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## **Poll Watching: You and What Army? An Analysis of Voter Intimidation Concerns in the 2020 Presidential Election**

Emma Lapp  
*Saint Louis University School of Law*

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**Poll Watching: You and What Army?**  
**An Analysis of Voter Intimidation Concerns in the 2020 Presidential Election**

**By: Emily Lapp\***

**I. Introduction**

At the first presidential debate, Donald Trump urged his supporters to “go into the polls and watch very carefully.”<sup>1</sup> Amid false claims about the integrity of mail-in voting and widespread electoral fraud, this call to action is the latest iteration of the Trump campaign’s repeated attempts to undermine public confidence in this year’s presidential election.<sup>2</sup> In a recent video, Donald Trump Jr. called upon “every able-bodied man and woman”<sup>3</sup> to “enlist” in “the Army for Trump’s election security operation,”<sup>4</sup> claiming that “the radical left are laying the groundwork to steal this election.”<sup>5</sup> Trump even called for law enforcement, U.S. Attorneys, and Attorneys General to monitor polls.<sup>6</sup> Trump’s calls for his followers to monitor voting activity are clear.<sup>7</sup> But is such monitoring legal?

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\* J.D. Candidate, 2022, Saint Louis University School of Law

<sup>1</sup> Danny Hakim et al., *Trump Renews Fears of Voter Intimidation as G.O.P. Poll Watchers Mobilize*, N.Y. TIMES (Sept. 30, 2020), <https://www.nytimes.com/2020/09/30/us/trump-election-poll-watchers.html>.

<sup>2</sup> *See id.*; Rosalind S. Helderman et al., *Trump’s suggestion of deploying law enforcement officials to monitor polls raises specter of voting intimidation*, WASH. POST (Aug. 21, 2020), [https://www.washingtonpost.com/politics/trumps-suggestion-of-deploying-law-enforcement-officials-to-monitor-polls-raises-specter-of-intimidation/2020/08/21/4ff6407a-e3bb-11ea-8dd2-d07812bf00f7\\_story.html](https://www.washingtonpost.com/politics/trumps-suggestion-of-deploying-law-enforcement-officials-to-monitor-polls-raises-specter-of-intimidation/2020/08/21/4ff6407a-e3bb-11ea-8dd2-d07812bf00f7_story.html).

<sup>3</sup> Pam Fessler, *Trump’s Calls for Poll Watchers Raise Fears About Voter Intimidation*, NPR (Sept. 30, 2020, 3:25 PM ET), <https://www.npr.org/2020/09/30/918766323/trumps-calls-for-poll-watchers-raises-fears-about-voter-intimidation>.

<sup>4</sup> *Id.*

<sup>5</sup> Hakim et al., *supra* note 1.

<sup>6</sup> Helderman et al., *supra* note 2.

<sup>7</sup> Hakim et al., *supra* note 1.

## II. Poll Watchers

Election observation is commonplace; both parties monitor polls.<sup>8</sup> A poll watcher's primary purpose is to ensure that their party has a fair chance of winning an election.<sup>9</sup> Poll watchers typically monitor election officials at polling sites and are not supposed to interfere in the electoral process,<sup>10</sup> apart from reporting issues to polling place authorities and party officials.<sup>11</sup> Poll watchers, also called partisan election monitors, must be registered to vote in the state in which they monitor, and some states only permit poll watchers to monitor the precinct in which they are registered to vote.<sup>12</sup> State laws regarding poll watchers requirements vary,<sup>13</sup> but at least forty states require poll watchers to be formally accredited ahead of the election,<sup>14</sup> and many limit the number who can be at a particular location.<sup>15</sup> Some states require poll watchers to wear badges or clothing clearly identifying themselves as such.<sup>16</sup>

While both parties monitor polls, the November 2020 election will be the first in almost forty years without a federal court overseeing Republican ballot security measures.<sup>17</sup> The Republican Party has been under a nationwide federal consent decree since 1982,<sup>18</sup> following the New Jersey 1981 gubernatorial election, in which:

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<sup>8</sup> Michael Wines, *Freed by Court Ruling, Republicans Step Up Efforts to Patrol Voting*, N.Y. TIMES (May 18, 2020), <https://www.nytimes.com/2020/05/18/us/Voting-republicans-trump.html?action=click&module=RelatedLinks&pgtype=Article>.

<sup>9</sup> *Poll Watchers and Challengers*, NAT'L CONF. OF ST. LEGISLATURES (Oct. 1, 2020), <https://www.ncsl.org/research/elections-and-campaigns/poll-watcher-qualifications.aspx>.

<sup>10</sup> Michael Martina & Andy Sullivan, *Fears of voter intimidation follow Trump's call for his backers to monitor polls*, REUTERS (Sept. 30, 2020), <https://www.reuters.com/article/us-usa-election-trump-poll-watchers/fears-of-voter-intimidation-follow-trumps-debate-call-for-his-backers-to-monitor-polls-idUSKBN26L3M5>.

<sup>11</sup> NAT'L CONF. OF ST. LEGISLATURES, *supra* note 9; Wines, *supra* note 8.

<sup>12</sup> NAT'L CONF. OF ST. LEGISLATURES, *supra* note 9.

<sup>13</sup> *Id.*

<sup>14</sup> Martina & Sullivan, *supra* note 10.

<sup>15</sup> NAT'L CONF. OF ST. LEGISLATURES, *supra* note 9.

<sup>16</sup> *Id.*

<sup>17</sup> Barton Gellman, *The Election that Could Break America*, ATLANTIC (Nov. 2020), <https://www.theatlantic.com/magazine/archive/2020/11/what-if-trump-refuses-concede/616424/>.

<sup>18</sup> Consent Order, *Democratic Nat'l Comm. v. Republican Nat'l Comm.*, No. 81-3876 (D.N.J. Nov. 1, 1982).

The RNC allegedly tried to intimidate voters by hiring off-duty law enforcement officers [to] a ‘National Ballot Security Task Force,’ some of them armed . . . . [T]hey stopped and questioned voters in minority neighborhoods, blocked voters from entering the polls, forcibly restrained poll workers, challenged people’s eligibility to vote, warned of criminal charges for casting an illegal ballot, and generally did their best to frighten people away from the polls.<sup>19</sup>

The order, which was extended as courts continued to find instances of Republicans intimidating minority voters, expired in 2018.<sup>20</sup> Election-law expert Richard L. Hasen pointed out to the *New York Times* that the “federal court ruling lifting the consent decree stated in a footnote that Mr. Trump had clearly encouraged voter suppression during the 2016 presidential campaign, but that his behavior could not be tied to the national party.”<sup>21</sup>

Emboldened, the Republican Party hopes to recruit some 50,000 volunteers in fifteen battleground states to “monitor polling places and challenge voters they deem suspicious-looking.”<sup>22</sup> Democrats have hired voter protection directors in nineteen states and plan to mobilize thousands of volunteers and lawyers on Election Day to prevent voter intimidation.<sup>23</sup>

### III. Voter Intimidation

Federal law prohibits “the knowing and willful intimidation, threat, coercion, or any attempt thereof, of any person for ... registering to vote, voting, or attempting to do the same,”<sup>24</sup> “intimidation, threat, coercion, or any attempt thereof, of a person’s right to vote for the candidate of his or her choosing,”<sup>25</sup> and “willfully injur[ing], intimidat[ing], or interfer[ing] with, or attempt[ing] to do the same, by force or threat [or under color of law], any person who is voting, has been voting, or is attempting to qualify

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<sup>19</sup> Gellman, *supra* note 17.

<sup>20</sup> Wines, *supra* note 8.

<sup>21</sup> Hakim et al., *supra* note 1.

<sup>22</sup> Gellman, *supra* note 17; Wines, *supra* note 8.

<sup>23</sup> Martina & Sullivan, *supra* note 10.

<sup>24</sup> 52 U.S.C. § 20511(1) (2018); William Mont, *Election Law Violations*, 57 AM. CRIM. L. REV. 553, 587 (2020).

<sup>25</sup> 18 U.S.C. § 594 (2018); Mont, *supra* note 24, at 588.

to vote.”<sup>26</sup> The Voting Rights Act “prohibits ‘intimidation,’ ‘threats,’ or ‘coercion’ against a person, either ‘for voting or attempting to vote’ or ‘for urging or aiding any person to vote or attempt to vote.’ Attempts to do the same are also prohibited,” and there is no intent requirement.<sup>27</sup> Voter intimidation is illegal in all fifty states.<sup>28</sup>

In light of Trump’s comments, Democrats expressed concerns that Trump’s comments could bring armed, right-wing groups to polling places in areas with high minority populations to intimidate voters.<sup>29</sup> Attorneys General in some states have issued reminders of voter intimidation laws, warning that violators will be prosecuted.<sup>30</sup>

In light of Trump’s comments, neo-Nazi sympathizers and alt-right groups such as the Proud Boys have encouraged members to join ‘Trump’s Army’ of poll watchers, sharing the sign-up link in online groups with thousands of members.<sup>31</sup> Stewart Rhodes, founder of the Oath Keepers militia group, said some members have signed up as poll watchers, while others plan to monitor the election armed and “undercover.”<sup>32</sup> In Fairfax, Virginia, Trump supporters chanting “four more years” disrupted early voting, forming a line in the path of voters attempting to enter the site.<sup>33</sup> Ten days later, Trump supporters who were not registered poll watchers attempted to enter a satellite early-voting site in Philadelphia.<sup>34</sup> The Trump campaign has also been videotaping Philadelphia voters depositing their ballots in drop boxes, which Pennsylvania’s attorney general warned could constitute voter

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<sup>26</sup> 18 U.S.C. § 245(b)(1)(A) (2018); Mont, *supra* note 24, at 588-89.

<sup>27</sup> 52 U.S.C. § 10307(b) (2018); Ben Cady & Tom Glazer, *Voters Strike Back: Litigating Against Modern Voter Intimidation*, 39 N.Y.U. REV. L. & SOC. CHANGE 173, 191 (2015).

<sup>28</sup> *Fact Sheet: Protecting Against Voter Intimidation*, GEO. L. INST. FOR CONST. ADVOC. AND PROTECTION, <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2020/10/Voter-Intimidation-Fact-Sheet.pdf>.

<sup>29</sup> Martina & Sullivan, *supra* note 10.

<sup>30</sup> Hakim et al., *supra* note 1.

<sup>31</sup> Josh Margolin et al., *Neo-Nazi and Proud Boys groups push Trump campaign poll watching operation online: Reports*, ABC NEWS (Oct. 16, 2020), <https://abcnews.go.com/Politics/neo-nazi-proud-boys-groups-push-trump-campaign/story?id=73663331>.

<sup>32</sup> Molly Hennessy-Fiske & Jaweed Kaleem, *What if armed far-right groups go to the polls? Some plan to*, L.A. TIMES (Oct. 10, 2020), <https://www.latimes.com/world-nation/story/2020-10-10/what-happens-if-armed-right-wing-groups-polls>.

<sup>33</sup> Hakim et al., *supra* note 1.

<sup>34</sup> Fessler, *supra* note 3.

intimidation.<sup>35</sup> Republican officials insist all poll watching will be legitimate.<sup>36</sup>

#### IV. Conclusion

Election monitoring by registered poll watchers is not voter intimidation. By contrast, the Southern Poverty Law Center warns that violent behavior at a polling place, including brandishing of firearms, disrupting voting lines, harassing voters in line, blocking the entrance to a polling place, and threats could constitute voter intimidation.<sup>37</sup> Trump supporters who take election monitoring into their own hands risk violating voter intimidation laws. All eyes are on the polls this Election Day to make sure that all Americans are able to vote freely, safely, and without interference.

Edited by Ben Davisson

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<sup>35</sup> Danny Hakim & Nick Corasaniti, *Trump Campaign Draws Rebuke for Surveilling Philadelphia Voters*, N.Y. TIMES (Oct. 22, 2020).

<sup>36</sup> Helderman et al., *supra* note 2.

<sup>37</sup> Michael Liberman, *Protect Your Vote: What to do if you see voter intimidation at the polls*, S. POVERTY L. CTR. (Oct. 23, 2020), <https://www.splcenter.org/news/2020/10/23/protect-your-vote-what-do-if-you-see-voter-intimidation-polls>.