

Electoral Violence in 2020: Prevention and Potential Remedies

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The threat of election-related violence is not new to the United States, but the 2020 election has provoked greater concern and attention to the problem than any election in recent memory. Violent clashes accompanying protests against police misconduct over the summer of 2020 and thinly veiled threats to enlist an “[army](#)” to watch the polls on Election Day have combined to produce a combustible atmosphere in which campaigns and voters appear on the edge of resorting to violence. This memo surveys state-level policies for addressing Election Day violence in eleven swing states. While several states have existing policies that could be used to respond to Election Day violence—such as Florida’s standing contingency plan for postponing or delaying a disrupted election—most states do not. For both legal and practical reasons, addressing a disrupted election after the fact will be difficult, so all effort should be made to prevent disruption in the first place.

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Introduction

As early voting begins across the country, Americans remain skeptical whether the 2020 election will be fairly administered. A YouGov/Economist study from early September found that around 35% of independents—along with roughly 30% of Republicans and 20% of Democrats— had little or no confidence that the election would be fair. According to [one tracking poll](#), only 45% of Americans believe that U.S. elections in general are free of fraud. And the Trump Administration has [continued to claim](#)—[without evidence](#)— that the 2020 election will be “rigged,” either through fraudulent mail ballots or millions of ineligible votes.

This legitimacy gap increases the threat of voting-related violence. As one of our authors has pointed out [elsewhere](#), a political movement that sees the electoral system as rigged has “little incentive to stay within the bounds of the democratic system.” A [recent study](#) found that two-in-five partisans (i.e. Democrats or Republicans) believe that violence is at least “a little justified” if the other party were to win the 2020 election. And similar numbers of both Democrats and Republicans feel this way—the contempt, it seems, is mutual. The percentage of Americans who believe violence is justified to advance political goals has [steadily increased](#) over the past few months. And campaign rhetoric has continued to heat up as the election approaches, potentially [normalizing](#) the idea of electoral violence.

Even apart from the obvious cost in human suffering, election-related violence could undermine the democratic process and interfere with individuals’ right to vote. An election marred by violence will feed into claims by the losing campaign that the election was illegitimate and unreflective of the “true” will of the voters. In turn, an election disrupted by violence may create political cover for extraordinary actions that push the boundaries of our constitutional system, if, for example, [state legislators act to set aside their state’s popular vote and choose their electors directly](#).

This memo surveys existing federal and state statutes related to preventing and remedying electoral violence. Our analysis focuses on eleven likely swing states: Arizona, Florida, Georgia, Maine, Michigan, New Hampshire, North Carolina, Ohio, Pennsylvania, Texas, and Wisconsin. We describe existing laws in these states relating to election violence and explore the measures that states, in general, can take to reduce the risk of violence in polling places.

This memo proceeds in three parts. First, we distinguish electoral violence from a related but distinct topic: voter intimidation. Second, we examine federal and state statutes related to preventing violence on Election Day. Third, we outline five ways states can respond to electoral violence. A brief conclusion follows.

I. Distinguishing Electoral Violence and Voter Intimidation

“Electoral violence,” as used in this memo, is defined as violence that influences the process or outcome of elections. This violence can be deliberate or accidental, promoted by state or non-state actors, and directed toward a variety of election-related targets.

“Voter intimidation” is a related but much more expansive concept. [Federal law](#) defines “voter intimidation,” in part, as acts that “intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote.” This encompasses a broad range of acts, including (but not necessarily requiring) physical violence. [The Brennan Center](#) asserts that any of the following actions could be considered voter intimidation:

- Baseless or abusive challenges to voters’ eligibility.
- Direct confrontation of voters.
- Use of insulting, offensive, or threatening language or raised voices in and around polling places.
- Blocking polling-place entrances.
- Following and photographing voters, recording license plate numbers, and visiting voters’ homes.
- Brandishing weapons in front of voters.
- Dissemination of misleading information that purposely misstates the time, location, manner, and date of an election.

For a recent example, on Sept. 19, Republican partisans “[created a commotion](#)” at an early voting location in Fairfax County, Virginia by waving flags and chanting partisan slogans. One could plausibly regard this incident as attempted voter intimidation, but it included no acts of electoral violence.

One could plausibly assert that most acts of electoral violence are likely to also be considered voter intimidation, but many acts of voter intimidation are not acts of electoral violence. This memo focuses on electoral violence. For expanded examination of voter intimidation acts, please see [Defining Voter Intimidation: Six Battleground States](#).

II. Preventing Election Day Violence

A. Security force presence at the polling place

The presence or absence of security forces—including law enforcement officers and military forces—at polling places may affect polling place violence in several conflicting ways. On the one hand, law enforcement officers may deter or suppress violence by immediately responding to violent acts in their vicinity, thereby minimizing their impact on the election. On the other hand, the mere presence of law enforcement officers may intimidate some voters and thereby disrupt the voting process. For example, the Trump Administration has [encouraged](#) states to dispatch law enforcement officials to polling places to guard against voter fraud, while opponents have [argued](#) that this tactic could ratchet up tensions at polling places and lead to widespread voter intimidation.

Different rules apply to federal and state security forces. [Federal law](#) specifically prohibits federal military troops or armed federal law enforcement personnel from entering a polling place for any reason other than voting or “repell[ing] armed enemies of the United States.” [Federal law](#) also specifically prohibits military officers from “interfer[ing] in any manner with an election officer’s discharge of his duties” and other interference with the electoral process.

Federal law is silent whether state security forces are allowed in the polling place, leaving it to each state to decide. These security forces include state police, local police, and most National Guard units. When acting under a state governor’s command, National Guard troops are considered to be state military forces—not federal troops—and are therefore not subject to federal law’s restrictions on the domestic use of federal military forces.

Several states only allow on-duty law enforcement officers to enter a polling site with the permission of local election officials. In [Florida](#), [Maine](#), [Arizona](#), [Wisconsin](#), [Texas](#), and [New Hampshire](#), officers may not enter the voting enclosure (except to cast a ballot) unless invited by election officials to maintain order and enforce the law. [Michigan](#) gives the local board of election inspectors full authority to maintain order at polling places, which likely includes the power to invite law enforcement agents into polling places. In [North Carolina](#), election officials have slightly less discretion. They may invite police into the voting enclosure, but only because of an “urgent need.” Furthermore, police activity must be limited to the “extent necessary to address that need.”

Three swing states grant police officers a general right to enter polling places. [Ohio](#) assigns police officers to each polling place, and then allows them to enter the enclosure alongside election officials. Meanwhile, [Georgia](#) and [Pennsylvania](#) allow police officers to enter the enclosure when “necessary for the preservation” of peace or order.

The result is a patchwork of different rules across the nation that permit varying levels of security force presence in and near polling stations. While federal officers and military forces are largely banned from entering polling places, state officials operate under different legal authority. Therefore, in the event of widespread violence on Election Day, the response of election officials and law enforcement officers will vary widely depending on their jurisdictions' unique rules.

B. Electioneering boundaries around polling places

Most states prohibit electioneering activities within a designated radius of a polling place. The National Association of Secretaries of State has [compiled](#) the relevant statutes on electioneering boundaries in all fifty states. Most swing states—including Florida, Michigan, Pennsylvania, Texas, and Wisconsin— prohibit electioneering, demonstrating, and/or protesting within 100 feet of the polling place entrance. Others vary: Maine imposes a 250-foot boundary, for example, while Pennsylvania imposes only a 10-foot boundary.

These boundaries could inhibit Election Day violence because they keep controversial or boisterous demonstrations out of the immediate vicinity of the polling place, alleviating tension and mitigating the impact on voting. In Virginia, for example, pro-Trump protestors recently [gathered](#) near an early voting center in Fairfax County, chanting slogans and blocking voters from approaching the polls. After election officials explained Virginia's electioneering laws, protestors relocated to a position over 100 feet from the polling place. Although some voters reportedly felt intimidated, there is no indication that the demonstrators prevented anyone from voting. Electioneering boundaries—and the enforcement of those boundaries—can therefore be an effective tool to prevent the escalation of potentially violent situations. Officials in states with smaller electioneering boundaries may be disadvantaged when responding to such incidents.

C. State Penalties for Electoral Violence

Civil disorder and violent acts, regardless of when they occur, are prohibited by state and federal law. States have also established a wide variety of specific criminal penalties for violent or destructive acts at a polling place. These penalties—which often include both felony and misdemeanor charges—could plausibly deter individuals from engaging in violence at polling places on Election Day.

The particular list of election-related crimes varies by state. The Georgetown Law Institute for Constitutional Advocacy has created [helpful fact sheets](#) for each state explaining which laws prohibit violent activities near polling places and voter registration drives. Common charges are outlined below, along with illustrative (but not exhaustive) examples from the swing states we examined:

- Using violence on election officials
 - [Pennsylvania](#): Felony charges for using or threatening the use of violence on election officials, [including](#) poll workers and voting machine inspectors.
 - [North Carolina](#): Misdemeanor charge for “any person to break up or by force or violence to stay or interfere with the holding of any primary or election, to interfere with the possession of any ballot box, election book, ballot, or return sheet by those entitled to possession of the same under the law, or to interfere in any manner with the performance of any duty imposed by law upon any election officer or member of any board of elections.”
- Destruction of legally cast ballots or ballot boxes
 - [Arizona](#): Felony charge for knowing destruction of a polling list, ballot, or ballot box “with the intent to interrupt or invalidate the election.”
 - [Georgia](#): Misdemeanor charge for willful destruction of a ballot.
- Destruction of voting machines or voting systems
 - [Florida](#): Felony charge for tampering with or destroying voting equipment “with the intention of interfering with the election process or the results thereof.”
 - [Michigan](#): Felony charge for willful destruction of voting machine.
- Interrupting the voting process
 - [Pennsylvania](#): Felony charge for “interrupt[ing] or improperly interfer[ing]” with election officials in the execution of their duties or for “block[ing] up or attempt[ing] to block up the avenue to the door of any polling place.”
 - [North Carolina](#): Class 2 misdemeanor for anyone to interfere with a voter in the voting enclosure or any voter marking their ballot.
- Intimidation of voters to discourage them from voting, or to encourage them to vote a certain way
 - [Florida](#): Felony charge for a person that “directly or indirectly use[s] or threaten[s] to use force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel an individual” to refrain from voting or to vote a particular way.
 - [Wisconsin](#): Felony charge for “mak[ing] use of force, violence, or restraint in order to induce or compel any person to vote or refrain from voting at an election.”
 - [New Hampshire](#): Felony charge for “any tactic of coercion or intimidation to knowingly induce or compel any other person to vote or refrain from voting.”

D. Federal Penalties for Electoral Violence

Finally, federal law imposes criminal and civil liability on individuals or state officials that obstruct another person’s right to vote. The threat of criminal or civil liability could deter instigators of electoral violence and could also discourage law enforcement of state and federal law by law enforcement officers. Federal statutes include:

- [18 USC § 594](#): Imposes fine and/or one-year imprisonment on an individual 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” in a federal or D.C. election;
- [42 USC § 1983](#): Authorizes a civil suit against state officials, acting under color of law, who deny a citizen “any rights, privileges, or immunities secured by the Constitution and laws,” including the right to vote guaranteed under the First and Fourteenth Amendments;
- [42 USC § 1985\(3\)](#): Creates a right of action against any individual who conspires with another to deprive any person of their right to vote, or to interfere with authorities protecting the right to vote.
- [42 USC § 1986](#): Imposes civil liability on parties—such as law enforcement agents—who refuse to prevent violations of 42 USC § 1985, despite having the power to do so;
- [52 USC § 10101\(b\)](#): Bans attempts to “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.” Injunctive relief authorized by subsection (c) of the same statute.
- [52 USC § 10307\(b\)](#): Prohibits any attempt to “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 or attempt to vote.”

III. Policy Options for Addressing Election Day Violence

The surveyed swing states have multiple statutory remedies for Election Day emergencies. Few of these statutes explicitly contemplate Election Day violence. Instead, they often lay out broad policy responses potentially suitable for responding to many types of emergencies. Many state statutes allow local election officials or the state executive to determine if there is an emergency, which could include polling place disruptions resulting from violent activities.

Our survey of statutory and case law in each of the swing states has revealed four mechanisms for remedying the impact of Election Day violence:

- Relocating polling places to undisturbed areas;
- Extending polling hours to account for relocation or disruption of polling places;
- Delaying the election in targeted precincts; and
- Creating new balloting or voting procedures on Election Day.

Few states have existing law authorizing all of these policies. Some states, for example, lack established protocols for relocating disrupted polling places to calmer areas. In states without clear statutory policies on election violence, post-election legal contests and emergency court decisions may fill the gap.

This memo does not extensively examine state emergency laws or court-ordered remedies for disrupted elections. State emergency laws allow some governors to suspend or modify state law. According to the [National Conference of State Legislatures](#), both Maine and Wisconsin allow the governor to suspend legislative statutes during an emergency. Meanwhile, Arizona, Florida, Georgia, Michigan, Pennsylvania, and Texas allow the governor to suspend “regulatory statutes” (i.e., rules issued by executive agencies) in an emergency. Depending on the state, regulatory statutes “may include statutes related to elections.” These types of emergency powers may grant state governors broad power to prevent or respond to electoral violence in addition to those we outline below. Likewise, courts may make a variety of emergency interventions in response to disrupted elections.

For a more detailed view of election emergencies and potential court responses to Election Day violence, we recommend law professor Michael Morley’s article [*Election Emergencies: Voting in the Wake of Natural Disasters and Terrorist Attacks*](#).

A. Relocating polling places to undisturbed areas

One response to Election Day violence may be the relocation of polling places to secure areas. Of the states we surveyed, [Arizona](#), [Florida](#), [Georgia](#), [Maine](#), [Ohio](#), [Pennsylvania](#), and [Wisconsin](#) permit local election officials to move polling places because of an emergency. To be sure, this discretion is not always absolute: In [Pennsylvania](#), for example, an emergency polling place relocation is acceptable unless there is a majority objection by registered electors of the district. Registering such an objection would likely be difficult given the short timeframe and general confusion engendered by an emergency relocation.

These statutes also give officials broad discretion to determine the site of the relocated polling place. Ohio, Georgia, and [Florida](#) explicitly permit officials to move the voting site beyond the boundaries of the original precinct. Moreover, none of the remaining states with relocation policies require the official to relocate the polling place within the precinct. Thus, officials could arguably move polling places to different precincts as necessary to ensure voter safety and the election’s integrity.

Several states require election officials to inform voters of a relocated polling place. For example, in Florida, the supervisor of elections “shall cause a notice to be posted at the old polling place advising the electors of the location of the new polling place in an emergency.” Similarly, if Wisconsin election inspectors determine that it is “impossible or inconvenient to hold an election at the designated location,” they must appoint a “law enforcement officer or other proper person designated by the municipal clerk” to notify voters at the old polling place.

Moving precincts during an election would almost certainly cause voter confusion and unintentional disenfranchisement. As such, this will often be an imperfect remedy for isolated acts of

violence. These laws are best used to respond to intensive, predictable, and prolonged electoral violence that is confined to specific geographic areas. In addition, if a polling place is moved, it will often be ideal to extend polling hours to account for the relocation or disruption, a matter we address below.

B. Extending polling hours to account for relocation or disruption of polling places

If there is a violent disruption at a polling place, it may be necessary to extend hours to make up for the “lost” hours. But few states allow polling place hours to be adjusted in response to changing conditions. Instead, almost all of the states that we surveyed prescribe polling hours by statute. These states include [Arizona](#), [Florida](#), [Georgia](#), [Michigan](#), [North Carolina](#), and [Ohio](#).

The absence of a statutory remedy does not necessarily prevent state or federal courts from authorizing emergency extensions of polling hours. For example, Pennsylvania [law](#) requires local courts to remain open during an election to make emergency decisions. Similarly, North Carolina law [explicitly contemplates](#) extending polling hours by court order, or by order of a local board of elections, in case of emergencies. And courts in other states have issued [similar orders](#).

Even absent court intervention, in most states, all people who are waiting in line when the polls close are entitled to vote, even long after the official polling closing time. For example, Ohio law requires that the polls close at 7:30 p.m., “unless there are voters waiting in line to cast their ballots, in which case the polls shall be kept open until such waiting voters have voted.” Thus, as long as voters are in line at the relocated polling place, they will be able to vote even if the line is exceptionally long because of the relocation. This could partially redress voting hours lost during a violent disruption.

C. Delaying the election in targeted precincts

Should violence threaten the safety of large numbers of voters or prevent voters in certain areas from safely reaching the polls, it may be necessary to delay the election entirely in affected areas. However, most states we surveyed do not have statutes explicitly authorizing the delay or postponement of an election.

[Georgia](#) and [Florida](#) both give state officials the explicit authority to delay or postpone an election in response to an emergency. Looking at the Florida law—which the National Association of State Legislatures has called one of the nation’s “most expansive election emergency statutes”—the governor may delay or reschedule an election upon declaring a state of emergency. Although Florida law gives the governor broad discretion to determine when a declaration of emergency is appropriate, two statutory provisions circumscribe his/her power with respect to elections. First, the legislature may

vote to [terminate](#) a state of emergency at any time. Second, when an emergency disrupts an election, the new election must be held within ten days of the original election, or “as soon thereafter as is practicable.”

The statute also requires the Florida Department of State to establish an election emergency contingency plan, which provides specific procedures for rescheduling the election. The full plan is available [here](#). The key elements of the state’s emergency contingency plan include:

- Requirements for local officials to “determine the safety and ability to use existing polling places and early voting sites and the need and availability of alternate polling places and early voting sites”;
- Requirements for election officials to coordinate with federal and local emergency management agencies to “provide security for polling places and early voting sites”;
- Authorizations for the supervisors of elections in affected jurisdictions to “establish temporary vote-by-mail ballot sites in the affected areas”;
- Authorizations for affected voters to “request and obtain a vote-by-mail ballot on election day without having to execute an Election Day Vote-by-Mail Ballot Delivery Affidavit”;

The authors of Florida’s emergency election contingency plan clearly had natural disasters in mind. For example, the plan allows officials to use “tents and other temporary structures” as emergency polling places. It also requires that “[s]ufficient lighting . . . exist along the accessible path of travel to and from, and within the polling place.” However, the statute only requires a declaration of emergency from the Governor—it does not require that a natural disaster be the cause of that declaration. Thus, the contingency plan could apply to targeted counties—and the emergency declaration might be declared in response to localized election violence.

D. Creating alternative balloting or voting procedures on Election Day

Election Day violence may prevent or discourage voters from going to the polls in person. This could disenfranchise hundreds, thousands, or even millions of voters that prefer to vote in person on Election Day rather than by mail or during early voting. Thus, another remedy for Election Day violence would be to provide emergency alternative balloting procedures for voters who cannot safely vote in person.

Of the swing states surveyed, only Maine has passed a statute authorizing emergency revisions to normal voting procedures. Under the [Maine statute](#), the Maine Secretary of State—pursuant to a declared state of emergency—may establish new voting protocols for Maine voters. These can “include, but are not limited to, central issuance and receipt of absentee ballots for federal and state elections using the systems and procedures developed for uniformed service voters and overseas voters.” Such a

law may be useful if widespread violence at polling places is anticipated, though with many states already expanding absentee ballot access in response to the ongoing coronavirus pandemic, it may have limited impact.

Conclusion

As in every other aspect of election law, state policies differ with respect to addressing Election Day violence. The wide variety of election-specific state statutes prohibiting different aspects of violent election interference—combined with the extensive discretion that existing statutes grant to local election officials—means that state responses to electoral violence will likely be highly localized and unpredictable. Local election officials will determine where to place law enforcement officers, how to police electioneering boundaries, and whether to relocate polling places. Local judges may need to issue on-the-spot decisions regarding poll hour extension or alternative balloting procedures. After the election, state judges and officials may face overwhelming time pressure to resolve challenges to the election before the Electoral College meets and Congress certifies the final results.

It is inherently difficult to remedy election disruptions after the fact. Conditions will never be exactly the same as they were on Election Day, making it impossible to reconstruct a disrupted election with complete confidence or accuracy. Therefore polling place violence that disrupts the electoral process in November is a threat to the election's integrity. Given the difficulties of remedying a disrupted election and the high stakes of the 2020 election, state officials must focus significant attention on preventative measures. If efforts fail to prevent planned violence, or if spontaneous violence disrupts voting on Election Day, the election's legitimacy will suffer—with unpredictable and destabilizing consequences.