



NORTH CAROLINA STATE BOARD OF ELECTIONS

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Numbered Memo 2020-30

TO: County Boards of Elections
FROM: Karen Brinson Bell, Executive Director
RE: Conduct at the Polls for the 2020 General Election
DATE: October 9, 2020 (revised October 12, 2020)

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, and to ensure that voters are able to exercise their right to vote safely with minimal risk of contracting COVID-19. It updates Numbered Memos 2016-20 and 2020-09 and provides additional information on observer requirements and COVID-19 precautions.

Enforcing the Buffer Zone and Protecting the Voting Enclosure

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 is committed to ensuring all voters have a safe experience, free from intimidation and harassment, when they cast their ballot. 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 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 within these First Amendment protections.

State law provides special protections inside the marked buffer zone outside voting sites. The buffer zone is measured from the door of the entrance to the voting place—the building where voting is taking place. If practical, the buffer zone shall be 50 feet from the entrance to the voting place, when the door is closed, but in no event shall it be more than 50 feet or less than 25 feet.¹

¹ G.S. § 163-166.4.

If a separate exit is used for the voting enclosure, the law does not provide for an additional buffer zone from the exit door. To ensure ADA compliance and accessibility, exit areas may be marked to ensure they remain clear and do not impede a voter's mobility.

The area in the buffer zone exists so that voters can freely access the voting place without being harassed or intimidated. Electioneering activity and all forms of hindrance and harassment are prohibited in the buffer zone:

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.²

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 inside or outside the buffer zone.³ Interference can take many forms. This memo 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:

² G.S. § 163-166.4(a).

³ 18 U.S.C. § 594: "Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined under this title or imprisoned not more than one year, or both."

G.S. § 163-274(4) makes it a Class 2 misdemeanor "For any person to break up or by force or violence to stay or interfere with the holding of any primary or election, to interfere with the possession of any ballot box, election book, ballot, or return sheet by those entitled to possession of the same under the law, or to interfere in any manner with the performance of any duty imposed by law upon any election officer or member of any board of elections."

(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.⁴

If the chief judge or one-stop site manager is unable to successfully ensure voters' unobstructed access to the polls, they shall immediately contact their county board of elections and/or law enforcement. Contact local law enforcement as soon as a situation begins to escalate beyond the ability of election officials to respond and control the situation. It is appropriate to contact law enforcement any time there is a reasonable concern for individuals' safety or election officials believe the situation may be likely to get out of control.

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

Each county board of elections is encouraged to meet with local law enforcement, including the sheriff's department and municipal police, to alert them of upcoming election dates, election laws related to voting places, and to share any information about possible threats or gatherings. If a voting site and county board cannot control a situation at the polls, partnerships and information sharing with local law enforcement are important to ensuring a swift and appropriate response.

It is not appropriate or permissible for law enforcement to be stationed at a voting place. In the event a county board must utilize law enforcement for parking and traffic issues at a voting site, officers must be in plain clothes. Law enforcement may periodically drive by a voting site in the event heightened security is needed. County boards of elections must be mindful that some

⁴ 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."

voters find a law enforcement presence at the polls intimidating. County boards may use law enforcement as an escort outside of voting hours and should call law enforcement if an incident occurs. Law enforcement officers are permitted to vote while wearing their uniforms.

If a county board uses private security, the security guards shall be unarmed and shall not be stationed inside the voting enclosure. They may wear uniforms.

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.⁵

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.⁶

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

⁵ 18 U.S.C. § 241: “If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.” See also *Williams v. United States*, 341 U.S. 97 (1951).

⁶ G.S. § 163-274(4).

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.”⁷

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

No person may engage in election-related activity within the buffer zone.⁸

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.⁹

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.¹⁰

⁷ G.S. § 163-275(17): It is a Class I felony “For any person, directly or indirectly, to misrepresent the law to the public through mass mailing or any other means of communication where the intent and the effect is to intimidate or discourage potential voters from exercising their lawful right to vote.”

⁸ G.S. § 163-166.4(a).

⁹ G.S. § 163-275(11): It is a Class I felony “For any person, by threats, menaces or in any other manner, to intimidate or attempt to intimidate any chief judge, judge of election or other election officer in the discharge of duties in the registration of voters or in conducting any primary or election.” See *State v. Hines*, 122 N.C. App. 545 (June 4, 1996).

¹⁰ 18 U.S.C. § 594.

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

State law prohibits challenges made indiscriminately or based on speculation.¹¹ 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.¹²

8. *An electioneer outside the buffer zone stands within one foot of voters walking into the voting place and repeatedly ignores requests to socially distance. The electioneer uses this tactic as a way to intimidate voters from voting.*

It is a federal crime to intimidate voters for the purpose with interfering with their right to vote.¹³ Because the electioneer intended to force voters to act against their will by placing them in fear of losing something tangible, which includes liberty or safety, the intent requirement is met.

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.

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

¹¹ G.S. § 163-90.1.

¹² 18 U.S.C. § 241. 18 U.S.C. § 242: “Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.” See 52 U.S.C. §§ 10101, 10301, 10303(f), and 10503 for civil action by U.S. Attorney General. See [Federal Prosecution of Election Offenses](#) (Dec. 2017) for additional information.

¹³ 18 U.S.C. § 594.

- 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.

COVID-19 Precautions at the Voting Place

As outlined in [Numbered Memo 2020-18](#), voters are strongly encouraged to wear face coverings but cannot be turned away if they do not wear one.

Voters who state that a medical exception applies may vote curbside if they wish, but they are not required to do so. If a voter refuses to wear a mask and does not indicate that an exception to wearing a mask applies, they are not eligible to vote curbside if they do not meet one of the other criteria to vote curbside. See [Numbered Memo 2020-20](#).

Because voters cannot be turned away from voting or denied entry to the voting place if they have a fever or other symptoms of illness, voters shall not be asked to submit to a temperature check before entering the voting place. If a voting site generally requires all non-voters to wear masks and submit to temperature screenings prior to entering the building, or if a municipality enacts the same requirements for all municipal-owned buildings, the voting place within the affected building may be sectioned off so that voters, who do not go through the checks, are not able to enter other areas of the building.

Observers

Appointment Required

Observers are appointed by the political parties according to the requirements in the law.¹⁴ Only lawfully appointed observers are permitted to be present in the voting place. Observers must be

¹⁴ G.S. § 163-45; 08 NCAC 20 .0101.

registered to vote in the county, except for the 100 state at-large observers, who must be registered to vote in the state. For detailed information about appointment, see [G.S. § 163-45](#) and [08 NCAC 20 .0101](#).

Observers may observe and take notes. They may possess personal electronic devices as long as they do not disrupt voters or election officials. Any problems must be reported to the chief judge or county board of elections. An observer may not speak with voters or assistants. Additional prohibited activities by observers include:

- (1) Wearing or distributing campaign material or electioneering;
- (2) Impeding or disrupting the voting process or speaking with voters or election assistants;
- (3) Interfering with the privacy of the voter, including positioning themselves in such a way that they can view confidential voter information on poll books or laptops or standing in such a way that they can view the contents of ballots inserted into a tabulator;
- (4) Using an electronic device to film or take photographs inside the voting enclosure;
- (5) Taking photographs, videos, or recording a voter without the consent of the voter and the chief judge;
- (6) Entering the voting booth area or attempting to view voted ballots;
- (7) Boarding a vehicle containing curbside voters; and
- (8) Providing voter assistance.

All observers, whether precinct-specific or at-large, may be relieved after serving no less than four hours. An observer may leave the voting place without having served for four hours, but the observer cannot be replaced by a new observer until at least four hours have passed since the first observer began serving. An observer who leaves the voting place for any reason may be prohibited by the chief judge from returning if the observer's return would cause a disruption in the voting enclosure.¹⁵

Health and Safety Precautions

To reduce the risk of transmission of COVID-19 at the polls, all observers shall wear masks when inside the voting enclosure. Social distancing is in place in all voting places and observers shall also abide by social distancing requirements as outlined in [Numbered Memo 2020-18](#). The county board may place a marker, chair, or other designation to assist with social distancing of observers. Observers who refuse to wear a mask or abide by social distancing will be required to leave.

¹⁵ 08 NCAC 20 .0101.

Other Individuals Outside the Polls

Anyone has the right to watch or monitor the election outside the voting place. All activity must remain outside of the marked buffer zone. Only those persons authorized by law may enter the voting enclosure.¹⁶ Members of the public, campaigners, candidates, advocates, and “poll watchers” may not enter the buffer zone or voting enclosure unless they are engaging in the act of voting. A “poll watcher” has no legal status under North Carolina law and therefore must remain outside the marked buffer zone. All individuals are encouraged to wear masks and practice social distancing in accordance with the Governor’s Executive Orders and CDC guidance.

Individuals may be present outside the voting place for purposes unrelated to voting, such as encouraging voters to get flu shots or publicizing products or services. We discourage county boards from partnering with such groups because this is not within the county board’s mission and such partnerships could be construed by the public as encouraging or supporting certain services and products over others.

Individuals or groups may not give away free items such as food, drink or other things of value if the giveaway is conditioned on the person having voted. It is a federal crime to make or offer to make any expenditure to any person based on whether they choose to vote or not to vote, or to vote for or against any candidate.¹⁷ It is permissible for individuals or groups to give away items to all persons they encounter, regardless of whether or not they have voted or plan to vote.

¹⁶ See G.S. § 163-166.3(a).

¹⁷ 18 U.S.C. § 597: “Whoever makes or offers to make an expenditure to any person, either to vote or withhold his vote, or to vote for or against any candidate; and Whoever solicits, accepts, or receives any such expenditure in consideration of his vote or the withholding of his vote— Shall be fined under this title or imprisoned not more than one year, or both; and if the violation was willful, shall be fined under this title or imprisoned not more than two years, or both.”