permitted outstanding debts." There is no recognition that a candidate committee would own or be financing ownership of real property. This language, combined with restrictions against using funds to benefit the candidate or candidate's family, supports the proposed Rule.

Submitted, this 23 day of January, 2020.

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