



July 24, 2020

NC State Board of Elections  
Attn: Executive Director Karen Brinson Bell  
430 North Salisbury Street  
Raleigh, NC 27603

Director Bell:

On behalf of the North Carolina Republican Party (“NCGOP”), I am writing to object to the Emergency Order of July 17, 2020, entitled Administering the November 3, 2020 General Election During the Global COVID-19 Pandemic and Public Health Emergency on the basis that the Order is procedurally defective and unfairly discriminates against voters who live in rural counties across North Carolina.

### **The Emergency Order is Procedurally Defective**

The NCGOP, along with candidates, county and state election board members and members of the North Carolina General Assembly, was surprised to see the Emergency Order in the final hour of business this past Friday, July 17, 2020. We are disappointed that there was not an open line of communication between your office and these very important stakeholders regarding this Emergency Order.

We are also concerned that the actions taken in the Emergency Order have not been authorized by either statute or NCSBE regulations.

North Carolina General Statute § 163-27.1 states that the Executive Director “may exercise emergency powers to conduct an election in a district where the normal schedule for the election is disrupted” in certain defined situations. That statute requires that the “Executive Director *shall adopt rules describing the emergency powers* and the situations in which the emergency powers will be exercised.” (emphasis added).

While the NCSBE has adopted rules describing the situations in which the emergency powers may be exercised and considerations in exercising them (See 08 NCAC 01 .0106), the Board has not adopted any rules actually describing the powers which may be exercised. This deficiency was clearly at the heart of the Proposed Temporary Rule which was put forth by the NCSBE and rejected by the Rules Review Commission earlier this year.

This Emergency Order suffers from the same deficiency. There is no statutory or regulatory authority granted to the Executive Director to take the steps outlined in the Emergency Order.

Further, the NCSBE's administrative rules require that the "Executive Director shall consult with State Board members when exercising his or her emergency powers if feasible given the circumstances." 08 NCAC 01 .0106. To our knowledge, there has been no consultation with the State Board members, the public, the General Assembly, or major political parties in this state. It appears the only consultation was with Governor Cooper's administration regarding their expectation that the Governor will continue his lockdown in response to the spread of COVID-19 through the election.

### **The Emergency Order Discriminates Against Rural Counties**

As noted in NCSBE Numbered Memo 2020-13, N.C. Gen. Stat. § 163-227.6, as amended by Session Law 2019-239, now requires that the State Board consider whether a County Early Voting Plan "disproportionally favors any party, racial or ethnic group, or candidate." The Emergency Order will require every county to disproportionately favor one party and that party's candidates.

Because the Emergency Order is based on population density rather than geography, it disproportionately benefits the Democratic Party, which has significantly more voters in the counties that will be forced to open additional early voting locations under the Order.

In 2016, many rural counties had only one or two early voting sites - your order, in many cases, would not require an increase in early voting sites in those areas. All voters, no matter their locale, should have equal access to the polls.

Take Cherokee County for example. The county stretches 497 square miles. As of July 11, 2020, Cherokee County had 21,340 registered voters. Therefore under your order, the Cherokee County Board of Elections would only be required to open one early voting site. In fact, in 2016, Cherokee had only one early voting site. A voter who lives in the town of Topton, which is in Cherokee County, would have to drive around 25 miles to reach the Cherokee County Board of Elections building (the only early voting site in 2016).

Meanwhile, under the Emergency Order, voters in Wake County will have 38 different early voting sites to choose from, many of which will likely be less than ten minutes from their homes or place of work.

Beyond the inequity in voter convenience and access, the health concerns in these more rural counties must be taken into account. Rural counties are in most cases composed of a number of different townships and communities. If there is only one site in a rural county, like Cherokee, voters from one community who wished to vote early would have to expose themselves to others in a different community. The increase in the commingling of members from different communities likely increases the risk of spreading the virus.

## **NCGOP Request**

The North Carolina Republican Party respectfully requests that the NCSBE withdraw the Emergency Order and engage in a formal Rulemaking Process, seeking input from counties, members of elections boards, political parties and other stakeholders prior to issuing any changes to the election process for the 2020 General Election.

In the alternative, in order to protect the health and safety of voters in rural counties and correct the discrimination against rural areas, the NCGOP requests that you amend your order to require the following:

Each county board of elections shall open at least one early voting site per 20,000 registered voters in a county or one early voting site for every 100 square miles or major fraction thereof in a county, whichever produces a greater number of early voting sites within the county. In any event, each county board of elections shall open at least four early voting sites.

We request a response from the NCSBE regarding this matter on or before July 31, 2020. Please feel free to reach out to our counsel, Philip Thomas at [philip.thomas@ncgop.org](mailto:philip.thomas@ncgop.org) or 919-828-6423 if you should have any questions.

Sincerely,



Michael Whatley  
Chairman