

Fact Sheet: Protecting Against Voter Intimidation

Is voter intimidation illegal?

Yes. The right of each voter to cast his or her ballot free from intimidation or coercion is a foundational principle of a free and democratic society. Federal law prohibits voter intimidation.

Multiple federal statutes make it a crime to intimidate voters: it is illegal to intimidate, threaten, or coerce a person, or attempt to do so, “for the purpose of interfering with” that person’s right “to vote or to vote as he may choose.” 18 U.S.C. § 594. It is also a crime to knowingly and willfully intimidate, threaten, or coerce any person, or attempt to do so, for “registering to vote, or voting,” or for “urging or aiding” anyone to vote or register to vote. 52 U.S.C. § 20511(1). And it is a crime to “by force or threat of force” willfully injure, intimidate, or interfere with any person because he or she is voting or has voted or “in order to intimidate” anyone from voting. 18 U.S.C. § 245(b)(1)(A).

Federal law also provides for civil lawsuits based on voter intimidation. Section 11 of the Voting Rights Act makes it unlawful to “intimidate, threaten, or coerce” another person, or attempt to do so, “for voting or attempting to vote” or “for urging or aiding any person to vote or attempt to vote.” 52 U.S.C. § 10307(b). And Section 2 of the Ku Klux Klan Act of 1871 makes it unlawful for “two or more persons to conspire to prevent by force, intimidation, or threat,” any voter from casting a ballot for the candidate of his or her choice. 42 U.S.C. § 1985(3).

Every state also separately prohibits interference with voters and/or voter intimidation.

What are examples of voter intimidation?

The U.S. Department of Justice has [explained](#) that voter intimidation is conduct that is intended to compel prospective voters to vote against their preferences, or to not vote at all, through activity that is reasonably calculated to instill fear. Some actions that ordinarily would be legal may be unlawful if they are intended to intimidate voters.

Voter intimidation is often subtle and context-dependent, so it can be difficult to identify in advance. Here are some examples of conduct near polling sites that likely would constitute illegal voter intimidation, although other conduct could also qualify:

- Violent behavior inside or outside the polling site
- Confronting voters while wearing military-style or official-looking uniforms
- Brandishing firearms or the intimidating display of firearms
- Disrupting voting lines or blocking the entrance to the polling place
- Following voters to, from, or within the polling place
- Verbal threats of violence
- Spreading false information about voter fraud, voting requirements, or related criminal penalties
- Aggressively approaching voters’ vehicles or writing down voters’ license plate numbers
- Harassing voters, aggressively questioning them about their qualifications to vote

Are guns permitted at polling places?

Sometimes. As the Giffords Law Center [explains](#), Arizona, California, Florida, Georgia, Louisiana, Texas, and the District of Columbia “explicitly prohibit guns at polling locations,” while Mississippi, Missouri, Nebraska, and

South Carolina “prohibit concealed firearms at the polls.” Guns may also be prohibited when polling locations are in K–12 schools and other property where firearms are not permitted.

Even where guns are not explicitly prohibited, they may not be used to intimidate voters. Nor may armed groups of individuals patrol polling locations or otherwise engage in activities reserved for law enforcement or official state militias. Fact sheets containing state laws banning private unauthorized militia activity are available at <http://bit.ly/50factsheets>.

Does the First Amendment protect intimidating speech?

Not always. The First Amendment does not protect intimidation in the form of “true threats,” “where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence” against another person or group. *Virginia v. Black*, 538 U.S. 343, 360 (2003).

Even when speech is not openly threatening, states and localities nonetheless may impose some restrictions on speech in order to protect the integrity of elections and the rights of voters to cast their ballots free from intimidation. In *Burson v. Freeman*, 504 U.S. 191 (1992), the Supreme Court upheld a Tennessee law that banned campaigning within 100 feet of the entrance to a polling place. Nearly every state has a [similar law](#) protecting voters against electioneering in the immediate vicinity of the polls. Although speech outside this limited distance may be entitled to greater protections, jurisdictions likely could, for example, require any demonstrations to remain a reasonable distance away from the path that voters must take into the polling place in order to guard against intimidation.

What does it mean to be a poll watcher?

[State law](#) regulates those who are permitted to observe the voting process within a polling place, sometimes called “poll watchers” or “election observers,” and what those observers are permitted to do. State law also governs who is permitted to challenge a voter’s qualifications to vote and what a challenger must show to make such a challenge. These laws vary from state to state. Election officials should be familiar with these laws to prevent unauthorized observation or challenges and to ensure that such activities are not used for purposes of intimidation. Even if your qualifications to vote are challenged, you may still cast a regular ballot unless that challenge is sustained, and, at a minimum, you always have the right to cast a provisional ballot before leaving the polling site.

What should I do if I see or experience voter intimidation?

- ✓ If you fear imminent violence, call **9-1-1**.
- ✓ Notify your **local election official** at your polling place.
- ✓ **Document** what you saw or experienced: what happened, where, and when, and whether any voters were deterred from voting.
- ✓ Call **Election Protection at 866-OUR-VOTE** (866-687-8683). Assistance is also available in **Spanish** at 888-VE-Y-VOTA (888- 839-8682), in **Arabic** at 844-YALLA-US (844-915-5187), and **Asian languages** at 888-API-VOTE (1-888-274-8683). A video **American Sign Language** line is available at 301-818-VOTE (301-818-8683).

This Fact Sheet has been prepared by the Institute for Constitutional Advocacy and Protection (ICAP) at Georgetown University Law Center. ICAP’s mission is to use the power of the courts to defend American constitutional rights and values. Visit us at <https://www.law.georgetown.edu/icap/>. Contact us at reachICAP@georgetown.edu.