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honestelections.org

March 19, 2020

Honorable Daniel Cameron
c/o Barry Dunn
Attorney General
Capitol Building, Suite 118
700 Capital Avenue
Frankfort, Kentucky 40601
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VIA ELECTRONIC MAIL: BARRY.DUNN@KY.GOV

Subject: To what extent, under the current state of emergency declared by the President of the United States and the Governor of Kentucky due to the COVID-19 pandemic, can the Governor supersede or suspend Kentucky law?

Dear Attorney General Cameron:

The Honest Elections Project is a nonpartisan group devoted to supporting the right of every lawful voter to participate in free and honest elections. Through public engagement, advocacy, and public-interest litigation, the Honest Elections Project defends fair, reasonable, common sense measures that voters put in place to protect the integrity of the voting process. As part of its mission in this challenging time, the Honest Elections Project seeks to ensure that elections are carried out using lawful methods while accounting for public health issues.

As you are aware, on March 6, 2020, Governor Andy Beshear declared a state of emergency in response to a confirmed case of COVID-19 in Kentucky. Executive Order 2020-215. On March 13, 2020, the President of the United States declared a national state of emergency due to the further spread of COVID-19.

KRS §39A.100 (I) provides that, in the event of a state of emergency, the Governor, upon the recommendation of the Secretary of State, may “declare by executive order a different time or place for holding elections. . . . The election shall be held within thirty-five (35) days from the date of the suspended or delayed election. The State Board of Elections shall establish procedures for election officials to follow.”

On March 16, 2020, Secretary of State Michael G. Adams formally recommended to Governor Beshear that the elections scheduled for May 19, 2020—including the Democratic primary election, the Republican primary election, any special elections, and any local option elections—be delayed by 35 days, to June 23, 2020. On March 17, 2020, Governor Beshear agreed and signed an executive order to that effect. Executive Order 2020-236.



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The governments of other states, such as Ohio, have also acted to delay their primary elections in response to the outbreak of COVID-19. In Ohio's case, the authority of the secretary of state and governor to supersede provisions of state election law was challenged in the Supreme Court of Ohio. *See State ex. rel. Corey Speweik v. Wood Cty. Board of Elections*, No. 2020-0382 (Ohio 2020). That challenge led to costly, last minute litigation, which drained valuable state resources. Ohio's actions generated additional litigation as well. *See State ex. rel. Ohio Democratic Party v. LaRose*, No. 2020-388 (Ohio 2020).

We hope that Kentucky will be able to avoid the litigation and the harm to voters that Ohio's last minute changes created. To avoid repeating Ohio's mistakes, the Honest Elections Project seeks clarification about the extent to which the Governor can supersede or suspend Kentucky's duly enacted laws, beyond merely rescheduling the date of the election, particularly in light of the fact that Kentucky's election statutes put the bipartisan State Board of Elections in charge of setting rules for rescheduled elections. *See KRS §39A.100(I)*.

We would appreciate a response as soon as possible, so that the Governor, the Secretary of State, the Legislature, candidates, voting rights advocates, and others engaged in the elections process can understand how Kentucky's newly scheduled primary election will be conducted.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Snead", written in a cursive style.

Jason Snead
Executive Director
The Honest Elections Project
JSnead@honestelections.org