



NORTH CAROLINA

STATE BOARD OF ELECTIONS

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Numbered Memo 2020-09

TO: County Boards of Elections
FROM: Karen Brinson Bell, Executive Director
RE: Conduct at the Polls
DATE: February 28, 2020 (rescinded on February 14, 2024)

This numbered memo is intended as guidance to election officials in their efforts to ensure all voters enjoy a safe environment that is free from intimidation when they go to the polls. It updates Numbered Memo 2016-20, issued by this office on October 19, 2016.

State and federal laws prohibit intimidation and coercion at the polls. Voting opportunities must be offered in a manner free from discrimination based on race, ethnicity, national origin, language competency, physical disability or religion. Penalties for violations include prison time, a fine, or both.

The State Board must carefully weigh and consider any limitations on speech, including the display of signs or symbols, by private individuals who engage in activity outside the buffer zone. The area outside the buffer zone is a public forum, and therefore courts apply a stricter standard when evaluating restrictions on political activity outside of the protected area. The First Amendment provides a high level of protection for campaign speech and other election- and voting-related speech. We must balance the right of every voter to enter the voting place free from intimidation with these First Amendment protections.

Enforcing the Buffer Zone and Protecting the Voting Enclosure

State law provides special protections within the marked buffer zone outside voting sites. While the buffer zone is commonly thought to limit electioneering activity, the buffer zone also serves to prohibit all forms of hindrance and harassment:

No person or group of persons shall hinder access, harass others, distribute campaign literature, place political advertising, solicit votes, or otherwise engage

in election-related activity in the voting place or in a buffer zone which shall be prescribed by the county board of elections around the voting place.¹

Both state and federal laws forbid **interference with the right of a voter to participate in an election, including hindering access to the voting place**, whether outside or within the buffer zone.² Interference can take many forms. This memorandum identifies examples of scenarios elections officials may encounter during early voting and on Election Day.

Responsibility of the Chief Judge

The chief judge or one-stop site manager is responsible for ensuring voters have unimpeded access into the buffer zone and voting enclosure. They must ensure that voters are able to freely access the voting place without fear of harassment or intimidation. By rule, the chief judge is required to:

(19) ensure peace and good order at the voting place as required by G.S. 163-48.

Examples of peace and good order include:

- (A) keeping open and unobstructed the place at which voters or persons seeking to register or vote have access to the place of registration and voting;
- (B) preventing and stopping attempts to obstruct, intimidate, or interfere with any person in registering or voting;
- (C) protecting challengers and witnesses against molestation and violence in the performance of their duties; and
- (D) ejecting from the place of registration or voting any challenger or witness for violation of any provisions of the election laws or rules.³

If the chief judge or one-stop site manager is unable to successfully ensure voters' free access to the voting place, they should immediately contact their county board of elections and/or law

¹ G.S. § 163-166.4(a).

² 18 U.S.C. § 594 and G.S. § 163-274(4). G.S. § 163-274(4) provides that it is a misdemeanor for anyone to break up or by force or violence stay or interfere with the holding of any primary or election.

³ 08 NCAC 10B .0101(b)(19). The rule was adopted to implement G.S. § 163-48, which requires the chief judge and judges to “enforce peace and good order in and about the place of registration and voting.”

enforcement. Directors should contact local law enforcement as soon as a situation begins to escalate beyond the ability of elections officials to respond and control the situation.

The State Board has partnerships with federal, state, and local partners, who can provide assistance including monitoring and support on the ground. In the event your office becomes aware in advance of a planned event or gathering that has the potential to cause a disruption or commotion at the polls, notify the State Board right away and we can work with our partner agencies to monitor the situation and provide support as needed.

Examples of Prohibited Acts

Agency staff has prepared a non-exhaustive list of scenarios that illustrate prohibited behavior:

1. *Individuals outside the buffer zone wear “SECURITY” insignia and inform voters that they are “monitoring” the polling place.*

Federal law prohibits those around the polling place from displaying badges, uniforms, or credentials that reasonable individuals would interpret to mean that the person is a law-enforcement officer.⁴

2. *Individuals in the parking lot physically prevent multiple cars from parking at the only parking lot in the voting place. Voters in the cars turn around and leave.*

It is a crime to interfere with the ability of any voter to access the voting place.⁵

3. *Individuals intentionally distribute misleading information about the time, date or place of an election, or about the qualifications required to vote.*

It is a felony to misrepresent the law to the public in any communication “where the intent and effect is to intimidate or discourage potential voters from exercising the lawful right to vote.”⁶

4. *A radio station is played over speakers inside the voting enclosure, and the broadcast includes political discussion or commentary.*

⁴ See 18 U.S.C. § 241 and *Williams v. United States*, 341 U.S. 97 (1951). Violation may result in a fine and/or up to 10 years imprisonment.

⁵ G.S. § 163-274(4) makes it a crime for any person to break up or by force or violence to stay or interfere with the holding of any primary election. Violation is a Class 2 misdemeanor.

⁶ G.S. § 163-275(17). Violation is a Class I Felony.

No person may engage in election-related activity within the buffer zone.⁷

5. *An observer in the polling place threatens to choke and kill the precinct official because they have a disagreement about whether a voter is eligible to vote the assigned ballot. The observer also curses and tells the precinct official to get out of the room.*

It is a crime for any person to intimidate any chief judge, judge of election or other election officer in the discharge of his duties in the registration of voters or in conducting any primary or election.⁸

6. *Individuals outside the buffer zone threaten a voter with physical harm if the voter does not vote for or against a particular candidate or party.*

It is a federal crime to intimidate, threaten, or coerce anyone in order to interfere with an individual's right to vote or not vote in an election; this includes conduct intended to force prospective voters to vote against their preferences. This crime requires proof that the actor intended to force voters to act against their will by placing them in fear of losing something of value.⁹

7. *Individuals attempt to enter voter challenges without a proper basis.*

State law prohibits challenges made indiscriminately or based on speculation.¹⁰ It is also a violation of federal law, which may result in civil or criminal penalties, for any voter to challenge an individual on the basis of the individual's ethnicity, religion, language fluency, or national origin.¹¹

Individuals who direct any of the above noted actions against individuals or groups based upon ethnicity, religion, language fluency or national origin are in violation of state and federal law.

⁷ G.S. § 163-166.4(a).

⁸ G.S. § 163-275(11). See *State v. Hines*, 122 N.C. App. 545 (June 4, 1996). Violation is a Class I Felony.

⁹ 18 U.S.C. § 594. Violation may result in a fine and/or up to one year imprisonment.

¹⁰ G.S. § 163-90.1.

¹¹ 18 U.S.C. §§ 241 and 242. Violation may result in a fine and/or up to 10 years imprisonment. 52 U.S.C. §§ 10101, 10301, 10303(f), and 10503 (civil action by U.S. Attorney General). See [Federal Prosecution of Election Offenses](#) (Dec. 2017) for additional information.

The following represent additional examples of conduct that may unlawfully intimidate voters:

- An individual or individuals outside the buffer zone approach only voters who appear to be of a certain ethnic group to ask whether they speak English or to demand that they verify their citizenship. The group's aim is to discourage voters from voting.
- An individual or individuals outside the buffer zone follow a non-English speaker who is receiving assistance from a person of their choice and accuse them of committing voter fraud.
- An individual or individuals outside the buffer zone yells insults or profanity at people who received assistance in the voting enclosure.

Election officials must be prepared to respond immediately to behavior that disrupts or threatens to disrupt the peace and order of a polling site. If the behavior poses a threat to any person's safety, the election official should immediately contact local law enforcement for assistance. The official should then contact the county elections office to report the incident, which in turn should be reported to the State Board of Elections office immediately.



NORTH CAROLINA

STATE BOARD OF ELECTIONS

CONDUCT OUTSIDE VOTING SITE

North Carolinians deserve to be treated with courtesy and respect at the polls. Elections officials are committed to facilitating a safe voting experience, and the State Board of Elections is asking private citizens, campaigners, and advocates to help us promote a positive experience during early voting and on Election Day. Conduct at the voting place should conform with the following guidance:

- Respect the right of all voters to participate in the election without fear of intimidation or violence. Intimidating any voter is a state and federal crime.
- Demonstrate courtesies towards those at the voting place, regardless of differences of opinion.
- Remain civil and calm at all times. Arguments should not involve profanity or provocative gestures.
- Confine electioneering and issue advocacy to designated areas outside of the voting place. Election officials strictly enforce the marked area in which no electioneering or loitering is permitted.

We understand certain individuals are interested in observing the election process, though only appointed observers and runners will be admitted within the voting place. Please contact your local political party or county elections officials for more information about the appointment process under G.S. § 163-45.