

Defining Voter Intimidation: Six Battleground States

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The spectre of voter intimidation in the 2020 election has received renewed attention in recent [weeks](#), in part due to the President’s directive in the first presidential debate for his supporters to “[go into the polls and watch very carefully](#).” Further, concrete allegations of voter intimidation have already been made in [Virginia](#), [North Carolina](#), and [Michigan](#). Clarifying the concept becomes even more important as we approach Election Day, given the renewed attention and the greater likelihood that voter intimidation may be a bigger problem in 2020 than in recent elections. This memo sheds light on the rules and guidance aimed at preventing voter intimidation in six battleground states: Arizona, Florida, Michigan, North Carolina, Pennsylvania, and Wisconsin.

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Introduction

The spectre of voter intimidation in the 2020 election has received renewed attention in recent [weeks](#), in part due to the President’s directive in the first presidential debate for his supporters to “[go into the polls and watch very carefully](#).” Further, concrete allegations of voter intimidation have already been made in [Virginia](#), [North Carolina](#), and [Michigan](#). Clarifying the concept becomes even more important as we approach Election Day, given the renewed attention and the greater likelihood that voter intimidation may be a bigger problem in 2020 than in recent elections.

[Federal law](#) defines voter intimidation in broad strokes as encompassing acts that “intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote.” There is little official guidance as to what particular conduct that definition covers. However, according to [the Brennan Center](#), the term may encompass a broad range of acts, including:

- 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.

Similar to federal law, many state laws about voter intimidation are broad and often fail to provide specific guidance as to which particular acts would constitute a violation. Further, instances of voter intimidation have rarely made it into the courts, depriving us of case law that could illuminate how states’ broad prohibitions against such conduct might apply in particular instances.

This memo sheds light on the rules and guidance aimed at preventing voter intimidation in six battleground states: Arizona, Florida, Michigan, North Carolina, Pennsylvania, and Wisconsin. It does not seek to provide a comprehensive assessment of remedies for alleged voter intimidation, nor does it exhaust coverage of related conduct, such as electioneering. While Pennsylvania does lay out many

specific examples of what conduct constitutes voter intimidation, most states we examined did not, leaving it an open question how state officials may apply their broad prohibitions against such conduct.

Arizona

Arizona law includes both general prohibitions on voter intimidation and more specific protections for certain groups. In [Arizona](#), it is a misdemeanor for an individual to directly or indirectly and knowingly “make use of force, violence or restraint,” “inflict or threaten infliction... of any injury, damage, harm or loss,” or “in any manner to practice intimidation upon or against any person,” in order to induce or compel such person to vote or refrain from voting. Arizona law also makes election-related intimidation by employers illegal. [Section 10-1012](#), which describes the “intimidation of elector by employer,” states that it is a misdemeanor for an employer to knowingly put employees’ pay in envelopes with “political mottos, devices, or arguments” containing either express or implied threats that aim to influence employees’ political views or behavior. In addition, within 90 days of an election, an employer [may not](#) knowingly exhibit any notices, handbills, or placards which contain threats related to elections, including statements that if a particular candidate is defeated, wages will be lowered or the establishment will close.

Arizona law also includes broader protections intended to provide a bulwark against voter intimidation. First, Arizona [requires](#) that a 75-foot zone be maintained around voting areas, which may only be used by poll workers and individuals who are currently voting. It is a [misdemeanor](#) for a voter to knowingly “interfere with [another] voter” either within the 75-foot limit designated by an election official, or within seventy-five feet of a main outside entrance to an on-site early voting location. Voters also [may not](#) knowingly “hinder the voting of others.” Additionally, it is a [felony](#) to knowingly interfere with a election officers as their discharge their duty. Individuals also [may not](#), directly or indirectly, “either by force, threats, menaces, bribery, or any corrupt means . . . awe, restrain, hinder, or disturb” a electors, or to deter them from or influence them in casting their vote. Finally, Arizona’s constitution [includes the language](#) that “[a]ll elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”

These provisions exist against the backdrop of a long history of voter intimidation. Minority voters have been frequent targets of intimidation efforts in Arizona. According to an expert report [submitted](#) in a case decided by the 9th Circuit in the 1960s:

Intimidation of minority group members—Hispanics, African-Americans, as well as Native Americans—who wished to vote was . . . a fact of life in Arizona. [White voters] sometimes challenged minorities at the polls and asked them to read and explain “literacy” cards containing quotations from the U.S. Constitution. These intimidators hoped to frighten or embarrass minorities and discourage them from standing in line to vote . . . [p]eople in the non-Native American community, hoping to keep Native Americans away from the polls, told them that involvement could lead to something detrimental, such as increased taxation, a loss of reservation lands, and an end to their special relationship with the federal government.

Intimidation of these communities has continued since the 1960s. The Arizona Native Vote Election Protection Project, carried out by Arizona State University’s Indian Legal Clinic, [documented](#) instances of voter intimidation of Native American voters at Arizona’s Guadalupe polling station in 2008 and 2010. And, in 2014, the Department of Justice [decided](#) the threat of voter intimidation was imminent enough to warrant monitoring the area.

Despite this history, few Arizona state court decisions have squarely addressed voter intimidation. In the 1948 case [Morgan v. Board of Sup’rs](#), an individual sought to invalidate the results of an election concerning school bonds. Among other claims, the plaintiff argued that acts of coercion and intimidation by election officials and school trustees compromised the fairness of the election. These individuals had distributed documents stating that voters needed to pay property tax in order to vote, and voters were required to answer questionnaires about this when they voted. (The distributed information was correct; at the time, only real property taxpayers could vote under Arizona’s constitution.) The Arizona Supreme Court found that the presence of such conduct was not enough to contest the election, for the evidence [failed to show](#) “any appreciable number of qualified voters excluded or any act of intimidation or coercion.” This case illustrates the high bar for proving voter intimidation in the courts, for, while the court found that the alleged suppressive conduct occurred, it also required that plaintiffs adequately establish its intimidatory impact on an appreciable number of voters.

At least one case in federal court has considered Arizona’s voter intimidation statutes specifically.¹ In that [case](#), a party argued that certain candidates had been placed on the ballot solely to draw votes away from the Democratic Party. That party requested a temporary restraining order to prohibit the candidates from being listed. When the plaintiff raised Arizona’s criminal prohibition on voter intimidation and coercion, the U.S. Federal Court for the District of Arizona stated that it “was not persuaded” that Arizona’s criminal prohibitions on voter intimidation could be raised by a private party, since these statutes lacked a private right of action. Instead, bringing those claims [required](#) some indication that the legislature “intended to protect any special group by creating a private cause of action by a member of that group.” Although in that case the plaintiffs failed to make this showing, future litigants potentially could.

Florida

Florida state statutes provide a detailed list of actions that can be categorized as felony voter intimidation. Under [Fl. §104.0615](#), it is a felony for any person to directly or indirectly use or threaten to use force, violence, or intimidation to induce someone else to:

- Vote or refrain from voting altogether or for a specific candidate or measure;
- Register to vote;
- Become a poll worker or poll watcher; or
- Challenge a person’s right to vote.

Additionally, Florida has a number of laws that may tangentially cover intimidating conduct at the polls. These include laws [banning photography](#) (apart from a voter taking a picture of their own ballot) and [banning electioneering](#) within 150 feet of polling locations. Election supervisors and clerks are tasked with [enforcing order](#) at polling locations and may take any “reasonable steps” necessary to ensure that order, including having law enforcement remove any disturbances.

¹ Federal courts have considered whether voter intimidation in Arizona violated the federal Voting Rights Act. For example, in [Arizona Democratic Party v. Arizona Republican Party](#), the Arizona Democratic Party sued under the Ku Klux Klan Act of 1871 and section 11(b) of the Voting Rights Act, arguing that the Trump campaign, Roger Stone, and the group Stop the Steal were intimidating voters. The plaintiffs pointed to statements that encouraged individuals to report perceived illegal voting behavior to the Arizona Republican Party (including photos and videos) as well as various statements by Mr. Trump regarding voter fraud. The plaintiffs’ request for a preliminary injunction was denied as unlikely to succeed on the merits, in part because the court read the campaign’s statements as tied to unlawful behavior by voters, rather than voter intimidation.

In recent years, voter intimidation in Florida has repeatedly made the news. During early voting for the presidential election in 2016, the Lawyers' Committee for Civil Rights Under Law claimed it [received reports](#) from Miami-Dade county, Jacksonville, and Hollywood about aggressive behavior causing voters to leave the polls without voting. During the 2018 midterms, [racist robocalls](#) targeted voters in an attempt to dissuade them from supporting gubernatorial candidate Andrew Gillum. These calls used derogatory and offensive language to [disparage](#) Gillum and his policies and ultimately turned out to be from a white supremacy group in Iowa. Further, in February 2019, robocalls claiming to be from the Palm Beach County Supervisor of Elections Office warned voters about the penalties of [vote-by-mail fraud](#). While the county election supervisor reported the incidents to the state attorney general, [citing](#) their potential to “frighten and intimidate voters,” it is unclear if any tangible outcomes resulted from the investigation.

Michigan

In [Michigan](#), it is a felony to, “influence, deter, or interrupt an elector while they’re giving their vote” using “bribery, menace, or other corrupt means.” While the law itself does not further specify what behavior is prohibited, the state’s Bureau of Elections has done so, [describing](#) such conduct by poll watchers and election challengers.

Michigan’s Secretary of State has also issued [guidance](#) governing the conduct of election challengers and poll watchers. This guidance [prohibits](#) both classes from approaching or talking directly to voters for any reason. If either violates this standard, they can be asked to leave by election officials, and, if they refuse, the election inspector “will call law enforcement.” And, although challengers are allowed to observe the processing of voters from behind the processing table, they must give precinct workers ample space to perform their duties and may not hinder or impede voters in any way. Further, challengers are allowed to challenge the registrations of voters, but must not do so indiscriminately so as to avoid voter intimidation. For example, challengers [may not](#) challenge an elector’s registration based on mere “impressions,” including ones based on the elector’s manner of dress, race, disability, inability to read or write English, need for assistance with voting, or lack of picture ID. Any challenger who is found to have challenged a qualified and registered elector for the purposes of annoying or delaying their vote is guilty of a [misdemeanor](#).

Voter intimidation in the 2020 election in Michigan has already occurred. On Oct. 1, 2020, Michigan's Attorney General [charged](#) two political operatives with voter intimidation for orchestrating a series of robocalls aimed at suppressing the vote in the November general election. These robocalls presented false and misleading information about mail-in voting, including [claims](#) that personal information submitted on mail-in ballots could be used to execute outstanding arrest warrants or to collect unpaid debts. This was not the first instance of alleged voter intimidation in Michigan. In 2016, the Michigan Democratic Party [filed](#) claims that the state's Republican Party and the Trump campaign were planning to conspire to prevent minorities from voting. In the complaint, the Democratic party [cited](#) pledges by Trump supporters "to descend upon polling places in 'certain areas' where many minority voters live in order to interfere with their efforts to exercise the franchise."

North Carolina

North Carolina state law [prohibits](#) intimidating any legally qualified voter. Any direct or indirect [attempt](#) at voter intimidation is a Class 2 misdemeanor. Though the statute does not provide an explicit definition of intimidation, the State Board of Elections [provides](#) examples of conduct that may unlawfully intimidate voters, including:

- Approaching voters who appear to be of a certain ethnic group to ask whether they speak English or to demand that they verify their citizenship.
- Following a non-English speaker who is receiving assistance from a person of their choice and accusing them of committing voter fraud.
- Yelling insults or profanity at people who received assistance in the voting enclosure.

More broadly, North Carolina law [forbids](#) engaging in "disruptive behavior" that may interfere with voting, [detering](#) voters from exercising their rights, [photographing](#) or filming inside the polling place without consent, or [hindering](#) access, harassing others, distributing campaign literature, placing political advertising or otherwise engaging in election-related activity within the buffer zone designated by county board of elections around the voting place. Additionally, North Carolina law includes provisions dictating election officials' and poll monitors' responsibilities to prevent voter intimidation. Chief judges of polling places are responsible for [maintaining](#) order at polling places, including preventing and stopping attempts to intimidate any person registering or voting. Chief judges are [mandated](#) to conduct elections fairly and impartially and to enforce peace and good order at the

polling location. If necessary, the chief judge may call the police to aid them in enforcing the law. Election observers [may not](#) interfere with voters under any circumstances, participate in electioneering, or [attempt](#) to challenge voters without a proper basis.

In spite of these directives, voter intimidation continues to remain a major concern in threatening the integrity of the electoral process in North Carolina. In February 2020, the NAACP [sent](#) a letter to the General Counsel for the North Carolina State Board of Elections calling for emergency action regarding voter intimidation. The letter came in response to an incident at an early voting site during the presidential primary. Demonstrators protesting a panel discussion of “The Civil War Today” displayed flags supporting the Confederacy, the League of the South, and President Donald Trump in close proximity to a polling location. And, during the 2018 midterm election, election officials [removed](#) a poll worker from an early voting site for alleged voter intimidation. The poll worker allegedly repeatedly asked a number of African American voters to spell their names.

North Carolina courts have infrequently considered claims of voter intimidation.² In [State v. Rogers](#), a 1901 case in North Carolina’s Supreme Court, an individual was expelled from a church he was a member of because he had voted for the Democratic party. The defendants, charged with “having injured, threatened, oppressed, and attempted to intimidate” the man, were acquitted on the basis that “[t]he injury or oppression, if any . . . was not of a physical nature,” and the man “suffered no loss of property or gain, nor was [] in any way restrained of his liberty or otherwise controlled in the exercise of his physical conduct.” This case is now over a century old and the statute it interpreted has changed,³ so it may hold little sway. But if adopted, it may outline a requirement for physical violence that is not explicit in North Carolina law.

² There are several cases from the late 1800s, including [State v. Williams](#) (1895) and [Roberts v. Calvert](#) (1887). However, due to changes in the applicable law, explained further in footnote three, it is unclear to what extent courts would apply this older precedent now.

³ The statute this case interpreted has changed since the case was decided. The relevant section [provided](#), “Any person who shall discharge from employment, withdraw patronage from, or otherwise injure, threaten, oppress or attempt to intimidate any qualified voter of the state, because of the vote such voter may or may not have cast in any election, shall be guilty of a misdemeanor.” However, similar language exists in [section 163-274](#) of North Carolina’s general statutes (stating that it is a misdemeanor for “any person, directly or indirectly, to discharge or threaten to discharge from employment, or otherwise intimidate or oppose any legally qualified voter on account of any vote such voter may cast or consider or intend to cast, or not to cast, or which he may have failed to cast.”).

Pennsylvania

Pennsylvania state law dictates that no person shall, by [intimidation](#), “intentionally prevent or attempt to prevent an applicant who is a qualified elector from being registered or a registered elector from changing political enrollment.” Per the Pennsylvania Department of State, it is [illegal](#) for any person or corporation:

- “to directly or indirectly practice intimidation or coercion through the use of force, violence, restraint, or infliction or threatened infliction of injury, damage, harm, or loss, in order to induce or compel a person to vote or refrain from voting for a particular candidate or on a particular political issue”; or
- “to use abduction, duress, coercion, or any other forcible or fraudulent means to impede, prevent or otherwise interfere with a person’s right to vote.”

Individuals who intimidate voters can be [fined](#) up to \$5,000 and face up to two years in prison. Each County Commission is [required](#) to investigate alleged violations and report them to the District Attorney, who has the authority to prosecute such violations.

The Pennsylvania Department of State [has published](#) nonbinding guidance that lays out a non-exhaustive list of examples of voter intimidation, including aggressive behavior outside the polling place, blocking the entrance to the polling place, direct confrontation or questioning of voters, disrupting voting lines, disseminating false or misleading election information, ostentatious display of weapons, photographing or videotaping voters to intimidate them, using raised voices or insulting offensive or threatening language or making taunting chants inside the polling place, vandalism of polling places, verbal or physical confrontation of voters by persons dressed in official-looking uniforms, and violence or using the threat of violence to interfere with a person’s right to vote.

Pennsylvania state law includes provisions regarding the conduct of election officials and police officers on election day. Per state law, any “registrar or clerk who, without reasonable cause, refuses to register a qualified elector lawfully entitled to be registered commits a misdemeanor of the first degree.” The Pennsylvania Department of State further [prohibits](#) poll watchers from confronting, hovering or directly speaking to voters, posting signs inside the polling place of penalties for “voter fraud” voting or support for a candidate, routine and frivolous challenges to voters by election workers and private

citizens that are made without a stated good faith basis, and challenges based on the voter's lack of eligibility to register to vote as examples of voter intimidation. If necessary, a commission may call on police officers to maintain the peace at a place of registration. However, police are [banned](#) from coming within 100 feet of the polling place otherwise and are expressly forbidden from using or practicing "any intimidation...nor, in any manner, unduly influence or overawe any elector or prevent him from voting or restrain his freedom of choice."

As a result of President Trump [encouraging](#) supporters to go to the polls in Philadelphia and "watch very carefully" during the first Presidential debate, the Mayor of Philadelphia vowed to [develop](#) an interagency plan for potential voter intimidation during the general election. This development comes amidst [claims](#) of voter intimidation in communities of color during the Pennsylvania primary and as the Pennsylvania Attorney General's Office [investigates](#) robocall telling voters their information will be used to issue arrest warrants and collect on old credit card debts.

Wisconsin

Wisconsin law broadly [defines](#) voter intimidation, stating that "[n]o person may personally or through an agent, by abduction, duress, or any fraudulent device or contrivance, impede or prevent the free exercise of the franchise at an election." Further, [the statute](#) explicitly prohibits the use or threat of violence, kidnapping, or any form of force to compel someone to vote a certain way or abstain from voting. The state also has specific laws aimed at minimizing the risk of voter intimidation, including [banning electioneering](#) within 100 feet of polling locations, and allowing police officers to be [present](#) at polling locations at the discretion of the election officials to enforce anti-harassment of voters. Wisconsin state law also authorizes election officials to [warn and remove](#) any individual causing a disturbance and [moving the polling location](#) if election officials deem it "impossible or inconvenient" to continue holding the election in its original location. The Wisconsin Board of Elections also advertises an anonymous [form](#) to submit any instances of voter intimidation.

However, the applicability of these statutes on broader issues of voter intimidation through misinformation in Wisconsin is unclear. While [Wisconsin law](#) bans the use of "fraudulent devices or contrivances" to suppress voters, it does not define the term. Further, we found no case law in Wisconsin that sheds light on the subject. This ambiguity is particularly worrisome because such voter intimidation tactics have been repeatedly used in recent years. In 2004, a non-existent ["Milwaukee](#)

[Black Voters League](#)” distributed flyers in predominantly minority communities that contained false information about the ability to vote and claimed that violating these rules would result in 10 years in prison. In 2010, [billboards](#) appeared in predominantly minority communities that provided no voting information, but rather, advertised the penalties for voter fraud. Unfortunately, the question still remains whether these statutes are sufficient to handle all permutations of voter intimidation.

Conclusion

Across the six battleground states we examined, the law defines voter intimidation broadly, specifying few particular instances of what conduct actually constitutes it. However, all six states regulate common categories of voter intimidation, such as using force, violence, or threats to attempt to stop voters from voting or coerce them into voting a certain way. Additionally, each state has election laws aimed at minimizing the risk of disorder and intimidation at the polls, ranging from electioneering buffer zones to prohibitions of photography inside polling locations. Besides such general commonalities, states differed widely in what particular conduct they identified as intimidating. For example, while Florida law is largely silent on what conduct is considered enough of a disturbance to constitute voter intimidation, Pennsylvania law provides a long list of intimidating conduct, including direct confrontation or questioning of voters, disrupting voting lines, disseminating misleading election information, and many other examples. Unfortunately, the dearth of recent case law around voter intimidation statutes in these states fails to add clarity to the concept.

The lack of more specific guidelines about what constitutes voter intimidation in the majority of the states we examined may be problematic given the elevated threat of such conduct in the 2020 election. Many states have experienced varied attempts at voter intimidation, from threats made in person at polling locations, to misleading and even racist robocalls. Without clarity on what conduct is prohibited, such attempts may go unreported or unaddressed, or may lead to litigation over whether a given action constitutes voter intimidation.