

April 20, 2020

North Carolina State Board of Elections
Attn: Rulemaking
P.O. Box 27255
Raleigh, NC 27611-7255
Submitted via email to rules@ncsbe.gov

Re: Comment on Proposed Amendments to 08 NCAC 01 .0106 (Emergency Powers of Executive Director)

Democracy North Carolina submits this comment to voice our support for the proposed amendment to the State Board of Elections rule regarding the executive director's emergency powers (08 NCAC 01 .0106).

Democracy North Carolina is a nonpartisan organization that works to protect voting rights and ensure fair representation in North Carolina. As part of this work, we author original research on election administration, advocate for specific policies and practices before the State Board of Elections and county boards of elections, and help coordinate a statewide nonpartisan poll monitoring and voter assistance network. We advocate for policies and practices that ensure both widespread voting access for eligible voters, including historically underrepresented voters, and secure elections. And in addition to our advocacy, we work with a base of volunteer advocates across the state who mobilize to advance our mission and encourage their fellow North Carolinians to engage in the political process. We therefore take an interest in the proposed rule change concerning the State Board executive director's emergency powers, which currently act as a backstop for protecting voting access in events like natural disasters.

We support the proposed amendment because it addresses the credible possibility COVID-19's spread could disrupt both voters' access to the fall election and officials' ability to effectively administer that election. The rule's current text provides that the executive director may exercise emergency authority in particular circumstances: following one of several listed severe weather events or a "[c]atastrophe arising from natural causes" resulting in a federal or state disaster declaration— and, even then, only when "one or more components of election administration been impaired." The proposed language clarifies any ambiguity as to whether the executive director may exercise that power if election administration is impaired by COVID-19— a scenario illustrated by recent events in Wisconsin, where the public health crisis led to a shortage of poll workers that dramatically reduced the availability of in-person voting. In the event that the current public health crises continues or recurs, the proposed amendment would give the executive director the ability to mitigate harms in a manner that preserves the election's participation and integrity.

We understand that opponents are concerned about the implications for specific policy and administration issues, including an administrative shift to all mail-in voting and voter list maintenance. While the details of specific election administration practices are rightfully a topic of public interest, they do not bear on the question before the State Board. The language at issue here does not mandate the implementation of any particular policy or practice.

The proposed amendment does not create a dramatic new power, but rather acts to extend existing authority to a scenario not expressly contemplated by the rule as currently constituted. Just as in other situations where election access and administration are “impaired,” as provided in the current rule, we believe that the executive director’s authority in this or future public health crises is an important contingency measure. We recognize that elections require significant advance planning and that alterations to their administration are taken seriously by both officials and the wider community. With the hope that this power allows for prudential and responsive action, Democracy North Carolina supports the proposed amendment.

Sincerely,

Tomas Lopez
Executive Director