



SOUTHERN COALITION for SOCIAL JUSTICE

VIA E-MAIL

June 25, 2020

Grey Flynn, Chair, Wake County Board of Elections
Keith Weatherly, Secretary of the Wake County Board of Elections
Erica Porter, Member of the Wake County Board of Elections
Gerry Cohen, Member of the Wake County Board of Elections
Angela Hawkins, Member of the Wake County Board of Elections

cc: Gary Sims, Director of the Wake County Board of Elections

Recommendations for 2020 Early Voting Plan

Dear Members of the Wake 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 Wake County and in anticipation of the challenges introduced by the ongoing public health crisis, we recommend for the upcoming general election that the Wake County Board of Elections (“Board”) (i) increase the number of early voting sites to a minimum of 21 early voting sites, one more than the list of potential early voting sites proposed by the Board in its preliminary search for early voting sites, (ii) ensure that the Herbert C. Young Community Center, the Apex, Community Center, and the Lake Lynn Community Center are used as early voting sites, (iii) ensure that there is an adequate community-driven replacement early voting site for the Chavis Community Center (like the Shaw University Gym) since it is a popular site that is now under construction; (iv) increase weekend voting hours to accommodate the large numbers of voters who utilize weekend voting.

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 in general, 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. But, the number of early voting sites in Wake County, actually increased from 9 in 2014 to 10 in 2018, which is a rarity. In the litigation described above, our goal is to avoid any reduction due to 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. Thus, to the extent possible, as many early voting sites as possible should be open.

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 before 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 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.

The proposed FY 2021 Budget for the Board is \$7,852,497, which represents an almost \$500,000 decrease from the Board's FY 2020 Budget of \$8,347,875 and includes reductions in the budgeted expenditures for supplies and materials.¹ 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. Additionally, as discussed above the Board and Wake County Commissioners have an obligation 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, that 21 early voting sites be considered the baseline for the November 2020 election. We recognize that this may require going back to the Wake County Board of County Commissioners to readdress the budget for this election: 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.

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.

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

It will be very important that the Board is completely funded such that it may offer voters at a minimum, 21 early voting sites, one more early voting site than was offered in 2016. We ask that the Board take efforts to secure as much funding as possible to continue operating as many early voting sites as possible. Additionally, we request that the Board undertake both a data-driven and community-informed process in deciding which sites to open or to remain open if necessary. Attached, in Exhibit A, is a chart that details the sites utilized in the 2016 general election, and in Exhibit B, a chart that details the early voting sites in 2018. While of course some sites available in 2016 or other previous elections may no longer be available, either due to COVID-19 or other extenuating circumstances, the popularity of certain sites is still informative.

Based on sheer usage alone in 2016, it is clear that the Board must certainly continue to offer the Herbert C. Young Community Center, the Apex Community Center, and the Lake Lynn Community Center as early voting sites. But the usage numbers ought to be further informed by community perspectives. For example, the

¹ Recommended Operating Budget and Capital Improvement Program;
<http://www.wakegov.com/budget/fy21/Documents/Recommended%20Budget%20Book.pdf>

Chavis Community Center is a high-usage early voting site, but since it is under construction and not available (as noted in the Board’s list of potential early voting sites), any site that replaces this site should be adequately disseminated to voters who may be accustomed to voting there. Additionally, any replacement site should be in the same area as the Chavis Community Center since it has been a popular site in the past, potentially the Shaw University Gym which—based on community input—would more adequately serve voters than other potential sites in the same area. However, the Shaw University Gym is not a part of the Board’s list of potential sites, thus, SCSJ will be advocating for its usage based on the community’s input. Further, based on community input, we support the use of the Wake Tech North Campus which is listed as a possible early voting site.

Finally, looking at the attached geographic dispersal of the Wake 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), Wake Black Voters by Precinct in 2016 (Exhibit G) and 2018 (Exhibit H) and Wake LatinX Voters by Precinct in 2016 (Exhibit I), and 2018 (Exhibit J), it is important to have the early voting sites located in the same general areas in which they were located, in 2016. Having the early voting sites in the same general areas as 2016 will help to allow as many voters as possible to cast their ballot. We note however, that it will be particularly important to protect early voting sites on the outskirts of Wake County in towns such as Zebulon, Wendell, Fuquay-Varina, and Wake Forest.

2. Prioritizing Days that Wake County Voters Have Shown to Prefer and that Have Black 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 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 voters that might give rise to claims under the Voting Rights Act.

The below table in part details the total number of voters in Wake County during the 2016 election. Viewing the table, we would like to stress how important it is to utilize weekend voting in Wake County, so much, that additional hours at weekend polling places would be helpful in making sure that the number of voters per hour in one polling place is not so high that social distancing cannot occur. Any decrease in early voting sites will have a large impact on people’s ability to vote, and will lead to more voters per hour which could mean violating social distancing guidelines and increasing voters’ chances of contracting COVID-19. Thus, the Board should strive to have as many early voting sites open as possible, especially given the large number of Wake County voters. Additionally, the table also notes the percentage of Black voters during each day of early voting during the 2016 election. This data shows that Black voters consistently voted during each day of early voting and also voted at high percentages during the weekend. Thus, keeping as many early voting sites open as possible during the week and specifically during the weekend is of paramount importance. The high percentage of Black voting on the weekend is further reason for increasing hours for weekend early voting.

| 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 | 12289 | 12527 | 7569 | 5971 | 13468 | 12572 | 12666 | 24454 | 24597 | 13380 | 10856 | 23733 | 24708 | 26258 | 27101 | 31850 | 19076 |
| % Black Voters | 27.9 | 25.6 | 29.6 | 29.7 | 26.6 | 23.7 | 22.8 | 20.6 | 20.6 | 24.0 | 24.7 | 21.1 | 18.1 | 18.5 | 18.9 | 18.9 | 28.4 |

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 a 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 Wake 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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