



Sent Via Email
October 28, 2020

The Honorable Steve Marshall
Attorney General
Attorney General's Office
State of Alabama
501 Washington Avenue
Montgomery, AL 36104
Email: Steve.Marshall@AlabamaAG.gov

Re: Voter Intimidation at Polling Places

Dear General Marshall:

On behalf of the NAACP Legal Defense and Educational Fund, Inc., Giffords Law Center to Prevent Gun Violence, SPLC Action Fund, and the ACLU of Alabama, we urge you to issue a public statement reminding Alabama residents that voter intimidation is contrary to both federal and Alabama civil and criminal laws. Issuance of a public statement about voter intimidation by your office is critically important this year in light of widespread media reports indicating organized efforts to intimidate and harass voters at the polls this fall.¹

1. Voter Intimidation Is a Serious Crime and Contrary to Federal Civil Rights Statutes.

Voter intimidation is a serious crime under both federal law and Alabama law. Federal law provides that:

¹ See, e.g., Jane C. Timm, *GOP recruits army of poll watchers to fight voter fraud no one can prove exists*, NBC News (June 9, 2020), <https://www.nbcnews.com/politics/donald-trump/gop-recruits-army-poll-watchers%20fight-voter-fraud-no-can-n1217391>; Rosalind S. Helderman et al., *Trump's suggestion of deploying law enforcement officials to monitor polls raises specter of voting intimidation*, Washington Post (Aug. 21, 2020), https://www.washingtonpost.com/politics/trumps-suggestion-of-deploying-law-enforcement-officials-to-monitor-polls-raises-specter-of-intimidation/2020/08/21/4ff6407a-e3bb-11ea-8dd2-d07812bf00f7_story.html; *Local officials should prepare against Trump-inspired voter intimidation*, Washington Post (Oct. 5, 2020), https://www.washingtonpost.com/opinions/local-officials-should-prepare-against-trump-inspired-voter-intimidation/2020/10/05/867709ea-0454-11eb-b7ed-141dd88560ea_story.html; Brentin Mock, *How Voter Intimidation Could Get Uglier*, Bloomberg (Oct. 7, 2020), <https://www.bloomberg.com/news/articles/2020-10-07/how-voter-intimidation-could-become-violent-in-2020>.

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 [federal office] . . . shall be fined under this title or imprisoned not more than one year, or both.²

Similarly, Alabama law provides that:

It shall be unlawful for any person to obstruct, 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 or she may choose, or for the purpose of causing such other person to vote for, or not to vote for, any candidate for state or local office or any other proposition at any election. Any person who violates this section shall be guilty, upon conviction, of a Class A misdemeanor.³

In addition, any individuals or organizations engaging in voter intimidation are subject to civil liability under numerous federal statutes. *First*, Section 11(b) of the Voting Rights Act of 1965 provides that “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[.]”⁴ *Second*, Section 131(b) of the Voting Rights Act of 1957 provides that “[n]o 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[.]”⁵ *Third*, Section 2 of the Enforcement Act of 1871 (the “KKK Act”) bars any conspiracy “to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote . . . from giving his support.”⁶

Intimidating conduct is based on an objective assessment of the conduct’s effect and does not require intent on the part of the individual engaging in the conduct to be unlawful intimidation.⁷

² See 18 U.S.C. § 594.

³ Ala. Code § 17-17-33.

⁴ 52 U.S.C. § 10307.

⁵ 52 U.S.C. § 10101(b).

⁶ 42 U.S.C. § 1985(3).

⁷ See Ben Cady & Tom Glazer, *Voters Strike Back: Litigating Against Modern Voter Intimidation*, 39 N.Y.U. Rev. L. & Soc. Change 173, 204 (2015) (explaining that “Section 11(b) [of the Voting Rights Act] does not require a plaintiff to make any showing with regard to the defendant’s intent.”).

2. Demonstrations Outside Polling Places Could Constitute Voter Intimidation.

Under Alabama law, the only individuals who are permitted within 30 feet of the entrance to a polling place are voters and those admitted to assist them, certain officials, and specifically designated watchers.⁸ Demonstrations taking place beyond this 30-foot zone may appear to be routine political activity, but they may constitute unlawful voter intimidation. There are many aggravating factors that can make demonstrations at polling places especially concerning and increase the risk of unlawful voter intimidation:

- Failure to wear masks or observe social distancing guidelines. If voters are forced to walk near demonstrators, they may be forced to choose between their health and their right to vote.
- Open association with hate groups, including demonstrators waving Confederate flags.⁹
- Physically blocking voters from accessing a polling place or blocking traffic.
- Carrying or brandishing firearms or other weapons.¹⁰
- Direct confrontation with prospective voters or others,¹¹ or the use of raised voices or insulting, offensive, or threatening language, or other intimidating conduct including photographing voters, copying license plates, and aggressive exit polling.
- Wearing uniforms or attire that suggest demonstrators are engaging in official in official functions.¹² This is a significant threat today, because many hate groups have

⁸ See Ala. Code § 17-9-50 (“Except as electors are admitted to vote and persons to assist them as herein provided, and except for the judge of probate, the sheriff, or his or her deputy, the precinct election officials, and watchers, no person shall be permitted within 30 feet of the door of the building of the polling place.”)

⁹ The Southern Poverty Law Center has identified 16 hate groups active in Alabama in recent years. See *Groups in Alabama*, Southern Poverty Law Center, <https://www.splcenter.org/states/alabama>.

¹⁰ Alabama law allows for the concealed carry of firearms only by individuals licensed to do so. However, absent a valid concealed handgun license, Alabama law prohibits the carrying of a handgun on premises that are *not owned or under the control of the possessor*. Ala. Code § 13A-11-52. Moreover, many polling places are located in public schools. Alabama law prohibits “carry[ing] or possess[ing] a deadly weapon on the premises of a public school[.]” and doing so constitutes a Class C Felony. Ala. Code § 13A-11-72(c)–(d).

¹¹ This may include election officials, individuals engaging in lawful electioneering, non-partisan election observers, poll watchers, or others.

¹² See *Democratic Nat’l Comm. v. Republican Nat’l Comm.*, 671 F. Supp. 2d 575, 580 (D. N.J. 2009) (“*DNC v. RNC*”) (prohibiting polling place election activities by individuals wearing attire that “creates the appearance that the individuals are performing official or government functions, including . . . wearing public or private law enforcement or security uniforms, using arm bands, or carrying or displaying guns or badges”).

begun wearing standardized attire, law enforcement or security uniforms, and even paramilitary uniforms.¹³

Demonstrations can constitute unlawful voter intimidation even if they comply with Alabama’s 30-foot zone around polling sites. This electioneering zone will provide very little protection to voters this year, because lines of voters may extend far beyond 30 feet as voters are instructed to maintain at least six feet of distance while waiting in line¹⁴—indeed, only a line of five voters would extend the full length of the zone.

This year, there have already been reports of demonstrations that might constitute unlawful voter intimidation. For example, it was reported that in Fairfax County, Virginia, a group of demonstrators disrupted voting (causing election officials to move voters inside), as they waved campaign flags, chanted, yelled, and honked horns as voters entered an early voting site, at one point reportedly forming a line that voters had to walk around in order to access their polling place.¹⁵



September 19, 2020 Demonstration outside polling place in Fairfax, Virginia¹⁶

Similarly, in Chatham County, North Carolina, demonstrators outside of a polling place displayed flags supporting groups including the Confederacy and the League of the South

¹³ See, e.g., Tasneem Raja, *Decoding the Language of Extremist Clothing*, Topic (Oct. 2017), <https://www.topic.com/decoding-the-language-of-extremist-clothing>.

¹⁴ The CDC has urged election officials to “[e]ncourage voters to stay at least 6 feet apart.” See *Considerations for Election Polling Locations and Voters*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

¹⁵ See, e.g., Nick Corasaniti and Stephanie Saul, *Trump supporters disrupt early voting in Virginia*, Fairfax Times (Sept. 21, 2020), http://www.fairfaxtimes.com/articles/trump-supporters-disrupt-early-voting-in-virginia/article_be07dda0-fc55-11ea-b8ab-4b39670e4fe8.html; Drew Wilder, *Dems accuse Trump supporters of voter intimidation in Fairfax County* (Sept. 21, 2020), <https://www.nbcwashington.com/news/local/dems-accuse-trump-supporters-of-voter-intimidation-in-fairfax-county/2424398/>.

¹⁶ See Matthew Delaney, *Trump supporters crowd line at Fairfax Co. polling site* (Sept. 20, 2020), <https://wtop.com/fairfax-county/2020/09/trump-supporters-crowd-line-at-fairfax-co-polling-site/>.

(designated a violent hate group by Southern Poverty Law Center), and reportedly yelled slurs at voters as they attempted to access their polling place.¹⁷



February 15, 2020 Demonstration outside polling place in Chatham County, North Carolina¹⁸

In Florida, voters have been targeted by disturbing incidents of voter intimidation over the last several days. As one example, Miami police officer in full uniform, including a badge and gun, entered an early voting site while wearing a mask containing the logo for a political candidate, along with profanity.¹⁹ This type of conduct is precisely the sort of voter intimidation that federal and Alabama laws are intended to prevent.²⁰

There were reports of intimidation in Alabama in the 2016 general election.²¹ Alabama officials must be prepared for such intimidation to occur again, and indeed for the potential of more intense and severe incidents.

¹⁷ See *Letter Calling for Emergency Action Regarding Voter Intimidation* (Feb. 24, 2020), <https://www.naacpldf.org/wp-content/uploads/2-24-20-Coalition-Letter-to-SBOE-re-Voter-Intimidation-in-Chatham-County.pdf>.

¹⁸ See *id.*

¹⁹ See, e.g., Sophie Lewis, *Miami officer facing discipline for wearing Trump 2020 face mask at early voting site*, CBS News (Oct. 21, 2020), <https://www.cbsnews.com/news/miami-officer-trump-2020-mask-voting-site-2020-10-21/>.

²⁰ See *DNC v. RNC*, 671 F. Supp. at 580 (presence of law enforcement or individuals carrying or displaying guns or badges at polling places can constitute voter intimidation).

²¹ See Press Release, Lawyers Committee for Civil Rights Under Law, National Election Protection Hotline Receives Calls from Alabama Voters Reporting Voter Intimidation and Mass Voter Confusion Tactics at the Polls Statewide (Dec. 12, 2017), <https://lawyerscommittee.org/national-election-protection-hotline-receives-calls-alabama-voters-reporting-voter-intimidation-mass-voter-confusion-tactics-polls-statewide/>.

3. Other Attorneys General Have Issued Statements Affirming that Voter Intimidation Is a Crime.

Within the last several weeks, numerous attorneys general from across the country have issued statements affirming that voter intimidation is a crime:

- **Maine Attorney General Aaron Frey** issued a statement committing to “vigorously enforce the rule of law to ensure a free and fair election for Maine citizens and to ensure that Maine voters are able to exercise their fundamental right to vote without fear or intimidation.”²²
- **Maryland Attorney General Brian E. Frosh** issued guidance to remind “Maryland voters of their protections against voter intimidation and clarifying the role of poll watchers in Maryland,” “explaining that Maryland and federal law provides every voter the right to vote free of coercion or intimidation.”²³
- **Virginia Attorney General Mark Herring** issued guidance affirming that voter intimidation is a crime under federal and state law, and voters “should not fear for their safety when voting, whether they are within the forty-foot zone of a polling place or in socially-distanced lines beyond that zone.”²⁴
- **Washington D.C. Attorney General Karl Racine** reminded voters that it is “unlawful to threaten, intimidate or coerce District residents who choose to vote by mail or in-person” and committed to “go to court to get the appropriate remedies if necessary.”²⁵
- **Wisconsin Attorney General Josh Kaul** has stated that “it is a felony to use force or threaten to use force to prevent somebody from exercising their right to vote” and that it is “also a crime to cause someone to be in a state of duress to prevent them from voting.”²⁶

²² See *Office of the Attorney General Election Advisory*, Maine Office of the Attorney General (Oct. 8, 2020), <https://www.maine.gov/ag/news/article.shtml?id=3436656>.

²³ See *Office of Attorney General Guidance*, Maryland Office of the Attorney General (Oct. 14, 2020), <https://www.marylandattorneygeneral.gov/press/2020/101420a.pdf>.

²⁴ See *Attorney General Herring Reiterates Protections Against Voter Intimidation and Outlines Guidance for Poll Watchers*, Commonwealth of Virginia Office of the Attorney General (Sept. 30, 2020), <https://www.oag.state.va.us/media-center/news-releases/1840-september-30-2020-herring-reiterates-protections-against-voter-intimidation-and-outlines-guidance-for-poll-watchers>.

²⁵ See Darcy Spencer, *DC Attorney General Says His Office is Ready to Fight Voter Intimidation*, NBC Washington (Oct. 11, 2020), <https://www.nbcwashington.com/news/local/dc-attorney-general-says-his-office-is-ready-to-fight-voter-intimidation/2441466/>.

²⁶ See Sarah Thomsen, *Wisconsin attorney general talks voter intimidation, security ahead of election*, WBAY (Oct. 19, 2020), <https://www.wbay.com/2020/10/19/wisconsin-attorney-general-talks-voter-intimidation-security-ahead-of-election/>.

4. Issue a Statement Affirming that Voter Intimidation Is a Serious Crime.

We urge you to immediately issue a public statement affirming that voters have a right to vote without intimidation and that voter intimidation is a serious crime under both federal and Alabama law punishable by severe penalties. It is important that your statement reference the aggravating factors that we have listed above, each of which increases the risk that demonstrations at polling places could intimidate voters.

Your public statement on this issue will not only have an important deterrence effect on potential bad actors, but it will also give Alabama voters comfort that they will be able to safely head to the polls to cast their ballots free from voter intimidation.

We ask that you respond in writing by October 30, 2020, to inform us of the steps you will take to address the issues in this letter and whether we can provide any support or assistance to you. We also ask that you identify the name and contact information for a member of your staff who we can contact directly about specific instances of voter intimidation.

Sincerely,

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NAACP Legal Defense and Educational Fund, Inc. (“LDF”)

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that prohibit voter discrimination, intimidation, and suppression and increase access to the electoral process.

Giffords Law Center to Prevent Gun Violence

For over 25 years, the legal experts at Giffords Law Center to Prevent Gun Violence have been fighting for a safer America by researching, drafting, and defending the laws, policies, and programs proven to save lives from gun violence.

SPLC Action Fund

The SPLC Action Fund is dedicated to fighting for racial justice alongside impacted communities in pursuit of equity and opportunity for all. We work primarily in the Deep South where we have offices in Alabama, Georgia, Florida, Louisiana, Mississippi, and Washington, D.C.

American Civil Liberties Union of Alabama

Since April 1965, the American Civil Liberties Union of Alabama has worked in the courts, legislatures, and communities to defend the individual rights and personal freedoms guaranteed to us by the Constitution and Bill of Rights. The ACLU of Alabama focuses on the critical civil rights and civil liberties issues facing Alabamians including voting rights, criminal legal reform, and abortion access. Our goal is to center the voices of those directly impacted by these issues in our state.