



## ATTORNEY GENERAL ADVISORY ON POLL MONITORING AND VOTER INTIMIDATION

The Office of the Attorney General issues the following advisory concerning poll monitoring and voter intimidation. State and federal laws protect the rights of the citizens of Massachusetts to vote safely in elections, free from intimidation.

### **Background**

On August 20, 2020, in a televised interview, President Trump was asked whether he would send “poll watchers” to monitor elections for possible voter fraud. He responded by saying, “We’re going to have everything. We’re going to have sheriffs and law enforcement and we’re going to have, hopefully, U.S. attorneys, and we’re going to have everybody, and attorney generals, but it’s very hard.” State and federal laws have long protected against poll monitoring by law enforcement and voter intimidation.

State law requires that local police officers be at polling places to assist local election officials and to perform other functions relating to ensuring that voters are not obstructed from voting. Mass. Gen. Laws ch. 54, § 72.<sup>1</sup> However, law enforcement officers, including police officers, are prohibited from interfering with or intimidating voters. And, in fact, police officers working at election sites are generally barred from entering the immediate voting area, unless requested to assist the chief election official at a polling place. Mass. Gen. Laws ch. 54, § 69; 950 CMR 52.03(24); 950 CMR 54.04(24). Massachusetts state law prohibits intimidation of voters and interference with the duties of elections officers by anyone, whether a police officer or a private citizen; violations of the law are punishable by fines or imprisonment. Mass. Gen. Laws ch. 56, §§ 29-31, 46-49.

The Commonwealth will vigorously enforce these laws to ensure a free and fair election for our citizens.

### **Advisory**

#### ***Can the President send the military and/or federal law enforcement to monitor the polls?***

No. An array of federal statutes bar federal employees, law enforcement, and the military from using their official power to interfere with an election. More specifically, federal law prohibits the military and armed federal law enforcement officers from being present at a poll site unless it is necessary to “repel armed enemies of the United States,” 18 U.S.C. § 592, and from interfering in the election, including by intimidating voters, 18 U.S.C. § 594, or interfering with an election officer’s discharge of his or her duties, 18 U.S.C. § 593. Violators can face fines and imprisonment.

Federal law also prohibits federal and state administrative employees from interfering with, or affecting, a presidential or congressional election that has been financed in whole or in part by the federal government. 18 U.S.C. § 595.

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<sup>1</sup> In the City of Boston, a special law requires that local police officers be at the check-out table keeping a list of voters turning in ballots. Boston City Ordinance 2-6.

***Can the President order state and local law enforcement officials to monitor the polls?***

No. The President's authority over federal law enforcement actors does not extend to their state counterparts. Despite his suggestion that he will deploy sheriffs or other state officials to monitor the polls, he has no such power. *See generally* U.S. CONST. amend. X. In addition, as with federal actors, state and local administrative employees face criminal sanctions if they interfere with a presidential or congressional election where the state is in receipt of federal monies used in connection with administering the election. *See* 18 U.S.C. § 595. As discussed, violations under this statute are punishable by fines or imprisonment.

***Are there permissible forms of election observation and monitoring?***

Yes. State law allows for election observation. Massachusetts law provides that elections must be conducted in a manner that is open to public observation. Poll observers are allowed inside the polling place, unless they are disorderly or obstruct the access of voters. 950 CMR 52.03(22); 950 CMR 54.04(22).

The Voting Rights Act permits federal observers to monitor voting conditions in certain eligible jurisdictions to ensure the right to vote is protected. The Civil Rights Division of the U.S. Department of Justice also deploys its own attorneys and staff to monitor compliance with federal voting rights laws in jurisdictions that are not currently eligible for assignment of federal observers.

Poll watchers may observe polling place operations but under no circumstances can they intimidate, threaten, coerce or otherwise interfere with your right to cast your ballot. 950 CMR 52.03(22); 950 CMR 54.04(22).

***Does the law prohibit private citizens from intimidating voters at the polls?***

Yes. A number of federal and state laws prohibit private actors from engaging in voter intimidation. *See* 18 U.S.C. § 594; 52 U.S.C. §§ 10307(b), 10101(b); Mass. Gen. Laws ch. 56, §§ 29-31, 43, 46-49. These laws serve to protect you against intimidation, threats and coercion when casting your vote for the candidate of your choice.

A non-exclusive list of conduct that may constitute impermissible voter intimidation where directed at interfering with a citizen's right to vote includes: verbal or physical confrontations, a request for documentation where none is required, following or otherwise harassing a voter, using threatening language, challenging a voter for the purpose of intimidation, or otherwise acting in an intimidating manner. Mass. Gen. Laws c. 56, §§ 29-31, 46-49.

Citizens of Massachusetts are entitled to free and fair elections. My office is here to strengthen trust in the electoral process and safeguard our election. Any abuse will be met with a strong legal response.

**Contacts:**

If someone interferes with your right to vote through threats, intimidation, or coercion, or you become aware of any interference with the right of Massachusetts citizens to vote, please contact the Civil Rights Division of the Massachusetts Attorney General's Office at 617-963-2917. If you need immediate assistance, dial 911 or contact your local police department.

Information regarding voter registration and voting procedures in Massachusetts can be found on the Secretary of the Commonwealth's Elections Division website at: [www.sec.state.ma.us/ele](http://www.sec.state.ma.us/ele).

Dated: September 17, 2020