

To: Connecticut Municipal and State Police
Date: October 21, 2020

Re: Protecting the Right to Vote

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.”³ In Connecticut, the head of the state GOP has joined in these efforts by recruiting for the “Army for Trump,” seeking to “cover every polling place in our state.”⁴

As you may be aware, the Secretary of the State, the Attorney General, and the Chief State’s Attorney’s Office have identified that disruption of the election is a major area of concern on November 3, 2020. These officials have come together to announce a zero-tolerance stance on interference with voting and vote-counting.⁵ With this stance, it is likely that police departments across the state will be called on to enforce our state’s voter intimidation laws.



Connecticut

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The ACLU of Connecticut believes in ensuring that every eligible voter can exercise their right to vote without barriers or intimidation. The risk for racial voter intimidation in Connecticut is real. From its early days, Connecticut has been the least expansive for voting rights for Black people of all the New England states, limiting their franchise in the 1800s when other states allowed Black men to vote without significant restriction.⁶ Voter intimidation began as soon as Connecticut ratified the Fifteenth Amendment, which guaranteed the right to vote to men of all races.⁷ Connecticut was one of only twelve states using a literacy test into the 1950s.⁸ Even today, voter suppression is overwhelmingly directed at Black voters and other voters of color⁹ by people who want to limit the political power of people of color. Through this country’s history, voter intimidation led not only to disenfranchisement of Black people and other people of color, but often cost them their lives.¹⁰

The risk to Black voters and other voters of color this year is evident not only from the racist history of voter intimidation but also from the racial animosity being stoked by President Trump. The encouragement of partisan poll watchers is an old voter intimidation tactic: a similar effort in 1981 led to a nationwide federal consent decree requiring the GOP to refrain from deploying armed poll watchers and from selecting ballot security targets based on race.¹¹ Recently, at a presidential debate, President Trump requested that the violent white supremacist Proud Boys group “stand by.”¹² In the 2016 election, then-candidate Trump’s campaign targeted more than 3.5 million Black voters for deterrence from voting, in line with their explicitly stated campaign strategy to “limit the number of Black people who turned out.”¹³ Racist rhetoric has marked Trump’s entire presidency.¹⁴ For these reasons, this November, as in years past, people intimidating voters may target Black and Latinx voters in Connecticut. Election officials must ensure that people of color can vote free from barriers and intimidation, which remains one of the major civil rights struggles in the U.S. more than 50 years after the passage of the Voting Rights Act.¹⁵

The American Civil Liberties Union of Connecticut is a nonpartisan, non-profit membership organization that defends, promotes and preserves individual rights and liberties under the U.S. and Connecticut constitutions in state and federal court, the General Assembly and the state’s 169 towns and cities.

Voter intimidation can take many forms. It includes, but is not limited to, aggressively questioning voters about their qualifications to vote, including regarding citizenship; displaying false or misleading information about voting requirements or voter fraud; and harassment targeting voters of color and non-English speakers.¹⁶

While the ACLU of Connecticut supports the civic engagement of all Connecticut residents regardless of their political views, voter intimidation is not political expression, and as a result, state and federal law explicitly forbid voter intimidation. More than a century ago, the U.S. Supreme Court stated that the right to vote is a “fundamental political right, because [it is] preservative of all rights” and people must be allowed to exercise this right free from intimidation or harassment.¹⁷ Congress has passed the Ku Klux Klan Act of 1871, which makes it unlawful to “conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote” from doing so,¹⁸ and the Civil Rights Act of 1957, which decrees that “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.”¹⁹ These prohibitions still stand today. Connecticut law is similarly straightforward. Using force, threat, or deceit to keep voters from voting is a felony, as is using force or threat to influence a person’s vote.²⁰ People are also prohibited from interfering with ballots or ballot counting.²¹



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The U.S. Supreme Court has long recognized that polling places should be an ‘island of calm,’ free from distraction and interference. If outside actors are engaging in voter intimidation, including, but not limited to, targeted harassment of people of color, your role, if called upon, is to preserve that calm by ensuring that voters are free to exercise their vote.

Given the very clear state and federal policy of promoting the right to vote free from intimidation or threat, if called upon to enforce voter intimidation laws, we urge Connecticut municipal police departments and the Connecticut State Police to commit to protecting voters’ rights by:

- Acknowledging that people of color are disproportionately likely to be subjected to voter suppression and intimidation and affirming that protecting the right to vote by people of color is important
- Directing police employees to prioritize protection of the right to vote over competing concerns
- Allowing voters who have responded to intimidation and harassment tactics to exercise their right to vote
- Evaluating whether the presence of police at a particular polling place makes it more difficult for people to vote

With these steps, Connecticut voters can have a safe, fair election free of voter intimidation and suppression on November 3.

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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.donaldtrump.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>.

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 Michael Hamad, “‘Army for Trump’: Connecticut Republicans, following White House lead, ask for volunteers to help ‘secure our election.’” Hartford Courant, Oct. 10, 2020, available at <https://www.courant.com/politics/hc-pol-connecticut-gop-poll-watchers-election-day-20201010-5jcqdxduqvazdbpsfdil37rqqe-story.html>.

⁵ Christopher Keating, “Connecticut officials warn voter intimidation, election disruptions will be prosecuted.” Hartford Courant, Oct. 15, 2020, available at <https://www.courant.com/politics/hc-pol-election-warning-prosecute-voter-intimidation-20201015-3hvl5lzi65aeboldgqziaviopy-story.html>.

⁶ Elizabeth Normen, “Our Hard-Won Right to Vote.” Connecticut Explored, Spring 2016, available at <https://www.ctexplored.org/our-hard-won-right-to-vote/>.

⁷ Katherine J. Harris, “No Taxation with Representation’: Black Voting in Connecticut.” Connecticut Explored, Spring 2016, available at <https://www.ctexplored.org/no-taxation-without-representation-voting-petitions-in-connecticut/>.

⁸ Steve Thornton, “Literacy Tests and the Right to Vote.” Connecticut History, last visited on October 20, 2020, available at <https://connecticuthistory.org/literacy-tests-and-the-right-to-vote/>.

⁹ Vann R. Newkirk II, “Voter Suppression Is Warping Democracy.” The Atlantic, July 17, 2018, available at <https://www.theatlantic.com/politics/archive/2018/07/poll-prri-voter-suppression/565355/>.

¹⁰ Peniel E. Joseph, “In 2020, voting rights are on the ballot.” Washington Post, Sep. 10, 2020, available at <https://www.washingtonpost.com/outlook/2020/09/10/2020-voting-rights-are-ballot/>.

¹¹ Mark Krasovic, “Trump’s encouragement of GOP poll watchers echoes an old tactic of voter intimidation.” The Conversation, Sept. 30, 2020, available at <https://theconversation.com/trumps-encouragement-of-gop-poll-watchers-echoes-an-old-tactic-of-voter-intimidation-147234>.

¹² Jason Wilson, “Proud Boys are a dangerous ‘white supremacist’ group say US agencies.” The Guardian, Oct. 1, 2020, available at <https://www.theguardian.com/world/2020/oct/01/proud-boys-white-supremacist-group-law-enforcement-agencies>.

¹³ Philip Bump, “What we know about alleged efforts by Trump’s 2016 campaign to suppress Black votes.” Washington Post, Sept. 29, 2020, available at <https://www.washingtonpost.com/politics/2020/09/29/what-we-know-about-efforts-by-trumps-2016-campaign-suppress-black-votes/>.

¹⁴ Nicquel Terry Ellis, “‘Stand back and stand by’: Rhetoric some call racist has marked Trump’s entire presidency.” USA Today, Oct. 13, 2020, available at <https://www.usatoday.com/story/news/politics/elections/2020/10/13/hate-speech-common-theme-trumps-presidency/5873238002/>.

¹⁵ Richard L. Hasen, “Civil Right No. 1: Dr. King’s Unfinished Voting Rights Revolution.” 49 U. of Memphis L. Rev. 137, 145-50 (Jan. 23, 2018), available at <https://www.memphis.edu/law/documents/hasen.pdf>.

¹⁶ See, e.g., Danielle Root & Aadam Barclay, “Voter Suppression During the 2018 Midterm Elections.” Center for American Progress, Nov. 20, 2018, available at <https://www.americanprogress.org/issues/democracy/reports/2018/11/20/461296/voter-suppression-2018-midterm-elections/>.

¹⁷ *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

¹⁸ 42 U.S.C. § 1985(3).

¹⁹ 52 U.S.C. §§ 10101(3)(b); 10307(b).

²⁰ Conn. Gen. Stats. §§ 9-364; 9-364a.

²¹ *Id.* § 9-364a.