



Sent Via Email

October 27, 2022

The Honorable Ashley Moody
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Re: Voter Intimidation in Florida

Dear General Moody:

On behalf of the NAACP Legal Defense and Educational Fund, Inc., NAACP Florida State Conference, Common Cause Florida, All Voting is Local Florida, LatinoJustice PRLDEF, Faith in Public Life, Demos, Southern Poverty Law Center, The League of Women Voters of Florida, Equal Ground, Lawyers' Committee for Civil Rights Under Law, Protect Democracy, American Civil Liberties Union of Florida, Campaign Legal Center, Florida Rising, and ADL, we urge you to reiterate your condemnation of voter intimidation and your commitment to ensure that voters are free to vote without fear and intimidation.¹ Prior to the 2020 general election, your office issued the following statement:²

¹ Your previous statement was issued in response to a letter sent by the NAACP Legal Defense and Educational Fund, Inc., Giffords Law Center to Prevent Gun Violence, League of Women Voters of Florida, and Common Cause Florida. See NAACP Legal Defense and Educational Fund, *Coalition Urges Florida Attorney General to Speak Out Against Voter Intimidation Amid Reports of Illegal Activity* (Oct. 23, 2020) <https://www.naacpldf.org/press-release/coalition-urges-florida-attorney-general-to-speak-out-against-voter-intimidation-amid-reports-of-illegal-activity/>.

² See Issac Morgan, Florida Phoenix, *Civil Rights Groups Wait for Response From Attorney General Ashley Moody on Voter Intimidation Issues* (Oct. 30, 2020),

“The Attorney General condemns hate, and any and all acts of voter intimidation. Violence and threats cannot be tolerated in our elections process. Voters must be allowed to exercise their right to vote without fear or intimidation and law enforcement must stand ready to assist if these acts occur.”

In light of widespread reports indicating organized efforts to intimidate and harass voters this fall, it is critically important that your office issue a similar statement prior to the upcoming election.

1. Voter Intimidation is a Serious Crime.

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

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.

See 18 U.S.C. § 594. Similarly, Florida law provides that:

A person may not directly or indirectly use or threaten to use force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel an individual to:

- (a) Vote or refrain from voting;
- (b) Vote or refrain from voting for any particular individual or ballot measure;
- (c) Refrain from registering to vote; or
- (d) Refrain from acting as a legally authorized election official or poll watcher.

§ 104.0615(2), Fla. Stat. Florida law also 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 other person for the purpose of interfering with the right of such other person to vote or not to vote as that person may choose, or for the purpose of causing such other person to vote for, or not vote for, any candidate for any office at any

<https://floridaphoenix.com/2020/10/30/civil-rights-groups-wait-for-response-from-attorney-general-ashley-moody-on-voter-intimidation-issues/>.

general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

§ 104.0515(3), Fla. Stat. These provisions of Florida law provide that violations constate felonies of the third degree.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[.]” 52 U.S.C. § 10307. *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[.]” 52 U.S.C. § 10101(b). *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.” 42 U.S.C. § 1985(3).

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 engage in unlawful intimidation.⁴

2. Florida Voters Are Subject to Severe Threats of Voter Intimidation.

There is a significant risk of widespread voter intimidation at the polls during Florida’s general election. It has been widely reported that extremist organizations and hate groups, including the Proud Boys as well as other groups that embrace conspiracy theories, have been working to recruit poll workers and poll watchers in Florida.⁵ Indeed, during the recent primary, it was reported that a member of the Proud Boys actually served as a poll

³ Conduct sufficient to violate these Florida statutes is not protected by the First Amendment. *See, e.g., Russ v. State*, 832 So. 2d 901, 907, 911 (Fla. 1st DCA 2002).

⁴ *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.”).

⁵ *See* Nicole Lafond, *Where Things Stand: Flynn Recruits Poll Workers At Proud Boys Event Inside Bunker Community*, Talking Points Memo (Oct. 17, 2022), <https://talkingpointsmemo.com/edblog/flynn-recruits-poll-workers-at-proud-boys-event-inside-bunker-community>; Will Sommer, *Flynn Group Recruits Cops, Vets for ‘One More Mission’—to Watch Election Sites*, The Daily Beast (Oct. 21, 2022); <https://www.thedailybeast.com/michael-flynn-group-recruits-cops-and-military-veterans-for-one-more-mission-to-watch-election-sites>.

worker in Miami-Dade.⁶ The Anti-Defamation League Center on Extremism has recorded over 400 instances of white supremacist propaganda distribution in Florida from January 2020 to August 2022.⁷ A new joint report with Princeton’s Bridging Divides Initiative found that out of 400 cases of election-related threats and harassment, Florida had the third highest number of incidents (29), behind only California (64) and Pennsylvania (35).⁸ In 2021, the Southern Poverty Law Center’s Intelligence Project documented 53 hate groups⁹ and 24 antigovernment groups¹⁰ operating in Florida.

During the 2020 election, the nonpartisan Election Protection hotline received over 300 calls reporting incidents of in-person voter intimidation at Florida early voting and election day voting locations, and has received similar reports thus far in 2022. Indeed, it has been widely reported that Florida voters were targeted by numerous disturbing incidents of voter intimidation in recent years.¹¹ For instance, a significant number of Florida voters¹² received disturbing emails, purportedly from the Proud Boys,¹³ threatening to “come after” voters if they do not vote for a particular candidate.¹⁴ Other voters received text messages

⁶ Alex Deluca, *Local Proud Boy Worked Miami-Dade Polling Station for August 23 Primary*, Miami New Times (Aug.24, 2022), <https://www.miaminewtimes.com/news/miami-proud-boy-worked-at-polling-station-for-august-23-midterm-primary-15135257>.

⁷ Anti-Defamation League, *ADL H.E.A.T. Map (Hate, Extremism, Antisemitism, Terrorism)*, <https://www.adl.org/resources/tools-to-track-hate/heat-map>.

⁸ *Bridging Divides Initiative*, Princeton University, <https://bridgingdivides.princeton.edu/>.

⁹ Southern Poverty Law Center, *In 2021, 53 Hate Groups Were Tracked in Florida*, <https://www.splcenter.org/states/florida>.

¹⁰ Southern Poverty Law Center, *2021 Antigovernment Groups by State*, <https://www.splcenter.org/fighting-hate/extremist-files/ideology/antigovernment#state-by-state>.

¹¹ *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. Helderma et al., *Trump’s suggestion of deploying law enforcement officials to monitor polls raises specter of voting intimidation*, Wash. 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>.

¹² We have heard the greatest number of reports from voters in Alachua County, but we have also heard reports from voters in counties across the state including but not limited to Duval, Bay, Clay, Brevard, Charlotte, Broward, Marion, Collier, Orange, and Escambia.

¹³ The Proud Boys is a far-right organization classified in 2018 by the FBI as an “extremist group”¹³ and listed by the Southern Poverty Law Center as a hate group.¹³

¹⁴ It has since come to light that a foreign actor was responsible for the email. *See* Ellen Nakashima, Amy Gardner, Isaac Stanley-Becker & Craig Timberg, *U.S. government concludes Iran was behind*

urging them to vote for a particular party and telling them they were “being watched.”¹⁵ At an early voting site in Miami, a 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.¹⁶ At an early voting site in Pinellas County, two armed individuals in uniforms who falsely claimed to be associated with a political campaign stationed themselves outside of a polling place, prompting a criminal investigation by local law enforcement.¹⁷ At a polling place in Chipley in Washington County, a uniformed individual was openly brandishing a weapon, making voters uncomfortable.¹⁸

One of the most concerning developments since the 2020 election is the growth in organized planning efforts from anti-democracy groups to place their supporters in election observer structures.¹⁹ At least a half-dozen current and former members of the Proud Boys have secured seats on partisan political executive committees in Florida, including individuals who face criminal charges for participating in the January 6 attack on the Capitol.²⁰ Anti-democracy groups have also organized supporters to monitor ballot drop boxes on a large scale, with some anti-democracy organizers publicly claiming to have groups ready to monitor drop boxes in at least 18 states.²¹

Recent years have also been marked by threats to election officials. Nationwide, the U.S. Department of Justice has investigated more than 1,000 harassing and threatening

threatening emails sent to Democrats, Washington Post (Oct. 21, 2020), <https://www.washingtonpost.com/technology/2020/10/20/proud-boys-emails-florida/>.

¹⁵ See NAACP Legal Defense and Educational Fund, Inc., *Democracy Defended*, https://www.naacpldf.org/wp-content/uploads/LDF_2020_DemocracyDefended-1-3.pdf.

¹⁶ 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/>.

¹⁷ Janelle Irwin Taylor, Florida Politics, *Pinellas Sheriff investigating report of armed voter intimidation at St. Pete early voting location*, (Oct. 22, 2020), <https://floridapolitics.com/archives/376432-armed-guards-spotted-at-downtown-st-pete-voting-site-possible-voter-intimidation-under-investigation/>.

¹⁸ See NAACP Legal Defense and Educational Fund, Inc., *Democracy Defended*, https://www.naacpldf.org/wp-content/uploads/LDF_2020_DemocracyDefended-1-3.pdf.

¹⁹ See, e.g., Ned Parker, et al., ‘Stop the steal’ supporters train thousands of U.S. poll observers, Reuters (Oct. 13, 2022), <https://www.reuters.com/world/us/stop-steal-supporters-train-thousands-us-poll-observers-2022-10-13/>.

²⁰ Patricia Mazzei and Alan Feuer, *How the Proud Boys Grippped the Miami-Dade Republican Party*, New York Times (October 13, 2022), <https://www.nytimes.com/2022/06/02/us/miami-republicans-proud-boys.html>.

²¹ See, e.g., Western States Center, *Voter Intimidation, Disinformation, and Conspiracy Theories: Defending Democracy During the 2022 Midterm Election*, https://docs.google.com/document/d/1eUM6jDjm896Me3WAcf4ghQse-35qO0xm7yXV_Gr0qYA/edit#.

messages directed at election workers, and roughly 100 have risen to the level of potential prosecution as of August of this year.²² Just last week, at least two individuals in tactical gear and armed with weapons were stationed outside of drop box locations in Arizona, triggering law enforcement investigations for intimidation.²³ Protecting the safety and security of election workers is fundamental to the integrity of our election process. While it is critical that jurisdictions with the most frequent records of voter intimidation and election threats are equipped with strategies to prevent repeated harm, all localities benefit from a security-conscious plan for election administration.

3. Numerous Attorneys General Have Issued Statements Addressing Voter Intimidation.

As we approach the 2022 midterm election, attorneys general from across the country have issued statements addressing voter intimidation. For example, on October 13, 2022, Colorado Attorney General Phil Weiser issued public advisories on voter intimidation and promised to “hold accountable those who attempt to intimidate or harass voters or election workers.”²⁴ On October 6, 2022, Wisconsin Attorney General Josh Kaul issued warnings against voter intimidation.²⁵ Earlier this week, United States Attorney General Merrick Garland issued a strong statement against voter intimidation, stating that “The Justice Department has an obligation to guarantee a free and fair vote by everyone who’s qualified to vote and will not permit voters to be intimidated.”²⁶

These recent statements build off the numerous statements issued by Attorneys General prior to the 2020 election, which include your statement as well as statements from Attorneys General in at least nine other states.²⁷

²² See Marina Villeneuve, *Justice Department details threats against election workers*, Assoc. Press (Aug. 3, 2022), <https://abcnews.go.com/Politics/wireStory/justice-department-details-threats-election-workers-87890073>.

²³ See Jacob Knutson, *Election officials: Armed “vigilantes” near ballot drop box in Arizona*, Axios (Oct. 23, 2022) <https://www.axios.com/2022/10/23/mesa-arizona-armed-vigilantes-ballot-drop-box>.

²⁴ See Colorado Attorney General, *Attorney General Phil Weiser reissues public advisories on voter intimidation and election worker safety* (Oct. 13, 2022), <https://coag.gov/press-releases/10-13-22/>.

²⁵ See Duaa Israr, *Wisconsin Attorney General Josh Kaul issues warnings about voter intimidation*, News8000 (Oct. 6, 2022), <https://www.news8000.com/wisconsin-attorney-general-josh-kaul-issues-warnings-about-voter-intimidation/>.

²⁶ Paul LeBlanc and Sean Lyngaas, *Attorney General Merrick Garland vows Justice Department ‘will not permit voters to be intimidated’ ahead of midterms*, CNN (Oct 24, 2022), <https://www.cnn.com/2022/10/24/politics/voter-intimidation-justice-department-merrick-garland-polls-fbi-sheriffs/index.html>.

²⁷ See Conrad Swanson, *Colorado AG says he will prosecute voter intimidation during November election*, Denver Post (Oct. 3, 2020), <https://www.denverpost.com/2020/10/03/colorado-election-phil-weiser-trump-voter-fraud-intimidation/>; Office of the Attorney General Election Advisory, Maine Office of the Attorney General (Oct. 8, 2020),

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

We urge you to immediately issue a public statement affirming that voter intimidation is a serious crime under both federal and Florida law and warn potential perpetrators that there are severe penalties if they intimidate voters, as you did in 2020.

Your public statement on this issue will not only have an important deterrent effect on potential bad actors, but it will also give Florida 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 November 1, 2022 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 in Florida. Please feel free to contact us directly at mpernick@naacpldf.org or (917) 790-3597.

Sincerely,

Michael Pernick
Michael Skocpol
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<https://www.maine.gov/ag/news/article.shtml?id=3436656>; *Massachusetts Attorney General Advisory on Poll Monitoring and Voter Intimidation*, Commonwealth of Massachusetts Office of the Attorney General (Sept. 17, 2020), <https://www.mass.gov/doc/ago-advisory-on-poll-monitoring-and-voter-intimidation-english/download>; Neil Vigdor, *Michigan charges two right-wing operatives with felonies over voter suppression scheme*, New York Times (Oct. 1, 2020), <https://www.nytimes.com/2020/10/01/us/elections/jacob-wohl-jack-burkman-michigan-felony.html>; Sam Metz, *Nevada attorney general vows to take on voter intimidation*, Nevada Appeal (Oct. 2, 2020), <https://www.nevadaappeal.com/news/nevada-attorney-general-vows-to-take-on-voter-intimidation/>; *Vermont AGO Guidance Regarding Voter Intimidation and Harassment*, State of Vermont Office of the Attorney General (Oct. 5, 2020), <https://ago.vermont.gov/wp-content/uploads/2020/10/AGO-Guidance-10.5.20.pdf>; *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>; 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/>; 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/>.

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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.

NAACP Florida State Conference

Founded in 1909, the NAACP is the nation’s oldest and largest nonpartisan civil rights organization. Its members throughout the United States and the world are the premier advocates for civil rights in their communities. In 1941, the NAACP Florida State Conference was formed as the 1st State Conference in the nation.

Common Cause Education Fund, Inc.

Common Cause is a nonpartisan, grassroots organization dedicated to upholding the core values of American democracy. We work to create open, honest, and accountable government

that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process. We employ grassroots organizing, coalition building, research, policy development, public education, lobbying and litigation to win reform at all levels of government.

All Voting is Local (AVIL)

All Voting is Local, a nonpartisan organization, exists to expose and dismantle threats to voter freedom in order to make voting safe, fair, and accessible, to build a democracy for us all. For more information about All Voting is Local, visit <https://allvotingislocal.org>.

LatinoJustice PRLDEF

LatinoJustice PRLDEF. LatinoJustice PRLDEF (formerly known as the Puerto Rican Legal Defense and Education Fund) is a national civil rights organization founded in 1972 with the goal of changing discriminatory practices via advocacy and litigation.

Faith In Public Life

Faith in Public Life is a national movement of clergy and faith leaders united in the prophetic pursuit of justice, equality and the common good. Together, we are leading the fight to advance just policies at the local, state and federal levels. Our network of 50,000 leaders engage in bold moral action that affirms our values and the human dignity of all.

Dēmos

Through cutting-edge policy research, inspiring litigation and deep relationships with grassroots organizations, Demos champions solutions that will create a democracy and economy rooted in racial equity. Our name means “the people.” It is the root word of democracy, and it reminds us that in America, the true source of our greatness is the diversity of our people.

Southern Poverty Law Center

The SPLC is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people.

League of Women Voters of Florida

The League of Women Voters of Florida works to register voters, provide voters with nonpartisan election information through voter guides as well as candidate forums and debates. The League encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy.

Equal Ground Education Fund

Equal Ground Education Fund is a Black-led community center organization working to help protect and expand Black Floridians ability to get registered to vote, educated and mobilized.

The Lawyers' Committee for Civil Rights Under Law

The Lawyers' Committee for Civil Rights Under Law is a nonpartisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to mobilize the nation's leading lawyers as agents for change in the Civil Rights Movement. Today, the Lawyers' Committee uses legal advocacy to achieve racial justice, fighting inside and outside the courts to ensure that Black people and other people of color have the voice, opportunity, and power to make the promises of our democracy real. For more information, please visit <https://lawyerscommittee.org>.

Protect Democracy

Protect Democracy is a nonpartisan nonprofit organization formed in late 2016 with an urgent and explicit mission: to prevent American democracy from declining into a more authoritarian form of government. Because our democracy depends on free and fair elections, Protect Democracy has worked to ensure that all eligible voters are free to vote and have their votes counted.

American Civil Liberties Union of Florida

The American Civil Liberties Union (ACLU) is our nation's guardian of liberty, working daily in courts, legislatures, and communities to defend and preserve the individual rights and liberties guaranteed to all people in this country by the Constitution and laws of the United States. The mission of the ACLU of Florida is to protect, defend, strengthen, and promote the constitutional rights and liberties of all people in Florida.

Campaign Legal Center

Campaign Legal Center (CLC) is a nonpartisan organization that advances democracy through law at the federal, state and local levels, fighting for every American's rights to responsive government and a fair opportunity to participate in and affect the democratic process. CLC seeks a future in which the American political process is accessible to all citizens, resulting in representative, responsive and accountable government.

ADL

ADL is the leading anti-hate organization in the world. Founded in 1913, its timeless mission is "to stop the defamation of the Jewish people and to secure justice and fair treatment to all." Today, ADL continues to fight all forms of antisemitism and bias, using innovation and partnerships to drive impact. A global leader in combating antisemitism, countering extremism and battling bigotry wherever and whenever it happens, ADL works to protect democracy and ensure a just and inclusive society for all.