



Sent Via Email

October 22, 2020

The Honorable Ashley Moody
Attorney General
Office of the Attorney General
State of Florida
PL-01 The Capitol
Tallahassee, FL 32399-1050
Email: ashley.moody@myfloridalegal.com

Re: Voter Intimidation at Polling Places

Dear General Moody:

On behalf of 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, we urge you to issue a public statement reminding Florida residents that voter intimidation is a serious crime under federal and Florida law. 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.

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

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*, 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>.

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, Fla. Stat.

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 be unlawful intimidation.²

2. Florida Voters Have Been Subjected to Severe Acts of Voter Intimidation Over the Last Several Days.

Florida voters have been targeted by disturbing incidents of voter intimidation over the last several days. On October 20, 2020, a 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,

² 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.”).

along with profanity.³ This type of conduct is precisely the sort of voter intimidation that our laws are intended to prevent.⁴

On October 20, 2020, a significant number of Florida voters⁵ received disturbing emails purportedly from the Proud Boys, a far-right organization classified in 2018 by the FBI as an “extremist group”⁶ and listed by the Southern Poverty Law Center as a hate group,⁷ threatening to “come after” voters if they do not vote for a particular candidate. It has since come to light that a foreign actor was responsible for the email.⁸ However, this type of conduct can also be perpetrated by domestic actors – for instance, the Michigan Attorney General recently charged two individuals with a variety of crimes, including voter intimidation, for allegedly using a robocall targeted at urban areas with significant minority populations in an effort to intimidate voters from participating in the November general election.⁹

It is important to anticipate and prepare for the risk that additional voter intimidation occurs with even greater intensity and severity as we approach Election Day.

3. Demonstrations Outside Polling Places Could Constitute Voter Intimidation.

We have heard a significant number of concerning reports of hostile and confrontational demonstrations occurring outside polling places across Florida during the first several days of early voting. Although demonstrations outside polling places often appear to be routine political activity, they may constitute unlawful voter intimidation, even if they occur outside of the 150-foot no-solicitation zone under Florida law.¹⁰ There are a number of aggravating factors that can make

³ 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/>.

⁴ See *DNC v. RNC*, 671 F. Supp. 2d 575, 580 (D. N.J. 2009) (presence of law enforcement or individuals carrying or displaying guns or badges at polling places can constitute voter intimidation).

⁵ 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.

⁶ See Jason Wilson, *FBI now classifies far-right Proud Boys as ‘extremist group’, documents say*, The Guardian (Nov. 19, 2018), <https://www.theguardian.com/world/2018/nov/19/proud-boys-fbi-classification-extremist-group-white-nationalism-report>.

⁷ See *Proud Boys*, Southern Poverty Law Center, <https://www.splcenter.org/fighting-hate/extremist-files/group/proud-boys>.

⁸ See Ellen Nakashima, Amy Gardner, Isaac Stanley-Becker & Craig Timberg, *U.S. government concludes Iran was behind threatening emails sent to Democrats*, Washington Post (Oct. 21, 2020), <https://www.washingtonpost.com/technology/2020/10/20/proud-boys-emails-florida/>.

⁹ See *Political Robocallers Arraigned on Felony Voter Intimidation Charges*, Michigan Department of Attorney General (Oct. 8, 2020), <https://www.michigan.gov/ag/0,4534,7-359--541876--,00.html>.

¹⁰ Under Florida law, “[n]o person, political committee, or other group or organization may solicit voters inside the polling place or within 150 feet of the entrance to any polling place[.]” § 102.031(4)(a), Fla. Stat.

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.¹¹
- Physically blocking voters from accessing a polling place or blocking traffic.¹²
- Carrying or brandishing firearms or other weapons.¹³
- Direct confrontation with prospective voters or others,¹⁴ 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 suggests demonstrators are engaging in official functions.¹⁵ This is a significant threat today, because many hate groups have begun wearing standardized attire, law enforcement or security uniforms, and even paramilitary uniforms.¹⁶

Demonstrations can constitute unlawful voter intimidation *even if they comply with Florida's electioneering rules*. Under Florida law, voter solicitation is prohibited “inside the polling place or within 150 feet of the entrance to any polling place, a polling room where the polling place is also a polling room, an early voting site, or an office of the supervisor where vote-by-mail ballots are requested and printed on demand.” § 102.031, Fla. Stat. This no-solicitation zone will provide little protection to voters this year, because lines of voters may extend far beyond

¹¹ The Southern Poverty Law Center has identified 67 hate groups that were active in Florida in recent years. *See Groups in Florida*, Southern Poverty Law Center, <https://www.splcenter.org/states/florida>.

¹² This conduct may also violate § 316.2045, Fla. Stat., which makes it a misdemeanor to “obstruct the free, convenient, and normal use of any public street, highway, or road[.]” These risks are enhanced risk this year, in light of the increase in political “car parades,” which not only have the potential to intimidate voters, but may also create traffic jams in key thoroughfares and intersections that serve as critical access points to polling places.

¹³ Florida law prohibits the open carrying of firearms, and any armed demonstrators are likely in violation of § 790.053(1), Fla. Stat., in addition to engaging in unlawful voter intimidation. Florida law allows for the concealed carry of firearms only by individuals licensed to do so, but even these licenses do not permit the carrying of firearms into polling places. § 790.06(12)(a)(6), Fla. Stat.

¹⁴ This may include election officials, individuals engaging in lawful electioneering, non-partisan election observers, poll watchers, or others.

¹⁵ *See DNC v. RNC*, 671 F. Supp. 2d 575, 580 (D. N.J. 2009) (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”).

¹⁶ *See, e.g.,* Tasneem Raja, *Decoding the Language of Extremist Clothing*, Topic (Oct. 2017), <https://www.topic.com/decoding-the-language-of-extremist-clothing>.

150 feet as voters are instructed to maintain at least six feet of distance while waiting in line.¹⁷ Demonstrators could be unlawfully intimidating voters even if they remain in compliance with this rule, especially if they exhibit any of the aggravating factors listed above.

4. 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:

- **Colorado Attorney General Phil Weiser** explained, “When hate turns to voter intimidation, it becomes a crime. For that matter, any voter intimidation is a crime and will be prosecuted.”¹⁸
- **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.”¹⁹
- **Massachusetts Attorney General Maura Healey** issued a statement affirming that “Massachusetts state law prohibits intimidation of voters . . . punishable by fines or imprisonment” and committing to “vigorously enforce these laws.”²⁰
- **Michigan Attorney General Dana Nessel** committed to prosecute any efforts to use intimidation or misinformation in the November elections, explaining that “Michigan voters are entitled to a full, free and fair election in November and my office will not hesitate to pursue those who jeopardize that.” Nessel brought voter intimidation charges against two individuals for allegedly attempting to deter electors from participating in the November election through a racially targeted robocall.²¹

¹⁷ 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>. Only 25 voters would be able to stand in line within the 150-foot no-solicitation zone if they are each spaced 6 feet apart.

¹⁸ *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/>.

¹⁹ *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>.

²⁰ *See 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>.

²¹ *See* 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>.

- **Nevada Attorney General Aaron Ford** expressed concern over the possibility of voter intimidation at the polls, and warned potential perpetrators, “Believe me when I say it: You do it, and you will be prosecuted.”²²
- **Vermont Attorney General Thomas Donovan** issued a statement explaining that voter intimidation “is both illegal and inimical to the basic [tenets] of our society,” and committed to “enforce those laws as necessary to ensure that all Vermonters are able to peacefully exercise their fundamental right to vote without disruption.”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.” He has committed to investigate and prosecute acts of voter intimidation.²⁶

5. 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. 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.

²² See 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/>.

²³ See 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>.

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/>.

Your public statement on this issue will not only have an important deterrence 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 October 26, 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 in Florida.

Sincerely,

Catherine Meza, Senior Counsel
Michael Pernick
NAACP Legal Defense & Educational Fund, Inc.
(917) 790-3597
mpernick@naacpldf.org

Allison Anderman, Senior Counsel
David Pucino, Senior Staff Attorney
Giffords Law Center to Prevent Gun Violence
(415) 433-2062
aanderman@giffords.org
dpucino@giffords.org

Patricia Brigham
President
League of Women Voters of Florida
(407) 377-5777
patricia@lwvfl.org

Liza McClenaghan, State Chair
Common Cause Florida
(239) 596-5248
lizamacfl@gmail.com

cc: Richard Martin, Chief of Staff, Florida Office of the Attorney General

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.

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.

Common Cause

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. Learn more at www.CommonCause.org.