



PROTECTING WISCONSINITES FROM VOTER INTIMIDATION

This memo outlines the robust protections for voters against voter intimidation under both federal and Wisconsin law. **Voter intimidation is a crime and local election officials and law enforcement have a responsibility to protect Wisconsinites 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, Wisconsin law protects Wisconsin voters from threats, duress, and other interference with the right to vote and the “exercise of the franchise at an election.”²

Finally, election officials are *required* to “maintain order” at the polling places, including preventing disorderly conduct, disturbance to election proceedings, and attempts to distract or interfere with any voter.³ They are also required to “enforce obedience to their lawful commands,” including directing law enforcement to remove disorderly individuals from the voting area.

1 18 U.S.C. § 594.

2 See, e.g. Wis. Stat. § 12.09.

3 Wis. Stat. §§ 5.35, 7.37



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From the Wisconsin Election Commission:

“Behavior that is disruptive, including conversing with or intimidating voters, or causing undue delays in the registration or voting process, will not be tolerated.”⁴

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.⁵

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.⁶ 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.⁷ People who intimidate or attempt to intimidate voters—or interfere with the right to vote—are also subject to steep civil penalties.⁸

4 Letter from Megan Wolfe, Interim Adm’r, Wis. Election Comm’n, to Election Observer Orgs. (Oct. 16, 2018).

5 18 U.S.C. § 594; *see also* 18 U.S.C. §§ 241, 242, 245(b)(1)(A), and 610 (criminal provisions).

6 52 U.S.C. § 20511.

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

8 *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”).

Wisconsin Law

Under Wisconsin law, it is **felony** to “**compel, induce, or prevail upon**” a voter to vote, or refrain from voting for a particular question or referendum. This statute applies in all elections.⁹ Violators are guilty of a Class I felony.¹⁰

Employers may not refuse employees time off for voting or subject them to penalty for taking time off to vote.¹¹ Likewise, employers may not distribute printed matter to their employees containing “threats intended to influence the political opinions or actions of the employees.”¹²

In addition, Wisconsin law specifically provides that no person may:

- “By abduction, duress, or any fraudulent device or contrivance, **impede or prevent the free exercise of the franchise at an election.**¹³
- “Make use of or **threaten to make use of force**, violence, or restraint in order to induce or compel any person to vote or refrain from voting at an election.”¹⁴

Unless otherwise noted, violations of Wisconsin’s voter intimidation laws are Class I felonies, punishable by a fine of up to \$10,000 or imprisonment for up to 3 years and 6 months, or both.¹⁵

Any Wisconsin **election official** who violates Wisconsin voter intimidation laws will be disqualified from acting as an election official for at least five years, in addition to punishment for a Class I felony.¹⁶

9 Wis. Stat. § 12.09.

10 Wis. Stat. § 12.60(1)(a).

11 *Id.*

12 Wis. Stat. § 12.07.

13 Wis. Stat. § 12.09.

14 *Id.*

15 Wis. Stat. § 939.50(3)(i). This is the punishment for violating Wis. Stat. § 12.09. Violations of Wis. Stat. § 12.07 are punishable by a fine of up to \$1,000, imprisonment of up to 6 months or both.

16 Wis. Stat. 12.60(3).

Examples of Intimidation

Though there are many different kinds of voter intimidation, common examples of unlawful 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.¹⁷

II. Electioneering and Other Misconduct at the Polling Place

“Electioneering” is any activity which is intended to influence voting in an election.¹⁸ It is illegal within 100 feet of a polling place.

Wisconsin law prohibits anyone—including election officials, municipal clerks, observers, and voters—from electioneering within 100 feet of a polling place while ballots are being cast.¹⁹

Election officials are responsible for enforcing electioneering laws. These include **election inspectors** (volunteer poll workers) who are directed to contact the municipal county clerk should they have any problems related to enforcement.²⁰

¹⁷ 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.

¹⁸ Wis. Stat. §12.03

¹⁹ Wis. Stat. §12.03

²⁰ *Election Day Manual for Wisconsin Election Officials*, Wis. Election Comm'n, 87 (2018) https://elections.wi.gov/sites/default/files/publication/65/election_day_manual_2018_10_pdf_64299.pdf

Election officials are responsible for:

- Maintaining **order** at polling places;²¹
- Ensuring voters have unobstructed access to the polling place;²²
- Preventing **loud, boisterous, or otherwise disruptive behavior** that interferes with voting;²³
- Contacting the municipal clerk or law enforcement if they experience a problem with the conduct of any person at a voting location²⁴;

Election inspectors “possess full authority to maintain order and enforce obedience to their lawful commands.”²⁵

No person may:

- Refuse to obey a lawful order of an inspector made for the purpose of enforcing the election laws;²⁶
- Engage in disorderly behavior at or near a polling place;²⁷
- Interrupt or disturb voting or canvassing proceedings²⁸
- Tamper with ballots;²⁹
- Tamper with voting machines or tabulating equipment³⁰
- Solicit a person to show how his or her vote is cast; or³¹
- Remove or destroy any of the supplies or conveniences placed in compartments or polling booths.³²

21 *Id.* at 11.

22 *Id.* at 23.

23 *Id.* at 81.

24 *Id.*

25 Wis. Stat. § 7.37.

26 Wis. Stat. §12.13(3)

27 *Id.*

28 *Id.*

29 *Id.*

30 *Id.*

31 *Id.*

32 *Id.*

III. Voter Challenges

“Any individual who **abuses the right to challenge** may be subject to a lawful order of an election inspector to cease making challenges and removal from the polling place if the individual refuses to obey such an order.”³³

Wisconsin law places limits on voter challenges and provides a voting procedure for voters whose qualifications have been challenged.³⁴ Either election officials or fellow voters can challenge the qualification of a fellow voter, but **challenges must be supported by specific evidence related to the actual voter.**³⁵

If a voter’s qualifications are challenged, election inspectors can ask the challenged voter to swear that they are indeed qualified to vote, and ask questions of the voter to determine their qualifications.³⁶ If the challenged voter takes the oath and answers the election inspectors’ questioning, in a way that indicates they are qualified to vote, **they must be given a regular ballot, and “the person’s vote shall be received.”**³⁷ The ballot is marked as challenged, but “the challenged ballot shall be counted.”³⁸

The challenged ballot is not disqualified “unless the municipal clerk, board of election commissioners or a challenging elector . . . demonstrates **beyond a reasonable doubt** that the person does not qualify as an elector or is not properly registered.”³⁹ Voters can appeal decisions on the validity of challenged ballots that they have cast.⁴⁰

Making aggressive, baseless, and frivolous voter challenges that disrupt voting may constitute voter intimidation under federal and Wisconsin law and thus may be subject to criminal prosecution.⁴¹

33 Letter from Megan Wolfe, Interim Adm’r, Wis. Election Comm’n, to Election Observer Orgs. (Oct. 16, 2018).

34 See Wis. Stat. § 6.95

35 Letter from Megan Wolfe, Interim Adm’r, Wis. Election Comm’n, to Election Observer Orgs. (Oct. 16, 2018).

36 Wis. Stat. §§ 6.92-6.94.

37 Wis. Stat. § 6.94. See also *Wisconsin: Challenges to Voter Eligibility*, MIT Election Data & Science Lab, <https://electionlab.mit.edu/landscapes/wisconsin>.

38 Wis. Stat. § 6.95.

39 *Id.*

40 *Id.*; see also Wis. Stat. § 9.01.

41 See 18 U.S.C. § 594; 18 U.S.C. §§ 241, 242, 245(b)(1)(A); Wis. Stat. §12.09.

IV. Observers

Members of the public may be present at any polling place while ballots are being cast.⁴² However, Wisconsin law places limits on observers and their placement, including:

- All observers must sign in at the polling place, present photo identification, and wear an identifying badge;
- The chief inspector and municipal clerk may “reasonably limit the number of persons representing the same organization” who are allowed to be present as observers at one time;⁴³ and
- Election officials may restrict the location of observers within the polling place and designate a specific “observer area.”⁴⁴

Additionally, election observers are subject to strict limitations on their behavior. They may not:

- Engage in loud, boisterous or disruptive behavior, or interfere with voting or the conduct of the election;⁴⁵
- Engage in electioneering;
- Handle official election documents;
- Take photos or videos of voters;
- Have conversations about candidates, parties or ballot questions;
- Make calls / use cell phones for voice calls inside the polling area;
- Wear clothing or buttons related to candidates, parties or referenda that is intended to influence the election, regardless of whether a candidate is mentioned or portrayed;
- Interact with voters, except when requested;
- View confidential information on the poll list; or
- Enter vehicles of curbside voters.⁴⁶

42 Wis. Stat. § 7.41

43 *Id.*

44 *Id.*

45 Letter from Megan Wolfe, Interim Adm’r, Wis. Election Comm’n, to Election Observer Orgs. (Oct. 16, 2018).

46 *Wisconsin Election Observer Rules-at-a-Glance*, Wis. Elections Commission (2018), <https://elections.wi.gov/publications/brochures/observer-rules>; see also Letter from Megan Wolfe, Interim Adm’r, Wis. Election Comm’n, to Election Observer Orgs. (Oct. 16, 2018).

As Wisconsin's limitations on election observers illustrate, **behavior that is otherwise lawful may constitute illegal voter intimidation in and around polling places.** Voter intimidation is subject to criminal prosecution under Wisconsin and federal law.⁴⁷

Removal of Disruptive Observers

The Wisconsin Election Commission directs chief election inspectors to warn any observer engaging in loud, boisterous, or otherwise disruptive behavior, and if the behavior persists, to order the observer to leave the polling place. **If the offending observer refuses to leave, “the chief inspector should summon law enforcement to remove the observer.”**⁴⁸

V. Firearms and Open Carry

While Wisconsin law does not prohibit carrying firearms into polling places as a general matter, it is generally illegal to possess a firearm, or any other sort of weapon, in a public K-12 school zone.⁴⁹ It is also illegal to carry a concealed handgun, even with a concealed handgun license, into a public or private college or university or a government facility if the site has notified the actor not to.⁵⁰ Together, these provisions mean it is illegal to possess firearms, or at least concealed handguns, in some sites used as polling places.

Finally, it is important to remember that even if carrying firearms into the polling place may be allowed, the use or handling of a firearm in a particular way may still be illegal under the statutes discussed above, if particular behavior intimidates or threatens voters or otherwise interferes in the conduct of the election.⁵¹

47 See 18 U.S.C. § 594; 18 U.S.C. §§ 241, 242, 245(b)(1)(A); Wis. Stat. §12.09.

48 *Special Procedures Agenda*, Wis. Election Comm'n, <https://elections.wi.gov/clerks/education-training/election-inspectors>.

49 See Wis. Stat. 948.605.

50 *Location Restrictions in Wisconsin*, Giffords Law Center to Prevent Gun Violence (Sept. 2020), <https://giffords.org/lawcenter/state-laws/location-restrictions-in-wisconsin>; *Preventing Armed Voter Intimidation: A State-by-State Analysis*, Giffords Law Center to Prevent Gun Violence (Sept. 2020), <https://giffords.org/lawcenter/report/preventing-armed-voter-intimidation-a-state-by-state-analysis>.

51 *Preventing Armed Voter Intimidation: A State-by-State Analysis*, Giffords Law Center to Prevent Gun Violence (Sept. 2020), <https://giffords.org/lawcenter/report/preventing-armed-voter-intimidation-a-state-by-state-analysis>; see also Wis. Stat. § 941.20 (Prohibiting the intentional pointing of a firearm at another).

VI. Law Enforcement at Polling Locations

Despite recent comments by President Trump,⁵² **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.⁵³

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.⁵⁴ This prohibition, of course, does not apply to members of the U.S. military who are at the polls to vote.

Under Wisconsin law, election officials may order law enforcement to aid them in enforcing the law, including in preserving order and stopping voter intimidation.⁵⁵ However, particularly in light of recent events in Kenosha, Wisconsin 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.⁵⁶

VII. Voter Misinformation

It is illegal under Wisconsin law for any person to make false representations about any candidate or referendum that is intended to affect or does affect voting in an election.⁵⁷

More generally, voter misinformation is a serious issue, particularly during the era of COVID-19, when it is possible bad actors could intentionally misinform a potential voter about the coronavirus, or laws and ordinances related to the coronavirus, to discourage them from voting. Under certain circumstances, **such misinformation could even constitute voter intimidation in violation of the laws above.**

52 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>.

53 18 U.S.C. § 592.

54 18 U.S.C. § 593.

55 See, e.g. Wis. Stat. § 7.37(2).

56 See, e.g. Becky Sullivan, *Kenosha Protests, Violence, Expose Racial Disparities Among the Worst in the Country*, NPR (Sept. 2, 2020), <https://www.npr.org/2020/09/02/908605928/kenosha-protests-violence-expose-racial-disparities-among-the-worst-in-the-count>.

57 Wis. Stat. § 12.05.

VIII. Mask Mandates

Governor Tony Evers has declared a statewide mask mandate until November 21, 2020,⁵⁸ but the order does not extend to polling places.⁵⁹ In guidance to Wisconsin county and municipal clerks, the Wisconsin Election Commission recommended that voters and election officials wear face coverings during in-person absentee and election day voting, but stated that, “[n]o voter should be refused a ballot for lack of wearing a face covering.”⁶⁰ Additionally, poll workers may request that voters “brief[ly]” remove their masks to verify that the voter “reasonably resemble[s]” the photo on their ID.⁶¹

IX. Whom to Contact for Enforcement

Wisconsin’s elections are primarily administered by municipal and county election clerks.⁶² On a statewide level, the Wisconsin Election Commission is the state regulatory authority in charge of administering Wisconsin Election Law and providing centralized guidance to county and municipal clerks and law enforcement.⁶³

Most violations of Wisconsin election law fall under the authority of local law enforcement, including police and district attorneys.⁶⁴ The Wisconsin Elections Commission also has a duty to investigate complaints and work collaboratively with local election officials and state and local law enforcement to maintain election integrity.⁶⁵

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, may call 911 or report to the Wisconsin Elections Commission, using the information below.

58 Scott Bauer, *Evers extends Wisconsin mask mandate until Nov. 21*, Associated Press (Sept. 22, 2020), <https://apnews.com/article/virus-outbreak-wisconsin-archive-b61ef9f6454af4171c0f686bae779b27>.

59 *Face Coverings While Voting and Conducting Elections - COVID-19* Wis. Elections Comm’n, (July 31, 2020), <https://elections.wi.gov/node/6981>.

60 *Id.*

61 *Id.*

62 A directory of municipal and county clerks can be found [here](#).

63 *About the Wisconsin Elections Commission*, Wisconsin Elections Comm’n, <https://elections.wi.gov/about>.

64 *Commitment to Election Integrity*, Wis. Elections Comm’n, <https://elections.wi.gov/elections-voting/integrity>.

65 *Id.*

Wisconsin Elections Commission
212 East Washington Avenue, Third Floor P.O. Box 7984
Madison, Wisconsin 53707-7984
Tel: (608) 266-8005
Email: elections@wi.gov

Or file a voter intimidation complaint at:
<https://elections.wi.gov/complaints/intimidation>

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/>.⁶⁶

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.

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