



Deterring Threats to Election Workers

**RECOMMENDATIONS FOR
THE DOJ TASK FORCE**

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Introduction

False claims of a stolen election in 2020 shook U.S. democracy to its foundation, seeding ideas and establishing behavior that will reverberate in elections for years to come. The unprecedented number of false claims alleging election fraud in 2020 ignited a [barrage of threats against election workers](#) in what had traditionally been a very low threat environment.

In 2020, then Philadelphia Elections Commissioner Al Schmidt received numerous threats against himself and his family: “Heads on spikes. Treasonous Schmidts.” He was one of countless [election officials](#) that had to leave their homes to assure their personal safety during the November election. As the nation prepares for the 2022 midterm elections, election officials continue to deal with threats, harassment, and abuse, and the Department of Homeland Security recently [warned](#) that “calls for violence by domestic violent extremists” directed at election workers are likely to increase as the midterm election season continues.

The right to vote cannot be protected unless election officials are permitted to do their jobs free from improper partisan influence, harassment, and abuse. If perpetrators of threats face no consequences for their actions, many of the workers who safeguarded [the most secure U.S. election ever](#), according to the Cybersecurity and Infrastructure Security Agency (CISA), may choose not to work in future elections, [risking election integrity](#).

Election workers who leave will inevitably be replaced by less experienced workers who are more likely to make errors, which could undermine public confidence in the election process and create an environment ripe for conspiracy. Furthermore, some of the election workers who leave could be replaced by [rogue workers](#), who are sympathetic to election conspiracies and more willing to break rules or miscount ballots out of a mistaken desire to ensure that elections are not “rigged” or “stolen.”

To help protect election workers from threats—and the foreseeable consequences of such threats on the integrity of future U.S. elections—the U.S. Department of Justice (DOJ) established an [Election Threats Task Force](#) last year that included members from the Criminal Division, the Civil Rights Division, the National Security Division, and the FBI. The Task Force has been notified of hundreds of threats, but progress on investigations and prosecutions has been [too slow](#).

Last August, the head of the task force, John Keller, told a meeting of secretaries of state that the response to the surge in threats to election workers had been “[inadequate](#).” After her family received dozens of threats that were investigated without subsequent arrests, Tricia Raffensperger, wife of Georgia’s Secretary of

State, observed that [the lack of action to protect election workers](#) stood in stark contrast to the DOJ's aggressive investigation into the January 6th insurrection at the U.S. Capitol, which had produced about 600 arrests. Al Schmidt also underscored the dire threats posed by both the January 6th insurrection and the harassment of election officials in [congressional testimony](#) in early May and again at a [January 6th Select Committee hearing](#) in June. Both threats against election officials and the January 6th insurrection embody dire threats to our democracy, and both deserve the full attention of the DOJ.

Recommendations for Enhancing DOJ Guidance

A functioning democracy depends on election workers administering free and fair elections that reflect the will of the voters. As we approach the 2022 midterms, one major challenge many election officials will encounter—and will adapt to—is recruiting enough workers who believe in the integrity of U.S. elections to [keep America's election machinery running](#). Another challenge is the increasingly aggressive [election observers](#) and [challengers](#) cropping up in election offices and polling places across the country. A more aggressive and comprehensive posture by the Election Threats Task Force could ensure the safety of election workers serving on the front lines of U.S. elections, an important bulwark in helping to resist nascent authoritarianism.

To improve the task forces' effectiveness and encourage the protection of election workers, the DOJ should release additional guidance for local law enforcement, FBI's field offices, and others who work on the front lines of elections that shows how federal laws can be used to deter threats and hold those accountable who threaten election officials.

Such a document would serve at least three purposes:

- 1. Offer additional clarity on when a threat is prosecutable, which would help direct limited law enforcement resources:** The guidance document should discuss the federal statutes the department enforces related to election threats, the statutes that prohibit the intimidation of election officials, and the department's commitment to act against those who violate the law. The guidance document could also bolster ongoing efforts by some states to prosecute election threats and encourage the reporting of threats, even those that cannot be prosecuted.

2. **Offer ideas for how to improve the safety of election workers, regardless of whether a prosecution is possible:** The guidance document should also share best practices for how to ensure election worker safety more broadly against threats. Enforcement actions—as critical as they can be—are unlikely by themselves to fully resolve the threats and harassment election workers continue to face. Best practices from sources such as reports, trainings, academic research, and elsewhere could help create road maps for states and localities seeking to better protect their election workers. Such information could build on previous efforts by others, such as [CISA](#) and the [U.S. Election Assistance Commission](#), to help protect election workers while also helping foster greater collaboration between the DOJ, law enforcement agencies, and election officials.
3. **Reaffirm that the issue of threats to election workers remains a Departmental priority:** The [DOJ's mission](#) is to ensure “public safety against threats foreign and domestic.” Threats against election workers clearly fall into this characterization. The DOJ has exhibited a commitment to their mission through their election threats task force, but more needs to be done. Other agencies, like CISA or the EAC, simply do not have the bandwidth or capacity to pursue guidance for law enforcement.

DOJ guidance has demonstrated success in impacting state and local decision-making. For example:

- **Arizona:** As a part of its review of the 2020 election in Maricopa County, the Arizona Senate initially planned to canvass voters, asking for information about their voter registration and voting records. Following a [letter](#) from the DOJ's Civil Rights Division informing the Senate that such a canvass could violate federal laws barring voter intimidation, the Arizona Senate [replied](#) that that portion of the review would be put off, and we are not aware that it ever happened.
- **Wisconsin:** After the DOJ put out [guidance](#) to ensure compliance with federal statutes related to post-election “audits,” Madison, Wisconsin, election officials utilized the guidance to help ensure the security and integrity of the city's election records.

The DOJ can and should be able to reiterate the need for election officials to report threats while also helping law enforcement direct their limited resources. In some cases, law enforcement's reluctance to pursue even very prosecutable election threats may be influenced by guidance from the DOJ. As a department that works to [detect, investigate and pursue violations of federal civil and criminal laws related to voting](#), the DOJ should expand guidance for how others can be held civilly liable for threatening election workers.

Limits on Federal Laws Prohibiting Threats to Election Officials

There are federal laws that protect election officials, as well as those helping administer elections, and the guidance document should describe these statutes. For example, 18 U.S.C. §245 contains language that [prohibits](#) physical threats or reprisals against candidates, voters, poll watchers, and election workers. 52 U.S.C. § 20511 and §10307 prohibits intimidating election workers who help voters register to vote and cast their ballots. Similarly, [18 U.S.C. § 241](#) makes it illegal for two or more persons to conspire to interfere with federal voting rights and certain state voting rights. Conspiring to threaten those who ensure a voter's right to a fair and democratic process could certainly have a substantial impact on an American's right to vote, though proving such conspiracies can be challenging. And [18 U.S.C. § 875](#) states that an individual who “transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another,” is guilty of a felony and faces up to five years imprisonment.

The guidance document should note the limitations of these laws (and [others](#)) and ways to address them. For example, election threat prosecutions under the Civil Rights Act [require](#) written authorization by the attorney general or another senior DOJ official, who [must certify](#) that federal prosecution is “in the public interest and necessary to secure substantial justice.” This requirement was imposed in response to the [reluctance of some members of Congress](#) to give the federal government authority over what were (state) assault and battery cases. In making this certification, the [standard](#) is “whether the facts of the matter are such that the appropriate state law enforcement authorities should, but either cannot or will not, effectively enforce the applicable state law, thereby creating an overriding need for federal intervention.”

The DOJ should consider further defining the circumstances under which it will invoke Section 245. As other election experts have [noted](#), state police forces and local prosecutors were not initially equipped to address the surge of hostility directed at election administrators and workers. And while investigating such threats may fall within their jurisdiction, it may not be a priority and in some cases may be actively resisted for political reasons. One way to help ensure that investigating such threats is a priority for local, state, and federal government entities, while also improving coordination and accountability, is to detail the conditions under which the federal government could and would intervene under the statute.

The DOJ should also further clarify when law enforcement agencies can bring charges under 18 U.S.C. § 875, a statute used for recent election threat prosecutions. One reason some have cited for the task force’s lack of progress is the [ambiguity](#) over what constitutes a “true threat,” and there is some [merit](#) to this point. That said, there is sufficient clarity on what constitutes a “true threat” in many instances for the DOJ to prosecute cases and issue guidance. For example, if a person transmits a communication for the purpose of issuing a threat, or with knowledge that the communication will be viewed as a threat, the [mental state requirement to prosecute](#) under Section 875(c) will clearly be met. The DOJ’s Election Threats Task Force invoked the statute without issue when it arrested and charged Texas resident Chad Stark after he allegedly sent a [message](#) on January 5, 2021 via Craigslist in which he allegedly threatened to injure and kill government officials in Georgia.

Alternatives to Criminal Prosecution

Even if law enforcement cannot criminally prosecute someone for making a threat to an election official, there are still things that can be done to help ensure the safety of election workers. For example, a perpetrator could still be held civilly liable, particularly if a statement would put any “reasonable person” in fear. The DOJ Elections Task Force should consider issuing “best practice” guidance for how states legislatures, Congress, and other lawmaking bodies could hold individuals civilly liable for threatening or intimidating election workers in the performance of their original duties.^a As Trey Grayson, Matthew Masteron, Orion Danjuma, and Ben Berwick noted in [State and Local Solutions Are Integral to Protect Election Officials and Democracy](#), a properly crafted civil action could reduce the likelihood of misuse and empower election workers to enforce their rights even if prosecutors will not. Such suits could be initiated by victims of harassment or by attorneys general and would provide a specialized mechanism to obtain damages from perpetrators and court orders preventing further harassment. The skills and experiences of those who make up the DOJ’s Election Threats Task Force would make it well positioned to provide guidance here.

Additionally, the DOJ should aim to improve the safety of election workers by providing law enforcement agencies and the broader public access to related best practices, perhaps through the creation of a one-stop shop of information and best practices that are currently scattered across government agencies and

^a Several organizations, like the [Committee for Safe and Secure Elections](#) and [States United for Democracy](#), have created guidance documents for election officials experiencing harassment and for local and state law enforcement. These would serve as a complement to material put out by the DOJ Elections Task Force.

outside organizations. These resources could cover topics such as how to report a threat (even if the threat is not prosecutable), how to implement new security measures, and how to balance legal considerations related to election worker safety and privacy. The DOJ could also consider including [administrative actions and legislative proposals](#) that have been taken across the country in response to reports of threats to election workers. Contributions for this resource could come not only from prosecutors, law enforcement, and election officials, but non-governmental actors including community groups and civil rights organizations.

Such a resource could be invaluable to lawmakers, law enforcement agencies, and election officials seeking to implement reforms at a time when concern about election worker threats is [causing many states and jurisdictions to re-think efforts](#) to protect election workers. Not only could it provide more ideas for how to better protect election workers, but it could help convince state and local law enforcement, as well as their communities, to take greater ownership of the push to protect election officials. The DOJ should encourage CISA or the FBI to provide state and local law enforcement with techniques for determining the identity of those posting threats on social media.

Election worker threats are unlikely to diminish significantly in response to federal efforts if those efforts are seen as primarily antagonistic. The sharing of best practices not only provides more support, guidance, and assistance to state and local law enforcement, election officials, and their partners, it will also help ensure that the DOJ guidance is perceived as an invitation for greater partnership, not punishment.

Conclusion

At a time of rising threats against election officials and departures, and roughly a year and half after the January 6th insurrection was followed by nationwide calls to bolster U.S. democracy, guidance from the DOJ like that outlined above could: improve enforcement of and accountability for election worker threats, empower federal, state, and local government actors address this challenge, and build greater trust between election workers, law enforcement, and others working on this issue. If the DOJ is to make a dent in improving election worker safety, it must demonstrate that it is both ready and willing to use its investigatory powers to investigate and prosecute election-relates threats, while also seeking to collaborate with its partners at every turn. This additional guidance is an acknowledgement of that. And while it will not be a panacea for all the ongoing threats of violence being directed at election workers, it would certainly be a big step in the right direction.



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