



Millions to the Polls

PRACTICAL POLICIES TO FULFILL THE FREEDOM
TO VOTE FOR ALL AMERICANS

**DECEPTIVE PRACTICES
& INTIMIDATION**

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DECEPTIVE PRACTICES AND INTIMIDATION

- Voter intimidation and misinformation campaigns have significantly increased in recent years.
- Congress should pass a ban on deceptive practices and voter intimidation at the federal level.
- States and local governments should have emergency procedures in place to immediately correct misinformation about elections.

In the crucial battleground states of Ohio and Wisconsin, 145 anonymous billboards noting that voter fraud is a felony punishable by up to 3.5 years in prison and a \$10,000 fine popped up in predominately African America urban areas around Milwaukee, Cleveland, and Columbus two weeks before the 2012 election. The signs were designed with large white letters reading “VOTER FRAUD IS A FELONY! Up to 3 ½ years & \$10,000 Fine!” with a big picture of a judge’s gavel.¹

The selective placement of these billboards belies any argument that they were merely intended to be informative. They are instead an example of voter intimidation meant to discourage potential voters of color through scare tactics. Recent elections have also seen a rise in coordinated incidents of phone calls targeting voters that misrepresent times and locations of voting, policies and endorsements of particular candidates,² and flyers, mailer, and billboards that misinform, discourage, and intimidate targeted voters.

Deceptive practices are intentional disseminations of false or misleading information about the voting process in order to prevent an eligible voter from casting a ballot, such as providing misinformation about when and where to vote.³ Voter intimidation is the use of threats, coercion, harassment or other improper tactics to interfere with the free exercise of the right to vote.^{4,5} Voters of color are disproportionately targeted for misinformation and intimidation tactics.^{6,7} These tactics endanger the integrity of our elections and impede an individual’s fundamental right to vote.⁸

On top of interfering with the fundamental freedom to vote, unwarranted challenges and voter intimidation tactics deplete resources and distract election administrators.⁹ They are toxic for elections and toxic for democracy.

Voter Intimidation

The Voting Rights Act of 1965 and the National Voter Registration Act of 1993 prohibit persons from intimidating or attempting to intimidate, threaten or coerce another person for the purpose of interfering with the right to vote freely in federal elections. Voter intimidation, coercion or threats interfering with the right to vote are also criminal offenses.¹⁰ However, because the maximum penalty for conviction on a charge of voter intimidation under federal guidelines is a fine and/or no more than one year in prison, the law has not eliminated voter intimidation schemes in the past.¹¹

Yet, while there are legal avenues in place to stop it, voter intimidation can be difficult to curtail because of the subtlety of the tactics and a lack of clarity in existing laws. In North Carolina, for example, there is a state law that bans any person from interfering with or attempting to interfere with any voter when inside the voting enclosure or when marking her ballot. However, the narrow definition of “voting place” and “voting enclosure” combined with a lack of enforcement diminishes the effectiveness of the law.^{12,13} For example, in 2008 a predominately African American group was heckled and harassed at an early voting center in Fayetteville by a group of mostly white protesters as they went in to vote.¹⁴ Poor enforcement of existing law meant this harassment was allowed to occur.

Intimidation tactics have also included:

- Police officers scanning lines of voters looking for people with outstanding warrants.¹⁵
- Signs posted at the polling place warning of penalties for “voter fraud” or “noncitizen” voting, or illegally urging support for a candidate.¹⁶
- Poll workers “helping” voters fill out their ballots, and instructing them on how to vote.¹⁷
- Flyers and radio ads containing false information about where, when and how to vote, voter eligibility, and the false threat of penalties.¹⁸

Voters continue to also face physical harassment. In New Mexico in 2008 a private investigator was hired by a Republican Party official to go to the homes of newly registered minority voters and interrogate them about their citizenship status.¹⁹ Several voters at two precincts in the predominately Muslim neighborhood of Dearborn, Michigan reported the presence of police scanning the long lines for voters with outstanding warrants as well as poll workers giving increased scrutiny to voters who “appeared” Muslim.²⁰

North Carolina’s State Board of Elections received numerous reports of

physical and verbal intimidation during the 2012 election including campaign and party supporters breaching and moving buffer zone barriers, as well as approaching voters within the buffer zone. A polling place worker was even injured and required emergency medical attention while attempting to protect the buffer zone from an overly aggressive electioneer. Voters also reported being approached in their vehicles while they waited in the curbside voting zone and individuals using profanity and aggressive language to supporters of opposing candidates or political parties.²¹

Misinformation

Misinformation on electoral logistics, eligibility, and process is often spread through robocalls and flyers, mailers, and/or billboards. Robocalls, or automated calls with incorrect information, are often used to deter voters from going to the polls. Deceptive robocalls across the country continue to give voters incorrect polling location information.²²

Voters in recent elections in New York, Colorado, Virginia, Florida and New Mexico reported receiving harassing robocalls falsely claiming to be from one of the candidates running for office in the area when in fact those campaigns had not activated the calls.²³ These calls to registered voters in the days before the election also falsely claimed that their registrations were cancelled and that if they tried to vote they would be arrested.²⁴

In 2012, the State Board of Elections in North Carolina received numerous reports from around the state of voters receiving calls providing a slew of misinformation, including that: they can vote by phone or online, if they are affiliated with a certain political party that they must vote on a date different than the actual election day, if they have an outstanding ticket they cannot vote, and they are required to re-register each time they vote.²⁵

In 2012, voters in Arlington, Accomack, Augusta, and Northampton counties in Virginia reported receiving phone calls on Election Day saying voters would be arrested if they attempted to vote on Election Day or that their polling locations had been moved, although none of the locations had changed.²⁶ In another example, students at Virginia Tech were falsely told by people at the polling place that registering to vote in Virginia could affect their scholarship or tax dependency status and would obligate them to change their car registration and driver's license to their permanent address.²⁷ Also in Virginia,

flyers were distributed to voters falsely stating that, “Due to larger than expected voter turnout in this year’s electoral process,” people supporting Republican candidates vote on November 4th (actual Election Day) and Democrats vote on the following day in 2008.²⁸

Communities of color in Milwaukee, Wisconsin received flyers from a fictitious organization called the “Milwaukee Black Voters League,” falsely informing voters that those who already voted in *any* election that year could not vote again during the 2004 elections. The group also asserted that anyone with even minor infractions, like parking tickets, was disqualified from voting. Flyers like these are often deceptively printed on official-looking local government letterhead with the wrong election date or other misleading information.²⁹

In an attempt to combat misinformation, the federal Telephone Consumer Protection Act requires that automated political calls identify the caller-- but not the entity that paid for the call-- and give the caller’s telephone number.³⁰ In addition, eight states require a live operator to obtain the called person’s consent before playing the recorded message, unless the person has made a prior agreement to receive the call.³¹ Thirteen states require disclosure during an automated call of the person or entity paying for the call or for whom it is made.³²

On the state level, Missouri explicitly prohibits knowingly providing false information about election procedures for the purpose of preventing any person from going to the polls.³³ In Maine, automated calls that name a candidate within 21 days before a primary election or 35 days before a general election must clearly state the name of the person who made or financed the call, except for automated calls paid for by a candidate that use the candidate’s own voice and support that candidate. Automated calls used for conducting polls must identify the caller and are limited to 8:00 AM to 9:00 PM. Push polls must state that it is a paid political advertisement, who has paid for the advertisement, and the name of the company calling if different. The caller must also disclose a valid telephone number and address.³⁴

POLICY RECOMMENDATIONS

- Congress should enact H.R. 5815 (112th): Deceptive Practices and Voter Intimidation Prevention Act of 2012,³⁵ which makes knowingly deceiving any person about the time, place, or manner of conducting any federal election or the qualifications for or restrictions on voter eligibility for any election a federal crime. In addition to a criminal penalty, the act also provides a private right of action for victims of

these practices and requires the Department of Justice to investigate and act within 48 hours after receiving a report of deceptive practices or voter intimidation.

- The penalties for convictions of voter intimidation should be increased, at both the state and federal level, to a maximum of five years in prison and a \$100,000 fine and any attempt or conspiracy to intimidate voters should be punished equally harshly.
- Any person who engages in voter intimidation should be barred from holding public office for a set amount of time.
- The U.S. Attorney General should be required to report to Congress a compilation of incident reports within 90 days of a federal election.³⁶
- States and local governments should also enforce existing laws by actively monitoring & criminally prosecuting those who commit deceptive practices to intimidate voters or disrupt turnout.
- State and local governments must have in place emergency procedures to immediately correct information spread by deliberate misinformation campaigns. ■

ENDNOTES

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32. These States include: California, Louisiana, New York, Connecticut, Minnesota, North Carolina, Florida, Mississippi, North Dakota, Idaho, Nebraska, Virginia, and Indiana. Florida and Louisiana make an exception for polling calls.
33. Mo. Revised Statutes § 115.635.
34. If made on behalf of a candidate, that candidate's name and office sought must be disclosed. If not made on behalf of a candidate, the call must state that the candidate has not approved the call. OnTimeTelecom, Incorporated, *Robo Call State Laws*, (2013), available at <http://robo-calls.net/robo-call-laws.php>.
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