

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. _____

2022 SEP -9 PM 1:41

BARBARA DEAS, THE NORTH CAROLINA
REPUBLICAN PARTY; and THE REPUBLICAN
NATIONAL COMMITTEE, WAKE COUNTY, C.S.C.
BY _____

Plaintiffs,

v.

THE NORTH CAROLINA STATE BOARD OF
ELECTIONS; DAMON CIRCOSTA, in his official
capacity as CHAIR OF THE STATE BOARD OF
ELECTIONS; STELLA ANDERSON, in her
official capacity as SECRETARY OF THE STATE
BOARD OF ELECTIONS; JEFF CARMON III, in
his official capacity as MEMBER OF THE STATE
BOARD OF ELECTIONS; STACY "FOUR"
EGGERS IV, in his official capacity as MEMBER
OF THE STATE BOARD OF ELECTIONS;
TOMMY TUCKER, in his official capacity as
MEMBER OF THE STATE BOARD OF
ELECTIONS; and KAREN BRINSON BELL, in
her official capacity as EXECUTIVE DIRECTOR
OF THE STATE BOARD OF ELECTIONS,

Defendants.

COMPLAINT

NOW COME Plaintiffs Barbara Deas ("Ms. Deas"), the North Carolina Republican Party ("NCGOP"), and the Republican National Committee ("RNC") (collectively "Plaintiffs") pursuant to N.C. Gen. Stat. § 1-253 *et seq.* and Rules 8, 57, and 65 of the North Carolina Rules of Civil Procedure and, complaining of Defendants the North Carolina State Board of Elections ("NCSBE"); Damon Circosta, in his official capacity as Chair of the NCSBE; Stella Anderson, in her official capacity as Secretary of the NCSBE; Jeff Carmon III, in his official capacity as

Member of the NCSBE; Stacy “Four” Eggers IV, in his official capacity as Member of the NCSBE; Tommy Tucker, in his official capacity as Member of the NCSBE; and Karen Brinson Bell, in her official capacity as Executive Director of the NCSBE, say and allege as follows:

INTRODUCTION

1. Confidence in elections is undermined when they are administered without transparency and contrary to the rule of law. Despite clear statutory language, the North Carolina State Board of Elections (“NCSBE”) is undermining both transparency and the rule of law by blocking the right of at-large election observers to have full access to voting places and unilaterally extending the deadline for the return of absentee-by-mail ballots. This lawsuit seeks to compel NCSBE to follow the law and ensure transparency in the elections process.

2. While Chapter 163 of the North Carolina General Statutes grants certain powers and duties to the NCSBE, those powers and duties are also limited by the specific election laws set forth in Chapter 163. *See* N.C. Gen. Stat. § 163-22(a) (“The State Board of Elections . . . shall have authority to make such 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 other provision of this chapter.*” (emphasis added)).

3. As such, the NCSBE is not the final arbiter of election law in North Carolina; rather, it must exercise its authority in accordance with the statutes that grant it such power.

4. Recent decisions of the NCSBE, however, have flouted its authority under the law.

I. Suppressing Transparency Guaranteed by State Law to At-Large Observers.

5. The crucial role that election observers serve in our electoral process is well documented. *See generally*, David Levine & Avery Davis-Roberts, *How More Robust Election Observation Could Help Save U.S. Elections* (The Carter Center 2022) (hereinafter “Election

Observation”) (recommending robust partisan and nonpartisan election observation)¹; Rebecca Green, *Election Observation Post-2020*, 90 Fordham L. Rev. 467 (2021); *Declaration of Principles for International Election Observation* (United Nations 2005) (endorsing election observations as a tool “to enhance the integrity of election processes, by deterring and exposing irregularities and fraud and by providing recommendations for improving electoral processes”)².

6. The ability of observers from each political party to watch how elections are actually conducted promotes public confidence, integrity, fairness, and accountability in elections.

7. Voter confidence is bolstered tremendously by open elections, where observers can view the process up close to report issues, malfeasance, or errors.

8. This transparency boosts the public’s trust, not only in election procedures but also in the results those procedures produce.

9. While often overlooked, the role of election observers is crucial to our election process, and efforts to constrain election observers from being able to perform their statutory function should be carefully reviewed.

10. It is not enough for observers to watch an election unfold from a remote distance. If observers are restricted from actually seeing or hearing important aspects of the election administration process, then they can be left with doubts and cannot attest to accuracy. Thus, the purposes of election observation are defeated by restrictions that prevent meaningful observation and discernment.

11. The Carter Center, for example, recommends that “Election administrators should seek to permit observers, both partisan and nonpartisan, to observe as much of their election

¹ Publicly available at: <https://www.cartercenter.org/resources/pdfs/peace/democracy/how-more-robust-election-observation-could-help-save-us-elections.pdf>.

² Publicly available at: <https://usoas.usmission.gov/wp-content/uploads/sites/271/2017/05/UN-Declaration-of-Principles-Election-Observation-2005.pdf>.

processes as possible without compromising the security of the electoral infrastructure.” Election Observation, *supra*, at 3.

12. The General Assembly has recognized these principles in expanded transparency rights for at-large observers appointed by the political parties. N.C. Gen. Stat. § 163-45(a) provides that, in addition to voting place-specific election observers, the chair of each political party in each county can designate up to ten (10) at-large election observers “who are residents of that county who may attend any voting place in that county.”

13. Likewise, section 163-45(a) provides that “[t]he chair of each political party in the State shall have the right to designate up to 100 additional at-large observers who are residents of the State who may attend any voting place in the State.”³

14. Unlike voting place-specific observers, section 163-45(a) contains no limitation on the number of voting places an at-large observer can visit. This is logical, as the public interest in open elections is served by having a limited number of at-large observers not only able to visit numerous voting places to observe, but also to have more than one at-large observer able to visit voting places in case of issues such as scheduling conflicts, personal emergencies, sick observers, and significant voting problems necessitating observer staffing changes.

15. Contrary to section 163-45(a), in 2018 the NCSBE adopted an administrative rule which, among other things, purported to apply the four-hour, one observer restrictions to at-large observers in addition to voting place-specific observers. 08 N.C. Admin. Code § 20.0101(c).

³ This provision was originally added by N.C. Session Law 2018-144 (formerly S.B. 824). That particular Session Law was enjoined by the three-judge trial court panel in *Holmes, et al. v. Moore, et al.*, Wake County Sup. Ct. No. 18 CVS 15292 (Sep. 17, 2021), publicly available at <https://www.nccourts.gov/assets/inline-files/2021-09-17-Holmes-v-Moore-Final-Judgment-18-CVS-15292.pdf>. However, the poll watcher statute has been recodified in N.C. Gen. Stat. § 163-45 through N.C. Session Law 2018-146. No party in *Holmes* challenged N.C. Session Law 2018-146. Nevertheless, there is no question in *Holmes* as to the applicability of county-level appointment of at-large observers.

16. Upon information and belief, local election officials have only sporadically enforced 08 N.C. Admin. Code § 20.0101(c) against at-large election observers.

17. Now, after the 2018 and 2020 elections, the NCSBE has issued written guidance for the 2022 election cycle indicating that it will attempt to enforce the four-hour, one observer restrictions on at-large observers in the November election. A true and accurate copy of the 2022, version 2, of the NCSBE's "Tips for Monitoring or Observing the Election at Polling Sites" is attached hereto as **Exhibit A**.

18. Any attempt to enforce the four-hour, one observer restrictions against at-large observers constitutes a unilateral, unlawful application of the restrictions beyond the provisions of N.C. Gen. Stat. § 163-45, and thus is contrary to N.C. Gen. Stat. §163-45 and in excess of the NCSBE's authority.

II. The NCSBE's Unilateral Extension of the Statutory Receipt Deadline.

19. N.C. Gen. Stat. § 163-231(b)(2) provides that civilian absentee-by-mail ballots "**shall not be accepted**" if they are received later than 5:00 p.m. on the date of the election unless (1) they "are received by the county board of elections not later than three days after the election by 5:00 p.m."; or (2) federal law so requires. N.C. Gen. Stat. § 163-231(b)(2) (emphasis added). The 2022 general election is scheduled to occur on Tuesday, November 8, 2022. Thus, the deadline for receipt of civilian absentee ballots is Friday, November 11, 2022.

20. On August 17, 2022, however, NCSBE Executive Director Karen Brinson Bell ("Brinson Bell") issued Numbered Memo 2022-09, which provides guidance to County Boards of Election that they are to accept civilian absentee-by-mail ballots through Monday, November 14, 2022, on the grounds that November 11, 2022, is the Veterans Day holiday. A true and accurate copy of Numbered Memo 2022-09 is attached hereto as **Exhibit B**.

21. The guidance in Numbered Memo 2022-09 constitutes a unilateral, unlawful extension of the statutory deadline by which Boards of Election may accept civilian absentee-by-mail ballots, is contrary to N.C. Gen. Stat. §163-231(b), and thus is in excess of the NCSBE's authority.

22. Moreover, this sudden change usurps the North Carolina General Assembly's authority to regulate "[t]he Times, Places, and Manner of holding Elections for Senators and Representatives" under the U.S. Constitution.

23. Accordingly, Plaintiffs seek a declaratory judgment from this Court that:

a. 08 N.C. Admin. Code § 20.0101(c) and the recent written guidance regarding NCSBE's intent to enforce the four-hour, one observer limitations on at-large observers exceed NCSBE's statutory authority;

b. The four-hour limitation contained in N.C. Gen. Stat. § 163-45 applies only to voting place-specific election observers, and not to at-large election observers; and

c. Numbered Memo 2022-09 exceeds NCSBE's statutory authority and the deadline for Boards of Election to receive and accept civilian absentee-by-mail ballots, postmarked by Election Day, is November 11, 2022, and in no event is the deadline Monday, November 14, 2022.

PARTIES AND JURISDICTION

24. Plaintiff Barbara Deas is a citizen and resident of Clay County, North Carolina. Ms. Deas is a registered Republican voter, and regularly votes in elections. Ms. Deas also regularly participates in the electoral process and is the Chairwoman of the Clay County Republican Party. Ms. Deas has also acted as an at-large observer in Clay County elections, intends to appoint herself

and others as at-large observers in Clay County for the upcoming November 8, 2022 election, and intends to vote in the upcoming November 8, 2022 election.

25. Plaintiff NCGOP, founded in 1867 is a political party as defined in Article 9 of Chapter 163 of the North Carolina General Statutes, and is the state political organization of the Republican Party. A significant part of the NCGOP's mission is to support Republican candidates running in North Carolina elections.

26. The NCGOP has statutory authority to appoint certain at-large election observers and assists the county party chairs in recruiting, appointing, and training county-appointed at-large observers. The NCGOP has already begun this process for at-large observers for the 2022 general election, including recruiting and training of at-large observers.

27. The NCSBE's ultra vires actions applying the four-hour, one observer restrictions to at-large observers have hampered and are continuing to interfere with the NCGOP's efforts to properly equip and train at-large observers.

28. Plaintiff RNC is the national committee of the Republican Party as defined by 52 U.S.C. § 30101(14). It manages the Republican Party's business at the national level, supports Republican candidates for public office at all levels (including in North Carolina), coordinates fundraising and election strategy, develops and promotes the national Republican platform, and communicates the Republican Party's positions and messages to voters.

29. The RNC is a political party as defined in Article 9 of Chapter 163.

30. The RNC makes considerable expenditures in North Carolina both directly and through its support of the NCGOP to elect Republican candidates running up and down the ballot in North Carolina elections, including by educating its voters and election observers on the applicable laws governing the voting process.

31. The RNC assists the NCGOP and its county party chairs in recruiting, training, and appointing at-large election observers and intends to continue its assistance for the 2022 election.

32. Defendant North Carolina State Board of Elections is the agency created by the North Carolina General Assembly and which is responsible for the administration of the election laws of the State of North Carolina. N.C. Gen. Stat. § 163-22.

33. Defendant Damon Circosta is the Chair of the North Carolina State Board of Elections. Mr. Circosta is sued in his official capacity.

34. Defendant Stella Anderson is a Member and the Secretary of the North Carolina State Board of Elections. Ms. Anderson is sued in her official capacity.

35. Defendant Jeff Carmon III is a Member of the North Carolina State Board of Elections. Mr. Carmon is sued in his official capacity.

36. Defendant Stacy “Four” Eggers IV is a Member of the North Carolina State Board of Elections. Mr. Eggers is sued in his official capacity.

37. Defendant Tommy Tucker is a Member of the North Carolina State Board of Elections. Mr. Tucker is sued in his official capacity.

38. Defendant Karen Brinson Bell is the Executive Director of the North Carolina State Board of Elections. Brinson Bell is sued in her official capacity.

39. Jurisdiction is proper in this Court pursuant to N.C. Gen. Stat. § 1-253 *et seq.* and N.C. Gen. Stat. § 7A-245.

40. Venue is proper in this Court under N.C. Gen. Stat. § 163-22(1) and N.C. Gen. Stat. § 1-82.

FACTUAL ALLEGATIONS

I. The NCSBE's Unlawful Restrictions on At-Large Observers.

41. Prior to 2013, political parties were limited to appointing voting place-specific observers.

42. On August 12, 2013, the North Carolina General Assembly passed House Bill 589, now codified at N.C. Gen. Stat. § 163-45 (the “Election Observer Statute”), which created the opportunity for “at-large” election observers to be appointed by political party officials.

43. The current version of section 163-45(a) provides, with regard to election observers:

The chair of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and such observers may, at the option of the designating party chair, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each chair contains the names of all persons authorized to represent such chair's political party. The chair of each political party in the county shall have the right to designate 10 additional at-large observers who are residents of that county who may attend any voting place in that county. The chair of each political party in the State shall have the right to designate up to 100 additional at-large observers who are residents of the State who may attend any voting place in the State.

44. Sometime after House Bill 589 was enacted, the NCSBE recognized the differential treatment of at-large and voting place-specific observers in the Election Observer Statute. For example, upon information and belief, sometime soon after House Bill 589 was passed, the State Board of Elections released guidance called “Tips for Monitoring or Observing the Election at Polling Sites[,]” which provided that “[p]recinct observers may be relieved after serving for at least 4 hours.” (emphasis added).

45. Upon information and belief, from the time of the enactment of the Election Observer Statute until 2018, the NCSBE did not attempt to require at-large observers to remain at any specific voting place for any specific amount of time, but rather allowed them to go from voting place to voting place within their authorized county.

46. In 2016, however, the NCSBE began to change its treatment of at-large observers. In providing guidance on the number of observers allowed in the voting enclosure, Numbered Memo 2016-21, issued by the NCSBE's Executive Director, stated, on page 3; that "All observers, whether precinct-specific or at-large, may be relieved after serving no less than four hours. N.C. Gen. Stat. § 163-45(a). This means that at least four hours must have passed since the observer began serving before a replacement observer can take over from the prior observer."⁴

47. Upon information and belief, during the 2016 election, however, Numbered Memo 2016-21 was not enforced against at-large observers.

48. On October 1, 2018, the State Board Administrative Rule 08 N.C. Admin. Code. § 20.0101 (the "Regulation") became effective. The Regulation discusses Election Observers and claims its authority from N.C. Gen. Stat. § 163-45. In pertinent part, the Regulation at subsection (c) improperly extends the four-hour mandate to at-large observers, stating "[a]ll observers, *whether precinct-specific or at-large*, may be relieved after serving no less than four hours." 08 N.C. Admin. Code. § 20.0101 (emphasis added).

⁴Publicly available at:
<https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2016/Numbered%20Memo%202016-21%20%20Voter%20Registration%20and%20Election%20Observer%20Requirem....pdf>

49. On October 15, 2018, the Executive Director of the NCSBE provided guidance to the County Boards of Election through Numbered Memo 2018-14 which, among other things, specifically noted that the Regulation had been approved by the Rules Review Commission.⁵

50. Upon information and belief, during the 2018 election, however, the Regulation was not enforced against at-large observers.

51. On October 9, 2020 (revised October 12, 2020), the Executive Director of the NCSBE issued Numbered Memo 2020-30 concerning Conduct at the Polls for the 2020 Elections.

In regard to the four-hour restriction for observers, it stated, citing the Regulation:

All observers, whether precinct-specific or at-large, may be relieved after serving no less than four hours. An observer may leave the voting place without having served for four hours, but the observer cannot be replaced by a new observer until at least four hours have passed since the first observer began serving. An observer who leaves the voting place for any reason may be prohibited by the chief judge from returning if the observer's return would cause a disruption in the voting enclosure.

52. Upon information and belief, during the 2020 election, however, the Regulation (and this aspect of Numbered Memo 2020-30) was only sporadically enforced by local election officials against at-large observers in a few counties.

53. In 2021, the NCSBE considered and adopted modifications to the regulations for election observers. On March 12, 2021, the RNC submitted a comment to the NCSBE pointing out, *inter alia*, the existing regulation's conflict: "[W]e would note that the language of the existing regulation purports to saddle at-large observers with the same four-hour time threshold for relief that N.C.G.S. § 163-45(a) applies solely to the precinct-specific observers[.]" The RNC requested the Board to "immediately repeal the parts of the regulation that conflict and affirm that it will

⁵ Publicly available at:

<https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2018/Numbered%20Memo%202018-14.pdf>

direct county boards to not enforce this unlawful rule for any elections until it does.” A true and accurate copy of the RNC’s comment letter is attached hereto as **Exhibit C**.

54. On February 23, 2021 and May 6, 2021, the NCGOP submitted comments to NCSBE which, *inter alia*, criticized the four-hour, one observer limitations.

55. On or about May 16, 2021, a representative from the RNC offered public comment to the NCSBE in opposition to the application of the four-hour restriction to at-large observers given the plain language of N.C. Gen. Stat. § 163-45.

56. The Board adopted changes to the Regulation at a June 29, 2021 meeting, but took no action to eliminate the regulation’s conflict with the statute.

57. North Carolina’s first primary election for the 2022 election cycle was conducted on May 17, 2022. During the primary, at-large poll observers experienced issues in the inconsistent application and enforcement of N.C. Gen. Stat. § 163-45.

58. Following the May primary, at its July 14, 2022 meeting, the NCSBE proposed amendments, via the temporary rulemaking process under N.C. Gen. Stat § 150B-21.1, to 08 N.C. Admin. Code § 20.0101 and 08 N.C. Admin. Code § 10B.0101.⁶

59. The proposed amendments to 08 N.C. Admin. Code § 20.0101 did not change the Regulation’s improper application of the four-hour, one observer restriction to at-large observers.

60. On August 12, 2022, Plaintiffs RNC and NCGOP submitted public comment to the proposed temporary amendments to 08 N.C. Admin. Code § 20.0101, including objections to the four-hour, one observer restrictions for at-large observers.

61. At its August 16, 2022, meeting, the NCSBE adopted amended versions of temporary rules for 08 N.C. Admin. Code § 20.0101 and 08 N.C. Admin. Code. § 10B.0101.

⁶ This action does not concern 08 N.C. Admin Code § 10B.0101.

62. The amended version of 08 N.C. Admin. Code § 20.0101 continued to apply the four-hour, one observer restrictions to at-large observers.

63. On August 19, 2022, the RNC and NCGOP sent a letter to NCSBE detailing its objections to the four-hour, one observer restrictions being applied to at-large election observers. The letter noted that it was at least the “fourth occasion” on which the NCGOP or RNC has raised this issue with the NCSBE. A true and accurate copy of the RNC’s and NCGOP’s letter is attached hereto as **Exhibit D**.

64. The August 19 letter specifically asked the NCSBE to inform the RNC and NCGOP whether it intended to enforce the four-hour, one observer restrictions against at-large observers during the November 8, 2022 general election.

65. To date, the NCSBE, however, has not responded to the RNC and NCGOP’s August 19, 2022 letter.

66. On August 24, 2022, the RNC and NCGOP submitted correspondence to the North Carolina Rules Review Commission again objecting to the four-hour, one at-large observer limitations being applied to at-large observers. A true and accurate copy of the RNC and NCGOP’s August 24 letter is attached hereto as **Exhibit E**.

67. At a specially-called meeting on August 25, 2022, however, the North Carolina Rules Review Commission returned the proposed temporary rules to the NCSBE.

68. The NCSBE’s four-hour, one at-large observer mandate, attempted to be enforced through the Regulation, Numbered Memos, and written guidance, conflicts with N.C. Gen. Stat. § 163-45 and exceeds the NCSBE’s authority.

69. The NCSBE’s four hour, one at-large observer mandate harms the RNC and NCGOP because Republican party observers will be improperly restricted from observing the

election process as “[they] may desire,” only subject to the restrictions outlined in N.C. Gen. Stat. § 163-45. Moreover, the at-large observer role was created to help fill the gaps in coverage created by a lack of site-specific observers. The at-large observer could alleviate a site-specific observer who may need to leave a voting place early or needs to arrive late.

70. More importantly, recruiting individuals to volunteer as observers compared to serving as paid election workers or campaign greeters can be a difficult task. For this reason, at-large observers are indubitably important, especially for the rural counties across the state. In many instances, there are less than (10) volunteers who agree to serve as an observer. The number of observers is often times inadequate to have an observer at each voting place on election day.

71. By subjecting at-large observers to the four-hour, one at-large observer limitations, the NCSBE has eliminated the benefits and rights of at-large observers as they were specifically granted by the General Assembly.

72. Likewise, the NCSBE’s four hour, one at-large observer mandate harms Ms. Deas both as the Chairwoman of the Clay County Republican Party, by making it harder for her to ensure observer coverage for the election sites in Clay County, as well as in her individual capacity, by limiting the number at-large observers she can use to observe at various voting places.

73. Given the NCSBE’s failure to respond or meaningfully engage with Plaintiffs’ numerous warnings and correspondence regarding the unlawfulness of the regulation, and in light of the proximity of the November 2022 general election, Plaintiffs are forced to proceed with this litigation seeking declaratory relief.

II. The NCSBE’s Unlawful Extension of the Civilian Absentee by Mail Deadline.

74. North Carolina law requires civilian absentee-by-mail ballots to be postmarked by Election Day and be “received by the county board of elections not later than three days after the

election by 5:00 p.m.” or else they “**shall not be accepted.**” N.C. Gen. Stat. § 163-231(b)(2) (emphasis added).

75. Election Day for 2022 is November 8, 2022.

76. Three days after November 8, 2022, is Friday, November 11, 2022.

77. Thus, under N.C. Gen. Stat. § 163-231(b)(2), the deadline for county boards of election to receive civilian absentee-by-mail ballots is 5:00 p.m. on November 11, 2022.

78. Veterans Day, a state and federal holiday, is Friday, November 11, 2022. While U.S. mail will not be delivered that day, voters may continue to submit ballots in person at county board of election offices or by designated delivery services such as UPS or Federal Express.

79. Saturday, November 12, 2022, is not a state or federal holiday.

80. Mail will be delivered on November 12, 2022.

81. On August 17, 2022, Executive Director Brinson Bell issued Numbered Memo 2022-09 to county boards of election, which advised them that “**in 2022, the deadline for receipt of absentee ballots that are postmarked by Election Day is Monday, November 14.**” (emphasis in original).

82. As grounds for moving the deadline, Numbered Memo 2022-09 states that “when the deadline for the return of postmarked absentee ballots falls on a holiday, the deadline moves to the next business day, pursuant to G.S. § 103-5(a).”

83. Unlike other provisions in Chapter 163, N.C. Gen. Stat. § 163-231 does not cite to N.C. Gen. Stat. § 103-5 as authority for changing the deadline by which county boards of election must receive civilian absentee-by-mail ballots in order for them to be accepted. N.C. Gen. Stat. § 103-5 does not authorize the NCSBE or its Executive Director to unilaterally alter the receipt deadline set by the General Assembly.

84. No other mechanism in Chapter 163 gives the NCSBE, or its Executive Director, authority to unilaterally change the deadline by which civilian absentee-by-mail ballots must be received by county boards of election in order to be accepted.

85. This unilateral action directly usurps the General Assembly's authority as granted in Article I, Section 4 of the United States Constitution, which vests authority to set the "Time, Places, and Manner of holding Elections for Senators and Representatives" exclusively in the state legislature.

FIRST CLAIM FOR RELIEF
Declaratory Judgment – Violation of Chapter 163

86. Plaintiffs hereby incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

87. Plaintiffs bring this claim for declaratory judgment pursuant to N.C. Gen. Stat. § 1-253 *et seq.* as to the rights, status, or other legal relations between Plaintiffs and Defendants.

88. NCSBE is an agency created by statute that only has the authority expressly provided to it by the North Carolina General Assembly or the Constitution of the State of North Carolina.

89. N.C. Gen. Stat. § 163-22(a) expressly limits the NCSBE's authority "to make such reasonable rules and regulations with respect to the conduct of primaries and elections" to only those rules and regulations that do not conflict with any other provisions of Chapter 163.

90. An actual controversy exists between Plaintiffs and Defendants in regard to:

- a. Whether the NCSBE's four-hour, one at-large observer mandate conflicts with or is an unlawful expansion of the provisions of N.C. Gen. Stat. § 163-45;
- b. Whether the NCSBE's moving of the deadline for receipt of civilian absentee-by-mail ballots from November 11, 2022, to November 14, 2022,

conflicts with or is an unlawful expansion of the provisions of N.C. Gen. Stat. § 163-231.

91. The declaratory judgment sought by Plaintiffs would terminate the uncertainty or controversy giving rise to this proceeding.

92. Further, the NCSBE's actions have harmed and will continue to harm Plaintiffs by improperly restricting statutory rights granted to Plaintiffs by the General Assembly as poll observers, appointers of poll observers, and political parties under Chapter 163 of the North Carolina General Statutes.

93. Specifically, Plaintiffs seek a declaratory judgment that:

a. The Regulation and the written guidance regarding enforcement of the four-hour, one at-large observer restrictions exceed NCSBE's statutory authority;

b. N.C. Gen. Stat. § 163-45 and the four-hour limitations contained therein apply only to voting place-specific election observers, and does not apply to at-large election observers;

c. Numbered Memo 2022-09 exceeds the NCSBE's statutory authority; and

d. N.C. Gen. Stat. § 163-231 mandates that the deadline for Boards of Election to receive and accept civilian absentee-by-mail ballots, postmarked by Election Day, is November 11, 2022 and in no event is it November 14, 2022.

SECOND CLAIM FOR RELIEF

Declaratory Judgment – Violation of N.C. Const. Art. 1, Sec. 19

94. Plaintiffs hereby incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

95. Article I, Section 19 of the North Carolina Constitution provides that “[n]o person shall be . . . deprived of his life, liberty or property, but by the law of the land.”

96. Defendants' (1) imposition of the four-hour, one at-large observer restrictions, and (2) unilateral change of the deadline for receipt of civilian absentee-by-mail ballots violate Plaintiffs' substantive and procedural due process rights, in that they deprive Plaintiffs of life, liberty, or property guaranteed by Article I, Section 19 of the North Carolina Constitution and exceed the NCSBE's authority under the governing statute.

97. Defendants' imposition of the four-hour, one at-large observer restrictions violate Plaintiffs' substantive and procedural due process in that it bears no rational relation to a valid state objective and is inconsistent with, and in excess of, the provisions of N.C. Gen. Stat. § 163-45.

98. Likewise, Defendants' unilateral change of the deadline for receipt of civilian absentee-by-mail ballots violates Plaintiffs' substantive and procedural due process in that it bears no rational relation to a valid state objective and is inconsistent with, and in excess of, the three-day deadline set by N.C. Gen. Stat. § 163-231 for the receipt of civilian absentee-by-mail ballots.

99. Defendants' unilateral change of the deadline for receipt of civilian absentee-by-mail ballots also violates a fundamental right of Plaintiff Deas, i.e., her right to vote and have her vote counted equally and according to law.

100. Plaintiffs request this Court declare:

a. Defendants' adoption of the Regulation and the written guidance regarding enforcement of the four-hour, one observer restrictions on at-large observers violates Plaintiffs' due process rights;

b. Defendants' adoption of Numbered Memo 2022-09 violates Plaintiffs' due process rights; and

c. Therefore, neither the Regulation and written guidance regarding the four-hour, one observer restrictions on at-large observers, nor Numbered Memo 2022-

09 may be enforced in the 2022 elections.

THIRD CLAIM FOR RELIEF

Request for Declaratory Relief – Violation of U.S. Const. art. I sec. 4

101. Plaintiffs hereby incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

102. Article I, Section 4, Clause 1 of the United States Constitution provides that:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

103. As such, the power to determine the times, places, and manner of holding elections for United States Senators and Representatives in North Carolina is exclusively vested in the North Carolina General Assembly.

104. Statutorily-authorized elections observers are part of the “Times, Places, and Manner of holding Elections for Senators and Representatives” under Article I, Section 4 of the United States Constitution.

105. The NCSBE is not a member of the legislative branch of North Carolina government.

106. The General Election scheduled for November 8, 2022, in North Carolina includes elections for United States Senator and fourteen (14) Representatives to the United States House of Representatives.

107. In accordance with Article I, Section 4, Clause 1 of the United States Constitution, the North Carolina General Assembly determined that civilian absentee-by-mail ballots must be postmarked by Election Day and be “received by the county board of elections not later than three days after the election by 5:00 p.m.” or else they “shall not be accepted.” N.C. Gen. Stat. § 163-

231(b)(2).

108. In accordance with Article I, Section 4, Clause 1 of the United States Constitution, the North Carolina General Assembly determined that voting place-specific election observers were subject to being relieved after “no less than four hours”, but did not apply the four-hour, one observer limitations to at-large observers. N.C. Gen. Stat. § 163-45(a).

109. As the NCSBE is not the “Legislature” of North Carolina, it cannot determine the “Times, Places, and Manner” of electing United States Senators and Representatives in North Carolina that is inconsistent with the choices for the Times, Places, and Manner of such elections made by the North Carolina General Assembly.

110. The Regulation and the written guidance from the NCSBE based thereon, improperly apply the four-hour, one observer restrictions to at-large observers.

111. The Regulation and written guidance from NCSBE based thereon, are inconsistent with N.C. Gen. Stat. § 163-45(a), in that they apply the four-hour, one observer restrictions to at-large observers.

112. Numbered Memo 2022-09 extends the time for acceptance of civilian absentee-by-mail ballots from three days after the 2022 election to six days after the 2022 election.

113. Numbered Memo 2022-09’s extension of the time for acceptance of civilian absentee-by-mail ballots for an extra three (3) days is inconsistent with N.C. Gen. Stat. § 163-231(b)(2), in that no extensions or exceptions exist in the statute for federal and state holidays or non-business days.

114. Defendants violated the federal Elections Clause by adopting the Regulation and written guidance based thereon, to apply the four-hour, one observer restrictions to at-large observers, restrictions beyond that authorized by the General Assembly.

115. Defendants violated the federal Elections Clause by unilaterally adopting Numbered Memo 2022-09 to move the deadline for acceptance of civilian absentee-by-mail ballots for North Carolina’s federal elections beyond that authorized by the North Carolina General Assembly.

FOURTH CLAIM FOR RELIEF

Request for Declaratory Relief - Violation of N.C. Const. Art. 1, Sec. 19 (Failure to Follow the North Carolina Administrative Procedures Act)

116. Plaintiffs hereby incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

117. Article I, Section 19 of the North Carolina Constitution provides that “[n]o person shall be . . . deprived of his life, liberty or property, but by the law of the land.”

118. The Administrative Procedures Act, N.C. Gen. Stat. § 150B *et seq.*, requires any procedures or requirements that directly or substantially affect the rights of persons outside of an agency be adopted as rules.

119. Numbered Memo 2022-09 amounts to a “rule” as defined under N.C. Gen. Stat. 150B-2(8a).

120. Defendants failed to provide notice and the opportunity to be heard before the adoption of Numbered Memo 2022-09.

121. Defendants’ adoption of Numbered Memo 2022-09 violates Plaintiffs’ procedural due process rights as set forth under the Administrative Procedures Act and as otherwise alleged herein.

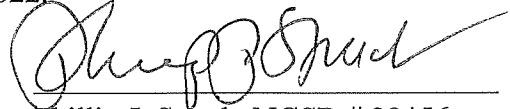
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court grant the following relief against Defendants and in favor of Plaintiffs:

1. A declaration that the Regulation and the written guidance regarding enforcement of the four-hour, one observer limits on at-large observers exceed the NCSBE's statutory authority;
2. A declaration that Numbered Memo 2022-09 exceeds the NCSBE's statutory authority;
3. A declaration that the Regulation and the written guidance regarding enforcement of the four-hour, one observer restrictions on at-large observers violate Plaintiffs' due process rights under the North Carolina Constitution;
4. A declaration that Numbered Memo 2022-09 violates Plaintiffs' due process rights under the North Carolina Constitution;
5. A declaration that the NCSBE violated the federal Elections Clause by adopting the Regulation, Numbered Memos, and written guidance as to the four-hour, one observer restrictions;
6. A declaration that the NCSBE violated the federal Elections Clause by adopting Numbered Memo 2022-09;
7. A declaration that the NCSBE failed to follow the North Carolina Administrative Procedures Act when issuing the written guidance regarding enforcement of the four-hour, one observer limitations on at-large observers in violation of Plaintiffs' procedural due process rights;
8. A preliminary and permanent injunction enjoining the NCSBE and its Members from enforcing the four-hour, one observer restrictions as to at-large election observers;
9. A preliminary and permanent injunction enjoining the NCSBE and its Members from enforcing Numbered Memo 2022-09 during the 2022 election cycle;

10. An award of Plaintiffs' attorneys' fees and costs; and
11. Any additional relief this Court deems just and proper.

Respectfully submitted, this the 9th day of September, 2022.



Phillip J. Strach, NCSB # 29456

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**NELSON MULLINS RILEY &
SCARBOROUGH LLP**

4140 Parklake Avenue, Suite 200

Raleigh, NC 27612

Ph: (919) 329-3800

Fax: (919) 329-3799

Exhibit A



TIPS FOR MONITORING OR OBSERVING THE ELECTION AT POLLING SITES

OUTSIDE MONITORS

Anyone has the right to watch or monitor the election outside the voting place. This activity must remain outside the buffer zone, which typically extends 50 feet from the entrance of the voting place and is clearly marked. Outside observers may not disrupt voting, intimidate voters, or otherwise impede access to the polls. On-site elections officials have the duty to ensure a safe and orderly voting site where voters are not obstructed. These officials are authorized to remove anyone who is disruptive. G.S. 163-48.

Allowed:

- Pass out campaign material and sample ballots.
- Speak to voters.
- Conduct polling.
- Monitor and report concerns and complaints.

Prohibited:

- Enter the polling place or curbside voting area unless they are in the act of voting.
- Obstruct, intimidate, or interfere with any person registering or voting.

OBSERVING THE ELECTION INSIDE (appointed by political party)

Members of the public may not enter a voting site to observe the election. Only observers appointed in advance by a political party may be inside. The chief judge or one-stop manager will designate a place for observers that is close enough to hear voters checking in, but far enough to not impede the voting process or observe confidential information. Each party may assign site-specific observers and at-large observers for the county. No more than 2 site-specific observers and 1 at-large observer from the same party may be in the voting place at the same time. Observers at any site may be relieved after serving for at least 4 hours.

Allowed:

- Make observations and take notes, including on a computer or phone (without capturing images, video, or audio).
- Periodically approach the registration, ballot, or help tables without interfering with voters or elections officials, or viewing confidential information. The chief judge or one-stop manager has the discretion to limit this activity if it is disruptive.
- Report concerns to the chief judge or one-stop manager. Discussions should be with the chief judge or one-stop manager only, not other elections workers.
- Walk outside the voting enclosure to view the curbside voting area or make phone calls, at the discretion of the chief judge or one-stop manager.
- Obtain a list of voters who have voted in the precinct at designated time intervals (typically 10am, 2pm, and 4pm).
- View bound sets of completed authorization-to-vote or one-stop application forms without removing the binding.

Prohibited:

- May not interfere with elections workers when opening or closing the polls, but may observe these processes.
- Must not speak to voters or voter assistants.
- Must not impede or disrupt the voting process.
- Must not wear or distribute campaign material.
- Must not go behind the registration, ballot, or help tables.
- Must not enter voting booth area. Must not approach voting equipment without chief judge/one-stop manager.
- Must not position oneself to view confidential voter information on poll books or check-in laptops.
- Must not position oneself to see the contents of voted ballots, whether in the voting enclosure or curbside.
- Must not board a vehicle containing curbside voters.
- Must not provide voter assistance.
- Must not photograph, video, or record a voter without consent of the chief judge/one-stop manager, then the voter.

RUNNERS (appointed by political party)

Runners are appointed in advance by a political party to collect lists of people who have voted at particular intervals (10am, 2pm, 4pm). The chief judge will receive a list of the names of each runner. The runner must identify themselves to the chief judge and immediately leave the voting enclosure after receiving the list of voters. G.S. 163-45(d).

VOTER ASSISTANCE

Any in-person voter is entitled to assistance entering/exiting the voting booth and filling out a ballot. Any voter may receive such assistance from a near relative. Voters who need assistance entering to vote or marking a ballot due to disability, blindness, or illiteracy may receive assistance from anyone the voter chooses, except the voter's employer or agent of the voter's union. Assistants may not influence the voter's selections, take notes on anything occurring in the voting booth, or reveal how the person voted. There is no limit on the number of voters an assistant may assist. G.S. 163-166.8.

N.C. Administrative Code – ELECTION OBSERVERS

08 NCAC 20 .0101

(a) **Observer Lists.** The chair of each political party in a county may designate two precinct-specific observers to attend each voting place on Election Day and each one-stop site during a primary or general election in accordance with this Rule. The precinct-specific observer list may include up to eight names and shall include the times that each observer shall serve. The county party chair may designate 10 additional at-large observers who may attend any voting place in the county. The list of observers for one-stop must designate the names of the observers who will be present on each day of early voting and, for precinct-specific observers, at each one-stop site. At-large observers may serve at any one-stop site. The chair of each State political party may designate up to 100 additional at-large observers who are residents of the State who may attend any voting place in the State.

(b) **Submission of Lists.** The county party chair shall submit a written, signed list of county at-large observers to the county director of elections, with two copies provided to the chair of the county board of elections, prior to 10:00 a.m. on the fifth day prior to Election Day. The county party chair shall submit a written, signed list of the observers appointed for each precinct to the chief judge of each precinct, with two copies provided to the chair of the county board of elections, prior to 10:00 a.m. on the fifth day prior to Election Day; the list may be delivered in care of the county director of elections. The county party chair shall submit the list of observers for one-stop before 10:00 a.m. on the fifth day before the observer is to observe. The list of at-large observers to serve on Election Day may be amended prior to Election Day to substitute one or all of the at-large observers. The list of at-large observers who serve during early voting may not be amended after 10:00 a.m. on the fifth day before the at-large observer is to observe. The list of precinct-specific observers to serve on Election Day may not be amended after 10:00 a.m. on the fifth day prior to Election Day. The State party chair shall submit the written, signed list of State at-large observers by 10:00 a.m. on the fifth day prior to Election Day to the State Board, which shall disseminate the list to the county boards of elections. The list shall include the full name of each at-large observer and the county in which the observer is registered. The State Board shall confirm that each State at-large observer is a registered voter of the State. Party chairs may provide the lists by facsimile or email provided the letters are signed. Scanned signatures are permissible.

(c) **Observers at Voting Place.** No more than two precinct-specific observers from each political party may be in the voting enclosure at any time. Only one at-large observer from each political party may be in the voting enclosure at any time, even if no precinct-specific observers are present. All observers, whether precinct-specific or at-large, may be relieved after serving no less than four hours; however, the total number of observers from each party cannot exceed three total observers in the voting enclosure at one time: two precinct-specific observers and one county or State at-large observer. An observer may leave the voting place without having served for four hours, but the observer cannot be replaced by a new observer until at least four hours have passed since the first observer began serving. An observer who leaves the voting place for any reason may be prohibited by the chief judge from returning if the observer's return would cause a disruption in the voting enclosure.

(d) **Observer Conduct.** Observers who engage in prohibited conduct after receiving a warning may be required by the chief judge to leave the voting enclosure. Prohibited activities by observers include:

- (1) Wearing or distributing campaign material or electioneering;
- (2) Impeding or disrupting the voting process or speaking with voters or election assistants;
- (3) Interfering with the privacy of the voter, including positioning themselves in such a way that they can view confidential voter information on poll books or laptops or standing in such a way that they can view the contents of ballots inserted into a tabulator;
- (4) Using an electronic device to film or take photographs inside the voting enclosure;
- (5) Taking photographs, videos, or recording a voter without the consent of the voter and the chief judge;
- (6) Entering the voting booth area or attempting to view voted ballots;
- (7) Boarding a vehicle containing curbside voters; and
- (8) Providing voter assistance.

(e) **Eligibility.** No person who is a candidate on the ballot in a primary or general election may serve as an observer or runner in that primary or that general election. No person who serves as an observer or runner in a primary or general election may serve as a precinct official or one-stop election official in that primary or that general election.

(f) **Observers for unaffiliated candidates.** An unaffiliated candidate or the candidate's campaign manager may appoint two observers at each voting place as set forth in this Rule.

(g) The use of the term "chief judge" includes one-stop site managers.



NORTH CAROLINA
STATE BOARD OF ELECTIONS

Dobbs Building
Third Floor
430 N Salisbury St
6400 Mail Service Center
Raleigh NC 27603-1362
Phone: 919-814-0700
Email: elections.sboe@ncsbe.gov

Exhibit B



NORTH CAROLINA

STATE BOARD OF ELECTIONS

Mailing Address:
P.O. Box 27255, Raleigh, NC 27611
(919) 814-0700 or
(866) 522-4723
Fax:(919) 715-0135

Numbered Memo 2022-09

TO: County Boards of Elections
FROM: Karen Brinson Bell, Executive Director
RE: Absentee Ballot Return Deadline
DATE: August 17, 2022

This numbered memo provides guidance for when the civilian absentee-by-mail deadline falls on a holiday. This guidance applies to all future elections.

State law provides that absentee ballots must be either:

- Received by 5 p.m. on Election Day; or
- Postmarked by Election Day and received no later than 5 p.m. three days after the election.¹

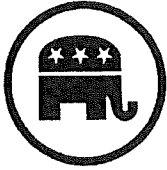
In 2022, the deadline for receipt of postmarked absentee ballots falls on Friday, November 11, Veterans Day, a state and federal holiday.² When a deadline for doing an act to be performed in a public office falls on a weekend or holiday, the deadline moves to the next day the public office is open.³ Accordingly, when the deadline for the return of postmarked absentee ballots falls on a holiday, the deadline moves to the next business day, pursuant to G.S. § 103-5(a). **Therefore, in 2022, the deadline for receipt of absentee ballots that are postmarked by Election Day is Monday, November 14.**

¹ G.S. § 163-231(b)(2)b.

² 5 U.S.C. § 6103; G.S. § 103-4(a)(12).

³ G.S. § 103-5(a) states: "Except as otherwise provided by law, when the day or the last day for doing any act required or permitted by law to be performed in a public office or courthouse falls on a Saturday, Sunday, or legal holiday when the public office or courthouse is closed for transactions, the act may be performed on the next day that the public office or courthouse is open for transactions."

Exhibit C



Republican
National
Committee

Counsel's Office

VIA Electronic Mail

Re: Proposed Rulemaking

March 12, 2021

North Carolina State Board of Elections
Attn: Rulemaking Coordinator
PO Box 27255
Raleigh, NC 27611-7255

The Republican National Committee (RNC) writes in response to a request for public comment to proposed changes to the text in the North Carolina Register, specifically, 8 N.C. Admin. Code 20.0101. The RNC joins the North Carolina Republican Party in strong opposition to this proposed rulemaking because it would directly conflict with and thus be preempted by state election statutes. N.C.G.S. § 163-45 confers on state and county political parties rights both to appoint replacement precinct-specific observers and for at-large observers to attend any voting place in the county or state. The proposed regulation prohibits both. The proposed regulations would also eliminate transparency and accountability in the elections process and decrease confidence in the state's elections. Finally, the regulation in its current form conflicts with and is preempted by existing statute in limiting the rights given to at-large observers. The Board should repeal the provisions that conflict immediately.

First, the proposed regulatory changes conflict with existing statute which permits precinct-specific observers to relieve existing observers. The statute provides:

The chair of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and *such observers may, at the option of the designating party chair, be relieved during the day of the primary or election after serving no less than four hours.*¹

The proposed amendment to 8 N.C. Admin. Code 20.0101 limits the total number of precinct-specific observers to two and thus conflicts with the above statute, which clearly permits two

¹ N.C.G.S. § 163-45(a) (emphasis added).

observers at each voting place who can be relieved by two new observers once the original observers have served for four hours.² Polls are open in North Carolina for 13 hours which would allow for up to four different shifts of two precinct-specific observers: an initial set of two observers for four hours, a replacement set of two for the second four hours, a set of two for the third four-hour period, and a set of two for the final hour polls are open. Thus, the statute authorizes as many as eight different precinct-specific observers per voting place throughout the course of the day. There is no plausible way to harmonize the statute which allows as many as eight observers with the proposed regulatory changes capping it at two for the entire day.

The proposed regulation similarly limits the statutory rights of at-large observers. It states that “the *total number* of observers ... cannot exceed *three total observers*: two precinct-specific observers and *one county or State at-large observer*.”³ Unlike the proposed rule, the statute in no way restricts an at-large observer from leaving a voting place and being immediately replaced by another at-large observer so long as they are both not observing at the same time. Nor does the statute prohibit an at-large observer from attending a voting place where a different at-large observer has already attended. Instead, N.C.G.S. § 163-45(a) makes clear that observers may “attend any voting place in the county” or “State,” as appropriate. The Board of Elections cannot rescind a statutory right authorizing at-large observers to observe in a polling location simply because other at-large observers may have already been present there at some point in the day.

Finally, we would note that the language of the existing regulation purports to saddle at-large observers with the same four-hour time threshold for relief that N.C.G.S. § 163-45(a) applies solely to the precinct-specific observers:

All observers, *whether precinct-specific or at-large*, may be relieved after serving no less than four hours. An observer may leave the voting place without having served for four hours, *but the observer cannot be replaced by a new observer until at least four hours have passed since the first observer began serving*.⁴

The plain reading of the statute makes clear that the four-hour restriction applies only to precinct-specific observers.⁵ The first sentence of the section of the statute allows for the replacement of observers after having served “no less than four hours” but that provision refers only to the “two observers to attend each voting place.”⁶ The subsequent two sentences specifically

² The proposed amendment to 8 N.C. Admin Code 20.0101 states: “The chair of each political party in a county may designate a total of two precinct-specific observers to attend each voting place on Election Day....” It further prohibits “[a]lternate precinct-specific observers” and states that “the total number of observers from each party per day cannot exceed three total observers: two precinct-specific observers and one county or State at-large observer.”

³ 8 N.C. Admin Code 20.0101 (proposed) (emphasis added).

⁴ 8 N.C. Admin. Code 20.0101(c).

⁵ Guidance from the State Board of Elections General Counsel created shortly after the addition of at-large observers to N.C.G.S. § 163-45(a) confirmed that an at-large observer is not required to serve a minimum amount of time before another at-large observer may take his or her place: “Is an At-large Observer Subject to a Minimum 4 Hour Shift? No. The provision in GS 163-45(a) that covers at-large observers was added after the statutory language as to the 4-hour minimum.” Don Wright, *Observers*....2014 (August 5, 2014), https://s3.amazonaws.com/dl.ncsbe.gov/Election%20Resource%20Center/Conference%20Materials/2014/2014_August_Conference/Day_2_presentations/Observers2014.pdf.

⁶ N.C.G.S. § 163-45(a) (emphasis added).

address the at-large observers but nowhere apply the four-hour relief period applicable to the precinct-specific observers. Once again, the regulation is in direct conflict with the statute.

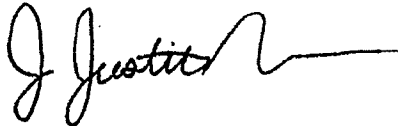
The Board of Elections cannot overrule statutes duly enacted by the General Assembly. North Carolina statute does give the Board rulemaking authority, but only so long as those rules and regulations are reasonable and “do not conflict with any provisions of” the election statutes. N.C.G.S. § 163-22(a). As explained, by limiting the statutory rights given to poll observers these proposed changes do conflict and the Board, therefore, has no authority to enact them.

Moreover, the existing regulation applying the four-hour relief period applicable to precinct-specific observers to at-large observers is also invalid because it is preempted by the statute which imposes no such requirement. The Board should immediately repeal the parts of the regulation that conflict and affirm that it will direct county boards to not enforce this unlawful rule for any elections until it does.

Beyond the incurable preemption problems, these proposals reduce transparency by limiting the number of people who can observe the electoral process. The existing statute addresses any potential overcrowding concerns by capping the number of poll observers to three per party at one time. It is hard to fathom what useful policy goal this rulemaking would achieve beyond shutting out the political parties and in effect the millions of voters they represent from observing the electoral process.

The State Board of Elections has a legitimate and important regulatory function under North Carolina law but it cannot rescind rights and rewrite statutes enacted by the elected members of the General Assembly. Even in the absence of the preemption problems which doom the proposed rulemaking, the Board should always err on the side of transparency which these proposals clearly do not.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Justin Riemer", with a long horizontal flourish extending to the right.

J. Justin Riemer
Chief Counsel

Exhibit D

REPUBLICAN
NATIONAL COMMITTEE



VIA Electronic Mail

August 19, 2022

To: Ms. Karen Brinson-Bell
Executive Director
North Carolina State Board of Elections
430 N. Salisbury St.
Raleigh, NC 27603

State Board Members
Damon Circosta, Chair
Stella Anderson, Secretary
Jeff Carmon
Four Eggers
Tommy Tucker

Katelyn Love
General Counsel
North Carolina State Board of Elections

From: Republican National Committee
310 First Street SE
Washington, DC 20003

North Carolina Republican Party
1506 Hillsborough St.
Raleigh, NC 27605

Dear Executive Director Bell,

We write requesting clarification from the North Carolina State Board of Elections (“NCSBE”) as to the NCSBE’s regulation of conduct of at-large election observers under N.C. Gen. Stat. § 163-45. An administrative rule issued by the NCSBE, 08 N.C.A.C. § 20 .0101, and guidance issued by the NCSBE based thereon, is in conflict with N.C. Gen. Stat. § 163-45’s treatment of election observers. Specifically, the NCSBE is enforcing a 4-hour time limitation on at-large observers that is inconsistent with the statute. We are asking the NCSBE to confirm that it will not enforce any 4-hour limitations on at-large election observers during the 2022 general election.

We would note at the outset that this is at least the fourth occasion on which the North Carolina Republican Party or Republican National Committee has raised this issue to the Board and the Board has not provided any substantive explanation for why it has not removed this unlawful component from the regulation. First, on March 12, 2021, in a written comment to a 2021 Board rulemaking, the RNC explained

how the provision conflicts with statute.¹ In testimony at a May 14, 2021 hearing regarding the same rulemaking, RNC Election Integrity Counsel Alyssa Gonzalez Specht pointed out the same issue and the Board made no changes in the rulemaking to bring the regulation into conformity with the statute. Finally, in an August 12, 2022 North Carolina Republican Party and RNC comment to the Board regarding its recent temporary rulemaking, we once again raised this issue with the Board noting how both the proposed temporary rule and existing regulation still contained this unlawful provision.²

The current version of N.C. Gen. Stat. § 163-45(a) provides, with regard to election observers:

The chair of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and such observers may, at the option of the designating party chair, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each chair contains the names of all persons authorized to represent such chair's political party. The chair of each political party in the county shall have the right to designate 10 additional at-large observers who are residents of that county who may attend any voting place in that county. The chair of each political party in the State shall have the right to designate up to 100 additional at-large observers who are residents of the State who may attend any voting place in the State.

Of note, the 4-hour time limitation appears in the sentence describing the voting place-specific observers, and is qualified by the term “such observers.” *Id.* The sentences later in the statute pertaining to at-large observers do not contain the 4-hour time limitation language. *See id.* Under the doctrine of *expressio unius est exclusio alterius*, the General Assembly’s decision to only apply the 4-hour limitation to the voting place-specific observers should be interpreted as excluding the 4-hour limitation from application to at-large observers. *See Morrison v. Sears, Roebuck & Co.*, 319 N.C. 298, 303, 354 S.E.2d 495, 498 (1987) (“To aid in statutory construction, the doctrine of *expressio unius est exclusio alterius* provides that the mention of such specific exceptions implies the exclusion of others.” (italics in original)). Since the 4-hour limitation was included for voting place-specific observers, but not for at-large observers, any attempt by the NCSBE to apply the 4-hour limitation to at-large observers conflicts with the statute and, thus, constitutes an improper rule. As such, the 4-hour time limitation in section 163-45 should only apply to voting place-specific observers, not at-large observers.

Over the past several years the NCSBE has, incorrectly in our view, interpreted N.C. Gen. Stat. § 163-45(a) to allow it to impose the 4-hour time limitation on both voting place-specific observers and at-large observers:

¹ Available at: [https://prod-media-assets.protectthevote.com/media/document/rulemaking/RNC Comment to Proposed Rulemaking df4wnugq.pdf](https://prod-media-assets.protectthevote.com/media/document/rulemaking/RNC%20Comment%20to%20Proposed%20Rulemaking%20df4wnugq.pdf)

² Available at: [https://prod-media-assets.protectthevote.com/media/document/rulemaking/RNC NCGOP Public Comment 8.12.22 r8yn137t.pdf](https://prod-media-assets.protectthevote.com/media/document/rulemaking/RNC%20NGOP%20Public%20Comment%208.12.22%20r8yn137t.pdf)

- Numbered Memo 2016-21 (“All observers, whether precinct-specific or at-large, may be relieved after serving no less than four hours. G.S. § 163-45(a). This means that at least four hours must have passed since the observer began serving before a replacement observer can take over from the prior observer.”);
- Numbered Memo 2018-14 (“All observers, whether precinct-specific or at-large, may be relieved after serving no less than four hours.”); and
- Numbered Memo 2020-30 (“All observers, whether precinct-specific or at-large, may be relieved after serving no less than four hours. An observer may leave the voting place without having served for four hours, but the observer cannot be replaced by a new observer until at least four hours have passed since the first observer began serving.”).

The NCSBE also promulgated an administrative rule codifying this interpretation of N.C. Gen. Stat. § 163-45(a), 08 N.C.A.C. § 20 .0101(c), which provides, in pertinent part:

No more than two precinct-specific observers from each political party may be in the voting enclosure at any time. Only one at-large observer from each political party may be in the voting enclosure at any time, even if no precinct-specific observers are present. All observers, whether precinct-specific or at-large, may be relieved after serving no less than four hours; however, the total number of observers from each party cannot exceed three total observers in the voting enclosure at one time: two precinct-specific observers and one county or State at-large observer. An observer may leave the voting place without having served for four hours, but the observer cannot be replaced by a new observer until at least four hours have passed since the first observer began serving.

(emphasis added). Similarly, at its August 16, 2022 meeting, the NCSBE approved temporary rules for the 2022 election, which included the above-referenced limitations on at-large observers which are unsupported by N.C. Gen. Stat. §163-45.³

North Carolina law, however, provides that administrative agencies – like the NCSBE – cannot enforce legislative rules which conflict with their authorizing statute. “An agency shall not seek to implement or enforce against any person a policy, guideline, or other interpretive statement that meets the definition of a rule contained in G.S. 150B-2(8a) if [it] has not been adopted as a rule in accordance with this Article.” N.C. Gen. Stat. § 150B-18. “Legislative rules are those established by an agency as a result of a delegation of legislative power to the agency. Legislative rules fill the interstices of statutes. They go beyond mere interpretation of statutory language or application of such language and within statutory limits

³ The temporary rules approved by the NCSBE at its August 16, 2022 meeting are available at: <https://s3.amazonaws.com/dl.ncsbe.gov/State Board Meeting Docs/2022-08-16/Election%20Rules/08%20NCAC%2020%20.0101%20-%20as%20adopted%208-16-22.pdf>

set down additional substantive requirements.” *State ex rel. Com’r of Ins. v. N. Carolina Rate Bureau*, 300 N.C. 381, 411, 269 S.E.2d 547, 568 (1980), *overruled on other grounds by Matter of Redmond by & through Nichols*, 369 N.C. 490, 797 S.E.2d 275 (2017). *See also* N.C. Gen. Stat. § 150B-2(8a) (defining “rule” under the APA).

The legislative rule at issue here does not fall “within statutory limits.” Here, in passing the statute providing for the creation of election observers, the General Assembly limited application of a 4-hour time period to voting place-specific observers and did not include that limitation in its language creating at-large observers. *See* N.C. Gen. Stat. § 163-45(a). The NCSBE cannot, by administrative rule or otherwise, impose the 4-hour limitation on at-large observers when the General Assembly specifically chose not to do so in the authorizing statute. As such, attempts by the NCSBE to apply the 4-hour time limit to at-large observers is in excess of the NCSBE’s statutory authority, and we ask the NCSBE to confirm by September 1, 2022 that it will not seek to enforce the 4-hour time limitation on at-large observers during the upcoming general election.

We look forward to the NCSBE’s prompt response to this request.

Sincerely,



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National Election Integrity Counsel
Republican National Committee



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Exhibit E

VIA Electronic Mail

August 24, 2022

To: Rules Review Commission

From: Republican National Committee
310 First Street SE
Washington, DC 20003

North Carolina Republican Party
1506 Hillsborough St.
Raleigh, NC 27605

Re: *Temporary Rules filed by the State Board of Elections on August 25, 2022*

Dear Commission Members,

The Republican National Committee (“RNC”) and the North Carolina Republican Party (“NCGOP”) submit this letter concerning Proposed Temporary Rule 08 NCAC 10B.0101 and 08 NCAC 20.0101 (together, the “Proposed Rules”). This letter supplements the public comment submitted by the RNC and NCGOP to the North Carolina State Board of Elections (“State Board”) on August 12, 2022 concerning the Proposed Rules.

While the Proposed Rules that were filed by the State Board differed from the temporary rules that were originally put forth by it, several issues remain with the Proposed Rules.

The State Board Lacks the Authority to Promulgate the Proposed Rules

As an initial matter, the State Board does not appear to have met the statutory prerequisites for avoiding the regular rulemaking process for the Proposed Rules. As the Rules Review Commission (the “Commission”) is aware, N.C. Gen. Stat. § 150B-21.1(a)(11) provides two sets of requirements agencies must meet in order to promulgate temporary rules:

- (1) The agency must find that adherence to the notice and hearing requirements of adopting a permanent rule would be contrary to the public interest; and
- (2) After notice or hearing or upon any abbreviated notice or hearing the State Board finds the need to adopt a temporary rule practical for one or more of the following:

- (a) In accordance with the provisions of G.S. 163-22.2.
- (b) To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.
- (c) The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.

Here, the State Board has not shown that promulgation of these temporary rules, in lieu of the regular rulemaking process, is in the public interest; nor has it shown that it is necessary to preserve the integrity of the 2022 elections or elections process.

Public Interest

In determining the need for temporary rulemaking, the State Board has stated “[t]he need for these rules became apparent after experiences in the May primary election and feedback from county elections officials, and there is insufficient time remaining before the general election to follow the lengthier permanent rulemaking procedures.” Any claim that undergoing the permanent rulemaking process would be contrary to the public interest fails, because the State Board had the necessary amount of time to use the permanent rulemaking process. Once a Proposed permanent rule is published, the agency must accept public comment for 60 days. N.C. Gen. Stat. § 150B-21.2(f). At that point, the agency may submit the Proposed rule(s) to the Rules Review Commission (“Commission”), which has a deadline to conduct its review. This deadline is calculated in N.C. Gen. Stat. § 150B-21.9(b),¹ but the Commission has discretion to review such rules on a timeline that makes sense to them. Our understanding is that historically the entire process for permanent rulemaking takes approximately 90 days.

The State Board claims the need for the rules became apparent after the May 17, 2022 primary election. Any “experiences” concerning the Proposed rules would have concluded on May 17, 2022. County Boards of Elections conducted canvass and certified the primary results on May 27, 2022 and the State Board certified the results on June 9, 2022. Even if the State Board wanted to wait until after certifying the election to make changes, there was more than sufficient time to undergo the permanent rulemaking process. June 10, 2022, was 132 days before early voting begins for the November 8, 2022, General Election in North Carolina. Instead of acting upon the apparent need for rulemaking, the State Board waited 33 days after the State Canvass to publish the Proposed rules on their meeting website (99 days prior to the start of early voting).

¹ “Timetable. – The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1.”

On July 14, 2022, the State Board voted to consider the Proposed rules. The State Board further delayed the rulemaking process by waiting 8 days after that vote to provide notice of the public comment period, which they finally did on July 22, 2022 (90 days prior to the start of early voting). These delays were solely caused by the State Board.

Inapplicability of G.S. § 163-22.2

North Carolina General Statute 163-22.2 provides that:

In the event any portion of Chapter 163 of the General Statutes or any State election law or form of election of any county board of commissioners, local board of education, or city officer is held unconstitutional or invalid by a State or federal court or is unenforceable because of objection interposed by the United States Justice Department under the Voting Rights Act of 1965 and such ruling adversely affects the conduct and holding of any pending primary or election, the State Board of Elections shall have authority to make reasonable interim rules and regulations with respect to the pending primary or election as it deems advisable so long as they do not conflict with any provisions of this Chapter 163 of the General Statutes and such rules and regulations shall become null and void 60 days after the convening of the next regular session of the General Assembly.

In relation to these Proposed rules, no law has been held unconstitutional or invalidated. Thus, the provisions of § 163-22.2 do not support the State Board's Proposed temporary rules.

Implementation of State or Federal Law with Granted Authority

The State Board currently has rules in place regarding poll observers and election officials, which applied during both the 2022 primary and second primary elections. Federal and state law relating to the subject matter of the Proposed Rules have not changed since then, and the State Board has made an insufficient showing that the Proposed Rules are necessary to implement now, as opposed to through the regular rulemaking process. As such, there is no pressing need to implement any provisions of State or federal law regarding these two subject matters prior to the 2022 general election. Any changes the State Board wishes to make to the current rules should be carried out through the regular rulemaking process.

The North Carolina General Assembly (“General Assembly”) granted the State Board a general supervisory authority “over the primaries and elections in the State,” and the “authority to make such 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* [Chapter 163].” N.C. Gen. Stat. § 163-22(a) (emphasis added).

Provisions of the Proposed Rule Conflict with its Authorizing Statute

08 NCAC 20.0101

N.C. Gen. Stat. § 163-45 (the “Authorizing Statute”) provides the process for the county and state party chairs to appoint poll observers and places restrictions on who may serve as a poll observer. In part, N.C. Gen. Stat. § 163-45 provides “[p]ersons appointed as observers must be registered voters of the county for which appointed and must have good moral character. No person who is a candidate on the ballot in a primary or election may serve as an observer or runner in that primary or election. Observers shall take no oath of office.”

Specifically, the Authorizing Statute limits those who may serve as a poll observer to those who are registered voters², who have good moral character, and are not a candidate on the ballot. N.C. Gen. Stat. § 163-45. These are the only limitations the General Assembly included in the Authorizing Statute. *Id.*

First, the Administrative Rule, as currently written, already conflicts with the Authorizing Statute. The Rule provides “[n]o person who serves as an observer or runner in a primary or general election may serve as a precinct official or one-stop election official in that primary or that general election.” *Current* 08 NCAC 20.0101. The Authorizing Statute contains no restriction on a registered voter serving as an observer and a precinct or one-stop election official. The Proposed Rule by the State Board provides “[n]o person who serves as a county board member, county board staff, precinct official, or one-stop election official in a primary or election may serve as an observer or runner in that primary or general election.”³ This Proposed rule clearly expands and extends the current rule by expanding the restriction from only observers or runners to also include county boards members, county board staff, precinct officials, or other one-stop election officials. The current Rule is an improper overreach by the State Board and such impropriety should not be expanded upon as the Proposed Rules would.

Secondly, Proposed Rule 08 NCAC 20.0101 seeks to restrict the observation rights granted to observers by N.C. Gen. Stat. § 163-45(c), which provides:

An observer shall do no electioneering at the voting place, and shall in no manner impede the voting process or interfere or communicate with or observe any voter in casting a ballot, but, subject to these restrictions, the chief judge and judges of elections *shall permit the*

² For clarification, a precinct specific observer and county at-large observers must be registered voters of the county for which appointed, while state at-large observers must be registered voters of the State of North Carolina.

³ A full copy of the Proposed rule as adopted by the State Board of Elections can be seen here: https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2022-08-16/Election%20Rules/08%20NCAC%2020%20.0101%20-%20as%20adopted%208-16-22.pdf

observer to make such observation and take such notes as the observer may desire.

(emphasis added). Poll observers are restricted from impeding the voting process, but they are granted the right to “make such observation . . . as the observer may desire.” *Id.* The Proposed Rule would strip poll observers of said right. Poll observers, as indicated in their title, should have the right to observe and that is clear in the statute. However, there is a great difference between interfering and observing. It is clear observers cannot interfere with the voting process, but observing from a distance is still allowed. *See* N.C. Gen. Stat. 163-45(c).

Specifically, Proposed Rule 08 NCAC 20.0101 provides “[p]rohibited activities by observers include: . . . (9) Using doors designated for precinct officials or one-stop workers, except when using doors for the general public, observers need not wait in the voting line to enter the voting enclosure and (10) Leaving the area designated for observers by the county board of elections, provided the area designated allows the observer to observe each part of the voting process except for the marking of ballots.” *Proposed* 08 NCAC 20.0101. Observers should not be restricted in their observation of the election except as set out in the Authorizing Statute. The Proposed Rule would allow election officials to be in a position of imposing arbitrary and capricious standards for movement by poll observers in the execution of their tasks and functions.

Furthermore, such a rule lacks clarity and would cause confusion. For example, are observers allowed to leave the designated area to use the bathroom? According to the Proposed Rule, the answer would be no. Are observers allowed to walk around and view other areas of the polling site? According to the Proposed Rule, the answer would be no. Are observers allowed to leave the polling site to answer a personal phone call? According to the Proposed Rule, the answer would be no. Furthermore, there should be no reason why a poll observer cannot use a common doorway to gain access to the voting area along with all of the site workers. At the very least, this rule would cause confusion and contention. Are all doors going to be labeled as designated for staff? What if an observer, who is unfamiliar with the site, enters one of the doors by accident? By having a designated area for observers, there is no way for observers to observe as they “may desire.” N.C. Gen. Stat. § 163-45(c). Therefore, these sections of the Proposed temporary rule should be stricken.

Lastly, the State Board has continued to improperly apply the 4-hour restriction, which pertains to site-specific observers, to at-large observers. The State Board could rectify this issue by clarifying in the Proposed temporary rule that the 4-hour restriction does not apply to at-large observers. A plain reading of the statute makes clear that the four-hour restriction applies only to site-specific observers. The first sentence of the section states:

The chair of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and *such observers* may, at the option of the designating party chair, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each chair contains the names of all persons authorized to represent such chair's political party.

N.C. Gen. Stat. § 163-45(a) (emphasis added).

The addition of “such observers” clearly limits the four-hour time restraint to the site-specific observers, which are the only type of observers mentioned in that sentence. The second sentence of the section states “[t]he chair of each political party in the county shall have the right to designate 10 additional at-large observers who are residents of that county who may attend any voting place in that county.” Under the doctrine of *expressio unius exclusio alterius*, it is clear the Legislature intended to place the four-hour restriction on site-specific observers, but chose not to apply the same restriction upon at-large observers.

It appears the State Board is seeking to promulgate the Proposed rules in order to restrict who is “allowed” to serve as a party-appointed poll observer under § 163-45. As currently drafted, however, the Proposed Rules are inconsistent with the Authorizing Statute in that it seeks to place extra-statutory restrictions on North Carolinian voters who intend to participate in the election process as party-appointed poll observers.

08 NCAC 10B.0101

Proposed Rule 08 NCAC 10B.0101 creates a rule that is vague and ambiguous. Ultimately, the passage of the Proposed rule would lead to greater conflict during the voting process. Many of the “prohibited acts” in the Proposed rule are already addressed in “other provisions of law.”⁴ As discussed *supra*, the State Board has already created a rule concerning election officials and should go through the proper permanent rulemaking process.

Need to Become Effective Immediately to Preserve Integrity of Upcoming Elections

The State Board has continuously claimed the validity of elections in North Carolina. The elections they are referencing were conducted under the rules as they are currently written. It is contradictory for the State Board to tout their election process and then claim ambiguous temporary rules must be immediately enacted. Furthermore, the Proposed rules do not ensure the

⁴ NCSBE Meeting, July 14, 2022.

integrity of the election process, rather, they restrict the ability of North Carolina voters to observe and report election fraud and irregularities.

The State Board claims “[t]he need for these rules became apparent after experiences in the May primary election and feedback from county elections officials . . .” The State Board is relying on the results from a survey they sent out to county elections directors. The complaints do not seem to be any different than those from years past, which the State Board did not voice concern over. Ultimately, the State Board has failed to show a need for the Proposed temporary rules to become effective immediately and should go through the permanent rulemaking process if they wish to make the Proposed changes to the rules.

Procedural Argument

The North Carolina Legislature set out clear rules for the rule-making process for an administrative agency like the State Board of Elections. Specifically, when agencies develop rules, they should follow the following guidelines:

- (1) “An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.
- (2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.
- (3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.
- (4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is Proposed. The agency shall not adopt a rule that is unnecessary or redundant.
- (5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).
- (6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.”

N.C. Gen. Stat. § 150B-19.1. In creating these rules, the State Board of Elections did not follow any of the guidelines set forth in the statute.

First, 08 NCAC 10B.0101 has been effective since August 1, 2004 and 08 NCAC 20.0101 has been effective since October 1, 2018. The State Board opened up public comment to allow for the public's input on these Proposed amendments to the administration code. The public overwhelmingly is against these amendments, as seen in the public comments against them.⁵ With

⁵ A copy of the public reactions can be seen at the following links:

the public backlash and opposition to these changes, the State Board cannot claim the Proposed rules are meant to serve the public interest. Thus, the first statutory requirement has not been met.

Second, the burden on the observers will be increased, not reduced, by having to comply with the changes. Instead of having less administrative and statutory requirements to follow, observers are now required to follow more rules and more regulations.

Third, as stated prior, these Proposed rules are unclear and ambiguous. This is evidenced by the simple questions stated above and as follows: Are observers allowed to leave the designated area to use the bathroom? Are observers allowed to leave the polling site to answer a personal phone call? Are observers allowed to walk around and view other areas of the polling site? What if an observer, who is unfamiliar with the site, enters one of the doors by accident? Also, poll observers have largely already been trained for the upcoming election, and now they are expected to forget all of this training to learn completely new and different information, with under 3 months until the election. Also, poll observers would now have to undergo different election day procedure than they did just a few months ago in the primary elections. All of these results would lead to more confusion and ambiguity, not clarity as required by the statute above.

Fourth, the Proposed rule changes are already addressed, making them clearly redundant. Specifically in 08 NCAC 10B.0101, there is a section for duties of precinct officials, when there is a similar section within that already in place in our state statutes. *See* N.C. Gen. Stat. § 163-182.17(b). Furthermore, the Proposed changes in 08 NCAC 10B.0101 relate to prohibited acts by precinct officials. However, the Proposed changes even reference the applicable statute, which is clear about what can and cannot be done by a precinct official. *See* N.C. Gen. Stat. § 163-41(e). Why does there need to be another administrative code change to say the exact same thing and provide the exact same requirements as already done by our state legislature?

Fifth, there is no scientific or technical evidence to base these rules on. Specifically, they rely on subjective determinations from the Chief Judges themselves, which can result in different interpretations, depending on the judge. Specifically, the most basic question arises as to what the definition of observe is? *See* N.C. Gen. Stat. § 163-45(c). Unfortunately, these rules do little to answer or clarify that question. The Proposed Rule 08 NCAC 20.0101 also appears to have no scientific basis or evidence to base the change that observers are not allowed to leave their

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- (1) https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2022-08-16/Election%20Rules/Mail%20comments.pdf
 - (2) https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2022-08-16/Election%20Rules/Online_Comments_Observers.pdf
 - (3) https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2022-08-16/Election%20Rules/Online_Comments_Precinct_Officials.pdf

designated area. In fact, wouldn't the act of observing in itself lead one to believe that poll observers are allowed to look around and observe, whether in a designated area or not?

Sixth, these rules were not designed in a timely manner as required by the statute. A timely manner would not be under three months before an election, rather this seems like a rushed, last-minute decision to change the process of an election, after the primary election was taken place. A timely decision would have resulted in these changes occurring many months ahead of the election, even before the primary, to have a chance to try the rules out. These rules have been in place for multiple years and election cycles with no issue, so why does there need to be last-minute changes now?

Conclusion

Changes in law should come from the democratic process involving the State Legislature and the Governor, not from the partisan State Board of Elections.

Furthermore, the timeliness of these changes brings them further into question. Why is the State Board rushing to make these changes right in between the 2022 Primary Election and 2022 General Election? The voters of this State deserve to have an election without last-minute rule changes. If nothing else, these last-minute changes will cause confusion and uncertainty among election workers and volunteers. Training for the 2022 General Election has already commenced and these rule changes will further confuse and disrupt that process.

Best regards,



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