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To: [SBOE Grp - Legal](#)
Subject: Presidential Executive Order on Elections
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State Board members and County directors (via BCC):

You may have read the news or received some questions about the [executive order](#) issued by President Trump on Tuesday regarding election administration. Below my signature is a summary of the provisions of the executive order that are relevant to county election administration, and some context for your understanding.

Bear in mind, this is a complex and uncertain situation in terms of the extent of the president's legal authority to order some of these actions, effective dates of any of the actions, how the actions may or may not be implemented by the federal officials directed to take action, federal officials' ability to access or exchange data, and more. We are still gathering information on this matter, so more will be forthcoming in the days and weeks ahead.

We are sharing this information with the members of the State Board of Elections, so this may also be shared with your county board members.

Best regards,

Paul Cox

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Executive Order Summary

Section 2

- **Federal VR Form.** Requires the Election Assistance Commission (EAC) to change the [federal voter registration form](#) to include a requirement that the applicant include

documentary proof of citizenship (listing specific allowable documents). Under the [NVRA](#), states must accept the federal form, although our understanding is we see very few of these in practice. The federal form does not determine the content of North Carolina's voter registration form, which is determined by [state law](#). The executive order also directs the EAC to require states to mark on each federal voter registration form it receives what type of documentary proof of citizenship is provided by the voter. Because the EAC is an independent, bipartisan agency within the federal government, it remains to be seen how all of the above will be implemented exactly. And for any changes to the federal form, [HAVA](#) requires the EAC to consult the states. Finally, we would need to know more to determine how this could affect the processing of federal VR forms by county boards. So, stay tuned on this.

- **Federal immigration databases.** Requires the U.S. Department of Homeland Security and Department of State to make federal databases available to state and local officials to help determine citizenship of registrants. In our experience, accessing information from such databases requires you to possess a unique identifier for an individual that was provided by federal immigration authorities (e.g., alien identification number). Elections officials don't generally possess such information. So it remains to be seen how this will work in practice.
- **Homeland Security review of voter lists.** Requires the Department of Homeland Security to work with the "Department of Governmental Efficiency," or DOGE, to review each state's "publicly available voter registration lists" and other available records, along with federal immigration databases and information gathered by "subpoena where necessary and authorized by law," for determining compliance with federal law.

Section 3

- **Social Security data sharing.** Requires the Social Security Administration to make data available to the states to assist with voter registration eligibility determinations. This includes the "master death index," which can be used for list maintenance for deaths. North Carolina already gets the bulk of any death data that would be available from the death index through the state's vital records agency, on a weekly basis. This may mean we could get some more data (i.e., deaths of our registrants in other states that we don't already receive), but due to federal privacy protections, this would likely take some time for federal agencies to arrange for such data sharing.
- **USDOJ action on HAVA and NVRA.** Requires the federal Department of Justice to enforce compliance among the states for the list maintenance requirements of the NVRA and HAVA. This is something USDOJ already does, but it may suggest a greater prioritization on lawsuits against states on these grounds.
- **FPCA changes.** Requires the Department of Defense to change the Federal

Postcard Application (FPCA) for UOCAVA voters to require documentary proof of citizenship (like with the federal VR form) and “proof of eligibility to vote in elections in the State in which the voter is attempting to vote.” It is unclear what the second part would add to the current [FPCA](#). States are required, under [UOCAVA](#), to register and provide an absentee ballot to a covered voter who submits an FPCA. But that federal law also permits such voters to register and request ballots using state forms which would not be changed in the order. We will need to know more to determine what this means for processing FPCAs, whether in paper form, as electronic attachments to emails, or when such applications are made through the portal. So, stay tuned on this.

Section 4

- **EAC grants.** Requires the EAC to stop providing HAVA grants to states that do not use the federal VR form, as changed by the executive order to require documents proving citizenship. In recent years, Congress has provided fewer and fewer of these federal grants to the states.
- **Voting system decertification.** Requires the EAC to change its already-adopted, latest federal voting system certification standard (VMSG 2.0) to prohibit the use of a ballot-marking device that produces a ballot with a barcode or QR code to be read by the tabulator, except where used for voters with disabilities. This would mean that the ExpressVote or other similar ballot-marking devices would not qualify under the new federal certification standard, except for use for voters with disabilities. An important context is that no voting system currently exists on the market that meets the VMSG 2.0 standard. And the certification process takes months to complete. Then, of course, it takes months for the state to go through its certification of voting systems. Another important context is that these federal voting system standards are voluntary and, under federal law, the states are not required to use those standards to pick voting equipment. Our state’s certification law does draw on federal certification for guidance, but it does not require a voting system, once certified at the state level, to continue to meet the *latest* federal certification requirements. Instead, it allows a voting system to continue to be used if it “meet[s] current Federal Voting System Standards or *other applicable Federal Standards*.” 08 NCAC 04 .0301(15) (emphasis added). The executive order also directs the EAC to “rescind all previous certifications of voting equipment based on prior standards.” In practice, this would mean that no voting system on the market is certified at the federal level anymore. Nonetheless, due to the language of our state certification law, this would not prohibit a previously certified voting system to be used in elections, because all systems we currently use “meet . . . applicable Federal Standards,” as evidenced by the fact that they have been certified previously as meeting those standards. Again, it

remains to be seen how the EAC will react to this order, so we will monitor this closely.

Section 5

- **Data sharing with federal investigators.** Directs the USDOJ to enter into agreements with state elections offices to get detailed information on all suspected violations of state and federal election laws discovered by state officials. If a state does not enter into such an agreement voluntarily, the USDOJ is instructed to punish that state by prioritizing enforcement actions against it and consider withholding unrelated USDOJ grants to the state and its localities.

Section 6

- **Non-US citizens working in elections.** Directs the USDOJ and the US Department of Homeland Security to take actions “to the extent permitted by 42 U.S.C. 5195c and all other applicable law,” to prevent non-citizens from being involved “in the administration of any Federal election, including by accessing election, ballots, or any other relevant materials used in the conduct of any Federal election.” This is purportedly done under the law that allows homeland security to designate elections infrastructure as critical infrastructure. But the [critical infrastructure law](#) only authorizes federal agencies to provide support to protect critical infrastructure, not to regulate it. And as far as we are aware, there is no law that authorizes these federal agencies to require states or localities to forbid noncitizens with legal working status from working in an elections office. Our state law already requires poll workers and board members to be citizens, of course. And it requires a criminal background check for any elections office worker accessing SEIMS.
- **Homeland Security review of voting systems.** Requires the Department of Homeland Security to work with the EAC to determine any security vulnerabilities of voting equipment and voter registration systems. Presumably this refers to reviewing the documentation pertaining to the certification of voting equipment by the EAC, as the law does not authorize federal agents to go into a state or locality to inspect a state or locality’s equipment or databases for security reviews.

Section 7

- **Ballots arriving after Election Day.** The executive order purports to declare that states may not accept and count ballots that arrive after Election Day in federal elections, despite state laws that authorize this. Our [law](#) for military and overseas absentee voting allows for this, where those ballots were cast before Election Day and received by the business day before canvass. The executive order directs the USDOJ to take action against states that follow their state laws allowing for such

ballots to count in federal elections. And it directs the EAC not to provide HAVA grants to states who count ballots received after Election Day. We suspect a court will have to determine the legality of this pronouncement.