



September 24, 2020

Karen Brinson Bell, Director
Katelyn Love, General Counsel
North Carolina State Board of Elections & Ethics Enforcement
430 North Salisbury Street
Raleigh, NC 27603

Re: Letter Calling for Urgent Action Regarding Voter Intimidation

Dear Director Brinson Bell, General Counsel Love, and Members of the North Carolina State Board of Elections and Ethics Enforcement:

We write to you, in our capacity as organizations concerned with protecting the rights of voters, to follow up on the letter sent to you on February 24, 2020 regarding a disturbing voter intimidation incident which took place at a one-stop early voting site in Chatham County.

Since that date, we have seen a large uptick in white supremacist intimidation incidents across the state, including two that occurred just this past week: a swastika found carved into someone's yard in Onslow County on Sept. 18th,¹ and a rally led by a neo-Confederate hate group in Alamance County on Sept. 19th.² Preventing voter intimidation in all forms is a central focus of our organizations in the 2020 election cycle. We therefore write to ask that the State Board of Elections continue to take proactive action to ensure that voters are able to access the polls in the primary and general elections, free of any voter intimidation or harassment.

As the SBOE set forth in its 2016 memo³ and its revised 2020 memo,⁴ both state and federal law prohibit intimidation and coercion at the polls and interference with the right of a voter to participate in an election, whether outside or within the buffer zone.⁵ Private actors and government officials are prohibited by the Voting Rights Act from engaging in any efforts

¹<https://www.cbs17.com/news/north-carolina-news/nc-sheriff-issues-statement-after-swastika-found-mowed-in-residents-yard/>

²<https://www.alternet.org/2020/09/watch-neo-confederate-trump-supporters-shout-white-power-during-north-carolina-car-parade/>

³ Memorandum From Kim Strach, Executive Director, to County Boards of Elections re Conduct at the Polls, Numbered Memo 2016-20, Oct. 29, 2016.

⁴ Memorandum from Karen Brinson-Bell, Executive Director, to County Boards of Elections re Conduct at the Polls, Numbered Memo 2020-09, Feb. 28, 2020.

⁵ 18 U.S.C. §594 and G.S. 163-274(3).

to intimidate or threaten a voter to vote or not vote, or to vote for or against a particular candidate.⁶ That prohibition applies even where there is no intentional race-based motivation.⁷

North Carolina law similarly prohibits intimidation, threats, or coercion of voters.⁸ Under N.C. Gen. Stat. 163-166.4(a):

“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” (emphasis added).

North Carolina law **separately prohibits efforts to deceive or deter voters directly or indirectly from exercising their rights.**⁹ Similarly, persons at the polls are not permitted to engage in disruptive behavior that interferes with voting,¹⁰ and appointed party observers may not interfere or communicate with voters under any circumstances.¹¹ They also may not photograph or film a voter inside the polling place without the consent of both the voter and the chief judge.¹² In addition, federal courts have found a number of activities that constitute unlawful voter intimidation: economic coercion and character assassination¹³; aggressive poll watching¹⁴; false accusations of criminal behavior and doxing¹⁵; the selective invocation of trespass laws against individuals when they register to vote¹⁶; the threat of criminal prosecution¹⁷; and the arrest and prosecution of voting rights organizers.¹⁸

While we understand the State Board’s position in its Feb. 28, 2020 Memo that it must “carefully weigh and consider any limitations on speech,” we disagree with an implication

⁶ 52 U.S.C. § 1010(b), 10307(b).

⁷ *Willingham v. County of Albany*, 593 F. Supp. 2d 446, 463 (N.D.N.Y. 2006).

⁸ N.C. Gen. Stat. § 163-48, 163-274(3) & (6).

⁹ N.C. Gen. Stat. § 163-275(17).

¹⁰ N.C. Gen. Stat. § 163-274(4) (making it a misdemeanor for “any person to be guilty of any boisterous conduct so as to disturb any member of any election board of any chief judge or judge of election in the performance of his duties as imposed by law).

¹¹ N.C. Gen. Stat. § 163-45(c).

¹² See Memorandum From Kim Strach, Executive Director, to County Boards of Elections re Polling Site Preparation, Numbered Memo 2016-17, Sept. 29, 2016, at 2.

¹³ *United States ex rel. Katzenbach v. Original Knights of the KKK*, 250 F. Supp. 330, 342, 345-49 (E.D. La. 1965) (Wisdom, J.)

¹⁴ *Daschle v. Thune*, No. 4-4177, Dkt. 6, at 1-2 (D.S.D. 2004).

¹⁵ *LULAC-Richmond Region Council 4614*, 2018 WL 3848404, at *4 (E.D. Va. 2018).

¹⁶ *United States v. Bruce*, 353 F.2d 474, 476-77 (5th Cir. 1965).

¹⁷ *United States v. McLeod*, 385 F.2d 734, 747 (5th Cir. 1967).

¹⁸ *United States v. Wood*, 295 F.2d 772, 781-82 (5th Cir. 1961); *United States v. Clark*, 249 F. Supp. 720, 728 (S.D. Ala 1965).

that the First Amendment precludes election officials from taking action outside the buffer zone and believe the position of the Board on this point must be clarified in this cycle in advance of the elections given the particular threats and risks already documented. Although the government cannot ban speech in a public forum, it may nonetheless impose reasonable and content-neutral “time, place, and manner” restrictions on speech in those locations. **Ensuring that voters have unobstructed access to their polling locations, for example, is a sufficiently compelling state interest to satisfy that test.** The Supreme Court has upheld a state law creating a 100-foot buffer zone around polling places—twice the size of the buffer zone recognized under North Carolina law.¹⁹ Election officials have the authority, as a First Amendment matter, to stop people or groups from interfering with voters even outside of the statutorily recognized buffer zone. The duty to act swiftly is great when people or groups actions are interfering with access to a polling place or obstructing the pathway of a voter exercising the right to vote.

North Carolina has a long history of voter intimidation, which has continued to the present day and is compounded by the current heightened political environment. There has been a history of ballot security-efforts, racial intimidation and violence, discrimination, and disenfranchisement in our state’s elections. Just a few examples of this history are:

- In 1992, the Jesse Helms campaign and the North Carolina Republicans sent postcards specifically to African-American voters to discourage them from voting, which contained ‘warnings’ about the penalties for voter fraud.²⁰
- In 1998, GOP officials in Mecklenburg and Cumberland counties planned to videotape people in some heavily Democratic precincts, saying it was to prevent voting fraud. State GOP spokesman Richard Hudson said poll-watching programs targeted heavily Democratic voter registration precincts, not racial groups. However, as a result of complaints about the plans, the Justice Department sent out letters making clear that videotaping minority voters at or near the polls violates the 1965 Voting Rights Act.²¹
- In 2000, the Duplin County Board of Elections staff was removed due to a number of allegations of fraudulent and criminal behavior. The allegations included altered signatures, unauthorized voter address changes, and voter intimidation at the polls. The local district attorney refused to prosecute in spite of overwhelming evidence of criminal behavior, according to the civil rights watchdog group Democracy South.²²

¹⁹ See *Burson v. Freeman*, 504 U.S. 191, 211 (1992).

²⁰<https://www.nytimes.com/1992/02/28/us/the-1992-campaign-helms-campaign-signs-decree-on-racial-postcards.html>.

²¹ <http://archive.fairvote.org/righttovote/PFAW-NAACP.pdf>

²² <http://archive.fairvote.org/righttovote/PFAW-NAACP.pdf>

- In 2016, a brave poll worker declined to work at the Uwharrie Fire Department poll station because she was offended by the Confederate flag over the polling place.²³ As a result, the SBOE asked the local County Board of Elections to find an alternative voting location for that precinct. The presence of the Confederate flag is known to have a harmful, intimidating, and chilling effect, particularly on people of color.²⁴
- In 2018, election officials in Franklin County had to remove a poll worker from an early voting site following allegations that she intimidated several African-American voters.²⁵ Also during the 2018 elections, North Carolina was one of several states where groups distributed racist, anti-Semitic mailers depicting Jewish candidates holding wads of cash.²⁶
- In 2020, in addition to incidents documented above, we have received reports of President Donald Trump’s administration and efforts by individuals to intimidate voters, particularly Latinx voters, and to discourage them from participating in the midterm elections. In August, for example, the U.S. Department of Justice (DOJ) subpoenaed the voter records—an estimated 20 million documents in all—across 44 North Carolina counties that included disproportionate numbers of black and Latinx citizens.²⁷

These instances of intimidation have the effect of robbing voters of their voice, their dignity, and their Constitutional rights.

In light of the documented history of voter intimidation, the recent incidents documented here, and in acknowledgement of the robust protections against voter intimidation under North Carolina and Federal law, on behalf of our members across the state of North Carolina, Democracy North Carolina, Forward Justice, North Carolina State Conference of the NAACP, Advance Carolina, Southern Coalition for Social Justice, Common Cause NC and members of the Protect Our Vote NC Coalition request the State Board of Elections take the following immediate actions:

²³ <https://www.courier-tribune.com/news/20170224/confederate-flag-issue-results-in-polling-place-change>

²⁴ See, e.g., *Hardwick ex rel. Hardwick v. Heyward*, 711 F.3d 426, 438–39 (4th Cir. 2013)(discussing connection between Confederate symbols and racial tensions and violence and upholding school ban on Confederate symbols); *Defoe ex rel. Defoe v. Spiva*, 625 F.3d 324, 336 (6th Cir. 2010) (acknowledging that the Confederate flag is a “controversial racial and political symbol” and holding that “school officials reasonably forecast that permitting displays of the Confederate flag would result in substantial disruption of, or material interference with, the school environment.”)

²⁵ Specifically, members of the Franklin County PAC reported the poll worker for repeatedly asking African-American voters to spell their names when they arrived at the polls. Though she was assigned to office duty away from the voting site, she successfully intimidated several voters before intervention took place. See <https://www.newsobserver.com/article220380085.html>.

²⁶ <https://www.washingtonpost.com/politics/2018/11/06/republicans-attack-jewish-candidates-across-us-with-an-age-old-caricature-fistfuls-cash/>

²⁷ <https://www.cnn.com/2018/09/05/politics/ice-subpoena-voter-records/index.html>

1. SBOE PUBLIC STATEMENT

First, we urge the State Board of Elections to issue a public statement that no voter intimidation will be tolerated in North Carolina, reinforcing the seriousness with which the State agency will take any threats to intimidate or interfere with the right to vote. We also urge the SBOE to specifically condemn as unlawful the use of any racially intimidating symbols at polling places.

2. PROVIDE SITUATION-BASED TRAINING ON VOTER INTIMIDATION

Prior to the start of Early Voting on October 15, 2020, we request that the State Board of Elections provide training to all County Boards of Elections on how to uniformly handle instances of voter intimidation at the polls and provide a “voter intimidation complaint form” to centralize the complaints received by the County Boards of Elections (CBOE). Each type of voter intimidation may require a different advocacy response, which is why we are requesting that the CBOE training be “situation-based” and that each poll worker understand how to respond to common types of voter intimidation that may occur. The undersigned groups would be interested in communicating with the SBOE about the specific guidance which will be provided, and would also be willing to be directly involved in these training sessions.

3. VOTER INTIMIDATION SPECIALISTS DESIGNATED AND INFORMATION SHARING WITH ADVOCACY ORGANIZATIONS

We suggest that the State Board immediately designate attorneys to serve as voter intimidation specialists within the State Board of Elections to monitor and train on a voter intimidation complaint process, and to cross-share information with election protection-designated voter intimidation liaisons and other relevant agencies and parties.

4. UPDATE SBOE GUIDANCE TO INCLUDE IN TRAINING MODULES

Based on the important legal prohibitions discussed above, we urge your office to issue an updated guidance memo for the November 2020 general election on what conduct is impermissible at the polls by challengers, poll watchers, and other persons coming to voting sites for reasons other than voting in North Carolina elections to include in scenario-based training.

We ask that this memo specifically address racist voter intimidation, including the use of hate symbols. We believe that special instructions are necessary to protect the safety and integrity of the election and strongly recommend that this guidance reflect the following prohibitions as well as a specific list of examples of voter discrimination and intimidation, which are included here as **Exhibit A**:

1. *Discrimination.* Discrimination against voters, whether by private citizens or election officials, is prohibited.
2. *Intimidation.* Private citizens, acting as challengers, poll watchers, or otherwise, may not directly confront voters in an intimidating discriminatory manner. They also may not use insulting, offensive, or threatening language, which includes racial slurs, or display racially hostile signs or symbols, which may include Confederate flags, other white nationalist, or neo-Confederate symbols that are associated with racial violence.

The definition of intimidation includes, but is not limited to:

- Property damage as an early indicator of escalation
 - Actual violence or other kinds of assault, and
 - Voter eligibility challenges targeting specific groups of voters
3. *Deceptive Practices.* It is unlawful to disseminate misleading information about elections, including flyers or other communications that purposely misstate the time and date of an election, where it will be held, and how voting will happen.
 4. *Conspiracy to Violate Voters' Rights.* Private citizens may not assist others in discriminatory or intimidating conduct that interferes with a voters' right to participate in an election.

* * *

With swift action by the State Board of Elections and cooperative action in the coming month, together, we can help ensure that unaddressed voter intimidation will not be among the many challenges that North Carolinians will have to face as we seek to build confidence in all voters that democracy will be free, fair, and accessible in the 2020 election cycle. If we can provide any additional information or assistance to the Board, we stand ready.

Respectfully Submitted,

Caitlin Swain & Daryl Atkinson
Co-Directors
Forward Justice

Tomas Lopez
Executive Director
Democracy North Carolina

Rev. Dr. T. Anthony Spearman
President
North Carolina State Conference
of the NAACP

Marcus Bass
Executive Director
Advance North Carolina

Allison J. Riggs
Interim Executive Director
Chief Counsel for Voting Rights
Southern Coalition for Social Justice

Bob Phillips
Executive Director
Common Cause of North Carolina

EXHIBIT A

Selected Examples of Unlawful Voter Intimidation

A. Discrimination

- Election officials may not treat voters differently in any way based on race or other protected characteristics, including asking voters of only certain ethnic or racial groups to show ID or to answer questions to vote.
- Election judges and private citizens may not challenge a person's eligibility to vote based on the racial or ethnic makeup of a precinct or polling place.
- Election judges may not accept a private citizen's challenge to a voter's eligibility if the challenge was discriminatory, or based on unreliable information.

B. Intimidation. The definition of intimidation should include, but is not limited to:

- *Threats of violence:*
 - Aggressive electioneering at the polls, such as getting in people's personal space, making disparaging comments about a voter's choices, blocking people's cars, or forcing them to take campaign materials.
 - Any use of racial slurs
 - Any use of white Supremacist or militia-related symbols (including but not limited to nooses, caskets, Confederate flags, or League of the South flags), including lurking at a polling site while sending white supremacist or militia-related cues.
 - Law enforcement, police, sheriff presence prominently at the polls, including an armed deputy on site or a marked car in the parking lot, which may result in intimidation and create a destabilizing environment at the polls for some voters, increasing the chance of escalated conflict.
 - Intimidation via invading someone's personal space, including a lack of respect for adequate social distancing, refusing to wear a mask or coughing and spitting on others.
 - Private militias patrolling near a polling place wearing uniforms and carrying weapons, but without wearing "security" badges.
 - Driving by majority BIPOC or Democratic polling places in military style vehicles while yelling racial slurs.
- *Property damage as an early indicator of escalation:*
 - Cars defaced in the parking lot of a polling place.
 - Slashed or defaced campaign signs.

- Graffiti or vandalization of campaign headquarters for BIPOC candidates and/or candidates of choice for BIPOC voters.
- *Actual violence or other kinds of assault:*
 - 2016 Pamlico County example - a campaigner for Hillary Clinton was pushed to the ground by a young man who threatened to injure her so badly that she would need a “handicappeddisabled parking sticker” placard “if Hillary wins” on the election.²⁸
 - 2018 Mecklenburg County example - a Black GOP campaigner was angrily confronted and threatened by self-appointed poll watchers, when he approached their car to take a picture of their license plate. The car had been lurking around the polling place and taking photos for two consecutive days. A heavily tattooed white man wearing a shirt with a Punisher skull on it (a symbol that has been adopted by the far right)²⁹ and a holstered pistol (apparently a BB gun), rushed out of the car and yelled racial slurs at the Black GOP campaigner.³⁰
 - 2016 Craven County example - An older white man had tobacco juice spit on him while working in a biracial team (with a younger Black woman) providing Democratic campaign materials to voters standing in line.³¹
- *Voter eligibility challenges targeted at specific groups including non-citizens or those who have recently had their rights restored.*

C. **Deceptive Practices.** It is unlawful to disseminate misleading information about elections, including flyers or other communications that purposely misstate the time and date of an election, where it will be held, and how voting will happen.

D. **Conspiracy to Violate Voters’ Rights.** Private citizens may not assist others in discriminatory or intimidating conduct that interferes with a voters’ right to participate in an election.

²⁸ <https://democracync.org/wp-content/uploads/2018/02/TomasLopezUSCCRTestimony-2.2.18.pdf>

²⁹ <https://www.bpr.org/post/digging-meaning-symbols-murphy-billboard-rally#stream/0>

³⁰ <https://www.newsobserver.com/article220574455.html>

³¹ <https://democracync.org/wp-content/uploads/2018/02/TomasLopezUSCCRTestimony-2.2.18.pdf>