



## ATTORNEY GENERAL ISSUE ALERT: PRIVATE ARMED “GUARDS” AT POLLING PLACES

### LEGAL OVERVIEW

- **Voter Intimidation Is Illegal.** Voter intimidation is illegal in every state and under federal law.<sup>1</sup>
- **States Can Constitutionally Restrict Weapons Around Polling Places.** Thirteen states and territories expressly ban weapons at polling places,<sup>2</sup> and those laws have faced no serious constitutional challenge. The Second Amendment allows restricting guns in “sensitive places.”<sup>3</sup>
- **Using Weapons to Intimidate Voters Is Not Constitutionally Protected.** The Supreme Court has recognized that “the display of a gun instills fear in the average citizen.”<sup>4</sup> Open carrying of a weapon is not “expressive conduct” protected by the First Amendment.<sup>5</sup>
- **It’s Illegal to Impersonate Law Enforcement.** Would-be intimidators who pretend to be official election guards risk prosecution for impersonating law enforcement.<sup>6</sup>

### MESSAGING GUIDANCE

- We’re not going to let voter intimidation happen here. Voters can go to the polls with confidence. Our election will be safe, fair, and secure.
- States can restrict electioneering near the polls. They can restrict gun carrying near the polls. And voter intimidation is illegal *everywhere*.
- We deeply respect the First and Second Amendments. But there’s no right to scare people away from voting. Voter intimidation is a crime, and we’re not going to tolerate it.
- It’s illegal to impersonate a law enforcement officer. Do not pretend to be a government official providing election security. If you do, you risk arrest and prosecution.
- I am working closely with my partners in law enforcement to protect the right to vote and make sure our polls are safe and secure.

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<sup>1</sup> See, e.g., 18 U.S.C. § 594; Michigan (M.C.L. § 168.932); Florida (FL Stat. § 104.0615).

<sup>2</sup> See National Conference of State Legislatures, *Elections and Campaigns: Polling Places* (Aug. 18, 2020) (collecting state laws); *Georgia Carry.Org, Inc. v. Georgia*, 764 F. Supp. 2d 1306 (M.D. Ga 2011) (upholding Georgia’s law banning open carry within 150 feet of a place of worship and at any polling place.).

<sup>3</sup> *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008)).

<sup>4</sup> *McLaughlin v. United States*, 476 U.S. 16, 17-18 (1986) (an unloaded gun is a “dangerous weapon” for purposes of the federal bank robbery statute).

<sup>5</sup> *Nordyke v. King*, 319 F.3d 1185, 1190 (9th Cir. 2003).

<sup>6</sup> See, e.g., Wis. Stat. § 946.69 (making it a felony to “assume[] to act in an official capacity or to perform an official function...”).