

Protecting North Carolina Voters From Voter Intimidation

This memo outlines the robust protections for voters against voter intimidation under both federal and North Carolina law. **Voter intimidation is a crime and local election officials and law enforcement have a responsibility to protect North Carolina voters from intimidation of any kind.**

First, anyone who “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”¹ in a federal election commits a federal crime.

Second, North Carolina has a robust set of laws that protect voters from intimidation and interference with the right to vote, both inside and outside of voting locations.²

Finally, election officials have a duty to maintain order at the polling place.³ It is a crime in North Carolina to “intimidate or oppose” any voter on account of who they may vote for.⁴ A chief judge of elections can remove election observers for interfering with election administration,⁵ and it is a felony to intimidate or interfere with election officers in the course of their duties.⁶



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¹ 18 U.S.C. § 594.

² See, e.g., N.C. Gen. Stat. §§ 163-274, 163-275, 163-166.4.

³ N.C. Gen. Stat. § 163-48.

⁴ N.C. Gen. Stat. § 163-274(a)(7).

⁵ N.C. Gen. Stat. § 163-45.1(j).

⁶ N.C. Gen. Stat. § 163-275(11).

I. Voter Intimidation

FEDERAL LAW

Federal law provides that “[w]hoever **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 federal office, shall be fined or imprisoned for not more than one year, or both.⁷

Such protection extends to **attempts** to intimidate, threaten, or coerce voters and any intimidation, threats, or coercion with respect not only to voting but **also to voter registration and assisting voters** to register and/or vote.⁸ Thus, federal laws prohibit all persons from engaging in conduct that is intended to (regardless of its effect) intimidate voters.

A person found guilty of violating the federal voter intimidation law could be sentenced to up to five years in prison in addition to criminal fines.⁹ People, including federal and state officials, who intimidate or attempt to intimidate voters – or interfere with the right to vote – can also be subject to civil liability.¹⁰

NORTH CAROLINA LAW

In North Carolina, **it is illegal for any person to use or threaten to use force or violence against an election officer, or act in any other manner to intimidate a qualified voter.**¹¹ Specifically, it is a Class I felony for any person to intimidate an election officer “by threats, menaces or in any other manner”¹² and a misdemeanor for any person to interfere with the holding of an election¹³ or to intimidate a voter on account of the vote that person intends to cast.¹⁴

⁷ 18 U.S.C. § 594; see also 18 U.S.C. §§ 241, 242, 245(b)(1)(A), and 610 (other criminal provisions).

⁸ 52 U.S.C. § 20511.

⁹ *Id.*; see also 52 U.S.C. § 10308(a).

¹⁰ See 52 U.S.C. § 10307(b) (“No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote”); 52 U.S.C. § 10101(b) (“No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt 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[.]”); see also 42 U.S.C. § 1985(3) (providing a private right of action where “two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States”).

¹¹ N.C. Gen. Stat. § 163-275(11); N.C. Gen. Stat. § 163-274(7).

¹² N.C. Gen. Stat. § 163-275(11).

¹³ N.C. Gen. Stat. § 163-274(4).

¹⁴ N.C. Gen. Stat. § 163-274(7).

In addition, it is a misdemeanor for any county officer to willfully refuse to carry out assigned duties that relate to election administration.¹⁵ The chief judge and judges of election must also keep voting places open and free from disturbance or violence.¹⁶

North Carolina law also makes it a felony to misrepresent the law to the public through any means of mass communication, where the intent OR effect is to intimidate voters from voting.¹⁷

II. Conduct at Polling Locations

NORTH CAROLINA ELECTIONEERING GUIDELINES

No person is permitted to solicit votes, hinder access, or harass others within the voting place or the buffer zone.¹⁸ No person is permitted to distribute any campaign materials or participate in any other election-related activity within this zone.¹⁹

Buffer Zone:

- County boards of elections shall set the buffer zone at each voting place.²⁰
- The buffer zone must be **at least 25 feet from the door** to the voting place and no more than 50 feet from the door.²¹
- County boards of election will provide designated areas outside of the buffer zone for election-related activity.²²

Only voters, election officials, observers, those assisting voters, and individuals election officials deem to have an urgent need may enter the voting enclosure.²³ Photography or recordings of any voter is prohibited.²⁴ No one, including the voter, may photograph or record a voted official ballot.²⁵

¹⁵ N.C. Gen. Stat. § 14-230.

¹⁶ N.C. Gen. Stat. § 163-48.

¹⁷ N.C. Gen. Stat. § 163-275(17).

¹⁸ N.C. Gen. Stat. § 163-166.4(a).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² N.C. Gen. Stat. § 163-166.4(b).

²³ N.C. Gen. Stat. § 163-166.3(a).

²⁴ N.C. Gen. Stat. § 163-166(b).

²⁵ N.C. Gen. Stat. § 163-166(c).

It is a felony to willfully prevent any election officer from performing his or her duties or from holding an election.²⁶ It is likewise a felony assault an election officer.²⁷

ELECTION OBSERVER GUIDELINES

An “election observer” is a person appointed by a political party, political body, or candidate who is authorized to enter the enclosed space to observe the conduct of an election and the counting and recording of votes.²⁸

- The list of individuals appointed must be submitted by noon on the business day before the individual is scheduled to observe. The list must be submitted to the county board of elections or State Board of Elections.²⁹
- County boards or the chief judge of a voting place may challenge the appointment of an observer if there is evidence that the observer could impact the conduct of the election.³⁰
- The State Board can require individuals to wear a badge to indicate the observer’s role.³¹
- Election observers cannot interfere with the conduct of the election or the privacy of voters.³² For example, observers are prohibited from (a) looking at, photographing or recording ballots, (b) making or receiving phone calls in the voting place, (c) interfering with the performance of official election duties, (d) preventing a voter from entering or exiting a voting place, or (e) engaging in electioneering.³³
- The chief judge of the voting place can remove an observer who engages in prohibited behavior. The judge can also report the individual for a violation of state or federal law.³⁴

III. Firearms and Law Enforcement at Polling Places

The President does not have authority to order law enforcement to patrol polling places.³⁵ Sheriff’s deputies and police officers are commanded at the local level, and a federal statute makes it a felony for any federal official to send “armed men” to the vicinity of polling places.³⁶

²⁶ N.C. Gen. Stat. § 163-275(11).

²⁷ N.C. Gen. Stat. § 163-275(10).

²⁸ N.C. Gen. Stat. § 163-45.1(a)-(b).

²⁹ N.C. Gen. Stat. § 163-45.1(c).

³⁰ N.C. Gen. Stat. § 163-45.1(f).

³¹ N.C. Gen. Stat. § 163-45.1(d).

³² N.C. Gen. Stat. § 163-45.1(g).

³³ N.C. Gen. Stat. § 163-45.1(h)(1)-(5).

³⁴ N.C. Gen. Stat. § 163-45.1(j).

³⁵ Sean Morales-Doyle, et al., *Voters Should Not Be Intimidated*, Brennan Center for Justice (Oct. 7, 2020), <https://www.brennancenter.org/our-work/research-reports/voters-should-not-be-intimidated>.

³⁶ 18 U.S.C. § 592.

Federal law prohibits U.S. military presence at the polls and members of the U.S. military from interfering with any qualified voter's right to vote.³⁷ However, this prohibition does not apply to members of the U.S. military who are at the polls to vote.³⁸

In North Carolina, chief judges at voting places may call law enforcement to assist in enforcing order at a voting location and may order the arrest of people violating the law. However, an arrest shall not prevent the individual from voting.³⁹

The presence of law enforcement at polls can be intimidating to voters. Election officials must balance any engagement with law enforcement to maintain order against the risk of voter intimidation.⁴⁰ The North Carolina State Board of Elections directs election officers to avoid having law enforcement stationed at voting places during voting hours and to avoid having law enforcement appear like election monitors.⁴¹

North Carolina does not have specific laws preventing firearms in polling places.⁴² However, individuals cannot carry guns on any educational property, including any serving as polling places.⁴³

IV. Challenges

North Carolina allows registered voters to challenge another individual's right to vote during early voting and on Election Day.⁴⁴ The challenge may be based on a voter's (1) residency, (2) repeat voting in the same election, (3) lack of proper photo identification, (4) citizenship status, (5) felony status, or (6) age.⁴⁵ No individual may challenge a voter's eligibility on the grounds that the voter did not present proper photo identification if that voter claims an exception to the requirement and completes a Photo ID Exception Form.⁴⁶ Only the county board of elections may approve or deny an Exception Form.⁴⁷

³⁷ 18 U.S.C. § 592; 18 U.S.C. § 593.

³⁸ 18 U.S.C. § 593.

³⁹ N.C. Gen. Stat. § 163-48.

⁴⁰ Numbered Memo 2022-12, N.C. State Bd. of Elections at 5-6 (updated Feb. 14, 2024), <https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2022/Numbered%20Memo%202022-12%20Maintaining%20Order%20at%20the%20Polls.pdf>.

⁴¹ *Id.*

⁴² Location Restriction Laws in North Carolina, Giffords Law Center (updated Dec. 31, 2023), <https://giffords.org/lawcenter/state-laws/location-restrictions-in-north-carolina/>.

⁴³ N.C. Gen. Stat. § 14-269.2(b).

⁴⁴ N.C. Gen. Stat. § 163-87.

⁴⁵ N.C. Gen. Stat. §§ 163-85(c), 163-87.

⁴⁶ Numbered Memo 2023-03, N.C. State Bd. of Elections at 10-11 (updated Oct. 11, 2024), <https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2023/Numbered%20Memo%202023-03%20Photo%20ID%20and%20In-Person%20Voting.pdf>.

⁴⁷ *Id.* at 11.

A challenger must have knowledge or reasonably believe that the challenged voter is not eligible to vote and must show affirmative proof of that belief.⁴⁸ Precinct officials at the voting site will conduct a hearing and the judges of election will rule on the challenge.⁴⁹

V. Officials Responsible for Enforcement

State Board of Elections: The State Board of Elections is an independent state agency that administers elections and makes the rules and regulations that govern elections.⁵⁰ Voters can report violations of election law and voter intimidation to the Board at (919) 814-0700.

County Board of Elections: County Boards of Elections operate voting sites and handle election administration in their respective counties. Voters can report violations of law and voter intimidation to their local county board.⁵¹

Chief Judge: The chief judge is a registered voter appointed by the county board of elections. The chief judge is charged with conducting primaries and elections in individual precincts.⁵² The chief judge enforces peace and order in voting places and prevents attempts to intimidate voters.⁵³ North Carolina law gives the chief judge authority to direct the arrest of or eject anyone violating election law.⁵⁴

Precinct Judge: Precinct judges are registered voters appointed by the county board of elections to conduct elections in their respective precincts.⁵⁵ Precinct judges enforce peace and order in voting places and prevent attempts to intimidate voters.⁵⁶ Judges are required to report any violation of election law to the chief judge.⁵⁷

STATE BOARD OF ELECTIONS POWERS

The North Carolina State Board of Elections is an independent state agency in charge of administering primaries and general elections. The Board:

- Promulgates rules and regulations for primaries and elections;⁵⁸

⁴⁸ N.C. Gen. Stat. § 163-90.1

⁴⁹ N.C. Gen. Stat. § 163-88(a).

⁵⁰ See N.C. Gen. Stat. § 163-22.

⁵¹ Voters can find their county board contact info here: <https://vt.ncsbe.gov/BOEInfo/>.

⁵² N.C. Gen. Stat. § 163-41(a).

⁵³ N.C. Gen. Stat. § 163-48.

⁵⁴ *Id.*

⁵⁵ N.C. Gen. Stat. § 163-47.

⁵⁶ N.C. Gen. Stat. § 163-48.

⁵⁷ 08 NCAC 10B .0101.

⁵⁸ N.C. Gen. Stat. § 163-22(a).

- Publishes copies of election laws with explanatory materials to county boards of elections;⁵⁹
- Oversees county board of election compliance with election laws, and has the power to remove officers who fail to perform duties;⁶⁰
- Investigates the administration of the election, allegations of fraud, and reports violations of election laws to the State Bureau of Investigation;⁶¹
- Tabulates election returns and declares the results.⁶²

Voters may also seek advice on how to report intimidation by contacting the national, nonpartisan Election Protection coalition. The main number, **866-OUR-VOTE**, is administered by the Lawyers' Committee for Civil Rights Under Law. The coalition also has lines available for Spanish-speaking (888)-VE-Y-VOTA, Arabic-speaking (844)-YALLA-US, and Asian-language- speaking (888)-API-VOTE voters.

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⁵⁹ N.C. Gen. Stat. § 163-22(b).

⁶⁰ N.C. Gen. Stat. § 163-22(c).

⁶¹ N.C. Gen. Stat. § 163-22(d).

⁶² N.C. Gen. Stat. § 163-22(h).