

**ORDER NO. 2020-37  
INDIANA ELECTION COMMISSION**

**CONCERNING EMERGENCY PROVISIONS AFFECTING THE 2020 INDIANA  
PRIMARY ELECTION**

*WHEREAS*, per Executive Order 20-02, the Governor of the State of Indiana has declared a public health disaster emergency effective March 6, 2020, in response to the COVID-19 pandemic;

*WHEREAS*, on March 11, 2020, the World Health Organization declared COVID-19 to be a global pandemic, and, several days later, on March 13, 2020, the President of the United States declared a national emergency under Proclamation 9994 in response to the COVID-19 pandemic;

*WHEREAS*, Indiana Code 3-6-4.1-14 provides that the Indiana Election Commission (“the Commission”) shall, in addition to other duties prescribed by law, administer Indiana election laws, and advise and exercise supervision over local election and registration officers;

*WHEREAS*, Indiana Code 3-6-4.1-17 permits the Commission to issue an order extending the time to perform an election related duty or file a document as the result of an emergency;

*WHEREAS*, Indiana Code 3-6-4.1-25 permits the Commission to issue advisory opinions to administer Indiana election law;

*WHEREAS*, Indiana Code 3-11-4-1(c) permits the Commission, in an emergency, to allow a person who is otherwise qualified to vote in person the ability to vote by absentee ballot;

*WHEREAS*, Indiana Code 3-11-4-1(d) permits the commission to determine whether absentee ballots subject to 3-11-4-1(c) may be transmitted to and from the voter by mail or personally delivered; and

*WHEREAS*, Indiana Code 3-11-10-1(a)(6) currently allows only the voter, the voter’s attorney in fact, a member of a voter’s household, the U.S. Mail, or a bonded courier to return the absentee ballot to the county election board.

**NOW, THEREFORE, BE IT ORDERED BY THE INDIANA ELECTION  
COMMISSION:**

**SECTION 1.** The Indiana primary election of May 5, 2020, is postponed to Tuesday, June 2, 2020. This order applies to all Indiana counties and election boards.

**SECTION 2.**

**A.** Pursuant to IC 3-6-4.1-17(b) this order applies to the entire State of Indiana and to all county election boards, boards of registration, boards elections and registration, circuit court clerks, and all other persons (as defined in IC 3-5-2-36) who are required to perform a duty or permitted to file a document under Indiana Code 3.

- B.** This order applies to any statute set forth in IC 3, IC 6-1.1-20, and IC 20-46-1 which specifies a date by which a duty must be performed or documents filed on or before May 5, 2020.
- C.** This order applies to any statute set forth in, IC 3, IC 6-1.1-20, and IC 20-46-1 which specifies a date by which a duty must be performed or documents filed after May 5, 2020, to the extent that the deadline is calculated to occur on a number of days after the election that was to occur on May 5, 2020.

### **SECTION 3.**

- A.** All dates corresponding to and calculated from the date of the May 5, 2020, primary election, including deadlines for performing a duty or filing a document are extended by twenty-eight (28) days.
- B.** The Commission advises any person affected by this SECTION of the following deadlines for performing a duty or filing a document provided in Appendix 1 of this Order.

### **SECTION 4.**

- A.** Any ballot, notice, form, or filing made before the date of this order is valid for purposes of the June 2, 2020 primary election, notwithstanding any May 5, 2020 reference.
- B.** Any ballot, notice, or form prescribed for use on the May 5, 2020 primary is valid for use during the primary election on June 2, 2020.

### **SECTION 5.**

- A.** All registered and qualified Indiana voters are afforded the opportunity to vote no-excuse absentee by mail. Specifically, the qualifications set forth in IC 3-11-10-24(a) are expanded to include all otherwise registered and qualified Indiana voters.
- B.** The Indiana Election Division is ordered to prescribe an application to request an absentee ballot by mail under IC 3-5-4-8 in compliance with this SECTION. The order prescribing the application shall expire on June 3, 2020.
- C.** The Commission advises each county election board that it may assign its responsibility to mail an absentee ballot to a voter under IC 3-11-4-18 to one (1) or more of the following persons the circuit court clerk, or an employee of the county election boards appointed under IC 3-6-5, IC 3-6-5.2; IC 3-6-5.4; or IC 3-6-5.6

### **SECTION 6.**

- A.** An absentee by mail application that was submitted on or after December 2, 2019, and not later than the date of this order on which the voter did not indicate a qualification under IC 3-11-10-24(a) shall be accepted by a county election board if otherwise in accordance with the requirements of Indiana law. If the application was rejected prior to this date due to the lack of stated qualification to vote by mail, it shall be accepted if otherwise in compliance with Indiana law.
- B.** If possible, the Indiana Election Division shall, create a system preferably through the statewide voter registration system and Indianavoters.com, the state's online voter portal, for a voter to submit an absentee ballot application online to a county election board. An electronic copy of the voter's signature from the voter's registration record will be affixed to only those applications submitted through the online portal. The Indiana Election Division

shall work with the Secretary of State under IC 3-7-26.3-3 to incorporate this feature into the statewide voter registration system.

## **SECTION 7.**

- A.** The Commission advises each county election board, consistent with Executive Order 20-04 and 20-09, that county election boards may suspend the requirement of explicitly adopting a policy for electronic participation and suspend the requirement to have any members be physically present for meetings deemed to be essential. All meetings of the county election board where the Open Door Law (IC 5-14-1.5) applies may be conducted by videoconference or by telephone conferencing so long as a quorum of members is met, and any meeting is made available to members of the public and media.
- B.** The Commission advises each county election board that under IC 3-11-4-17.5, a county election board may review and determine if an absentee ballot application is to be approved or rejected in the place of an absentee voting board appointed under IC 3-11.5-4-23 and 3-11.5-4-23.5.
- C.** The Commission advises each county election board and circuit court clerk that under IC 3-11-4-17 the circuit court clerk, or an employee of the county election board that is assigned an election duty of the circuit court clerk under IC 3-6-5-14.5, but only one (1) person is required to enter information contained on an applicant's absentee ballot application into the statewide voter registration system ("SVRS").
- D.** The Commission advises each county election board that under IC 3-11-4-19 and 3-11-10-27, each appointed member of the county election board or their designated representative may initial absentee ballots that are issued to a voter and that each appointed member of the county election board is not required to be present when the other appointed member initials a ballot.

## **SECTION 8.**

- A.** Each county election board is directed to notify the county chairmen of the two major political parties of the county to nominate additional members of absentee voter boards under IC 3-11.5-4-23 and 3-11.5-4-23.5 and encourage the nomination of employees of residential and in-patient healthcare facilities to jointly perform the duties of absentee travel board members to assist those confined in medical facilities, including hospitals and nursing homes, and other locations in casting their ballot.
- B.** The Commission advises each county election board and circuit court clerk to work with staff and administrators of residential and in-patient healthcare facilities to develop a plan for the delivery of absentee ballots and other envelopes and forms required by IC 3-11-10 that are to be taken into said facilities and for the return of any completed absentee ballot to the county election board. This plan should include designating an absentee voter board, circuit court clerk, or employee of the county election board with delivering absentee ballot materials to a designated place at each facility and taking possession of absentee ballots completed by a voter in the facility.
- C.** Each absentee voter board appointed under this SECTION that assists a voter in completing their ballot shall complete Affidavits of Voter Assistance (PRE-3) (State Form 28192; R10/5-19).

## **SECTION 9.**

- A.** For the purposes of this SECTION, “voter with disabilities” includes a voter who is unable to complete their ballot because they are temporarily unable to physically touch or be in safe proximity to another person.
- B.** Each county election board is directed to notify the county chairmen of the two major political parties of the county to nominate additional members of absentee voter boards under IC 3-11.5-4-23 and 3-11.5-4-23.5 and encourage the nomination of two (2) members of a household to perform the duties of absentee travel board members to assist a voter confined in the same private residence as the absentee travel board members.
- C.** Each absentee travel board is not required to be in the same room as a voter with disabilities to assist them in completing their ballot. A travel board may communicate with the voter from a different room, by telephone, visually, or by some other telephonic or video device to help the voter complete their ballot and allow the voter to verify the votes on their ballot were accurately captured.
- D.** Each absentee voter board appointed under this SECTION that assists a voter in completing their ballot shall complete an Affidavit of Voter Assistance (PRE-3) (State Form 28192; R10/5-19).

**SECTION 10.**

- A.** For purposes of this SECTION, “family member” is defined as an individual listed in IC 3-6-6-7(4): as the spouse, parent, father-in-law, mother-in-law, child, son-in-law, daughter-in-law, grandparent, grandchild, brother, sister, brother-in-law, sister-in-law, uncle, aunt, nephew, or niece of the voter.
- B.** For purposes of this SECTION, “care giver” is defined as a person who provides care or assistance to a voter in the person’s place of residence.
- C.** Notwithstanding IC 3-11-10-1(a)(6), a family member or care giver may personally deliver a voted ballot in the required security envelope to a county election board, and upon executing an affidavit setting forth their status as a family member of the voter on a form prescribed under IC 3-5-4-8.

**SECTION 11.**

- A.** The Commission advises to each circuit court clerk that they may designate one location in their county to be a location of the office of the circuit court clerk for the purpose of absentee voting under IC 3-11-10-26.
- B.** A county election board may establish satellite locations for conducting absentee voting according to IC 3-11-10-26.3 and may establish as many locations as necessary to conduct absentee voting and observe any CDC or state department of health guidelines regarding the COVID-19 virus. Any satellite locations established for the primary election that is postponed under SECTION 1 of this Order are not required to be used during the general election held after the primary election.

**SECTION 12.**

- A.** The Commission advises each county election board that they have the ability to reduce and consolidate the number of polling locations and poll workers needed to conduct an election on election day. This includes:
  - i. A resolution under IC 3-6-6-38 to not use the position of Sheriff or Poll clerk.

- ii. A resolution under IC 3-6-6-38.5 to have one person serve as inspector for each precinct whose polling location is located in the same shared location.
- iii. An order under IC 3-11-8-3.2 to move a precinct polling location established by the county executive that the county election board determines would be dangerous or impossible to use on election day.
- iv. An order under IC 3-11-8-4.3 to locate the polls of a precinct to the same location as the polls of another adjoining precinct.

**B.** The Commission advises each county election board that a challenger station referred to IC 3-11-8-19 may be used to assist in following any public health guidelines to prevent the spread of the COVID-19 virus by keeping as many people as is practical and efficient from congregating in the area where a voter signs the poll list or casts a ballot.

### **SECTION 13.**

**A.** Notwithstanding IC 3-11-18.1-6, a vote center plan of a county where the total number of active voters in the county equals at least twenty-five thousand (25,000), may be amended, by unanimous vote of the entire membership of the board, to provide for the following only for the election postponed by SECTION 1 of this Order:

(1) At least one (1) vote center for each twenty five thousand (25,000) active voters.

(2) In addition to the vote centers designated in subdivision (1), the plan must provide for a vote center for any fraction of twenty five thousand (25,000) active voters.

**B.** This SECTION may not be construed to require a county election board to establish more vote center locations in the county vote center plan that is required by IC 3-11-18.1-6.

**C.** The Commission advises each county election board that a county vote center plan under IC 3-11-18.1-4 only requires a minimum of one (1) precinct election board for each vote center established in the plan.

### **SECTION 14.**

**A.** Notwithstanding IC 3-6-6-39, an individual who is not a voter and eligible to serve as a precinct election officer under IC 3-6-6-39 does not need to provide written approval of the principal of the school the individual is attending at the time of being appointed as a precinct election officer, if the school the individual attends is not in session, or, if the student is educated in the home, the approval of the individual responsible for the education of the student.

**B.** Notwithstanding IC 3-11.5-4-23, an individual who is eligible to be appointed as an absentee ballot counter or courier under IC 3-11.5-4-23(d) does not need to provide written approval of the principal of the school the individual attends at the time of being appointed as a precinct election office or, if the student is educated in the home, the approval of the individual responsible for the education of the student, if the school the individual attends is not in session. An individual who is eligible to be appointed as an absentee ballot counter or courier under IC 3-11.5-4-23 is also eligible to be appointed as a member of an absentee voter board except for an absentee traveling board under IC 3-11-10-25.

### **SECTION 15.**

**A.** The Commission advises each county election board that it may adopt a resolution under IC 3-11.5-4-11 to provide for the processing and counting of absentee ballots at 6:00 a.m. on election day.

- B.** Each county election board in a county where IC 3-11.5-4-11(c) or (d) does not apply may adopt a resolution, by the unanimous vote of the entire membership of the board, to allow for the processing and counting of absentee ballot according to IC 3-11.5 to begin at 6:00 a.m. on election day.

The Commission advises each county election board that it may adopt a resolution under IC 3-11.5-4-12 to waive the requirements to make the findings under IC 3-11.5-4-12(b)(2) and (b)(3) for an absentee ballot cast under IC 3-11-10-25, 3-11-10-26, and 3-11-10-26.3.

- C.** Notwithstanding IC 3-11.5-4-12.5(a), the provisions of IC 3-11.5-4-12.5 apply to each county.
- D.** Notwithstanding IC 3-11.5-6-4, the requirement that each of the absentee ballots for each precinct be counted without interruption does not apply to the primary election postponed under SECTION 1 of this Order. The county election board shall direct the pace in which absentee ballots in each precinct shall be counted provided that the counting of absentee ballots must be completed not later than noon, June 12, 2020.

### **SECTION 16.**

- A.** The Commission advises each county election board that there is no deadline to complete the canvass of the vote under IC 3-12-4-6 except that the final, certified results of the election must be determined not later than 3:00 p.m. local prevailing time June 12, 2020.
- B.** The Commission advises each county election board, consistent with Executive Order 20-04 and 20-09, to make efforts to allow the public to participate in the public meeting when the canvass is held electronically. The county election board may take into consideration matters of public health and safety when determining which parts of the room where election materials are handled or transported may be restricted.

### **SECTION 17**

- A.** The Commission shall hold a public hearing on April 22, 2020 at 10:00 a.m. Eastern Time, to consider the methods and procedures necessary to implement a vote by mail election for the primary election that has been postponed by SECTION 1 of this Order should the public health disaster emergency necessitate such a change in election procedures.
- B.** At this meeting, the Commission shall also address the timely certification of elected state convention delegates and the presidential primary preference vote to each of the major political parties so that both parties may hold their state conventions. The Commission shall also consider any other statutes that would need to be addressed to allow the major political parties to hold their state convention with the postponed primary.

**SECTION 18.** This Order is effective immediately.

**ADOPTED THIS 25<sup>th</sup> DAY OF MARCH, 2020 BY THE INDIANA ELECTION COMMISSION:**

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**Paul Okeson, Chair**

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**S. Anthony Long, Vice Chair**

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**Suzannah Wilson Overholt, Member**

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**Zachary E. Klutz, Member**

## **Appendix 1**

Per Section 2 and 3 of Order No. 2020-37, the Indiana Election Commission advises all those affected by this Order of the following deadlines to perform a duty or file a document:

[Insert new deadlines from updated administrator calendar].