

# PROTECTING PENNSYLVANIANS FROM VOTER INTIMIDATION

## I. Overview

This memo outlines the robust protections for voters against voter intimidation under both federal and Pennsylvania law. **Voter intimidation is a crime and local election officials and law enforcement have a responsibility to protect Pennsylvanians 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, Pennsylvania, has election laws that protect Pennsylvanians from the use and threat of force, intimidation, coercion, or undue influence in the context of voting, refraining to vote, and supporting or disavowing any particular candidate or political issue.<sup>2</sup> **A violation of these voter intimidation prohibitions constitutes a felony of the third degree, and upon conviction can lead to a fine of up to \$15,000 and a prison sentence for up to seven years.**<sup>3</sup>

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1 18 U.S.C. § 594.

2 See 25 Pa.C.S. §§ 320-1827, 1828, 1839 and 1847(a); 25 Pa.C.S. § 3547; PA Department of State, *Guidance on Voter Intimidation and Discriminatory Conduct* (October 2016), available at <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/DOS%20Voter%20Intimidation%20Guidance%2010.14.16.pdf>.

3 See *Id.*, 25 Pa.C.S. §§ 320-1827, 1828.



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Finally, election authorities are prohibited from knowingly refusing a registered voter's vote.<sup>4</sup> Likewise, it is the duty of the judge of election to maintain order in the polling place.<sup>5</sup> However, any election officer, or any three qualified electors in a given district, may call upon the mayor, sheriff, police officer, or other law enforcement agent to maintain order, quell a disturbance, or clear the entry to a polling place if it is disrupted during the voting period.<sup>6</sup>

From Pennsylvania's Department of State Guidance on Voter Intimidation:

"It is illegal for any person or corporation to directly or indirectly practice intimidation or coercion through the use of force, violence, restraint, or infliction or threatened infliction of injury, damage, harm, or loss, in order to induce or compel a person to vote or refrain from voting for a particular candidate or on a particular political issue."<sup>7</sup>

**Lastly, during the coronavirus pandemic, the Commonwealth highly encourages all voters who plan to vote in person to wear a mask to their polling place.** However, anyone without a mask will not be denied the right to vote.<sup>8</sup>

## II. 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.<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.

4 See 25 Pa.C.S. § 320-1823.

5 25 Pa.C.S. § 320-1220(f).

6 25 Pa.C.S. § 320-1207.

7 See *supra*, *Guidance on Voter Intimidation and Discriminatory Conduct*.

8 Jackie de Tore, *Do you have to wear a face mask to vote?*, Fox 43, June 2, 2020, <https://www.fox43.com/article/news/local/vote/do-you-have-to-wear-a-face-mask-to-vote/521-dae618c5-5ae6-40ba-93a5-a911980c09f6>

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

10 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>

### Pennsylvania Law

Under Pennsylvania law, it is a felony in the third degree to “use or practice any intimidation, threats, force or violence with design to influence unduly or overawe any elector, or to prevent him from voting or restrain his freedom of choice.” It is also a third degree felony to block or attempt to block the entrance to a polling place, as well as to “interrupt or improperly interfere with [an election officer] in the execution of his duty.”<sup>13</sup>

**Employers** in Pennsylvania are also prevented from practicing intimidation in order to induce or compel employees to vote or refrain from voting on any person, question or issue. For example, an employer cannot pay his employees’ salary or wages in “pay envelopes” upon which or in which there is written or printed any political motto or statement, containing threats, express or implied, intended or calculated to influence the political opinions or actions of such employees. **Any threat or implication that an employer would fire an employer or close his business as a result of a certain political outcome is likewise prohibited.** Any employer convicted of these violations is guilty of a misdemeanor of the second degree and may be subject to a fine of up to \$5000 and a prison sentence of up to two years.<sup>14</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> *Supra*, 25 Pa.C.S. § 320-1827.

<sup>14</sup> 25 Pa.C.S. § 320-1847(c).

### **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>15</sup>

### **III. Electioneering, campaigning or “hanging around” polling places**

Pennsylvania law prohibits electioneering within a polling place<sup>16</sup> and imposes a 10-foot boundary around any active polling place.<sup>17</sup> No behaviors that constitute electioneering are allowed within 10 feet of the polling place (measured from the entrance to the room in which the voting machines are located).<sup>18</sup>

Electioneering behaviors may include handing out campaign materials or telling voters which candidates to support. Although wearing certain clothing that shows support for a candidate is considered electioneering, it does not apply to voters in the act of voting. Voters can wear clothing showing support for the voter’s chosen candidate, but campaigning for the candidate in the polling place is not allowed.<sup>19</sup>

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15 These examples are provided by the Brennan Center for Justice: Wendy Weiser and Vishal 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).

16 25 Pa.C.S. § 320-1220(c).

17 25 Pa.C.S. § 320-1220(d).

18 City of Philadelphia, *Guide for Election Board Officials in Philadelphia County*, at 26.

19 PA Department of State, *Guidance on Rules in Effect at the Polling Place on Election Day*, at 4 (October 2016).

## **Election officials or poll watchers may not wear partisan apparel or buttons.<sup>20</sup>**

Voters are permitted to bring campaign literature (e.g., brochures) into the voting booth if such materials would help them make their selections, provided that they remove any such literature from the polling place (and the voting booth) when they leave.<sup>21</sup>

**A stricter electioneering provision governs the conduct of police officers**, who are specifically prohibited from “electioneer[ing] or directly or indirectly attempt[ing] to influence the election or electors while within one hundred (100) feet of a polling place.”<sup>22</sup>

### **IV. Conduct at polling locations**

In Pennsylvania, each political party that has nominated candidates is entitled to appoint up to three watchers at any general election for each election district (or up to two watchers if a political candidate is appointing a poll watcher).<sup>23</sup> An appointed poll watcher must be a registered voter of the county in which the watcher’s assigned election district is located.<sup>24</sup> The poll watcher need not be a resident in that particular election district for which he or she is appointed.<sup>25</sup> Poll watchers must be identified in advance and assigned to specific precincts.<sup>26</sup> Watchers may keep a list of voters and even challenge voter qualifications.<sup>27</sup> **However, watchers may not personally engage or confront voters or otherwise interfere with the orderly process of voting.**<sup>28</sup> Counties may allow poll watchers to use portable electronic devices in the polling place, but such use must be **limited to the area outside where voting occurs.**<sup>29</sup>

With respect to general use of electronic devices, although using electronic devices in polling places is not prohibited, voters are urged to use common sense to be respectful of other citizens. Voters may take “ballot selfies” (a picture of oneself voting). If voters decide to take a picture of themselves voting, they are recommended not to disclose which candidate they voted for.<sup>30</sup>

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20 *Id.*

21 *Id.*

22 25 Pa.C.S. § 320-1207.

23 25 Pa.C.S. § 2687(a).

24 25 Pa.C.S. § 2687(b).

25 25 Pa.C.S. § 320-1417(b).

26 *Supra, Guidance on Rules in Effect at the Polling Place on Election Day*, at 2.

27 *Id.*

28 *Id.*

29 *Supra, Guidance on Rules in Effect at the Polling Place on Election Day*, at 3.

30 *Id.*

## V. Firearms and Open Carry laws

Federal law generally prohibits guns in school zones, but makes an exception for individuals licensed by the state in which the school zone is located to carry the firearm.<sup>31</sup>

Pennsylvania election law does not prohibit bringing a firearm to a polling place. However, polling places are often in schools, where 18 Pa.C.S. § 912 makes it a crime to possess a firearm, or in other local government buildings where local ordinances may prohibit the possession of guns. If a polling place is on private property, the entity in charge may bar firearms from the premises as well. Note that firearms and ammunition are regulated at the state level in Pennsylvania, meaning that no county or municipality may regulate firearms and ammunition.<sup>32</sup>

Although carrying firearms into the polling place is generally allowed, certain aggressive behaviors are prohibited. It is illegal to display an aggressive behavior with a firearm that has an effect of intimidating voters.<sup>33</sup>

## VI. Law enforcement at polling locations

Despite recent comments by President Trump,<sup>34</sup> **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.<sup>35</sup>

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>36</sup> However, this prohibition does not apply to members of the U.S. military who are at the polls to vote.

Pennsylvania law recognizes the intimidating effect that uniformed law enforcement personnel may generate in the place of voting. Thus, law enforcement is not permitted in polling locations.

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31 18 U.S.C. § 922(q)(2).

32 18 Pa.C.S. § 6120.

33 25 Pa.C.S. § 3547.

34 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>.

35 18 U.S.C. § 592.

36 18 U.S.C. § 593.

**Except in limited circumstances, police officers (either uniformed or plain-clothes) must stay 100 feet or more away from the entrance of a polling place.**<sup>37</sup> Police officers can be present at polling locations if (1) they are there to personally vote; (2) the polling place is located in a building that also houses a police station;<sup>38</sup> (3) they are there to serve a warrant; (4) they are summoned to “preserve the peace” or resolve an issue, such as clearing path to the door to help voters get into polling stations or quelling disturbance.<sup>39</sup>

## VII. Formal Challenges

In Pennsylvania, it is presumed that each voter is a bona fide qualified elector and must be allowed to vote if the voter’s name appears on the poll book.<sup>40</sup> However, other voters who are present in the polling place, election officials, poll watchers, and overseers may challenge a voter’s qualification to vote.<sup>41</sup> **It is important to note that only challenges with respect to identity (whether the voter is who he or she says he/she is) and residency (whether the voter lives in that particular precinct) are allowed, and the eligibility to register to vote is not a permissible ground for challenge.**<sup>42</sup> Any challenge of a voter must be made in good faith. For example, no one can validly challenge an eligible voter by accusing the voter of not speaking fluent English and thus potentially not being a U.S. citizen.

Initially, local election officers of the precinct (supervised by the Judge of Election, who is in charge of a specific polling place) are responsible for resolving any challenges with respect to a voter’s qualifications to vote that arise on the election day. However, if a disagreement continues, the Judge of Election decides. The Judge of Election will determine whether a challenge rests on a good-faith basis. At the least, any voter who is challenged must be provided a provisional ballot.<sup>43</sup> If the Judge of Election finds that there is a satisfactory answer to the identity and residency of the challenged voter, the voter must be permitted to vote normally.<sup>44</sup> If the Judge of Election cannot so find, the voter must be permitted to bring a witness to the precinct or sign an affidavit vouching for his or her challenged identity or residence.<sup>45</sup>

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37 25 Pa.C.S. § 320-1207.

38 *Id.*

39 25 Pa.C.S. § 320-1820.

40 *Supra, Guidance on Rules in Effect at the Polling Place on Election Day, at 4.*

41 *Id.*

42 *Id.*

43 *Id.*

44 *Supra, Guidance on Rules in Effect at the Polling Place on Election Day, at 5.*

45 *Id.*

**The following are unlawful challenges and thus are prohibited:<sup>46</sup>**

- No one can intentionally refuse to permit a qualified person to vote. Depriving an eligible voter of his or her voting right violates the Pennsylvania Election Code as well as the Federal Voting Rights Act of 1965;
- Challenges based on race, ethnicity, or other protected characteristics are unlawful; and
- Using lists compiled from returned mail from private mailings is illegal and is not considered to be based on good faith.

### **VIII. Who to contact for enforcement**

Pennsylvania's elections are administered primarily by the county boards of elections.<sup>47</sup> On a statewide level, the Secretary of the Commonwealth is Pennsylvania's chief election officer, issues general rules and instructions for the conduct of elections, and compels observance of the election laws by county officials.<sup>48</sup> The county board of election have a duty to investigate irregularities or potential violations of election laws and forward them to the appropriate officials for prosecution.<sup>49</sup> Both county boards of election and elected local district attorneys are empowered to investigate and prosecute election law violations.<sup>50</sup>

Persons who have been subject to, or witnessed, any efforts to commit any kind of fraud or corruption in the voting process, including voter intimidation, should report them at the municipal level as soon as they occur, to both the county [District Attorney's Office](#) and to the [County Board of Elections](#), specifically to the Supervisor of Elections who oversees that board.

In addition, any election complaints can be reported to the Pennsylvania Department of State's reporting page (linked [here](#)). Election complaints filed at the Department of State's website are then forwarded to appropriate county authorities for future investigations.<sup>51</sup> If there is an immediate need, voters should call the voter hotline at 1-877-868-3772 (VOTESPA).

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46 *Id.*

47 See 25 Pa.C.S. § 320-301(a).

48 See 25 Pa.C.S. § 1325(a).

49 See 25 Pa.C.S. § 320-302(i).

50 *Id.*

51 Report Election Complaints page, available at <https://www.pavoterservices.pa.gov/pages/ReportElectionComplaints.aspx>.



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 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.

