



PROTECTING GEORGIA VOTERS FROM VOTER INTIMIDATION

This memo outlines the robust protections for voters against voter intimidation under both federal and Georgia law. **Voter intimidation is a crime and local election officials and law enforcement have a responsibility to protect Georgia 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, Georgia has an extensive set of laws that protect Georgia voters from intimidation, interference, and influence while voting.

Finally, poll managers have a duty to maintain order at the polling place.² A poll manager can remove poll watchers for interfering with election administration,³ and it is a crime to prevent poll workers from conducting their election duties.⁴

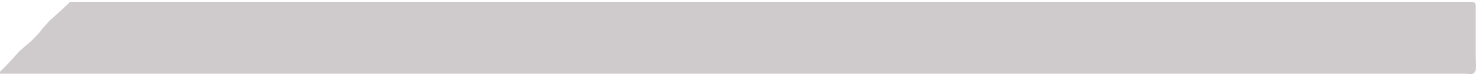


¹ 18 U.S.C. § 594.

² Ga. Code Ann. § 21-2-413(h).

³ Ga. Code Ann. § 21-2-408.

⁴ Ga. Code Ann. § 21-2-566(1); Ga. Code Ann. § 21-2-569.



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, or both⁵

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 civil liability.⁸

Georgia Law

In Georgia, **it is illegal for any person to use or threaten to use force and violence, or act in any other manner to intimidate any other person**, to:

1. Vote or refrain from voting at any primary or general election, or to vote or refrain from voting for or against any particular candidate or question submitted to electors at such primary or election; or
2. Place or refrain from placing his or her name upon a register of electors.⁹

The crime is a felony, and upon conviction, carries a sentence of not less than one nor more than ten years, or a fine not to exceed \$100,000, or both.¹⁰

The Georgia Code defines “act in any other manner to intimidate” as “to undertake or

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

⁹ Ga. Code Ann. § 21-2-567.

¹⁰ *Id.*

pursue a knowing and willful course of conduct which causes emotional distress by placing another person in reasonable fear for such person's safety or for the safety of another person and which serves no legitimate purpose."¹¹

In addition, it is a felony to attempt to influence the vote of another while giving that person lawful assistance in voting.¹² Finally, it is also a separate felony to use or threaten violence in a manner that would prevent a reasonable elector from voting, or actually prevents any elector from voting.¹³

Though not specifically applying to elections, Georgia law also makes it a misdemeanor to threaten bodily harm via an electronic communication (such as e-mail or text), or to contact another person repeatedly via electronic communication for the purpose of harassing, molesting, or threatening, or intimidating that person.¹⁴ Electioneering, campaigning or "hanging around" polling places

Georgia law prohibits any person, when within the polling place, from electioneering or soliciting votes for any political party or body or candidate or question.¹⁵ No candidate on the ballot may enter any polling place except to vote, and must leave immediately upon voting.¹⁶

Georgia Electioneering Guidelines

No person is permitted to solicit votes in any manner or by any means or method, no person is permitted to distribute any campaign materials or to solicit signatures for any petition, and no person (other than election officials discharging their duties) is permitted to establish or set up any tables or booths on any day in which ballots are being cast:

1. **Within 150 feet of out the outer edge of the building in which the polling place is established;**
2. Within any polling place; or
3. **Within 25 feet of any voter standing in line** to vote at any polling place.¹⁷

Campaign material is defined as "any newspaper, booklet, pamphlet, card, sign, paraphernalia, or any other written or printed matter referring to:

- A candidate whose name appears on the ballot in a primary or election;
- A referendum which appears on the ballot in a primary or election; or
- A political party or body which has a nominee or nominees on the ballot in a primary or election."¹⁸
- Rooms under the control or supervision of the board of registrars or absentee ballot clerk in which absentee ballots are cast are considered polling places.¹⁹

¹¹ Ga. Code Ann. § 21-2-567(b).

¹² Ga. Code Ann. § 21-2-568.

¹³ Ga. Code Ann. § 21-2-566(4).

¹⁴ Ga. Code Ann. § 16-11-39.1.

¹⁵ Ga. Code Ann. §§ 21-2-413, 21-2-414; GA. SEC'Y OF STATE, POLL WORKER MANUAL 40 (May 2021),

<https://georgiapollworkers.sos.ga.gov/Shared%20Documents/Georgia%20Poll%20Worker%20Manual%202021.pdf> [hereinafter POLL WORKER MANUAL].

¹⁶ Ga. Code Ann. § 21-2-414.

¹⁷ Ga. Code Ann. § 21-2-414; POLL WORKER MANUAL, *supra* note 13 at 40.

¹⁸ Ga. Code Ann. § 21-2-2; POLL WORKER MANUAL, *supra* note 13 at 40.

¹⁹ Ga. Code Ann. § 21-2-414(b); POLL WORKER MANUAL, *supra* note 13 at 40.

No person is permitted to conduct any exit poll or public opinion poll with voters within 25 feet of the exit of any building in which a polling place is established on any day in which ballots are being cast.²⁰ **Poll managers may manage the number of persons allowed in the polling place to prevent confusion, congestion, and inconvenience to voters.**²¹

II. Conduct at polling locations

It is a felony to willfully prevent any poll officer from performing his or her duties or from holding an election.²² It is likewise a felony to use or threaten violence in a manner that would prevent a reasonable poll officer from executing his or her duties, or that materially interrupts or improperly interferes with the execution of a poll officer's duties.²³

The manager of each polling place has a general duty to “keep order” at the polling place.²⁴ No person is permitted to use photographic or other electronic monitoring or recording devices, cameras, or cellular telephones while in a polling place while voting is taking place.²⁵ However, a poll manager, in his or her discretion, may allow the use of photographic devices in the polling place, provided that no photography shall be allowed of a ballot or the face of a voting machine or direct-recording electronic (DRE) unit or electronic ballot marker while a person is voting.²⁶ Likewise, no photography shall be allowed of an electors list or the use of an electors list.²⁷

Poll Watcher Guidelines

A “poll watcher” is a person named by a political party, political body, or candidate who is authorized to enter the enclosed space to observe the conduct of an election and the counting and recording of votes.²⁸

- A poll watcher may be permitted behind the enclosed space for the purpose of observing the conduct of the election and the counting and recording of votes.²⁹
- Before the election, **the superintendent will provide each poll watcher with a badge bearing their name, precinct, election, and the words “Official Poll Watcher.” This badge must be worn by the poll watcher at all times on election day.**³⁰
- However, poll watchers cannot interfere with the conduct of the election.³¹ For example, **poll watchers are prohibited from (a) talking to voters, (b) checking elector lists, (c) using photographic or other electronic monitoring/recording devices, (d) using cell phones, or (e) participating in any form of campaigning while**

²⁰ Ga. Code Ann. § 2-2-414(c)

²¹ *Id.*

²² Ga. Code Ann. § 21-2-566(1); Ga. Code Ann. § 21-2-569.

²³ Ga. Code Ann. § 21-2-566(2).

²⁴ Ga. Code Ann. § 21-2-413(h).

²⁵ Ga. Code Ann. § 21-2-413(e); POLL WORKER MANUAL, *supra* note 13 at 42.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Ga. Code Ann. § 21-2-408; POLL WORKER MANUAL, *supra* note 13 at 42.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

within the polling place.³²

- If a poll watcher engages in any such conduct and continues to do so after being warned by an election official, he or she can be removed from the polling place.³³
- If a poll watcher observes any misconduct or irregularities, they must report these directly to the election superintendent and not to the poll manager.³⁴

If any elector asks for instructions concerning the manner of voting, a poll officer may give such instructions.³⁵ However, poll officers are prohibited from in any manner implying, suggesting, or seeking to persuade or induce any elector to vote for any particular candidate or for or against any particular question.³⁶

III. Firearms and Open Carry laws

It is illegal under Georgia law to carry a weapon or long gun in an unauthorized location within 150 feet of any polling place when elections are being conducted.³⁷

However, there is an exception to this prohibition for peace officers regularly employed by the federal, state, county, or municipal government or certified security guards.³⁸

A conviction for this offense is a misdemeanor³⁹ and carries a maximum penalty of twelve months in custody and \$1000 in fines.⁴⁰ Additionally, a conviction for possession of a weapon or long gun in an unauthorized location can result in a revocation of the offender's Weapons Carry License.⁴¹

IV. Law Enforcement at Polling Locations

The President does not have authority to order law enforcement to patrol polling places.⁴² 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

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.⁴⁴ However, this prohibition does not apply to members of the U.S. military who are at the polls to vote.⁴⁵

It is a misdemeanor under Georgia law for a law enforcement officer to neglect or refuse to clear any obstruction to a polling place, neglect or refuse to maintain order or

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Ga. Code Ann. § 21-2-410; POLL WORKER MANUAL, *supra* note 13 at 59.

³⁶ *Id.*

³⁷ Ga. Code Ann. § 16-11-127(b)(7).

³⁸ Ga. Code Ann. § 21-2-413.

³⁹ Ga. Code Ann. § 16-11-127(b).

⁴⁰ Ga. Code Ann. §17-10-3(a)(1).

⁴¹ Ga. Code. Ann. §16-11-129.

⁴² 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>.

⁴³ 18 U.S.C. § 592.

⁴⁴ 18 U.S.C. § 592; 18 U.S.C. § 593.

⁴⁵ 18 U.S.C. § 593.

quell disturbances at polling places, or hinder or delay a poll officer in the performance of an election duty.⁴⁶

V. Challenges

Any elector of the county or municipality can challenge the right of any other elector, whose name appears on the county list of electors, to vote in an election.⁴⁷ Elector challenges must be in writing and specify distinctly the grounds of such challenge.⁴⁸ Any such challenge may be made at any time prior to the person whose right to vote is being challenged is voting at the polling place, or if the challenged voter is casting an absentee ballot, before 5 PM on the day absentee ballots are counted.⁴⁹ Once a challenge is made, the board of registrars determines whether the challenge has probable cause.⁵⁰ If there is no probable cause, the challenge is denied.⁵¹ If there is probable cause, the challenged voter is given the opportunity to appear and answer the challenge.⁵² If the challenged voter tries to vote at the polls and the challenge is denied, the voter can vote normally, even if polls have closed.⁵³

Electors may also challenge the qualifications of someone registering to vote or may challenge that someone is no longer eligible to vote.⁵⁴ In these cases, the burden is on the elector making the challenge to prove that the person being challenged is not qualified to remain on the list of electors.⁵⁵

If a hearing cannot be conducted on the challenge, the challenged elector is still permitted to vote by casting a provisional ballot.⁵⁶

VI. Enforcement authority

There are four main enforcement authority options for voter intimidation issues in Georgia: the Secretary of State (together with the State Elections Board), county election officials, the Attorney General, and local district attorneys. The Secretary of State is Georgia's highest-profile election official and oversees the Elections Division. He is a member of the State Election Board (an independent body) which organizes and supervises all election activity. The Secretary of State provides information to candidates⁵⁷ and voters,⁵⁸ and conducts training sessions for local election officials.⁵⁹

State Elections Board Powers

⁴⁶ Ga. Code Ann. § 21-2-593.

⁴⁷ O.C.G.A. § 21-2-230(a); POLL WORKER MANUAL, *supra* note 13 at 83-84.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Ga. Code Ann. § 21-2-229

⁵⁵ *Id.*

⁵⁶ O.C.G.A. § 21-2-230(a); POLL WORKER MANUAL, *supra* note 13 at 83-84.

⁵⁷ Ga. Code Ann. § 21-2-50(a)(10).

⁵⁸ Ga. Code Ann. § 21-2-50(a)(13).

⁵⁹ Ga. Code Ann. § 21-2-50(a)(11).

The Georgia State Elections Board:

- Promulgates rules and regulations to obtain uniformity in election practices and proceedings, and promote the legality and purity in all elections;
- Formulates, adopts, and promulgates rules and regulations, to effect fair, legal, and orderly conduct of primaries and elections;
- Prepares and publishes explanatory pamphlets regarding the interpretation and application of the election laws;
- Investigates, or authorizes the Secretary of State to investigate, when necessary or advisable the administration of primary and election laws and frauds and irregularities in primaries and elections and reports such violations to the Attorney General or the appropriate district attorney; and
- “[T]ake[s] such other action, consistent with law, as the board may determine to be conducive to the fair, legal, and orderly conduct of primaries and elections.”⁶⁰

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: <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.

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⁶⁰ Ga. Code Ann. § 21-2-31.