



**MICHELE REAGAN**  
*Secretary of State*  
*State of Arizona*

November 2, 2016

**ARIZONA SECRETARY OF STATE GUIDANCE ON POLLING PLACE CONDUCT  
AND PREVENTION OF VOTER INTIMIDATION AND DISCRIMINATION**

The Secretary of State's office is committed to ensuring that the November 8, 2016 General Election is run as fairly and smoothly as possible. The following memorandum sets forth the Secretary of State's office's guidance regarding the laws and rules in effect at the polling place in order to best ensure that voters, poll workers, observers, political parties, and interested citizens understand their respective roles, responsibilities and rights.

**Persons Permitted in the Polling Place**

Arizona law prescribes a 75-foot limit around each polling place in order to create a safe zone for persons to vote. Only the following types of persons are allowed within this safe zone:

- Voters (which may be accompanied by minor children or someone to assist the voter);
- Election officials engaged in the performance of official duties;
- Authorized political party observers; and
- United States Department of Justice observers.<sup>1</sup>

The number of authorized party observers per polling place is established on a county-by-county basis. However, all party observers are required to obtain credentials from their county political party chairperson and present those credentials at the assigned polling place.

Credentialed party observers are there to do just that: observe. Observers should not obstruct poll workers, interact with voters, take videos or photos, act unprofessionally, or otherwise fail to obey the polling place inspector or rules established by the county. Party observers that violate these guidelines may have their credentials revoked by the county and be asked to leave.

Non-party observers, interest groups, candidates and members of the media are not allowed within the 75-foot limit. Even if you intend to observe outside the 75-foot limit, observers are encouraged to attend training and remain under the supervision of one of the recognized political parties.

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<sup>1</sup> A.R.S. § 16-515; Secretary of State Election Procedures Manual, pgs. 155-58. Rules governing observers are generally detailed in the Election Procedures Manual, *see* pages 120-22, but local officials retain discretion to establish and enforce additional protocols.



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### **Electioneering within the 75-foot Limit**

It is unlawful to conduct campaign-related activity in the polling place or within the 75-foot limit. This includes handing out campaign literature, talking to voters or poll workers about political candidates or issues, and otherwise attempting to influence the election. (Voters generally may bring campaign-related literature in the polling place solely for the purpose of assisting themselves vote their own ballot.) Candidates should particularly refrain from entering the 75-foot limit except for the purpose of voting.

Election officials and political party observers are held to the same non-electioneering standard, and are expressly prohibited from wearing, carrying or displaying any materials that express support or opposition to any candidate, political party, ballot measure or any other political issue. However, *voters* are permitted to wear clothing or apparel that bears a political message without being asked to leave, remove or cover any political message. Electioneering becomes unlawful if a voter intentionally and knowingly speaks to another voter with the intent to have that person vote or refrain from voting in a particular manner.<sup>2</sup>

### **Law Enforcement and Uniformed Personnel**

Generally, law enforcement officers (whether uniformed or plain clothes) should not be stationed in polling places or within the 75-foot limit. Exceptions may apply if the officer is voting, if the polling place is located within a public safety building, or if an officer is called upon to respond to an emergency.

Excessive use of uniformed law enforcement personnel may have the effect of intimidating voters. Counties are encouraged to balance this potentially intimidating effect with the need to preserve the peace.

As noted below, the election marshal is the person charged by law with keeping order in and around the polling place. Situations that cannot be solved by the marshal should be resolved with the assistance of election officials. In cases where there is violence or threats of violence, including any instance where a person carries a weapon within the 75-foot limit, the marshal or election officials should contact law enforcement for the limited purpose of resolving that situation.

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<sup>2</sup> A.R.S. §§ 16-411(H); 16-515; Secretary of State Election Procedures Manual, pgs. 58, 155-57. Electioneering that takes place outside the 75-foot limit, but that can be audibly heard within the 75-foot limit, is likewise prohibited. Secretary of State Election Procedures Manual, pg. 157.



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As for civilians, wearing any clothing, uniforms or apparel to pseudo-identify oneself as an election official, law enforcement officer, or similar organization that attempts to “police” polling places or their surroundings could have an intimidating effect as well.<sup>3</sup>

### **Carrying Firearms and Weapons**

Arizona law prohibits private citizens, even those who are properly licensed, from entering a polling place with a weapon.<sup>4</sup> The Secretary of State’s office interprets this prohibition to include the 75-foot limit.

Openly carrying a firearm *outside* the 75-foot limit of a polling place can also present problems. Arizonans have a legal right to carry, but the presence of a firearm in the context of voting could potentially intimidate voters. For example, carrying a weapon *despite* being outside a polling place is one thing, but carrying a weapon *because* there is a polling place may cross the line. Additionally, any aggressive or ostentatious display of a weapon will almost certainly constitute an act of intimidation.

The Secretary of State’s office seeks to ensure polling places are not only safe, but free of intimidation as well, so strongly consider leaving your weapon at home or in your vehicle if you intend to observe voters.

### **Taking Photographs and Videos**

While taking pictures of your voted early ballot (“ballot selfies”) are permissible, photographs and videos in the polling place or within the 75-foot limit remain prohibited and punishable as a misdemeanor offense.<sup>5</sup>

Much like open display of firearms, taking photos or videos *outside* the 75-foot limit could also have a potentially intimidating effect on voters entering or exiting the polling place. In particular, filming voters based on race, ethnicity, religion or political affiliation (if known) is *per se* inappropriate.

If you find it necessary to film in order to document the commission of crime or other election-related violation, consider informing the polling place marshal or contacting law enforcement first.

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<sup>3</sup> See e.g. *Democratic Nat’l Committee v. Republican Nat’l Committee*, 671 F. Supp. 2d 575, 579-80 (D. N.J. 2009).

<sup>4</sup> A.R.S. § 13-3102(A)(11). Since many polling places are located in schools, it may be unlawful to bring a firearm on school property even outside the 75-foot limit. A.R.S. § 13-3102(A)(12).

<sup>5</sup> A.R.S. §§ 16-515(G)-(H); 16-1018(A)(4).



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### **Prohibition Against Discriminatory, Harassing or Intimidating Conduct**

Discrimination against voters based on race, ethnicity, national origin, language, religion, or disability is punishable under law.<sup>6</sup> Even conduct traced only *in part* to discriminatory motives may be prohibited.<sup>7</sup>

Even in the absence of discrimination, any attempt to intimidate, coerce, or threaten a person to vote or not vote is strictly prohibited and may be criminally punishable.<sup>8</sup> Conspiring with others who do so is likewise punishable.<sup>9</sup>

The following constitutes a non-exhaustive list of potentially intimidating conduct, whether it occurs inside or outside the polling place:

- Aggressive behavior, such as raising one's voice or taunting a voter or poll worker;
- Using threatening, insulting or offensive language to a voter or poll worker;
- Blocking the entrance to a polling place;<sup>10</sup>
- Disrupting voting lines;
- Intentionally disseminating false or misleading information at a polling place, such as flyers or communications that misstate the date of the election, times for polling places, locations for polling places, or similar efforts intended to disenfranchise voters;
- Impersonating a law enforcement officer, or otherwise wearing clothing, uniforms or official-looking apparel, intended to deter, intimidate, or harass voters;
- Aggressive or ostentatious display of weapons;
- Directly confronting or questioning voters in a harassing or intimidating manner;
- Asking voters for "documentation" or other questions that only poll workers should perform;

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<sup>6</sup> U.S. CONST., AMENDS. XIV and XV; 42 U.S.C. § 12101 *et seq.*; 52 U.S.C. §§ 10301, 10303(f)(3), and 10503; *see also* ARIZ. CONST., ART. 2 § 13.

<sup>7</sup> *See Democratic Nat'l Committee v. Republican Nat'l Committee*, 671 F. Supp. 2d 575 (D. N.J. 2009).

<sup>8</sup> 52 U.S.C. §§ 10101(b) and 10307(b); *Willingham v. County of Albany*, 593 F. Supp. 2d 446, 463 (N.D.N.Y. 2006); A.R.S. §§ 13-1202 and 16-1013.

<sup>9</sup> 42 U.S.C. § 1985(3); *see also* 8 U.S.C. §§ 241 and 242 (penalties); 52 U.S.C. § 10308(c) (same). Arizona law similarly criminalizes criminal conspiracies. A.R.S. § 13-1003.

<sup>10</sup> Constructing permanent or temporary structures in public areas and parking lots, or the blocking or impairment of access to voter parking spaces, constitutes unlawful electioneering under Arizona law. A.R.S. § 16-411(h); Secretary of State Election Procedures Manual, pg. 157.



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- Raising repeated frivolous voter challenges to poll workers without any good faith basis, or raising voter challenges solely based on race, ethnicity, national origin, language, religion or disability;
- Photographing or filming voters in a harassing or intimidating manner; or
- Posting signs or communicating messages about penalties for “voter fraud” in a harassing or intimidating manner.

In sum, any activity that has the intent or effect of threatening, harassing or intimidating voters—whether inside the polling place or outside—is unlawful and should be strictly enforced by county election officials in conjunction with local law enforcement.

### **Enforcing Polling Place Rules and Decorum**

Inspectors remain in charge of each polling place, and are expected to utilize the marshal to preserve order and remove potentially disruptive persons.<sup>11</sup> Higher-level decisions generally should be raised through county channels, whether through a trained troubleshooter, the county election headquarters, or both. Any decision to contact law enforcement is a decision for local election officials to be exercised in their sound judgment.

If you witness a problem at a polling place, you should not speak to or accost a voter in an attempt to “enforce” the law yourself. Tense situations should be deescalated, not escalated. Please inform a poll worker to resolve the issue, and if necessary under the circumstances, contact law enforcement without taking matters into your own hands.

### **Reporting Discrimination, Harassment or Intimidation**

Beyond addressing poll workers, voters that experience any discrimination, intimidation or any other form of harassment are encouraged to contact local election officials, the applicable county attorney’s office, the U.S. Attorney’s office, or the Secretary of State’s office. If public safety is at risk, call 911 to request law enforcement and do not take matters into your own hands.

The Secretary of State’s office may be reached at (602) 542-8683 or at [elections@azsos.gov](mailto:elections@azsos.gov). Staff will be ready to respond from 5:30 a.m. on Election Day until 9 p.m. A listing of county election officials, including contact information, may be found at [www.arizona.vote/](http://www.arizona.vote/).

Various county attorney offices will be open during business hours on Election Day, and the U.S. Attorney’s office in Phoenix will accept election-related complaints as well. Assistant U.S.

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<sup>11</sup> A.R.S. § 16-535(B). It is unlawful for any person not to comply with poll workers’ decisions to preserve peace and security. A.R.S. § 16-1004(A).



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Attorney Todd Allison may be contacted at (602) 595-2866. For further information on federal government resources available on Election Day, please visit [www.justice.gov/usao-az/pr/us-attorney-announces-efforts-protect-voters-and-prevent-fraud-november-2016-elections](http://www.justice.gov/usao-az/pr/us-attorney-announces-efforts-protect-voters-and-prevent-fraud-november-2016-elections).

The Secretary of State's office takes any discrimination, harassment or intimidation very seriously, and will ensure that all such allegations are fully investigated. All Arizonans are entitled to freely exercise their right to vote.

A handwritten signature in blue ink that reads "Michele Reagan".

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Arizona Secretary of State