

**ORDER NO. 2020-40**  
**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*, per Executive Order 20-17, the Governor's declaration of a public health disaster emergency was renewed for an additional thirty (30) days to May 5, 2020;

*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; and

*WHEREAS*, the Commission adopted Order 2020-37 concerning emergency provisions affecting the 2020 Indiana primary election.

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

**SECTION 1.** Pursuant to IC 3-6-4.1-17(b), Indiana Election Commission Order 2020-37, which expires on April 24, 2020, is readopted and extended for an additional thirty (30) days from the date Order 2020-37 is to expire, meaning until May 24, 2020.

**SECTION 2.**

- A.** Any registered voter of Indiana may be nominated as a precinct election officer by a political party chairman or appointed by a county election board or county board of elections and registration to fill a vacancy if no nomination is timely made if the individual is otherwise qualified to serve as a precinct election officer under IC 3-6-6-7.
- B.** Any registered voter of Indiana may be nominated as an absentee board member, absentee ballot counter, or absentee ballot courier by a political party chairman or appointed by a county election board or county board of elections and registration to fill a vacancy if no nomination is timely made if the individual is otherwise qualified to serve as an absentee board member, absentee ballot counter, or absentee ballot courier under IC 3-11.5-22.

- C.** Any registered voter of Indiana may be nominated as a watcher by a political party chairman or appointed by a county election board or county board of elections and registration to fill a vacancy if no nomination is timely made if the individual is otherwise qualified to serve as a watcher under IC 3-6-8 or IC 3-11.5-3 at a polling place, vote center or absentee ballot counting location.

**SECTION 3.** The Commission advises each county executive and county election board that under IC 3-11-8-4 all school buildings, fire stations and other public buildings shall be made available to a county to be designated as a polling location under IC 3-11-8 or vote center location under IC 3-11-18.1 for the June 2, 2020 primary election.

**SECTION 4.** The Secretary of State and the Indiana Election Division shall provide training guidelines to each county election board and circuit court clerk for special procedures to conduct the June 2, 2020 primary election, including CDC guidelines for handling mail and the need for and proper use of personal protective equipment (PPE). The Secretary of State and Election Division will also seek guidance from the Indiana State Department of Health when issuing these guidelines.

Each county election official shall follow the guidelines included with this Order in Appendix A, and any other supplemental guidelines issued by the Secretary of State or Indiana Election Division, which follow current CDC and state health department guidelines when conducting election functions. Any deviation from the prescribed guidelines to conduct elections in the county must be approved by the county's health officer.

**SECTION 5.** In accordance with Indiana law, which provides that a political subdivision (including a county) does not possess "home rule" authority to order or conduct an election (IC 36-1-3-8(a)(12)) except as expressly provided by statute, each person shall perform their responsibilities and duties in accordance with the requirements of the Indiana election code (IC 3). Except to the extent required to comply with a legally binding order, the June 2, 2020 primary election shall be conducted strictly in accordance with the provisions of the Indiana Election Code (IC 3), other relevant statutes concerning elections (IC 6-1.1 and IC 20), and any vote center plan adopted by a county.

**SECTION 6.** Notwithstanding any contrary provision in IC 3-11-4 or IC 3-11-10 including IC 3-11-10-26, IC 3-11-10-26.2 or IC 3-11-10-26.3 or any vote center plan adopted under IC 3-11-18.1, a voter may cast an absentee ballot before the June 2, 2020 primary at the office of the circuit court clerk, satellite office or vote center only during the following period: Beginning Tuesday, May 26, 2020, and ending at noon (prevailing local time), Monday June 1, 2020.

## **SECTION 7.**

- A.** Notwithstanding any provision in IC 3-11.5, a county election board by unanimous vote of its entire membership, may adopt a resolution permitting the central counting of absentee ballots to take place at more than one (1) location, not to exceed one (1) location for every fifty thousand (50,000) active voters as of the May 4, 2020 statewide voter registration deadline. For a county that has fewer than fifty thousand (50,000) active voters as of May 4, 2020, not more than three (3) absentee central count locations may be established. However, an absentee ballot central count location established under this resolution may not perform its functions unless two (2) appointed members of the county election board or county board of elections and registration, affiliated with opposite major political parties, are present at all times during the counting or represented by a proxy appointed under IC 3-6-5-4.5, IC 3-6-5.2, IC 3-6-5.4, or IC 3-6-5.6.
- B.** Section 6A of 2020-37 is rescinded and replaced by the following: An absentee by mail application that was submitted on or after December 2, 2019, and not later than 11:59 p.m. Thursday, May 21, 2020, 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.

## **SECTION 8.**

- A.** In a vote center county, the location of a vote center used on election day may only be changed in accordance with IC 3-11-18.1, after giving the best possible notice to all voters of the county and by filing the necessary change to the vote center plan with the election division.
- B.** Section 13A of 2020-37 is rescinded and replaced by the following: 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) as of the May 4, 2020 voter registration deadline 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.
- C.** In a precinct based county, the location of a polling place for a precinct used on election day may only be changed in accordance with IC 3-11-8-3.2, after giving the best possible notice to all voters of the county and by filing a written notice with the election division. County election boards in a precinct based county may unanimously agree to locate the polls for a precinct at the polls for an adjoining precinct, using the precinct election board of the adjoining precinct pursuant to IC 3-11-8-4.3. By the unanimous vote of the entire membership of the county election board or board of elections and registration a non-vote center county can establish additional absentee early in person voting locations.

## **SECTION 9**

The county election board may notify a voter that the voter's absentee ballot application or absentee ballot security envelope is defective to allow for the voter to cure the issue under current Indiana law. The Indiana Election Commission advises the uniform and non-discriminatory application of such a policy.

## **SECTION 10.**

- 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 Order 2020-37 should the public health disaster emergency necessitate such a change in election procedures.
- B.** At this hearing, 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 as a result of the postponed primary to allow the major political parties to hold their state convention.

The Commission shall hold at least one (1) meeting in the month of May 2020, but before May 24, 2020, to consider the extension of orders IEC 2020-37 and IEC 2020-40.

**SECTION 11.** This Order is effective immediately.

**ADOPTED THIS 17<sup>th</sup> DAY OF APRIL, 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**