



July 13, 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 County Boards Regarding Remote Meeting Attendance Options

Dear Executive Director Bell –

We write to request that you issue formal guidance—preferably in the form of a numbered memo—to all County Boards of Election (“County Boards”) directing them to offer a remote option for all meetings, along with adequate prior notice and opportunities for residents of the county to participate and/or comment. This request is urgent. We understand that because one-stop early voting plans (“Early Voting Plans”) are, as of now, due to the N.C. State Board of Elections (“NCSBE”) at the end of July,¹ many County Boards have already held or are set to hold meetings soon to consider Early Voting Plans for the 2020 General Election.

Problematically, many County Boards are not offering a remote option for members of the public who wish to participate. And even when County Boards are offering a remote option, many have either failed to (1) give sufficient prior notice of the option, or (2) provide opportunities for attendees to participate or comment.

These shortcomings at the very least present poor governance practices, which we know the NCSBE does not endorse, or in some of the more troubling cases, violate N.C. Open Meetings Law. Governor Cooper’s Phase 2 “Safer at Home” restrictions remain in effect until at least July 17, 2020, prohibiting indoor gatherings of more than 10 people.² North Carolina

¹ NC SBOE Numbered Memorandum 2020-13

² [Executive Order 147](#), extending restrictions in [Executive Order 141](#).

continues to report record highs of confirmed cases and hospitalizations.³ In light of these circumstances, county residents may not be able to safely attend public meetings in person, including County Board meetings. And given these circumstances, the County Boards have not fulfilled their obligation to provide reasonable accommodations for public participation in the Early Voting Plan process; nor have they implemented sensible measures to protect citizens who want to provide Early Voting Plan input from placing their health at risk in order to petition their government, as is their right.

We sympathize with the challenge County Boards face in administering an election during a pandemic – this task is Herculean, to be certain. But this extraordinary time only magnifies the need for County Boards to hear from their citizens. Aside from Open Meeting Law compliance – which is paramount – County Boards can only successfully balance public health concerns against budget and other administrative limitations if they receive feedback from concerned citizens.

Given that public health officials predict a second wave of the pandemic in the fall, these challenges will endure after Early Voting Plan meetings. Detailed guidance in a numbered memo will give County Boards the clarity they need to satisfy their legal obligations while also navigating the ongoing public health crisis.

A. Recommendations for Guidance in Numbered Memo

1. County Boards must offer a remote option for all citizens who wish to participate in open meetings.
2. Encourage County Boards to utilize Microsoft Teams for the remote meeting option, or, if this is not feasible, a telephone conference number.
3. County Boards must provide notice on their respective websites at least 48 hours before an open meeting of (1) meeting dates and times, and (2) details on how the public can attend and participate remotely.
4. County Boards must offer citizens an opportunity to participate and/or comment if attending an open meeting remotely.
5. County Boards must record all open meetings, whether via a video or audio recording.
6. County Boards must provide public access to recordings and meeting minutes on their respective websites in a timely manner.
7. Any County Boards that have held Early Voting Plan meetings without meeting the requirements of 1-6 above must hold meetings to reconsider their Early Voting Plans in accordance with requirements 1-6 above.

B. County Board Meeting Deficiencies

Recognizing that it would be critical to offer a remote option for impending Early Voting Plan meetings, Democracy North Carolina began communicating with County Boards in the spring. On April 28, 2020, Democracy North Carolina sent a letter to more than 40 County

³ <https://www.newsobserver.com/news/coronavirus/article244046887.html>

Boards, urging them to provide for video or telephonic participation in open meetings. *See Exhibit 1*, April 28, 2020 Ltr. from A. Ellis to Pender County Board of Elections. Through calls and emails, Democracy North Carolina staff, interns, and volunteers have likewise requested remote attendance options and gathered information regarding Early Voting Plan meetings from other County Boards.

These efforts uncovered three categories of County Board shortfalls: (1) failing to offer a remote option to attend meetings; (2) if offering a remote option, failing to provide adequate notice of how the public can attend remotely; or (3) if offering a remote option, failing to provide the ability to participate and/or comment for those attending remotely.

Category 1: Democracy North Carolina has confirmed by phone that the following County Boards have not offered or will not be offering a remote option for Early Voting Plan meetings:

Anson
Beaufort
Camden
Catawba
Cherokee
Currituck
Davidson
Harnett
Henderson
Hertford
Nash
Pamlico
Robeson
Rockingham
Sampson
Union
Vance
Washington
Wilson

The Richmond and Watauga County Boards have not yet determined whether they will offer a remote attendance option.

A Democracy North Carolina volunteer experienced firsthand the serious public health risks that can arise just by virtue of attempting to participate in County Board meetings in-person during the COVID-19 pandemic. At a recent Pamlico County Board meeting (a meeting with no remote attendance option), the volunteer attended in-person and observed that two of the Board members were not wearing face coverings during the meeting. Citizens should not be forced to choose between their right to advocate for voting access and their health.

Category 2: Many County Boards have not provided sufficient notice regarding remote attendance. For example, while offering remote options, the Bertie, Cabarrus, Columbus, and Pasquotank County Boards have not publicized or circulated information access information.

The lack of proper notice is both practically and legally problematic. The Cabarrus County Board did not provide notice of how the public could remotely access its Early Voting Plan meeting; those wanting to participate instead had to contact the Board directly to receive an access link. **Exhibit 2**, June 29, 2020 G. Nuzzolillo & C. Soles Email String.

Similarly, the Bertie County Board did not publicize how constituents could access the remote attendance option for its July 7, 2020 Early Voting Plan meeting. By contacting the Board directly, a Democracy North Carolina volunteer was able to determine how to attend remotely and did so. But due to of the lack of notice, there were only 10 attendees – five Bertie County Board staff members and five citizens (four of whom were the Democracy North Carolina volunteer and three others that the volunteer informed directly).

County Boards should not be holding such crucial discussions without proper notice to the public. This scarce attendance can only be the direct result of the pandemic’s prohibitive effects on in-person attendance and the County Boards’ failure to inform the public on how to attend remotely.

Category 3: For the County Boards offering remote options that are providing adequate access notice, some are not allowing remote participants to participate and/or comment, instead limiting this right to those that attend in-person. The Guilford County Board, for example, has provided access information to attend by video or telephone, but these options are “watch and/or listen” only.

Opportunities for public participation should be meaningful and conducted in a manner to allow the County Boards to consider public opinion prior to acting on certain issues; otherwise, inviting public comment is arbitrary and ineffectual. During the July 7, 2020 Bertie County Board meeting discussed above, the Board did allow for public comments on Early Voting Plan options, but only after the Board had already voted and passed its Early Voting Plan. By passing an Early Voting Plan without first hearing public opinion, the Bertie County Board acted in a vacuum and in violation of the N.C. Open Meeting Law.

The Columbus County Board’s shortcomings fall in all three categories. On July 8, 2020, Democracy North Carolina phoned the Columbus County Board to inquire about the status of its

Early Voting Plan. Having not received a response, Democracy North Carolina contacted the Columbus County Board by email the next day. **Exhibit 5**, July 9, 2020 Email String. The Board Chair’s response – in its entirety – was, “When our Board has decided on the one-stop implementation plan we will let you know.”

There is no information on the Columbus County Board’s website about a meeting to discuss its Early Voting Plan, much less how residents can attend (remotely or otherwise) and participate. It was only through a Democracy North Carolina volunteer’s personal connection with a Columbus County Board member that we learned the Board is set to meet to discuss the Early Voting Plan on July 13, 2020. The Columbus County Board’s complete failure to give adequate notice and an opportunity to participate flouts the N.C. Open Meetings Law and will result in an Early Voting Plan that will not reflect the legitimate health concerns county residents have about voting during a pandemic.

The need for County Boards to offer a remote attendance option with adequate notice and an opportunity to be heard has been apparent since at least March. In Numbered Memo 2020-11, you encouraged County Boards to “conduct meetings telephonically if possible” and to provide the public “access to listen to the meeting.” On March 26, 2020, the N.C. Attorney General’s Office confirmed in an advisory letter that local public bodies could conduct meetings electronically, so long as the meetings complied with the N.C. Open Meetings Law. **Exhibit 3**, March 26, 2020 Ltr. from S. Cassell to G. McLeod. And in light of the continued proliferation of COVID-19 cases in North Carolina, we wrote you on June 16, 2020, asking that you require County Boards to offer remote attendance options in compliance with the Open Meetings Law for all remaining meetings in 2020. **Exhibit 4**, June 16, 2020 Ltr. from A. Ellis & A. Riggs to K. Brinson Bell.

C. The County Boards Must Do More Under the N.C. Open Meetings Law

Despite these efforts and guidance, many County Boards have run astray of the Open Meetings Law, which exists to ensure that “the people’s business . . . be conducted openly.” N.C. Gen. Stat. § 143-318.9. Generally, “each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.” N.C. Gen. Stat. § 143-318.10(a). Our courts use a “liberal interpretation which favors full and open access” when examining the Open Meetings Law. *Garlock v. Wake Cnty. Bd. of Educ.*, 211 N.C. App. 200, 221, 712 S.E.2d 158, 173 (N.C. Ct. App. 2011).

The Open Meetings Law requires County Boards to take “reasonable measures” to provide for public access. *Id.* at 174, 712 S.E.2d at 223. Such “reasonable measures” must ensure that (1) “[County Boards] receive public input regarding the substance of the [County Boards’] actions;” (2) “the public has the opportunity to have knowledge and understanding of the [County Boards’] deliberations and actions;” and (3) “[County Boards] . . . act in good faith in making provision for the public’s knowledge and participation in its meetings.” *Id.*, 712 S.E.2d at 222.

County Boards must also provide adequate notice of a meeting. N.C. Gen. Stat. § 143-318.12. Generally, such notice must be given 48 hours in advance of the meeting and contain

details regarding the time and place of the meeting. N.C. Gen. Stat. § 318.12(b). For meetings conducted by telephone or other electronic means, County Boards must “provide a location and means whereby members of the public may listen to the meeting.” N.C. Gen. Stat. § 143-318.13(a).

And on May 4, 2020, Governor Cooper signed the COVID-19 Recovery Act (the “Act”), which established new requirements of public bodies conducting open meetings during an emergency declaration. The Act imposes new requirements for remote meetings, including:

- Notice: County Boards conducting remote meetings must “specify the means by which the public can access the remote meeting as that remote meeting occurs.”
- Openness: County Boards conducting remote meetings must “simultaneously” stream the audio or video feed of the meeting live online so that it is available to the public, or, if conducted by telephone, must provide the public with the opportunity to dial in or stream the audio live.

N.C. Gen. Stat. § 166A-19.24(b).

The failures we have detailed above fall far short of meeting the reasonableness standard under the Open Meetings Law. With the ongoing public health crisis and Governor Cooper’s restriction of in-person gatherings to 10 or less persons, County Boards cannot allow for reasonable opportunities for the public to attend and provide essential input on the County Boards’ work without offering a remote attendance and participation option. Likewise, without providing sufficient notice of how the public can access a remote attendance option, County Boards have denied the public the opportunity to gain crucial awareness of how County Boards will carry out an election in the midst of a pandemic.

Taking these steps will not be overly burdensome; we understand that all County Boards access to Microsoft Teams, enabling them to offer a remote attendance option, along with the capability for the public to participate and/or offer comments. This technology also allows County Boards to record meetings and make the recordings publicly available. In addition, there is little to no burden imposed on the County Boards by a requirement to provide information on their websites or other public forums regarding how to access the remote attendance and participation options.

The steps may not be burdensome, but they are imperative and pressing. Now more than ever, County Boards need to hear the concerns of citizens regarding how County Boards will ensure a free and fair 2020 General Election while also mitigating health risks due to the COVID-19 pandemic. Many County Boards are currently lacking this information due to the shortcomings we have outlined; detailed guidance in a numbered memo will help make certain that they will receive it.

Sincerely,

Alissa Ellis
Advocacy Director
Democracy North Carolina

Allison Riggs, Esq.
Executive Director
Southern Coalition for Social Justice

Bob Phillips
Executive Director
Common Cause North Carolina

David Boaz, Esq.
Counsel
Replacements, Ltd.