



SOUTHERN COALITION for SOCIAL JUSTICE

VIA E-MAIL

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CC: Derek Bowens, Director of the Durham County Board of Elections

Recommendations for 2020 Early Voting Plan

Dear Members of the Durham County Board of Elections,

We write to you today to provide you with information that we believe will assist you in developing an early voting plan that best serves the constituents of your county. We recognize that the challenge that faces you and your staff—conducting a safe and fully participatory election during a global pandemic—is one of the greatest magnitude, and we want to help you confront that challenge with as many resources and as much support as possible.

Executive Summary

As discussed in more detail below, based on voting and demographic data specific to Durham County and in anticipation of the challenges introduced by the ongoing public health crisis, we recommend for the upcoming general election that the Board (i) maintain at least 13 early voting sites as it did in 2016, (ii) ensure that early voting sites include the South Regional Library, North Regional Library, East Regional Library, Eno River Unitarian Universalist Fellowship, and sites on the campuses of North Carolina Central University and Duke University, as used in the past and to ensure access for voters throughout the county, and (iii) offer robust early voting hours and retain offering Sunday early voting hours.

Over the coming months, our team of advocates will work with civic engagement organizations, faith groups, and community leaders to solicit feedback on early voting sites. These individuals will attend Board of Election meetings, provide public comment, and may reach out to you with questions and requests. We will also incorporate this information into future early voting plan recommendations.

The COVID-19 Pandemic and Potential Changes to State Law

All North Carolinians—voters and election administrators alike—are facing unprecedented circumstances due to the COVID-19 pandemic. The North Carolina State Board of Elections has predicted that absentee-by-mail voting in this year’s general election could hit 40%, up from only 4% in 2016. Assuming that number is accurate for planning purposes, that means that a majority of voters will still vote in-person. However, unlike in previous years, election officials and poll workers now have social distancing and disinfectant procedures to take

into account when conducting early in-person voting. This means that, even if in-person voting during the early voting period will be lower than in 2016, offering more sites and days is more critical than ever to keep in-person voting safe and prevent voters who are socially distancing from turning away from the polls due to long lines and crowding. For public health reasons, counties should be seeking to have enough sites and days for in-person voting to keep the rate of voters (voters per hour per site) low so that voters can maintain distance while waiting to vote and to ensure that poll workers have time to employ proper disinfecting procedures between voters. This will not be possible if there are too many voters seeking to use an early voting site at one time.

Additionally, we urge you to at least make contingency plans for an early voting period unencumbered by current state law, which is under challenge. Democracy North Carolina (“DemNC”) is a plaintiff (represented by the Southern Coalition for Social Justice (“SCSJ”) among others) challenging certain aspects of the current statutory election scheme as creating an unconstitutional burden on the right to vote in light of the current public health crisis. The part of that lawsuit most relevant here is our challenge to the uniform hours requirement, created by Senate Bill 325 in 2018 and in effect in the 2018 general election and 2020 primary elections (in addition to intervening municipal elections). We are seeking to have this law (and others) enjoined for the 2020 general election to allow county boards the flexibility to offer more sites when more voters are expected to turn out to vote (and thus reduce lines and wait times and increase the efficacy of public health measures) and not waste precious county resources keeping early voting sites open at hours it is known that voters will not utilize.

We understand that the imposition of the uniform hours requirement has made it more difficult for county boards, including yours, to craft an early voting plan that best serves the geographic and demographic needs of your county, and that maintaining sites when all sites have to be open the same days and hours can have a significant budgetary impact on your county. In the litigation described above, our goal is to avoid a situation that would require Durham County to reduce the number of early voting sites to comply with the uniform hours requirement.

That being said, even with those unnecessary restrictions, we believe that it still remains your duty to ensure that all voters in your county have easy access to one-stop early voting sites and times, regardless of the outcome of the litigation. We recognize that by having to keep every site open a certain number of hours each day during the weekdays, and having to have all sites open if any site is open on the weekend, could create some financial challenges for the county, but the cost of a fair and accessible democracy can never be too high.

We understand that for many counties, one of the consequences of the COVID-19 pandemic has been budget concerns and potential shortfalls. Without dismissing the challenge that presents you as an election board, we urge you to remember that access to the franchise is both the central service offered by counties and mandated by state and federal law. If counties do not conduct an election that allows full and safe participation, accountability and oversight on other budgetary decisions will be impeded. We know that the county boards of elections do not set budgets, but your county commission is obligated to fully fund your efforts to conduct an election compliant with all federal and state constitutional and statutory demands. *See* N.C.G.S. § 163-37 (requiring the county commission to “appropriate reasonable and adequate funds necessary for the legal functions of the county board of elections, including reasonable and just compensation of the director of elections”); *see also*, NC SBOE Numbered Memorandum 2016-06; *Graham County Board of Elections v. Graham County Board of Commissioners*, 212 N.C. App. 313, 712 S.E.2d 372 (N.C. App. June 7, 2011) (holding that the grant of authority to the county commission on budget issues is limited by more specific statutory delegations of authority to the county board of elections). If the county commission provides inadequate funding, they are in violation of state law and can be forced to make the necessary appropriations. And, while the county board of elections can go back to the county commission with further evidence of financial shortfalls in conducting elections and request further appropriations, *see* N.C.G.S. § 159-15, the burden of doing so while conducting an election during a

pandemic is significant. To the extent the Board of Elections is predicting near-certain costs now, the county commission should make appropriations to address those needs rather than burden the Board of Elections later.

As of June 8, 2020, the Durham County Board of Commissioners proposed an approximate 11.5% cut to the Durham County Board of Elections (“BOE”) FY 2020-2021 Budget, citing less need for elections funding due to there being fewer elections than in FY 2019-2020.¹ We understand that a budget similar to the proposed budget was adopted by the County Board of Commissioners that evening, but is not currently available on the Board of Commissioners’ website. Given the fact that epidemiologists are predicting that there will be a second outbreak of COVID-19 in the fall, steps must be taken now to avoid the shortages in polling place supplies and adequate printing costs—otherwise, the County could be responsible for the massive disenfranchisement of many potential voters. As stated above, Executive Director Karen Brinson Bell is already predicting a 10-fold increase in the number of absentee voters this year, so there is going to be a dire need for printed absentee request forms and ballots this year. The Board and County Commissioners must be careful to ensure that voters will be able to adequately vote by mail and in-person and the County Commissioners must provide the necessary and adequate resources to ensure that this occurs.

We strongly urge that, notwithstanding the additional cost, the county treat the 13 sites offered during the 2016 election as the baseline number of sites that should be offered this election. We recognize that this may require going back to the Durham County Board of County Commissioners to readdress the proposed budget for this election; but, please keep in mind that we believe the North Carolina State Board of Elections has the authority to force you to offer additional voting sites and hours if there is no unanimous plan and the plans under consideration by the county board offer too few voting opportunities in ways that may, for instance, disproportionately disadvantage voters of color. The more prudent course of action is to plan on offering a fulsome early voting plan now, and not be forced to scramble last minute to cover costs if the State Board requires you to offer more hours or sites. Additionally, we also strongly urge you to request a calendar of events for early voting sites to ensure you are able to prepare for any overlapping events, and specifically to mitigate any potential impact those events may have on voter turnout.

However, we do recognize that budgetary concerns may still come into play. With that in mind, we think there are several priorities this Board should embrace in the development of an early voting plan for the November 2020 election, particularly as public health, financial, and litigation situations become more clear.

1. Prioritizing Highly Used Sites with Near High Concentrations of Voters

While we do think it is possible to maintain 13 sites in 2020, if it turns out that is not feasible, we ask that this Board take both a data-driven and community-informed process by which it decides what sites to open. Attached as **Exhibit A** is a chart reflecting voter utilization of the 13 early voting sites in the 2016 general election. While of course some sites available in 2016 may no longer be available, either due to COVID-19 or other extenuating circumstances, the popularity of certain sites, and their geographic location, is still informative. Likewise, appended as **Exhibit B** is a chart with the number of voters per the 6 sites offered in the 2018 midterm election. The 6 sites is fewer sites than we recommend offering, and even an increase from 6 sites to 10 sites, as contemplated in the Board’s June 11, 2020 meeting, may not be sufficient given the expected turnout and COVID-19 concerns during this presidential election year.

Based on sheer usage alone, it is clear that the Board must certainly continue to offer the South Regional Library, North Regional Library, the East Regional Library, and at least one site in the southwest part of the

¹ <https://www.dconc.gov/home/showdocument?id=32052> at pp. 54-55

county, ideally Eno River Unitarian Universalist Fellowship, as satellite early voting sites. But the usage numbers ought to be further informed by community perspectives. We believe it is critical to maintain a site on both the campuses of North Carolina Central University and Duke University, as we believe these sites serve young voters that may lack transportation and would otherwise not vote but for the easy access to these nearby sites. We thus recommend their usage in 2020. It is important that as you develop an early voting plan for November, you listen to the advocates whose job it is to reach those voters and make sure they can get out to vote, and incorporate those advocates' knowledge into the decision-making process.

Finally, looking at the geographic dispersal of the Durham County early voting sites in 2016 (**Exhibit C**) and 2018 (**Exhibit D**), when compared to the precincts with the highest number of voters in 2016 (**Exhibit E**) and 2018 (**Exhibit F**), Durham Black Voters by Precinct in 2016 (**Exhibit G**) and 2018 (**Exhibit H**), and Durham LatinX Voters by Precinct in 2016 (**Exhibit I**) and 2018 (**Exhibit J**), it is clear that voters are concentrated around the city of Durham, and that early voting sites should be distributed accordingly.

While ensuring geographic dispersal of sites across the county is something that a county might prioritize when funding is not as dire an issue as it may be for this election, we urge you to focus on serving the greatest number of voters possible given the resources you may have.

2. Prioritizing Days that Durham County Voters Have Shown to Prefer and that Have Black/LatinX Voter Usage

Secondly, we also strongly recommend that you prioritize offering fulsome voting hours on days that are both highly utilized by voters in the county overall and that Black and LatinX voters disproportionately use. This does two things: (1) ensures that the county is not wasting money and is operating early voting sites in a manner likely to reduce lines and wait times on Election Day, and (2) minimizes any burden on Black or LatinX voters that might give rise to claims under the Voting Rights Act.

The below chart shows the number of voters by day of early voting during the 2016 general election. While number of voters is but one metric, and should not be focused on in isolation, it is clear that the first few days and last few days of early voting, particularly the final Saturday, are popular days, and we encourage you to maximize the hours of early voting available on each of these days. It is important to note that the more early voting sites there are, the less time people have to stand in line potentially exposing themselves to COVID-19.

Day	Th Oct 20	F Oct 21	Sa Oct 22	Su Oct 23	M Oct 24	T Oct 25	W Oct 26	Th Oct 27	F Oct 28	Sa Oct 29	Su Oct 30	M Oct 31	T Nov 1	W Nov 2	Th Nov 3	F Nov 4	Sa Nov 5
Total Voters	7791	7724	6496	3729	7615	7287	6584	9060	7863	5666	3577	5891	7122	7455	8455	10788	6780
% Black Voters	40.8	34.0	37.4	37.5	39.8	36.6	35.2	39.6	36.5	35.9	35.6	38.3	36.5	35.6	35.8	36.9	43.5
% LatinX Voters	2.3	2.3	2.7	2.9	2.1	2.0	3.7	2.7	2.8	3.5	3.6	2.6	3.2	2.9	3.2	4.0	3.8

Additionally, the above chart demonstrates that Black and LatinX voters utilized early voting throughout the entire period, and that weekend voting usage amongst Black and LatinX voters was higher than a number of the days of weekday voting. This indicates to us that preserving robust early voting hours and weekend hours (and, indeed, expanding them) should be a priority for the county and that a decrease in early voting overall hours would disproportionately harm voters of color.

If you have any questions as you consider early voting plans (for the first time or revising them in light of litigation), or should you be unable to agree on an unanimous plan, please do not hesitate to reach out to us. Our goal is to ensure that the one-stop early voting plan adopted by or ordered into effect for Durham County is one that ensures that voters are able to safely access their fundamental right to vote notwithstanding the current public health crisis.

Sincerely,

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