



November 7, 2022

VIA ELECTRONIC MAIL

Attorney General Steve Marshall
Office of the Attorney General
State of Alabama
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Re: Intimidation at Alabama Polling Places

Dear Attorney General Marshall,

The Alabama Black Woman's Roundtable, Alabama Election Protection Network, ACLU of Alabama Foundation, Campaign Legal Center, Lawyers' Committee for Civil Rights Under Law, Lift Our Vote, and Legal Defense Fund ("LDF") write to urge you to make a public statement condemning intimidation of voters and election officials in Alabama prior to the November 8 Midterm Election. We also request that you issue guidance on intimidation to help election officials take corrective action, including providing them with de-escalation measures and ways to report instances of intimidation to minimize the risk of disenfranchisement. Urgent action by the Attorney General is needed to ensure open and equal access to the ballot during the Midterm Election.

1. Intimidation of Voters and Election Officials Is a Serious Crime.

Intimidation of voters and election officials is unlawful under both federal and Alabama law. Federal laws protect a wide range of voting activities from intimidation or coercive conduct. The Voting Rights Act broadly prohibits any public or private person or organization from intimidating, threatening, or coercing another person or attempting to do so "for voting or

attempting to vote”¹ or “for the purpose of interfering with the right of such other person to vote.”² The conduct prohibited by the Act need not be intentional or violent.³ The Voting Rights Act also protects conduct that “urg[es] or aid[s]” voting, which includes working at a polling station. The Ku Klux Klan Act of 1871 makes it unlawful to conspire to intimidate any voter from casting a ballot for the candidate of their choice.⁴ Federal law also makes it a crime for any public or private actor or organization to engage in intimidation for the purpose of interfering with another’s right to vote.⁵

Alabama law mirrors federal law and makes it unlawful to intimidate a voter in order to interfere with their fundamental right to vote, or to cause or dissuade them from voting for a particular candidate.⁶ Your office also has the authority to address the rise of intimidation directed at elections officials.⁷

Before the 2020 general election, the ACLU of Alabama, LDF, and other groups in Alabama, contacted your office to request that you issue a public statement unequivocally asserting that voter intimidation is a serious crime and contrary to federal and Alabama laws. We urged you to consider certain aggravating factors that increase the risk of unlawful intimidating behavior at demonstrations outside of polling places. But you remained silent in the face of Alabamians’ concern about threats of intimidation to voters and election officials.

As Alabama’s chief law enforcement officer, we again urge you to make a statement asserting that voters and election officials have a right to engage in election-day activities free of

¹ 52 U.S.C. § 10307(b) (“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, 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, or intimidate, threaten, or coerce any person for exercising” certain powers or duties under the Voting Rights Act).

² 52 U.S.C. § 10101(b) (“ No 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 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], at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.”).

³ See *supra* note 1; *LULAC v. Pub. Int. Legal Found.*, No. 1:18-cv-00423, 2018 WL 3848404, at *4 (E.D. Va. Aug. 13, 2018); *Allen v. City of Graham*, Nos. 1:20-cv-997, 1:20-cv-998, 2021 WL 2223772, at *7 (M.D.N.C. June 2, 2021); *United States v. Clark*, 249 F. Supp. 720, 728 (S.D. Ala. 1965).

⁴ 42 U.S.C. § 1985(3) (“[I]f two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person” in federal elections).

⁵ 18 U.S.C. § 594 (“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). See also 52 U.S.C. § 20511(1) (making it a crime to knowingly and willfully intimidating another or attempting to do so for “registering to vote, or voting,” or for “urging or aiding” anyone to vote or register to vote); 18 U.S.C. § 245(b)(1)(A) (making it a crime to use force or threat of force to willfully intimidate another person because she is or has voted or “in order to intimidate” anyone from voting).

⁶ Ala. Code § 17-17-33.

⁷ *Local Election Officials Survey: March 2022*, Brennan Ctr. For Just. (Mar. 10, 2022), <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-march-2022>.

intimidation and coercive conduct. Your statement will have an important deterrent effect on potential intimidation and reiterate to Alabama voters that they have the right to safely head to the polls to cast their ballots on November 8.

2. The Risk of Intimidation Is Real.

The risk of intimidation during the 2022 Midterm Election is high. Given the already charged political environment in which groups and individuals emboldened with misinformation and false claims of voter fraud have been intimidating voters nationwide, Alabama election staff and voters are at even greater risk of being subjected to intimidation this year.⁸

Thirteen hate groups are active in Alabama.⁹ Between 2020 and 2022, watchdog organizations documented 223 incidents of harassment and intimidation in the state.¹⁰ Indeed, in 2020, white supremacist hate groups were open about their plans to show up at the polls to intimidate voters.¹¹ The effects of election intimidation and harassment in Alabama are directly evident in the statewide poll worker shortage.¹²

Nationwide, more than 40% of Americans are deeply concerned about intimidation at the polls, and nearly 66% worry that acts of violence will erupt after the election.¹³ Voters and election workers are already being targeted by vigilante groups promoting false claims of “illegal voting” and actively intimidating voters from lawfully casting their ballot.¹⁴ In Florida, for example, five voters at two different polling locations reported being verbally attacked as they exited polling

⁸ Moira Warburton and Jason Lange, *Exclusive: Two in Five U.S. Voters Worry About Intimidation at Polls – Reuters/Ipsos*, Reuters (Oct. 26, 2022, 7:13 AM), <https://www.reuters.com/world/us/exclusive-two-five-us-voters-worry-about-intimidation-polls-reutersipsos-2022-10-26/>.

⁹ *Groups in Alabama*, S. Poverty Law Ctr., <https://www.splcenter.org/states/alabama> (last visited Nov. 4, 2022).

¹⁰ *H.E.A.T. Map (Hate, Extremism, Antisemitism, Terrorism)*, Anti-Defamation League (2022), <https://www.adl.org/resources/tools-to-track-hate/heat-map> (describing documented incidents in Alabama).

¹¹ Report, S. Poverty Law Ctr., *Overcoming the Unprecedented: South Voters’ Battle Against Voter Suppression, Intimidation, and a Virus* 1, 20 (2021), https://www.splcenter.org/sites/default/files/splc_vr_report_overcoming_the_unprecedented_mar_2021.pdf.

¹² See Devan Markham and Stephanie Haines, *Poll Workers Shortage Ahead of Midterm Elections*, NewsNation (Oct. 12, 2022, 12:20 PM), <https://www.newsnationnow.com/politics/elections-2022/poll-worker-shortage-midterm-elections/>. See also Ed O’Keefe and Tori B. Powell, *Polling Stations Understaffed Amid Safety Concerns Ahead of Midterm Elections*, CBS News (Oct. 21, 2022, 1:03 PM), <https://www.cbsnews.com/news/midterm-elections-polling-stations-understaffed-safety-concerns/>.

¹³ Warburton, *supra* note 8.

¹⁴ Jen Fifield, *Drop Box Watchers in Arizona Connected to National Effort from “2000 Mules” Creators*, Votebeat Ariz. (Oct. 27, 2022, 7:57 PM), <https://arizona.votebeat.org/2022/10/27/23427525/clean-elections-usa-drop-box-watchers-voter-intimidation>.

places during early voting.¹⁵ In Georgia, Michigan, Pennsylvania, Nevada, Colorado, Wisconsin, and Arizona, the FBI has identified high threat levels against poll workers.¹⁶

The U.S. Department of Justice has taken action to protect voters and election officials by appointing officers to Alabama in the midterms.¹⁷ As the state's chief enforcement officer, it is crucial that you anticipate and prepare for the risk that additional voter intimidation will occur with greater intensity and severity as Election Day approaches and issue a statement condemning all forms of intimidation.

3. The Alabama Attorney General Should Issue Guidance to Election Officials and Voters on Ways to Identify, De-escalate, and Report Instances of Intimidation.

In light of the serious threats to voters and elections officials this election, guidance from your office concerning intimidation is critical. Your guidance should include: (a) methods of appropriately identifying intimidation of voters and election officials, (b) measures to de-escalate potential violence, harassment, threats, or intimidation—using law enforcement only as a last resort, and (c) methods for election officials and voters to report instances of intimidation, inside and outside of polling stations.¹⁸

Identifying intimidating conduct: Guidance on how to identify intimidation is critical because intimidation is unlawful and creates an unsafe environment that deters voters' and election officials' participation in elections. There are many aggravating factors that can make demonstrations at polling places especially concerning and increase the risk of unlawful intimidation:

- Wearing uniforms or attire that suggest demonstrators are engaging in official functions. This is a significant threat today, because many hate groups have begun wearing

¹⁵ Lauren Cervantes, *Seminole County Supervisor of Elections Investigating Verbal Attacks at Early Voting Sites*, ClickOrlando.com (Nov. 3, 2022, 12:44 PM), <https://www.clickorlando.com/news/local/2022/11/02/seminole-county-supervisor-of-elections-investigating-verbal-attacks-at-early-voting-sites/>. See Joe Byrnes, *Election Officials Report Voter Intimidation at Polling Places in Volusia and Seminole Counties*, NPR WMFE 90.7 (Nov. 2, 2022), <https://www.wmfe.org/election-officials-report-voter-intimidation-at-polling-places-in-volusia-and-seminole-counties/205308>.

¹⁶ Jeff Pegues, *Seven States Continue to See Unusual Levels of Threats to Election Workers*, CBS News (Oct. 3, 2022, 3:53 PM), <https://www.cbsnews.com/news/election-worker-threats-7-states/>.

¹⁷ Press Release, *U.S. Attorney Prim F. Escalona Appoints District Election Officer for the Northern District of Alabama*, U.S. Dep't. Of Just. (Oct. 20, 2022), <https://www.justice.gov/usao-ndal/pr/us-attorney-prim-f-escalona-appoints-district-election-officer-northern-district>.

¹⁸ Prior to the 2020 general election, LDF and partners sent letters to the Alabama attorney general and Alabama probate judges to remind them that voter intimidation is a crime under Alabama law, and to urge the state to effectively train election workers to address voter intimidation. See LDF, *et al*, Letter to Alabama Attorney General: *Voter Intimidation at Polling Places* (Oct. 28, 2020), <https://www.naacpldf.org/wp-content/uploads/2020.10.28-Letter-to-Ala-Attorney-General-FINAL.pdf>; LDF, *et al*, Letter to Alabama Probate Judges: *Voter Intimidation and Frivolous Voter Challenges* (Oct. 28, 2020), <https://www.naacpldf.org/wp-content/uploads/2020.10.28-FINAL-Letter-to-AL-Probate-Judges.pdf>.

standardized attire, law enforcement or security uniforms, and even paramilitary uniforms.¹⁹

- Open association with hate groups, including demonstrators waving Confederate flags.
- Physically blocking voters from accessing a polling place or blocking traffic.
- Carrying or brandishing firearms or other weapons.²⁰
- Direct confrontation with prospective voters or others,²¹ the use of raised voices, insulting, offensive, or threatening language, or other intimidating conduct including photographing voters, copying license plates, and aggressive exit polling.
- 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.

Demonstrations can constitute unlawful voter intimidation even when they comply with Alabama’s 30-foot zone around polling sites. We urge you to describe common examples of intimidation to clarify what conduct constitutes intimidation under Alabama and federal law, with examples including the aggravating factors listed above.

De-escalation: Election officials must be instructed to de-escalate threats of harassment and intimidation, relying on law enforcement only as a last resort. Alabama has a long history of employing law enforcement officials to intimidate and suppress the right to vote. Law enforcement were integral to the enforcement of Jim Crow tactics of voter suppression designed expressly to exclude Black voters from the franchise.²²

Today, Alabamians are deterred from participating in elections in racially disparate ways when law enforcement are present at polling places.²³ A recent study found that the presence of

¹⁹ *Council on Am.-Islamic Rels.-Minn. v. Atlas Aegis, LLC*, 497 F. Supp. 3d 371, 379 (D. Minn. 2020) (finding “[t]he presence of armed ‘guards’ at the polls with no connection to state government is certainly likely to intimidate voters”); see also Tasneem Raja, *Decoding the Language of Extremist Clothing*, 4 Topic (Oct. 2017), <https://www.topic.com/decoding-the-language-of-extremist-clothing>.

²⁰ 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 when done with the intent to commit bodily harm. Ala. Code § 13A-11-72(c)–(d).

²¹ This may include election officials, individuals engaging in lawful electioneering, non-partisan election observers, poll watchers, or others.

²² See David Niven, *Policing Polling Places in the United States: The Negative Effect of Police Presence on African American Turnout in an Alabama Election*, Democracy & Security (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4148928.

²³ *Id.* at 8.

police officers at Alabama polling places was associated with a 32% reduction in Black voter participation in the state.²⁴ In Mobile, during the 2020 election, two police SUVs were stationed outside a polling entrance with “blue lights flashing...for at least several hours.”²⁵ Ongoing police presence had the effect of making voters “uneasy about going to th[e] polling location.”²⁶ Indeed, for Black communities and other communities of color who are disproportionately impacted and targeted by police violence, the presence of police vehicles and flashing lights creates a general sense of vulnerability and anxiety, and can intimidate voters. While sheriffs or their deputies have the “duty to preserve order at elections,”²⁷ election officials must be trained to de-escalate matters in a manner that uses law enforcement as a last resort, not to harass or intimidate voters.

In Autauga County, a non-partisan poll monitor was harassed by an election official and wrongfully detained by a sheriff and two deputies.²⁸ The election official claimed that the poll monitor was harassing voters, although she only took photos of accessibility issues at the polling station, which is permissible conduct.²⁹ While the election official in Autauga could have benefitted from guidance on identifying intimidating behavior, the official should also have been trained to de-escalate.³⁰

Reporting: Relatedly, your office must communicate the proper procedure for Alabamians to report instances of intimidation. Your guidance must make clear that election officials and police officers can be reported for intimidation or harassment. And your office should track reports of intimidation and harassment and follow up on them through appropriate means.

In light of the constitutional rights at stake and given the 2022 Midterm Election is tomorrow, we ask you to issue a public statement condemning the intimidation of voters and election officials and respond to this letter immediately. We request that you inform us of the steps you will take to address the issues raised in this letter and reach out to us for support and assistance.

²⁴ *Id.*

²⁵ John Sharp, *Election Intimidation at Alabama Polls: Report Cites Loitering Police, ‘Blue Lives Matter’ Sign*, Alabama Local (Mar. 21, 2021, 2:55 PM), <https://www.al.com/news/2021/03/election-intimidation-at-alabama-polls-report-cites-loitering-police-blue-lives-matter-sign.html>.

²⁶ *Id.*

²⁷ Ala. Code § 17-9-1.

²⁸ Melissa Brown and Marty Roney, *Alabama Sheriff’s Deputy Pursued, ‘Detained’ Election Day Poll Monitor*, Montgomery Advertiser (Nov. 3, 2020, 6:40PM), <https://www.montgomeryadvertiser.com/story/news/2020/11/03/alabama-autauga-county-deputy-follow-non-partisan-poll-monitor-from-polling-place-monitor-says/6144311002/>; The Legal Defense Fund, *Voting in Alabama*, YouTube (May 23, 2022), <https://youtu.be/hPltbNizLcM>.

²⁹ See Ala. Sec. of State, *Alabama Polling Official Guide 2022* 1, 5 (2021) https://www.sos.alabama.gov/sites/default/files/election2022/2022%20Poll%20Worker%20Guide%20Complete%20-.2021-10-13pdf_0.pdf.

³⁰ Texas, for example, is providing de-escalation trainings to prepare election workers for the potential increase in intimidation at the polls. See Asher Price, *Texas County Pays for De-escalation Training for Election Workers*, Axios-Austin (Nov. 1, 2022), <https://www.axios.com/local/austin/2022/11/01/texas-county-deescalation-training-election-workers>.

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Legal Defense Fund

Since its founding in 1940, Legal Defense Fund (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.

Alabama Black Women's Roundtable

The Alabama Black Women's Roundtable is a state affiliate to the Black Women's Roundtable. BWR is an intergenerational civic engagement network of the National Coalition on Black Civic Participation. At the forefront of championing just and equitable public policy on behalf of Black women, BWR promotes their health and wellness, economic security, education and global empowerment as key elements for success.

Alabama Election Protection Network

Alabama Election Protection Network seeks to ensure safe, fair, and secure elections by providing Alabamians with comprehensive information and assistance at all stages of voting, from registration, to absentee and early voting, to casting a vote at the polls, to overcoming obstacles to participation. Our goal is to work together to make elections more inclusive, accurate, and accessible.

ACLU of Alabama

The American Civil Liberties Union (ACLU) of Alabama's mission is to preserve and protect the civil liberties and civil rights guaranteed by the U.S. Constitution, especially the principals contained in the Bill of Rights.

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.

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.

Lift Our Vote

Lift Our Vote serves to alleviate and/or eradicate issues plaguing communities of color. We serve to transform our communities through the arts, culture, and creative mind. We understand the

power in the Vote, and work to protect Voters by fighting Voter suppression and creating a culture of Voting.