



Voter Protection Program

VOTER INTIMIDATION TOOLKIT: TEMPLATE FOR ATTORNEY GENERAL GUIDANCE

This template is provided as an illustrative resource for state attorneys general who are considering releasing guidance or an advisory opinion to educate the public, reassure voters, and deter potential bad actors. Of course, any guidance or advisory must be adapted to the specific state context and informed by expertise in relevant state laws.

Attorneys general considering issuing guidance or an advisory on voter intimidation may wish to review relevant statements already issued by their colleagues:

- On September 17, Massachusetts Attorney General Maura Healey [issued an advisory](#) on poll monitoring and voter intimidation.
- On September 24, Virginia Attorney General Mark Herring issued [an official advisory opinion](#) explaining the laws relevant to voter intimidation.

ATTORNEY GENERAL GUIDANCE PROHIBITIONS ON UNAUTHORIZED POLL WATCHERS AND VOTER INTIMIDATION

The Office of the Attorney General issues the following guidance concerning private militias and unauthorized poll watching. State and federal laws protect the rights of the citizens of [STATE] to vote safely in elections, free from interference or intimidation.

Background

I am committed to ensuring that every voter can cast their ballot freely and with confidence that it will be counted. My office will act swiftly to protect the rights of citizens to vote free from violence and intimidation.

In recent weeks, concerns have been raised regarding the potential for voter intimidation during the general election. I have also heard concerns about other forms of interference with the peaceful and orderly administration of polling stations.

These scare tactics will not work. State and federal laws protect voters from interference and intimidation, including by menacing or violence and by improper challenges to votes. Laws also protect our residents against the illegal activities of unauthorized private militias. Anyone who engages in any form of voter interference or intimidation is at risk of criminal prosecution. Anyone who engages in any form of prohibited conduct in or around polling places may be subject to removal, fines, arrest, or all three.

Guidance

Intimidating Voters Is Illegal

Here, depending on applicable state law, state attorneys general may wish to list and explain relevant prohibitions against voter intimidation, interference, and harassment. This may include:

- *A list and brief explication of relevant state laws that criminalize or otherwise prohibit voter intimidation, harassment, or menacing. One example can be found in Virginia Attorney General Mark Herring's [Advisory Opinion](#) on voter intimidation: "Both state and federal law include provisions designed to ensure that voters may cast their votes free from interference or harassment. The Code of Virginia, for example, expressly prohibits voter intimidation. Section 24.2-607(A) makes it unlawful "for any person to hinder, intimidate, or interfere with any qualified voter so as to prevent the voter from casting a secret ballot." Violations of that provision are punishable as a Class 1 misdemeanor..."*
- *Non-exclusive, illustrative examples of conduct that may constitute prohibited voter intimidation in the state. Depending on state law, these may include baseless or abusive challenges to voters' eligibility; direct confrontation of voters; use of insulting, offensive, or threatening language or raised voices in and around polling places; blocking polling-place entrances; following and photographing voters, recording license plate numbers, and visiting voters' homes; brandishing weapons in front of voters; and disseminating 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.*

- *A statement of the federal laws on point. For instance: "It is a federal crime to intimidate, threaten, or coerce anyone in order to interfere with an individual's right to vote in a presidential or congressional election. See 18 U.S.C. § 594, 1985(3); 52 U.S.C. §§ 10307(b), 10101(b)."*
- *A reminder of the purpose of the laws and the consequences of law breaking. For instance: "These laws protect voters against intimidation, threats, and coercion. Violators may be removed from polling places and may be subject to penalties under the law."*

State and Federal Law Regulates Conduct at Polling Places to Ensure a Safe and Fair Election

Here, depending on applicable state law, state attorneys general may wish to distinguish between legal poll watching and illegal intimidation. If appropriate under law, state attorneys general may wish to include:

- *A note that, in the state, authorized poll watching is legal but carefully regulated to protect the voters and to enable election officials to conduct a safe, effective, and fair election.*
- *An overview of applicable law governing poll watching in the state, including provisions – if any – about how poll watchers are authorized and regulated. Attorneys general may wish to note the behaviors that are permitted and forbidden for poll watchers, including any prohibitions against challenging qualified voters for the purposes of annoying or delay.*
- *A reminder that private individuals who attempt to monitor or keep watch over polling places may risk engaging in prohibited voter intimidation.*
- *A reminder that anyone credibly suspecting voter fraud should contact the appropriate authorities, rather than attempting vigilante justice. For instance: "The Office of the Attorney General takes all allegation of voter fraud or other abuse of our elections process seriously. Anyone who has credible allegations of a crime involving our elections should notify our office."*

It Is Illegal for Private Groups to Carry out Law Enforcement or Military Activities

Here, depending on applicable state law, state attorneys general may wish to list and explain any relevant prohibitions against unauthorized militia activity. If appropriate under law, state attorneys general may wish to include:

- *A general summary statement of the law. For instance: “Private individuals who engage in unauthorized law enforcement or paramilitary activity on their own accord are acting illegally under state and federal law. “*
- *A list and brief explication of relevant state laws that criminalize or otherwise prohibit unauthorized paramilitary activity.*
- *A reminder that relevant state laws bar unauthorized individuals from falsely assuming law enforcement identities or functions.*

Contacts

The Office of the Attorney General will act swiftly to protect the rights of citizens from violence and intimidation.

If anyone interferes with your right to vote through threats, intimidation, or coercion, or you become aware of any interference with the right of our citizens to vote, please contact the _____ of the Attorney General's Office at _____. If you need immediate assistance, dial 911 or contact your local police department.

Dated: October [__], 2020