



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

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**VIA EMAIL**

Dear Colleague:

The New York State Office of the Attorney General (“NYAG”) is committed to protecting the rights of all eligible voters to participate fully and meaningfully in the electoral process. All voters have the right to vote freely and without fear of intimidation, coercion, or threats to their safety.

Voter intimidation is prohibited by federal and state law. All eligible voters have the right to equal access to the ballot box, and there are various protections under the law to ensure that New Yorkers are able to easily access polling places. This advisory outlines the legal prohibitions on intimidation and coercive conduct at poll sites. It also discusses the role of poll watchers, and the laws governing their conduct at polling places.

Voting in New York is safe, and we expect voting in this election to proceed smoothly. If, however, New Yorkers experience any intimidation or other interference with their right to vote, or even any attempts to intimidate or otherwise interfere with that right, those incidents should be reported to the NYAG’s Election Protection Hotline by either calling (866) 390-2992 or visiting <https://electionhotline.ag.ny.gov/>. Voters and boards of elections should also report incidents involving potentially dangerous conduct to local law enforcement immediately, in addition to reporting those complaints to our office. The NYAG will continue to work collaboratively with its partners at boards of elections (“BOEs”) and with law enforcement to swiftly address any incidents of voter intimidation or harassment. Any questions regarding this guidance should be directed to the NYAG Election Protection Hotline.

LETITIA JAMES  
New York Attorney General

## NEW YORK STATE ELECTION ADVISORY

### Does the law protect voters from intimidation at the polls?

Yes. Under federal law, it is illegal for anyone to intimidate, threaten, or coerce voters with the purpose of interfering with their right to vote.<sup>1</sup> Voter intimidation is also a crime and civil offense under New York election law.<sup>2</sup>

### What types of conduct would likely constitute unlawful voter intimidation?

Voter intimidation can take many forms, including (but not limited to):

- individuals or groups patrolling outside of polling places and trying to scare people out of the voting line;
- civilians dressing as law enforcement officers and harassing voters at poll sites;<sup>3</sup>
- poll watchers inside a polling place aggressively challenging substantial numbers of voters, or targeting voters of a specific demographic for challenges, leading to long lines and creating false fears that voters may be illegally voting;
- poll watchers standing in the vicinity of privacy booths; standing in unauthorized areas; videotaping and/or photographing voters within the polling place; following or harassing voters in the polling place;
- individuals spreading false rumors or making false statements that there are negative consequences to voting;<sup>4</sup> or

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<sup>1</sup> 18 U.S.C. § 594; *see also* 52 U.S.C. § 10101(b); 52 U.S.C. § 10307(b); 42 U.S.C. § 1985(3).

<sup>2</sup> *See* N.Y. Elec. Law § 17-150; *id.* § 17-212.

<sup>3</sup> *Democratic Nat'l Comm. v. Republican Nat'l Comm.* (D.N.J. 1982) (Civ. No. 81-3786) (consent decree reached after DNC filed voter intimidation complaint alleging, among other things, that RNC posted signs outside polling places stating that the polls were being monitored by the “National Ballot Security Task Force” and that volunteers dressed as law enforcement officers harassed voters outside the polls).

<sup>4</sup> *National Coalition of Black Civic Participation v. Wohl*, 498 F. Supp. 3d 457 (S.D.N.Y. 2020) (temporary restraining order issued against defendants who issued a robocall to voters that included statements about the consequences of voting that were “manifestly false” and “meant to intimidate citizens from exercising voting rights.”).

- individuals or groups displaying weapons<sup>5</sup> or foreign military uniforms or other military paraphernalia<sup>6</sup> outside of polling locations.

Behavior that has been found to constitute voter intimidation under federal law in the past includes:

- threats of violence;<sup>7</sup>
- following voters to poll sites and speaking loudly about prosecuting them for illegal voting;<sup>8</sup>
- economic coercion, such as threatening to boycott in response to an individual exercising their right to vote;<sup>9</sup>
- threatening to evict someone for exercising their right to vote;<sup>10</sup>
- patterns of baseless arrests and prosecutions in the vicinity of voter registration meetings;<sup>11</sup> and

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<sup>5</sup> New York is not an open carry state. N.Y. Penal Law § 400 *et seq.* New York law also makes it illegal for groups of people to organize as private militias without permission from the state. A “paramilitary organization” is “an organization of two or more persons who engage or conspire to engage in military instruction or training in warfare or sabotage for the purpose of unlawfully causing physical injury to any person or unlawfully damaging the property of any person.” N.Y. Mil. Law § 240(6)(b)(i). It is a misdemeanor for any “body of men other than the organized militia and the armed forces of the United States . . . [to] associate themselves together as a military company or other unit or parade in public with firearms in any city or town of this state.” N.Y. Mil. Law § 240(1). Cities and towns are prohibited from providing funding for “arming[,] equipping, uniforming, or in any other way supporting, sustaining or providing drill rooms or armories for any such body.” N.Y. Mil. Law § 240(2). It is a felony to “assemble[] or conspire[] to assemble with one or more persons as a paramilitary organization,” with “knowledge of its purpose,” and to “practice with a military weapon to further the purpose of” that organization. N.Y. Mil. Law § 240(6)(a).

<sup>6</sup> New York makes it a misdemeanor to “appear in any public place or in the public view attired in any uniform similar to that worn by the military, semi-military, naval, police, storm troop or other official or semi-official forces of any foreign state, nation or government,” or “in any distinctive part” of such uniform, “or to assemble with other persons similarly attired in any camp, drill ground or other place for the purpose of engaging in military drill or training or other military practices.” N.Y. Mil. Law § 238-c.

<sup>7</sup> *United States ex rel. Katzenbach v. Original Knights of KKK*, 250 F. Supp. 330, 342, 345-49 (E.D. La. 1945) (injunction granted against defendants alleged to have directed violence, threats, harassment, and economic coercion against Black citizens in an effort to deter them from registering to vote).

<sup>8</sup> Temporary Restraining Order, *Daschle v. Thune*, No. 4:04-cv-04177-LLP (D.S.D. Nov. 1, 2004) (restraining poll watchers for a Republican candidate who allegedly followed Native American voters in polling places and spoke loudly about them being prosecuted for illegal voting).

<sup>9</sup> *United States v. Deal*, 6 Race Rel. L. Rep. 474 (W.D. La. 1961) (restraining order granted against business owners allegedly refusing to gin cotton, sell goods or services, or engage in ordinary business transactions with Black farmers who attempted to register to vote.)

<sup>10</sup> *United States v. Beaty*, 288 F.2d 653 (6th Cir. 1961) (concluded that landowners who allegedly threatened Black tenants with eviction or refusal to deal in good faith if said tenants voted or registered to vote had engaged in voter intimidation).

<sup>11</sup> *United States v. McLeod*, 385 F.2d 734 (5th Cir. 1967) (concluded that an alleged pattern of baseless arrests and prosecutions in the vicinity of voter registration meetings organized by the Dallas County Voters League in order to encourage Black voter registration and turnout constituted voter intimidation).

- publicly disseminating individuals’ names and addresses, or “doxing,” in an effort to vilify those individuals.<sup>12</sup>

Please report any of the foregoing conduct to the NYAG.

### **Does the First Amendment protect intimidating speech?**

Not always. “True threats [...] where the speaker means to communicate a serious expression of intent to commit an act of unlawful violence” against another person or group are not protected by the First Amendment.<sup>13</sup> Even some speech that is not intimidating may be subject to restriction, such as electioneering, which includes the encouragement of a voter to vote for or against a candidate, within 100 feet of the polling place.<sup>14</sup>

### **Does the law prohibit government officials or the military from intimidating voters at the polls?**

Yes. It is illegal for state and local employees to interfere with or affect a presidential or congressional election that is financed in whole or in part by the federal government.<sup>15</sup> This applies to the 2022 General Election. It is also illegal for a member of the United States armed forces to prevent, or attempt to prevent, a voter from fully exercising their voting rights through force, threat, intimidation, or advice.<sup>16</sup> Furthermore, it is illegal for troops, military, or armed federal law enforcement officers to be present at a poll site unless “such force [is] necessary to repel armed enemies of the United States.”<sup>17</sup> Finally, Section 11(b) of the Voting Rights Act prohibits any person, including government officers, from engaging in voter intimidation.<sup>18</sup> Should any of the foregoing conduct arise, please contact the NYAG.

### **Are militias permitted at the polls?**

No. It is illegal for groups of people to organize as private militias without permission from the State.<sup>19</sup> It is a felony to assemble or aspire to assemble as a paramilitary organization, with knowledge of its purpose, and to practice with a military weapon to further the purpose of that

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<sup>12</sup> *LULAC-Richmond Region Council 4614*, Civ. No. 1:18-cv-00423, 2018 WL 3848404 (E.D.Va. Aug 13, 2018) (denying motion to dismiss complaint alleging that the Public Interest Legal Foundation’s publication linking Latino voters’ names and personal information to a report condemning felonious voter registration constituted voter intimidation).

<sup>13</sup> See *Virginia v. Black*, 538 U.S. 343, 360 (2003).

<sup>14</sup> See *Burson v. Freeman*, 504 U.S. 191 (1992) (upholding a state law that banned campaigning within 100 feet of the entrance to a polling place); N.Y. Elec. Law § 8-104(1) (“While the polls are open no person shall do any electioneering within the polling place, or in any public street, within a one hundred foot radial measured from the entrances designated by the inspectors of election, to such polling place or within such distance in any place in a public manner; and no political banner, button, poster or placard shall be allowed in or upon the polling place or within such one hundred foot radial.”).

<sup>15</sup> 18 U.S.C. § 595.

<sup>16</sup> 18 U.S.C. § 593.

<sup>17</sup> 18 U.S.C. § 592.

<sup>18</sup> 52 U.S.C. § 10307(b)

<sup>19</sup> See N.Y. Mil. Law § 240(1).

organization.<sup>20</sup> Anyone who sees or hears about this kind of activity should contact local law enforcement immediately as well as the NYAG:

### **Does New York law prohibit firearms at polling places?**

New York does not permit handguns to be carried openly,<sup>21</sup> and also prohibits the possession of machine guns and loaded or unloaded assault weapons.<sup>22</sup> New York law also forbids the use of firearms or other dangerous instruments to intimidate or harass.<sup>23</sup> When brandished in a threatening manner, the following objects have been classified as “dangerous instruments”: a baseball bat,<sup>24</sup> a tire iron,<sup>25</sup> a knife,<sup>26</sup> and a hammer,<sup>27</sup> among others.

BOEs should report any incident involving an openly carried firearm at polling places or outside of polling places to local law enforcement and to the NYAG, immediately. Voters, BOEs, and local law enforcement should also report to the NYAG any incident involving a firearm that is brandished, or openly carried, at or outside of a polling place.

### **Are poll watchers allowed to monitor the polls?**

Yes, though poll watchers may not intimidate voters or engage in other unauthorized conduct. Poll watchers are permitted at elections and are designated by candidates, political parties, or independent organizations which have candidates on the ballot and/or political committees to observe elections. The Election Law permits a “party committee,” “independent body” whose “candidates are upon the ballot,” or a “political committee supporting or opposing a ballot proposal,” to designate poll watchers for a general election.<sup>28</sup> Poll watchers observe irregularities and report these observations to the Elections Inspector or the BOE. Poll watchers must each have a certificate in writing issued by the chairperson or secretary of the political party or

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<sup>20</sup> See N.Y. Mil. Law § 240(6)(a).

<sup>21</sup> N.Y. Penal Law § 400.00 *et seq.* does not include a permitting provision for the open carry of handguns.

<sup>22</sup> N.Y. Penal Law § 265.02(2) (makes it a felony to possess a machine gun); N.Y. Penal Law § 265.02(7) (makes it a felony to possess an assault weapon, loaded or unloaded).

<sup>23</sup> N.Y. Penal Law § 120.14 makes it a misdemeanor to intentionally place or attempt to place another person in reasonable fear of physical injury, serious injury or death by displaying a deadly weapon, dangerous instrument or what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm.

<sup>24</sup> *People v. Cruci*, No. 2006–242 OR CR (N.Y. App. Div. Dec. 13, 2006) (upheld conviction of menacing in the second degree after defendant swung an aluminum bat in an aggressive manner towards the victim after a traffic accident).

<sup>25</sup> *People v. Bryant*, 787 N.Y.S.2d 540 (App. Div. 2004) (concluded that a jury could infer that the defendant intended to place the victim in reasonable fear of physical injury by displaying a tire iron).

<sup>26</sup> *In re Jonathan M.*, 772 N.Y.S.2d 42 (App. Div. 2004) (affirmed defendant’s conviction of menacing in the second degree after defendant swung a knife at the victim’s ribs).

<sup>27</sup> *People v. Muhammad*, 2011-2928 N CR, 2013 WL 1633140 (N.Y. App. Div. Apr. 12, 2013) (conviction for menacing in the second degree upheld after defendant removed a “standard-sized” hammer, tightly wrapped in a bag, from her purse, raised it up in view of the complainant, and, according to the complainant’s testimony, stated that she was going to “bust” the complainant in the head).

<sup>28</sup> N.Y. Elec. Law § 8-500(1); *Cotz v. Mastroeni*, 476 F. Supp. 2d 332, 364 (S.D.N.Y. 2007) (“Clearly, by its very terms, the statute vests the right to have watchers present at the polls in a political party or organization, *not* an individual poll watcher.”).

independent body, or the candidates, appointing them.<sup>29</sup> These certificates must be delivered to an inspector at the election district.<sup>30</sup> Persons who are not legally authorized to engage in poll watching are prohibited from doing so.

At both general and primary elections, party or political committees (among others) may place three poll watchers at each election district at any given time, not more than one of whom may be within the guard rail.<sup>31</sup> The “guard rail” refers to the portion of the poll site containing the table used by election inspectors and BOE equipment, including the privacy booths, ballot marking device (“BMD”), and scanners, used to conduct such elections and any areas used by voters within the poll site to move between such locations.

If a poll watcher is found to be standing in a way that impedes the flow of voters to voting booths, the Election Commissioner may require that the poll watcher remain seated or risk being removed.<sup>32</sup>

Under no circumstances are poll watchers allowed to intimidate voters or electioneer. Pursuant to these prohibitions, poll watchers may not:<sup>33</sup>

- Solicit votes;
- Distribute, wear, or carry political literature, posters, banners, or buttons;
- Display refreshments showing a candidate’s party or name;
- Tamper with election materials, including BOE posted signs or results tape;
- Protest a vote ruling; or
- Accompany a voter to the privacy booth, scanner, or to any BMD.

Other behavior by poll watchers that could, based on the context, constitute voter intimidation includes:

- Pretextually challenging large swaths of voters, leading to long lines and creating false fears that voters may be illegally voting;
- Standing in the vicinity of privacy booths;<sup>34</sup> and

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<sup>29</sup> See, e.g., Poll Watcher’s Certificate, Poll Watcher’s Guide, <https://elections.dutchessny.gov/wp-content/uploads/2020/02/Poll-Watcher-Certificate.pdf>.

<sup>30</sup> See N.Y. Elec. Law § 8-500(3).

<sup>31</sup> N.Y. Elec. Law 8-500, *et seq.* N.Y. Elec. Law § 17-130(6) separately prohibits unlawfully going within the guard rail of any polling place or remaining within the guard rail after being commanded to leave such an area by an inspector of election.

<sup>32</sup> *Cotz v. Mastroeni*, 476 F. Supp. 2d 332, 364 (S.D.N.Y. 2007) (holding that a poll watcher’s First Amendment rights were not violated by the Election Commissioner’s command that she sit while poll watching after she was alleged to have been disruptive and standing between Election Inspectors’ tables in a way that impeded the flow of voters to the voting booths).

<sup>33</sup> See, e.g., Poll Watcher’s Certificate, Poll Watcher’s Guide, <https://elections.dutchessny.gov/wp-content/uploads/2020/02/Poll-Watcher-Certificate.pdf>.

<sup>34</sup> See, e.g., N.Y. Elec. Law § 8-202(2) (election inspectors at particular poll sites must not allow any person to be “in any position or near any position, that will permit one to see or ascertain how a voter votes, or how he or she has voted”); N.Y. Elec. Law § 8-602(ii) (the state board of elections shall promulgate rules or regulations to “ensure an efficient and fair early voting process that respects the privacy of the voter”); N.Y.C.R.R. 6211.5 (“[t]o ensure an efficient and fair early voting process that respects the privacy of the voter, the manner of voting on days of the early

- Standing in unauthorized areas.

Such conduct should be immediately reported to the NYAG, and to the extent it involves any potentially dangerous conduct, local law enforcement.

### **Is photography permitted in the polling place?**

Sometimes. Media and press are allowed to film or take pictures of individuals in the polling place if they have written authorization from the BOE and each individual's permission. A BOE may choose to enact a policy prohibiting photography in the polling place, or even within 100 feet of it, without violating the First Amendment.<sup>35</sup> In any circumstance, voters are not permitted to show their completed ballot to anyone else, and it is a misdemeanor for anyone to request a voter do so.<sup>36</sup> Such acts should also be reported to the NYAG.

### **Are voters required to present photo identification in order to cast an in-person ballot?**

An individual is *never required to show photo ID* anywhere in the State of New York in order to vote. Some form of identification may be required to vote, depending on when an individual registered, and whether this is their first time voting.<sup>37</sup> Under such circumstances, an individual may produce a photo ID *or* one of the following items: a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.<sup>38</sup> It is entirely the voter's choice as to which form to provide. If the individual does not have any of the aforementioned pieces of identification, they may cast an affidavit ballot, unless a court says otherwise.<sup>39</sup> Improper requests for voter identification should be shared with the NYAG.

### **Are there protections for voter privacy at polling places?**

Yes. New York's election law and its regulations ensure the privacy of voters at early voting and Election Day poll sites. Election inspectors at poll sites must not allow any person to be "in any position or near any position that will permit one to see or ascertain how a voter votes, or how he

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voting period shall be the same as the manner of voting on the day of election"); N.Y. Elec. Law § 17-130(7) (it is a misdemeanor to invade the privacy of the voting booth used by a voter); N.Y. Elec. Law § 17-130(10) (it is a misdemeanor to show a completed ballot, to any person so as to reveal the contents, or soliciting a voter to show the same).

<sup>35</sup> *Silberberg v. Bd. of Elections of New York*, 272 F. Supp. 3d 454 (S.D.N.Y. 2017) (upheld the constitutionality of N.Y. Elec. Law § 17-130 and of New York City's policy banning photography within the polling place); *New Jersey Press Ass'n v. Guadagno*, No. CIV.A. 12-06353 JAP, 2012 WL 5498019 (D.N.J. Nov. 13, 2012) (concluded that an Election Law prohibiting photographing or interviewing voters within 100 feet of the polling place was a reasonable restriction under the First Amendment).

<sup>36</sup> N.Y. Elec. Law § 17-130(10) (makes it a misdemeanor for a person to show another the contents of their prepared ballot, or for a person to solicit a voter to do so); *Silberberg v. Bd. of Elections of New York*, 272 F. Supp. 3d 454 (S.D.N.Y. 2017) (upheld the constitutionality of N.Y. Elec. Law §17-130 and of New York City's policy banning photography within the polling place); *New Jersey Press Ass'n v. Guadagno*, No. CIV.A. 12-06353 JAP, 2012 WL 5498019 (D.N.J. Nov. 13, 2012) (concluded that an election law prohibiting photographing or interviewing voters within 100 feet of the polling place was a reasonable restriction under the First Amendment).

<sup>37</sup> See N.Y. Elec. Law § 8-303(1) (Individuals who registered to vote by mail on or after January 1, 2003, and have not yet voted in a federal election in their jurisdiction, may be asked for identification at the polls.).

<sup>38</sup> See N.Y. Elec. Law § 8-303(2)(a).

<sup>39</sup> See N.Y. Elec. Law §§ 8-302, 8-303(2)(b).

or she has voted not shall they permit any other person to be less than three feet from the ballot scanner, ballot marking device, or privacy booth while occupied.”<sup>40</sup>

It is also a crime to invade the privacy of the voting booth used by a voter.<sup>41</sup>

Infringing on voter privacy, whether carried out by a poll watcher, poll worker, election inspector or others, may constitute voter intimidation and any such incidents should be reported to the NYAG immediately.

**Does New York permit electioneering or campaigning inside or near polling places?**

No. While the polls are open, electioneering—campaigning or otherwise advocating on behalf of a political party or candidate—is prohibited both within the polling place and within a one-hundred-foot radial measured from the entrances of the polling place.<sup>42</sup> No political banner, button, poster or placard is allowed in the polling place or within the one-hundred-foot radius. No one may urge a voter to vote for any party or candidate or against any party or candidate in these designated areas.

**Where should complaints of voter intimidation or interference be directed?**

If you observe any prohibited conduct, please immediately contact the Election Protection Hotline of the New York Attorney General’s Office, by calling (866) 390-2992 or visiting <https://electionhotline.ag.ny.gov/>. Any incidents involving potentially dangerous conduct should be reported to local law enforcement immediately.

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<sup>40</sup> N.Y. Elec. Law § 8-202(2).

<sup>41</sup> N.Y. Elec. Law § 17-130(7).

<sup>42</sup> N.Y. Elec. Law § 8-104(1).



## APPENDIX A: APPLICABLE LAW

### 1. Federal Law

#### The Ku Klux Klan Act of 1871 – 42 U.S.C. § 1985(3)

“...If 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 as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.”

#### The Ku Klux Klan Act of 1871 – 42 U.S.C. § 1986

“Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented...”

#### Voting Rights Act, Section 131(b) – 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 the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.”

#### Voting Rights Act, Section 11(b) – 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 any powers or duties under section 10302(a), 10305, 10306, or 10308(e) of this title or section 1973d or 1973g of title 42.”

#### 18 U.S.C.A. § 592

“Whoever, being an officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held, unless such force be necessary to repel armed enemies of the United States, shall be fined

under this title or imprisoned not more than five years, or both; and be disqualified from holding any office of honor, profit, or trust under the United States.”

18 U.S.C. § 593

“Whoever, being an officer or member of the Armed Forces of the United States, prescribes or fixes or attempts to prescribe or fix, whether by proclamation, order or otherwise, the qualifications of voters at any election in any State; or [...] prevents or attempts to prevent by force, threat, intimidation, advice or otherwise any qualified voter of any State from fully exercising the right of suffrage at any general or special election; or [...] orders or compels or attempts to compel any election officer in any State to receive a vote from a person not legally qualified to vote; or [...] imposes or attempts to impose any regulations for conducting any general or special election in a State, different from those prescribed by law; or [...] interferes in any manner with an election officer’s discharge of his duties— Shall be fined under this title or imprisoned not more than five years, or both; and disqualified from holding any office of honor, profit or trust under the United States.”

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 the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined under this title or imprisoned not more than one year, or both.”

18 U.S.C. § 595

“Whoever, being a person employed in any administrative position by the United States, or by any department or agency thereof, or by the District of Columbia or any agency or instrumentality thereof, or by any State, Territory, or Possession of the United States, or any political subdivision, municipality, or agency thereof, or agency of such political subdivision or municipality [...], in connection with any activity which is financed in whole or in part by loans or grants made by the United States, or any department or agency thereof, uses his official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, shall be fined under this title or imprisoned not more than one year, or both.”

**2. New York State Law**

N.Y. Elec. Law § 8-202(2)

Election inspectors at particular poll sites must not allow any person to be “in any position or near any position, that will permit one to see or ascertain how a voter votes, or how he or she has voted.”

N.Y. Elec. Law § 8-303(1)

“Each board of elections, in a uniform and nondiscriminatory manner, shall require a voter to meet the requirements of subdivision two of this section [generally requiring voter identification] if:

- (a) the individual registered to vote in a jurisdiction by mail on or after January first, two thousand three; and
- (b) the individual has not previously voted in an election for federal office in the jurisdiction of the board of elections.”

N.Y. Elec. Law § 8-104(1)

“While the polls are open no person shall do any electioneering within the polling place, or in any public street, within a one hundred foot radial measured from the entrances designated by the inspectors of election, to such polling place or within such distance in any place in a public manner; and no political banner, button, poster or placard shall be allowed in or upon the polling place or within such one hundred foot radial.”

N.Y. Elec. Law § 8-500

“1. At any general, special, town or village election, any party committee, any independent body whose candidates are upon the ballot, and any political committee supporting or opposing a ballot proposal may have for each election district three watchers at any one time, not more than one of whom may be within the guard rail at any one time. Watchers shall be appointed by the chair or other officer of any such party committee, independent body or political committee.

2. At any primary election, any party committee and any candidate on the ballot may have for each election district three watchers at any one time, not more than one of whom may be within the guard rail at any one time. Watchers shall be appointed by the chair or other officer of any such party committee or by any candidate.

3. Watchers may be present at the polling place at least fifteen minutes before the unlocking and examination of any voting machine or ballot box at the opening of the polls, until after the signing of the inspectors' returns and proclamation of the result.

4. The appointment of watchers for any election shall be by a certificate in writing issued by the appointing authority. Such certificate shall be delivered to an inspector at the election district.

5. Each watcher must be a qualified voter of the city or county in which he or she is to serve. No person shall be appointed or act as a watcher who is a candidate for any public office to be voted for by the voters of the election district in the same election in which the watcher is to serve. Nothing in this subdivision shall be construed as prohibiting any such candidate from visiting a polling place in such district on an election day while the polls are open.”

N.Y. Elec. Law § 8-502

“Before his vote is cast at an election any person may be challenged as to his right to vote, or his right to vote by absentee, military, special federal or special presidential ballot. Such

challenge may be made by an inspector or clerk, by any duly appointed watcher, or by any registered voter properly in the polling place. An inspector shall challenge every person offering to vote, whom he shall know or suspect is not entitled to vote in the district, and every person whose name appears on the list of persons to be challenged on election day which is furnished by the board of elections.”

N.Y. Elec. Law § 17-130(7)

It is a misdemeanor to “[e]nter[] a voting booth with any voter or remain[] in a voting booth while it is occupied by any voter, or open[] the door of a voting booth when the same is occupied by a voter, with the intent to watch such a voter while engaged in the preparation of his ballot, except as authorized by this chapter ... .”

N.Y. Elec. Law § 17-130(10)

It is a misdemeanor to “[s]how[] [a] ballot after it is prepared for voting, to any person so as to reveal the contents, or solicits a voter to show the same ... .”

N.Y. Elec. Law § 17-150

“Any person or corporation who directly or indirectly:

1. Uses or threatens to use any force, violence or restraint, or inflicts or threatens to inflict any injury, damage, harm or loss, or in any other manner practices intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting for or against any particular person or for or against any proposition submitted to voters at such election, or to place or cause to be placed or refrain from placing or causing to be placed his name upon a registry of voters, or on account of such person having voted or refrained from voting at such election, or having voted or refrained from voting for or against any particular person or persons, or for or against any proposition submitted to voters at such election, or having registered or refrained from registering as a voter; or,

2. By abduction, duress or any forcible or fraudulent device or contrivance whatever impedes, prevents or otherwise interferes with the free exercise of the elective franchise by any voter, or compels, induces or prevails upon any voter to give or refrain from giving his vote for or against any particular person at any election [...] is guilty of a misdemeanor ... .”

N.Y. Elec. Law § 17-152

“Any two or more persons who conspire to promote or prevent the election of any person to a public office by unlawful means and which conspiracy is acted upon by one or more of the parties thereto, shall be guilty of a misdemeanor.”

N.Y. Elec. Law § 17-154

“It shall be unlawful for any person to: 1. Intimidate, threaten or coerce, or to 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 for the purpose of causing such other person to vote for, or not to vote for, any candidate for the office of governor, lieutenant-governor, attorney-general, comptroller, judge of any court, member of the senate, or member of the assembly at any election held solely or in part for the purpose of

selecting a governor, lieutenant-governor, attorney-general, comptroller, any judge or any member of the senate or any member of the assembly ... .”

N.Y. Elec. Law § 17-212

1. (a) No person, whether acting under color of law or otherwise, may engage in acts of intimidation, deception, or obstruction that affects the right of voters to access the elective franchise.

(b) A violation of paragraph (a) this subdivision shall be established if:

(i) a person uses or threatens to use any force, violence, restraint, abduction or duress, or inflicts or threatens to inflict any injury, damage, harm or loss, or in any other manner practices intimidation that causes or will reasonably have the effect of causing any person to vote or refrain from voting in general or for or against any particular person or for or against any proposition submitted to voters at such election; to place or refrain from placing their name upon a registry of voters; or to request or refrain from requesting an absentee ballot; or

(ii) a person knowingly uses any deceptive or fraudulent device, contrivance or communication, that impedes, prevents or otherwise interferes with the free exercise of the elective franchise by any person, or that causes or will reasonably have the effect of causing any person to vote or refrain from voting in general or for or against any particular person or for or against any proposition submitted to voters at such election; to place or refrain from placing their name upon a registry of voters; or to request or refrain from requesting an absentee ballot; or

(iii) a person obstructs, impedes, or otherwise interferes with access to any polling place or elections office, or obstructs, impedes, or otherwise interferes with any voter in any manner that causes or will reasonably have the effect of causing any delay in voting or the voting process, including the canvassing and tabulation of ballots.

N.Y. Mil. Law § 240(1)

“No body of men other than the organized militia and the armed forces of the United States except such independent military organizations as were on the twenty-third day of April, eighteen eighty-three and now are in existence and such other organizations as may be formed under the provisions of this chapter, shall associate themselves together as a military company or other unit or parade in public with firearms in any city or town of this state.”

N.Y. Mil. Law § 240(6)(a)

“Any person who assembles or conspires to assemble with one or more persons as a paramilitary organization and has knowledge of its purpose is guilty of a class C felony when he, with one or more other members of such organization, practices with a military weapon in order to further the purpose of such organization.”

N.Y. Pen. Law § 265.01-A

“A person is guilty of criminal possession of a weapon on school grounds when he or she knowingly has in his or her possession a rifle, shotgun, or firearm in or upon a building or grounds, used for educational purposes, of any school, college, or university. . . .”

### **3. Federal Court Cases**

#### ***United States Supreme Court Cases***

*Virginia v. Black*, 538 U.S. 343 (2003) (holding that “[t]rue threats [...] where the speaker means to communicate a serious expression of intent to commit an act of unlawful violence” against another person or group are not protected by the First Amendment).

*Burson v. Freeman*, 504 U.S. 191 (1992) (upholding a state law that banned campaigning within 100 feet of the entrance to a polling place).

#### ***Federal Courts of Appeal Cases***

*United States v. McLeod*, 385 F.2d 734 (5th Cir. 1967) (concluded that an alleged pattern of baseless arrests and prosecutions in the vicinity of voter registration meetings organized by the Dallas County Voters League in order to encourage Black voter registration and turnout constituted voter intimidation).

*Paynes v. Lee*, 377 F.2d 61 (5th Cir. 1967) (in the case of a group of white men who allegedly assailed a Black man in the nighttime and threatened to destroy/annihilate him, his possessions and his family if he attempted to become a registered voter, the court concluded that despite him not yet being a registered voter, this was within the reach of §1985(3)).

*United States v. Bruce*, 353 F.2d 474 (5th Cir. 1965) (where the government alleged that a Black insurance collector who had actively encouraged voter registration was ordered by white landowners to stay off their property (where many of his policyholders resided), court concluded the landowners could not legally exclude him as a threat or means of coercion for the purpose of interfering with his right or the others whom he represented in exercising their right to register and vote).

*United States v. Beaty*, 288 F.2d 653 (6th Cir. 1961) (concluded that landowners who allegedly threatened Black tenants with eviction or refusal to deal in good faith if said tenants voted or registered to vote had engaged in voter intimidation).

*United States v. Wood*, 295 F.2d 772 (5th Cir. 1961) (government stated a valid claim of intimidation of black residents in Walthall County, Mississippi after a courthouse official beat a Black ‘Student Non-Violent Coordinating Committee’ volunteer in front of Black residents trying to register to vote and conducted a baseless arrest and prosecution of that volunteer).

#### ***Federal District Court Cases***

*LULAC-Richmond Region Council 4614*, Civ. No. 1:18-cv-00423, 2018 WL 3848404 (E.D.Va. Aug 13, 2018) (denying motion to dismiss complaint alleging that the Public Interest Legal Foundation’s publication linking Latino voters’ names and personal information to a report condemning felonious voter registration constituted voter intimidation).

*Silberberg v. Bd. of Elections of New York*, 272 F. Supp. 3d 454 (S.D.N.Y. 2017) (upheld the constitutionality of N.Y. Elec. Law §17-130 and of New York City’s policy banning photography within the polling place).

*New Jersey Press Ass’n v. Guadagno*, No. CIV.A. 12-06353 JAP, 2012 WL 5498019 (D.N.J. Nov. 13, 2012) (concluded that an Election Law prohibiting photographing or interviewing voters within 100 feet of the polling place was a reasonable restriction under the First Amendment).

*Cotz v. Mastroeni*, 476 F. Supp. 2d 332 (S.D.N.Y. 2007) (held that a poll watcher's First Amendment rights were not violated by the Election Commissioner's command that she sit while poll watching after she was alleged to have been disruptive and standing between Election Inspectors' tables in a way that impeded the flow of voters to the voting booths).

Temporary Restraining Order, *Daschle v. Thune*, No. 4:04-cv-04177-LLP (D.S.D. Nov. 1, 2004) (restraining poll watchers for a Republican candidate who allegedly followed Native American voters in polling places and spoke loudly about them being prosecuted for illegal voting).

*Democratic Nat'l Comm. v. Republican Nat'l Comm.* Civ. No. 81-3786 (D.N.J. 1982) (consent decree reached after DNC filed voter intimidation complaint alleging, among other things, that RNC posted signs outside polling places stating that the polls were being monitored by the "National Ballot Security Task Force" and that volunteers dressed as law enforcement officers harassed voters outside the polls).

*United States v. Deal*, 6 Race Rel. L. Rep. 474 (W.D. La. 1961) (restraining order granted against business owners allegedly refusing to gin cotton, sell goods or services, or engage in ordinary business transactions with Black farmers who attempted to register to vote.)

*United States v. Clark*, 249 F. Supp. 720 (S.D. Ala. 1965) (granting injunction against local officials who allegedly conducted "baseless arrests" and "unjustified prosecutions" against Black citizens attempting to vote and volunteers).

*United States ex rel. Katzenbach v. Original Knights of KKK*, 250 F. Supp. 330, 342, 345-49 (E.D. La. 1945) (injunction granted against defendants alleged to have directed violence, threats, harassment, and economic coercion against Black citizens in an effort to deter them from registering to vote).

#### **4. State Court Cases**

*People v. Muhammad*, 2011-2928 N CR, 2013 WL 1633140 (N.Y. App. Div. Apr. 12, 2013) (conviction for menacing in the second degree upheld after defendant removed a "standard-sized" hammer, tightly wrapped in a bag, from her purse, raised it up in view of the complainant, and, according to the complainant's testimony, stated that she was going to "bust" the complainant in the head)

*People v. Cruci*, No. 2006-242 OR CR (N.Y. App. Div. Dec. 13, 2006) (upheld conviction of menacing in the second degree after defendant swung an aluminum bat in an aggressive manner towards the victim after a traffic accident).

*People v. Bryant*, 787 N.Y.S.2d 540 (App. Div. 2004) (concluded that a jury could infer that the defendant intended to place the victim in reasonable fear of physical injury by displaying a tire iron).

*In re Jonathan M.*, 772 N.Y.S.2d 42 (App. Div. 2004) (affirmed defendant's conviction of menacing in the second degree after defendant swung a knife at the victim's ribs).