



Preventing Problems at the Polls: North Carolina

By Rebecca Buckwalter-Poza and Liz Kennedy | October 17, 2016

The struggle over voting rights in North Carolina has captured national attention, as have recent tensions over the so-called bathroom bill that targets transgender Americans¹ and the shooting death of Keith Lamont Scott by police.²

The U.S. Supreme Court's June 2013 decision in *Shelby County v. Holder* eliminated the Voting Rights Act's preclearance requirement for changes to voting procedures in states with a history of voter suppression. Just weeks after the decision was announced, the North Carolina legislature, which had requested data on voting practices by race while drafting a voter ID bill, passed an expanded version of that legislation—a “monster voter suppression law”³—restricting voting and registration in multiple ways that disproportionately affected African Americans. No other state combined so many voter suppression measures into a single bill. The new law, along with other problems at the polls, kept at least 30,000 voters from voting in the 2014 election.⁴

A federal district court upheld the law in April 2016,⁵ but the 4th U.S. Circuit Court of Appeals reversed the decision in July, striking key provisions of the law—namely, the voter ID requirement and cuts to early voting, same-day registration, out-of-precinct voting, and preregistration.⁶ The state was found to be intentionally targeting African American voters, designing restrictions on voting rights with “almost surgical precision” so they would be most disadvantaged.⁷ The Rev. William Barber II characterized this ruling as “a people’s victory ... that sends a message to the nation.”⁸ North Carolina asked the U.S. Supreme Court to stay that ruling, but the Court declined to intervene, leaving the 4th Circuit’s decision intact.⁹ However, county-level decisions have continued to endanger ballot access, particularly for black voters.

In the 2008 election, turnout of eligible voters was 67.1 percent.¹⁰ Four years later, turnout was 68.3 percent.¹¹ Black turnout grew from 67.1 percent to 80.2 percent from 2008 to 2012.¹² Record early turnout during the March 2016 primary bodes well for a continued rise, but voters will face a number of obstacles as a result of increasingly overt efforts to impede registration and voting.¹³

The integrity of elections in the United States demands that every eligible American is able to cast a ballot and trust that it will be counted. Americans have the right to choose their representatives and take part in electoral decision-making. But across the country, thousands of voters have not had their voices heard—either because of targeted voter suppression laws or poor election administration decisions.¹ While the vast majority of Americans will vote without encountering difficulties, in recent election cycles, voters have faced preventable problems and unnecessary hurdles. Failures at the polls may deny individuals their right to participate in the democratic process.

This series of issue briefs assesses potential problems for voters in states that have experienced issues with election administration or recent changes to voting rules. Each brief analyzes steps to improve election performance and the voting experience. Ongoing lawsuits have led to significant changes in recent weeks, as federal judges have ruled that many provisions of new voting laws discriminate against voters of color and collectively burden voting rights for hundreds of thousands of Americans.² Understanding the potential burdens that voters may face is a first step toward ensuring that voting is free, fair, and accessible for all Americans.

A 2015 Center for American Progress report ranked North Carolina 47th in the country for “accessibility of the ballot.” This ranking was based in part on the lack of online or portable voter registration, as well as the voter ID requirement and preregistration ban established by the “monster” voter suppression law.¹⁴ While the 4th Circuit eliminated some of the provisions affecting ballot accessibility in North Carolina—which will likely improve overall accessibility—other provisions remain in effect and continue to jeopardize voting rights in North Carolina, particularly for people of color.

Unfortunately, the State Board of Elections has declined to extend the voter registration period despite Hurricane Matthew and flooding that devastated many communities and displaced many North Carolinians.¹⁵

Past voting problems

Although average voting wait times in North Carolina during the past two general presidential elections were within reason—21 minutes in 2008 and 13.5 minutes in 2012—problems at the polls and confusion created by the new voting law resulted in long wait times in several jurisdictions. In 2014, while 88 percent of voters waited less than 10 minutes, voters in 13 counties waited for more than an hour.¹⁶ During the March 2016 primary, voters in Wake and Durham counties had to wait three to four hours to vote,¹⁷ and Wilmington voters—many of whom were elderly—waited more than an hour.¹⁸ The bipartisan Presidential Commission on Election Administration, formed after long lines plagued polling locations across the country in 2012, recommends that no citizen should have to wait more than 30 minutes to vote.¹⁹

Voter registration errors have also contributed to problems at the polls. One North Carolina voter—Sherry Denise Holverson, an Army veteran who lives in Fayetteville—had to cast a provisional ballot in 2014 because she was “missing from the rolls,” despite having updated her address in person at the North Carolina Division of Motor Vehicles, or DMV. “I did the paperwork, but they said they had no record of me registering,” Holverson said. Concerned about the high rate of rejection of provisional ballots, she continued, “they neglected to say that provisional ballots really don’t count. So I’m pissed, very angry. My vote could have been the one that made the difference.”²⁰

Problems in the 2016 primaries

During the March 2016 primary, more than 29,000 North Carolinians²¹ were able to vote only because a court suspended the voting law’s bans on same-day registration and out-of-precinct voting, pending a ruling in the case.²² Other voters faced significant challenges.

More than 1,400 voters were forced to cast provisional ballots as a result of the voter ID requirement, and these votes were not counted.²³ Other voters were denied provisional ballots altogether even after demonstrating, as allowed by law, that they faced a “reasonable impediment” to obtaining the required identification.²⁴ In Carteret County, poll workers denied provisional ballots to voters who showed up in the wrong precinct. Some poll workers also told voters not to vote provisionally. A poll worker in Guilford County turned away voters and told them that 90 percent of provisional ballots would not be counted.²⁵ In Johnston County, people did not receive notice of a polling place change; poll workers also did not respond to voters in the curbside voting area when they pushed the curbside call button.²⁶

In Durham County, voters could not find their precinct polling place after the county board of elections did not post a notice of a location change until 4:00 p.m. on Election Day, and two of the three voting computers were not operational, even as at least 50 people waited in line.²⁷ Close to a dozen counties did not report results until after midnight.²⁸

What to watch for at the polls

The fight over election protocols and policies has become particularly heated this year, the first presidential election in 50 years without the full protections of the Voting Rights Act. The state requested that the Supreme Court reinstate both the voter ID requirement and the reduction in early voting days, but the request was declined. The executive director of the North Carolina Republican Party, however, openly encouraged Republican county board of elections officials to effectively bypass the court ruling and restore these restrictions at the county level by enacting voting plans that reduce early voting hours, limit polling sites, and close polls on Sundays.²⁹ These cutbacks disproportionately affect African American voters, as many black churches organize nonpartisan voting engagement activities on Sundays.³⁰

In most of North Carolina’s 100 counties, the three-member county boards of election—each of which is comprised of two Republicans and one Democrat—reached unanimous decisions on early voting hours.³¹ Seventy counties expanded early voting hours.³² But 23 out of the 100 county boards in North Carolina attempted to reduce early voting opportunities as compared with 2012,³³ despite nonpartisan state election officials’ attempt to “strongly encourage county boards of elections to be mindful of expected turnout and historical use of one-stop early voting in their respective counties.”³⁴ Nine of the 21 counties that offered Sunday voting in 2012 proposed to close sites on Sundays this year.³⁵

It is important to note that while opportunities for early voting improved overall,³⁶ African American voters have been disproportionately affected by the cutbacks, not in the least because the counties that made the most restrictive changes to early voting have a larger-than-average black population.³⁷ Cuts made to so-called off hours—voting hours outside of traditional working hours—will affect 44 percent of the state’s black voters, compared with just 36 percent of non-Hispanic whites.³⁸ County-level voting plans effectively ended Sunday voting for 4 percent of the state’s African American voters.³⁹

For example, Lenoir County offered 443 hours of early voting in 2012.⁴⁰ But this year, its board of elections attempted to pass a plan that would have reduced early voting to the minimum number of hours required by law, which is less than one-quarter of the 2012 total.⁴¹ Had the North Carolina State Board of Elections not stepped in,⁴² the county’s nearly 39,000 voters, 43 percent of whom are black,⁴³ would only have been able to vote early at a single site and only then if they could make it there during weekday business hours or the Saturday morning before the election.⁴⁴

The State Board of Elections determined early voting schedules in the 33 counties in which board members could not agree.⁴⁵ Fortunately, in most of those counties, the state board expanded voting hours, added polling places, or both expanded hours and added sites.⁴⁶ Voting rights advocates filed an emergency motion in federal court to expand early voting in five counties in which county boards passed restrictive plans, arguing that the plans violate the 4th Circuit’s ruling by “trying to accomplish on a county-by-county basis” what the court prohibited the state legislature from doing.⁴⁷ But the district court denied their request.⁴⁸ Voters in all counties can expect the voting process to take longer as a result of the “monster” voter suppression bill’s elimination of straight-ticket voting.⁴⁹

North Carolina used the Interstate Voter Registration Crosscheck Program—a system that checks states’ voter registration data to identify potential duplicate voters—to compile a list of more than 35,000 voters who it claims may have voted in both North Carolina and another state in 2012.⁵⁰ The state hired a former FBI agent to investigate these individuals.⁵¹ An Interstate Crosscheck list from 2014 that ostensibly identified nearly 600,000 potential duplicate voters⁵² has yet to yield any confirmed double voters.⁵³

Voter challenges and voter intimidation

In North Carolina, voters may also face challenges and attempts at intimidation at the polls. Any registered voter may challenge any other registered voter in the same county more than 25 days before the day of the primary or election.⁵⁴ There are some procedural protections for voters: Pre-Election Day challenges must be made in writing, under oath, and must specify a reason for the challenge.⁵⁵ Unfortunately, returned mail is accepted as evidence that the voter no longer resides at a residence, a rule that facilitates voter caging—the practice of sending mass mailings for the purpose of compiling lists of voters to challenge.⁵⁶

On the day of a primary or election, any voter, including an observer, may enter the voting enclosure to challenge the registration of any other voter registered in the same county.⁵⁷ The new law also allows political parties to appoint up to 10 observers per county, in addition to the two to which they were already entitled for each polling place, which may increase the threat of voter intimidation at polling places.⁵⁸

Fortunately, North Carolina law requires a buffer zone around polling places in which no electioneering is allowed and voter harassment is barred.⁵⁹ State law also prohibits interfering with or attempting to interfere with voters inside the voting enclosure and during the ballot-marking process, although the definition of “voting enclosure” is troublingly narrow.⁶⁰ North Carolina also has strong protections requiring judges to “enforce peace and good order in and about the place of registration and voting” and ensure that voters have access to the polling site.⁶¹

Use of provisional balloting

In 2008, 1.2 percent of ballots cast in North Carolina were provisional ballots, and 50.9 percent of all provisional ballots cast were rejected.⁶² The 2012 election saw similar numbers: 1.1 percent of ballots were provisional, and 54.4 percent of all provisional ballots were rejected.⁶³ In 2008, North Carolina also had an extremely high rate of rejecting mail-in ballots submitted for counting at 11.9 percent,⁶⁴ although that figure dropped to 1.1 percent in 2012.⁶⁵

A 2014 Center for American Progress report found a correlation in 16 states, including North Carolina, between the use of provisional ballots in the 2012 election and counties with the most voters of color.⁶⁶

Election technology

Officials in North Carolina have expressed the need for new voting machines in the next four years but do not have the funding to replace the existing machines.⁶⁷ At present, North Carolina is one of a few states in which jurisdictions use different voting machine models.⁶⁸ Legislation requiring counties to phase out strictly electronic voting machines in favor of those that generate paper ballots will strain budgets and further complicate the state’s election technology landscape.⁶⁹ North Carolina permits the use of electronic poll books “in lieu of or in addition to paper pollbooks.”⁷⁰

Conclusion

Although voting rights advocates won a major victory for North Carolina in the courts, voters may still face issues at the polls and battles ahead in the legislature. Without greater investment in election administration and new voting systems, there is no guarantee that the same glitches that plagued March's primaries will not recur next month. Voting rights advocates should anticipate confusion on the part of both voters and poll workers over which aspects of the voter suppression law remain in effect and will need to work to mitigate that confusion with outreach and education efforts. The integrity of the electoral process and civic engagement will be all the more critical to voters in North Carolina following the troubling events and conflicts of the past year.

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