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October 18, 2021

VIA EMAIL

To: Attorney Whitney Parrish
County Attorney, Lee County, North Carolina

CC: Kirk D. Smith, Chair of the Lee County Board of County Commissioners
Arianna Lavalley, Vice Chair of the Lee County Board of County Commissioners
Cameron Sharpe, Member of the Lee County Board of County Commissioners
Robert T. Reives, Member of the Lee County Board of County Commissioners
Mark Lovick, Member of the Lee County Board of County Commissioners
Dr. Andre Knecht, Member of the Lee County Board of County Commissioners
Bill Carver, Member of the Lee County Board of County Commissioners

Re: Proposed Board Redistricting “Plan F”

Attorney Parrish,

We write to you today on behalf of Brenda Johnson who lives at 815 W. McIntosh Street, which is within Board District 1. We have significant concerns not only about the redistricting process utilized by the Lee County Board of County Commissioners (the “Board”) in proposing Board redistricting “Plan F”, but also that the resulting map may undermine the ability of Black voters to elect their candidate of choice. It has come to our attention that the redistricting process that the Board has undertaken has been non-transparent with respect to “Proposed Plan F” because it was presented without public comment after the Board’s only public hearing on potential Board redistricting plans. In reviewing Plan F we have concerns that if passed, Plan F will potentially violate state and/or federal law because it significantly dilutes the voting power of Black voters in District 1. The significant modification of District 1, the County’s only minority opportunity district,¹ is problematic and the Board should consider adopting a different plan. Prior to Plan F being proposed, the Board had previously narrowed the universe of proposed districting plans to Plans A and E. It is our opinion that Plan A does the best job of preserving the core of a historic and important district for Black voters, whereas Plan F does not.

Lee County, North Carolina and the Voting Rights Act of 1965

In 1989, the Lee County Chapter of the NAACP filed suit against the Board alleging that the at-large method of election then in place violated the Voting Rights Act of 1965 (“VRA”) because it did not provide Black voters with the opportunity to elect their candidates of choice in

¹ District 1 is the only district where Black voters and LatinX voters make up the majority of the population (72.7% as currently configured).

About Us: The Southern Coalition for Social Justice partners with communities of color and economically disadvantaged communities in the South to defend and advance their political, social, and economic rights through the combination of legal advocacy, research, organizing, and communications.



county commissioner elections. In response, the Board passed a resolution changing the method of election and increasing the size of the Board. *See* Exhibit 1 (1989 Lee County Resolution Altering Structure of the Board). Specifically, the Board increased the size of the board to 7 Commissioners, and changed the method of election from completely at-large to a hybrid system of 4 single-member districts and 3 at-large positions. Within this Resolution, the Board also explicitly acknowledged that it “desir[ed] to increase the opportunity for Black voters to elect candidates of their choice to the Board.” *See* Exhibit 1.

Since then, District 1 has remained the only minority opportunity district and has consistently enabled Black voters to elect their candidate of choice. Lee County was covered by Section 5 of the Voting Rights Act while this provision was enforced, and we are certain the proposed changes in Plan F would not survive preclearance by the Department of Justice were Section 5 in place. Without the protections of Section 5 of the VRA, the Board must be even more vigilant to protect Black voters in Lee County. Furthermore, efforts to undermine or eliminate the voting strength of voters of color will surely be used as evidence in support of the restoration of Section 5 of the Voting Rights Act.

Plan F Undermines the Minority Vote Without Justification

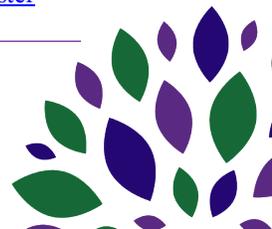
As currently comprised, District 1 is the only majority-minority district on the Board. However, Plan F significantly decreases the Black population in District 1 (-2.2%), while significantly increasing the white population (+3.8%). Additionally, Plan F decreases the LatinX population by 2.1%. In District 1, the total minority population has decreased by 3.8%, and that is a significant decrease in voting power, especially when district races for the Board have been decided by 30 votes in the past.² We also note that these numbers do not reflect the decrease in the statistical Black voting-age population in District 1, which may be more problematic than the actual loss in the total Black population.

The majority of the Black population in Lee County is comprised in District 1 (which covers most of the city of Sanford), which is currently represented by Robert T. Reives, the only Black Commissioner on the Board.³ The existence of District 1 has allowed Black voters to elect their desired candidate of choice, but Plan F seeks to dilute the power of Black voters, and as a consequence, the magnitude of their voices in the affairs of the Board and Lee County. To mitigate the effect of redistricting on Black voters in Lee County, the Board must ensure that Black voters in Lee County can continue to elect their candidates of choice. The VRA cannot be an afterthought in redrawing districts, it should be a priority, especially given the fraught racial history of Lee County that led it to come under VRA preclearance.

Compliance with Section 2 of the VRA is not optional, it is mandatory, and in order to comply, the Board must be cognizant of how its districting decisions affect Black voters and whether they are able to elect their candidate of choice to the Board. Although counties are not

² 2018 Election Results for the Lee County, North Carolina Board of Elections (11/6/2018), *available at* https://er.ncsbe.gov/?election_dt=11/06/2018&county_id=53&office=LOC&contest=0.

³ Lee County, North Carolina Commissioner Roster, <https://leecountync.gov/commissioners/commissionerroster> (last visited October 17, 2021).



beholden to the North Carolina Supreme Court's explicit ruling in *Stephenson v. Bartlett* that VRA districts must be drawn first, the spirit of *Stephenson's* VRA prioritization should permeate the Board's districting decisions.

To the extent that the Board is redrawing these districts with a partisan intent, the Board cannot avoid the racial issues described above by relying on purportedly partisan justifications for the changes in Plan F, especially where partisan manipulation or partisan gerrymandering can mask the underlying racially discriminatory intent in a proposed district map. It has been reported that members of the Board tried to draw maps that gave a partisan advantage on the Board, but you advised them not to in a September 13, 2021 memo.⁴ In North Carolina, race and political affiliation are often correlated, but as the court in *Common Cause v. Lewis* stated, “[e]lections are not free when partisan actors have tainted future elections by specifically and systematically designing the contours of the election districts for partisan purposes and a desire to preserve power.” 2019 N.C. Super. LEXIS 56, *344 (September 3, 2019). Thus, to the extent that the Board seeks to consolidate power within one party by undermining the power of the Black vote and their candidate of choice in District 1, the Board will likely run afoul of North Carolina's Free Election Clause. See N.C. Const. Art. I, § 10.

Non-Transparent Process in Proposing Plan F

The Board has developed Plan F behind closed doors in a process that lacked the transparency necessary to instill public confidence in the redistricting process and legitimacy of the district map if Plan F is adopted. Plan F was never submitted for public comment, and it was only proposed after a public hearing on two other maps (Plans A and E).⁵

It is clear that in proposing Plan F, the Board was not vigilant in protecting Black voters in Lee County. Plan F makes significant changes to District 1 and has done so with no transparency in how the map was drawn, including whether partisan data was utilized. The Board also did not publicly release the voting age population statistics that are necessary to determine how substantially the voting power of the Black community will be diminished under Plan F. Because there has been no public hearing on Plan F, there is no way to interrogate the Board members about Plan F and thus, there are limited ways to hold the Board accountable before it votes on the adoption of Plan F.

The residents of Lee County should choose their representatives in a fair and equitable way. For too long, elected officials in North Carolina have been choosing who *they* want to represent, whether on partisan or racial grounds. In creating a separate map that has not been vetted by the public, the Board has allowed transparency to take a back seat and the Board is now seeking to choose the voters it wants to represent, flipping our democratic process on its head. Plan F harms Black voters by significantly diluting their voting power within District 1. Local races are decided

⁴ Attorney Parrish Memo to Board of County Commissioners, available at <https://rantnc.com/wp-content/uploads/2021/09/Memorandum-9.13.21.2-converted.pdf> (last visited October 17, 2021). See also Smith Seeks “Political Breakdown” of Redistricting Proposals (September 17, 2012), <https://rantnc.com/2021/09/17/smith-seeks-political-breakdown-of-redistricting-proposals/>.

⁵ Richard Sullins, *Commissioners Propose, Approve Last Minute Redistricting Proposal* (October 6, 2021), <https://rantnc.com/2021/10/06/commissioners-propose-approve-last-minute-redistricting-proposal/>.



on very slim margins, and if Black voters writ large are not able to elect their candidates of choice for the Board because of the way the Board's districts are drawn, the Board will potentially run afoul of Section 2 of the VRA.

Recommendation

We recommend that the Board adopt Plan A, which is closest to the current composition of the districts, and which limits the deviation of the districts to an acceptable level.

Respectfully Submitted,

Mitchell D. Brown
Counsel, Southern Coalition for Social Justice

Allison Riggs
Chief Counsel and Co-Executive Director
Southern Coalition for Social Justice



Exhibit 1

EXHIBIT L

LEE COUNTY BOARD OF COMMISSIONERS

Resolution Altering Structure Of Board

June 26, 1989

WHEREAS, the Lee County Board of Commissioners presently consists of five members elected from the county at-large for staggered, four-year terms; and

WHEREAS, the Board desires to increase the opportunity for black voters to elect candidates of their choice to the Board; and

WHEREAS, Chapter 195 of the North Carolina Session Laws of 1989 authorizes the Board to change the method of election by adoption of a resolution following a public hearing; and

WHEREAS, such a public hearing has been held on this date, after the required ten days' notice was given;

NOW, THEREFORE, BE IT RESOLVED by the Lee County Board of Commissioners that:

1. After the 1990 election the Board of Commissioners shall consist of seven members, four of whom shall be elected from four single-member districts by the voters of those districts, and three of whom shall be elected by all the voters of the county.

2. Elections for the Board of Commissioners shall continue to be partisan. Political parties' candidates shall continue to be nominated by party primaries, but there shall be no second primaries. Results of party primaries in 1990 and subsequent election years shall be determined as follows:

- a. In a primary to choose a nominee for a district office, the candidate who receives the highest number of votes shall be declared the nominee.
- b. In a primary to choose nominees for at-large offices, the candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared the nominees.
- c. If two or more candidates receiving the highest number of votes necessary to be nominated each receive the same number of votes, the proper party executive committee shall, from among those candidates receiving the same number of votes, select the party nominee in accordance with N.C. Gen. Stat. § 163-114.

3. Maps showing the boundaries of the four single-member districts are available for public inspection at the County Manager's office. The districts are as follows:

District 1 - Includes all persons residing within the boundaries of an area described as follows: Beginning at the intersection of the Seaboard Coastline Railway and thence as the centerline of the following streets in a clockwise direction - Weatherspoon Street, Fifth Street, Charlotte Avenue, and N. Twelfth Street to the Sanford city limits line, as that line to an unnamed tributary of Lick Creek, as that creek line to a Carolina Power & Light cross-country transmission line, as that power line crossing San-Lee Drive to a point 1000 feet beyond, as a parallel line to San-Lee Drive back to the city limits of Sanford, as the city limits line of Sanford to Broadway Road, as Broadway Road, Cox Mill Road, Mount Pisgah Church Road, Cox-Maddox Road, Highway 87 South, and Wilson Road to the old abandoned railroad right-of-way line, as that railroad right-of-way to the 1980 Sanford city limits line, as that line to Dalrymple Street, as Dalrymple Street, Main Street, Woodland Avenue, Harkey Road, Courtland Drive, Tramway Road, Fire Tower Road, Carthage Street and Wicker Street to the Seaboard Railroad, and as that railroad right-of-way to the beginning.

District 2 - Includes all persons residing east of a line beginning at the intersection of Deep River and Hawkins Avenue (U.S. 15-510) and following Hawkins Avenue south to U.S. Highway 1 Bypass, as U.S. Highway 1 south to Horner Boulevard, as Horner Boulevard to Weatherspoon Street, as Weatherspoon Street to the beginning of District 1, as the eastern boundary of District 1 to Highway 87 South, as Highway 87 South to the Upper Little River, and as that river to the Harnett County Line. This district includes all of Cape Fear and Pocket townships, and portions of East Sanford, West Sanford, and Jonesboro townships.

District 3 - Includes all persons residing south and west of a line beginning at the intersection of the Harnett County line and the Upper Little River and follows the river west to the centerline of Highway 87 South, as that highway north to a point in the southern

boundary line of District 1, as that boundary line west to Fire Tower Road, thence as Tramway Road, Center Church Road, Henley Road, S. Franklin Road, Bridges Road, and Steel Bridge Road to the Moore County line. This district contains all of Greenwood Township, portions of Jonesboro Township and the southern portion of Pocket Township.

District 4 - Includes all persons residing north and west of a line beginning at the intersection of Steel Bridge Road and the Moore County line and following in an easterly direction the centerlines of Steel Bridge Road, Bridges Road, S. Franklin Road, Henley Road, Center Church Road, Tramway Road, Fire Tower Road, and Carthage Street to the Seaboard Coastline Railroad, as that railroad right-of-way line to Weatherspoon Street, as that street, N. Horner Boulevard, U.S. Highway 1 Bypass, and Hawkins Avenue to the Chatham County line. This district contains the northern portion of Pocket Township, the major portion of West Sanford Township, and portions of Jonesboro Township.

4. The transition to the new structure will take place as follows:

- a. The two incumbent commissioners elected in 1988 will continue to serve until their terms expire in 1992.
- b. One commissioner will be elected from each of the four districts in 1990 and every four years thereafter.
- c. One commissioner will be elected at-large in 1990 for a two-year term.
- d. Three at-large commissioners will be elected in 1992 and every four years thereafter. These three offices shall be voted upon together as a group.

5. This resolution shall be effective upon preclearance of this new election structure and Chapter 195 of the 1989 Session Laws pursuant to Section 5 of the federal Voting Rights Act of 1965.

6. This resolution shall be published in full upon its adoption.

7. As required by Chapter 195 of the 1989 Session Laws, certified true copies of this resolution shall be filed with the Secretary of State, Supreme Court Library and Legislative Library.

ADOPTED this 26th day of June, 1989.

/s/ Albert L. Cox
Albert L. Cox, Chairman

ATTEST:

/s/ K. R. Hoyle
K.R. Hoyle, Clerk

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