

Sent Via Email

September 13, 2024

The Honorable Alan Wilson
South Carolina Attorney General
P.O. Box 11549
Columbia, S.C. 29211

Re: Request for South Carolina Attorney General Statement Warning Against Voter Intimidation

Dear Hon. Alan Wilson:

On behalf of the Legal Defense Fund, we urge you to issue a statement condemning voter intimidation and affirming your commitment to ensure that voters will be free to vote without fear this November. In light of evidence of intimidation in recent elections, and reports indicating organized efforts to intimidate and harass South Carolina voters during this November's election, it is critically important that your office issue a statement to warn bad actors that voter intimidation will not be tolerated.

1. Voter Intimidation is a Serious Crime.

Voter intimidation is a serious crime under both federal law and South Carolina law. Federal law provides that:

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 he may choose, or of causing such other person to vote for, or not to vote for, any candidate for [federal office] . . . shall be fined under this title or imprisoned not more than one year, or both.

See 18 U.S.C. § 594. Similarly, South Carolina law provides that:

A person who, at any of the elections, general, special, or primary, in any city, town, ward, or polling precinct, threatens, mistreats, or abuses a voter with a view to control or intimidate him in the free exercise of his right of suffrage, is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both.

See S.C. Code Ann. § 7-25-80.

In addition, any individuals or organizations engaging in voter intimidation are subject to civil liability under numerous federal statutes. *First*, Section 11(b) of the Voting Rights Act of 1965 provides that “no person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person

for voting or attempting to vote[.]” 52 U.S.C. § 10307. *Second*, Section 131(b) of the Civil Rights Act of 1957 provides that “[n]o person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote[.]” 52 U.S.C. § 10101(b). *Third*, Section 2 of the Enforcement Act of 1871 (the “KKK Act”) bars any conspiracy “to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote . . . from giving his support.” 42 U.S.C. § 1985(3).

Intimidating conduct is based on an objective assessment of the conduct’s effect and does not require specific intent on the part of the individual engaging in the conduct to engage in unlawful intimidation under § 11(b) of the Voting Rights Act.¹

2. Voters in South Carolina Are Subject to Threats of Voter Intimidation.

There have been concerning reports of voter intimidation in South Carolina that raise red flags for the potential for further voter intimidation at the polls during the general election. Just this May, the South Carolina State Election Commission received “threatening” calls after the spread of a false rumor that a non-citizen was being allowed to vote.² In Spartanburg County, fabricated text messages in June sowed fears of voter intimidation.³

In the June primaries, LDF’s own poll monitors reported candidates and campaign workers soliciting votes directly outside entrances to poll sites in Berkeley, Charleston, and Dorchester counties,⁴ as well as a litany of incidents where partisan campaign signs were placed within the electioneering boundary in Beaufort, Charleston, Dorchester, and Greenville counties.⁵ These events, while they may not in themselves amount to voter intimidation, may very well lay the groundwork for instances of voter intimidation.

Moreover, threats against voters in South Carolina are not new: During the 2020 and 2022 elections, voters were targeted in disturbing incidents of voter intimidation. For

¹ See 52 U.S.C.A. § 10307 (West); Ben Cady & Tom Glazer, *Voters Strike Back: Litigating Against Modern Voter Intimidation*, 39 N.Y.U. Rev. L. & Soc. Change 173, 204 (2015) (explaining that “Section 11(b) [of the Voting Rights Act] does not require a plaintiff to make any showing with regard to the defendant's intent.”).

² See Anisa Snipes, *SC Election Commission Addresses Threats Over Non-U.S. Citizens Registering to Vote*, FOX CAROLINA (May 24, 2024), <https://www.foxcarolina.com/2024/05/24/sc-election-commission-address-threatening-phone-calls/>.

³ See Christian Boschult, *Spartanburg County Warns of Fraudulent Texts About Voter Intimidation*, POST AND COURIER (June 11, 2024), https://www.postandcourier.com/spartanburg/politics/spartanburg-county-fraudulent-voter-intimidation-text-message/article_93627256-2814-11ef-80c9-07fad58cbfbf.html.

⁴ LDF Internal Report:

⁵ See S.C. Code § 7-25-180.

instance, in the June 2022 primaries, the director of the Charleston County Election Board testified before Congress about a group of private citizens traveling throughout Charleston County to harass election workers. On the eve of the election, one member of the group disseminated a threatening message to its members and said, “[f]or all of you on the team tomorrow observing the polls, Good Hunting.”⁶

These threats are especially concerning given evidence of ongoing activity among extremist, antigovernment, and white supremacist organizations in South Carolina. The Southern Poverty Law Center is currently tracking 33 hate and antigovernment groups in South Carolina,⁷ and the Anti-Defamation League has identified 183 instances of white supremacist propaganda and two white supremacist events held in South Carolina since 2020.⁸

Moreover, recent years have been marked by increasing threats to election officials and a high turnover rate for election officials in South Carolina.⁹ In 2022, the U.S. Department of Justice investigated more than 1,000 harassing and threatening messages directed at election workers nationwide, roughly 100 of which rose to the level of potential prosecution.¹⁰ Protecting the safety and security of election workers is fundamental to the integrity of our election process.

3. In Past Election Cycles, Numerous State Attorneys General Have Issued Statements Addressing Voter Intimidation.

In previous Presidential election cycles, attorneys general from across the country and across the political spectrum have issued statements addressing voter intimidation. For example, heading into the 2020 Presidential Election, Florida Attorney General Ashley Moody issued the following statement:

⁶ See Ruby Edlin & Lawrence Norden, Poll of Election Officials Finds Concerns About Safety, Political Interference, Brennan Center for Justice (May 1, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/poll-election-officials-finds-concerns-about-safety-political>.

⁷ See *Hate Map*, Southern Poverty Law Center, available at <https://www.splcenter.org/hate-map>.

⁸ See *ADL H.E.A.T. Map*, Anti-Defamation League, available at <https://www.adl.org/resources/tools-to-track-hate/heat-map>.

⁹ Election official turnover is particularly high in South Carolina. 80 percent of county election directors have been hired since 2021. See Abraham Kenmore, *Low pay, too little staff contribute to high turnover of SC election officials*, SOUTH CAROLINA DAILY GAZETTE (Aug. 19, 2024), <https://scdailygazette.com/2024/08/19/low-pay-too-little-staff-contribute-to-high-turnover-of-sc-election-officials/>; See also JOSHUA FERRER, ET AL., ELECTION OFFICIAL TURNOVER RATES FROM 2000–2024 25 (April 2024). https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2024/04/WEB_BPC_Elections_Admin_Turnover_R01.pdf.

¹⁰ Marina Villeneuve, *Justice Department details threats against election workers*, Assoc. Press (Aug. 3, 2022), <https://apnews.com/article/2022-midterm-elections-violence-presidential-judiciary-5125682e179ac1234a97756a644e353c>.

The Attorney General condemns hate, and any and all acts of voter intimidation. Violence and threats cannot be tolerated in our elections process. Voters must be allowed to exercise their right to vote without fear or intimidation and law enforcement must stand ready to assist if these acts occur.

This is just one of many such statements that have been issued in recent years by states and jurisdictions such as Colorado, Arizona, Georgia, Wisconsin, Maine, Massachusetts, Michigan, Vermont, Virginia, and the District of Columbia.¹¹

¹¹ See Colorado Attorney General, *Attorney General Phil Weiser reissues public advisories on voter intimidation and election worker safety* (Oct. 13, 2022), <https://coag.gov/press-releases/10-13-22/>; Arizona Attorney General, *Attorney General Brnovich Stands Up to Protect Arizona Voters* (Oct. 26, 2022), <https://www.azag.gov/press-release/attorney-general-brnovich-stands-protect-arizona-voters>; Colorado Department of Law, *Public Advisory on Voter Intimidation Crimes and Poll Center Security* (Oct. 13, 2022) <https://coag.gov/app/uploads/2022/10/Public-Advisory-Voter-Intimidation-10-13-2022.pdf>; Georgia Secretary of State, *Secretary Raffensperger Reaffirms Stand against Political Intimidation, Calls on General Assembly to Pass Language of HB 790* (Jan. 4, 2024), <https://sos.ga.gov/news/secretary-raffensperger-reaffirms-stand-against-political-intimidation-calls-general-assembly>; Duaa Israr, *Wisconsin Attorney General Josh Kaul issues warnings about voter intimidation*, News8000 (Oct. 6, 2022), <https://www.news8000.com/wisconsin-attorney-general-josh-kaul-issues-warnings-about-voter-intimidation/>; Conrad Swanson, *Colorado AG says he will prosecute voter intimidation during November election*, Denver Post (Oct. 3, 2020), <https://www.denverpost.com/2020/10/03/colorado-election-phil-weiser-trump-voter-fraud-intimidation/>; Maine Office of the Attorney General, *Office of the Attorney General Election Advisory* (Oct. 8, 2020), <https://www.maine.gov/ag/news/article.shtml?id=3436656>; Commonwealth of Massachusetts Office of the Attorney General, *Massachusetts Attorney General Advisory on Poll Monitoring and Voter Intimidation* (Sept. 17, 2020), <https://www.mass.gov/doc/ago-advisory-on-poll-monitoring-and-voter-intimidation-english/download>; Neil Vigdor, *Michigan charges two right-wing operatives with felonies over voter suppression scheme*, New York Times (Oct. 1, 2020), <https://www.nytimes.com/2020/10/01/us/elections/jacob-wohl-jack-burkman-michigan-felony.html>; Sam Metz, *Nevada attorney general vows to take on voter intimidation*, Nevada Appeal (Oct. 2, 2020), <https://www.nevadaappeal.com/news/nevada-attorney-general-vows-to-take-on-voter-intimidation/>; State of Vermont Office of the Attorney General, *Vermont AGO Guidance Regarding Voter Intimidation and Harassment* (Oct. 5, 2020), <https://ago.vermont.gov/wp-content/uploads/2020/10/AGO-Guidance-10.5.20.pdf>; Commonwealth of Virginia Office of the Attorney General, *Attorney General Herring Reiterates Protections Against Voter Intimidation and Outlines Guidance for Poll Watchers* (Sept. 30, 2020), <https://www.oag.state.va.us/media-center/news-releases/1840-september-30-2020-herring-reiterates-protections-against-voter-intimidation-and-outlines-guidance-for-poll-watchers>; Darcy Spencer, *DC Attorney General Says His Office is Ready to Fight Voter Intimidation*, NBC Washington (Oct. 11, 2020), <https://www.nbcwashington.com/news/local/dc-attorney-general-says-his-office-is-ready-to-fight-voter-intimidation/2441466/>; Sarah Thomsen, *Wisconsin attorney general talks voter intimidation, security ahead of election*, WBAY (Oct. 19, 2020), <https://www.wbay.com/2020/10/19/wisconsin-attorney-general-talks-voter-intimidation-security-ahead-of-election/>.

4. We Urge You to Issue a Statement Affirming That Voter Intimidation Is a Serious Crime.

We urge you to issue a public statement affirming that voter intimidation is a serious crime under both federal and South Carolina law and warn potential bad actors that there are severe penalties if they intimidate voters.

Your public statement on this issue will not only have an important deterrent effect on potential bad actors, but it will also give South Carolina voters comfort that they will be able to safely head to the polls to cast their ballots free from voter intimidation.

We ask that you respond in writing by September 20, 2024, to inform us of the steps you will take to address the issues in this letter and whether we can provide any support or assistance to you. We also ask that you identify the name and contact information for a member of your staff who we can contact directly about specific instances of voter intimidation in South Carolina. Please feel free to contact us directly at aingram@naacpldf.org or (646) 647-7754.

Sincerely,

/s/ Antonio L. Ingram II

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