

# EXHIBIT 1

April 28, 2020

To: Pender County Board of Elections  
Russell Fawcett, Chair  
L. Bryan Smith, Secretary  
Barbara Melluso, Member  
Collin Smith, Member  
Jeffery R. Trout, Member  
CC: Susan Williams, Director

Re: Accessibility and Transparency during COVID-19

I am writing on behalf of Democracy North Carolina to urge the Pender County Board of Elections to ensure that its upcoming meetings, including those held virtually, are accessible to members of the public who wish to attend. We recognize that government entities, including county boards, will need to address public health concerns and also comply with the recent gubernatorial executive order prohibiting non-essential movement.<sup>1</sup> But we also know that your mission to oversee a free and fair election means that your work will continue, and so we ask that you do so in a manner that allows the public to access and participate in the Board's activities, including meetings and canvasses.

We recommend that you institute video or telephonic participation for County Board of Elections activities. Counties will continue essential election administration work, including the development of General Election Early Voting plans, in the coming weeks—these functions regularly generate public interest, and we see opportunities to allow remote public participation in this activity and other upcoming county elections-related meetings.

Per North Carolina statute, County Boards of Elections are subject to open meetings requirements, including: public right of access to open meetings, notice, and minutes (general accounts). In order to remain compliant with North Carolina law, we recommend that your county provide voters with each of the following:

- (1) Advance notice to the public on how to join open meetings (whether via telephone and/or video);
- (2) Recording of all open meetings, available on your website, or, alternatively, upon request; and
- (3) Minutes recorded and published on the county website in a timely manner.

We believe this expanded remote access to public meetings will be necessary for continued meaningful public participation, even after state, county, and local stay-home orders are lifted. We anticipate that the public's interest in Board activities will continue throughout the year, but also that citizens may be hesitant to attend public meetings for some time after the current crisis abates.

We appreciate the challenges facing elections officials in this time and the work you are taking on to both administer our elections effectively and ensure public access to key elements of that process. Please do not hesitate to reach out to us if you would like to discuss these recommendations.

Alissa Ellis  
Advocacy Director  
Democracy North Carolina

<sup>1</sup> Executive Order No. 121: <https://files.nc.gov/governor/documents/files/EO121-Stay-at-Home-Order-3.pdf>

## EXHIBIT 2

----- Forwarded message -----  
From: **Carol Soles** <clssoles@cabarruscounty.us>  
Date: Mon, Jun 29, 2020 at 3:12 PM  
Subject: Cabarrus County Board meeting  
To: gino@democracync.org <gino@democracync.org>

Our meeting is scheduled for Monday, July 6 at 12:30. It will be a Teams meeting. If you would like to participate just send me an e-mail and I will send you an invitation.

**Carol Link Soles**

Cabarrus County Director of Elections

*Board of Elections*

**Cabarrus County**

**369 Church St. N., Concord, NC 28025**

P.O. Box 1315, Concord, NC 28026-1315

O: 704-920-2860

F: 704-920-2831

[www.cabarruscounty.us](http://www.cabarruscounty.us)



E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

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Gino Nuzzolillo | *he/him/his*  
Summer Research Fellow | Democracy North Carolina | *of, by, for the people*  
3000 Aerial Center Parkway, Suite 160, Morrisville, NC 27560  
(o) 919-286-6000 | (e) [info@democracync.org](mailto:info@democracync.org)

Mon, Jun 29, 2020 at 3:48 PM

Gino Nuzzolillo <gino@democracync.org>  
To: Carol Soles <clssoles@cabarruscounty.us>  
Cc: Caroline Fry <caroline@democracync.org>, Taylor Moss <taylor@democracync.org>

Ms. Soles,

Apologies for bothering you again — is there any way that the Teams meeting information could be shared online as well, on your website? There are a few folks in the County that we'd love to share this information with, and it might be easiest for us to share your website! Please let us know if this would be possible.

Thanks,

Gino

On Mon, Jun 29, 2020 at 3:15 PM Gino Nuzzolillo <gino@democracync.org> wrote:

Hello Ms. Soles,

Thank you for your response! I'd love to receive an invitation, if possible. Thank you so much for your assistance!

Best,

Gino

On Mon, Jun 29, 2020 at 3:12 PM Carol Soles <clssoles@cabarruscounty.us> wrote:

Our meeting is scheduled for Monday, July 6 at 12:30. It will be a Teams meeting. If you would like to participate just send me an e-mail and I will send you an invitation.

**Carol Link Soles**

Cabarrus County Director of Elections

*Board of Elections*

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[Quoted text hidden]

# EXHIBIT 3

**JOSH STEIN**  
**ATTORNEY GENERAL**



**SHANNON CASSELL**  
**SPECIAL COUNSEL**  
**(919) 716-6425**

March 26, 2020

Greg McLeod  
Deputy General Counsel, Office of the Governor  
20301 Mail Service Center  
Raleigh, NC 27699-0301

RE: Advisory Letter Regarding the Ability for Local Public Bodies to Conduct Open Meetings Electronically

Dear Greg,

I write with regards to the request from your office for us to weigh in on the issue of whether local governing boards can carry out their meetings electronically and remain in compliance with Open Meeting Laws. This question comes on the heels of federal and state executive orders directed at preventing the spread of COVID-19 by significantly limiting – if not prohibiting – the ability to gather in person, yet governing must continue at all levels of state and local government.

**QUESTION PRESENTED:**

Can local governments carry out their necessary meetings via electronic means during these exigent circumstances?

**BRIEF ANSWER:**

Yes, because electronic meetings are allowed under N.C.G.S. §143.318.13, and the requirements of notice, access and minutes can be met through electronic means. Due to the unprecedented circumstances we are all faced with, and the fact that local governing bodies conducting meetings remotely is not expressly prohibited by statute, I conclude that local governments can carry out necessary meetings electronically and remain in compliance with Open Meetings Laws.

**DISCUSSION:**

At the outset, it is significant to note that the Public Policy behind the Open Meetings Laws is to ensure the hearing, deliberations, and actions of the public bodies “conduct[ing] the people’s business” be conducted openly. N.C.G.S. §143.318-9.

Generally speaking, a public body may hold an official meeting (defined in N.C.G.S. § 143-318.10(d)) by use of electronic means. N.C.G.S. §143-318.13. In that case, it shall provide a location and means whereby members of the public may listen to the meeting, the location of which should be specified in

the notice. *Id.* A fee of up to \$25 may be charged to each listener to defray the cost of providing the necessary cost and equipment. *Id.*

As with all meetings being made available to the public, public bodies should still comply with statutory requirements of notice, access and minutes.

1. Notice – The public body must provide notice of an official meeting. N.C.G.S. §143-318.12. Most meetings require 48-hours' notice and that should be met if at all possible. N.C.G.S. §143-318.12(b)(2). Emergency meetings may be called on short notice, but notice should still be provided. N.C.G.S. §143-318.12(b)(3).
2. Access – With few exceptions, an official meeting of a public body shall be open to the public. N.C.G.S. §143-318.10. Access should be reasonable. The Governor can, and has, limited the number of people that can physically attend a gathering. That limitation must be respected. This means the public must be given reasonable means of listening/participating in the meeting.
3. Minutes – Minutes are required and should be respected even when conducting the meeting electronically. N.C.G.S. §143-318.10(e). These may be in the form of sound or video and sound recordings. *Id.*

When public bodies are attempting to comply with statutes requiring a physical quorum, it is best that the physical quorum be met if at all possible. As of today, that would need to be no more than ten people in the meeting. Minutes should specifically record the person(s) that is not able to be physically present as not recusing himself or herself, but rather choosing to participate electronically. As discussed herein, if it is not possible for a quorum to be physically present, I believe it is reasonable for the governing body to meet electronically.

When meetings of public bodies are not necessary for immediate ongoing governance, I would encourage postponing that meeting until a future time when the meeting can occur in-person.

I realize this does not address all of the various statutory provisions that could be implicated, and that is not the intent of this letter. I have provided citations when available, but have also canvassed available information. All weighing in on this topic are in agreement: whatever is not explicitly addressed in the statutes should be met with reasonableness to allow transparency into the local governing process. That is to say that local governments must continue to run, people have been ordered to not convene in groups larger than ten, and reasonableness must prevail in a time like this. Again, these are unprecedented times and I feel confident a court will view efforts to remain transparent through a lens of reasonableness, which can be met through electronic meetings.

This is an advisory letter and has not been reviewed and approved in accordance with the procedures for issuing an Advisory Opinion of the Attorney General. Please let me know if I can be of further assistance.

Sincerely,

s// Shannon Cassell  
Special Counsel

cc: Alec Peters, Chief Deputy Attorney General  
Blake Thomas, Deputy General Counsel

# EXHIBIT 4





June 16, 2020

**VIA EMAIL**

Karen Brinson Bell  
Executive Director  
North Carolina State Board of Elections  
430 North Salisbury Street  
Raleigh, NC 27603

**Re: Issuing guidance to counties on Early Voting planning for the 2020 General Election**

We are writing today to offer our recommendations for how the North Carolina State Board of Elections (NCSBE) can offer guidance to counties as they begin the process of developing their Early Voting plans for the 2020 General Election. Due to the covid-19 pandemic, counties will face new challenges when developing their Early Voting Plans. It is imperative that the State Board act quickly to disseminate essential information. Below are our recommendations for how the State Board of Elections can assist counties in facing these challenges:

**Recommendation 1: Circulate deadlines to counties regarding the timeline for planning and submitting Early Voting plans via a numbered memo.**

In conversations with County Board of Elections members and staff, it is clear that there is considerable confusion regarding the deadline for when county Early Voting plans must be submitted to the State Board of Elections for approval. County board members have stated that they are unsure about the deadline for Early Voting plan submission and thus are unable to give the public appropriate information regarding when and how they can participate in the Early Voting planning process. We recommend that the State Board of Elections make these deadlines clear to counties no later than June 22, 2020 via numbered memo so that they have time to adequately prepare and involve the public in this process.

**Recommendation 2: Require each County Board of Election meeting to be remotely available to the public in accordance with state law.**

Per North Carolina statute, County Boards of Elections are subject to open meetings law.<sup>1</sup> This includes the public right to access all meetings. While many counties are offering ways for the public to remotely participate in these meetings, others are only offering in-person options.

<sup>1</sup> See N.C. Article 33C.



North Carolina is currently experiencing the largest increase in covid-19 cases to date. At present, North Carolina is in Safer At Home Phase 2, which prohibits gatherings of more than 10 people.<sup>2</sup> In order to prohibit the spread of covid-19 and abide by the Governor’s restrictions on gatherings, we recommend that the state require all counties to offer the ability for the public to participate remotely (via phone) for all remaining meetings in 2020.

This requirement must include: (1) A method for sufficient advance notice of manner to join the meeting (whether via phone and/or video); (2) Guidelines for how the public can participate to provide comment in the meeting; (3) Recording of all open meetings, available on your website, or, alternatively, upon request; and (4) Minutes recorded and published on the county website in a timely manner. Expanded remote access to public meetings is necessary for continued meaningful public participation in the Early Voting process.

**Recommendation 3: Submit updated, covid-19 specific guidelines for Early Voting site selection.**

The NCSBE’s initial guidance and report on their efforts for the 11th Congressional District Primary is a great starting point. However, many voters who arrive at Early Voting sites this October will have concerns about how they can cast their ballot while staying safe, adhering to social distancing guidelines, and protecting themselves from sharing high-contact materials.

The State Board of Elections should provide guidance to counties regarding how their Early Voting sites can operate to keep poll workers and voters safe. This includes offering numerous early voting sites with hours that limit the amount of voters in the site at one time. Early Voting sites must be large enough to account for social distancing and have adequate ventilation. Additionally, the state must remind counties that curbside voting will be required at each Early Voting site and that Early Voting locations should be vetted with this in mind. This is especially important given the likelihood that there will be a high volume of voters who utilize curbside voting this year.

**Recommendation 4: Provide guidance to county boards of elections on ensuring the optimal preparation for Early Voting, including adequate financial support and resources via numbered memo.**

We understand that the imposition of the uniform-hours requirement has made it more difficult for county boards to craft an early voting plan that best serves the geographic and demographic needs of their counties.

<sup>2</sup> Executive Order No. 121: <https://files.nc.gov/governor/documents/files/EO121-Stay-at-Home-Order-3.pdf>



We also understand that maintaining sites when all sites have to be open the same days and hours can have a significant budgetary impact at the county level. For example, Alamance County had to reduce its number of early voting sites from 4 in 2014 to 3 in 2018.

That being said, even with the current unnecessary restrictions, we believe that it still remains the NCSBE’s duty to ensure that all counties maintain easy access to one-stop early voting sites and times. 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 many counties across the state, but the cost of a fair and accessible democracy can never be too high.

One of the consequences of the COVID-19 pandemic has been new budget concerns and potential shortfalls for many counties. It is essential that you issue guidance outlining the following information:

- 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;
- Remind counties that their county commission is obligated to fully fund your efforts to conduct an election compliant with all federal and state constitutional and statutory demands;<sup>3</sup>
- If the county commission provides inadequate funding, they are in violation of state law and can be forced to make the necessary appropriations; and,
- Moreover, the county board of elections can always go back to the county commission with further evidence of financial shortfalls in conducting elections and request further appropriations.<sup>4</sup>

It is clear that we are facing a multitude of new challenges for the upcoming 2020 General Election, and we are thankful for your work to ensure that our elections are safe, secure, and accessible to all North Carolinians.

<sup>3</sup> 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, NCSBE Numbered Memorandum 2016-06; *Graham County Board of Elections v. Graham County Board of Commissioners*, — S.E.2d —, 2011 WL 2207576 (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).

<sup>4</sup> See § N.C.G.S. 159-15.



It is imperative that each county board of elections understands their responsibility to the voters they serve, and that they work quickly to ensure that their elections are fully funded to ensure the broadest possible access to the ballot.

Sincerely,

Alissa Ellis  
Advocacy Director  
Democracy NC

Allison Riggs  
Executive Director  
Southern Coalition for Social Justice

# EXHIBIT 5



Gino Nuzzolillo <[gino@democracync.org](mailto:gino@democracync.org)>

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## Columbus County Early Voting Plan, Fall 2020

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**Gino Nuzzolillo** <[gino@democracync.org](mailto:gino@democracync.org)>  
To: [Columbus.BOE@columbusco.org](mailto:Columbus.BOE@columbusco.org)  
Cc: [Caroline Fry <caroline@democracync.org>](mailto:Caroline Fry <caroline@democracync.org>)

Thu, Jul 9, 2020 at 11:53 AM

Hello!

My name is Gino Nuzzolillo, and I am a research fellow at Democracy North Carolina. I called your office yesterday regarding the County's early voting plans for the 2020 general elections. Given that the Board of Elections met this week, we were hoping to learn whether the Board had voted on Early Voting plans, and if that vote was unanimous or if it was being sent to the State Board. Any information you can share would be greatly appreciated! I will also try to call again this afternoon.

All the best,

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Gino Nuzzolillo | *he/him/his*  
Summer Research Fellow | Democracy North Carolina | *of, by, for the people*  
3000 Aerial Center Parkway, Suite 160, Morrisville, NC 27560  
(o) 919-286-6000 | (e) [info@democracync.org](mailto:info@democracync.org)



Gino Nuzzolillo <gino@democracync.org>

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## Columbus County Early Voting Plan, Fall 2020

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**Carla Strickland** <cstrickland@columbusco.org>  
To: Gino Nuzzolillo <gino@democracync.org>

Thu, Jul 9, 2020 at 3:39 PM

When our Board has decided on the one-stop implementation plan we will let you know.

[Quoted text hidden]