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This memo examines what, if any, discretion local election officials might have in Georgia, North Carolina, and Florida to help more individuals vote in 2020, while also protecting those voters from the threat posed by COVID-19. This research focuses on five areas of state law as they may relate to the election in 2020: (a) voter registration; (b) early voting; (c) mail-in voting; (d) polling locations/hours/curbside voting; and (e) public health authorities.<sup>1</sup>

### Summary:

In short, none of the three states—Georgia, North Carolina, and Florida—expressly prohibits local officials from automatically mailing applications for individuals to register to vote. Georgia participates in an automatic voter registration system through the state’s Department of Driver Services, but only those residents who interact with the DDS for some other reason (e.g. renewing a license) are automatically registered. While North Carolina and Florida do not practice automatic registration, they have implemented registration options through the states’ Department of Motor Vehicles and Department of Highway Safety and Motor Vehicles, respectively; therefore, automatic registration systems seem logistically possible for these states, but as these agencies are administered by the state, it is likely beyond the capabilities of local authorities.

Georgia and North Carolina both provide specific dates during which early voting may be conducted in person, but local officials may have authority to allow for early voting on weekends and for extended hours during the specified periods. Florida, on the other hand, also grants local officials some discretion to determine the start and end dates for early voting, within a range specified by the state. In addition, counties and municipalities in these states have discretion to determine the number of early voting polling places that will be available, though local officials in North Carolina must receive approval from the State Board of Elections to open additional early voting locations.

None of the three states expressly prohibits local officials from automatically mailing applications for mail-in absentee ballots. A proposed bill in Georgia to bar local officials from doing so failed to pass in June 2020. Florida’s statutes also do not expressly prohibit the mailing of absentee ballots to eligible voters who do not request one, but a “voter guide” issued by the

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<sup>1</sup> Prepared by Katie Friel (J.D. Candidate, Columbia Law School, 2021) for Professor Richard Briffault.

Florida Department of State, Division of Elections states that one must first request a ballot in order to vote by mail.

Local officials in these states have some discretion over the number of polling places voters may cast their votes in person, the hours and dates they may vote, and the number of voting booths present at polling places—all of which may reduce waiting time and result in less congestion of people at any particular location on election day. In addition, state laws in Georgia and Florida do not expressly provide a curbside voting option, but they also do not expressly prohibit it. As such, local officials in these states may be able to utilize their authority to accommodate voters who require assistance to implement curbside voting. In North Carolina, every polling location in 2020 will offer curbside voting for voters who, because of age or physical disability, are unable to enter the voting enclosure without personal assistance. In addition, the North Carolina Board of Elections has provided that a voter who has a medical condition that puts the voter at increased risk of COVID-19 or is experiencing symptoms of COVID-19 qualifies for curbside voting under the statute.

Lastly, all three states provide for some discretion of local governments in regulating public health. Because public health authority is also granted by state statutes, local officials may be able to use the authority granted them under these provisions to impose requirements on elections, even when such authority would not otherwise exist under the states' election codes.

#### Analysis:

#### I. Georgia

##### a. Voter Registration

In order to vote in Georgia, individuals must: be registered to vote; be a U.S. citizen; be 18 years old; be a resident of the state; have not been convicted of a felony involving moral turpitude, unless upon completion of the sentence; have not been found mentally incompetent by a judge.<sup>2</sup>

Though not enacted through the state's legislature, Georgia implemented an administratively-approved automatic voter registration system beginning in 2016 through the Department of Driver Services and the Attorney General's office, in which eligible residents are registered to vote when they interact with the DDS unless they choose to opt out.<sup>3</sup> Individuals may otherwise register by mail, in person, or online if they possess a valid state driver's license or identification

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<sup>2</sup> O.C.G.A. § 21-2-216(a)-(b); *see also* Georgia Secretary of State, "Register to Vote", available at [https://sos.ga.gov/index.php/Elections/register\\_to\\_vote](https://sos.ga.gov/index.php/Elections/register_to_vote).

<sup>3</sup> Brennan Center for Justice, "VRM in the States: Georgia", Mar. 15, 2018, available at <https://www.brennancenter.org/our-work/research-reports/vrm-states-georgia>; *see also* National Conference of State Legislatures, "Automatic Voter Registration", Apr. 14, 2020, available at <https://www.ncsl.org/research/elections-and-campaigns/automatic-voter-registration.aspx>.

card issued by the DDS.<sup>4</sup> For eligible voters who do not have a valid ID issued by the DDS, postage-paid applications to register to vote may be accessed online, but must be printed and submitted by mail.<sup>5</sup> Automatically mailing every eligible voter a registration application in Georgia would alleviate any obstacles residents who do not have a valid DDS ID may face in completing the forms if they do not have access to printers in their homes. Individuals must register by the fifth Monday prior to election day.<sup>6</sup> Same day registration is not available.

#### b. Early Voting

Any qualified voter in Georgia may vote early if she wishes and does not need to provide an excuse to do so.<sup>7</sup> “Advance voting” in person is available beginning on the fourth Monday prior to the election through the Friday preceding the election.<sup>8</sup> Voting during this time period is conducted during regular business hours on weekdays, and from 9:00 a.m. to 4:00 p.m. on the second Saturday prior to the election; however, counties and municipalities may extend the hours of voting beyond regular business hours to suit the needs of electors.<sup>9</sup> County boards of registrars may also establish additional sites for the purposes of early in-person voting.<sup>10</sup> It is not clear from the statutes whether the discretion granted to local authorities to extend the *hours* for early voting beyond regular business hours also grants the authority to extend the *days* on which voting is available during the advance voting period; for example, while it is clear that local authorities may extend the hours for voting on weekdays, they may also be able to allow for early voting on *weekend* days beyond the second Saturday before the election, so long as the days are within the advance voting period. Local officials could maximize voter turnout while decreasing the risks posed by COVID-19 by extending the number of days available for early voting in person and the hours during which such places will be operable, as well as increasing the number of available polling locations for voters who choose to vote during this period.

#### c. Mail-in Voting

Just as any qualified voter may vote early in Georgia, any qualified voter may also request an absentee ballot and vote by mail.<sup>11</sup> Absentee ballots will only be mailed to voters upon request, meaning that local officials cannot automatically send out ballots by mail to all registered voters.<sup>12</sup> The Georgia Secretary of State chose to send absentee ballot applications to all

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<sup>4</sup> Georgia Secretary of State, “Register to Vote”, available at [https://sos.ga.gov/index.php/Elections/register\\_to\\_vote](https://sos.ga.gov/index.php/Elections/register_to_vote).

<sup>5</sup> State of Georgia, “How Do I Register to Vote?”, available at <https://georgia.gov/register-vote>.

<sup>6</sup> O.C.G.A. § 21-2-224(a).

<sup>7</sup> O.C.G.A. § 21-2-380(b).

<sup>8</sup> O.C.G.A. § 21-2-385(d).

<sup>9</sup> *Id.*

<sup>10</sup> O.C.G.A. § 21-2-382(a).

<sup>11</sup> State of Georgia, “Vote By Absentee Ballot”, available at <https://georgia.gov/vote-absentee-ballot>.

<sup>12</sup> Georgia Secretary of State, Elections Division, *Absentee Voting: A Guide for Registered Voters (2014)*, available at [https://sos.ga.gov/admin/uploads/Absentee\\_Voting\\_Guide\\_20142.pdf](https://sos.ga.gov/admin/uploads/Absentee_Voting_Guide_20142.pdf), at 4.

registered voters in the state for their primary election in June.<sup>13</sup> The Secretary has since changed course in preparation for the general election, opting to create a website for voters to apply for absentee ballots online instead of automatically mailing applications to all voters.<sup>14</sup> While this measure may make applying for absentee ballots easier for some voters, it will not help those that either lack reliable internet access or are particularly uncomfortable with technology. Further, applications that are submitted online must first be printed, signed by the applicant, scanned, and then e-mailed to the appropriate county board of registrars.<sup>15</sup> Consequently, eligible voters may face additional challenges if they lack safe access to a printer/scanner. A bill aiming to bar election officials in Georgia from mailing absentee ballot applications to registered voters was proposed, but failed to pass in June 2020.<sup>16</sup> The fact that such a bill was proposed in the state's legislature may serve as evidence that, under the law as it currently stands, local officials in Georgia already possess the authority to take this action, if they so choose. In the absence of further state-wide action from the Secretary of State for the election in November, local officials should make the decision to mail out absentee ballot applications to all eligible voters in their jurisdictions to alleviate some of the burdens discussed above.

Voters may apply for an absentee ballot beginning 180 days before the election either in person, by mail, by fax, or e-mail through the Friday preceding the election.<sup>17</sup> Absentee ballots will be mailed or issued to electors not more than 49 days before the election.<sup>18</sup> Mail-in ballots must be received by the close of polls on election day.<sup>19</sup>

#### d. Polling Locations/Hours/Curbside Voting

Polling places in Georgia are open from 7:00 a.m. until 7:00 p.m. on election day.<sup>20</sup> The number of polling precincts is determined by the governing bodies of municipalities.<sup>21</sup> The superintendent of a county or the governing authority of a municipality chooses the polling place within each precinct and may make modifications to existing polling places to provide more convenient access for disabled electors.<sup>22</sup>

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<sup>13</sup> Danny Hakim, et al., "Anatomy of an Election 'Meltdown' in Georgia", Jul. 25, 2020, available at <https://www.nytimes.com/2020/07/25/us/politics/georgia-election-voting-problems.html>.

<sup>14</sup> *Id.*

<sup>15</sup> State of Georgia, "How Do I Vote by Absentee Ballot?", available at <https://georgia.gov/vote-absentee-ballot>.

<sup>16</sup> Mark Niese, "Ban on Mailing Absentee Ballot Forms Dies at Georgia Legislature", The Atlanta Journal-Constitution (Jun. 27, 2020).

<sup>17</sup> O.C.G.A. § 21-2-381(a); *see also* State of Georgia, "How Do I Vote by Absentee Ballot?", available at <https://georgia.gov/vote-absentee-ballot>.

<sup>18</sup> O.C.G.A. § 21-2-384(a)(2).

<sup>19</sup> *Id.* at 5.

<sup>20</sup> O.C.G.A. § 21-2-403.

<sup>21</sup> O.C.G.A. § 21-2-260(b).

<sup>22</sup> O.C.G.A. §§ 21-2-265(a), (d).

Georgia’s election code does not provide for a curbside voting option, but it also does not explicitly prohibit it. However, Georgia’s statutes governing voting assistance for voters with disabilities are particularly limited. O.C.G.A. § 21-2-409(a) reads: “No elector shall receive any assistance in voting at any primary or election unless he or she is unable to read the English language or he or she has a disability which renders him or her unable to see or mark the ballot or operate the voting equipment or to enter the voting compartment or booth without assistance.” The assistance provided for voters who have a qualifying disability consists of choosing a person “to enter the voting compartment or booth with him or her to assist in voting, *such assistance to be rendered inside the voting compartment or booth*” (emphasis added).<sup>23</sup> Further, the Secretary of State’s website outlines options for voters with disabilities to vote in-person on election day, all of which consist of some form of assistance within the voting booth, such as assistive voting devices and seated voting options for voters using wheelchairs.<sup>24</sup> As a result, unless local officials argue that they are establishing voting compartments outside the polling place (i.e. in the voter’s car) to provide more convenient access for disabled voters under the authority granted them in O.C.G.A. §§ 21-2-265(d), counties and municipalities may have difficulty offering curbside voting options under the state’s existing statutes.

e. Public Health Authority

County boards of health are granted, by the state’s health code, the authority to take such steps as “may be necessary to prevent and suppress disease and conditions deleterious to health and to determine compliance with health laws and rules, regulations, and standards adopted thereunder.”<sup>25</sup> County boards are also authorized to require the isolation or segregation of persons with communicable diseases or conditions likely to endanger the health of others.<sup>26</sup> Pursuant to these authorities and on the basis of public health concerns, local officials may be able to impose requirements on elections that are not otherwise authorized by the state’s statutes governing election administration.

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<sup>23</sup> O.C.G.A. § 21-2-409(b).

<sup>24</sup> Georgia Secretary of State, “Voters With Disabilities”, available at [https://sos.ga.gov/index.php/elections/voters\\_with\\_disabilities](https://sos.ga.gov/index.php/elections/voters_with_disabilities).

<sup>25</sup> O.C.G.A. § 31-3-4(a)(3).

<sup>26</sup> O.C.G.A. § 31-12-4.

## II. North Carolina

### a. Voter Registration

To register to vote in North Carolina, individuals must: be 18 years old by the date of the election<sup>27</sup>; be a U.S. citizen; live in the county she is seeking to register in and have resided there for at least 30 days prior to the election; not be serving a sentence for a felony conviction, including probation, parole, or post-release supervision.<sup>28</sup>

North Carolina does not participate in automatic voter registration. Applications to register may be submitted in person, online through the State Department of Motor Vehicles, by mail, fax, or e-mail.<sup>29</sup> However, voters who are registering to vote for the first time must submit their applications in person or by mail.<sup>30</sup> Applications must be physically signed by applicants—electronically generated signatures are not accepted; however, signatures may be electronically captured and scanned in order to submit applications online.<sup>31</sup> Consequently, even though North Carolina offers an electronic voter registration option, local officials can alleviate obstacles for those potential voters who may not have access to a printer/scanner by automatically mailing paper copies of registration applications to all qualified voters. In addition, because North Carolina has implemented an online registration option through the state’s DMV, an automatic registration system seems logistically possible, but that measure would require coordination with the state DMV and may not be feasible if state officials do not support such a program.

Applications that are submitted by mail must be postmarked at least 25 days before the election.<sup>32</sup> Applications that are submitted in person, by fax, online, or by e-mail must be received by the county board of elections by a time and date to be determined by each county’s board, but no earlier than 5:00 p.m. on the 25<sup>th</sup> day before the election and no later than the 20<sup>th</sup> day before.<sup>33</sup> If eligible voters miss the registration deadline, they may register in person and vote the same day during the early voting period, through North Carolina’s “Same-Day Registration” program.<sup>34</sup>

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<sup>27</sup> North Carolina allows 16 and 17 year-olds to “preregister” to vote, but they will not be eligible to vote in any election until they are 18 years old. North Carolina State Board of Elections, “Registering to Vote in North Carolina”, available at: <https://www.ncsbe.gov/Voters/Registering-to-Vote>.

<sup>28</sup> N.C. Gen. Stat. § 163-55; *see also*, North Carolina State Board of Elections, “Registering to Vote in North Carolina”, available at <https://www.ncsbe.gov/Voters/Registering-to-Vote>.

<sup>29</sup> N.C. Gen. Stat. § 163-82.6(a).

<sup>30</sup> North Carolina State Board of Elections, “Registering to Vote in North Carolina”, available at <https://www.ncsbe.gov/Voters/Registering-to-Vote>.

<sup>31</sup> N.C. Gen. Stat. § 163-82.6(c).

<sup>32</sup> N.C. Gen. Stat. § 163-82.6(d).

<sup>33</sup> N.C. Gen. Stat. § 163-82.6(d)-(e).

<sup>34</sup> North Carolina State Board of Elections, “Registering to Vote in North Carolina”, available at <https://www.ncsbe.gov/Voters/Registering-to-Vote>.

## b. Early Voting

Any registered voter may cast an absentee ballot in person at an early voting location during the early voting period, a process referred to as “one-stop early voting” in North Carolina.<sup>35</sup> The early voting period begins on the third Thursday prior to election day and ends at 3:00 p.m. on the Saturday preceding the election.<sup>36</sup>

Unlike on election day, registered voters do not have an assigned early voting place but may instead vote early at any one-stop voting location in their county.<sup>37</sup> Counties must conduct one-stop voting at either the office of the county board of elections or a site in lieu of the board’s office if the site is “reasonably proximate” to the office (referred to as “in-lieu of sites”).<sup>38</sup> Counties may submit a plan to the State Board of Elections to offer additional one-stop voting sites.<sup>39</sup> County boards must unanimously agree on a plan to submit for the state board’s approval.<sup>40</sup>

If a county proposes, and the state board approves, multiple one-stop voting sites, all locations must be open for early voting on the same days during the early voting period.<sup>41</sup> All sites approved for one-stop voting must be open from 8:00 a.m. to 7:30 p.m. each weekday during the early voting period, and from 8:00 a.m. to 3:00 p.m. on the Saturday before the election.<sup>42</sup> Normally, counties may offer additional one-stop voting during the early voting period, such as on weekends; such information must be included in the one-stop implementation plan submitted to the state board.<sup>43</sup>

In response to the threat of COVID-19 and in an effort to reduce crowding of voters at polling places, the Executive Director of the State Board of Elections issued an “Emergency Executive Order Modifying Early Voting for the November 3, 2020 Election”.<sup>44</sup> Pursuant to her authority

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<sup>35</sup> North Carolina State Board of Elections, “One-Stop Early Voting”, available at <https://www.ncsbe.gov/Voting-Options/One-Stop-Early-Voting>.

<sup>36</sup> N.C. Gen. Stat. § 163-227.2(b).

<sup>37</sup> North Carolina State Board of Elections, “One-Stop Early Voting”, available at <https://www.ncsbe.gov/Voting-Options/One-Stop-Early-Voting>.

<sup>38</sup> N.C. Gen. Stat. § 163-227.6(a); *see also* North Carolina State Board of Elections, *North Carolina Election Official Manual*, Section 3.1, available at [https://s3.amazonaws.com/dl.ncsbe.gov/Training/election\\_official/Election%20Official%20Manual/Election%20Official%20Manual4/!SSL!/Responsive\\_HTML5/topic.htm?#t=3\\_One-stop\\_Absentee\\_Administration%2F3.1\\_Overview.htm](https://s3.amazonaws.com/dl.ncsbe.gov/Training/election_official/Election%20Official%20Manual/Election%20Official%20Manual4/!SSL!/Responsive_HTML5/topic.htm?#t=3_One-stop_Absentee_Administration%2F3.1_Overview.htm).

<sup>39</sup> N.C. Gen. Stat. § 163-227.6(a).

<sup>40</sup> N.C. Gen. Stat. § 163-227.6(a).

<sup>41</sup> N.C. Gen. Stat. § 163-227.6(c).

<sup>42</sup> *Id.*

<sup>43</sup> N.C. Gen. Stat. § 163-227.2(h).

<sup>44</sup> North Carolina State Board of Elections, “Emergency Order: Administering The November 3, 2020 General Election During The Global Covid-19 Pandemic And Public Health Emergency”, Jul. 17, 2020, available at:

under N.C. Gen. Stat. § 163-27.1 and 08 NCAC 01.0106<sup>45</sup>, Executive Director Karen Brinson Bell ordered that: (i) all counties open each one-stop voting location for a minimum of 10 hours total for each of the first and second weekends during the early voting period<sup>46</sup>; (ii) all counties must open at least one one-stop voting location per 20,000 registered voters, unless an alternative plan sufficient to “serve the voting population, maintain social distancing and reduce the likelihood of long lines” is submitted and approved by the Executive Director; (iii) any county that only has one one-stop voting site must arrange for a backup site and backup staff in case the original site must be shut down; (iv) counties may open one-stop sites earlier than 8:00 a.m. and/or may stay open later than 7:30 p.m., provided that all sites are open at the same time; (v) all counties must post signs outside of each one-stop site with the location and hours of all one-stop sites in the county so voters can decide whether to go to a different location; (vi) counties may request a transfer of some voters to an adjacent precinct if one of the polling places in the first precinct is “inaccessible because of the COVID-19 pandemic”, but such a request must be submitted at least 45 days prior to the election and must be approved by the Executive Director; and (vii) counties must take certain safety precautions at polling places to protect against the transmission of the coronavirus.<sup>47</sup>

### c. Mail-in Voting

Any qualified voter is eligible to vote by mail in North Carolina.<sup>48</sup> For the November 2020 election, absentee ballot request forms may be submitted in person, by mail, by fax, or by e-mail and must be received by the county board of elections by 5:00 p.m. on the Tuesday preceding the election.<sup>49</sup> If a voter expects to be unable to vote in person on election day because of sickness or other physical disability, that voter or the voter’s “near relative” may request an absentee ballot in person at the county board of elections after 5:00 p.m. on the Tuesday before the election and before 5:00 p.m. the day before the election.<sup>50</sup> Further, if an absentee ballot is requested pursuant

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[https://s3.amazonaws.com/dl.ncsbe.gov/State Board Meeting Docs/Orders/Executive%20Director%20Orders/Emergency%20Order\\_2020-07-17.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Orders/Executive%20Director%20Orders/Emergency%20Order_2020-07-17.pdf).

<sup>45</sup> The cited provisions authorize the Executive Director of the State Board of Elections to exercise “emergency powers to conduct an election where the normal schedule is disrupted by a catastrophe arising from natural causes that has resulted in a disaster declaration by the President of the United States or the Governor, while avoiding unnecessary conflict with the laws of North Carolina.” North Carolina State Board of Elections, “Emergency Order: Administering The November 3, 2020 General Election During The Global Covid-19 Pandemic And Public Health Emergency”, Jul. 17, 2020, available at

[https://s3.amazonaws.com/dl.ncsbe.gov/State Board Meeting Docs/Orders/Executive%20Director%20Orders/Emergency%20Order\\_2020-07-17.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Orders/Executive%20Director%20Orders/Emergency%20Order_2020-07-17.pdf), at 5.

<sup>46</sup> County board of elections offices that are only open during regular business hours and serving as one-stop voting locations are exempt from this requirement, so long as there is at least one other one-stop voting site in the county. *Id.*, at 6.

<sup>47</sup> *Id.*, at 6-7.

<sup>48</sup> N.C. Gen. Stat. § 163-226(a).

<sup>49</sup> North Carolina State Board of Elections, “Absentee Voting in North Carolina”, available at <https://www.ncsbe.gov/Voting-Options/Absentee-Voting>.

<sup>50</sup> N.C. Gen. Stat. § 163-230.1(b).

to this provision, the county may personally deliver the application and ballots to the voter or that voter's near relative.<sup>51</sup> As of September 1, 2020, voters are able to submit requests for absentee ballots online through the State Board of Elections' website using an electronic signature.<sup>52</sup> However, before then, voters had to print the form, physically sign it, and then scan it in order to submit their request electronically. As with voter registration forms, local officials should automatically mail paper absentee ballot request forms to all registered residents—as there is no state law prohibiting them from doing so—in order to alleviate unnecessary burdens for voters.

Generally, completed absentee ballots require signatures from two witnesses in order to be counted, or only one witness if that witness is a notary public. For the November 2020 election, only one witness is required in order to cast an absentee ballot by mail.<sup>53</sup> However, individuals under 18 years old are not eligible to serve as a witness and, for voters who are patients or residents of a hospital, clinic, nursing home, or rest home, neither are employees of the facility at which the voter resides.<sup>54</sup> These restrictions may make it significantly difficult for some voters to safely acquire a witness signature in order to complete their absentee ballot during the pandemic.

If a voter has registered by mail to vote absentee, she must include with her completed absentee ballot a copy of a photo ID unless she included this documentation with her application to register to vote.<sup>55</sup> Again, voters who do not have access to a scanner and/or printer at home may have difficulty obtaining a copy of their ID to include with their absentee ballot.

Completed ballots must be returned to the county board of elections by 5:00 p.m. on election day or, if returned by mail and postmarked on or before election day, must be received by 5:00 p.m. on the third day after the election.<sup>56</sup> Ballots may be mailed or delivered in person to the county board of elections office—or an open early voting site during the early voting period—by the voter or the voter's "near relative".<sup>57</sup>

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<sup>51</sup> *Id.*

<sup>52</sup> N.C. Gen. Stat. § 163-230(b); *see also* North Carolina State Board of Elections, "FAQs: Voting by Mail In North Carolina in 2020", available at: <https://www.ncsbe.gov/voting/vote-mail/faqs-voting-mail-north-carolina-2020#are-absentee-by-mail-ballots-automatically-sent-out-to-all-registered-voters>.

<sup>53</sup> North Carolina State Board of Elections, "Absentee Voting in North Carolina", available at: <https://www.ncsbe.gov/Voting-Options/Absentee-Voting>.

<sup>54</sup> North Carolina State Board of Elections, "Absentee Voting in North Carolina", available at: <https://www.ncsbe.gov/Voting-Options/Absentee-Voting>.

<sup>55</sup> N.C. Gen. Stat. § 163-166.12(b), (f).

<sup>56</sup> North Carolina State Board of Elections, "Absentee Voting in North Carolina", available at: <https://www.ncsbe.gov/Voting-Options/Absentee-Voting>.

<sup>57</sup> "Near relatives" include: spouses, brothers, sisters, parents, grandparents, children, grandchildren, mothers-in-law, fathers-in-law, daughters-in-law, sons-in-law, stepparents, or stepchildren. North Carolina State Board of Elections, "Absentee Voting in North Carolina", available at: <https://www.ncsbe.gov/Voting-Options/Absentee-Voting>.

#### d. Polling Locations/Hours/Curbside Voting

Polls in North Carolina are open on election day from 6:30 a.m. to 7:30 p.m.<sup>58</sup> County boards of election may establish, alter, or create new election precincts or voting places, by resolution, “as it may deem expedient”, but no county board may change any precinct boundary unless approved by the Executive Director of the State Board of Elections.<sup>59</sup> A county board of elections may also establish satellite voting places—other than the regular precinct polling place—for elderly or disabled voters to cast their ballots.<sup>60</sup> However, such a plan must pass by a unanimous vote of the county board, and must also be approved by the State Board of Elections.<sup>61</sup> A county board of elections may also designate a second voting place to be used in a precinct by a unanimous vote, but such a proposal is again subject to approval by the Executive Director of the State Board of Elections.<sup>62</sup>

County boards of election are responsible for providing an adequate quantity of ballots and voting machines to precinct polling places.<sup>63</sup> County boards are also responsible for ensuring that “adequate procedures are in place at each voting place for a safe, secure, fair, and honest election.”<sup>64</sup> Curbside voting is available for voters who, because of age or physical disability, are unable to enter the voting enclosure without personal assistance.<sup>65</sup> In 2020, every polling location will offer curbside voting for qualified voters.<sup>66</sup> In addition, the North Carolina Board of Elections has provided guidance on what qualifies as a “physical disability” for purposes of curbside voting during the pandemic; a voter who meets any of the following criteria may vote from within her vehicle outside the polling location: (i) is unable to enter the polling place due to age or physical or mental disability, such as agoraphobia; (ii) has a medical condition that puts the voter at increased risk of COVID-19; (iii) should not wear a mask due to a medical or behavioral condition or disability; or (iv) is experiencing symptoms of COVID-19.<sup>67</sup>

#### e. Public Health Authority

Local boards of health in North Carolina have the statutory authority to adopt rules necessary to protect and promote the public health.<sup>68</sup> Counties and cities have the general power to make ordinances to regulate acts or conditions detrimental to the health, safety, or welfare of its

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<sup>58</sup> N.C. Gen. Stat. § 163-166.01.

<sup>59</sup> N.C. Gen. Stat. §§ 163-128(a), 163-132.3(a).

<sup>60</sup> N.C. Gen. Stat. § 163-130.

<sup>61</sup> *Id.*

<sup>62</sup> N.C. Gen. Stat. § 163-130.2.

<sup>63</sup> N.C. Gen. Stat. § 163-165.10.

<sup>64</sup> N.C. Gen. Stat. § 163-166.1(2).

<sup>65</sup> N.C. Gen. Stat. § 163-166.9(a).

<sup>66</sup> North Carolina State Board of Elections, “Curbside Voting”, available at: <https://www.ncsbe.gov/voting/help-voters-disabilities/curbside-voting>.

<sup>67</sup> *Id.*

<sup>68</sup> N.C. Gen. Stat. § 130A-39(a).

citizens.<sup>69</sup> Further, during a state of emergency as declared by the governor, counties and municipalities have the authority to enact prohibitions and restrictions on activities or conditions “the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency”.<sup>70</sup> Counties and municipalities in North Carolina might be able to impose additional requirements on the November election under the state’s public health authorities. For example, a county could try to enact an ordinance requiring additional polling places during both early voting and voting on election day in order to ensure social distancing and reduce the threat of contracting COVID-19. Enacting such a requirement under the state’s election code would require a unanimous vote by the County Board of Elections and approval by the Executive Director of the State Board of Elections, whereas enacting it pursuant to their emergency powers or public health authority would not require a unanimous vote or approval by the state board.

### III. Florida

#### a. Voter Registration

In order to register to vote in Florida, individuals must: be at least 18 years old; be a U.S. citizen; be a resident of Florida and the county in which she registers to vote; have not been adjudicated mentally incapacitated in any state unless she has had her right to vote restored pursuant to law; have not been convicted of any felony unless she has had her right to vote restored pursuant to law.<sup>71</sup>

Qualified individuals may register online, by mail, or in person.<sup>72</sup> Floridians have the option to apply for registration through certain state agencies, such as the Florida Department of Highway Safety and Motor Vehicles, when accessing their services (e.g. renewing a driver’s license).<sup>73</sup> As such, an automatic registration system seems logistically possible, but as these agencies are administered by the state, it is likely beyond the capabilities of local authorities. Further, as there are a significant number of eligible voters who may never use these state agencies’ services, local officials could increase voter registration—in a safe, socially distant manner—by mailing registration forms to all residents.

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<sup>69</sup> N.C. Gen. Stat. § 153A-121(a); *see also* § 160A-174(a).

<sup>70</sup> N.C. Gen. Stat. § 166A-19.31(b)(5).

<sup>71</sup> Fla. Stat. Ann. § 97.041.

<sup>72</sup> Fla. Stat. Ann. § 97.0525; *see also* Florida Department of State, Division of Elections, “Register to Vote or Update Your Information”, available at <https://dos.myflorida.com/elections/for-voters/voter-registration/register-to-vote-or-update-your-information/>.

<sup>73</sup> *Id.*

The deadline to register is 29 days before the election.<sup>74</sup> Same day registration is not available in Florida.

#### b. Early Voting

Early in-person voting in Florida begins on the 10<sup>th</sup> day before an election and ends on the 3<sup>rd</sup> day before the election, and must be available for a minimum of 8 and a maximum of 12 hours each day during this period.<sup>75</sup> County supervisors have discretion to extend the early voting period up to the 15<sup>th</sup> day before the election through the second day before the election, also for a minimum of 8 and a maximum of 12 hours each day.<sup>76</sup> As such, counties can expand opportunities for voting safely in person by initiating early voting starting on the 15<sup>th</sup> day before the election, keeping early voting sites open until the second day before the election, and keeping early polling locations open for the maximum of 12 hours each day in that period.

Early voting is conducted at the main or branch offices of the supervisor of elections.<sup>77</sup> Supervisors may also designate certain other public venues as early voting sites, such as libraries, courthouses, and community centers.<sup>78</sup> If no other eligible early voting location exists in an area of the county, supervisors may designate one early voting site to serve as an additional location for early voting.<sup>79</sup>

#### c. Mail-in Voting

No excuse is needed to vote by mail in Florida – any registered voter may vote by mail if she wishes.<sup>80</sup> Applications for a mail-in ballot may be made in person, by mail, by e-mail, by fax, by phone, or online.<sup>81</sup> Applications must be received by the supervisor of elections by 5:00 p.m. on the 10<sup>th</sup> day before the election.<sup>82</sup> As with registration forms, local officials should automatically mail out absentee ballot applications to all registered voters in order to maximize the opportunities for voters to vote safely during the pandemic and to make it easier for voters to

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<sup>74</sup> Fla. Stat. Ann. § 97.055; *see also* Florida Department of State, Division of Elections, “Register to Vote or Update Your Information”, available at <https://dos.myflorida.com/elections/for-voters/voter-registration/register-to-vote-or-update-your-information/>.

<sup>75</sup> Fla. Stat. Ann. § 101.657(1)(d).

<sup>76</sup> Fla. Stat. Ann. § 101.657(1)(d).

<sup>77</sup> Fla. Stat. Ann. § 101.657(1)(a).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Florida Department of State, Division of Elections, “Vote-by-Mail”, available at <https://dos.myflorida.com/elections/for-voters/voting/vote-by-mail/>.

<sup>81</sup> *Id.*

<sup>82</sup> Fla. Stat. Ann. § 101.62(2).

request an absentee ballot if they so wish. In fact, several counties in Florida have announced plans to mail absentee ballot applications to all voters in response to the pandemic.<sup>83</sup>

The supervisor must send mail ballots to those who timely submit an application, but the statute says nothing of sending ballots to those who do not request one. However, a “voter guide” issued by the Florida Department of State, Division of Elections states that one must first request a ballot in order to vote by mail.<sup>84</sup>

Floridians can designate someone else to pick up their absentee ballot in person, if they prefer not to wait for it to be mailed to them.<sup>85</sup> Completed ballots voted by mail must be received by the supervisor by the close of polls on election day.<sup>86</sup>

#### d. Polling Locations/Hours/Curbside Voting

Polls are open in Florida on election day from 7:00 a.m. to 7:00 p.m.<sup>87</sup> Precincts are established by the board of county commissioners and the supervisor of elections designates “a polling place” within each precinct.<sup>88</sup> In an emergency situation, supervisors may designate an additional polling place outside a precinct that may be used by eligible voters from that precinct.<sup>89</sup> Florida’s statutes neither expressly offer a curbside voting option on election day for its residents nor expressly prohibit it. One state statute provides that any voter who “requires assistance to vote by reason of blindness, disability, or inability to read or write” may request the assistance of two election officials to cast her vote.<sup>90</sup> Further, the statute reads, “[a]fter the elector requests the aid of the two election officials or the person of the elector’s choice, they shall retire to the voting booth for the purpose of casting the elector’s vote according to the elector’s choice.”<sup>91</sup> Counties in Florida may be able to implement a curbside voting option for voters under the authority of this provision.

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<sup>83</sup> David Smiley, “Mail voting expected to ‘explode’ in Florida as coronavirus reshapes 2020 elections”, Apr. 22, 2020, available at <https://www.miamiherald.com/news/politics-government/article242180901.html>.

<sup>84</sup> Florida Department of State, Division of Elections, *Florida Voter Guide*, available at: <https://dos.myflorida.com/media/699606/2018-voterregguide-1-18-2019.pdf>, at 10.

<sup>85</sup> Florida Department of State, Division of Elections, “Vote-by-Mail”, available at <https://dos.myflorida.com/elections/for-voters/voting/vote-by-mail/>.

<sup>86</sup> Fla. Stat. Ann. § 101.67(2); *see also* Florida Department of State, Division of Elections, “Vote-by-Mail”, available at <https://dos.myflorida.com/elections/for-voters/voting/vote-by-mail/>.

<sup>87</sup> Fla. Stat. Ann. § 100.011(1).

<sup>88</sup> Fla. Stat. Ann. § 100.001(1).

<sup>89</sup> Fla. Stat. Ann. § 101.74.

<sup>90</sup> Fla. Stat. Ann. § 101.051(1).

<sup>91</sup> *Id.*

e. Public Health Authority

Florida's statutes provide the state's Department of Health with most of the responsibility for regulating the management of emergencies and public health concerns in the state. Counties and municipalities are, however, authorized to enact health regulations and ordinances "not inconsistent with state public health laws and rules adopted by the [Department of Health]".<sup>92</sup> Assuming there is no directly contradictory rule adopted by the State Department of Health, local governments may be able to enact rules and regulations with regard to the administration of the November election to protect the public health that may not otherwise be authorized under the state's statutes governing elections.

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<sup>92</sup> Fla. Stat. Ann. § 381.0016.