



NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
NORTH CAROLINA STATE CONFERENCE

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February 24, 2020

Katelyn Love
General Counsel
North Carolina State Board of Elections
430 North Salisbury Street
Raleigh, NC 27603

Re: Letter Calling for Emergency Action regarding Voter Intimidation

Dear General Counsel Love, and Members of the North Carolina State Board of Elections:

We write to you, in our capacity as organizations concerned with protecting the rights of voters, regarding a disturbing voter intimidation incident which took place at a one-stop early voting site in Chatham County on February 15, 2020. That Saturday, a group of demonstrators gathered and protested an event held in the Chatham County Agriculture & Conference Center (“Agricultural Center”), where local groups Chatham for All and Abundance NC were hosting a panel discussion called “The Civil War Today.”¹ These demonstrators displayed flags supporting the Confederacy, the League of the South (designated a violent hate group by Southern Poverty Law Center²), and President Donald Trump – and reportedly yelled slurs and chanted “Trump 2020” – in the same area voters had to traverse to access the designated polling place for early voting.³⁴ As shown in the attached map, the Confederate-flag wielding protest groups gathered at the traffic loop in front of the Agricultural Center. Due to the single-road entrance to the complex, it was impossible for potential voters to avoid seeing these racially intimidating symbols as they entered the early voting complex and polling location.⁵ Witnesses reported feeling intimidated and harassed. Some potential voters apparently left the area rather than park their cars, which would require them to enter the demonstration area. **See Attached Exhibits.**⁶ There is also photographic evidence that at least some of these demonstrators were located directly in front of the entrance to the polling location. **See Exhibit E.**

¹ <https://www.wral.com/protesters-at-a-polling-site-during-early-voting-wave-confederate-flags-shout-slurs/18954338/>

² <https://www.splcenter.org/fighting-hate/extremist-files/group/league-south>

³ <https://chapelboro.com/news/news-around-town/panel-on-confederate-monuments-symbolism-draws-protests-in-chatham-county>

⁴ Some of these demonstrators also appeared to wear masks. *See* Exhibit F.

⁵ These instances of voter intimidation appear to have been avoidable – in fact, at the January 2020 Chatham County Board of Elections meeting, concerns were raised about this “controversial event” taking place at the same location as early voting. *See*: <https://www.chathamnc.org/home/showdocument?id=47643>

⁶ Exhibit A is a Google Satellite image of the Agricultural Center. The remaining exhibits are photos that were posted publicly by witnesses to this incident.

There is no place for racism at North Carolina’s polls. Preventing voter intimidation in all forms is a central focus of our organizations in the 2020 election cycle. Given the history of intimidation and violence by members of neo-confederate groups, this incident underscores our concern for the safety of the public and of poll workers and elections officials during the early voting process and on Election Day.

We therefore write to ask that the State Board of Elections (SBOE) take emergency and 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 memo,⁷ 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.⁸ Private actors and government officials are prohibited by the Voting Rights Act from engaging in any efforts to intimidate or threaten a voter to vote or not vote, or to vote for or against a particular candidate.⁹ That prohibition applies even where there is no intentional race-based motivation.¹⁰

North Carolina law similarly prohibits intimidation, threats, or coercion of voters.¹¹ 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.¹² Similarly, persons at the polls are not permitted to engage in disruptive behavior that interferes with voting,¹³ and appointed party observers may not interfere or communicate with voters under any circumstances.¹⁴ They also may not photograph or film a voter inside the polling place without the consent of both the voter and the chief judge.¹⁵

The Saturday incident in Chatham County is just the latest instance of voter intimidation in North Carolina. We are well-aware of the long history of ballot security-efforts, racial intimidation and violence, and discrimination and disenfranchisement in our state’s elections. Notoriously, in 1992, the Jesse Helms campaign sent postcards specifically to African-American voters to discourage them from voting, which contained ‘warnings’ about the penalties for voter fraud.¹⁶ More recently, on October 20, 2018, election

⁷ Memorandum From Kim Strach, Executive Director, to County Boards of Elections re Conduct at the Polls, Numbered Memo 2016-20, Oct. 29, 2016.

⁸ 18 U.S.C. §594 and G.S. 163-274(3).

⁹ 52 U.S.C. § 1010(b), 10307(b).

¹⁰ *Willingham v. County of Albany*, 593 F. Supp. 2d 446, 463 (N.D.N.Y. 2006).

¹¹ N.C. GEN. STAT. § 163-48, 163-274(3) & (6).

¹² N.C. GEN. STAT. § 163-275(17).

¹³ 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).

¹⁴ N.C. GEN. STAT. § 163-45(c).

¹⁵ 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.

¹⁶ <https://www.nytimes.com/1992/02/28/us/the-1992-campaign-helms-campaign-signs-decree-on-racial-postcards.html>

officials in Franklin County had to remove a poll worker from an early voting site following allegations that she intimidated several African-American voters.¹⁷ Furthermore, the presence of the Confederate flag is known to have a harmful, intimidating, and chilling effect, particularly on people of color.¹⁸ In 2016, a brave poll worker declined to work at the Uwharrie Fire Department poll station because she was offended by the flag over the polling place. As a result, the SBOE asked the local County Board of Elections to find an alternative voting location for that precinct.¹⁹ These instances of intimidation have the effect of robbing voters of their voice, their dignity, and their Constitutional rights.

On behalf of our members –and voters across the state of North Carolina—the NC NAACP, the ACLU of North Carolina, Advance Carolina, Common Cause of North Carolina, Democracy North Carolina, Forward Justice, NAACP Legal Defense Fund, Poder North Carolina Action, Repairers of the Breach, Southern Coalition for Social Justice, North Carolina Black Alliance, the North Carolina Justice Center, Planned Parenthood South Atlantic, the Lawyers’ Committee for Civil Rights, North Carolina Voters for Clean Elections, and the Hispanic Liaison/El Vinculo Hispano urge the State Board of Elections to take the following immediate actions:

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. We also urge the SBOE to specifically investigate and respond to the voter intimidation incident that occurred in Chatham County on February 15th, including by condemning as unlawful the use of any racially intimidating symbols at polling places.

2. MEETING

We request that the State Board of Elections schedule a meeting as soon as possible with the voting rights and racial justice organizations included here to formulate a proactive plan to address the issue of voter intimidation in 2020, including convening an advisory group, as described below.

3. UPDATE THE SBOE GUIDANCE MEMO

Based on the important legal prohibitions discussed above, we urge your office to issue an updated guidance memo and public-education materials 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. 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:

- i. *Discrimination.* Discrimination against voters, whether by private citizens or election officials, is prohibited. In particular:

¹⁷ 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>

¹⁸ *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.”)

¹⁹ <https://www.courier-tribune.com/news/20170224/confederate-flag-issue-results-in-polling-place-change>

- 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.
- ii. *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, including Confederate flags or other white nationalist or neo-Confederate symbols.
 - iii. *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.
 - iv. *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.

4. VOTER INTIMIDATION ADVISORY GROUP

Meaningfully addressing voter intimidation in 2020 will require a highly coordinated, integrated, and proactive response – and careful, sustained attention in a major election cycle where the State Board of Elections and election officials will have many competing priorities. To ensure we successfully unite to focus on addressing this critical concern, we urge your office to immediately convene an SBOE-hosted Voter Intimidation Advisory Group.

In addition to aiding in strengthening and clarifying statewide guidance, training procedures, and other ongoing support needs, we anticipate that this group would: (1) assist in identifying community concerns, (2) create and clarify rapid response protocols, (3) allow for much-needed communications sharing between government and non-government parties when incidents of voter intimidation occur, and (4) enhance centralization and publication of communication regarding resources for voters and the public who are concerned about voter intimidation and protecting the fundamental right to vote.

We believe investment now in an SBOE advisory group is one important step towards establishing long-lasting solutions to voter intimidation – a deeply pernicious problem that has plagued our state long before this election cycle and a challenge we can sadly expect to continue well-beyond 2020.

* * *

With swift action by the State Board of Elections and cooperative action in the coming months, 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 of assistance to the Board, we stand ready.

Respectfully Submitted,

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

Tomas Lopez
Executive Director
Democracy North Carolina

Robert Stephens
Director of Political Strategy and Advocacy
ACLU of North Carolina

Bob Phillips
Executive Director
Common Cause of North Carolina

Sherrilyn Ifill
President and Director-Counsel
NAACP Legal Defense Fund

Rick Glazier
Executive Director
North Carolina Justice Center

Susanna Birdsong
North Carolina Director of Public Affairs
Planned Parenthood South Atlantic

Allison Riggs
Chief Voting Rights Counsel
Southern Coalition for Social Justice

Rev. Dr. William Barber II
President
Repairers of the Breach

Caitlin Swain & Daryl Atkinson
Co-Directors
Forward Justice

Marcus Bass
Executive Director
Advance Carolina

Jennifer Nwachukwu
Counsel
Lawyers' Committee for Civil Rights

Courtney Crowder
Executive Director
North Carolina Black Alliance

Melissa Price Kromm
Director
North Carolina Voters for Clean Elections

Isela Gutierrez
Acting Executive Director
Poder NC Action

Ilana Dubester
Executive Director
The Hispanic Liaison/El Vinculo Hispano



EXHIBIT A



* Google Satellite image of the Agricultural Center

EXHIBIT B



EXHIBIT C



EXHIBIT D



EXHIBIT E



EXHIBIT F

