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Protecting Michigan Voters From Voter Intimidation

This memo outlines the robust protections for voters against voter intimidation under both federal and Michigan law. **Voter intimidation is a crime and local election officials and law enforcement have a responsibility to protect Michigan 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, Michigan law makes it a felony to "menace" voters in order to "influence an elector in giving his or her vote, or to deter the elector from, or interrupt the elector in giving his or her vote," and to obstruct or attempt to obstruct another person from voting.[2]

Finally, Michigan law imposes duties on state and local election and law enforcement officials to safeguard voters and polling places by ejecting those engaging in unlawful behavior[3] and both reporting[4] and criminally prosecuting[5] violators of state election laws.

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CLC is a nonpartisan, nonprofit organization working to protect and strengthen the U.S. democratic process across all levels of government through litigation, policy analysis, and public education. CLC seeks a future in which the American political process is accessible to all citizens, resulting in representative, responsive, and accountable government. Consistent with that mission, we have worked with election officials across the nation to improve their administrative policies, protect the freedom to vote of citizens within their jurisdictions, and strengthen the democratic process.



[1] 18 U.S.C. § 594.

[2] Mich. Comp. Laws Ann. § 168.932.

[3] Mich. Dep't of State Bureau of Elections, Managing Your Precinct on Election Day: Election Inspectors' Procedure Manual 4 (2022). Available online: https://www.michigan.gov/sos/-/media/Project/Websites/sos/Election-Administrators/Managing-Your-Precinct-on-Election-Day-July-2022.pdf?rev=c3f3495746284db4bb85c2a091367905&hash=A8AC1F8E745DB319C4FA008627E56A26https [*hereinafter* Procedure Manual].

[4] Mich. Comp. Laws Ann. § 168.939.

[5] Mich. Comp. Laws Ann. § 168.940.

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I. Voter intimidation is illegal, and violators are subject to civil and criminal penalties

A. FEDERAL LAW PROVIDES BROAD CRIMINAL PROTECTION AGAINST VOTER INTIMIDATION

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 the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined or imprisoned not more than one year, or both.[6]

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.[7] 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.[8] People who intimidate or attempt to intimidate voters—or interfere with the right to vote—are also subject to civil liability.[9]

B. MICHIGAN LAW SIMILARLY PROHIBITS INTIMIDATING VOTERS

In Michigan it is a felony for any person to "attempt, by means of… menace, or other corrupt means or device, either directly or indirectly, **to influence an elector in giving his or her vote, or to deter the elector from, or interrupt the elector in giving his or her vote at any election held in this state."**[10] **Any person who violates this provision can be jailed for up to 5 years and fined up to $1,000.**[11]

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[6] 18 U.S.C. § 594; *see also* 18 U.S.C. §§ 241, 242, 245(b)(1)(A), and 610 (other criminal provisions).

[7] 52 U.S.C. § 20511.

[8] *Id.*; *see also* 52 U.S.C. § 10308(a).

[9] *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").

[10] Mich. Comp. Laws Ann. § 168.932(a).

[11] Mich. Comp. Laws Ann. § 168.935.

Michigan's voter intimidation statute can apply against misinformation that seeks to reduce turnout. Michigan enforced this statute against a pair of political operatives for "orchestrating a series of robocalls aimed at suppressing the vote in the [2020] November general election."[12]

Michigan law requires election officials to report violations of this provision to state attorneys[13] and imposes a duty on Michigan prosecutors to bring charges against violators of Michigan's election laws.[14]Additionally, Michigan law and administrative guidance provide a wide variety of more specific restrictions on behavior at polling places, which are reviewed below.

C. EXAMPLES OF UNLAWFUL CONDUCT

Voter intimidation is a federal crime. Examples 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.**[15]

[12] Press Release, Michigan Department of Attorney General, AG Nessel Files Felony Charges Against Jack Burkman, Jacob Wohl in Voter-Suppression Robocalls Investigation (Oct. 1, 2020), https://www.michigan.gov/ag/news/press-releases/2020/10/01/ag-nessel-files-felony-charges-against-jack-burkman-jacob-wohl.

[13] Mich. Comp. Laws Ann. § 168.939 ("It shall be the duty of every inspector of election, knowing, or having reason to believe, that an offense punishable under the provisions of this act has been committed, to give information thereof to the prosecuting attorney without delay, and such prosecuting attorney shall adopt effective measures for the prosecution of all persons believed to be guilty of such offense.").

[14] Mich. Comp. Laws Ann. § 168.940 ("It is hereby made the duty of every prosecuting attorney, whenever he shall receive credible information that any such offense has been committed, to cause the same to be prosecuted.")

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

II. Election officials are empowered to prevent intimidation and protect voter access

Michigan law empowers election inspectors to "maintain peace, regularity, and order at the polling place."[16] Administrative guidance explains that this is because "voters have a right to vote a secret ballot in a secure, orderly environment free of distractions."[17]

If a challenger, poll watcher, or voter refuses to comply with polling place requirements—such as by engaging in illegal voter intimidation or refusing to conceal the insignia of a particular candidate—precinct chairs are supposed to "eject the individual from the polling place."[18] Where an individual refuses to leave a polling place after being ejected, election officials are instructed to contact the clerk and, if necessary, law enforcement.[19]

III. Electioneering is prohibited in "buffer zones"

Most political activity is banned within 100 feet of polling places in Michigan, defined by statute to be 100 feet from any entrance to a building containing a polling place or hallways used by voters to enter or exit a polling place.[20]

Within the 100 foot "buffer zone" around polling places and within the polling place itself, **Michigan law makes it a crime for any person to:**

- "persuade or endeavor to persuade a person to vote for or against any particular candidate or party ticket or for or against any ballot question that is being voted on at the election;"
- "place or distribute stickers;"
- "solicit donations, gifts, contributions, purchase of tickets, or similar demands, or request or obtain signatures on petitions;" or
- "post, display, or distribute . . . any material that directly or indirectly makes reference to an election, a candidate, or a ballot question."[21]

[16] Mich. Comp. Laws Ann. § 168.678.

[17] Procedure Manual, *supra* note 3 at 5.

[18] *Id.* at 6.

[19] *Id.*

[20] *Id.*

[21] Mich. Comp. Laws Ann. § 168.744.

Election workers are **required** to ask voters to conceal any materials that violate this requirement at the polls.[22] Additionally, voters may not leave any materials in the voting booth after they finish voting and election workers must periodically ensure any such materials are removed from voting booths. Candidates may not be within 100 feet of the polls except to cast their own ballot.[23]

PHOTOGRAPHY AND CELL-PHONE USE IS LARGELY PROHIBITED

With limited exceptions, **photography and recording is prohibited at Michigan polling places**, although non-disruptive cell-phone use is generally allowed.[24]

Poll-watchers and challengers may not photograph or record inside the polling place.[25] Voters may only take a photograph of their marked ballot inside of the polling booth, but may not take 'selfies' or share or display any photograph within 100 feet of the polling place.[26] News media may briefly record within the public area of the polling station under the supervision of the precinct chairperson, but are prohibited from obstructing, interviewing, or inconveniencing voters.[27] News media may not record within the voting area.[28]

Those present at the polls may use non-recording applications—such as e-mail or messaging functions—on their mobile devices, but only if they are not disruptive to the voting process.[29]

CHALLENGERS AND POLL WATCHERS ARE SUBJECT TO STRICT BEHAVIORAL GUIDELINES

Like many jurisdictions, Michigan permits members of the public to observe polling stations. However, Michigan places strict, enforceable limits on the behavior of observers and permits election officials to eject observers when necessary.[30]

Michigan law allows for two types of observers at the polls: challengers and poll watchers.[31] **Only challengers may challenge the right of an individual to vote** or the actions of election inspectors, and only challengers may exit the public area to observe the activities of election officials at the

[22] Procedure Manual, *supra* note 3 at 17.

[23] *Id.*

[24] *Id.* at 5.

[25] *Id.* at 6.

[26] *Id.* at 5.

[27] *Id.* at 6.

[28] *Id.*

[29] *Id.* at 5.

[30] *See generally*, Mich. Bureau of Elections, The Appointment, Rights, and Duties of Election Challengers and Poll Watchers (May. 2022). Available online: https://www.michigan.gov/sos/-/media/Project/Websites/sos/01vanderroest/SOS_ED_2_CHALLENGERS.pdf?rev=96200bfb95184c9b91d5b1779d08cb1b&hash=2CE1F512E8D7E44AFAF60071DD8FD750 [*hereinafter* Duties of Election Challengers and Poll Watchers].

[31] Procedure Manual, *supra* note 3 at 19.

processing table.[32] **Poll watchers must remain in the public area and may not challenge voters or officials.[33]**

Challengers must be registered to vote in Michigan, must carry credentials from the authority that has appointed them—generally a political party or interest group—and must not represent a campaign or candidate.[34] Challengers by a political party can be appointed up to Election Day, but all other challengers must be appointed in advance.[35]

Neither poll watchers nor challengers may touch or handle election materials, take photographs or videos in a polling place, approach, question, or assist voters; campaign, or display clothing, signs or symbols supporting a particular candidate or appointing authority.[36] Election officials may eject poll watchers and challengers who violate these rules or are otherwise disruptive.[37]

Challengers may challenge the qualifications of a particular voter by alerting the precinct chairperson only if the challenger has "good reason" to believe the voter is not qualified to vote.[38] **Challengers may not challenge a voter because of their race, ethnicity, manner or dress, ability to speak or write English, disability, party affiliation, or their lack of ID.[39]** Challenged voters may still cast a ballot after affirming their qualifications to vote.[40]

Repeated frivolous challenges or challenges "for the purpose of harassing, delaying, or annoying"[41] qualified voters may constitute voter intimidation and are punishable by law.[42]

[32] Duties of Election Challengers and Poll Watchers, *supra* note 30 at 1-2; *See also* Election Challengers and Poll Watchers: Summary of Rights and Duties, Michigan Secretary of State, https://www.michigan.gov/sos/-/media/Project/Websites/sos/Resources/Partners-in-Democracy/MDOS_ChallengersVWatchers_Summary.pdf?rev=b4278a6e536240418c2db6ae27a6d87f&hash=FAE7563F5F90C903E1F870AEA606DD28 [*hereinafter* Election Challengers and Poll Watchers: Summary].

[33] Duties of Election Challengers and Poll Watchers, *supra* note 30 at 23.

[34] *Id.* at 1.

[35] *Id.* at 2.

[36] Election Challengers and Poll Watchers: Summary, *supra* note 32.

[37] *Id.* at 21-22.

[38] *Id.* at 11.

[39] *Id.* at 12-13.

[40] *Id.* at 13-14.

[41] *Id.* at 21.

[42] 168 M.C.L. § 932(a)(making it a felony in Michigan to "attempt, by means of… menace, or other corrupt means or device, either directly or indirectly, to influence an elector in giving his or her vote, or to deter the elector from, or interrupt the elector in giving his or her vote at any election held in this state").

IV. Open carry of firearms generally prohibited

The open carry of firearms is prohibited in many places that are used as polling places.[43] These include school buildings, places of worship, banks, arenas, and more.[44] Some municipalities, including Detroit and Ann Arbor, also prohibit publicly brandishing firearms.[45] Concealed carry of firearms is also generally prohibited in school buildings and places of worship.[46]

Openly carrying a firearm in a polling place, even without brandishing, may constitute voter intimidation under some circumstances.[47] Election workers are directed to contact law enforcement if they encounter activity that deters or hinders people from voting.[48]

V. Law Enforcement at Polling Locations

Federal law makes it a felony for any federal official to send "armed men" to the vicinity of polling places.[49] Additionally, 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; however, this prohibition does not prevent members of the U.S. military from being present at the polls to vote.[50]

Michigan law enforcement may be present at Michigan polling places. In general, Michigan election inspectors are instructed to rely on law enforcement[51] if individuals are unwilling to comply with instructions to leave, to cease intimidating activities, or otherwise frustrate Election Inspectors' authority to "maintain peace, regularity and order at the polling place."[52]

VI. Voter misinformation is illegal

Voter misinformation aimed at suppressing voters or convincing voters to vote for a particular candidate may be prosecuted under Michigan law.

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[43] Mich. Sec'y of State, Overview of Current Voter Intimidation and Firearms Laws (July 21, 2022). Available Online: https://www.michigan.gov/sos/-/media/Project/Websites/sos/03mcalpine/Overview_of_Current_Voter_Intimidation_and_Firearms_Laws.pdf?rev=92fa5a11ae22410a8abd190e76be7253&hash=239B51F75AC14C3AE43F51CFC6E5D924.

[44] *Id.*

[45] Detroit, Michigan Municipal Code § 31-13-24; Ann Arbor, Michigan Municipal Code § 9:269.

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] 18 U.S.C. § 592.

[50] 18 U.S.C. § 593.

[51] Procedure Manual, *supra* note 3 at 18.

[52] *Id.* at 5.

On October 1, 2020, Michigan's Attorney General announced the filing of charges against Jack Burkman and Jacob Wohl for orchestrating roughly 12,000 robocalls designed to dissuade Detroit voters.[53] Those calls falsely claimed that "mail-in voting, in particular, will allow personal information to become part of a special database used by police to track down old warrants and by credit card companies to collect outstanding debts."[54] The state's complaint against Burkman and Wohl asserted that the pair used the "corrupt means" of "false and misleading statements" to deter "Detroit area electors" from voting, in violation of Michigan Law.[55] Under this theory, voter misinformation may be charged as violating Michigan law that criminalizes the use of any "corrupt means . . . to influence an elector in giving his or her vote, or to deter the elector from, or interrupt the elector in giving his or her vote at any election held in this state."[56] This activity also resulted in a temporary restraining order against Burkman and Wohl for violations of federal voter intimidation statutes.[57]

VII. Who to contact for enforcement

Voters may contact the Michigan Bureau of Elections at 517-335-3234 or via e-mail at elections@michigan.gov. Voters may also contact their clerk, who may be located via the following directory: https://mvic.sos.state.mi.us/Voter/Index/#yourclerk. Although Michigan does not have a centralized voter hotline, local election officials are required by law to report election law violations to law enforcement and prosecutors are required to charge such violations.[58]

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.[59]

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.

[53] Press Release, *supra* note 12.

[54] *Id.*

[55] Complaint Felony at 1, People of the State of Michigan v. Burkman, 988 N.W.2d 485 (2023), No. 164638.

[56] Mich. Comp. Laws Ann. § 168.932(a).

[57] *Nat'l Coal. on Black Civic Participation v. Wohl*, 498 F. Supp. 3d 457 (S.D.N.Y. 2020).

[58] Mich. Comp. Laws Ann. §§ 168.939-940.

[59] https://civilrights.justice.gov/report/.

VIII. Glossary

Election Inspector: Election inspectors are poll workers selected by clerks to work at a particular polling place.

Precinct Chair: Precinct chairs are poll workers who oversee a particular polling place and have special responsibilities.

Clerk: Clerks are election officials who hire election inspectors and precinct chairs and oversee multiple polling places. Michigan voters may find the identity of their clerk online here: https://mvic.sos.state.mi.us/Voter/Index/#yourclerk.

Poll Watcher: A poll watcher is an individual who wishes to observe a Michigan polling place, but has not been previously credentialed or appointed to serve as a challenger. Poll watchers may not challenge the qualifications of voters or actions of election officials and must obey strict conduct standards.

Challenger: A challenger is a credentialed observer appointed by a political party or interest group to observe a Michigan polling place. While challengers may challenge the qualifications of voters or decisions of election inspectors, they are subject to strict conduct standards and may not make frivolous challenges or challenges based on prohibited characteristics.

Updated: October 2026