

PROTECTING MICHIGAN VOTERS FROM VOTER INTIMIDATION

This memo outlines the robust protections for voters against voter intimidation under both federal and Michigan law. **Voter intimidation is a crime and local election officials and law enforcement have a responsibility to protect Michigan voters from 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, Michigan law makes it a felony to “menace” voters in order to “influence an elector in giving his or her vote, or to deter the elector from, or interrupt the elector in giving his or her vote.”²

Finally, Michigan law imposes duties on state and local election and law enforcement officials to safeguard voters and polling places by ejecting those engaging in unlawful behavior³ and both reporting⁴ and criminally prosecuting⁵ violators of state election laws.

1 18 U.S.C. § 594.

2 168 M.C.L. § 932(a).

3 MICH. DEPT' OF STATE BUREAU OF ELECTIONS, MANAGING YOUR PRECINCT ON ELECTION DAY: ELECTION INSPECTORS' PROCEDURE MANUAL 4 (2020). Available online: https://www.michigan.gov/documents/sos/Managing_Your_Precinct_on_Election_Day_391790_7.pdf.

4 168 M.C.L. § 939.

5 168 M.C.L. § 940.



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I. Voter intimidation is illegal; violators are subject to civil and criminal penalties.

A. Federal law provides broad criminal protection against voter intimidation.

Whoever **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 the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined under this title or imprisoned not more than one year, or both.⁶

Such protection extends to **conspiracies and 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.⁷ 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.⁸ People who intimidate or attempt to intimidate voters—or interfere with the right to vote—are also subject to steep civil penalties.⁹

6 18 U.S.C. § 594; *see also* 18 U.S.C. §§ 241, 242, 245(b)(1)(A), and 610 (criminal provisions).

7 52 U.S.C. § 20511.

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

9 *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”).

B. Michigan law similarly prohibits menacing voters.

In Michigan it is a felony for any person to “attempt, by means of... menace, or other corrupt means or device, either directly or indirectly, to influence an elector in giving his or her vote, or to deter the elector from, or interrupt the elector in giving his or her vote at any election held in this state.”¹⁰ Any person who violates this provision may be jailed for up to 4 years and fined up to \$2,000.

Michigan has recently enforced this statute against a pair of political operatives for allegedly “orchestrating a series of robocalls aimed at suppressing the vote in the November general election.”¹¹ It appears as a result that Michigan’s voter intimidation statute also applies against misinformation that seeks to reduce turnout.

Michigan law requires election officials to report violations of this provision to state attorneys¹² and imposes a duty on Michigan prosecutors to bring charges against violators of Michigan’s election laws.¹³ Additionally, Michigan law and administrative guidance provide a wide variety of more specific restrictions on behavior at polling places, which are reviewed below.

¹⁰ 168 M.C.L. § 932(a).

¹¹ Mich. Dep’t of Att’y General, *AG Nessel Files Felony Charges Against Jack Burkman, Jacob Wohl in Voter-Suppression Robocalls Investigation*, Oct. 1, 2020. Available online: <https://www.michigan.gov/ag/0,4534,7-359--541052--,00.html>.

¹² 168 M.C.L. § 939 (“It shall be the duty of every inspector of election, knowing, or having reason to believe, that an offense punishable under the provisions of this act has been committed, to give information thereof to the prosecuting attorney without delay, and such prosecuting attorney shall adopt effective measures for the prosecution of all persons believed to be guilty of such offense.”).

¹³ 168 M.C.L. § 940 (“It is hereby made the duty of every prosecuting attorney, whenever he shall receive credible information that any such offense has been committed, to cause the same to be prosecuted.”).

C. Examples of unlawful conduct.

Voter intimidation is a federal crime. Examples include:

- Verbal or physical confrontation of voters by persons dressed in official-looking uniforms;
- **Physical intimidation, such as standing or hovering close to voters as they attempt to vote;**
- Flyers threatening jail time or other punitive action against persons who vote;
- **Direct confrontation or questioning of voters or asking voters for documentation when none is required;**
- Vandalism of polling places;
- **Use of police officers to threaten or intimidate voters;**
- Photographing or videotaping voters inside a polling place without the consent of both the voter and the chief judge;
- Threats made by an employer to the job, wages, or benefits of an employee if he or she does not vote in a particular manner;
- Flying confederate flags outside a polling place or in a parking lot; and
- **Occupying the parking lot of a polling place in such a way that voters might be hindered from entering.**¹⁴

II. Election officials are empowered to prevent intimidation and protect voter access.

Michigan law empowers election inspectors to “maintain peace, regularity, and order at the polling place.”¹⁵ Administrative guidance explains that this is because “voters have a right to vote a secret ballot in a secure, orderly environment free of distractions.”¹⁶

¹⁴ These examples are provided by the non-partisan Brennan Center for Justice: WENDY WEISER AND VISHAL AGRAHARKAR, BRENNAN CENTER FOR JUSTICE, *BALLOT SECURITY AND VOTER SUPPRESSION* (2019). Available online: https://www.brennancenter.org/sites/default/files/2019-08/Report_Ballot_Security_Voter_Suppression.pdf

¹⁵ 168 M.C.L. § 678.

¹⁶ MICH. DEP'T OF STATE BUREAU OF ELECTIONS, *MANAGING YOUR PRECINCT ON ELECTION DAY: ELECTION INSPECTORS' PROCEDURE MANUAL 4* (2020). Available online: https://www.michigan.gov/documents/sos/Managing_Your_Precinct_on_Election_Day_391790_7.pdf.

If a challenger, poll watcher, or voter refuses to comply with polling place requirements—such as by engaging in illegal voter intimidation or refusing to conceal the insignia of a particular candidate—precinct chairs are required to “eject the individual from the polling place.”¹⁷ Where an individual refuses to leave a polling place after being ejected, election officials are instructed to contact the clerk and law enforcement.¹⁸

III. Electioneering is prohibited in “buffer zones.”

Most political activity is banned within 100 feet of polling places in Michigan, defined by statute to be 100 feet from any entrance to a building containing a polling place or hallways used by voters to access to a polling place.¹⁹

Within the 100 foot “buffer zone” around polling places and within the polling place itself, **Michigan law makes it a crime for any person to:**

- “persuade or endeavor to persuade a person to vote for or against any particular candidate or party ticket or for or against any ballot question that is being voted on at the election;”
- “place or distribute stickers;”
- “solicit donations, gifts, contributions, purchase of tickets, or similar demands, or request or obtain signatures on petitions;” or
- “post, display, or distribute . . . any material that directly or indirectly makes reference to an election, a candidate, or a ballot question.”²⁰

Election workers are **required** to ask voters to conceal any materials that violate this requirement at the polls. Additionally, voters may not leave any materials in the voting booth after they finish voting and election workers must periodically ensure any such materials are removed from voting booths. Candidates may not be within 100 feet of the polls except to cast their own ballot.²¹

¹⁷ *Id.* at 8.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ 168 M.C.L. § 744.

²¹ MICH. DEP’T OF STATE BUREAU OF ELECTIONS, MANAGING YOUR PRECINCT ON ELECTION DAY: ELECTION INSPECTORS’ PROCEDURE MANUAL 18 (2020). Available online: https://www.michigan.gov/documents/sos/Managing_Your_Precinct_on_Election_Day_391790_7.pdf.

IV. Masks at polling places

Currently, Michigan Executive Order No. 2020-153 requires that “Any individual who leaves their home or place of residence must wear a face covering over their nose and mouth: When in any indoor public space; [or] When outdoors and unable to consistently maintain a distance of six feet or more from individuals who are not members of their household.”²² The order exempts individuals who are “at a polling place,” but only if they are present “for purposes of voting in an election.”

Thus, **for challengers, poll-watchers, election workers and anyone present at a Michigan polling place for a purpose other than voting, masks are required.** Willful violation of this requirement is a misdemeanor punishable by a \$500 fine.²³

V. Photography and cell-phone use is largely prohibited

With limited exceptions, **photography and recording is prohibited at Michigan polling places**, although non-disruptive cell-phone use is generally allowed.

Poll-watchers and challengers may not photograph or record inside the polling place.²⁴ Voters may only take a photograph of their marked ballot inside of the polling booth, but may not take ‘selfies’ or share or display any photograph within 100 feet of the polling place.²⁵ News media may briefly record within the public area of the polling station under the supervision of the precinct chairperson, but are prohibited from impeding, interviewing or inconveniencing voters. News media may not record within the voting area.²⁶

Those present at the polls may use non-recording applications—such as e-mail or messaging functions—on their mobile devices, but only if they are not disruptive to the voting process.²⁷

22 Mich. Exec. Order No. 2020-153(1)(a-b); Mich. Exec. Order No. 2020-153(2)(i).

23 Mich. Exec. Order No. 2020-153(7)(b); Mich. Exec. Order No. 2020-153(8).

24 MICH. DEPT OF STATE BUREAU OF ELECTIONS, MANAGING YOUR PRECINCT ON ELECTION DAY: ELECTION INSPECTORS’ PROCEDURE MANUAL 8 (2020). Available online: https://www.michigan.gov/documents/sos/Managing_Your_Precinct_on_Election_Day_391790_7.pdf.

25 *Id.* at 7.

26 *Id.* at 8.

27 *Id.*

VI. Challengers and poll watchers are subject to strict behavioral guidelines

Like many jurisdictions, Michigan permits members of the public to observe polling stations. However, Michigan places strict, enforceable limits on the behavior of observers and permits election officials to eject observers when necessary.²⁸

Michigan law allows for two types of observers at the polls: challengers and poll watchers. **Only challengers may challenge the right of an individual to vote** or the actions of election inspectors and only challengers may exit the public area to observe the activities of election officials at the processing table. **Poll watchers must remain in the public area and may not challenge voters or officials.**²⁹

Challengers must be registered to vote in Michigan, must carry credentials from the authority that has appointed them—generally a political party or interest group—and must not represent a campaign or candidate.³⁰ Challengers are appointed in advance.

Neither poll watchers nor challengers may touch or handle election materials, take photographs or videos in a polling place, approach, question, or assist voters; campaign, or display clothing, signs or symbols supporting a particular candidate or appointing authority.³¹ Challengers and poll watchers must wear masks.³² Election officials may eject poll watchers and challengers who violate these rules or are otherwise disruptive.³³

Challengers may challenge the qualifications of a particular voter by alerting the precinct chairperson only if the challenger has “good reason” to believe the voter is not qualified to vote.³⁴ **Challengers may not challenge a voter because of their race, ethnicity, manner or dress, ability to speak or write English, disability, party affiliation, or their lack of ID.**³⁵ Challenged voters may still cast a ballot after affirming their qualifications to vote.³⁶

Repeated frivolous challenges or challenges “for the purpose of annoying or delaying” qualified voters constitute voter intimidation and are punishable by law.³⁷

28 See generally, MICH. DEP'T OF STATE, BUREAU OF ELECTIONS, THE APPOINTMENT, RIGHTS AND DUTIES OF ELECTION CHALLENGERS AND POLL WATCHERS (Sep. 2020). Available online: https://www.michigan.gov/documents/SOS_ED_2_CHALLENGERS_77017_7.pdf.

29 *Id.* at 3-4.

30 *Id.* at 4-5.

31 *Id.*

32 *Id.* at 2.

33 *Id.* at 5.

34 *Id.* at 8.

35 *Id.* at 2.

36 *Id.* at 8-9.

37 *Id.* at 10; See also, 168 M.C.L. § 932(a) (making it a felony in Michigan to “attempt, by means of... menace, or other corrupt means or device, either directly or indirectly, to influence an elector in giving his or her vote, or to deter the elector from, or interrupt the elector in giving his or her vote at any election held in this state”).

VII. Open carry of firearms prohibited

Michigan's Secretary of State has banned the open carrying firearms at the polls in Michigan – including within 100 feet of any polling place or any entrance, exit, or hallway used by voters to access a polling place.³⁸ Election workers are directed to contact law enforcement if they encounter weapons at polling places.³⁹ Moreover, it is already a crime to carry a firearm at many Michigan polling locations.

Michigan law makes it illegal for most individuals to carry firearms in a variety of locations that often serve as polling places. For example, firearms are generally prohibited in Michigan schools, courts, houses of worship, banks, colleges, arenas, and more.⁴⁰

Some municipalities, including Detroit and Ann Arbor, also prohibit publicly brandishing firearms.⁴¹ Additionally, carrying or brandishing firearms in order to intimidate or dissuade voters likely constitutes voter intimidation under both Michigan and federal law.

VIII. Law enforcement at polling locations

Despite recent comments by President Trump,⁴² **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.⁴³ Additionally, 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; however, this prohibition does not prevent members of the U.S. military from being present at the polls to vote.⁴⁴

38 MICH. SEC'Y OF STATE, OPEN CARRY OF FIREARMS AT POLLING PLACES ON ELECTION DAY PROHIBITED (Oct. 16, 2020). Available Online: https://www.michigan.gov/documents/sos/BOE_Open_Carry_Polling_Place_Instructions_10_16_2020_705274_7.pdf

39 *Id.*

40 See, COALITION TO STOP GUN VIOLENCE, GUNS DOWN AT THE POLLS: HOW STATES CAN AND SHOULD LIMIT FIREARMS AT POLLING PLACES 8 (2020). Available Online: <https://www.csgv.org/wp-content/uploads/2020/09/CSGV-GunsAtThePolls-X.pdf>

41 Detroit, Michigan Municipal Code § 31-13-24; Ann Arbor, Michigan Municipal Code § 9:269.

42 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>.

43 18 U.S.C. § 592.

44 18 U.S.C. § 593.

Michigan law enforcement may be present at Michigan polling places. In general, Michigan election inspectors are instructed to rely on law enforcement⁴⁵ if individuals are unwilling to comply with instructions to leave, to cease intimidating activities, or otherwise frustrate Election Inspectors' authority to "maintain peace, regularity and order at the polling place."⁴⁶

IX. Voter misinformation is illegal

Voter misinformation aimed at suppressing voters or convincing voters to vote for a particular candidate may be prosecuted under Michigan law.

On October 1, 2020, Michigan's Attorney General announced the filing of charges against Jack Burkman and Jacob Wohl for orchestrating roughly 12,000 robocalls designed to dissuade Detroit voters.⁴⁷ Those calls falsely claimed that "mail-in voting, in particular, will allow personal information to become part of a special database used by police to track down old warrants and by credit card companies to collect outstanding debts."⁴⁸ The state's complaint against Burkman and Wohl asserts that the pair used the "corrupt means" of "false and misleading statements" to deter "Detroit area electors" from voting, in violation of Michigan Law.⁴⁹ Under this theory, voter misinformation may be charged as violating Michigan law that criminalizes the use of any "corrupt means . . . to influence an elector in giving his or her vote, or to deter the elector from, or interrupt the elector in giving his or her vote at any election held in this state."⁵⁰

X. Who to contact for enforcement

Voters may contact the Michigan Bureau of Elections at 517-335-3234 or via e-mail at elections@michigan.gov. Voters may also contact their clerk, who may be located via the following directory: <https://mvic.sos.state.mi.us/Voter/Index/#yourclerk>. Although Michigan does not have a centralized voter hotline, local election officials are required by law to report election law violations to law enforcement and prosecutors are required to charge such violations.⁵¹

45 MICH. DEP'T OF STATE BUREAU OF ELECTIONS, MANAGING YOUR PRECINCT ON ELECTION DAY: ELECTION INSPECTORS' PROCEDURE MANUAL 8, 19 (2020). Available online: https://www.michigan.gov/documents/sos/Managing_Your_Precinct_on_Election_Day_391790_7.pdf.

46 *Id.* at 7.

47 MICH. DEP'T OF ATT'Y GENERAL, AG NESSEL FILES FELONY CHARGES AGAINST JACK BURKMAN, JACOB WOHL IN VOTER-SUPPRESSION ROBOCALLS INVESTIGATION, Oct. 1, 2020. Available online: <https://www.michigan.gov/ag/0,4534,7-359--541052--,00.html>.

48 *Id.*

49 *Id.*

50 168 M.C.L. § 932(a).

51 168 M.C.L. §§ 939-940.

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.⁵²

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.

XI. Glossary

Election Inspector: Election inspectors are poll workers selected by clerks to work at a particular polling place.

Precinct Chair: Precinct chairs are poll workers who oversee a particular polling place and have special responsibilities.

Clerk: Clerks are election officials who hire election inspectors and precinct chairs and oversee multiple polling places. Michigan voters may find the identity of their clerk online here: <https://mVIC.sos.state.mi.us/Voter/Index/#yourclerk>.

Poll Watcher: A poll watcher is an individual who wishes to observe a Michigan polling place, but has not been previously credentialed or appointed to serve as a challenger. Poll watchers may not challenge the qualifications of voters or actions of election officials and must obey strict conduct standards.

Challenger: A challenger is a credentialed observer appointed by a political party or interest group to observe a Michigan polling place. While challengers may challenge the qualifications of voters or decisions of election inspectors, they are subject to strict conduct standards and may not make frivolous challenges or challenged based on prohibited characteristics.

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