

## Voter Intimidation Is Illegal

As we approach the 2022 midterm elections, there are new threats of voter intimidation that could undermine a free and fair election. While some of the specific tactics are new, existing law forbidding voter intimidation already prohibits some of this concerning conduct. These laws must be publicized, understood, and enforced to protect voters.

The three primary civil federal laws forbidding voter intimidation are: [Section 2 of the Ku Klux Klan Act of 1871](#) (42 U.S.C. § 1985(3) clauses 3 and 4), [Section 131\(b\) of the Civil Rights Act of 1957](#) (52 U.S.C. § 10101(b)) and [Section 11\(b\) of the Voting Rights Act](#) (52 U.S.C. § 10307(b)). Because these are federal laws, they apply in every state regardless of any state laws or local rules. Under these laws:

- **Any conduct that is likely to intimidate a reasonable voter is illegal.**
- The intimidating conduct does not need to threaten violence or physical harm.
- The intimidating conduct does not need to be *intended* to intimidate voters, as long as a reasonable voter would be intimidated.<sup>1</sup>
- The voter does not need to be targeted because of their race or any other specific characteristic; what matters is whether the conduct is intimidating.
- Voter intimidation is illegal *no matter who the perpetrator is*: whether a private individual, candidate, campaign, political party, state official, federal official, or law enforcement officer.
- Intimidation that interferes with any of the activities around voting—such as registering to vote, advocating for a candidate, or election administrators counting ballots—is also illegal.

These three laws are civil, and can be enforced by private individuals,<sup>2</sup> state Attorneys General, and the U.S. Department of Justice.

## Voter Intimidation Is A Federal Crime

In addition to the above civil laws, voter intimidation is prohibited by multiple federal criminal statutes. [18 U.S.C. § 594](#), [18 U.S.C. § 245\(b\)\(1\)\(A\)](#), and [52 U.S.C. § 20511\(1\)](#) all criminalize voter intimidation.

Many states also have civil and criminal state laws prohibiting voter intimidation.<sup>3</sup>

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<sup>1</sup> Section 131(b) requires a showing of specific intent to intimidate voters; Section 11(b) explicitly does not.

<sup>2</sup> Section 11(b) and Section 1985(3) clauses 3 and 4 are enforceable by private parties; there is some dispute whether Section 131(b) is enforceable by private parties or only by states and the federal government.

<sup>3</sup> See, e.g., Fla. Stat. § 104.061 (Florida); 25 P.S. § 3547 (Pennsylvania); Wis. Stat. § 12.60(1)(a) (Wisconsin); Ariz. Rev. Stat. §§ 16-1006, 16-1008, 16-1013, 13-1202 (Arizona).

## New Forms Of Intimidation Are Illegal Under Existing Voter Intimidation Laws

New threats of voter intimidation have emerged since 2020. But while the specifics may be new, the core tactics are similar to those that have been used in the past. Existing law already prohibits many of these forms of voter intimidation.

Below are some threats that have emerged or increased during the 2022 election cycle:

- Private groups and individuals “surveilling” drop boxes, and taking pictures of voters, their cars, and their license plates, at ballot drop boxes.<sup>4</sup>
- Intimidation and harassment of voters at polling places, including by poll watchers and sometimes even by poll workers who subscribe to election conspiracy theories.<sup>5</sup>
- Harassment of voters at polling places by individuals challenging voters’ qualifications.<sup>6</sup>
- Intimidation of poll workers, by poll watchers and others.<sup>7</sup>
- Door-to-door canvassers who impersonate officials, question voters’ qualifications, and baselessly accuse voters of voter fraud and/or threaten consequences for voting.<sup>8</sup>
- Falsely accusing voters of fraud, spreading names and images of voters falsely accused of voter fraud, and/or threats of “consequences” for voting or voting by mail or drop box.<sup>9</sup>

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<sup>4</sup> See, e.g., Howard Fischer, *Attorney: Push in Arizona county to “watch” ballot boxes intimidating*, Tucson.com (Oct. 11, 2022), [https://tucson.com/news/election/attorney-push-in-arizona-county-to-watch-ballot-boxes-intimidating/article\\_3bcab274-497c-11ed-b107-8bfbobe1284d.html](https://tucson.com/news/election/attorney-push-in-arizona-county-to-watch-ballot-boxes-intimidating/article_3bcab274-497c-11ed-b107-8bfbobe1284d.html); Tiffany Hsu and Stuart A. Thompson, *Hunting for Voter Fraud, Conspiracy Theorists Organize ‘Stakeouts’*, New York Times (Aug. 10, 2022), <https://www.nytimes.com/2022/08/10/technology/voter-drop-box-conspiracy-theory.html> (identifying similar efforts in 10 states).

<sup>5</sup> See, e.g., Isaac Arnsdorf & Josh Dawsey, *GOP spends millions on election volunteers to search for fraud*, Washington Post (June 15, 2022), <https://www.washingtonpost.com/politics/2022/06/15/rnc-election-integrity-trump-mcdaniel/>; Nick Corasaniti, *G.O.P. Seeks to Empower Poll Watchers, Raising Intimidation Worries*, New York Times (May 1, 2021), <https://www.nytimes.com/2021/05/01/us/politics/republican-pollwatchers.html>.

<sup>6</sup> See, e.g., Stanley Dunlap, *Georgia elections chief clarifies: No, you can’t challenge another voter’s eligibility at the polls*, Georgia Public Broadcasting (Oct. 14, 2022), <https://www.gpb.org/news/2022/10/14/georgia-elections-chief-clarifies-no-you-cant-challenge-another-voters-eligibility> (explaining that in-person challenges to voter qualifications are not lawful under Georgia law, and explaining the risk of intimidation and “fear” that in-person challenges pose).

<sup>7</sup> See Protect Democracy, States United Democracy Center, and Law Forward, *A Democracy Crisis in The Making*, June 2022, at 19, [https://s3.documentcloud.org/documents/22040148/dcitm\\_2022-1.pdf](https://s3.documentcloud.org/documents/22040148/dcitm_2022-1.pdf) (discussing poll watcher interference with vote counting and with poll workers).

<sup>8</sup> Jim Brunner & Joseph O’Sullivan, *Group doorbells WA homes, searching for illegal voters and drawing complaints*, Seattle Times (May 30, 2022), <https://www.seattletimes.com/seattle-news/politics/group-doorbells-homes-across-washington-searching-for-illegal-voters-and-drawing-complaints/>; Nathan Solis, *Shasta County officials warn of people impersonating election officials, voter intimidation*, Los Angeles Times (Sept. 30, 2022), <https://www.latimes.com/california/story/2022-09-30/shasta-county-officials-warn-of-people-impersonating-election-officials-voter-intimidation>; Miles Parks & Bente Birkeland, *The election denial movement is now going door to door*, NPR (July 21, 2022), <https://www.npr.org/2022/07/21/1107023599/colorado-canvassing-election-integrity-plan>.

<sup>9</sup> Matt Shuham, *‘2000 Mules’ Has Radicalized the 2022 Midterm Elections*, Huffpost (Oct. 10, 2022), [https://www.huffpost.com/entry/2000-mules-radicalized-2022-midterm-elections\\_n\\_63444e4ae4bob7f89f4e8934](https://www.huffpost.com/entry/2000-mules-radicalized-2022-midterm-elections_n_63444e4ae4bob7f89f4e8934) (describing the debunked movie “2000 mules” which falsely accuses voters of fraud); Meryl Kornfield, *Robocall targets battleground states with falsehoods about mail-in voting*, Washington Post (Aug. 27, 2020),

All of the above tactics likely violate federal voter intimidation laws.

- Surveilling voters, including following them, and taking pictures of voters and their license plates, is a classic example of voter intimidation that courts have found to be unlawful and that the Department of Justice has wanted against.<sup>10</sup>
- Threatening “consequences” for voting and/or falsely accusing voters of voter fraud—whether at drop boxes, knocking on their doors, or at polling places—are clear examples of voter intimidation.<sup>11</sup>
- Intimidation of poll workers, including interfering with vote counting, is prohibited by voter intimidation laws.<sup>12</sup>
- Intimidation by law enforcement, including sheriffs who assert that they are not bound by federal law or the constitution (self-described as “constitutional sheriffs”<sup>13</sup>), is unlawful.<sup>14</sup>
- While most poll workers are dedicated volunteers serving their communities, in the rare instances where a poll worker might intimidate a voter, intimidation from official sources—including poll workers themselves—is prohibited by federal voter intimidation laws.<sup>15</sup>

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<https://www.washingtonpost.com/politics/2020/08/27/robocalls-michigan-penn-voting-jacob-wohl/> (describing robocalls before the 2020 election with false threats of “consequences” for voters who voted by mail).

<sup>10</sup> See, e.g., *Daschle v. Thune*, No. 4:04-cv-4177, ECF No. 6 (D.S.D. Nov. 1, 2004) (recording license plate numbers of Native American voters likely violated Section 11(b)); U.S. Attorney’s Office, Northern District of Alabama, *District Elections Officers Available Nov. 8 to Receive Complaints of Election Fraud or Voting Rights Abuses*, U.S. Att’y Office for N.D. Ala. (Oct. 21, 2016),

<https://www.justice.gov/usao-ndal/pr/district-elections-officers-available-nov-8-receive-complaints-election-fraud-or-voting> (“photographing or videotaping [voters] under the pretext that these are actions to uncover illegal voting, may violate federal voting rights law”).

<sup>11</sup> See *LULAC-Richmond Region Council 4614 v. Pub. Interest Legal Found.*, No. 18-423, 2018 WL 3848404, at \*4-6 (E.D. Va. 2018); *Nat’l Coal. on Black Civic Participation v. Wohl*, 512 F. Supp. 3d 500, 511 (S.D.N.Y. 2021) (threatening “consequences” for voting is voter intimidation); Brief for the United States as Amicus Curiae at 4-10, *Nat’l Coal. on Black Civic Participation v. Wohl*, No. 1:20-cv-8668 (S.D.N.Y.), *on motion for summary judgment* (Aug. 12, 2022) (explaining that 11(b) prohibits forms of intimidation far beyond threat of violence).

<sup>12</sup> The Voting Rights Act defines “vote” or “voting” to include “all action necessary to make a vote effective . . . including . . . having such ballot counted.” 52 U.S.C. § 10310(c)(1). Section 11(b) of the Voting Rights Act also prohibits intimidation for “aiding any person to vote,” which includes poll workers assisting voters and counting ballots. See also Brief for the United States as Amicus Curiae at 13, *Nat’l Coal. on Black Civic Participation v. Wohl*, No. 1:20-cv-8668 (S.D.N.Y.), *on motion for summary judgment* (Aug. 12, 2022) (discussing breadth of this definition).

<sup>13</sup> See States United Democracy Center & the Institute for Constitutional Accountability and Protection, *Fact Sheet: “Constitutional Sheriffs” and Elections* (Oct. 4, 2022),

<https://statesuniteddemocracy.org/resources/factsheet-constitutional-sheriff/>.

<sup>14</sup> Courts have long recognized the intimidation by law enforcement is unlawful. See e.g., *United States v. McLeod*, 385 F.2d 734 (5th Cir. 1967); *United States v. Wood*, 295 F.2d 772, 781-82 (5th Cir. 1961); *United States v. Clark*, 249 F. Supp. 720, 728 (S.D. Ala. 1965).

<sup>15</sup> In addition to federal voter intimidation law, states laws and regulations govern poll workers. For more information, see the state guides produced by All Voting Is Local and The Brennan Center for Justice, available at

<https://allvotingislocal.org/press-releases/democracy-experts-release-poll-worker-rules-for-seven-states/>.

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*[Protect Democracy](#) is a nonpartisan, nonprofit organization dedicated to protecting free and fair elections.*

*For more information, please contact Rachel Homer ([rachel.homer@protectdemocracy.org](mailto:rachel.homer@protectdemocracy.org))*

