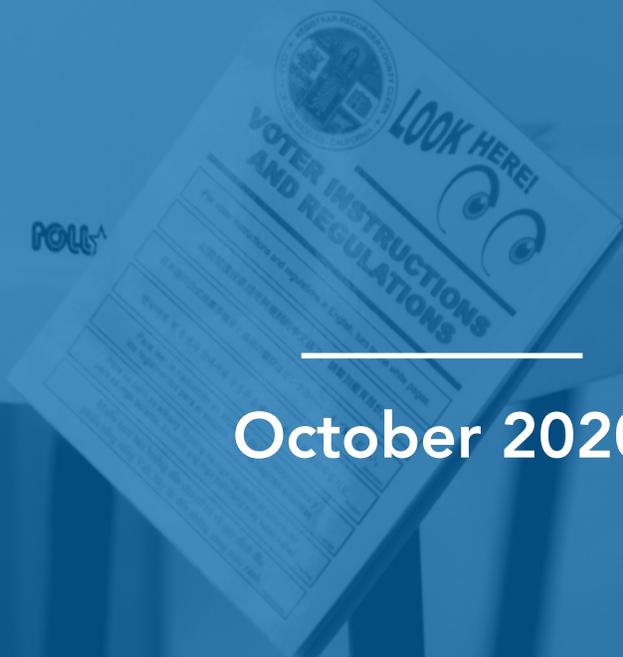
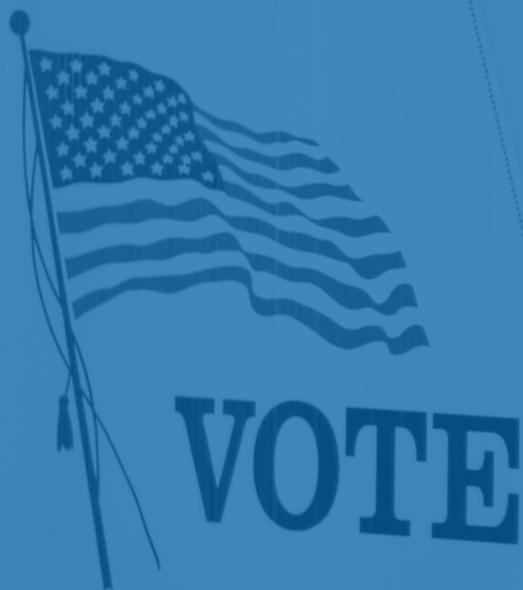


PROMOTING FAIR AND FREE ELECTIONS

Recommendations for Elected Prosecutor Engagement in Protecting the Right to Vote



October 2020

INTRODUCTION

Public trust in democracy, the rule of law, and the integrity of our government is integral to public safety. When one system is attacked and fails, it compromises the ability of *all* systems to function, including our criminal justice system. And when communities do not trust prosecutors, these leaders cannot deliver on the promises they have made to keep them safe.

As such, elected prosecutors have a critical role to play in ensuring fair and free elections and in guarding against interference with the right to vote. Listed below are ways that elected prosecutors can engage – by promoting voter education and information sharing, underscoring the integrity and reliability of vote-by-mail, debunking myths in regard to purported concerns with vote-by-mail, and helping ensure that interference with voting at the polls does not occur.



"Our democracy, which for centuries has been the envy of the world, is possible when everyone is free to vote."

– Karl Racine
District of Columbia
Attorney General

EDUCATE THE PUBLIC ON VOTING SECURITY AND DEBUNK MYTHS ABOUT VOTER FRAUD

Elected prosecutors can use information and communication channels at their disposal to educate the public on the integrity and security of voting and help debunk myths to the contrary. They should:

- Use their platform to promote pro-voting messages and **fight disinformation and misinformation** regarding the “dangers” of voting by mail.
- Be a **voice of reassurance and calm**. Reassure voters that there are security protocols in place for mail-in ballots.
- Become educated on existing **reports, data, and information around vote-by-mail** and studies that debunk myths around voter fraud. In particular, according to resources from the [Brennan Center](#) for Justice:
 - Voter “fraud is very rare, voter impersonation is virtually nonexistent, and many instances of alleged fraud are, in fact, mistakes by voters or administrators. The same is true for mail ballots, which are secure and essential to holding a safe election amid the coronavirus pandemic.”
 - Over time, more voters have chosen to use mail-in ballots – and in the last two federal elections, about one in four Americans chose to cast a ballot by mail.
 - Despite the increase in the use of mail voting, *fraud rates remain incredibly low* – “an exhaustive investigative journalism analysis of all known voter fraud cases identified only 491 cases of absentee ballot fraud from 2000 to 2012.”
 - “While mail ballots are more susceptible to fraud than in-person voting, *it is still more likely for an American to be struck by lightning than to commit mail voting fraud.*”
 - States have a variety of tools to address **security concerns** for mail ballots, including:
 - Identity verification;
 - Bar codes on ballots or envelopes;
 - Ballot tracking through the United States Postal Service;
 - Secure drop-off locations and drop-boxes;
 - Penalties for individuals who commit voter fraud;
 - Post-election audits; and
 - Access to in-person polling sites, as a fail-safe.
- Collect and publicize data from their own jurisdictions underscoring the fact that voter fraud is *extremely rare*.

"It's essential that people have confidence their votes will count and be properly counted."

– Larry Krasner
Philadelphia District Attorney

PROVIDE NONPARTISAN VOTER INFORMATION

Elected prosecutors have a unique opportunity to use their bully pulpit to promote nonpartisan **public education on voting**. They should:

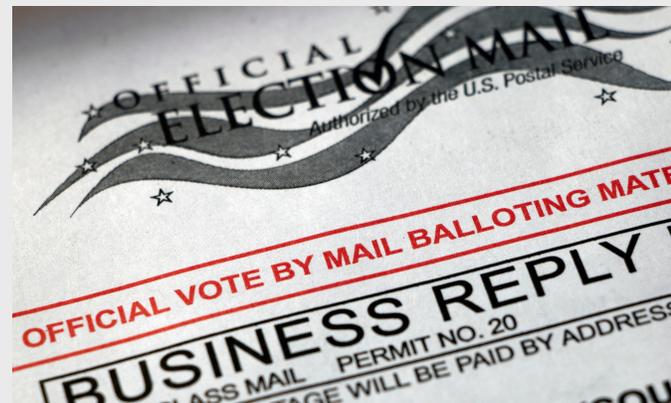
- Make **key information on voting** publicly available and easily accessible – such as via social media, office newsletters, press releases, and on the official office website. That information should include the following, at a minimum:
 - Voting dates and hours;
 - Who is eligible to vote;
 - How to get vote-by-mail ballots;
 - The location of in-person polling sites and secure drop-boxes for ballots; and
 - A link to the state/local voter registrar, voting FAQs, vote centers, and election department websites.
- Provide the public with information on the nonpartisan, multi-lingual national [Election Protection hotline](#) (866-OUR-VOTE). In addition to providing [voter information for all 50 states](#), Election Protection also documents problems people encounter while voting and works on the ground to help remove these barriers.
- Help to promote **voter registration** and efforts to facilitate voting rights for returning citizens.

Examples:

- The Office of the Attorney General for the District of Columbia has a web page devoted to “[District Voting Rights and Information](#),” which includes sections on eligibility to vote, when to vote, and voting rights.
- The Kings County (Brooklyn, NY) District Attorney’s office recently held a “[Re-entry Outreach Event](#)” to provide services to formerly incarcerated individuals, including assistance with voter registration.
- State Attorney Andrew Warren (Thirteenth Judicial Circuit, FL) has [implemented](#) a program that will modify sentences and restore the right to vote to those eligible under Amendment 4, a voter-approved ballot initiative in 2018 that restored the right to vote for individuals who had previously been convicted of felonies.

"The integrity of elections is important because voting is the most sacred and the most sacrosanct of our rights."

– Parisa Dehghani-Tafti
Arlington County & City of Falls Church, VA
Commonwealth's Attorney



PROVIDE VOTERS WITH BASIC “KNOW YOUR RIGHTS” INFORMATION

Elected prosecutors can be an invaluable and trusted source for educating voters on their rights. They should:

- Make **information about voting rights** publicly available and easily accessible – such as via social media, office newsletters and press releases, and on the official office website (see the DC Attorney General’s office [web page](#)). That information should include a description of the following voter rights (as well as links to other jurisdiction-specific information and guidance¹):
 - Right to vote if you are *in line* at the time when the polls close;
 - Right to bring voter information materials into the booth;
 - Right to not be intimidated;
 - Right to have a ballot brought to your car if you are elderly or disabled; and
 - Right to receive a replacement ballot if a mistake is made.
- Inform voters about steps they can take when and if voting rights are infringed upon.
- Become familiar with, and train local law enforcement on, state and local **laws against voter interference or intimidation**, so officers in the field can properly identify illegal activity and work to de-escalate situations as they might arise. Also, elected prosecutors may want to become familiar with [voter challenger laws](#)² and how to address challenges that may be made for partisan or discriminatory purposes.

Examples:

- Vermont Attorney General T.J. Donovan [issued guidance](#) regarding voter intimidation and harassment, providing the specific state and federal laws that protect voters from interference and intimidation and reassuring voters that these laws will be enforced so individuals can peacefully exercise their right to vote.
- Bernalillo County (Albuquerque, NM) District Attorney Raúl Torrez held a training for law enforcement officers on election law and how to identify illegal activity at polling places. DA Torrez also advocated for de-escalation and, whenever possible, redirecting and correcting illegal activity rather than resorting to arrests.



¹ As previously noted, voter information, by state, is available at an [interactive map on this website](#).

² Forty-six states have laws that allow private citizens to challenge the eligibility of prospective voters, either on or before Election Day. Although these laws are more than a century old, they have drawn increased public scrutiny in recent years as the number of citizen poll-watchers and challengers in elections continues to grow. The linked report above by the Brennan Center for Justice has good information on concerns with, and abuses of, these laws.

RESPOND TO AND ADDRESS VOTER INTERFERENCE AND INTIMIDATION

When and if voter interference or intimidation comes to light, elected prosecutors should act promptly and decisively. They should:

- **Speak out promptly** when concerning conduct that can erode voting rights comes to light or is threatened.
- Consider creating a **hotline** for community complaints regarding intimidation or interference and for law enforcement to use if they have questions from the field as voting is occurring.
- Ensure voters know whom to call if concerns arise. As noted above, a national election protection hotline has been set up at [866-OUR-VOTE](https://www.ourvote.gov).
- Promptly address and act to foreclose any unlawful **deployment of federal law enforcement** at the polls or excessive efforts by local law enforcement to police the polls in a manner that is unnecessary and intimidates voters.
- Respond to any **illegitimate voter fraud charges** that are advanced and use their elected position to condemn these actions.
- If there are concerns with intimidation or interference with voters at the polls, consider having office personnel trained and available to observe the polls and document any concerns (if state and local laws allow these observers) and work with other groups who train and assign poll watchers to coordinate responses. Make sure that any poll watchers are trained on how to sensitively defuse polling place crises in a **pro-voter** way that avoids creating an intimidating or threatening environment.³

Examples:

- In [2018](#), the Philadelphia District Attorney's **Election Fraud Task Force** deployed more than 65 ADAs throughout the city on Election Day to monitor the polls and respond to reports of election interference, intimidation, or other illegal activity. And, more recently in [2020](#), District Attorney Larry Krasner assembled the task force early and is keeping a prosecutor on call at all times to ensure a fair and free election both during the early voting period and on Election Day.
- In [2020](#), the Fort Bend County, TX District Attorney's Office established an Elections Task Force to ensure that people feel safe to vote. The Task Force will send members throughout the county to quickly respond to any complaints of voter intimidation at polling sites.

³ In the wake of the U.S. Supreme Court's 2013 opinion in *Shelby County v. Holder*, federal election observers are no longer stationed at polling places with a history of discrimination and voter suppression. Responding to concerns about voter suppression in the absence of such federal oversight, in 2016, then Dean of Wayne State University of Law School and current Michigan Secretary of State Jocelyn Benson [recommended](#) that states require poll worker trainings that outline state election laws.



- If **voter intimidation or interference at the polls** does arise, know where to refer these matters (see reference above to 866-OUR-VOTE) and how to document them.
- Should elected prosecutors learn of plans for **unauthorized "militias"** or armed groups of individuals to station themselves near early voting or Election Day polling places, or should such groups show up, call the Election Protection hotline at 866-OUR-VOTE.
 - Review and make sure prosecutors in the office, as well as law enforcement partners, are versed on the [specific state's legal prohibitions](#) on unauthorized militias.
 - Ensure poll observers or law enforcement investigators are appropriately trained on how to document evidence of [unauthorized militia interference](#).
 - If voter intimidation begins during early voting, act quickly to prevent further voter intimidation.
- If applicable **criminal voter protection laws** exist, be ready to prosecute locally or refer to the appropriate enforcement authorities (such as the state Attorney General) any voter intimidation or interference that rises to the level of criminal conduct, and train office personnel on these laws and how to best **make a record** of those who interfere with the right to vote.

"We will make sure to maintain the integrity of the election process so that everyone feels confident and safe to come and cast their vote."

– Brian Middleton
Fort Bend County, TX District Attorney



For more information, visit
FairandJustProsecution.org.

