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GUIDANCE ON VOTER INTIMIDATION

This guidance seeks to inform Maryland voters about activities that are permitted versus prohibited at or near polling places, so that they know the difference and can safely exercise their right to vote. Whether certain conduct constitutes voter intimidation will depend on the specific facts in each case, but if you believe that you have witnessed or experienced voter intimidation, or that such conduct is imminent, please contact the United States Attorney's Office, District Election Officer, nearest to you. For the Baltimore Office call 410-209-4800 and for the Greenbelt Office, call 301-344-4433. For all other election-related concerns, contact the State Board of Elections by phone at 410-269-2840 or by email addressed to info.sbe@maryland.gov, or reach out to your local board or elections directly. A list of contact information for each local board of elections is available at https://www.elections.maryland.gov/about/county_boards.html. Finally, if there is violence or a threat of violence at a polling place, call 911 immediately.

1. What is voter intimidation?

Voter intimidation is a crime under both Maryland and federal law. Under Maryland law, a person may not willfully and knowingly influence or attempt to influence a voter's voting decision, or a voter's decision whether to go to the polls to cast a vote, through the use of force, threat, menace, intimidation, bribery, reward, or offer of reward. Md. Code Ann., Elec. Law ("EL") § 16-201(a)(5), (6). A person also may not engage in conduct that results or has the intent to result in the denial or abridgement of the right of any citizen to vote on account of race, color, or disability. EL § 16-201(a)(7). A person who violates this law is guilty of a misdemeanor and on conviction is subject to a fine of not more than \$5,000 or imprisonment for not more than 5 years, or both. EL § 16-201(b).

Whether certain conduct constitutes voter intimidation will depend on context, but the intent to intimidate voters is a critical factor in the analysis. Indeed, "[s]ome actions that ordinarily would be legal may be unlawful if they are intended to intimidate voters." Institute for Constitutional Advocacy and Protection, Georgetown University Law Center, Fact Sheet: Protecting Against Voter Intimidation, available at:

<https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2020/10/Voter-Intimidation-Fact-Sheet.pdf>. Examples of conduct that would likely constitute voter intimidation include, but are not limited to:

- Violent behavior inside or outside a polling place;
- Confronting voters while wearing military-style or official-looking uniforms;
- Brandishing firearms or the intimidating display of firearms;
- Disrupting voting lines or blocking the entrance to the polling place;
- Following voters to, from, or within the polling place;
- Verbal threats of violence;
- Spreading false information about voter fraud, voting requirements, or related criminal penalties;
- Aggressively approaching voters' vehicles or writing down voters' license plate numbers;
- Harassing voters, aggressively questioning them about their qualifications to vote; and
- Assembly of a private militia outside a polling place.

Id. In addition to the criminal prohibition on voter intimidation, the Attorney General of Maryland may also bring an action in circuit court for injunctive relief to prohibit a person from committing an imminent violation or continuing to commit a violation of the State's voter intimidation law. EL § 16-1004(a)(1).

Similarly, under federal law, it is a crime for a person to intimidate, threaten, coerce or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right to vote for any candidate for President, Vice President, Presidential Elector, Member of the Senate, or Member of the House of Representatives, at any election held solely or in part for the purpose of electing such candidate. 18 U.S.C. § 594. A person found guilty of such a violation shall be fined or imprisoned for not more than one year, or both. *Id.* The U.S. Department of Justice has described this law as criminalizing "conduct intended to force prospective voters to vote against their preferences, or refrain from voting, through activity reasonably calculated to instill some form of fear." Richard C. Pilger, *Federal Prosecution of Election Offenses* (8th ed. 2017) at 52, available at <https://www.justice.gov/criminal/file/1029066/download>. That fear may be related to the loss of something tangible, such as money or economic benefits, or intangible, such as liberty or safety. *Id.*

2. Are firearms permissible in polling places?

Absolutely not. It is a crime under Maryland law to wear, carry, or transport a firearm in a location being used a polling place. Md. Code Ann., Crim. Law ("CL")

§ 4-111(d)(1). A polling place includes the area within the 100-ft. “no electioneering” zone that surrounds the polling place. Wearing, carrying, or transporting a firearm into a polling place is a misdemeanor punishable by up to one year in prison and/or a \$1,000 fine.

An exception exists for law enforcement officials and police officers. CL § 4-111(b)(1). A voter may leave a licensed firearm lawfully stored in their vehicle while voting inside a polling place. CL § 4-111(b)(11).

3. Whose duty is it to maintain order at polling places?

It is the duty of election judges to maintain order at polling places. Election judges are hired by each local board of elections and charged with ensuring that:

- Each voter’s right to cast a ballot in privacy is maintained;
- The integrity of the voting process is preserved;
- The accuracy of the counting process is protected;
- Order in the polling place is maintained; and
- All election laws are observed.

EL § 10-303(a)(2). If you have any doubt about whether you are dealing with an election judge while you are voting at a polling place, they are required to wear a badge that is in plain view and that identifies them as an election judge. EL § 10-303(b). Other elections officials may also be present at a polling place (see question #4). They, too, should be able to show you a badge or some other form of official identification.

Maryland law requires election judges to keep the peace. Specifically, election judges are authorized to order the arrest of any person who breaches the peace, violates election laws, or interferes with the work of the judges in conducting the election and carrying out their assigned tasks. EL § 10-303(c). It is a crime for a person to willfully disobey the lawful command of an election official at a polling place on Election Day. EL § 16-203. It is also a crime to hinder or impede the conduct of official election activities by breach of the peace, disorder, or violence or threat of violence, EL § 16-204, or to interfere with an election official in the performance of his or her official duties, EL § 16-205. Police officers on duty at a polling place are required to obey the orders of an election judge. EL § 10-304(a)(1).

4. Will there be law enforcement visible at polling places?

A law enforcement officer who is performing an official governmental function may wear a uniform at a polling site. EL § 16-903(b)(2). In addition, a

law enforcement officer or security guard who is on duty or traveling to or from duty may vote while wearing a uniform. EL § 16-903(b)(1). However, to avoid a potentially intimidating effect on voters, impersonating an election official or law enforcement officer at a polling place is against the law. Specifically, it is prohibited for a person to attire or equip an individual, or permit an individual to be attired or equipped, in a manner which creates the appearance that the individual is performing an official or governmental function in connection with an election, including:

- Wearing a public or private law enforcement or security guard uniform;
- Using an armband; or
- Except as required by law or by regulation adopted by the State Board of Elections in connection with ballot security activities, carrying or displaying a gun or badge within 100 feet of a polling site on Election Day.

EL § 16-903(a); *see also* Md. Code Ann., Pub. Safety (“PS”) § 3-502(b) (“A person may not, with fraudulent design on person or property, falsely represent that the person is a police officer, special police officer, sheriff, deputy sheriff, or constable.”). Besides law enforcement officers and security guards that are on duty at the polling place, persons may not be armed at or near polling sites. EL § 16-903(a).

It is also generally prohibited for a body of persons to associate as a military company or organization or parade in public, regardless of how close it is to a polling site. PS § 13-214(a).

5. Who is authorized to be present in the polling place?

The following individuals (and only the following individuals) are permitted to access the voting room at a polling place:

- A voter while in line, checking in, and voting;
- An individual who accompanies a voter in need of assistance;
- Polling place staff;
- A member or other representative of the State Board of Elections or local board of elections;
- A challenger or watcher, subject to a number of legal limits (see question #5);
- An individual under the age of 18 who accompanies a voter; and
- Any other individual authorized by the State Board of Elections or local board of elections.

EL § 10-308(a).

State Board regulations expressly permit the media to be present in a polling place, and to use cameras there, as long as their activities do not cause disruption, infringe on voter privacy, inhibit election judges from performing their duties, or otherwise interfere with the orderly conduct of the election. COMAR 33.07.04.01.

6. Who can legally be a challenger or watcher and what are the limits on that role?

Maryland law authorizes candidates, political parties, or other groups supporting or opposing a candidate or question on the ballot, as well as the State and local boards of elections, to designate registered voters as challengers or watchers. EL § 10-311(a)(1). However, challengers or watchers are subject to a number of important limits on their roles, including the prohibitions on voter intimidation discussed above. To be clear, a challenger or watcher, whether accredited or unaccredited, may *not* prevent a person from voting. Although a challenger or watcher may, as explained further below, challenge the right of any person to vote on the grounds of identity—that is, that the person is not the registered voter he or she claims to be, *see* EL § 10-312(a)(1)—a person whose identity is challenged will, at the very least, be able to vote by provisional ballot.

To be recognized as an *accredited* challenger or watcher, an authorized representative of the person or entity designating the challenger or watcher must sign a certification form provided by the State Board of Elections, which serves as evidence of the right of the challenger or watcher to be present in the voting room. EL § 10-311(c). The original certificate must be signed in pen by the authorized representative; the challenger, however, may present a photocopy of the signed certification form. Digital signatures are not acceptable.

Although election judges must permit an unaccredited challenger or watcher who desires to challenge the right to vote of any other individual to enter the polling place for that purpose, an unaccredited challenger or watcher must leave the polling place as soon as a majority of the election judges decides the right to vote of the individual challenged by the challenger or watcher. EL § 10-311(e). Accredited challengers, as discussed further below, have different rules governing their access.

A challenger or watcher may challenge the right of any person to vote but only on the grounds of identity, that is, that the person is not the registered voter he or she claims to be. EL § 10-312(a)(1). Such a challenge must occur *before* the person is issued a ballot or voter authority card, EL § 10-312(b), and the challenger or watcher must be prepared to provide in writing, under penalty of perjury, the reasons for the challenge, that is, the reasons he or she believes that the particular

voter is claiming a false identity, EL § 10-312(c)(1). The person whose right to vote is challenged may establish his or her identity by presenting:

- A voter registration or social security card;
- A valid Maryland driver's license;
- An ID card issued by a government unit;
- A photo ID from an employer; or
- A copy of a current bill, bank statement, government check, paycheck, or other government document that shows the individual's name and current address.

EL § 10-312(a)(2). If the challenged person provides identification, he or she may vote a regular ballot. EL § 10-312(a)(3). If not, the election judge must require the challenger or watcher to provide in writing, under penalty of perjury, the reasons for the challenge—and offer the challenged person the opportunity to cast a provisional ballot and attest to his or her identity. EL § 10-312(c)(2). The provisional ballot will be counted if the local board of elections is able to verify that the voter is registered and eligible to vote in Maryland.

The conduct of challengers or watchers is carefully prescribed by law. More specifically, an accredited challenger or watcher may: (1) enter the polling place one-half hour before the polls open; (2) enter or be present at the polling place at any time when the polls are open; (3) remain in the polling place until the completion of all tasks associated with the close of the polls and the election judges leave the polling place; (4) maintain a list of registered voters who have voted, or individuals who have cast provisional ballots, and take the list outside of the polling place; and (5) enter and leave a polling place for the purpose of taking outside of the polling place information that identifies registered voters who have cast ballots or individuals who have cast provisional ballots. EL § 10-311(b).

Although a challenger or watcher may be positioned near the election judges and inside the voting room so that the challenger or watcher may see and hear each person as the person offers to vote, the challenger or watcher may *not* attempt to:

- Ascertain how a voter voted or intends to vote;
- Converse in the polling place with any voter;
- Assist any voter in voting; or
- Physically handle an original election document.

EL § 10-311(d)(1). An election judge may eject a challenger or watcher who violates these requirements. EL § 10-311(d)(2). A challenger or watcher is also subject to the limitations discussed above about permissible activities, and an election judge may restrict the number of challengers or watchers at a polling site

to ensure the orderly flow of election business, as long as any such restriction applies to all candidates, parties, and other groups equally.

6. What is electioneering?

Election judges are required to establish a “no electioneering” zone with a radius of approximately 100 feet around the entrance/exit of each polling place. EL § 16-206(b). Within this zone, the law forbids canvassing, electioneering, or posting of campaign signs. This has been interpreted to forbid activities like handing out campaign literature for or against a candidate or ballot issue, soliciting signatures on petitions, or canvassing voters outside the polling place to determine their entitlement to vote. It has also been interpreted to preclude candidates, challengers or watchers, or others from wearing or carrying any clothing button, sticker, sign, or other paraphernalia that indicates support or opposition to a candidate or question. The only exception is that a voter may wear a hat, clothing, buttons, or stickers while he or she is in the polling place to vote, but such a voter may not linger in the polling place. Unlike electioneering, which is permissible outside of the “no electioneering” zone, voter intimidation is prohibited regardless of where it occurs.

State Board regulations permit members of the media or others to conduct exit polling, whether by questionnaire or interview, within the “no electioneering” zone outside a polling place, as long as pollsters do not enter the voting room, do not ask questions of a voter until the voter has left the voting room, tell each voter being polled that the voter’s participation is voluntary, and do not electioneer.

7. Are individuals allowed to observe or question voters around ballot drop boxes?

The legal protections against voter influence and intimidation apply with equal force to unmanned ballot drop boxes. It remains a crime to willfully and knowingly influence or attempt to influence a voter’s decision whether to go to the polls to cast a vote, through the use of force, threat, menace, intimidation, bribery, reward, or offer of reward. EL § 16-201(a)(6). It is also a crime to canvass, electioneer, or post any campaign material in a manner that obstructs access to a ballot drop box. EL § 16-206(a)(11). Finally, a person may not hinder or impede the conduct of official electoral activities by breach of the peace, disorder, or threat of violence. EL § 16-204(a). Altogether, this means an individual cannot attempt to dissuade a voter from dropping off a ballot at a ballot drop box through the use of threats, coercion, aggression, or intimidation.

Electioneering is also prohibited in the area within a 50-foot boundary surrounding a drop box. COMAR 33.11.01.04D. “Electioneering” includes traditional electioneering activities by an individual; an individual confronting a

voter at a ballot drop box, questioning the voter in any way about their qualifications or voting activities; and, the observation or recording of a voter's activities at a drop box by a group of individuals. COMAR 33.11.01.04E. If an individual wishes to observe a ballot drop box, they must do so without communicating or interfering with voters in any way and they may not wear any clothing or accessories with a political message on them. Finally, a person may not visibly possess, visibly carry, or brandish a firearm within the 50-foot electioneering boundary. COMAR 33.11.01.04F(1).