



PROTECTING ARIZONANS FROM VOTER INTIMIDATION

This memo outlines the robust protections for voters against voter intimidation under both federal and Arizona law. **Voter intimidation is a crime and local election officials and law enforcement have a responsibility to protect Arizonans from voter intimidation of any kind.**

First, anyone who “intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote”¹ in a federal election commits a federal crime.

Second, Arizona also has an extensive set of laws that protect Arizona voters from harassment, intimidation, and other interference with the right to vote, particularly in and around voting locations.²

Finally, election officials are required to maintain order at the polling places, including preserving uninhibited voter access to a polling place and preventing any attempts to obstruct, intimidate, or interfere with any voter.³

1 18 U.S.C. § 594.

2 See, e.g., A.R.S. §§ 16-1003, 16-1004(A), 16-1006(A)-(B), 16-1013, 16-1014(A), 16-1017.

3 See, e.g., A.R.S. §§ 16-512, 16-515(B), 16-562, 16-593(A), (C); Arizona Sec’y of State, *2019 Elections Procedures Manual*, 134-35, 141-42, 179-80, 190-91 (Dec. 2019),

https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf (hereinafter Manual).



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I. Voter Intimidation

Federal Law

Federal law provides that “[w]hoever **intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote** or to vote as he may choose, or of causing such other person to vote for, or not to vote for,” any candidate for federal office, shall be fined or imprisoned for not more than one year.⁴

Such protection extends to **attempts** to intimidate, threaten, or coerce voters and any intimidation, threats, or coercion with respect not only to voting but also voter registration and assisting voters to register and/or vote.⁵ Thus, federal laws prohibit all persons from engaging in conduct that is intended to (regardless of its effect) intimidate voters.

A person found guilty of violating the federal voter intimidation law could be sentenced to up to five years in prison in addition to criminal fines.⁶ People who intimidate or attempt to intimidate voters—or interfere with the right to vote—are also subject to steep civil penalties.⁷

Arizona Law

In Arizona, it is illegal to use coercion, intimidation, force, threat, menace, bribery, or any other corrupt means to influence a voter. This includes influencing *how* they vote or hindering them from voting in any way.⁸ Such intimidation is prohibited regardless of whether it takes place within or outside the 75-foot limit for the electioneering ban.⁹

4 18 U.S.C. § 594; *see also* 18 U.S.C. §§ 241, 242, 245(b)(1)(A), and 610 (criminal provisions).

5 52 U.S.C. § 20511.

6 *Id.*; *see also* 52 U.S.C. § 10308(a).

7 *See* 52 U.S.C. § 10307(b) (“No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote”); 52 U.S.C. § 10101(b) (“No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose[.]”); *see also* 42 U.S.C. § 1985(3) (providing a private right of action where “two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States”).

8 A.R.S. § 16-1006(A)-(B); A.R.S. § 16-1013.

9 Manual, *supra* note 3, at 180.

Examples of intimidation tactics from the Arizona Election Procedures Manual:

- Aggressive behavior, such as raising one’s voice or taunting a voter or poll worker
- Using threatening, insulting, or offensive language to a voter or poll worker
- Blocking the entrance to a voting location
- Disrupting voting lines
- Intentionally disseminating false or misleading information at a voting location, such as flyers or communications that misstate the date of the election, hours of operation for voting locations, addresses for voting locations, or similar efforts intended to disenfranchise voters
- Directly confronting or questioning voters in a harassing or intimidating manner
- Asking voters for “documentation” or other questions that only poll workers should perform
- Raising repeated frivolous voter challenges to poll workers without any good faith basis, or raising voter challenges solely based on race, ethnicity, national origin, language, religion or disability
- Posting signs or communicating messages about penalties for “voter fraud” in a harassing or intimidating manner.¹⁰

Interference with the work of election officials is a felony.¹¹ It is also illegal to destroy, deface, or delay delivery of a ballot.¹² It is unlawful to offer, promise, exchange, or accept money, an office, place, employment, or other valuable consideration (for oneself or someone else) in exchange for a vote (or to refrain from voting).¹³ It is also illegal to offer, promise, exchange, or accept such valuables to be used for bribery at any election.¹⁴

Election officers – It is illegal for election officers to use menace, reward, or promise thereof to induce a voter to vote differently than they intended.¹⁵ It is also illegal for them to try to find out who a voter voted for or disclose this information.¹⁶

10 A.R.S. § 16-1013(A); A.R.S. § 16-1017; Manual, *supra* note 3, at 181.

11 A.R.S. § 16-1004(A).

12 A.R.S. § 16-1003.

13 A.R.S. §§ 16-1014(A)(1), (3).

14 A.R.S. §§ 16-1014(A)(2), (3).

15 A.R.S. § 16-1008.

16 A.R.S. §§ 16-1007(1), (4).

Party observers – Party observers may not interfere with election procedures or staff.¹⁷ If an observer has a question about the proceedings or seeks to raise an objection, the observer should only speak to their designated point of contact.¹⁸ Where ballots are dropped off at a voting location, an observer may not—within the 75-foot limit—inspect, copy, or photograph the early ballot envelopes in an effort to discern voters’ identities, or confront, question, or photograph the individual who dropped off the early ballots.¹⁹

Employers – An employer may not include with an employee’s paycheck any political material containing threats (express or implied) intended to influence the political opinions or actions of employees.²⁰ Neither can employers display any threats or information meant to influence the political opinions or actions of their employees anywhere that they may see it in the course of their employment within 90 days of an election.²¹

Example violation: Employer displays a sign implying that the company will shut down or reduce employees’ wages if a certain candidate is elected.²²

Firearms – Private citizens cannot bring weapons into a polling place (including within the 75-foot limit), even with a license to carry.²³ Observers at voting locations should leave weapons at home or in their vehicles.²⁴ Military and peace officers in the performance of official duties are exempt.²⁵

Photography – No photography or video recording is allowed within the 75-foot limit of a voting location.²⁶ There is no exception for members of the media.²⁷

Signage – It is also a crime for any person to interfere with any political sign or any political mailer, handout, flyer or other printed material from forty-five days before a primary election until seven days after the general election.²⁸

17 Manual, *supra* note 3, at 141.

18 *Id.* at 141-42.

19 *Id.* The manual lists other general procedures for observers here as well. *Id.*

20 A.R.S. § 16-1012(A)(1).

21 A.R.S. § 16-1012(A)(2).

22 *Id.*

23 Manual, *supra* note 3, at 180.

24 A.R.S. § 13-3102(A)(11); Manual, *supra* note 3, at 180.

25 A.R.S. § 13-3102(C); Manual, *supra* note 3, at 180.

26 A.R.S. § 16-515(G); Manual, *supra* note 3, at 179.

27 Manual, *supra* note 3, at 179.

28 A.R.S. § 16-1019(A). Except that for a sign for a candidate in a primary election who does not advance to the general election, the period ends seven days after the primary election. A.R.S. § 16-1019(A).

Challenges – Any elector can orally challenge a voter’s eligibility at a voting location,²⁹ but this **may not** be used as an intimidation tactic. The challenger has to show fraud by clear and convincing evidence. A voter **may not** be challenged on the basis that they:

- Registered to vote using the State or Federal Form and did not provide proof of citizenship
- Moved from one address within the county to another within the county

If requested by the challenged voter, and before administering any oath, the inspector (who is responsible for adjudicating such challenges along with two judges) must read to the voter the rules for determining residency.³⁰ Only the inspector may address questions to the challenged voter.³¹ If a majority of the board finds the challenge to be invalid, the voter must be permitted to vote a regular ballot.³² If the person challenged refuses to take any oath or to answer questions material to the challenge, or if a majority of the board finds that the challenge is valid, the challenged voter **must still be permitted to vote a provisional ballot.**³³

Raising repeated frivolous voter challenges to poll workers without any good faith basis, or raising voter challenges solely based on race, ethnicity, national origin, language, religion or disability could be considered an unlawful **intimidation tactic** according to the state’s election procedures manual.³⁴

29 A.R.S. § 16-591; Manual, *supra* note 3, at 190-91.

30 A.R.S. §§ 16-593(A), (C). The term of residence shall be computed by including the day on which the person’s residence commenced and by excluding the day of election. A.R.S. § 16-593(B).

31 A.R.S. § 16-592(A).

32 A.R.S. § 16-592(B).

33 A.R.S. § 16-592(C).

34 A.R.S. § 16-1013(A); A.R.S. § 16-1017; Manual, *supra* note 3, at 181.

II. Electioneering

Definition: “Electioneering” occurs when a person knowingly, intentionally, and verbally expresses support for, or opposition to, a candidate or ballot measure on the ballot in that election, or a political party with candidate(s) who appear on the ballot in that election, in order to induce or compel another person to vote in a particular manner or to refrain from voting.³⁵

It is a crime to electioneer on Election Day within **75 feet** of a polling place or on-site early voting location.³⁶ Additionally, no electioneering may take place outside the 75-foot limit if it is audible from a location inside the door to the voting location.³⁷ The 75-foot limit is measured from the main outside entrance of the voting location.³⁸

The electioneering ban applies to the election board, other election officials, political party observers, and any voter within the 75-foot limit.³⁹ Though voters or voters’ assistants can wear clothes with political messages, it is illegal for election board members, other election officials, political party representatives, or authorized challengers to wear, carry, or display any materials that identify or express support for or opposition to a political party, political organization, or candidate or ballot measure appearing on the ballot.⁴⁰

Electioneering and other political activity must be permitted in public areas and parking lots used by voters outside the 75-foot limit.⁴¹ But even permissible electioneering and political activity outside the 75-foot limit **may still not** result in voter intimidation.⁴² Nor can any temporary or permanent structure be erected or access to parking spaces blocked or impaired.⁴³ Also, if a voting location has an emergency designation, electioneering and other political activity are **not permitted even outside the 75-foot limit**.⁴⁴ A polling place with an emergency designation is a last resort polling location that has been selected after a number of attempts have been made to find a suitable facility, and for which emergency conditions prevent electioneering.⁴⁵

35 A.R.S. § 16-515(I); Manual, *supra* note 3, at 178.

36 A.R.S. § 16-1018(A)(1); A.R.S. § 16-515(A); Manual, *supra* note 3, at 178.

37 Manual, *supra* note 3, at 178.

38 *Id.*

39 *Id.*

40 A.R.S. §§ 16-515(F), (H); Manual, *supra* note 3, at 179.

41 A.R.S. § 16-411(H); Manual, *supra* note 3, at 132.

42 Manual, *supra* note 3, at 132.

43 A.R.S. § 16-411(H); Manual, *supra* note 3, at 132.

44 A.R.S. § 16-411(I); Manual, *supra* note 3, at 132.

45 A.R.S. § 16-411(H); Manual, *supra* note 3, at 131-32. “[A] county recorder or other officer in charge of elections shall designate a polling place as an emergency polling place . . . if . . . [a]n act of God renders a previously set polling place as unusable” or “[a] county recorder or other officer in charge of

III. “Hanging Around” Polls

It is illegal to remain inside the 75-foot limit while the polls are open, except for the purpose of voting.

There is an exemption for election officials, political party representatives appointed by the county chairman, challengers permitted by law, U.S. DOJ or other authorized federal government observers, and voters’ assistants or accompanying minors.⁴⁶

Examples of people **NOT** authorized to be present within the 75-foot limit:

- X The media;
- X Researchers;
- X People conducting exit polls; and
- X Political party or campaign representatives without authorized political party observer status seeking “tear sheets.”⁴⁷

IV. Law Enforcement at Polling Locations

Despite recent comments by President Trump,⁴⁸ **the president does not have authority to order law enforcement to patrol polling places.** Sheriff’s deputies and police officers are commanded at the local level, and a federal statute makes it a felony for any federal official to send “armed men” to the vicinity of polling places.⁴⁹

Federal law prohibits U.S. military presence at the polls and members of the U.S. military from interfering with any qualified voter’s right to vote.⁵⁰ This prohibition, of course, does not apply to members of the U.S. military who are at the polls to vote.

Arizona election laws state that the inspector or marshal may call on law enforcement if needed to preserve order or remove disruptive persons from the voting location, but they must use sound judgment in deciding whether to do so, and any higher-level decisions should be raised through the officer in charge of elections.⁵¹

elections has exhausted all options and there are no suitable facilities in a precinct that are willing to be a polling place unless a facility can be given an emergency designation.” A.R.S. § 16-411(I).

46 A.R.S. §§ 16-515(A), (E), (H); A.R.S. §§ 16-580 (B)-(E); Manual, *supra* note 3, at 179-80. Regular business activity that normally occurs at the voting site may continue on Election Day, as long as it does not interfere with the voting process or result in electioneering. Manual, *supra* note 3, at 180.

47 Manual, *supra* note 3, at 179-80.

48 Fredreka Schouten, *Trump pledges to send ‘sheriffs’ and ‘law enforcement’ to polling places on Election Day, but it’s not clear he can*, CNN Politics, (Aug. 21, 2020), <https://www.cnn.com/2020/08/20/politics/trump-election-day-sheriffs/index.html>.

49 18 U.S.C. § 592.

50 18 U.S.C. § 593.

51 Manual, *supra* note 3, at 180.

However, it is important to note that law enforcement is still subject to voter intimidation laws, and Arizona election officials should be particularly vigilant of ensuring that voters who are distrustful of the police are not deterred from voting at polling locations because of the presence of law enforcement.

V. Officials Responsible for Enforcement

Secretary of state – The secretary of state or her designee is required to set up a toll-free hotline for the public to report incidents of voter fraud.⁵² The number is 1-877-THE VOTE (or 602-542-8683).⁵³

For violations of federal law, voters may file voting complaints with the Department of Justice’s Civil Rights Division by calling (800) 253-3931, emailing voting.section@usdoj.gov, or submitting an online form at <https://civilrights.justice.gov/report/>.

Voters may also seek advice on how to report intimidation by contacting the national, nonpartisan Election Protection coalition. The main number, **866-OUR-VOTE**, is administered by the Lawyers’ Committee for Civil Rights Under Law. The coalition also has lines available for Spanish-speaking ((888)-VE-Y-VOTA), Arabic-speaking ((844)-YALLA-US), and Asian-language-speaking ((888)-API-VOTE) voters.

Officer in charge of elections – The officer in charge of elections is typically the county recorder, though the designation can vary.⁵⁴ The officer in charge of elections maintains overall authority over the voting location.⁵⁵

- They may grant emergency designation to voting sites.⁵⁶
- They must train poll workers and establish policies to prevent and promptly remedy any instances of voter intimidation.⁵⁷ Poll worker training must cover the topic of establishing the 75-foot limit and enforcing non-electioneering and non-intimidation rules.⁵⁸
- They (or the inspector) may prohibit observers from using electronic devices in the voting location or central counting place if it interferes with or impedes election procedures or staff.⁵⁹
- They may be called in to help adjudicate formal challenges.⁶⁰
- They should publicize and/or implement certain listed guidelines, as applicable.⁶¹

52 A.R.S. § 16-142(C).

53 Arizona Sec’y of State, *Arizona Election Laws & Publications*, <https://azsos.gov/elections/arizona-election-laws-publications> (last visited Oct. 4, 2020).

54 See, e.g., A.R.S. § 16-411.

55 Manual, *supra* note 3, at 135.

56 A.R.S. § 16-411(l); Manual, *supra* note 3, at 179.

57 Manual, *supra* note 3, at 180.

58 *Id.* at 137.

59 *Id.* at 141-42.

60 Manual, *supra* note 3, at 190-91.

61 See *Id.* at 180.

County recorder – The county recorder enforces the electioneering ban during in-person early voting and at ballot replacement sites.⁶²

Election board – The inspector, marshal, judges, and clerks are collectively known as the “election board” for a particular polling location.⁶³ One of the election boards’ duties includes preparing and monitoring the voting location, which includes taking appropriate measures to preserve order and manage voter lines.⁶⁴ Upon arriving at the voting location, the election board (at the direction of the officer in charge of the election) must establish the 75-foot limit by posting at least three “75-foot limit” signs with certain specifications.⁶⁵ They must be posted in English and any other language required in the county under the Voting Rights Act.⁶⁶ The inspector, marshal, and judges have additional responsibilities related to voter intimidation, outlined below.

Inspector – The inspector serves as the chair of the election board and exercises authority over all election related activities at the voting location (under the direction of the county officer in charge of elections, who maintains overall authority over the voting location).⁶⁷

- Some of the inspector’s duties include maintaining sufficient knowledge about election procedures and ensuring the polling place is setup and functioning properly, which includes posting appropriate lists and notices and assisting electors.⁶⁸
- The inspector must utilize the marshal to preserve order and remove disruptive persons from the voting location. He (as well as the marshal) must use sound judgment to decide whether to contact law enforcement, and any higher-level decisions should be raised through the officer in charge of elections.⁶⁹
- The inspector (or officer in charge of the election) may prohibit observers from using electronic devices in the voting location or central counting place, as mentioned earlier.⁷⁰
- The inspector (and two judges) are responsible for deciding on challenges at the voting location.⁷¹

62 *Id.* at 179.

63 *Id.* at 133.

64 A.R.S. § 16-562; A.R.S. § 16-512; Manual, *supra* note 3, at 134.

65 The signs must have the heading “75-foot limit” printed in letters at least 2 inches high, and have the following statement printed below the heading: “No person shall be allowed to remain inside these limits while the polls are open, except for the purpose of voting, and except the election officials, one representative at any one time of each political party represented on the ballot who has been appointed by the county chairperson of such political party, and the challengers allowed by law. Voters having cast their ballots shall at once retire without the seventyfive foot limit. A person violating any provision of this notice is guilty of a class 2 misdemeanor.” A.R.S. § 16-515(B).

66 Manual, *supra* note 3, at 174.

67 *Id.* at 135.

68 A.R.S. § 16-563; A.R.S. § 16-312(E); A.R.S. § 16-343(F)-(G); A.R.S. § 16-169(B); A.R.S. § 16-579(D)-(E); A.R.S. § 16-572(A); Manual, *supra* note 3, at 135.

69 Manual, *supra* note 3, at 180.

70 *Id.* at 141-42.

71 A.R.S. §§ 16-593(A), (C).

Marshal – The marshal (under the direction of the officer in charge of elections) enforces the electioneering ban on Election Day. Law enforcement officials may be contacted to help enforce the ban in exceptional circumstances.⁷² The marshal must use sound judgment to decide whether to contact law enforcement, and any higher-level decisions should be raised through the officer in charge of elections.⁷³ The marshal is also responsible for preventing any violation of election law, like voter intimidation.⁷⁴

Judges – Challenges are decided at the voting location by the inspector and two judges.⁷⁵

Arizona Attorney General – One can also file an election related complaint through the state AG's office online.⁷⁶

⁷² *Id.* at 179.

⁷³ *Id.* at 180.

⁷⁴ A.R.S. § 16-535(B); Manual, *supra* note 3, at 135.

⁷⁵ Manual, *supra* note 3, at 190.

⁷⁶ Arizona Attorney General, *File an Election Complaint*, <https://www.azag.gov/complaints/election> (last visited Oct. 8, 2020).