



# 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”<sup>1</sup> 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.”<sup>2</sup>

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.<sup>3</sup> They are also required to “enforce obedience to their lawful commands,” including directing law enforcement to remove disorderly individuals from the voting area.<sup>4</sup>



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<sup>1</sup> 18 U.S.C. § 594.

<sup>2</sup> *See, e.g.*, Wis. Stat. § 12.09.

<sup>3</sup> Wis. Stat. §§ 5.35; 7.37; Election Administration Manual for Wisconsin Municipal Clerks, Wisconsin Elections Commission (Sept. 2023) 185; 187, [https://elections.wi.gov/sites/default/files/documents/Election%20Administration%20Manual%20%282023-09%29\\_1.pdf](https://elections.wi.gov/sites/default/files/documents/Election%20Administration%20Manual%20%282023-09%29_1.pdf) [hereinafter Election Administration Manual].

<sup>4</sup> Wis. Stat. § 7.37.



## 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.<sup>5</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>6</sup> 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.**<sup>7</sup> People who intimidate or attempt to intimidate voters—or interfere with the right to vote—are also subject to civil liability.<sup>8</sup>

### 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 candidate or referendum.<sup>9</sup> Violators are guilty of a Class I felony.<sup>10</sup>

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

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

<sup>6</sup> 52 U.S.C. § 20511.

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

<sup>8</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>9</sup> Wis. Stat. § 12.09.

<sup>10</sup> Wis. Stat. § 12.60.

<sup>11</sup> Wis. Stat. § 12.07.

<sup>12</sup> *Id.*

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.**”<sup>13</sup>
- “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.”<sup>14</sup>

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.<sup>15</sup>

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.<sup>16</sup>

### **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;
- Photographing or videotaping voters inside a polling place without their consent;
- 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>17</sup>

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<sup>13</sup> Wis. Stat. § 12.09.

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

<sup>15</sup> Wis. Stat. § 12.60; 156 Wis. Stat. § 939.50(3)(i).

<sup>16</sup> *Id.*

<sup>17</sup> 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 (2012), <https://www.brennancenter.org/our-work/research-reports/ballot-security-and-voter-suppression>.

## II. Electioneering and Other Misconduct at the Polling Place

**“Electioneering”** is any activity which is intended to influence voting in an election, including campaign-related activity in support of or opposed to a candidate or ballot measure.<sup>18</sup> Electioneering is prohibited by anyone – including election officials, municipal clerks, observers, and voters – within 100 feet of a polling place.<sup>19</sup>

Wisconsin law prohibits the distribution of election-related material at the polling place on Election Day. This encompasses material which describes or claims to describe the rights or responsibilities of individuals voting or registering to vote.<sup>20</sup> But this prohibition does not include required material by election officials.

Election inspectors (sometimes referred to as poll workers) are responsible for:

- Maintaining **order** at polling places;<sup>21</sup>
- Ensuring voters have access to the polling place;<sup>22</sup>
- Preventing **loud, boisterous, or otherwise disruptive behavior** that interferes with voting;<sup>23</sup>
- Contacting the municipal clerk or law enforcement if they experience a problem with the conduct of any person at a voting location<sup>24</sup>;

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

No person may:

- Refuse to obey a lawful order of an inspector made for the purpose of enforcing the election laws;<sup>26</sup>
- Engage in disorderly behavior at or near a polling place;<sup>27</sup>
- Interrupt or disturb voting or canvassing proceedings<sup>28</sup>
- Tamper with ballots;<sup>29</sup>

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<sup>18</sup> Wis. Stat. § 12.03

<sup>19</sup> *Id.*; Election Administration Manual *supra* note 3, at 185.

<sup>20</sup> Wis. Stat. § 12.035; Election Administration Manual *supra* note 3, at 189.

<sup>21</sup> Wis. Stat. § 7.37; Election Administration Manual *supra* note 3, at 124.

<sup>22</sup> Wis. Stat. § 7.41; Election Administration Manual *supra* note 3, at 185.

<sup>23</sup> Election Administration Manual *supra* note 3, at 185.

<sup>24</sup> *Id.* at 179; Wis. Stat. § 7.37.

<sup>25</sup> Wis. Stat. § 7.37.

<sup>26</sup> Wis. Stat. §12.13(3)(x)

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Wis. Stat. §12.13(3)(f)

- Tamper with voting machines or tabulating equipment<sup>30</sup>
- Solicit a person to show how his or her vote is cast; or<sup>31</sup>
- Remove or destroy any of the supplies or conveniences placed in compartments or polling booths.<sup>32</sup>

### III. Voter Challenges

Wisconsin law places limits on voter challenges and provides a voting procedure for voters whose qualifications have been challenged.<sup>33</sup> Either election officials or fellow voters can challenge the qualification of a voter, but **challenges should have reasonable and appropriate support.**<sup>34</sup> A voter can be challenged based on age, residency, citizenship, ability to sign the poll list or other disqualification from voting.<sup>35</sup> A challenge based on an individual's appearance, speech or inability to speak English is unacceptable.<sup>36</sup> A challenger who abuses the right to challenge can be subject to sanctions.<sup>37</sup>

When a fellow voter makes the challenge, they are placed under oath and asked to make a sworn statement giving the reason for the challenge.<sup>38</sup> The inspector then asks the challenger a series of questions.<sup>39</sup> Next, the challenged voter takes an oath and answers the election inspector's questions to establish they are qualified to vote.<sup>40</sup> After answering the questions and making another oath, the challenged voter is **given a regular ballot, and "the person's vote [is] received."**<sup>41</sup> The ballot is marked as challenged, but "the challenged ballot shall be counted."<sup>42</sup>

A challenged ballot or registration 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."<sup>43</sup> Voters can appeal decisions on the validity of challenged ballots that they have cast.<sup>44</sup>

**Making aggressive, baseless, and frivolous voter challenges that disrupt voting may constitute voter intimidation under federal and Wisconsin law and thus may be**

<sup>30</sup> *Id.*

<sup>31</sup> Wis. Stat. §12.13(3)(q)

<sup>32</sup> Wis. Stat. §12.13(3)(d)

<sup>33</sup> Wis. Stat. § 6.95; Election Administration Manual *supra* note 3, at 191-192; Wis. Admin. Code §§ EL 9.01-9.02.

<sup>34</sup> Election Administration Manual *supra* note 3, at 191-192.

<sup>35</sup> Election Administration Manual *supra* note 3, at 192.

<sup>36</sup> *Id.* at 3.

<sup>37</sup> Wis. Admin. Code § EL 9.02.

<sup>38</sup> *Id.*; Election Administration Manual *supra* note 3, at 191; Wis. Stat. § 6.925.

<sup>39</sup> *Id.*

<sup>40</sup> Wis. Admin. Code § EL 9.02.; Election Administration Manual *supra* note 3, at 192.

<sup>41</sup> *Id.*; Wis. Stat. § 6.94; Wis. Stat. § 6.95.

<sup>42</sup> Wis. Stat. § 6.95; Wis. Admin. Code § EL 9.03.

<sup>43</sup> Wis. Stat. § 6.95; Wis. Stat. § 6.325.

<sup>44</sup> Wis. Stat. § 6.95; Wis. Stat. § 9.01.

**subject to criminal prosecution.**<sup>45</sup>

#### **IV. Observers**

Members of the public may be present at any polling place while ballots are being cast.<sup>46</sup> 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;<sup>47</sup>
- 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;<sup>48</sup> and
- Election officials may restrict the location of observers within the polling place and designate a specific “observer area.”<sup>49</sup>

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;<sup>50</sup>
- Engage in electioneering;<sup>51</sup>
- Handle official election documents;<sup>52</sup>
- Take photos or videos of voters;<sup>53</sup>
- Have conversations about candidates, parties or ballot questions;<sup>54</sup>
- Make calls / use cell phones for voice calls inside the polling area;<sup>55</sup>
- 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;<sup>56</sup>
- Interact with voters, except when requested;<sup>57</sup>

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<sup>45</sup> See 18 U.S.C. § 594; 18 U.S.C. §§ 241, 242, 245(b)(1)(A); Wis. Stat. §12.09.

<sup>46</sup> Wis. Stat. § 7.41.

<sup>47</sup> *Id.*; Election Administration Manual *supra* note 3, at 168. Wisconsin Election Observer Rules-at-a-Glance Brochure, Wisconsin Elections Commission (Mar. 28, 2022), <https://elections.wi.gov/sites/default/files/legacy/2022-03/Election%2520Observer%2520Rules%2520at-a-Glance%2520March%25202022.pdf> [hereinafter Observer Rules]

<sup>48</sup> Wis. Stat. § 7.41.

<sup>49</sup> *Id.*; Election Administration Manual *supra* note 3, at 168-169.

<sup>50</sup> Election Administration Manual *supra* note 3, at 185.

<sup>51</sup> Observer Rules, *supra* note 47.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

- View confidential information on the poll list;<sup>58</sup> or
- Enter vehicles of curbside voters.<sup>59</sup>

As Wisconsin's limitations on election observers illustrate, **behavior that is otherwise lawful may constitute illegal voter intimidation in and around polling places.**<sup>60</sup> Voter intimidation is subject to criminal prosecution under Wisconsin and federal law.<sup>61</sup>

#### Removal of Disruptive Observers

The Wisconsin Election Commission directs chief election inspectors to warn any observer engaging in disruptive behavior to cease, and if the behavior persists, to order the observer to leave the polling place.<sup>62</sup> **If the observer refuses to leave, “the chief inspector should summon law enforcement to remove the offending observer.”**<sup>63</sup>

### **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.<sup>64</sup> Additionally, while Wisconsin does not bar guns in houses of worship, houses of worship can prevent persons with a gun from entering.<sup>65</sup> Together, these provisions mean it is illegal to possess firearms, or at least concealed handguns, in many 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 voter intimidation statutes if particular behavior intimidates or threatens voters or otherwise interferes in the conduct of the election.

### **VI. Law Enforcement at Polling Locations**

**The President does not have authority to order law enforcement to patrol polling places.**<sup>66</sup> 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

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> See 18 U.S.C. § 594; 18 U.S.C. §§ 241, 242, 245(b)(1)(A); Wis. Stat. §12.09.

<sup>61</sup> *Id.*

<sup>62</sup> Election Administration Manual *supra* note 3, at 185.

<sup>63</sup> *Id.*

<sup>64</sup> Wis. Stat, 948.605.

<sup>65</sup> Location Restrictions in Wisconsin, Giffords Law Center (Jan. 5, 2023), <https://giffords.org/lawcenter/state-laws/location-restrictions-in-wisconsin/>.

<sup>66</sup> Sean Morales-Doyle, et al., *Voters Should Not Be Intimidated*, BRENNAN CENTER FOR JUSTICE (Oct. 7, 2020), <https://www.brennancenter.org/our-work/research-reports/voters-should-not-be-intimidated>.

of polling places.<sup>67</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>68</sup> This prohibition, of course, does not apply to members of the U.S. military who are at the polls to vote.<sup>69</sup>

Under Wisconsin law, election officials may order law enforcement to aid them in preserving order and stopping voter intimidation.<sup>70</sup> However, given that law enforcement itself can be intimidating to some voters, Wisconsin election officials should be particularly vigilant in ensuring that voters who are distrustful of the police are not deterred from voting at polling locations because of the presence of law enforcement.

## **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.<sup>71</sup>

## **VIII. Whom to Contact for Enforcement**

Wisconsin's elections are primarily administered by municipal and county election clerks.<sup>72</sup> 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.<sup>73</sup>

Most violations of Wisconsin election law fall under the authority of local law enforcement, including police and district attorneys.<sup>74</sup> 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.<sup>75</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, may file a complaint with the Wisconsin Elections Commission .<sup>76</sup>

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<sup>67</sup> 18 U.S.C. § 592.

<sup>68</sup> 18 U.S.C. § 592; 18 U.S.C. § 593.

<sup>69</sup> 18 U.S.C. § 593.

<sup>70</sup> Wis. Stat. § 7.37.

<sup>71</sup> Wis. Stat. § 12.05.

<sup>72</sup> *Wisconsin Elections*, Wisconsin Elections Commission, <https://elections.wi.gov/elections>.

<sup>73</sup> *Id.*

<sup>74</sup> Wisconsin's Commitment to Election Integrity, Wisconsin Elections Commission, <https://elections.wi.gov/wisconsin-commitment-election-integrity>.

<sup>75</sup> *Id.*; Wis. Stat. § 5.05.

<sup>76</sup> Election Complaints & Concerns, Wisconsin Elections Commission, <https://elections.wi.gov/elections/election-security-integrity/election-complaints-concerns#230548828-3775798828>.



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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.