

PROTECTING GEORGIA VOTERS FROM VOTER INTIMIDATION

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

I. Voter intimidation

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.

In Georgia, **it is illegal for any person to use or threaten to use force and violence, or act in any other manner to intimidate any other person, to:**

1. Vote or refrain from voting at any primary or general election, or to vote or refrain from voting for or against any particular candidate or question submitted to electors at such primary or election; or
2. Place or refrain from placing his or her name upon a register of electors.

The crime is a felony, and upon conviction, carries a sentence of not less than one nor more than ten years or a fine not to exceed \$100,000 or both.²

¹ 18 U.S.C. § 594.

² O.C.G.A. § 21-2-567.



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The Georgia Code defines “act in any other manner to intimidate” as “to undertake or pursue a knowing and willful course of conduct which causes emotional distress by placing another person in reasonable fear for such person’s safety or for the safety of another person and which serves no legitimate purpose.”³

In addition, it is a felony to attempt to influence the vote of another while giving that person lawful assistance in voting.⁴ Finally, it is also a separate felony to use or threaten violence in a manner that would prevent a reasonable elector from voting, or actually prevents any elector from voting.⁵

Federal law prohibits threats and intimidation outside of the polls.⁶ Though not specifically applying to elections, Georgia law also makes it a misdemeanor to threaten bodily harm via an electronic communication (such as e-mail or text), or to contact another person repeatedly via electronic communication for the purpose of harassing, molesting, or threatening, or intimidating that person.⁷ The Georgia law does not apply to “constitutionally protected speech.”⁸

II. Electioneering, campaigning or “hanging around” polling places

Georgia law prohibits any person, when within the polling place, from electioneering or soliciting votes for any political party or body or candidate or question. No candidate on the ballot may enter any polling place except to vote, and must leave immediately upon voting.⁹

3 O.C.G.A. § 21-2-567(b).

4 O.C.G.A. § 21-2-568.

5 O.C.G.A. § 21-2-566(4).

6 *See, e.g.*, 18 U.S.C. §§ 594, 610; 52 U.S.C. §§ 10101(b), 10307(b). Courts have at times prohibited political organizations from engaging in activities constituting voter intimidation. *See, e.g., U.S. v. North Carolina Republican Party*, No. 91-161-Civ-5F (E.D.N.C. 1992).

7 O.C.G.A. § 16-11-39.1.

8 O.C.G.A. § 16-11-39.1.

9 O.C.G.A. §§ 21-2-413, 21-2-414; Ga. Sec’y of State, *Poll Worker Manual*, 40 (Aug. 2020), <https://georgiapollworkers.sos.ga.gov/Shared%20Documents/Georgia%20Poll%20Worker%20Training%20Manual.pdf>.

Georgia Electioneering Guidelines

No person is permitted to solicit votes in any manner or by any means of method, no person is permitted to distribute any campaign materials or to solicit signatures for any petition, and no person (other than election officials discharging their duties) is permitted to establish or set up any tables or booths on any day in which ballots are being cast:

- 1. Within 150 feet of out the outer edge of the building in which the polling place is established;**
2. Within any polling place; or
- 3. Within 25 feet of any voter standing in line** to vote at any polling place.¹⁰

Campaign material is defined as “any newspaper, booklet, pamphlet, card, sign, paraphernalia, or any other written or printed matter referring to:

- A candidate whose name appears on the ballot in a primary or election;
- A referendum which appears on the ballot in a primary or election; or
- A political party or body which has a nominee or nominees on the ballot in a primary or election.”¹¹

Rooms under the control or supervision of the board of registrars or absentee ballot clerk in which absentee ballots are cast are considered polling places.¹²

No person is permitted to conduct any exit poll or public opinion poll with voters within 25 feet of the exit of any building in which a polling place is established on any day in which ballots are being cast. **Except for credentialed poll watchers, poll workers, and law enforcement officers, poll managers may manage the number of persons allowed in the polling place to prevent confusion, congestion, and inconvenience to voters.**¹³

III. Conduct at polling locations

It is a felony to willfully prevent any poll officer from performing his or her duties or from holding an election.¹⁴ It is likewise a felony to use or threaten violence in a manner that would prevent a reasonable poll officer from executing his or her duties, or that materially interrupts or improperly interferes with the execution of a poll officer’s duties.¹⁵

¹⁰ O.C.G.A. § 21-2-414(a); Ga. Sec’y of State, *supra* note 6.

¹¹ O.C.G.A. § 21-2-2; Ga. Sec’y of State, *supra* note 6.

¹² O.C.G.A. § 21-2-414(b); Ga. Sec’y of State, *supra* note 6.

¹³ O.C.G.A. § 21-2-414(c).

¹⁴ O.C.G.A. §§ 21-2-566(1), 21-2-569.

¹⁵ O.C.G.A. § 21-2-566(2).

The manager of each polling place has a general duty to “keep order” at the polling place.¹⁶

No person is permitted to use photographic or other electronic monitoring or recording devices, cameras, or cellular telephones while in a polling place while voting is taking place. However, a poll manager, in his or her discretion, may allow the use of photographic devices in the polling place, provided that no photography shall be allowed of a ballot or the face of a voting machine or direct-recording electronic (DRE) unit or electronic ballot marker while an elector is voting. Likewise, no photography shall be allowed of an electors list or the use of an electors list.¹⁷

Poll Watcher Guidelines

A “poll watcher” is a person named by a political party, political body, or candidate who is authorized to enter the enclosed space to observe the conduct of an election and the counting and recording of votes.

- A poll watcher may be permitted behind the enclosed space for the purpose of observing the conduct of the election and the counting and recording of votes.
- Before the election, **the superintendent will provide each poll watcher with a badge bearing their name, precinct, election, and the words “Official Poll Watcher.” This badge must be worn by the poll watcher at all times on election day.¹⁸**
- However, poll watchers cannot interfere with the conduct of the election. For example, **poll watchers are prohibited from (a) talking to voters,** (b) checking elector lists, (c) using photographic or other electronic monitoring/recording devices, (d) using cell phones, or (e) participating in any form of campaigning while within the polling place
- If a poll watcher engages in any such conduct and continues to do so after being warned by an election official, he or she can be removed from the polling place.
- If a poll watcher observes any misconduct or irregularities, they must report these directly to the election superintendent and not to the poll manager.

If any elector asks for instructions concerning the manner of voting, a poll officer may give such instructions. However, poll officers are prohibited from in any manner implying, suggesting, or seeking to persuade or induce any elector to vote for any particular candidate or for or against any particular question.¹⁹

16 O.C.G.A. § 212-413(h).

17 O.C.G.A. § 21-2-413(e); Ga. Sec’y of State, *supra* note 6, at 42.

18 O.C.G.A. § 21-2-408; Ga. Sec’y of State, *supra* note 6, at 42.

19 O.C.G.A. § 21-2-410.

IV. Firearms and Open Carry laws

It is illegal under Georgia law to carry a weapon or long gun in an unauthorized location within 150 feet of any polling place when elections are being conducted.²⁰ However, there is an exception to this prohibition for peace officers regularly employed by the federal, state, county, or municipal government or certified security guards.²¹

A conviction for this offense is a misdemeanor and carries a maximum penalty of twelve months in custody and \$1000 in fines. Additionally, a conviction for possession of a weapon or long gun in an unauthorized location will result in a revocation of the offender's Weapons Carry License for a minimum period of five years, a period that will not begin to run until any term of probation associated with the conviction ends.

V. Law Enforcement at Polling Locations

Despite recent comments by President Trump,²² **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.²³

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.²⁴ However, this prohibition does not apply to members of the U.S. military who are at the polls to vote.

It is a misdemeanor under Georgia law for a law enforcement officer to neglect or refuse to clear any obstruction to a polling place, neglect or refuse to maintain order or quell disturbances at polling places, or hinder or delay a poll officer in the performance of an election duty.²⁵

20 O.C.G.A. § 16-11-127.

21 O.C.G.A. § 21-2-413.

22 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>.

23 18 U.S.C. § 592.

24 18 U.S.C. § 593.

25 O.C.G.A. § 21-2-593.

VI. Challenges & mask guidance

Any elector of the county or municipality can challenge the right of any other elector, whose name appears on the county list of electors, to vote in an election. Elector challenges must be in writing and specify distinctly the grounds of such challenge. Any such challenge may be made at any time prior to the elector whose right to vote is being challenged voting at the elector's polling place.²⁶ The burden is on the elector making the challenge to prove that the person being challenged is not qualified to remain on the list of electors.²⁷ The challenged elector is still permitted to vote by casting a "challenged ballot" on the same type of ballot that is used by the county or municipality for provisional ballots.

Though mask-wearing is encouraged by Georgian municipalities, current state policy specifically exempts Georgia voters from any local mask-wearing requirements while at polling places.

VII. Enforcement authority

There are four main enforcement authority options for voter intimidation issues in Georgia: the Secretary of State (together with the State Elections Board), county election officials, the Attorney General, and local district attorneys. Though the Secretary of State is Georgia's highest-profile election official, his statutory duties are fairly limited.²⁸ As relevant here, the Secretary of State may provide information to candidates²⁹ and voters,³⁰ and conduct training sessions for local election officials.³¹ For example, the Secretary of State has produced the official Georgia poll worker manual.³² As mentioned above, the Secretary of State also maintains an election integrity hotline. The Secretary of State is also chair of the five-member State Elections Board, which has more expansive authority.

26 O.C.G.A. § 21-2-230(a).

27 O.C.G.A. § 21-2-229(c).

28 In spite of these limited statutory duties, some courts have recognized the Secretary of State, particularly in his capacity as Board chair, as having broader supervisory and oversight authority over Georgia elections. *See, e.g., Fair Fight Action v. Raffensperger*, 413 F. Supp. 3d 1251, 1282-84 (N.D. Ga. 2019) (given Secretary's powers, not necessary to add county election officials as defendants).

29 O.C.G.A. § 21-2-50(a)(10).

30 O.C.G.A. § 21-2-50(a)(13).

31 O.C.G.A. § 21-2-50(a)(11).

32 *See supra* note 6.

State Elections Board Powers

The Georgia State Elections Board may, as relevant here:

- Promulgate rules and regulations so as to obtain uniformity in the practices and proceedings of local election officials, as well as the legality and purity in all primaries and elections;
- Formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections;
- Prepare and publish explanatory pamphlets regarding the interpretation and application of the election laws;
- Investigate, or authorize the Secretary of State to investigate, when necessary or advisable the administration of primary and election laws and frauds and irregularities in primaries and elections and to report violations of the primary and election laws either to the Attorney General or the appropriate district attorney who shall be responsible for further investigation and prosecution; and
- “[T]ake such other action, consistent with law, as the board may determine to be conducive to the fair, legal, and orderly conduct of primaries and elections.”³³

To report questionable election-related activity in Georgia, individuals should fill out the Stop Voter Fraud form at the following link: <https://sos.ga.gov/cgi-bin/EMailStopVoterFraud.asp>. The information will be forwarded directly to the Secretary of State’s Elections Division. Or, reports may be made by calling the Voter Fraud Hotline at 877-725-9797. Individuals may be contacted by an elections investigator for additional information.

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.³⁴

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.

33 O.C.G.A. § 21-2-31.

34 <https://civilrights.justice.gov/report/>.