
Coates' Canons Blog: 2013—A Year of Election Law Changes

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UPDATE February 2017: In July 2016 the federal Fourth Circuit Court of Appeals issued an injunction against enforcement of three elements of the of the 2013 legislation described in this post: photo ID at the polls, end of same-day registration and vote, and shortening of the early voting period. The matter is before the United States Supreme Court.

In 2013, the United States Supreme Court and the North Carolina General Assembly together made major changes in the law of elections. This was a watershed year in elections law.

The Change from the Supreme Court—the End of Pre-Clearance

In June, in the case of *Shelby County v. Holder*, the Supreme Court declared Section 4 of the Voting Rights Act of 1965 unconstitutional. Section 4 identified the jurisdictions in the nation that were required under Section 5 of the Act to submit changes related to voting for approval by the U.S. Department of Justice, in a process known as “preclearance.” With Section 4 unconstitutional, Section 5 is left without force. It is, for all practical purposes, dead.

What, exactly, does that mean for North Carolina’s 40 counties that were covered by Section 4? For decades, those counties and their cities and school boards and boards of elections have been required to submit elections changes for preclearance. No change related to voting in any of those 40 counties—or any municipality or school board in the county—could go into effect until the U.S. Department of Justice gave permission

And, because any elections law that applied statewide also obviously affected those 40 counties, every state elections statute also had to be submitted to the Department of Justice for preclearance.

Now, however, Section 5 is dead. For elections changes made starting in June 25, 2013, preclearance is no longer required. It is not required for changes at the county or municipal level or at the state level.

But Section 2 of the Voting Rights Act remains alive and well. It is the basic anti-discrimination portion of the Act. It prohibits discrimination in matters related to voting throughout the entire state of North Carolina and throughout the United States. Cities and counties still may be sued for voting practices that have a discriminatory effect, as may the state. The decision in *Shelby County v. Holder*, which for all practical purposes killed Section 5, has no effect at all on Section 2.

Changes from the North Carolina General Assembly

In an act entitled the Voter Information Verification Act (H 589, SL 2013-381), the state legislature in 2013 made several significant changes in the administration of elections in North Carolina. The new act is referred to as “VIVA.”

Here are VIVA's five biggest changes:

- Photo ID at polls
- End of same-day registration and vote
- Shortening of the early voting period
- End of straight-ticket voting
- Mail-in absentee ballot request changes

Photo ID at the Polls

Starting with elections in 2016, VIVA requires that a voter (with a couple of limited exceptions) will have to show one of the following forms of identification, with a photograph:

- NC drivers license
- NC DMV ID card
- Passport
- US military ID card
- Veterans Administration ID card
- Tribal enrollment card
- Other state drivers license if the voter moved to NC recently

The ID must be current—that is, unexpired—unless the voter is over 70 and the ID was unexpired when the voter turned 70. If a voter is turned away for lack of photo ID, he or she may vote a provisional ballot and show photo ID later. The state will issue DMV photo IDs for free.

Photo ID is not required for mail-in absentee voting.

End of Same-Day Registration and Voting

“Early voting” is really absentee voting. Not everyone realizes that. When you vote early, you are voting an absentee ballot that is in fact “retrievable.” All ballots cast at an early voting site are counted on election day, not on the day they are cast. Since 2007, the law has permitted eligible voters who are not registered to apply to register at an early voting site and cast their absentee ballot (which could, if necessary, be retrieved) at the same time. Elections officials then compared the identification information supplied (drivers license number or last digits of the Social Security Number) with data in DMV and Social Security Administration data bases. If the numbers matched, the ballot would be counted. If the numbers did not match, the ballot could be removed if the problem could not be straightened out by the date of the official canvass of the votes.

VIVA eliminates same-day registration and voting. Now, as before 2007, you must be registered to vote 25 days before election day in order to vote, whether you are voting at an early voting site or at your precinct on election day.

Shorten the Early Voting Period

Until VIVA, the early voting period has run from the third Thursday before election to the Saturday before election. Beginning in 2014, the period will be shorted by a week, running from the second Thursday before election to the Saturday before election. But the total number of hours of early voting is to be kept the same. Just how county boards of elections will implement that requirement remains to be seen.

End of Straight-Ticket Voting

Until now, a voter could mark the “Republican” or “Democratic” circle on the ballot—or the “Libertarian” circle—and vote for all the candidates of that party in all races on the ballot. A number of years ago, the law was changed to take the Presidential race out of straight-ticket voting. VIVA eliminates straight-ticket voting altogether. Beginning in 2014, voters will have to mark the ballot in every race in which they wish to cast a vote. It seems likely that there will be a noticeable drop off in votes cast for low-profile, down-the-ticket offices.

Mail-in Absentee Ballot Application Changes

There are two distinct ways to cast an absentee ballot. As mentioned above, “early voting” is really absentee voting. It feels very much like regular election-day voting, but it has some differences.

The other way to vote by absentee ballot is by mail. VIVA makes a significant change in mail-in absentee voting. Beginning in 2014, anyone can print out or copy a state-prepared form for requesting absentee ballots and provide that form to anyone else. So, parties or candidates will be able, for example, to send the forms to their potential voters along

with campaign flyers. The voter then fills out the form and mails it to the county elections office. The county board of elections will then mail to the voter the application for absentee voting and the ballots, which the voter can mark and verify (with witnesses) and mail back.

This process is more streamlined than the former processes. Combined with the fact that photo ID will not be required for mail-in absentee voting, it is anticipated that the volume of mail-in absentee ballots that county boards of elections may receive will be greatly increased.

Other General Assembly Changes

VIVA contains a number of other elections administration changes. Among them:

- Public financing of judicial and three executive branch races ended
- Pre-registration of 16- and 17-year olds ended
- More observers
- More people eligible to challenge voters
- Presidential preference primary moved earlier
- Out-of-precinct provisional voting ended
- Referendums can be held only on primary or election days