

# THREATENING DEMOCRACY: VOTER INTIMIDATION IN THE U.S.

NOVEMBER 2022

## Introduction

The right to vote is one of the most important rights afforded to us as citizens in a democracy. It allows us to have a voice in our democracy and to influence who makes decisions in local, state, and federal government. However, in the United States, there is a long and dark history of denying the right to vote to people of color, women, immigrants who have become citizens and others—both through legal barriers to voting and through intimidation, threats of violence, and violence itself.

Not since the Civil Rights era of the 1950s and 1960s has the United States witnessed the type of political violence and voter intimidation we've seen over the past two and half years. The recent proliferation of misinformation at a mass scale and false claims of voter fraud by numerous elected officials have led to a rise in aggressive poll watcher behavior, politically motivated prosecutions of voters, and even a growing movement among some local law enforcement to interfere in elections and intimidate voters.

Our democracy is under threat when citizens cannot vote and express their will without fear of harassment, violence or prosecution. When voters are intimidated and made to feel afraid, they won't vote. This can weaken our democracy and shape election outcomes in a way that emboldens violence and threats in the future. State laws and policies can protect against voter intimidation, ignore it, or even increase it. As outlined in this policy spotlight, we recommend states combat voter intimidation through key policies including limits on the activities of partisan poll watchers, banning guns in polling places, and properly regulating law enforcement involvement at the polls.

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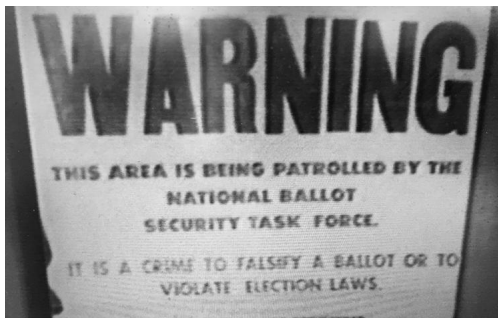
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POLLING  
PLACE

## What is Voter Intimidation?

Voter intimidation takes many forms. Federal law defines voter intimidation as any action that is intended 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.” Examples of voter intimidation include: physically blocking polling places, aggressively questioning a voter about their eligibility to vote, yelling or using threatening language in or near a polling place, and photographing or filming voters without permission. In the age of social media, voter intimidation may also take the form of mis/dis-information such as telling people they need a certain type of ID to vote that isn’t required in their state, falsely telling them that their polling place has moved, or even suggesting that the election date was changed, examples of which are shown in **Figure 1**.

### FIGURE 1: EXAMPLES OF VOTER INTIMIDATION



Sign posted at polls during 1981 election in New Jersey



Billboard seen in Ohio and Wisconsin during 2012 election



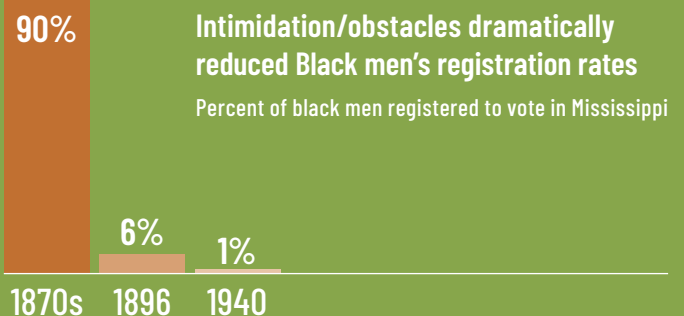
Military style vehicle outside Texas polling place during 2020 election



## A Long History of Voter Intimidation in the United States, Especially Against Black Americans

The United States has a long and shameful history of voter intimidation, often directed at people of color and other disenfranchised groups and paired with legal barriers to voting. During the Reconstruction Era following the Civil War, there was a brief period where the federal government acted to protect the rights of Black voters in the South under 14th and 15th Amendments to the Constitution. However, once federal troops were withdrawn from the South, the Ku Klux Klan and other white supremacist forces quickly acted to disenfranchise Black voters, often through voter intimidation that included threats of job losses, eviction and lynching.

For example, in Mississippi, in the years just after the Civil War, over 90% of Black men were registered to vote. By 1892, only 6% of Black men were registered to vote following years of racial violence in addition to obstacles to the polls implemented by racist government officials like poll taxes and literacy tests. By 1940, that rate had dropped even further; just 1% of eligible Black men were registered to vote in Mississippi. This mass suppression and intimidation of non-white voters was the status quo until the Civil Rights movement of the 1960's. As leaders and protesters organized to demonstrate and advocate for voting rights, white supremacist and government forces again lashed out with violence and other forms of voter intimidation to prevent non-white voters from registering and casting their ballots. This movement culminated in the passage of the Voting Rights Act in 1965, which prevented states with a history of voter suppression and intimidation from using racist requirements like literacy tests and prevented implementation of new restrictions in those states.



Source: University of Mississippi. “UM Votes: Exploring the History of Voting Suppression in MS”

Voter intimidation may be perpetrated by private citizens, poll workers, law enforcement officers, or even state officials. Just this year in Florida, the state's governor used the newly created Office of Election Crimes to launch a series of politically motivated prosecutions against about a dozen people with felony convictions who thought their voting rights had been restored—many of whom had even been told by local election officials they were eligible to vote. The prosecutions were then touted by the governor, creating a suppressive effect on all Florida citizens with a felony conviction, who now had to question whether they were actually able to vote and fear jail time if they or their local election official got it wrong. This is just one way in which modern voter intimidation has evolved beyond the blatant violations of years past.

Today, we find ourselves in an environment where political violence is rising, and voters are being intimidated and restricted from accessing their right to vote. According to *The New York Times*, the number of domestic terrorism investigations has doubled since the 2020 election, and threats to members of Congress are also at a record high. Adding to the problem, in 2018 the Republican National Committee was released from a court order that had been in place for 35 years that prevented them from engaging in a variety of voter intimidation practices. Politicians, including former president Donald Trump, have frequently used violent and racist rhetoric on social media and at rallies to intimidate voters and to encourage even everyday citizens to be ready to question voters, as shown in **Figure 2**.

## FIGURE 2: THE FORMER PRESIDENT USED SOCIAL MEDIA AND POLITICAL SPEECHES TO ENCOURAGE VOTER INTIMIDATION



(Former) President Donald Trump on Election Day 2018



This year, there have been reports of groups in at least 11 states going door to door, particularly in racially diverse communities, and accusing voters of fraud and questioning their eligibility and who they voted for. According to a lawsuit filed by the League of Women Voters in Colorado, these individuals are sometimes armed, and often take pictures of voters' residences. In late October, the Department of Justice announced an investigation into voter intimidation in Arizona, resulting from reports of armed individuals monitoring drop boxes and filming voters. Such tactics are textbook examples of voter intimidation and could lead to voters not turning up at the polls. No voter should be made to fear exercising their fundamental right to vote.

## How to Counter Voter Intimidation and Make Sure Every Eligible Voter Feels Safe Voting

### Proper Regulation of Partisan Poll Watchers

Poll watchers are citizens who observe the voting processes inside polling places, on behalf of a political party. Poll watching has long been a feature of U.S. elections. They are sometimes called partisan observers or challengers (in states where the poll watchers can also challenge a voter's eligibility at the polls). All states allow the use of poll watchers, and they are often appointed and trained by political parties or candidates. State laws vary widely on the roles of poll watchers. In general, they are to observe the poll and its functioning during an election and report any potential issues.

Traditionally, poll watchers are restricted from interfering with voters or election processes and are subject to various requirements on how closely they can observe and where they can be present within a polling place. However, the last few years are rife with examples of poll watchers engaging in voter intimidation. The Republican National Committee announced plans in 2020 to create an "army" of poll watchers as part of a conspiracy-driven push to infiltrate the inner workings of elections. For example, in Michigan, right-wing groups have organized thousands of poll watchers as part of an "Election Protection Team." During

trainings in the state, watchers were encouraged to break rules by recording notes and to "act like spies" at the polls. Following the 2022 Michigan primary, a poll worker was charged with two felonies for inserting a USB drive into election equipment containing voter data. In North Carolina, several incidents of voter intimidation perpetrated by poll watchers led to election officials having to intervene. All reported incidents involved Republican poll watchers.

With increasing false rhetoric about election fraud and encouragement by Republican politicians, election officials and experts fear voter intimidation efforts will only increase in the November 2022 midterm elections. "It is kind of troubling to see, in the wake of 2020, this new element of election workers who are there to more police things ...than they are to just perform the function of being an election worker and facilitating the democratic process in communities," said Justin Roebuck, the clerk of Ottawa County, Mich. and the chair of the Michigan Council of Election Officials.

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### Some States Are Moving in the Wrong Direction by Emboldening Partisan Poll Watchers

Despite the dangers outlined above, some states have actively granted additional power to partisan poll watchers in the last two years. In 2021, Georgia lawmakers enacted a law that expands the locations where parties can appoint partisan poll watchers, and that also allows any voter to challenge the registration status of other voters. Already this



year, over 64,000 challenges have been submitted across the state as part of a coordinated strategy to overwhelm election offices. In Iowa, the legislature passed a law that makes it a crime for an election official to interfere with or obstruct a poll watcher, which may prevent officials from removing disruptive watchers and preventing voter intimidation. And in Texas, the legislature enacted a law that also makes it a crime to obstruct a poll watcher and requires that watchers be allowed “free movement” to any part of the polling place outside of the voting booth, increasing the potential for voter intimidation and disruption at the polls.

### **States Can Allow Poll Watching While Preventing Voter Intimidation**

What can states do to address these growing problems? There are several best practices that states can adopt in terms of policies governing poll watchers.

- ***Allowing Election Officials to Remove Disruptive Poll Watchers*** Watchers: While most states have some form of prohibition on poll watchers interfering with voters, additional safeguards can be put in place to prevent voter intimidation. Voters must be protected—particularly in the context of some states giving poll watchers more power and even imposing new penalties on election officials who remove disruptive watchers. States should enact clear guidelines that allow election officials to remove poll watchers who are inappropriately interfering with voters and elections. For example, Colorado law allows county election officials to remove poll watchers for certain actions such as abusive or threatening behavior.

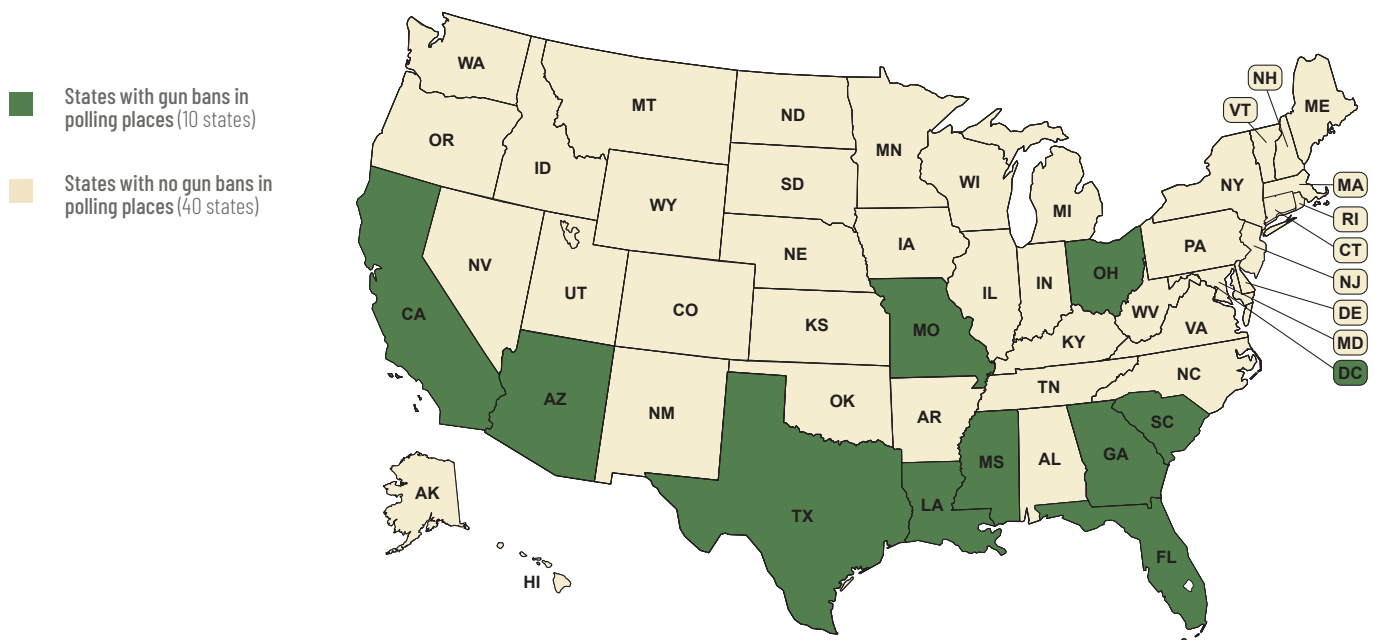
- ***Restrictions on Activities of Poll Watchers and Locations***: While the legitimate purpose of poll watchers is to observe election processes, states need to set clear limits on where watchers are allowed within the polling place and what activities they may engage in. Laws (such as the one recently passed in Texas) that allow poll watchers to move throughout a polling place increase the danger of confrontations with election officials and intimidation of voters. Poll watchers should be allowed within reasonable distance to observe most activities within the polling place, but strictly barred from being near the voting booth. Colorado law again provides a good example of best practices: watchers must remain outside of the immediate voting area at all times, but also be allowed enough visual access to observe activities of election officials. Poll watchers in Colorado are also prohibited from recording any personal information of voters, touching any materials, or possessing electronic devices.
- ***Robust Training Requirements***: Without proper training, states risk poll watchers falling victim to mis/dis-information due to a lack of understanding of proper election procedures. States should provide funding and assistance for local election offices to engage in training for poll watchers—and also make training a requirement for being a poll watcher. The U.S. Election Assistance Commission has useful materials for states and localities to improve their training procedures; recommendations include beginning training early, creating easily accessible online explainers, and working with political parties to assist in training.

There are approximately 120 guns for every 100 people in the United States. Guns at polling places, even if not used to commit violence, can be used to intimidate voters and election officials.

There is currently no federal law prohibiting the possession of firearms at polling places. Therefore, this policy decision is left to the states. Presently, only 10 states and the District of Columbia clearly prohibit firearms in polling places, as shown in **Figure 3**. Some states also prohibit possession of firearms at certain locations such as public schools, which when used as polling places would also be subject to such a prohibition. There has been no momentum on legislation introduced at the federal



### FIGURE 3: ONLY 10 STATES BAN GUNS IN POLLING PLACES



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Law enforcement pepper sprays marchers during get out the vote rally in North Carolina in 2020

### Properly Regulating Law Enforcement at Polling Places

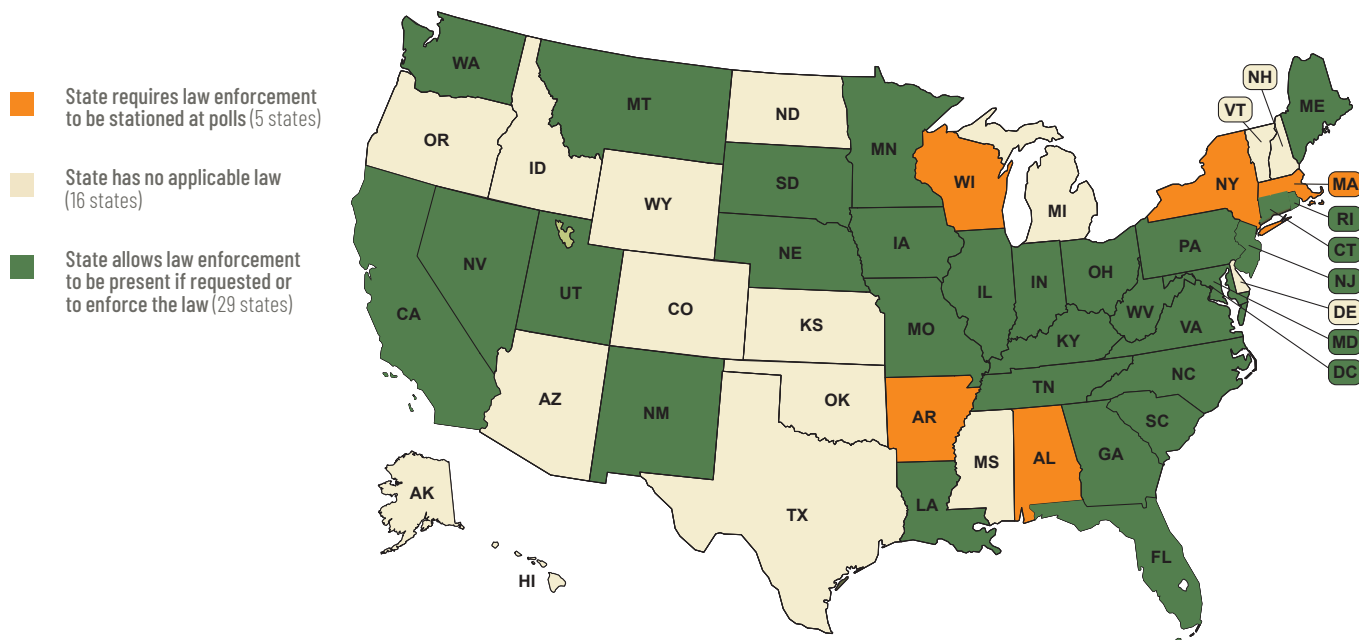
While law enforcement can act to prevent violence and voter intimidation, they have also historically been used to perpetrate it. Prior to the passage of the Voting Rights Act in 1965, police officers were often used in the South to prevent Black voters from exercising their rights. This is part of what led to a now-defunct court order that constrained the Republican party from voter intimidation. A study conducted last year by the University of Cincinnati found that the presence of police at polling places in Alabama corresponded with a 32% reduction in Black voter turnout in a 2017 special election. These troubling reports come in the wake of calls by the former president Donald Trump during the 2020 election to deploy law enforcement to the polls.

As mis/dis-information about election fraud circulate and ramp up into the November 2022 midterm elections, there are serious reasons to continue to be concerned about law enforcement over-involvement in the election process and the potential for voter intimidation. For example, reporting by *The New York Times* and others revealed an ongoing effort by election denialists to recruit county sheriffs as part of a push to validate false claims of voter fraud. Some of the sheriffs involved in the movement have allegedly started conducting their own independent investigations into supposed voter fraud, which has led to clashes with election officials, even resulting in an effort by one Wisconsin sheriff to charge election officials with crimes.

State laws governing the presence and role of law enforcement at the polls vary widely. Federal law speaks very clearly to the issue as it pertains to federal law enforcement or military: it has been a crime to deploy federal forces to the polls since 1948. However, according to data from the National Conference of State Legislatures, 16 states<sup>1</sup> have no clear law regulating the presence of law enforcement at the polls. Five states<sup>2</sup> actually require that law enforcement be stationed at the polls, while the other 29 states<sup>3</sup> have a mixture of requirements that allow law enforcement to be present if requested or to enforce the law. See **Figure 4**.

States can and should enact clear limits on law enforcement presence at the polls and restrictions on allowable actions. For example, California and Pennsylvania make it a crime for officers to appear at the polls without being summoned. Other states, like Ohio and Wisconsin, require that officers obey the authority of election officials when present at the polls. Organizations such as the National Policing Institute also provide resources for law enforcement to plan for proper and legal involvement at the polls. These safeguards ensure that voters, particularly voters of color, are not intimidated and prevented from exercising their right to vote.

**FIGURE 4: STATES VARY IN THE PRESENCE OF LAW ENFORCEMENT IN POLLING PLACES**



Source: National Conference of State Legislatures. "Polling Places."

<sup>1</sup>Alaska, Arizona, Colorado, Delaware, Hawaii, Idaho, Kansas, Michigan, Mississippi, New Hampshire, North Dakota, Oklahoma, Oregon, Texas, Vermont and Wyoming

<sup>2</sup>Alabama, Arkansas, Massachusetts, New York and Wisconsin

<sup>3</sup>California, Connecticut, Washington, D.C., Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington and West Virginia



## Conclusion

Political extremism, threats to election workers, and false information about voter fraud have all contributed to an intimidating environment for voters heading into the midterm election. In addition to states restricting voter methods of casting their ballot, voters are also at risk of being harassed and threatened by their fellow citizens, overzealous

partisan poll watchers, and even government officials or law enforcement. State policies properly governing poll watchers, firearms, and the presence of law enforcement at voting sites can reduce and mitigate potential voter intimidation. Voters should not be made to fear exercising their most fundamental right.