

## Our Response to Voter Intimidation

Here are my thoughts on the two questions Kathy received from our voter protection committee counterparts in Sarasota County. First question:

*“What do you advise your outside poll observers and/or table greeters to do when aggressive Republicans engage in harassing behavior outside the (now) 150-foot limit on campaign activities? We have had trucks draped with Trump signs run over Democratic campaign signs, Republicans yelling at our table greeters that they were Communists and creating a general disturbance that kept people away from our tables, and other aggressive behavior that caused some of our volunteers to feel physically threatened.”*

### Harassment at Polling Places

Florida elections law speaks to this issue. The first point is that the election boards in each County have full authority to “maintain order at the polls.” That order is to be maintained by a deputy sheriff (apparently not by the local municipal police.) While it is not clear whether this responsibility only applies to the 150-foot no-solicitation zone around the polling place, I think there is a good argument that it should apply broadly to the entire polling station since a disturbance just outside his own clearly would have a chilling impact on protected activities within the zone.

**102.031 Maintenance of good order at polls; authorities; persons allowed in polling rooms and early voting areas; unlawful solicitation of voters.—**

(1) **Each election board shall possess full authority to maintain order** at the polls and enforce obedience to its lawful commands during an election and the canvass of the votes.

(2) **The sheriff shall deputize a deputy sheriff for each polling place** and each early voting site who shall be present during the time the polls or early voting sites are open and until the election is completed, who shall be subject to all lawful commands of the clerk or inspectors, and **who shall maintain good order**. The deputy may summon assistance from among bystanders to aid him or her when necessary to maintain peace and order at the polls or early voting sites.

...

(4) (c) Each supervisor of elections shall inform the clerk of the area within which soliciting is unlawful, based on the particular characteristics of that polling place. The supervisor or **the clerk may take any reasonable action necessary to ensure order at the polling places, including, but not limited to, having disruptive and unruly persons removed by law enforcement officers** from the polling room or place or from the 150-foot zone surrounding the polling place.

## Harassment of Voter Registration Activities

It is a crime use “menace or threat or intimidation” to deter a person’s right to register to vote:

**104.012 Consideration for registration; interference with registration; soliciting registrations for compensation; alteration of registration application.—**

...

(2) A person who by bribery, **menace, threat**, or other corruption, directly or indirectly, influences, deceives, or deters or attempts to influence, deceive, or deter any person in the free exercise of that **person’s right to register to vote** at any time, upon the first conviction, commits a felony of the third degree...

**104.0615 Voter intimidation or suppression prohibited; criminal penalties.—**

(1) This section may be cited as the “Voter Protection Act.”

(2) A person may not directly or indirectly use or threaten to use force, violence, or **intimidation or any tactic of coercion or intimidation to induce or compel an individual to:**

(a) **Vote or refrain from voting;**

(b) Vote or refrain from voting for any particular individual or ballot measure;

(c) **Refrain from registering to vote; or**

(d) Refrain from acting as a legally authorized election official or poll watcher.

...

(5) A person who violates subsection (2) ... commits a felony of the third degree...

## Enforcement

The election laws also have some teeth. The next section applies to sheriff (and presumably his deputies) at the polls on election day:

**102.091 Duty of sheriff to watch for violations; appointment of special officers.**

The sheriff shall exercise strict vigilance in the detection of any violations of the election laws and in apprehending the violators. The Governor may appoint special officers to investigate alleged violations of the election laws, when it is deemed necessary to see that violators of the election laws are apprehended and punished.

Section 104.11 is not limited to election day, so any law enforcement official who neglects his or her duties to enforce the elections law is actually violating the law.

**104.11 Neglect of duty by sheriff or other officer.—**

Any sheriff, deputy sheriff, or other officer who willfully neglects or willfully refuses to perform his or her duties relating to elections is guilty of a misdemeanor of the first degree...

Finally, anyone who even assists in the violation of the election code is also subject to penalties.

**104.091 Aiding, abetting, advising, or conspiring in violation of the code.—**

(1) Any person who knowingly aids, abets, or advises the violation of this code shall be punished in like manner as the principal offender.

(2) Any person who agrees, conspires, combines, or confederates with another person to commit a violation of this code shall be punished as if he or she had committed the violation.

(3) Any person who knows of a felony violation of this code and gives any aid to the offender who has violated this code, with intent that the offender avoid or escape detection, arrest, trial, or punishment, shall be punished as if he or she had committed the violation. This subsection does not prohibit a member of The Florida Bar from giving legal advice to a client.

Witnesses to election violations can be compelled to testify,

**104.39 Witnesses as to violations.**

Any person who violates any provision of this code shall be a competent witness against any other person so violating and may be compelled to attend and testify as any other person. The testimony given shall not be used in any prosecution or criminal proceeding against the person so testifying, except in a prosecution for perjury.

And any qualified voter can initiate a grand jury prosecution.

**104.43 Grand juries; special investigation.—**

The grand jury in any circuit shall, upon the request of any candidate or qualified voter, make a special investigation when it convenes during a campaign preceding any election day to determine whether there is any violation of the provisions of this code, and shall return indictments when sufficient ground is found.

## Solicitation Within Gated Communities on Election Day

The second question posed by the Sarasota Voter Protection Committee had to do with solicitation inside communities that restrict solicitation:

*“What guidance do you provide volunteers who wish to canvass in gated and non-gated communities that display “no solicitation” signs? I know that the FDP provided a “canvassing guidelines” statement last year, but, frankly, we did not find it that helpful to real-world situations. And, of course, a lot varies depending on local laws, the governmental structure and rules of a specific community, etc. But our Democratic Executive Committee does not have the resources to research every housing community in our county, and we don’t expect our volunteers to do so either.”*

First of all, here are the rules on election-day solicitation in Section 102.031. Basically, solicitation can be prohibited inside the 150-foot zone around the polling place, but not outside that zone. The same election-day rules are extended to private property, such as a gated community. I did not find any guidance for solicitation on non-election days:

4)(b) For the purpose of this subsection, the terms “solicit” or “solicitation” shall include, but not be limited to, seeking or attempting to seek any vote, fact, opinion, or contribution; distributing or attempting to distribute any political or campaign material, leaflet, or handout; conducting a poll except as specified in this paragraph; seeking or attempting to seek a signature on any petition; and selling or attempting to sell any item. The terms “solicit” or “solicitation” may not be construed to prohibit exit polling.

...

(4)(d) Except as provided in paragraph (a) [i.e., the 150-foot area], the supervisor may not designate a no-solicitation zone or otherwise restrict access to any person, political committee, candidate, or other group or organization for the purposes of soliciting voters. This paragraph applies to any public or private property used as a polling place or early voting site.

(4)(e) The owner, operator, or lessee of the property on which a polling place or an early voting site is located, or an agent or employee thereof, may not prohibit the solicitation of voters outside of the no-solicitation zone during polling hours.

### **My Recommendations**

We need to make this information accessible to Voter Protection committees statewide. My thought is that we would also ask to meet with our Polk County sheriff, Grady Judd, present him with some specific scenarios, and ask how he would have his deputies deal with them. If possible, I would like to get his response in writing.

Finally, we should equip poll watchers equipped with a short pamphlet outlining the statutory requirements above, so they will know their rights and can give the pamphlet to officers or harassers. We should also equip them with a special hotline number so we can deal with elevate harassment situations in real time — possibly by having one of our team members speaking to the deputy on duty on polling day, or contacting local law enforcement officials on other occasions.

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