



2015 VIP Legislative Agenda (“Starting Five”)

The mission of Voter Integrity Project is “to restore trust in the electoral process by the investigation and prevention of vote fraud.” Passage of the following changes to our state’s election laws would all either prevent vote fraud, make vote fraud easier to detect, or increase the likelihood that any vote fraud perpetrators who do get caught will also get prosecuted. These reforms are balanced against the need for voters to carry out their voting privilege without intimidation.

1. Eliminate Curbside Voter ID Loophole
2. Specified Rights for Election Observers
3. Increase the Penalties for Vote Fraud, Conspiracy to Commit Vote Fraud and Soliciting Vote Fraud
4. Broaden Standing in Prosecutorial Inaction Petitions
5. Funding Petitions Filed Against Prosecutorial Inaction

We hope you will agree these changes are reasonable and prudent. We also hope you will contact your state Legislator or Senator to express support for these measures. To locate who represents you, please visit us at www.VoterIntegrityProject.com/2015_starting_five

(Note: We refer to these as the “Starting Five,” because we are always researching and evaluating cases of vote fraud identified in NC and elsewhere. As new evidence of fraud emerges, we reserve the right to offer more solutions that will reduce or eliminate vote fraud as a threat to the security of our ballot boxes and to the longevity of our constitutional freedom.)



Eliminate Curbside Voter ID Loophole

Problem: There appears to be an inadvertent loophole created in the revised election law that allows curbside voters to use non-photo ID documents instituted under the Help America Vote Act in place of the intended photo ID documents specified in HB 589.

According to NCGS § 163-166.13(a), “For a registered voter voting curbside, that voter shall present identification under G.S. 163-166.9.”

According to NCGS § 163-166.9 (b), “Any qualified voter voting under this section shall comply with G.S. 163-166.13(a) by one of the following means:

- (1) Presenting photo identification in accordance with G.S. 163-166.13.
- (2) Presenting a copy of a document listed in G.S. 163-166.12(a)(2).”

The documents listed in § 163-166.12(a)(2) include, “A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.”

Talking Points:

Double standards. As written, the law allows special rights for one class of voters: Those purporting to be unable to egress their automobile and/or to stand in line at the polls. This has severe implications under the equal protection clause of our Bill of Rights. While we can all agree that voter ID requirements should not deter any lawful voters, we hope all can agree that (what appears to be) an obvious loophole in the voter ID law should be corrected in order to prevent criminal abuses.

Since there is no rationale for excusing voters from presenting a valid ID just because they arrive in automobiles (or even vans or busses) and opt not to egress the vehicle, VIP-NC recommends modifying the law as follows:

NCGS § 163-166.9 (b) states, “Any qualified voter voting under this section shall comply with G.S. 163-166.13(a) ~~by one of the following means:~~

- ~~(1) Presenting photo identification in accordance with G.S. 163-166.13.~~
- ~~(2) Presenting a copy of a document listed in G.S. 163-166.12(a)(2).”~~

163-166.13(a)(1) For a registered voter voting curbside, that voter shall present identification ~~under G.S. 163-166.9:~~ as specified in this section.



Observer Bill of Rights

Problem: VIP-NC has received numerous reports of Election Observers being abused by Chief Judges at their precincts. Current law enumerates only a few restrictions on the Observers' ability to move about freely, but many Chief Judges have taken excessive liberty to restrict Observers to the point of their presence being pointless. Some Observers could neither see nor hear any of the activities of voters or precinct officials.

HB 589 SECTION 11.2 directed the Joint Legislative Elections Oversight Committee to study a "bill of rights for election observers to guarantee their right to help assist proper voting while ensuring proper protection for voters and recommend to the General Assembly any legislation it deems advisable." We strongly urge the Committee to conduct hearings and enact legislation that would protect voters from disenfranchisement by fraud. The final bill would include this suggested language.

Under § 163-45. (c) [ADDED] **Observer Rights.** An observer shall do no electioneering at the voting place, and shall in no manner impede the voting process or interfere or communicate with or observe any voter in casting a ballot, but, subject to these ~~restrictions~~ specified rights, the chief judge and judges of elections shall permit the observer to make such observation and take such notes as the observer may desire."

- 1) Election Observers shall have the explicit right to begin observation duties from the time the polling location is entered by the Judge and through the occasion of all ballot containers are officially sealed and the voting enclosure is secured for the day.
- 2) Election Observers shall have the explicit right to hear the name of each voter when they first announce it at the initial check-in table and to ask any election official to repeat the name and/or address of the voter if the Observer was unable to hear the voter's name and/or address when it was initially announced.
- 3) The election Observer shall have the explicit right to observe curbside voting and to hear the name and/or address of the voter as it is announced and to ask any election official to repeat the name of the voter if the Observer is unable to hear the voter's name and/or address when initially announced.
- 4) The Observer shall have the explicit right to traverse freely between the curbside voting area and the voting enclosure throughout the curbside voting process.
- 5) The Observer shall have the explicit right to observe curbside voting at such a distance that it would enable the observer to hear any instruction or verbal communication between the election assistant and the curbside voter, but may not stand less than five feet from the vehicle.
- 6) Observers shall have the explicit right to keep in view any and all ballot boxes until after the ballot boxes are sealed at the end of the day.
- 7) Chief Judges may only expel an Observer for cause and in writing. The written notice of expulsion shall be signed by the Chief Judge and at least one other Judge assigned to that Precinct before it may be lawfully served to the Observer.



Increase the Penalties for Vote Fraud

Proposed Legislation: Increase the penalty for vote fraud to a Class G felony by changing the following NCGS:

§ 163-275. Certain acts declared felonies. Any person who shall, in connection with any primary, general or special election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a Class I felony. [The statute then specifies 17 illegal election-related acts.]

Discussion: The highest criminal category for election fraud under North Carolina law is the lowest category of felony: Class I. Here are three reasons the maximum penalty for vote fraud should be raised to a Class G.

1. **Deterrence.** The signal to the public is clear: fraudulent acts relating to elections has been treated as a minor offense that seldom results in prosecution. In fact, possession of stolen bale of hay or obtaining a bale of hay under false pretenses are both crimes that are more severely punished than are crimes such as stealing someone's identity for the purposes of voting illegally, exchanging votes for financial compensation or even for voter intimidation. This antiquated view needs to be brought in line with the public's growing intolerance for such crimes against the constitution.
2. **Prosecutorial Discretion.** The relatively low penalty for fraud relating to voting and elections also sends a low-priority signal to prosecutors and investigators. This condition has emboldened District Attorneys to ignore known criminal referrals for double voting in the 2012 general election. Such a low valuation by lawmakers has translated into negligible effort to investigate such crimes and we've yet to see more than one case prosecuted as a stand-alone crime. The lone exception came after multiple queries to the DA from the Wake County BOE. The case involved three highly publicized double voters in 2008 that were not finally prosecuted until August of 2011. All three admitted to the crime.
3. **Adverse Plea Bargain Penalties.** According to our state's current sentencing guidelines (http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/sstrainingmanual_09.pdf) a defendant who pleads guilty to the lesser charge of an "attempted" crime will be found guilty of Class 1 misdemeanor, with no impact on the perpetrator's voting rights. The same rule applies to the charge of "**conspiracy** to commit." It too is a Class I misdemeanor, but "solicitation to commit a Class I felony is a Class 2 misdemeanor," as is "accessory after the fact." In the Wake County cases highlighted above, and all pled guilty to "attempted vote fraud," a Class 1 misdemeanor. One fraudulent voter, Brandon Earl McLean, even had a prior felony conviction for possession of stolen goods and two misdemeanor drug-related convictions; but he received the same penalty as the other two: \$200 fine plus court costs.

Bottom Line: The law is a teacher. By raising vote fraud to a Class G felony, "attempted" vote fraud becomes a Class H felony and soliciting (or even conspiracy) to commit vote fraud becomes a Class I felony. Any aspect of this crime against the fabric of our constitutional process should be a felony.



Broaden Standing in Prosecutorial Inaction Petitions

Proposed Legislation: Amend § 163-278.28 such that obstacles to prosecuting vote fraud may be reduced.

Discussion: Public perception of vote fraud is greatly distorted by the lack of prosecutions. There are numerous reasons that DA may opt not to prosecute vote fraud, constrained resources being the most frequent excuse; but the root problem is a lack of motivation. The District Attorneys simply do not understand how fundamental an issue vote fraud is among the people who voted a reform-minded majority into the Legislature. In broad terms, their hesitance, called “prosecutorial discretion,” is a time-honored principle that every DA needs in order to survive in their elected office; but election law allows a critical exception to that principle.

Previous Legislators have recognized and codified a law allowing citizens to bypass a potentially corrupt District Attorney in matters pertaining to either vote fraud or campaign finance violations. Specifically, the law allows a registered voter of that prosecutorial district to petition the superior court for appointment of a special prosecutor. On its surface, this allows a workaround to a potentially corrupt District Attorney, but the problem arises in hiring an attorney to file the petition. The potential effect of such a motion is to embarrass the DA for ignoring the fraud and potentially shame the court into appointing a Special Prosecutor for the case. A companion to this bill would award legal expenses to the citizen petitioning the court successfully, but it would still be important to broaden who has standing under this portion of the law in order to obtain prosecution against vote fraud and campaign finance violations.

To that end, we propose the following modifications to § 163-278.28:

§ 163-278.28. Issuance of injunctions; special prosecutors named.

(a) The superior courts of this State shall have jurisdiction to issue injunctions or grant any other equitable relief appropriate to enforce the provisions of this Article upon application by any registered voter of the State.

(b) If the Board makes a report to a district attorney under G.S. 163-278.27 and no prosecution is initiated within 45 days after the report is made, any registered North Carolina voter ~~of the prosecutorial district to whose district attorney a report has been made~~, or any board of elections within that prosecutorial district, may, by verified affidavit, petition the superior court for that district for the appointment of a special prosecutor to prosecute the individuals or persons who have or who are believed to have violated any section of this Article. Upon receipt of a petition for the appointment of a special prosecutor, the superior court shall issue an order to show cause, directed at the individuals or persons alleged in the petition to be in violation of this Article, why a special prosecutor should not be appointed. If there is no answer to the order, the court shall appoint a special prosecutor. If there is an answer, the court shall hold a hearing on the order, at which both the petitioning and answering parties may be heard, to determine whether a prima facie case of a violation and failure to prosecute exists. If there is such a prima facie case, the court shall so find and shall thereupon appoint a special prosecutor to prosecute the alleged violators. The special prosecutor shall take the oath required of assistant district attorneys by G.S. 7A-63, shall serve as an assistant district attorney pro tem of the appropriate district, and shall prosecute the alleged violators. (1973, c. 1272, s. 1; 1979, c. 500, s. 11.)



Funding Petitions Filed Against Prosecutorial Inaction

Proposed Legislation: Amend § 163-278.28 such that financial obstacles to citizens seeking prosecution of vote fraud and campaign finance violations may be reduced.

Discussion: Public perception of vote fraud is greatly distorted by the lack of prosecutions. There are numerous reasons that DA may opt not to prosecute vote fraud, constrained resources being the most frequent excuse; but the root problem is a lack of motivation. The District Attorneys simply do not understand how fundamental an issue vote fraud is among the people who voted a reform-minded majority into the Legislature. In broad terms, their hesitance, called “prosecutorial discretion,” is a time-honored principle that every DA needs in order to survive in their elected office; but election law allows a critical exception to that principle.

Previous Legislators have recognized and codified a law allowing citizens to bypass a potentially corrupt District Attorney in matters pertaining to either vote fraud or campaign finance violations. Specifically, the law allows a registered voter of that prosecutorial district to petition the superior court for appointment of a special prosecutor. On its surface, this allows a workaround to a potentially corrupt District Attorney, but the problem arises in hiring an attorney to file the petition. The potential effect of such a motion is to embarrass the DA for ignoring the fraud and potentially shame the court into appointing a Special Prosecutor for the case. A companion to this bill would broaden who has standing in such a motion, but this bill would enact the exact same financial recourse already permitted to the petitioner under North Carolina’s public records statute, § 132-9(c), and to the District Attorney if frivolously petitioned, as in § 132-9 (d). The overall effect is to provide a means for private citizens to place a financial burden on any DA who refuses to prosecute vote fraud or campaign finance fraud.

To that end, we propose the following addition to § 163-278.28:

§ 163-278.28. Issuance of injunctions; special prosecutors named.

[ADDED] (c) In any action brought pursuant to this section in which a party successfully compels the appointment of a special prosecutor, the court shall allow a party seeking prosecution who substantially prevails to recover its reasonable attorneys' fees if attributed to the filing of the petition. The court may not assess attorneys' fees against the governmental body or governmental unit if the court denies the petition.

(d) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court shall assess a reasonable attorney's fee against the person or persons instituting the action and award it to the public agency as part of the costs. (1973, c. 1272, s. 1; 1979, c. 500, s. 11.)