

Democracy North Carolina

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October 25, 2009

Mr. Larry Leake, Chair
Mr. Robert Cordle, Secretary
Ms. Anita Earls
Mr. Bill W. Peaslee
Mr. Charles Winfree

Re: Wake Co. School Board Runoff Election

Dear Mr. Chairman and Members of the Board,

I write to urge you not to intervene and stop the runoff election now underway for the District 2 seat on the Wake County Board of Education. There are a number of reasons to allow the election to run its course.

Ripe for intervention: Newspaper reports indicate that Cathy Truitt has declared she withdraws as a candidate for the runoff, but she has not delivered such a clear statement to the Wake County Board of Elections. Rather, her one sentence letter of October 21 states: “I would like to withdraw my request for a runoff for the District 2 Wake County School Board seat in order to spare the citizens of Wake County the added cost, if possible, for this election.” That sentence could be interpreted as a withdrawal of candidacy, but it focuses on withdrawing a request for the runoff and includes a conditional clause regarding saving Wake County citizens the “added cost” of the runoff. So, if her request to stop the runoff is denied, can she continue as a candidate? Does she want to withdraw as a candidate or not? And if there is only minimal savings to “the citizens of Wake County,” is her request null and void? Can she turnaround and withdraw her request for the withdrawal upon learning that citizens of Wake, whether as county taxpayers or as taxpayers in the municipalities with November elections, will be paying nearly the same amount of money, whether or not the runoff continues? (Only three precincts have a ballot for just the District 2 race; all the others have ballots with municipal contests, too. A county school election combined with a municipal election means the county budget pays 50% and municipalities pay 50% of the election costs; a precinct with only a school board race means the county budget pays for 100% of the cost. The only savings for Wake citizens would come from not opening three precincts on Election Day, i.e., less than two cents per Wake County adult.) Arguably, the only statement you have from Ms. Truitt, as of today, is far too muddled to use as the basis to stop an election.

Timeliness: Deadlines are important in matters of law, as you know. Ms. Truitt filed her request for the runoff in a timely manner and it was granted by the Wake County Board of Elections and the runoff is now underway. Mail-in and in-person absentee ballots are being cast. Arguably, Ms. Truitt could have withdrawn her request if she had done so before the Thursday after canvass day, in accordance with the deadline provided in law [NCGS 163-293(c)]. She missed the deadline to change her mind and now the runoff election proceeds. Ms. Truitt does not have the power, under law, to stop the runoff because the election process is bigger than just her view of who should win or when an election should end.

Withdrawal as a candidate: Insofar as the October 21 letter can be used, it is only actionable if it amounts to a statement of a candidate withdrawing from the race and seeking to end the election.

The statute that seems to best provide guidance for the General Assembly's intent in such a situation is NCGS 163-274.1, regarding the death, withdrawal or disqualification of a candidate after ballots are printed. Subsection (b) states, in part: "If a candidate . . . in a nonpartisan election dies, becomes disqualified, or withdraws before election day and after the ballots have been printed, the board of elections shall determine whether there is enough time to reprint the ballots. If there is not enough time to reprint the ballots, and should the deceased or disqualified candidate receive enough votes to be elected, the board of elections shall declare the office vacant, and it shall be filled as provided by law." This statute recognizes that the election process is larger than the fate or desire of any candidate; once ballots have been printed and voting has commenced, other fundamental rights come into play and the election must continue.

Predictable outcome: The outcome of this particular election may seem certain but we all know that the unpredictable can happen in elections. A predictable outcome should not be the basis for a decision to stop an election. NCGS 163-274.1 clearly supports such a perspective and policy. Elections already begun are not just stopped because one candidate so desires. Indeed, in this election, many outcomes are theoretically possible, including the election of a write-in candidate.

The voter's right to vote. Under Session Law 1981-742, Wake County adopted the majority election with a runoff method for choosing its Board of Education members, in accordance with specific statutes cited in the Session Law and the additional statement, in Sec. 3: "Such election shall be governed by the provisions of Chapter 163 of the General Statutes." The County could have chosen a one-time, plurality election, or under newer law, experimented with Instant Runoff Voting to avoid the need for a runoff. But this election is governed by a different process that includes a provision for a runoff. In truth, only a small fraction of eligible voters (about 9%) went to the polls for the October election – and a majority did not agree on a winner. Voters of District 2 now have a right to vote in a properly called runoff and it is now underway. The Board should not deny District 2 voters the right to express their views about the two leading candidates or perhaps another choice they may write in, in accordance with Chapter 163.

Policy and Precedence: Finally, it would be a bad precedent to allow candidates to stop an election after established deadlines have past – bad for the integrity of the election process, bad for the voters, and even bad for the candidate. One way to think about the error of endorsing such a policy is to consider this scenario: What if it was a highly favored frontrunner who, late in the process, withdraws and requests that the runoff be stopped? We might wonder about what's going on behind the scenes to cause such a decision. And if the request was honored, the voters who want the candidate to succeed (and other voters as well) would be denied the opportunity, provided by the runoff method, to impact the ultimate outcome of the election. Elections are more than a contest between two candidates.

For all these reasons, I hope the State Board will not stop the election but will advise the Wake County Board of Elections to let the election run its course, count the ballots as directed by law, and take whatever subsequent action is appropriate.

Sincerely,

Bob Hall

Bob Hall
Executive Director