



MEMORANDUM

October 6, 2020

TO: State and Local Officials
FROM: Center for American Progress
RE: Concrete Steps To Safeguard Our Elections

All elected officials have a sacred and legal obligation to protect the sanctity of elections, including protecting voters from violence or intimidation. Voter intimidation undermines not only U.S. democracy writ large but also every elected position and officeholder throughout the country. The legitimacy of our government and its actors rests on carrying out free and fair elections in which all voters are free from intimidation and fear when they cast their ballot.

In the absence of federal leadership, governors, mayors, attorneys general, police chiefs, and secretaries of state must lead in developing comprehensive plans to safeguard the 2020 electoral process. As such, you must plan for the possibility that groups motivated by a range of ideologies will engage in voter intimidation and shows of force—or even violent confrontations—as people exercise their right to vote. Protecting the right of Americans to vote in 2020 calls for more preparation and readiness than it has in some time. An unprecedented confluence of violent activism, national leaders breaking long-held norms by condoning political violence, and increasing calls to distrust the fair and free electoral process is causing alarm about voters' ability to cast their ballots free of intimidation and fear. This challenge is compounded by the COVID-19 pandemic, which requires extra measures to ensure voters and election officials can fully participate in our democracy.

Specifically, the Center for American Progress recommends that state and local leaders take five key steps:

1. Publicize that voter and election worker intimidation is unlawful and will be prosecuted.
2. Develop a plan to minimize the chances for incidents through extended early voting, additional polling locations, and increased training for poll workers.
3. Identify authorities for emergency action should interference cause delays at polling places, and be ready to go to court if necessary.
4. Clearly delineate the role of law enforcement at and around polls.
5. Issue advisory opinions to explain any limitations on individuals to openly carry firearms at polling places and locations related to election administration.

Additional efforts will be needed to be ready to protect against the intimidation of election workers in post-election administrative processes. For example, in 2000, dozens of operatives stormed a Miami government building in what became known as the [Brooks Brothers riot](#), disrupting election officials who were conducting recount efforts in the wake of the election. A forthcoming memo will offer recommendations to minimize such interference and disruptions.

RECOMMENDATION 1: State attorneys general should publicize that voter and election worker intimidation is unlawful and will be prosecuted.

- **State attorneys general should immediately launch public awareness campaigns to educate the public that voter and election worker intimidation is unlawful and that those engaging in this activity will be prosecuted to the maximum extent permissible under the law.** Federal law states that, “No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any person for the purpose of interfering with the right of such other person to vote.” (see 42 U.S.C. § 1971(b)) Many states have similar laws: For example, in Michigan, it is [illegal](#) to “menace” a voter to “influence an elector in giving his or her vote,” and in North Carolina, it is [illegal](#) to “intimidate or oppose any legally qualified voter.” Public awareness campaigns must begin immediately, since early in-person and mail-in voting have already started in many states. States could also engage civil rights and other civic organizations to help disseminate this information. The information should be translated into multiple languages and should also include contact information where illicit behavior can be reported while simultaneously advising of the types of circumstances that the public should and should not report. Some state attorneys general are already taking steps to make clear that voter intimidation is illegal. Virginia Attorney General Mark Herring issued an [advisory opinion](#) describing Virginia state laws prohibiting voter intimidation and has said such actions will not be tolerated. Notably, Herring’s opinion notes that it is a criminal offense in Virginia “for private individuals to usurp the role of actual law enforcement, and it is accordingly unlawful to appear at the polls attempting to exercise roles that rightfully belong to law enforcement.” Nevada Attorney General Aaron Ford effectively used social media to [promise](#) that people engaging in voter intimidation would be prosecuted.
- **Attorneys general should send a memo to law enforcement agencies emphasizing that only law enforcement officers and prosecutors who have adequate training and experience on election-related offenses should be permitted to investigate them.** Election-related offenses are both complicated and relatively rare, so local law enforcement should partner with state and federal agents who have expertise in this field to ensure the proper protocols for taking in complaints of election-related crimes and investigating those allegations.

- **Attorneys general, district attorneys, and police chiefs should consider creating a special statewide task force to identify any coordinated voter intimidation efforts across multiple polling locations.** The targets of such a task force should be those who are conducting an organized effort to prevent people from physically accessing the polls or threatening violence against voters or election workers.

RECOMMENDATION 2: State election officials should make specific plans now detailing steps to take at polling locations to minimize the chances of an incident.

- **Extend early voting and open additional polling locations on Election Day to alleviate long lines and the opportunity for heightened tensions due to long lines.** Black and Latinx communities have historically faced unnecessary poll closures and long lines. For example, in 2016, North Carolina had [158 fewer](#) early polling locations available in 40 predominately African American counties than in 2012. During this year’s primary election, voters in Nevada had only [three polling places](#) in the Las Vegas area to cast a ballot, and many voters had to wait up to seven hours to vote. In Georgia, some voters [reportedly](#) had to wait up to six or seven hours to cast their ballot.
- **Recruit an adequate number of poll workers and provide training on how to respond to voter intimidation.** An insufficient number of poll workers can lead to fewer polling places, longer lines, and larger health risks during a pandemic for voters. Yet even before the COVID-19 pandemic, poll workers were in increasingly short supply. In 2016, roughly [65 percent](#) of jurisdictions found it “very difficult” or “somewhat difficult” to obtain enough poll workers, and in 2018, that number rose to 70. This year, large numbers of poll workers have resigned due to health risks that are even greater for the older population composing much of their ranks. Recruiting younger poll workers and providing them the training and personal protective equipment necessary to keep them safe will be critical. One particularly promising approach is for officials to make city employees available to serve as poll workers and help process ballots. Many mayors and municipal leaders have the power to provide municipal employees with paid leave to assist with elections. Atlanta Mayor Keisha Lance Bottoms recently issued an [executive order](#) granting paid leave for city employees to serve as poll workers. Detroit Mayor Mike Duggan announced that he was [reducing](#) city operations before Election Day to put city workers at the clerk’s disposal to help count absentee ballots. Municipal legislatures in [Kansas City, Missouri](#), and [Cuyahoga County, Ohio](#), will also provide funding to employees who work the polls. For other specific recommendations, see the new CAP report, [“Recruiting and Retaining Poll Workers During the Coronavirus Pandemic.”](#)
- **State and local officials should ensure that all poll workers are trained on how to respond to a potential incidence of voter intimidation and be prepared to report such disturbances to the appropriate authorities.** At root, it is critically important that poll workers have a clear understanding of what actions constitute permissible and impermissible conduct and that their training includes specific examples of voter intimidation. For example, in 2016, [Colorado](#) trained its poll workers for a range

of situations, including how to monitor people for suspicious behavior and how to respond to a mass shooting at a polling place. Similarly, in [Pennsylvania](#), poll workers have been trained to help stop any voter intimidation that may happen around a polling place—including immediately approaching people to warn them that they will be ejected from the location if the problem persists, as well as the last resort of contacting law enforcement to deal with the disturbance.

- **Provide poll workers with as much concrete guidance as possible about the circumstances under which people may not openly carry firearms in or around polling locations.** Although most states have laws that permit open carry of firearms in many locations—including some polling places, depending on whether they are on public or private property—the open carry of firearms in a manner that intimidates voters may violate other criminal and civil laws. This guidance should be informed by any advisory opinions issued by the attorney general as recommended below.
- **States should consider extending the electioneering perimeter around polling places. Every state has restrictions on how close campaigns and outside groups engaging in electioneering can be to polling places.** For example, Louisiana sets the perimeter at [600 feet](#) from a polling place; other states have smaller perimeters. In light of the ongoing pandemic, social distancing means that voting lines may extend significantly further than normal. Given that fact, and the potential for voter intimidation as people wait in those lines, officials should consider whether the perimeters should be extended, provided they have the authority to do so. Furthermore, should credible information about threats come to light, officials should use any emergency authorities available to extend the perimeters.
- **Prepare poll workers to address voters who refuse to wear masks.** Requirements to wear masks at polling locations may lead to flashpoints not just limited to extremist groups. It is likely that each state—and even counties within states—will develop varying protocols to deal with voters who refuse to wear masks, especially if the refusal is meant as an intimidation tactic. Poll worker responses will likely range from offering to supply nonmask-wearing voters with disposable masks to allowing nonmask-wearing voters to vote curbside or at a more isolated voting machine. Officials will need to train poll workers on how to effectively deescalate these situations in a way that both ensures maskless voters are not deprived of their constitutional right to vote and keeps other nearby voters as safe and secure as possible. Poll workers should also be instructed to wear masks themselves, even in jurisdictions that do not otherwise have mask requirements in place.
- **Educate and prepare voters to report threatening activity to election authorities, law enforcement authorities, and/or nonpartisan voter protection hotlines.** Polling places should post clear signage with relevant instructions in multiple languages, as required by the Language Minority Provisions of the Voting Rights Act. As a general matter, if voters experience or witness intimidating conduct, they should immediately inform a poll worker and, if appropriate, contact law enforcement.

Voters also may choose to call one of several nonpartisan voter protection hotlines, which are staffed with trained workers who can counsel voters on how to deal with a disturbance and safely exercise their right to vote. Some voters may also choose to report intimidating polling place conduct to the U.S. Department of Justice’s Voting Section. Again, in all cases, officials should strive to educate voters about these options and provide them with all relevant contact information.

RECOMMENDATION 3: Governors and secretaries of state (or whoever is the state’s top election official) should identify authorities for emergency action should interference cause delays or disruptions at polling places—and be ready to go to court if necessary.

- **Fully use authorities granted by almost every state to governors; secretaries of state; and, in some cases, local election officials to respond to emergency circumstances, including for the conduct of fair and safe elections.** It is imperative that officials determine the full scope of their election-related authorities and are prepared to be contacted by polling place workers asking for time-sensitive assistance. These officials should develop and disseminate plans—before Election Day—that clearly delineate what situations trigger emergency actions. For example, state and local officials are often able to extend polling place hours. And according to the National Conference of State Legislatures, at least [24 states](#) allow their officials to change polling place locations during emergency situations. In March, when a man crashed his car into a [Missouri](#) polling location and then poured water onto voting equipment and a person at the location, election officials used their authority to immediately relocate the polling place.
- **Be prepared to file emergency lawsuits to extend voting hours.** Where necessary, state attorneys general, along with state or local election officials, should be prepared to ask courts to extend polling place hours if polling places are disrupted and voters are prevented from entering locations or casting votes during normal voting periods. In some cases, individual plaintiffs, with the assistance of third-party organizations, may initiate an emergency legal proceeding requesting this relief. Judges often order polling locations to remain open past their scheduled closing time when voters are unable to cast their votes in a fair and timely manner. For example, in June, [judges in Georgia](#) ordered at least 20 polling locations to remain open past their scheduled closing time due to long lines and other factors that prevented voters from exercising their right to cast a ballot during regularly scheduled hours. And in states such as Wisconsin, state law [allows](#) municipal election authorities to request that a judge order a change in polling place hours or locations if the original polling place was shut down for a period of time.

RECOMMENDATION 4: Governors, mayors, sheriffs, and police chiefs should develop and publicize a plan that clearly delineates the role of law enforcement during an election—including limitations on their activities around polling places.

- **Police chiefs and sheriffs should coordinate with election officials ahead of time to determine when and how they will respond to calls for service.** Certain behaviors such as actual violent confrontations should precipitate a law enforcement action, but not every situation requires a police response. Law enforcement must exercise careful judgment as to whether and how they should respond to prevent the escalation of tensions. At the very least, in order to promote transparency and accountability, police must be able to articulate specific facts and document the information that caused them to take action. Furthermore, local officials and law enforcement should work with 911 operators ahead of Election Day to better triage the types of calls for service they may receive.
- **Police chiefs and elected leaders should jointly publicize a clear articulation of law enforcement’s responsibilities and limitations when it comes to protecting voters and election workers.** Law enforcement has a critical yet delicate role to play in ensuring that voters and elections officials are protected from violent confrontations. Police can serve to keep the peace and allow people to exercise their constitutional rights. When acting in a fair and impartial manner, the police can deescalate tensions and prevent clashes before they erupt. However, recent and historical examples illustrate how law enforcement has been used to intimidate voters, and civil rights leaders have warned that stationing officers at polling locations can serve to suppress the vote. Nationwide protests over police violence have further exacerbated distrust between law enforcement and communities of color.
- **Police should minimize their visible presence at polling locations.** To the extent practicable, police should not maintain a visible presence at polling locations, especially those akin to a “show of force,” unless absolutely necessary. This should include a clear prohibition on officers in riot gear and brandishing military equipment as preventative measures. Moreover, when law enforcement responds to polling locations, they must ensure that their primary objective is to deescalate and reduce the possibility of confrontations and that their presence is as understated and discrete as possible.
- **Governors, secretaries of state, and/or attorneys general can provide training to local law enforcement agencies on how to respond to a call for service while minimizing any negative impact of their presence.** According to the nonpartisan [Brennan Center for Justice](#), some states such as Pennsylvania and Tennessee expressly prohibit the presence of law enforcement at the polls unless a narrow exception applies.
- **Police chiefs should provide clear training and orders to any officers who may respond to or be involved with a call for service at a polling location.** Scenario-based training and protocols ahead of Election Day and the in-person early voting period will go a long way toward developing proper procedures.

RECOMMENDATION 5: State attorneys general should issue advisory opinions explaining the limitations on carrying firearms at polling places and other locations related to election administration.

- **Clarify that the manner in which an individual displays a firearm and the totality of circumstances of an exercise of open carry may violate the law, even in states that allow open carry.** Openly carrying guns in a reckless or threatening manner may violate criminal laws related to menacing, reckless endangerment, disorderly conduct, disturbing the peace, or improper display or brandishing of a weapon, even in states that have permissive open carry laws.¹ For example, it is a crime in [Florida](#) to exhibit a weapon, including a gun, “in a rude, careless, angry, or threatening manner.” In [Nevada](#), a person commits a misdemeanor offense if that person “draws or exhibits any of such deadly weapons in a rude, angry or threatening manner not in necessary self-defense.” Virginia Attorney General Herring’s [advisory opinion](#) referenced above notes that it is a crime to hold a gun “in a public place in such a manner as to reasonably induce fear in the mind of another of being shot or injured.”
- **Clarify that openly displaying guns outside a polling place may also violate federal and state laws regarding voter intimidation.** As discussed above, it is against federal law to threaten or intimidate a voter, and many states have parallel laws prohibiting menacing, intimidating, or using threats of force to prevent people from voting. To the extent that individuals are displaying guns near polling places for such purposes, they are violating federal, and in many cases state, law.
- **Clarify that armed extremist groups, if purporting to act as unauthorized militias, may be violating state laws prohibiting such conduct.** The Institute for Constitutional Advocacy and Protection at the Georgetown University Law Center (ICAP) recently released a [comprehensive report](#) and [state fact sheets](#) identifying state laws and constitutional provisions that may be violated by organized, unsanctioned militia activity—and what to do if armed people show up at a polling place. ICAP generally identified four categories of such laws: “(1) constitutional provisions requiring the subordination of the military to civilian authorities; (2) statutes restricting unauthorized private militia activity; (3) anti-paramilitary-activity criminal laws; and (4) prohibitions on the false assumption of the uniform or duties of a peace officer or member of the military.” ICAP suggests that state and local leaders use these laws both to proactively enact policies to prevent organized armed militia activity and to respond to specific incidents.

¹ For examples of state laws related to menacing, see, for example, 11 Del. C. § 602; NY CLS Penal § 120.14; Colo. Rev. Stat. 18-3-206; Code of Ala. § 13A-6-23; and Kentucky Penal Code § 508.050. For examples of state laws related to reckless endangerment, see, for example, Tenn. Code Ann. § 39-13-103; N.D. Cent. Code, § 12.1-17-03; Code of Ala. § 13A-6-24; and Utah Code Ann. § 76-5-112.

- **Clarify that the Second Amendment is not a barrier to protecting the polls from armed intimidation.** A significant barrier to the development of an effective strategy to prevent armed demonstrations by extremists and white supremacists is a widespread misunderstanding of the scope of the Second Amendment. Both mainstream conservative organizations such as the National Rifle Association and extremist conservative groups promote an interpretation of the Second Amendment that would grant individuals a virtually unlimited right to possess and carry firearms. However, this interpretation of the Second Amendment was explicitly rejected by the U.S. Supreme Court in 2008 in the pivotal decision in [District of Columbia v. Heller](#). In *Heller*, the Supreme Court held that while the Second Amendment does confer an individual the right to possess guns for self-defense in the home, that right is not unlimited and is subject to reasonable restrictions to protect public safety. In the majority opinion, Justice Antonin Scalia explained that the Second Amendment is “not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” Justice Scalia also specifically identified certain laws restricting the locations at which guns may be carried as among those that were not in question following the *Heller* decision, explaining “nothing in our opinion should be taken to cast doubt on ... laws forbidding the carrying of firearms in sensitive places such as schools and government buildings.” Following the *Heller* and subsequent related decisions, federal courts have routinely upheld various laws restricting access to firearms as [constitutionally permissible](#).

Background

Why must plans to safeguard elections prepare for the possibility that violence or the threat of violence will be used to intimidate voters and election officials?

Numerous recent examples and circumstances have made the possibility of intimidation and potentially violent confrontation at the polls and during post-election activities a foreseeable concern this year. In addition to the intensely polarized climate around the election, there are a variety of both well-organized and loosely connected groups of anti-government extremists, militia groups, and white supremacists participating in demonstrations, who do so for a variety of ideological or political reasons. Despite the lack of a single unifying ideology, a common theme across many anti-government extremist and violent white supremacist groups is a focus on firearms as both a tool and subject of their messaging.

Extremist groups that espouse or are sympathetic to white supremacist views, anti-government sentiments, or conspiracy theories are increasingly active. For example, in April, a group of well-armed demonstrators occupied the [Michigan Legislature](#) and attempted to barge into the chamber in opposition to the governor’s stay-at-home order. Violent confrontations have also taken place at Confederate monuments. And recently, a group of 10 to 15 people walked through a Fort Lauderdale Target store [without masks](#) screaming “no more masks” at shoppers.

Voting has just begun, and there have already been instances of organized voter intimidation. Several weeks ago, a large group of supporters of President Donald Trump [disrupted](#) voters entering an early voting location in Virginia, forcing local election officials to provide escorts and open another portion of the facility so that voters could avoid the unruly crowd. Some voters and poll workers alike reported feeling intimidated.

Why does it fall to state and local leaders to take action?

Despite the fact that the U.S. Department of Homeland Security has now found that white supremacist groups pose the [greatest risk](#) of domestic terrorism, the federal government has not taken sufficient steps to crack down on these groups or protect voting processes from their interference. To the contrary, President Trump has deliberately stoked fear and division among the public in the run-up to Election Day, saying that the election will be “[rigged](#).” Instead of tamping down the possibility of violent confrontations, his then-[senior adviser](#) stated publicly that chaos and violence are beneficial to Trump’s reelection chances. And Trump has [refused](#) to denounce violence by militias or white supremacist extremists, even defending the individual accused of murdering two peaceful protestors in Kenosha, Wisconsin.

The president has also repeatedly [called for](#) federal law enforcement to be deployed to polling locations under the guise of preventing voter fraud, raising the specter that federal agents could intimidate voters. This is particularly troubling in light of a judicial consent decree that was just [lifted](#) after nearly 40 years that limited Republican National Committee (RNC) poll monitoring activities. That decree was put in place in 1982 after accusations that the RNC posted armed off-duty officers at polling places in communities of color as part of an effort to intimidate African American voters. Now that the decree has been lifted, the RNC is recruiting 50,000 “poll watchers” in key states to challenge people’s right to vote when they show up to cast ballots on Election Day. This raises the strong possibility that as before, these “poll watchers,” some of whom may be armed, will use scare tactics, intimidate eligible voters, and chill turnout.

Conclusion

It is critical for widespread acceptance of the results of the election—and hence our very democracy—that every voter is able to go to a polling place and cast their vote without fear and that every election worker is able to carry out their job without intimidation. States and localities must be prepared to take steps to immediately respond to violence and confrontations that may lead to altercations as Americans exercise their right to vote. Elected leaders and public safety officials should consider these concrete ways forward and incorporate them into pre-election planning promptly.