



# PROTECTING NEVADANS FROM VOTER INTIMIDATION

This memo outlines the protections for voters against voter intimidation under both federal and Nevada law. **Voter intimidation is a felony and local election officials and law enforcement have a responsibility to protect Nevadans 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”<sup>1</sup> in a federal election commits a federal crime.

Second, Nevada has election laws that protect Nevadans from the use and threats of force, intimidation, coercion, or undue influence.<sup>2</sup> **An individual convicted of voter intimidation, is guilty of a category E felony,<sup>3</sup> which carries a minimum sentence of one year and a maximum sentence of four years.<sup>4</sup>**

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1 18 U.S.C. § 594.


2 Nev. Rev. Stat. § 293.710.

3 *Id.*

4 *Id.* at § 193.130. Note that although the individual is sentenced to a minimum of one year in prison, Nevada law also states that for category E felonies, the individual is automatically granted parole, unless they are in violation of some other provisions of state law. *Id.*



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Nevada Attorney General Aaron Ford:

“Illegal voter intimidation is when folks try to use words, threats, or actions to influence voters. Electioneering is trying to campaign for a candidate while inside a polling place – that even includes wearing candidate-specific swag. Poll watchers are people independently observing the polls to make sure no one’s trying to sway or intimidate your vote. **Voter intimidation and electioneering are illegal in Nevada and anyone using these tactics should think twice or face prosecution.** When you get your ballot turn it in with honesty and integrity.”<sup>5</sup>

**Lastly, during the coronavirus pandemic, the state highly encourages all voters to wear a mask to the polling place.**<sup>6</sup> Voters who do not wear a mask to in-person voting may be provided with an “alternative voting method.”<sup>7</sup> But they cannot be deprived of their ability to cast a vote as long as the “voter is waiting line at his or her polling place to vote before 7 p.m.”<sup>8</sup>

## **I. Voter Intimidation is Illegal; Violators are Subject to Civil and Criminal Penalties**

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

Federal law provides that:

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 [federal] office... shall be fined under this title or imprisoned not more than one year, or both.<sup>9</sup>

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.<sup>10</sup> Thus, federal laws prohibit all persons from engaging in conduct that is intended to (regardless of its effect) intimidate voters.

5 NowThis (@nowthisnews), Twitter (Oct. 1, 2020, 6:23PM), <https://twitter.com/nowthisnews/status/1311793765250592769?s=20>.

6 2020 General Election, NEVADA SECRETARY OF STATE, [nvsos.gov/sos/elections/election-information/2020-election/2020-general-election](https://nvsos.gov/sos/elections/election-information/2020-election/2020-general-election) (last visited Oct. 4, 2020).

7 *Id.*

8 Nev. Rev. Stat. § 293.2546.

9 18 U.S.C. § 594; *see also* 18 U.S.C. §§ 241, 242, 245(b)(1)(A), and 610 (criminal provisions).

10 See 52 U.S.C. § 20511.

**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.**<sup>11</sup> People who intimidate or attempt to intimidate voters – or interfere with the right to vote – are also subject to steep civil penalties.<sup>12</sup>

**B. Nevada law similarly prohibits intimidation, threats, or coercion of voters.**<sup>13</sup>

**Under Nevada law, “intimidation of voters and other unlawful acts in connection with [the] election process” is a felony.**<sup>14</sup> Specifically, individuals may not “use or threaten to use any force, intimidation, coercion, violence, restraint, or undue influence.”<sup>15</sup>

Nevada also has a Voters’ Bill of Rights, which provides, among other enumerated rights, that each voter has the right to:

- “[v]ote without being intimidated, threatened or coerced.”
- “[h]ave nondiscriminatory equal access to the elections system, including, without limitation, a voter who is elderly, disabled, a member of a minority group, employed by the military, or a citizen who is overseas.”
- “[h]ave complaints about elections and election contests resolved fairly, accurately, and efficiently.”<sup>16</sup>

<sup>11</sup> *Id.*; see also 52 U.S.C. § 10308(a).

<sup>12</sup> 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”).

<sup>13</sup> Nev. Rev. Stat. § 293.710.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at § 293.2546.

### C. Examples of unlawful conduct.

Nevada law specifically states that “[i]t is unlawful for any person, in connection with any election, petition or preregistration or registration of voters, whether acting himself or herself or through another person in his or her behalf, to:

- a. Use or threaten to use any force, intimidation, coercion, violence, restraint or undue influence;
- b. Inflict or threaten to inflict any physical or mental injury, damage, harm or loss upon the person or property of another;
- c. Expose or publish or threaten to expose or publish any fact concerning another in order to induce or compel such other to vote or refrain from voting for any candidate or any question;
- d. Impede or prevent, by abduction, duress or fraudulent contrivance, the free exercise of the franchise by any voter, or thereby to compel, induce or prevail upon any elector to give or refrain from giving his or her vote; or
- e. Discharge or change the place of employment of any employee with the intent to impede or prevent the free exercise of the franchise by such employee.”<sup>17</sup>

#### **Examples of Intimidation**

Though there are many different kinds of voter intimidation, common examples of intimidation 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;
- 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; and
- Occupying the parking lot of a polling place in such a way that voters might be hindered from entering.<sup>18</sup>

<sup>17</sup> *Id.* at § 293.710.

<sup>18</sup> These examples are provided by the Brennan Center for Justice: Wendy Weiser and Vishal

## II. Election Officials Have a Duty to Prevent Intimidation and Electioneering In and Around the Polling Location, Including from Poll Observers

**Nevada law prohibits individuals, including election board individuals and poll observers, from electioneering within 100 feet of the entrance to the voting area and within the voting location.**<sup>19</sup>

Electioneering “means campaigning for or against a candidate, ballot question or political party,” including by soliciting votes or speaking to a voter on the subject of marking the voter’s ballot.<sup>20</sup> The Nevada Attorney General also specifies that wearing candidate-specific attire is electioneering and therefore illegal at the polling place.<sup>21</sup>

Inside a polling place, individuals cannot “**remain in... any polling place so as to interfere with the conduct of the election**” or ask another person whom they intend to vote for.<sup>22</sup> Interfering with the conduct of an election within the polling place in such a manner is a category E felony.<sup>23</sup> It is especially important to note that voters who are **physically disabled and/or unable to read or write English** are “**entitled to assistance from a consenting person of his or her own choice**” in filling out their ballot.<sup>24</sup>

### A. Poll Observers

Nevada law allows members of the general public to observe the conduct of voting at a polling place. **Observers are required to wear a name tag and are generally required to stay within a confined “observation” space that “must not be located in an area that would allow an observer to infringe on the privacy and confidentiality of the ballot of the voter.”**<sup>25</sup>

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Agraharkar, *Ballot Security and Voter Suppression: What It Is and What the Law Says*, Brennan Center for Justice, 7-8 (2019), [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Ballot\\_Security\\_Voter\\_Suppression.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Ballot_Security_Voter_Suppression.pdf).

19 *Id.* at § 293.740.

20 Nev. Rev. Stat. § 293.740.

21 NowThis (@nowthisnews), Twitter (Oct. 1, 2020, 6:23PM), <https://twitter.com/nowthisnews/status/1311793765250592769?s=20>.

22 *Id.* at § 293.730.

23 *Id.*

24 *Id.* at § 293.296.

25 Riley Snyder, *Ford Threatens Prosecution for Voter Intimidation After Trump’s Debate Comments; No Major Changes Planned for Poll-Watching*, NEVADA INDEPENDENT (Oct. 1, 2020, 3:50 PM), <https://thenevadaindependent.com/article/ford-threatens-prosecution-for-voter-intimidation-after-trumps-debate-comments-no-major-changes-planned-for-poll-watching>.

### A poll observer CANNOT:

1. Talk to voters within the polling place;
2. Use a mobile telephone or computer within the polling place, including photographing or recording the conduct of the polling place;<sup>26</sup>
3. Advocate for or against a candidate, political party or ballot question;
4. Argue for or against or challenging any decisions of county or city election personnel; or
5. Interfere with the conduct of voting.<sup>27</sup>

**Poll observers must sign an acknowledgement before observing in which they agree to the above, and can be removed from the polling place by the county or city clerk for any violations.<sup>28</sup> They also cannot engage in electioneering or any other voter intimidation behaviors prohibited by Nevada and federal law.**

The Nevada Attorney General Aaron Ford is particularly concerned about illegal voter intimidation this election cycle, especially by poll observers, and has vowed to prosecute anyone who commits voter intimidation.<sup>29</sup>

### B. Oral Challenges

Any person applying to vote in person may be challenged orally at the voting location by a **registered voter of the same precinct** on two specific grounds – either (a) the person is not the person entitled to vote as claimed, or (b) the person has already voted in the same election.<sup>30</sup>

The challenger must submit a written statement signed **under penalty of perjury** in the form prescribed by the Secretary of State stating the challenge is based on the challenger's personal knowledge.<sup>31</sup> Therefore, frivolous challenges are illegal, can be prosecuted in court, and cannot be used to intimidate voters.

26 Nev. Admin. Code § 293.274.

27 Nev. Admin. Code § 293.245.

28 Nev. Admin. Code § 293.245.

29 Sam Metz, *Nevada's Top Prosecutor Vows to Take on Voter Intimidation*, LAS VEGAS SUN (Oct. 1, 2020, 8:05 PM), <https://lasvegassun.com/news/2020/oct/01/nevada-top-prosecutor-vows-to-take-on-voter-intimi/#.X3ZPpnqLy4M.twitter>.

30 Nev. Rev. Stat. § 293.303(1)(a).

31 *Id.*

If a voter is challenged, the election board officer must provide the challenged voter with a form to sign under penalty of perjury to rebut the grounds for the challenge. For instance, if the challenge is based on an allegation that the challenged person does not belong to the political party designated on the roster, the challenged voter must affirm under penalty of perjury that they do belong to that political party.<sup>32</sup>

While state law does permit some limited challenges by third parties, federal and state law nonetheless prohibit voter intimidation and challenges cannot be used as a means of voter intimidation.

### III. Firearms and Open Carry

Nevada does not have laws specifically prohibiting firearms from polling places. However, **Nevada law does prohibit possession of firearms and other dangerous weapons on school property, which are often the location of polling places.**<sup>33</sup>

Nevada prohibits any person from carrying or possessing a firearm on the property of the Nevada System of Higher Education (state university and college system), a private or public school or child care facility, or while in a vehicle owned by a private or public school or child care facility.<sup>34</sup> Nevada prohibits concealed firearms permittees from carrying a concealed firearm while on the premises of a public building located on the property of a public school, a child care facility, or the property of the Nevada System of Higher Education, without specific written permission.<sup>35</sup>

For polling places that aren't located at schools, it is important to remember that even if firearms are allowed, the use or handling of a firearm can be illegal if the behavior intimidates or threatens voters or otherwise interferes in the conduct of the election.

### IV. Law Enforcement at Polling Locations

Despite recent comments by President Trump,<sup>36</sup> **the President has limited 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.<sup>37</sup>

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32 See, e.g., *Id.* at §§ 293.303(2); 293.303(2)(b).

33 Nev. Rev. Stat. § 202.265(1)(e).

34 *Id.*

35 Nev. Rev. Stat. § 202.3673(3)(a).

36 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>.

37 18 U.S.C. § 592.

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.<sup>38</sup> This prohibition, of course, does not apply to members of the U.S. military who are at the polls to vote.

Nevada law does not prohibit the presence of police officers or law enforcement, in uniform or out of uniform, at polling locations. However, the same laws prohibiting voter intimidation and electioneering, discussed in the above Sections, apply equally to police officers and law enforcement agents.

## V. Whom to Contact for Enforcement

Violations of Nevada's voter protection laws are enforced by the Secretary of State.<sup>39</sup> Voters can call the elections division at 775-684-5705 if they are "feeling pressured or coerced to vote a certain way or not vote at all."<sup>40</sup> But to get actual enforcement, **voters who experience or witness a violation of election laws must file a formal complaint with the Secretary of State via mail, email, or in person.**<sup>41</sup>

### Nevada Secretary of State Contact Information

**Mailing address:**

101 North Carson St. Suite 3  
Carson City, NV 89701-3714

**Fax:** 775-486-571

**Email:** [nvelect@sos.nv.gov](mailto:nvelect@sos.nv.gov)

The complaint must set forth the alleged violation and include the name and contact information (if known) of the individual, candidate, campaign, or group that is the subject of the complaint.<sup>42</sup> The complaint must also include a clear and concise statement of facts sufficient to establish that the alleged violation occurred.<sup>43</sup> Any relevant documents or other evidence that support the complaint should be listed and attached to the complaint.<sup>44</sup>

<sup>38</sup> 18 U.S.C. § 593.

<sup>39</sup> *Report Potential Election Law Violation in Nevada*, NEVADA SECRETARY OF STATE, <https://www.nvsos.gov/sos/elections/election-information/resources/report-potential-election-law-violation> (last visited Oct. 4, 2020).

<sup>40</sup> Ben Margiott, *Reno Woman Sent Intimidating Letter, Telling Her She Has "No Right to Vote"*, NEWS 4 & FOX 11 (Nov. 2, 2018), <https://mynews4.com/news/election/reno-woman-sent-intimidating-letter-telling-her-she-has-no-right-to-vote/>.

<sup>41</sup> *Id.*

<sup>42</sup> A sample report is available [here](#).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*



**The Nevada Attorney General “is ready to prosecute anyone attempting voter intimidation in Nevada”** this election cycle and will be working with the state’s Election Integrity Task Force (a state and federal joint task force composed of law enforcement bodies and the secretary of state’s office) to respond to any election law violations.<sup>45</sup>

### Nevada Attorney General Contact Information

**Online Complaints:**

[http://ag.nv.gov/Complaints/File\\_Complaint/](http://ag.nv.gov/Complaints/File_Complaint/)

**Phone:** 775-684-1100

**Twitter:** @AaronDFordNV

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](mailto:voting.section@usdoj.gov), or submitting an online form [here](#).<sup>46</sup>

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.

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45 Riley Snyder, *Ford Threatens Prosecution for Voter Intimidation After Trump’s Debate Comments; No Major Changes Planned for Poll-Watching*, THE NEVADA INDEPENDENT (Oct. 1, 2020, 3:50 PM PST), <https://thenevadaindependent.com/article/ford-threatens-prosecution-for-voter-intimidation-after-trumps-debate-comments-no-major-changes-planned-for-poll-watching>.

46 *Contact the Department of Justice to Report a Civil Rights Violation*, THE UNITED STATES DEPARTMENT OF JUSTICE, <https://civilrights.justice.gov/report/>.