

Managing Vehicular Protests During Election Season

This guidance outlines the law and provides information for law enforcement to better respond to drivers and multi-vehicle caravans that express support for a candidate or political cause while engaging in conduct that can threaten public safety, violate traffic laws, and/or cross the line into illegal voter intimidation. Law enforcement can help prevent caravans from intimidating voters, keeping in mind that during elections, excessive law enforcement presence near polling locations can itself be a source of voter intimidation.

Distinguishing Between Types of Activity

Law enforcement will need to distinguish between the following types of election-related driver activity:

1. **Drivers involved in peaceful and lawful demonstration.** If drivers are participating in a political demonstration—e.g., in a procession displaying political insignia, flags, etc.—and they are not violating traffic rules, intimidating voters, or threatening public safety, there is no need for law enforcement action.
2. **Drivers engaged in a demonstration but obstructing traffic or breaking other traffic rules.** If drivers are participating in a political demonstration but are obstructing traffic or violating other traffic rules, police may restore the free flow of traffic and ensure that drivers are obeying relevant traffic rules. Police should prioritize responding when vehicles are obstructing the flow of traffic around a polling place or otherwise impeding access to the polls.
3. **Drivers involved in voter intimidation.** If drivers are involved in voter intimidation, police should actively intervene, using de-escalation techniques when possible. See below for signs of voter intimidation.

What Are the Rules?

Voter intimidation is a crime under federal law and under every state’s laws.¹

Voter intimidation includes conduct intended to cause a voter to change their vote, or not vote at all, by instilling fear.² Laws criminalizing voter intimidation apply equally to voter intimidation conducted from vehicles. This is because a vehicle that is operated unsafely can be just as menacing and deadly as a firearm or other weapon. Indeed, many states consider vehicles to be deadly weapons for purposes of aggravated assault charges.³

¹ Theodore Wyman, *Litigation of Voter Intimidation Law*, 174 Am. Jur. Trials 385 § 8(2024); Inst. for Const. Advocacy & Prot., FactSheet: Protecting Against Voter Intimidation (accessed June 17, 2024), <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2020/10/Voter-Intimidation-Fact-Sheet.pdf>.

² See, e.g., 18 U.S.C. §§ 245(b)(1)(A), 594; 42 U.S.C. § 1985(3); 52 U.S.C. §§ 10307(b), 20511(1).

³ See, e.g., *Frayall v. State*, 259 Ga. App. 286, 287 (2003) (analyzing aggravated assault charge at GA. CODE ANN. § 16-5-21 and holding that a car “may become” a “deadly weapon” for purposes of an aggravated assault charge, “depending upon the manner in which it is used”); *Safian v. State*, 543 S.W.3d 216, 222 (Tex. Crim. App. 2018) (“the aggravated assault charge

Voter intimidation is often dependent on context. The following is a non-exhaustive list of behaviors that could, constitute voter intimidation, either on their own or as part of a broader pattern, when directed at voters, or conducted near polling places or drop boxes:

- Aggressively approaching voters' cars or writing down or recording license plate numbers or other information about voters;
- Following voters to, from, or within polling places;
- Aggressively revving engines as voters pass;
- Verbal threats or symbolic threats, especially of violence, (e.g., a noose or a coffin) directed at individual voters;
- Blocking roads to the polls;
- Coordinated blocking of traffic or parking spaces at polling sites;
- Confronting voters while wearing military-style or official-looking uniforms;
- Brandishing or intimidating display of firearms;
- Disrupting voting lines or blocking entrances;
- Tailgating other vehicles;
- Swerving aggressively towards pedestrians or other vehicles.

There is no political activity exception to public safety laws. State and local traffic laws relating to the safe operation of vehicles and impeding the flow of traffic apply to any location—including the vicinity of polling places.⁴ Officers are empowered to maintain order and safe traffic flow, and to enforce traffic laws as they normally would.⁵ The government has a compelling interest in protecting public safety by ensuring the free flow of traffic and keeping open access for emergency vehicles.⁶

The First Amendment does not prohibit content-neutral enforcement of generally applicable public safety laws. Enforcing traffic laws in a content-neutral manner is a clear example of a reasonable time, place, and manner regulation of conduct that might otherwise be protected by principles of free speech and association.⁷

required the State to prove that appellant threatened Officer Pearce with imminent bodily injury while using or exhibiting his motor vehicle as a deadly weapon”); *cf.* *Com. v. Fierst*, 423 Pa. Super. 232, 243 (1993) (finding sufficient evidence to support aggravated assault conviction under 18 PA. CONST. STAT. § 2702 on theory that defendant used his car with the intent to cause serious injury).

⁴ *See, e.g.*, *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 768 (1991) (“The State also has a strong interest in ensuring the public safety and order, in promoting the free flow of traffic on public streets and sidewalks, and in protecting the property rights of all its citizens.”).

⁵ *See, e.g.*, *Cox v. New Hampshire*, 312 U.S. 569, 574 (1941) (“The authority of a municipality to impose regulations [on parades and protests] in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend.”).

⁶ *See, e.g.*, *Schneider v. New Jersey*, 308 U.S. 147, 160 (1939) (“Municipal authorities, as trustees for the public, have the duty to keep their communities’ streets open and available for movement of people and property, the primary purpose to which the streets are dedicated. So long as legislation to this end does not abridge the constitutional liberty of one rightfully upon the street to impart information through speech or the distribution of literature, it may lawfully regulate the conduct of those using the streets. For example, a person could not exercise this liberty by taking his stand in the middle of a crowded street, contrary to traffic regulations, and maintain his position to the stoppage of all traffic . . . Prohibition of such conduct would not abridge the constitutional liberty since such activity bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion.”).

⁷ *See, e.g.*, *Perry Educ. Ass’n v. Perry Loc. Educators’ Ass’n*, 460 U.S. 37, 45 (1983) (“The state may also enforce regulations

What Should Law Enforcement Do?

- **Know the electioneering laws.** Law enforcement should be familiar with local and state laws that preclude electioneering within a certain distance of a polling place.⁸ Most states prohibit electioneering in the immediate vicinity of polling places. These laws generally apply to vehicles as well as to pedestrians.
- **Know state and federal voter intimidation laws.** Voter intimidation is unlawful whether within the no-electioneering zone or outside of it.
- **Enforce traffic laws to keep polling places accessible.**
 - If drivers are obstructing traffic or impeding access to polls, officers should first encourage drivers to move along, but note that enforcement action is possible if drivers persist in unsafe and unlawful conduct.
 - If law enforcement observes a caravan approaching voters or demonstrators near a polling place in circumstances in which voter intimidation or confrontations with demonstrators appear likely, officers should engage, if safe, in de-escalation techniques and encourage the caravan to divert and move along.
 - Law enforcement agencies should document delays and traffic obstruction if drivers interfere with voters. This evidence will be important to other branches of the justice system in crafting remedies to restore fair voting access, including by extending polling hours.
- **Minimize law enforcement visibility where possible.** To minimize the likelihood that the presence of uniformed law enforcement at a polling place might itself intimidate voters, officers should consider measures to keep visibility low, such as asking witnesses to provide statements at a nearby location.

This guidance document was prepared by the States United Democracy Center, 21CP Solutions, and the Institute for Constitutional Advocacy and Protection (ICAP) at Georgetown University Law Center.

The States United Democracy Center is a nonpartisan organization advancing free, fair, and secure elections. We connect state officials, law enforcement leaders, and pro-democracy partners across America with the tools and expertise they need to safeguard our democracy. For more information visit statesuniteddemocracy.org or follow us at @statesunited.

ICAP's mission is to use strategic legal advocacy to defend constitutional rights and values, while working to restore people's confidence in the integrity of their governmental institutions. Connect with ICAP at law.georgetown.edu/icap, reachICAP@georgetown.edu, or @GeorgetownICAP.

21CP is a team of forward-thinking thought leaders on public safety that helps cities and communities tackle the challenges of delivering safe, effective, just, and constitutional public safety services. Learn more at 21cpsolutions.com.

of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.”); *Cantwell v. Connecticut*, 310 U.S. 296, 308 (1940) (noting that “when clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the state to prevent or punish is obvious.”).

⁸ See Nat'l Ass'n of Secretaries of State, *State Laws Prohibiting Electioneering Activities Within a Certain Distance of the Polling Place* (Oct. 2022), <https://www.nass.org/sites/default/files/reports/state-laws-polling-place-electioneering-Oct2022.pdf>.