

1. All records reflecting any written policies or memoranda concerning poll watchers or poll watcher activities.

The Secretary of State directs the policies concerning poll watchers in the State of Texas. Their information can be found [here](#). Any other documents are in the folder "[1. Written policies or memoranda](#)".

2. All training materials concerning poll watchers (including, but not limited to, training materials provided to poll watchers and training materials concerning poll watcher appointments, acceptance, removal, complaints, reports, or misconduct).

Tarrant County does not train poll watchers. The link provided above for #1 provides the only official poll watcher materials available.

3. Any formal or informal reports or complaints submitted to any Tarrant County election staff member by any Tarrant County poll watcher or poll watcher appointing authority and records sufficient to identify the final status or disposition of each report or complaint.

Tarrant County Elections has no records responsive.

4. Any formal or informal reports or complaints submitted to any Tarrant County election staff member concerning poll watchers or poll watcher activities (including, but not limited to, poll watcher trainings, appointments, acceptance, removal, complaints, reports, or misconduct) and records sufficient to identify the final status or disposition of each report or complaint.

Tarrant County Elections has no records responsive.

5. Any formal or informal reports or complaints submitted to any Tarrant County election staff member concerning election procedures or election workers (including, but not limited to, election judges) and records sufficient to identify the final status or disposition of each report or complaint.

Tarrant County Elections has no records responsive.



Texas

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To: Texas Election Administration Officials
Date: October 9, 2020

Re: Advisory on Voter Intimidation Laws

In March 2020, the Trump campaign announced the launch of “Army for Trump,” a campaign to “mobilize Americans across the country who are committed to fighting to re-elect President Trump”¹ that explicitly includes “precinct coverage” as part of its mission.² Multiple times this month, President Trump has used Twitter to promote the “Army for Trump” website, specifically calling upon people to “volunteer to be a Trump Election Poll Watcher. Sign up today!”³

While the ACLU of Texas supports the civic engagement of all Texans regardless of their political views, all engagement must occur in a manner that complies with federal and state law. Over a century ago, the Supreme Court stated that the right to vote is a “fundamental political right, because [it is] preservative of all rights,”⁴ and people must be allowed to exercise that right free from intimidation or harassment. This communication synthesizes the federal and state regulations that protect voters from intimidation and harassment, all of which election officials should bear in mind as early voting and Election Day approach.

Voter intimidation can take many different forms. It includes, but is not limited to, aggressively questioning voters about their qualifications to vote, including regarding citizenship and criminal records; displaying false or misleading information about voting requirements or voter fraud; and harassment targeting non-English speakers and voters of color.⁵

¹ *Trump Campaign Announces Launch of ‘Army for Trump’ Website Ahead of the 2020 Election*, Donald J. Trump for President, Inc. (March 2, 2020), <https://www.donaldjtrump.com/media/trump-campaign-announces-launch-of-army-for-trump-website-ahead-of-the-2020-election/>.

² *Election Day Team*, Army for Trump, <https://www.armyfortrump.com/forms/election-day-team> (last visited Oct. 6, 2020).

³ Donald J. Trump, *Tweet posted on Oct. 1, 2020*, <https://twitter.com/realDonaldTrump/status/1311804730226675718>; Donald J. Trump, *Tweet posted on Oct. 5, 2020*, <https://twitter.com/realDonaldTrump/status/1313136308152401922?s=20>.

⁴ *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

⁵ See *Know Your Rights: Voting Rights*, American Civil Liberties Union, <https://www.aclu.org/know-your-rights/voting-rights/#someone-is-interfering-with-my-right-to-vote> (last viewed October 6, 2020).

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Multiple federal laws explicitly forbid voter intimidation. As early as the Ku Klux Klan Act of 1871, Congress declared it unlawful to “conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote” from doing so.⁶ The Civil Rights Act of 1957 further decreed, “No person, whether acting under color of law or otherwise, shall 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 [they] may choose.”⁷ That prohibition still stands today, and as dictated by 18 U.S.C. § 594, violating its requirements carries with it criminal penalties including the possibility of imprisonment.⁸

Texas state law provides voters additional protections from harassment and intimidation. The Texas Election Code provides that it is unlawful to loiter and to electioneer within 100 feet of a polling place; electioneering includes, but is not limited to, displaying political signs and badges.⁹ It is also unlawful to record images or sound within 100 feet of any voting station.¹⁰ Further, no one may operate a sound amplification device or a vehicle with a loudspeaker for the purpose of “making a political speech” or “electioneering for or against any candidate, measure, or political party” within 1,000 feet of a building in which a polling place is located.¹¹ Additionally, the Texas Penal Code makes carrying a firearm “on the premises of a polling place on the day of an election or while early voting is in progress” a felony offense.¹²

Other protections for voters do not contain any geographical limitation to the area surrounding a polling place. “[D]isplay[ing] a firearm or other deadly weapon in a public place in a manner calculated to alarm”¹³ is a misdemeanor without any geographical limitation, as are “abus[ing] or threaten[ing] a person in a public place”¹⁴ and threatening to injure or commit a felony against someone with the intent to “harass, annoy, alarm, abuse, torment, or embarrass” that person.¹⁵ It is a felony to harm or threaten to harm someone in retaliation for voting for or against a candidate, regardless of where that harm or threat to harm occurs.¹⁶

And, while President Trump and his campaign have referred to an “army,” Texas state law forbids any group “other than the regularly organized Texas military forces, the armed forces of the United States, or the active militia of another state” from “associat[ing] as a military company or organization or parad[ing] in public with firearms.”¹⁷ Viewed as a whole, Texas state law contains strong protections against voter intimidation.

⁶ 42 U.S.C. § 1985(3).

⁷ 52 U.S.C. § 10101(3)(b); *see also* 52 U.S.C. § 10307(b).

⁸ 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 [they] may choose...shall be fined under this title or imprisoned not more than one year, or both.”).

⁹ TEX. ELEC. CODE § 61.003; *see also Poll Watcher’s Guide*, Texas Secretary of State Elections Division (January 2018), <https://www.sos.texas.gov/elections/forms/pollwatchers-2018.pdf>.

¹⁰ TEX. ELEC. CODE § 61.014.

¹¹ *Id.* § 61.004.

¹² TEX. PENAL CODE § 46.03(2).

¹³ *Id.* § 42.01(8).

¹⁴ *Id.* § 42.01(4).

¹⁵ *Id.* § 42.07.

¹⁶ TEX. ELEC. CODE § 276.001.

¹⁷ TEX. GOV’T CODE § 437.208.

President Trump has also called for volunteers to be “poll watchers” as part of the “Army for Trump” campaign.¹⁸ However, the term poll watchers is reserved for only the limited number of people who are **officially** appointed to observe the conduct of an election on behalf of a candidate, political party, or the proponents or opponents of a measure.¹⁹

In order to qualify, poll watchers must be qualified voters from the counties in which they serve,²⁰ and they must present their certificates of appointment to the relevant presiding election judge when they report for service.²¹ People who are not officially appointed poll watchers may not observe early voting and Election Day polling activities in the same manner. Indeed, to the extent that the Trump campaign is calling for a large number of poll watchers, that call must be interpreted according to the constraints of the Election Code, which provides that each appointing authority may not appoint “more than two watchers for each precinct polling place” or “more than seven watchers for each main or branch early voting place.”²² Even for early voting, “not more than two watchers appointed by the same authority may be on duty at the same early voting place at the same time.”²³

In addition to being subject to all of the regulations described in the prior sections, poll watchers must follow strict rules of conduct mandated by the Election Code. Each poll watcher’s certificate of appointment must include an affidavit stating that they will not have a device capable of recording images or sound, or that any such device will be disabled or deactivated while poll watching.²⁴ They are explicitly forbidden from “convers[ing] with a voter” or “communicat[ing] in any manner with a voter regarding the election,”²⁵ and they are not allowed to be present “at the voter station when a voter is preparing the ballot.”²⁶

The upcoming election, which will take place in the midst of a global pandemic, is unprecedented in many ways. The ACLU of Texas is conscious of the immense amount of work that county officials throughout Texas have done to allow voters to participate in ways that do not jeopardize their health. Yet protecting voters also requires safeguarding their ability to participate in the political process without being subjected to intimidation or harassment. It is our hope that this communication will aid you in that important work.

Regards,



Anjali V. Salvador
Staff Attorney

¹⁸ Donald J. Trump, *Tweet posted on Oct. 5, 2020*, <https://twitter.com/realDonaldTrump/status/1313136308152401922?s=20>.

¹⁹ TEX. ELEC. CODE § 33.001.

²⁰ *Id.* § 33.031.

²¹ *Id.* § 33.051.

²² *Id.* § 33.007.

²³ *Id.* § 33.007.

²⁴ *Id.* § 33.006(6).

²⁵ *Id.* § 33.058.

²⁶ *Id.* § 33.057(b).

ELECTION INFORMATION

On Election Morning, immediately turn on and log into the **ePollbooks**. Logging in lets us know that we have staff at the polling place.

It is no longer necessary to call the elections office regarding mail in ballots. Voters who surrender their mail in ballot and wish to vote at your site must complete the Request to Cancel Application for Ballot by Mail and be allowed to vote a **regular ballot**. Voters who do not have their mail in ballot or state they never received one must vote a **provisional ballot**.

The Election Code requires that any voter who is not accepted for voting a regular ballot, must be offered a **Provisional Ballot**. Please refer to the Provisional Ballot instructions. Don't be the reason a voter's ballot isn't counted by failing to properly complete the necessary paperwork and/or by assigning the ballot improperly on the Controller.

You may experience an intermittent error with the Scan that reads **Unique Identifier Already Used**. Spoil the ballot (refer to instructions in handbook) and issue the voter another access code. Voter will make selections and print a new ballot. If the error occurs on the Scan again, with the same voter, remove the seal from the emergency slot and have voter insert their printed ballot into the slot. At the close of polls, remove the ballots from the emergency bin and place the ballots in the clear self-sealing bag labeled **"Unique Identifier Already Used" Ballots**. Fill out the affixed label and deliver bag to the Rally Station.

Items to return on Election Night. Please familiarize yourself with the items that MUST to be returned to the assigned Rally Station. If you arrive at the Rally Station missing items, you will need to return to the polling site as election results cannot be tallied without them. See enclosed flyer for a list of items that must be returned. Please note, said items are labelled with a big orange sticker that reads "Return this equipment to the Rally Station".

Voters who leave the polling site with their printed ballot **cannot return to vote**. Please station a clerk at the exit to ensure voters insert their ballot into the Scan. Ballots returned to the polling site must be spoiled.

Poll Watchers will be assigned at several polling sites. Please the handbook provided with the election supplies or view the guide at <https://www.sos.state.tx.us/elections/forms/pollwatchers-guide.pdf>

Curbside voting cannot be denied to anyone.

Voters may use **written communication**, such as sample ballots and campaign materials, for personal use only, in the polling place.

It is imperative you use the **wait time feature** on the ePollbook. Wait time information is reflected on our website to assist voters in determining which location they choose.