



VIA E-MAIL

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cc: Clifton W. Philbeck, Director of the Cleveland County Board of Elections

Recommendations for 2020 Early Voting Plan

Dear Members of the Cleveland 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 Cleveland 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 minimum 3 early voting sites as it did in 2016; (ii) ensure that the early voting sites at Bethel Baptist Church and Mt. Zion Baptist Church continue to be used, and (iii) add additional days of 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, 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 this situation.

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. We are aware that the budget for FY 2020-2021 adopted by the Cleveland County Board of Commissioners has cut the Board of Elections budget by almost \$50,000 compared to last year.¹ Without dismissing the challenge that presents you as an election board, we urge you to remember that access to the franchise is both the

¹ See Cleveland County FY 2020-2021 Approved Budget; <https://www.clevelandcounty.com/main/2020%202021.pdf>; FY 2019-2020 Budget: <https://www.clevelandcounty.com/main/19-20%20Budget%20Ordinance.pdf>.

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.

We strongly urge that, notwithstanding the additional cost, the county treat the 3 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 Cleveland 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. 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.

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, 3 early voting sites. 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 usage for each early voting site utilized in the 2016 general election, and in **(Exhibit B)**, a chart that details the early voting site usage 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 Bethel Baptist Church and Mt. Zion Baptist Church. But the usage numbers ought to be further informed by community perspectives. 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. For example, based on Democracy North Carolina's deep organizing roots in this county and thus highly informed perspective, we also believe that these two sites have been valuable early voting sites for Black voters as the percentage of Black voters that utilized these sites illuminates their importance. *See* Cleveland County Black Early Voters by Precinct in 2016 (**Exhibit C**) and 2018 (**Exhibit D**).

Finally, looking at the attached geographic dispersal of the Cleveland County early voting sites in 2016 (**Exhibit E**) and 2018 (**Exhibit F**), when compared to the precincts with the highest number of early voters in 2016 (**Exhibit G**) and 2018 (**Exhibit H**), it is important to have the early voting sites located in the southern part of the county where a majority of the population lives, similar to where they were located in 2016. 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 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 Cleveland 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 details the total number of voters in Cleveland County during the 2016 election, and the percentage of Black voters during each day of early voting. Analyzing this table shows that there was a consistent stream of voting across all days of early voting in Cleveland County. Thus, ensuring that as many polls as possible are open during early voting is important. The Board should also consider adding an extra Saturday of early voting or offer early voting on a Sunday during the early voting period. Increasing the overall number of days on which early voting hours are offered will decrease the possibility of long lines and crowded polls, which can otherwise lead to prolonged potential exposure to COVID-19.

| Day | Th Oct 20 | Fri Oct 21 | Sat Oct 22 | Sun Oct 23 | Mo Oct 24 | Tu Oct 25 | W Oct 26 | Th Oct 27 | F Oct 28 | Sat Oct 29 | Sun Oct 30 | M Oct 31 | Tu Nov 1 | W Nov 2 | Th Nov 3 | F Nov 4 | Sa Nov 5 |
|----------------------|-----------------|------------------|------------------|------------------|-----------------|-----------------|----------------|-----------------|----------------|------------------|------------------|----------------|----------------|---------------|----------------|------------|-------------|
| Total Voters | 2008 | 1728 | na | na | 1857 | 1550 | 1340 | 3000 | 2577 | 1242 | na | 2031 | 1957 | 1756 | 2124 | 2764 | 1921 |
| % Black Voters | 32% | 30% | na | na | 32% | 30% | 29% | 24% | 19% | 20% | na | 20% | 19% | 20% | 21% | 21% | 26% |

Additionally, as the chart above demonstrates, voting usage amongst Black voters in the first six days of early voting was significantly higher than in many of the other days of early voting, suggesting that these first days of early voting are very important to Black voters in Cleveland County. Additionally, a significant percentage of Black voters utilized the last Saturday of early voting. This indicates to us that expanding weekend hours, including the first weekend of early voting, should be a priority for the county and that a decrease in weekend 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 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 Cleveland 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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