



VIA Electronic Mail

February 23, 2021

North Carolina State Board of Elections
430 N. Salisbury St.
Raleigh, N.C., 27603-1362

Attn: Damon Circosta, Chairman; Karen Brinson-Bell, Executive Director; Katelyn Love,
General Counsel

Chairman Circosta:

I write today to express serious concerns with regards to some of the proposed administrative rules changes that will be taken up by the North Carolina State Board of Elections ("NCSBE") today, February 23, 2021.

08 NCAC 20 .0101

First, the proposed change to 08 NCAC 20 .0101 purports to limit the number of political party observers who may observe a polling site to three per day. This is in direct contradiction to the NCGS § 163-45, which provides in subsection (a) that a political party may have two site-specific observers plus one at-large observer at *any one time*. There is no prohibition on the number of observers who may serve at a specific site during a one-day period.

Subsection (a) lends further support to the fact that there is no daily limit as it allows that a site-specific observer may be "relieved" after serving no less than four hours by another observer whose name appears on the list of "all persons authorized to represent" such political party. Additionally, subsection (a) provides that the 10 county at-large observers, as well as the 100 statewide at-large observers, may "attend any voting place" in the county or state, respectively. The flexibility afforded at-large observers is not qualified with a statement such as "only if another at-large has not attended that voting place today."

Based upon the foregoing, the NCSBE's proposed changes to 08 NCAC 20 .0101 to cap the number of observers at a site per day appear to exceed their authority and to contradict the text as well as the intent of the statute.

Beyond the NCSBE's lack of legal authority to adopt such, a cap of the type proposed does nothing other than frustrate legitimate oversight by increasing the logistical burden on political parties. Rather than attempt to shut down election integrity initiatives, we would suggest the NCSBE work towards providing greater access to party observers as well as the public. After all, additional oversight provides the electorate greater confidence in the process and the results.

08 NCAC 21 .0501

This proposed rule would appear to designate "any sign, flat surface or other display greater than 2,160 square inches" (which, among other possible sizes, is anything over 3'x5') to fall under the definition of "billboard" for campaign finance purposes. Our understanding is that this would include the 3'x5' and 4'x8' signs (which are frequently utilized), flags (which are standard 3'x5'), and any other items that individuals would like to display such as banners and paintings on the side of a barn, for example.

As to the statutory scheme, under NCGS § 163-278.38Z(7), "Print media' means billboards, cards, newspapers, newspaper inserts, magazines, mass mailings, pamphlets, fliers, periodicals, and outdoor advertising facilities." (emphasis added). NCGS § 163-278.38Z(1) provides that "Advertisement' means any message appearing in the *print media*, on television, or on radio that constitutes a contribution or expenditure under this Article." It's "unlawful" for an individual to place an advertisement without properly including a disclosure legend. NCGS § 163-278.39(a). A disclosure legend is required if the advertisement is over \$1,000 or in the aggregate totals more than \$1,000. NCGS § 163-278.39C. If an individual inadvertently places or fails to place said legend, they are "guilty of a Class 1 misdemeanor." NCGS § 163-278.39(c).

Practically speaking, this change would require any individual who displays a sign, flag, painting, etc. that is 3'x5' or larger (now under the definition of "print media") that the NCSBE determines to be worth more than \$1,000 to place a disclosure legend on said print media. Likewise, if an individual has displayed any of these common items numerous times or in several locations, regardless of whether one instance would not reach the \$1,000 threshold, the NCSBE could find that the aggregate worth is more than \$1,000.

Such a proposal seems to be outside the NCSBE's statutory authority, unnecessary, and ill-advised.

First, the statute passed by the General Assembly specifies that “billboards” are considered “print media”. The common understanding of the term “billboard” certainly does not include flags, signs staked in the ground, or paintings on the side of an individual’s barn, etc. To our knowledge, the NCSBE has never attempted to define the commonsense terms found in NCGS § 163-278.38Z. The General Assembly laid out specific definitions for the things for which they believed a definition was necessary. Certainly, a 3’x5’ flag was not intended to be classified as a “billboard”. Therefore, it would appear this proposed rule is outside the authority of the NCSBE.

Furthermore, the rights of our citizens to freely express their support for a candidate or an issue should, to the maximum extent possible, not be interfered with by the State. The types of things the NCSBE is considering adding to the definition of “billboards” includes things commonly made by hand by individuals in support of a party or candidate - these are things that a normal person would not believe to fall under the scrupulous eye of the NCSBE or campaign finance laws. Such a limitation on free speech has not been supported by NCSBE research or to our knowledge, that of others.

The NCSBE has not provided any specific reason for this change. Absent some explanation of their authority as well as the calculus and need behind the change, the proposed rule change seems to be nothing more than a blatant attempt by the NCSBE to chill, and even criminalize, free speech and personal choice.

Conclusion

Based upon the foregoing, the NCGOP respectfully requests the NCSBE withdraw both of the aforementioned proposed rules as they fall outside the statutory authority of the NCSBE and based on the information provided, serve no other purpose than to frustrate public oversight of the voting process and to chill free speech. The NCGOP encourages the NCSBE to pass rules (within their legal authority) or seek statutory changes that promote the public’s ability to observe the election process and to express their views.



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