



# NORTH CAROLINA

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## STATE BOARD OF ELECTIONS

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July 17, 2020

### EMERGENCY ORDER

#### ADMINISTERING THE NOVEMBER 3, 2020 GENERAL ELECTION DURING THE GLOBAL COVID-19 PANDEMIC AND PUBLIC HEALTH EMERGENCY

As Executive Director, acting pursuant to N.C. Gen. Stat. § 163-27.1 and 08 NCAC 01 .0106, I hereby find the following:

1. On March 10, 2020, the Governor issued Executive Order No. 116, declaring a State of Emergency in response to the public health emergency posed by Coronavirus Disease 2019 (COVID-19).
2. On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic.
3. On March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and declared that the COVID-19 pandemic in the United States constitutes a national emergency.
4. On March 25, 2020, the President approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina.
5. On May 20, 2020, the Governor stated in Executive Order 141 that “slowing and controlling community spread of COVID-19 is critical to ensuring that the state’s healthcare facilities remain able to accommodate those who require medical assistance.” Executive Order 141 further states that, due to the “continued community spread of COVID-19 within North Carolina,” the State must “continue some measures to slow the spread of the virus during the pandemic.”
6. Executive Order 141 notes the determination of public health experts that that “the risk of contracting and transmitting COVID-19 is higher in settings that are indoors, where air does not circulate freely and where people are less likely to maintain social distancing by staying six feet apart.” Executive Order 141 also notes that “the risk of contracting and transmitting COVID-19 is higher in settings where people are stationary and in close contact for long periods of time” and “in gatherings of larger groups of people because these gatherings offer more opportunity for person-to-person contact with someone infected with COVID-19.”

7. The Secretary of the North Carolina Department of Health and Human Services has noted that scientific evidence suggests that the probability of COVID-19 transmission indoors is “approximately 18.7 times higher than in an open-air environment.”<sup>1</sup>

8. As of July 16, 2020, North Carolina has had more than 93,426 laboratory-confirmed cases of COVID-19 and more than 1,588 deaths from the disease.<sup>2</sup>

9. As of the date of this Order, North Carolina’s daily case counts of COVID-19 continue to increase, the percent of COVID-19 tests that are positive remains elevated, emergency-department visits for COVID-19-like illnesses are increasing, and hospitalizations for COVID-19 are increasing.<sup>3</sup>

10. COVID-19 infections in North Carolina are likely to continue for the next several months and into the fall, through at least Election Day.

11. In-person polling places, by their very nature, are venues where people may, without appropriate measures, congregate, often in close quarters, and sometimes for prolonged periods of time. As a result, it is critical that measures be taken to reduce the risk of COVID-19 transmission and to ensure, to the maximum extent possible, that voters are able to exercise their constitutional right to vote without undue risk.

12. Experiences from other states that have conducted elections during the pandemic are instructive. In Wisconsin, for example, following primary elections on April 7, researchers at the University of Wisconsin-Oshkosh and Ball State University found a “statistically and economically significant association between in-person voting and the spread of COVID-19 two to three weeks after the election.” In addition, the study found that “consolidation of polling locations, and relatively fewer absentee votes, increased positive testing rates two to three weeks after the election.”<sup>4</sup> The study’s findings suggest that taking measures to reduce crowding at polling places is important to minimize the risk of COVID-19 transmission.

13. It has also been publicly reported that in Georgia, in primary elections held on June 9, 2020, there were “widespread problems” that led to lengthy delays and disruptions that were caused by the introduction of a new voting system, a “mass exodus of poll workers fearing coronavirus exposure,” the forced closure of polling places due to insufficient staffing, and a

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<sup>1</sup> Declaration of Mandy K. Cohen, MD, MPH, *North Carolina Bowling Proprietors Assn. v. Cooper*, No. 20 CVS 6422 (Wake Cty. Sup. Ct.), Dkt. 14.1, ¶ 40.

<sup>2</sup> See North Carolina Department of Health and Human Services COVID-19 Response, available at <https://covid19.ncdhhs.gov/>.

<sup>3</sup> See North Carolina Department of Health and Human Services COVID-19 Dashboard, available at <https://covid19.ncdhhs.gov/dashboard>.

<sup>4</sup> Cotti, Chad D. and Engelhardt, Bryan and Foster, Joshua and Nesson, Erik and Niekamp, Paul, *The Relationship between In-Person Voting, Consolidated Polling Locations, and Absentee Voting on COVID-19: Evidence from the Wisconsin Primary* (May 10, 2020), available at SSRN: <https://ssrn.com/abstract=3597233>.

“crush of absentee ballot requests.”<sup>5</sup> In several locations, these problems led to hours-long delays in in-person voting on Election Day,<sup>6</sup> further increasing both inconvenience and risk to voters and poll-workers. It has been publicly reported that Nevada and South Carolina also experienced similar delays and disruption.<sup>7</sup> Pennsylvania and Washington, D.C. experienced delays during their primary elections as well; in Washington D.C., only 20 of its typical 143 polling places opened, with reported wait times at each location of more than an hour around 7:30 p.m. on election day during a citywide curfew and in Philadelphia, only 190 of 831 polling places were opened.<sup>8</sup>

14. On June 22, 2020, the Centers for Disease Control and Prevention (CDC) issued interim guidance to prevent the spread of COVID-19 in election-polling locations.<sup>9</sup> The CDC guidance encourages elections officials to:

- Ensure that “poll workers who are sick, have tested positive for COVID-19, or have recently had a close contact with a person with COVID-19” stay home.
- “Provide an alcohol-based hand sanitizer with at least 60% alcohol for use at each step in the voting process where voters interact with poll workers, after using the voting machine, and as the final step in the voting process.”
- Use “physical barriers, such as plexiglass shields, that can be used to protect workers and voters when physical distance cannot be maintained.”
- “Recommend and reinforce the use of cloth face coverings among all workers” and “encourage voters to use cloth face coverings while in the polling location.”
- Ensure adequate supplies, including soap, hand sanitizer, paper towels, tissues, disinfectant wipes, and no-touch trash cans, to support healthy hygiene.

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<sup>5</sup> Gardner, Amy and Lee, Michelle Ye Hee and Boburg, Shawn, *Voting debacle in Georgia came after months of warnings went unaddressed*, The Washington Post (June 19, 2020), available at [https://www.washingtonpost.com/politics/voting-debacle-in-georgia-came-after-months-of-warnings-went-unaddressed/2020/06/10/1ab97ade-ab27-11ea-94d2-d7bc43b26bf9\\_story.html](https://www.washingtonpost.com/politics/voting-debacle-in-georgia-came-after-months-of-warnings-went-unaddressed/2020/06/10/1ab97ade-ab27-11ea-94d2-d7bc43b26bf9_story.html).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Gardner, Amy and Viebeck, Elise and Pompilio, Natalie, *Primary voters in 8 states and D.C. faced some confusion, long lines and poor social distancing*, The Washington Post (June 2, 2020), available at [https://www.washingtonpost.com/politics/in-pennsylvania-officials-prepare-for-coronavirus-civil-unrest-to-disrupt-tuesday-primary/2020/06/02/96a55c40-a4be-11ea-b619-3f9133bbb482\\_story.html](https://www.washingtonpost.com/politics/in-pennsylvania-officials-prepare-for-coronavirus-civil-unrest-to-disrupt-tuesday-primary/2020/06/02/96a55c40-a4be-11ea-b619-3f9133bbb482_story.html).

<sup>9</sup> *Interim guidance to prevent spread of coronavirus disease 2019 (COVID-19)*, The Centers for Disease Control and Prevention (June 22, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

- Disinfect all surfaces “frequently touched by multiple people” and clean and disinfect voting-associated equipment. “After the polling location closes, clean and disinfect” all equipment and transport cases.
- “Where possible, replace shared objects like pens or ballot-activation cards with single-use objects” and headphones for voters with disabilities.
- “Encourage voters to stay at least six feet apart” from each other by posting signs and providing other visual cues and have plans to manage lines to ensure social distancing can be maintained.
- Increase the number of polling locations available for early voting and extend hours of operation at early voting sites.
- Maintain or increase the total number of polling places available to the public on Election Day to improve the ability to social distance.
- Minimize lines as much as possible, especially in small, indoor spaces.
- “Limit the number of voters in the facility by moving lines outdoors if weather permits or using a ticket system for access to the facility.”
- “To ensure sufficient space for social distancing and other measures, identify larger facilities for use as polling places.”
- Notify voters of changes to polling operations, including the availability of alternative voting options that minimize contact.
- Offer alternatives to in-person voting.
- Offer early voting or extended hours, where voter crowds may be smaller throughout the day.
- Offer alternative voting options that minimize exposure between poll-worker and voters for voters with symptoms, those who are sick, or known COVID-19 positive.

15. The COVID-19 pandemic is a major health emergency across all regions of North Carolina, affecting North Carolinians statewide.<sup>10</sup>

16. Because the COVID-19 pandemic affects North Carolinians across local jurisdictional boundaries, it is critical that health and safety measures instituted by county boards

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<sup>10</sup> See North Carolina Department of Health and Human Services COVID-19 Dashboard, available at <https://covid19.ncdhhs.gov/dashboard>.

of elections not conflict and are coordinated with statewide measures to ensure adequate protection for lives of North Carolina voters. Therefore, I have determined that it is necessary to take action and give direction to county boards of elections to ensure adequate protection for lives of North Carolinians.

17. The State Board and county boards of elections are already well underway with actively preparing to conduct the November 3, 2020 general election in accordance with state and federal law. For example, county boards were directed to submit one-stop early voting plans to the State Board by July 31, 2020. Some counties have already submitted plans. However, the COVID-19 pandemic is disrupting and will continue to disrupt the normal schedule for this election cycle in every county in the state, and has impaired critical components of election administration. These impairments include significantly increasing the difficulty for county boards to identify and train adequate numbers of poll-workers and one-stop workers who can safely assist with in-person registration and voting activities, and allow for voters to cast ballots without subjecting themselves to serious health risks. To address these impairments, county boards of elections can take actions that reduce crowd density, shorten the time voters spend in line and at polling locations, and improve sanitation and cleanliness.

18. N.C. Gen. Stat. § 163-27.1 and 08 NCAC 01. 0106 authorize me to exercise emergency powers to conduct an election where the normal schedule is disrupted by a catastrophe arising from natural causes that has resulted in a disaster declaration by the President of the United States or the Governor, while avoiding unnecessary conflict with the laws of North Carolina. The emergency remedial measures set forth here are calculated to offset the nature and scope of the disruption from the COVID-19 disaster.

19. Pursuant to N.C. Gen. Stat. § 163-27.1 and 08 NCAC 01. 0106(a) and (b), and after consultation with the State Board, I have determined that the COVID-19 health emergency is a catastrophe arising from natural causes—*i.e.*, a naturally occurring virus—resulting in a disaster declaration by the President of the United States and a declaration of a state of emergency by the Governor, and that the disaster has already disrupted and continues to disrupt the schedule and has already impacted and continues to impact multiple components of election administration.

20. State public health officials have cited data that show that the continuing spread of COVID-19 within North Carolina is on an upward trend.<sup>11</sup> They have informed me that the spread will likely continue for at least several months, through the November 3, 2020 general election date, and across the State. Pursuant to N.C. Gen. Stat. § 163-27.1 and 08 NCAC 01 .0106(c)(1) and (2), I have determined that these disruptions to administering the November 3, 2020 general election have already affected and will continue to affect the entire State and all contests. As of the date of this Order, I have determined that, pursuant to N.C. Gen. Stat. § 163-27.1 and 08 NCAC 01 .0106(c)(5), it is not clear when or if the disruptions to the normal schedule for the November 3, 2020 general election will end. Because of the advance planning necessary to address multiple components of election administration, pursuant to N.C. Gen. Stat.

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<sup>11</sup> See North Carolina Department of Health and Human Services COVID-19 Dashboard, available at <https://covid19.ncdhhs.gov/dashboard>.

§ 163-27.1 and 08 NCAC 01 .0106(c)(3), (8), and (10), I have determined that certain emergency measures need to be identified now to ensure that there is adequate time to meet State and federal deadlines, particularly in light of the upcoming deadline for county boards to submit their one-stop absentee voting plans. Impacted aspects of election administration include procuring necessary supplies, ensuring adequate staffing, and securing adequate facilities and infrastructure.

21. Because there is a higher risk of transmission of the COVID-19 virus indoors and in areas where people come in close contact, pursuant to N.C. Gen. Stat. § 163-27.1 and 08 NCAC 01. 0106(c)(4) and (6), the State Board and county boards of elections must make arrangements to ensure the existence of safe in-person voting opportunities and safe spaces for election workers so as to reduce, to the maximum extent possible, displacement of voters or election workers. Pursuant to N.C. Gen. Stat. § 163-27.1 and 08 NCAC 01. 0106(c)(7), I have determined that the high risk of transmission in close contact also requires that the State Board and county boards of elections ensure that there are sufficient voting locations and election workers to ensure that every eligible North Carolinian has the ability to vote without endangering herself.

22. Without sufficient measures to ensure that all eligible North Carolinians can vote safely, the integrity of the elections may be compromised. To avoid the disenfranchisement of eligible voters and to protect the health and safety of election workers and voters, pursuant to N.C. Gen. Stat. § 163-27.1 and 08 NCAC 01 .0106(c)(9), I have determined that the State Board and county boards of elections must put in place measures that will protect against the contraction and spread of COVID-19 while voting is taking place.

Based on the foregoing findings and conclusions, by the authority vested in me as Executive Director by N.C. Gen. Stat. § 163-27.1 and 08 NCAC 01 .0106, IT IS ORDERED:

1. All county boards of elections shall open each one-stop early voting site in their county for a minimum of ten hours total for each of the first and second weekends of the 17-day early voting period. A county-board office or in-lieu-of site (as defined in N.C. Gen. Stat. § 163-227.6) that is open only during regular business hours shall be excluded from the requirement in this paragraph, provided that there is at least one other one-stop site in the county.

2. Each county board of elections shall open at least one one-stop early voting site per 20,000 registered voters in the county, as reflected in the voter registration records as of July 11, 2020. A county board of elections may apply to the Executive Director for a waiver of the requirement in this paragraph if its proposed plan is sufficient to serve the voting population, maintain social distancing and reduce the likelihood of long lines.

3. Any county board of elections that only has only one one-stop early voting site shall arrange for a backup site and backup staff in the event that its site must be shut down or in the event that there is a lack of sufficient staffing due to COVID-19.

4. Any county board of elections may open its sites earlier than 8:00 a.m. and/or may stay open later than 7:30 p.m., provided that the sites (other than the county-board office or in-lieu-of site, if only open regular business hours) are all open at the same time.

5. All county boards of elections shall post visible signage outside each one-stop site to inform voters of the location and hours of all one-stop sites in the county so voters can assess, while abiding by social distancing guidelines outside the polling location, whether to go to a different location.

6. If a county board of elections learns that one of its polling places for a precinct is inaccessible because of the COVID-19 pandemic, the county board of elections may request a transfer of some voters to an adjacent precinct. The request is subject to approval by the Executive Director and shall explain why the partial transfer is necessary due to the COVID-19 pandemic and how the proposal is consistent with the criteria in N.C. Gen. Stat. § 163-130.2(3)-(7). The request must be received at least 45 days prior to the election. No later than 30 days prior to the election, the county board of elections shall mail a notice of precinct change to each registered voter who, as a result of the change, will be assigned to a different voting place.

7. All county boards shall:

- a. Provide for social distancing at voting sites, including by applying appropriate markings and providing appropriate barriers, including barriers between elections officials and voters at check-in;
- b. Provide for frequent sanitation of common surfaces, hand-sanitizer, and single-use ballot-marking devices;
- c. Require that elections officials wear face coverings, and make face coverings available to voters who do not bring their own. Voters will not be required to wear a face covering to vote;
- d. Require face shields or partitions and gloves for all election officials where appropriate for the task.

8. The State Board shall provide a centralized location on its website for precinct-consolidation information throughout the voting period.

9. As Executive Director, I will disseminate additional guidance on the measures described here in Numbered Memos.

10. If any provision of this Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of the Order which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this order are declared to be severable.

11. This order will be in effect immediately and will remain in effect through 11:59 p.m. on November 4, 2020 unless repealed, replaced, or rescinded by another Emergency Order. Further emergency orders may be issued to address other components of election administration that may be impaired as necessary.

This 17th day of July, 2020.

A handwritten signature in blue ink that reads "Karen Brinson Bell". The signature is written in a cursive, flowing style.

Karen Brinson Bell  
Executive Director  
North Carolina State Board of Elections