TO: Chairman Damon Circosta and Members of the State Board
Karen Brinson Bell, Executive Director
North Carolina State Board of Elections
P.O. Box 27255. Raleigh, NC 27611-7255

DATE: August 11, 2020

Dear Director Brinson Bell, Chairman Circosta, and Members of the North Carolina State Board of Elections:

As organizations that represent thousands of North Carolinians and advocates for fair and safe access to the ballot for all, we write to urge the North Carolina State Board of Elections to issue clear and uniform cure process guidance in advance of the November 2020 election that is voter friendly and will not result in discrimination and disenfranchisement. On August 4, 2020 the State was preliminarily enjoined from rejecting absentee ballots without affording voters the opportunity to remediate "material errors."[1] To ensure these goals are met, the State Board must require election officials to promptly notify voters of absentee-by-mail ballot defects that would result in rejection, provide guidance on the form and content of voter notification, and allow voters multiple, clear routes to cure those ballots to ensure voters are not disenfranchised.

North Carolina is expected to see an unprecedented increase in absentee-by-mail voting in the wake of COVID-19. While the efforts by state leaders to make it easier for voters to request and cast an absentee ballot are critically important in the midst of this public health crisis, a robust cure process is also a critical safeguard in preventing disenfranchisement. As the State Board is aware, ballot rejection tends to disproportionately impact women, military personnel, voters of color, people with disabilities, and people for whom English is a second language. A clear and efficient second chance "cure process" for absentee-by-mail ballot defects is necessary both to ensure due process protections and equal access to the ballot.

North Carolina's recent history of mail-in-absentee ballot rejection and projected increased participation rates demonstrate how high the stakes are for voters in our state. North Carolina's absentee ballot rejection rate is significantly higher than the national average. In the 2016 general election, **absentee ballots were rejected at a rate three times higher than in-person ballots**.[2] According to North Carolina's 2016 absentee ballot data, 75% of all rejected ballots were due to a missing voter signature or a missing witness signature.[3]

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[1] *Democracy North Carolina, et al., v. The North Carolina State Board of Elections*, No. 20-cv-00457-WO-JLW, (M.D.N.C., August, 4, 2020).

[2] According to the 2016 Election Assistance Voting Survey 2.7% of absentee ballots cast in North Carolina's general election were rejected (4,861 "rejected"/ 179,623 ballots returned) compared to 0.75% of ballots cast in person ((33,756 provisional ballots completely "rejected" / 4,510,572 ballots cast). See Overview Tables 2 and 3 of the Election Administration and Voting Survey 2016 Comprehensive Report: A Report to the 115th Congress, accessed online at https://www.eac.gov/sites/default/files/eac_assets/1/6/2016_EAVS_Comprehensive_Report.pdf

[3] Mail ballot usage, rejection rates, and rejection reasons data is from the U.S. Election Assistance Commission (EAC) Election Administration and Voting Survey (EAVS) Data and Reports.

While the state's absentee-by-mail participation rate has been historically low compared to other states, North Carolina is expected to see a surge of new absentee-by-mail voters due to the COVID-19 pandemic. These voters are likely to be unfamiliar with the process, which will only increase the potential for voter error. Only 2.6% of North Carolinians who voted in the 2018 general election cast an absentee-by-mail ballot. This number was only slightly higher in 2016 at 3.8%. In both election cycles, North Carolina's absentee-by-mail turnout was one of the lowest in the nation. In short, North Carolinians are less familiar with absentee voting and our state needs a robust cure process in order to prevent an unprecedented level of voter disenfranchisement.

The State Board of Elections is charged with adopting a robust, uniform, and voter-friendly cure process. We provide the following recommendations of what this cure process must include to meet the state's obligations and promise to voters:

1. **Timely notification to voters.** County officials must notify voters within 24 hours of identifying an improperly executed absentee application or ballot envelope. Voters should be notified via all available means, including telephone, email, and mail (if provided by the voter on their voter registration or absentee ballot request form), and should be provided clear instructions on how to cure the deficiency. The state's ballot tracking system should be promptly updated so that voters can definitively verify the status of their ballot.

2. **County election staff must review absentee ballots on a rolling basis.** We know that the overwhelming majority of rejected ballots are likely to be due to obvious and easy to spot defects like a missing voter signature or missing witness signature. These kinds of facial defects can be quickly identified by county staff on a rolling basis as ballots are received, and voters should be immediately notified of such defects rather than waiting until after the county board holds a formal meeting to "disapprove" the ballot.[4]

3. **County boards should publish a list of rejected ballots.** As county boards review ballots on a rolling basis and notify voters, they should also make public the list of individuals whose ballots have been rejected at least one week before canvass, and where feasible, on a rolling basis. This will provide an additional method of notifying a voter to the defect, and also allow for advocacy groups to assist those individuals in curing their ballot defect in a timely manner.

4. **Voters must be given every opportunity to cure their ballot.** In light of COVID-19, many voters will not be able to go to a county board of elections office or a polling place in order to cure their ballot in person. Therefore, all county boards should provide voters

Data, Instruments, and Codebooks: https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys
Reports: https://www.eac.gov/research-and-data/studies-and-reports

[4] N.C. Gen. Stat. § 163-230.1(f)

with a “cure affidavit” that they can mail in to cure deficiencies that do not require casting a new ballot. County boards should include these affidavits along with notice mailings to voters as soon as a deficiency is identified. The State Board should also instruct county boards to appoint, designate, or create a special Multipartisan Assistance Team (“MAT”) or “second chance” voter assistance cure specialist to be deployed to voter’s residences if a voter needs to fill out an entirely new absentee ballot but is unable to do so in person.

5. **Inform voters of their right to vote in-person.** Voters whose mail-in-absentee ballots are deficient should be notified that they may also choose to cast a ballot at a one-stop early voting location or at their polling place on election day. Notices to voters should include the days, hours, and locations for early voting, as well as the address of the voter’s election day polling place. Voters should further be notified that they will have the option to utilize curbside voting lanes to fill out a new absentee ballot during early voting or ballot on election day.

6. **Provide voters time to cure.** Voters should be given ample time to cure deficiencies up until November 12th, the day prior to the county canvass of votes. Many states have adopted similar post-election day cure deadlines, including Georgia, Ohio, and Kentucky.

7. **Statewide uniformity.** Counties must adopt uniform cure processes to ensure historically underrepresented communities aren’t disproportionately disenfranchised, and to prevent an inconsistent patchwork of local practices vulnerable to equal protection challenges. The State Board should take a proactive role in monitoring the status of rejected ballots in each county to ensure compliance with the August 4, 2020 preliminary injunction.

8. **Language Accessibility.** All materials and notices provided to voters regarding the cure process should be available in at least both English and Spanish.

9. **Unreliable and discriminatory signature matching should be prohibited.** County boards of elections should be instructed not to engage in the practice of signature matching, as it is not statutorily required, and its inconsistent application will likely disproportionately burden voters of color. County boards neither have the time nor the resources to properly train election staff on proper signature matching protocols before the November election.

Absentee ballot rejection is a preventable form of voter disenfranchisement. This November all states are expected to see a dramatic increase in the number of voters choosing to cast an absentee ballot, and North Carolina will be no exception. But with increased absentee participation comes an increased likelihood for thousands of ballots to be unnecessarily

discarded. It is therefore critical that every voter who chooses to cast an absentee ballot be afforded a safe and fair opportunity to ensure their vote is counted.

We, the undersigned, urge immediate action.

Megan DeSmedt
State Campaign Director
Voting Rights Lab Action

VOTING RIGHTS LAB

Caitlin Swain
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FORWARD JUSTICE

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