



The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Elections Division

MEMORANDUM

TO: Local Election Officials and Persons Interested in Observing
Elections in Massachusetts

FROM: Elections Division

DATE: October 25, 2012

RE: OBSERVERS AT THE POLLS

INTRODUCTION

State law requires the election be held in the public view. To achieve this legal requirement, observers are permitted inside the polling place, outside the guardrail, unless they are disorderly or obstruct the access of voters. An observer must comply with the applicable laws and regulations and observing must be done in a manner so as not to interfere with the voter or voting process and in conformity with the instructions of local officials. This memorandum is provided to give some additional guidance regarding observers at the polls.

GENERAL INFORMATION

Observers must be allowed into the polling place at least one half hour before the polls open so that they can observe the public inspection of the voting equipment or test results where scanning equipment is used. G. L. c. 54, § 35; 950 C.M.R. § 54.13(c). Observers must be allowed to remain within the polling place after the polls close to watch the voting lists and all ballots being removed from the ballot box. Only election officers may take part in the actual process of counting and sealing the voting materials. During this process, the observers must stand outside the guardrail. G. L. c. 54, § 70.

Although there is no requirement that observers notify the local election official that they will be at the polls, it is strongly recommended that observers notify the local election official in writing prior to election day. Pursuant to 950 C.M.R. § 54.04(23)(b), if the polling place is not large enough to accommodate all observers/challengers, to the extent possible, priority will be given to those

individuals representing candidates appearing on the ballot and to those who provided written notice to the local election official prior to the election. Local election officials may limit the number of observers in a polling place. If there are so many observers in the polling place that they obstruct voters, they may be asked to cooperate in collecting information. 950 C.M.R. § 54.04(22)(a).

Observers may keep notes including marked voting lists. If there are so many observers in the polling place that they obstruct voters, they may be asked to cooperate in collecting information. The warden may exclude from the polling place any person who is disorderly or who obstructs the access of voters. 950 C.M.R. § 54.04(22)(a).

LOCATION OF OBSERVERS

There are generally two functions of "observers," which are sometimes also referred to as "poll checkers."¹ One function of observers is to observe the check-in process to gauge turn out and challenge voters at the check-in table. Another function of observers is to observe, generally, the election day activity at the polling location. While all observers must remain outside the guardrail, the specific location of observers is dependent upon their function as well as available physical space. Under no circumstances should an observer be sitting at either the check-in or check-out table.

Observers watching voters during the check-in process are to remain outside the guardrail but close enough to the check-in table to hear the names of voters checking in. It is at this location an observer may challenge a voter in the manner discussed below. These observers are most commonly referencing their own list of voters and keeping notes of who has already voted.

To observe the overall election day proceeding, observers should be located outside the guardrail in a designated area so as not to impede the travels of persons voting at the election. It is from this area that pictures may be taken and video (no audio) may be recorded. Pictures and video at the polling location will be discussed in greater detail below.

CONDUCT OF OBSERVERS

Observers may not wander around the polling location as it becomes disruptive and confusing as to who is an election official, voter, observer, etc.

Observers are to have absolutely no interaction with voters. An observer may not:

- 1) Speak directly to voters;
- 2) Speak to each other;
- 3) Talk on cell phones;

¹ For purposes of this memorandum "poll checkers" will be referred to as "observers."

- 4) Take pictures of individual voters checking-in by observers located at the check-in table;
- 5) Take pictures of voters marking their ballots or depositing their marked ballots into the ballot box in a manner in which the secrecy of the ballot may be compromised;
- 6) Record audio of the check-in process;
- 7) Converse with election workers; or
- 8) Ask election officials to repeat or speak louder. (If election officials are not announcing the name and address of the voter loud enough, the observer should contact the warden.).

An observer located at the check-in table may only speak when making a challenge or when requesting to speak with the warden.

CHALLENGES

This section refers to observers located at the check-in table making a challenge. For purposes of this section, these observers are referred to as a challenger.

A challenger must be prepared to exercise their challenge at the time the voter's name is announced at the check-in table in a manner so as not to cause delay and interference in the voting process. Challenges can only be made when a voter is checking-in. Once a voter has received their ballot, challenges cannot be made as it is too late.

CHALLENGE PROCESS

If a voter is challenged, the poll worker should call the warden, who shall ask the challenger to briefly set forth factual information specific and personal to the challenged voter as to the reasons that voter is not qualified to vote in the election at that precinct. If the election official determines that the challenge is valid the warden shall process the challenge consistent with the regulations. G. L. c. 54, §§ 85, 85A; 950 C.M.R. § 54.04(23).

The warden shall then ask the challenger: "What is the reason for the challenge?" If the reason is general in nature (i.e., the voter is not who they say they are), the warden will ask the challenger, "Why?" If the challenger doesn't give a specific reason, the warden must reject the challenge. The burden is on the observer to provide such information, and the challenger must be ready to do so.

If the warden believes that the reason stated by the challenger is factually specific and personal to the voter and therefore valid, the warden shall administer the following oath to the challenged person:

"You do solemnly swear (or affirm) that you are the identical person whom you represent yourself to be, that you are registered in this precinct, and that you have not voted in this election."

The warden shall require the challenged person to write his name and present residence on the back of the optical scanner ballot. If it is an absentee ballot, the warden shall insert this information. The warden shall write on the ballot the name and address of the challenger and the stated reason for the challenge, and the voter may cast the ballot.

The warden shall cause to be recorded in the clerk's book the name and residence of every person who is challenged and has voted. The election officers in charge of the voting list shall mark the letters "CV" next to the challenged voter's name on the voting list.

INVALID CHALLENGES

If the election officer determines that the challenger has not provided factual information specific and personal to that voter demonstrating that the voter is not qualified to vote at that precinct then the election officer shall reject the challenge on the grounds that the challenge was not based upon a legal cause. The election officer shall note in the clerk's election record the name of the challenged voter, the name of the challenger, the factual basis for the challenge and the reason why the challenge was rejected.

A challenger should be made aware that any person unlawfully using the challenge procedure for improper purposes, including but not limited to, the intimidation of a voter or to ascertain how he voted, may be fined up to \$100 and or be subject to other available legal penalties and/or remedies.

Baseless challenges may be grounds for the warden to have the observer/challenger removed from the polling location.

PICTURES

Pictures and video (no audio) are allowed at the polling location outside the guardrail in an area designated by the warden. However, an observer is not permitted to:

- 1) Take pictures or video in any manner that compromises the secrecy of any ballot;
- 2) Take pictures of voters in an effort to intimidate them;
- 3) Use public power sources;
- 4) Use signage; or
- 5) Leave equipment unattended.

It is the opinion of this Office that cameras of any kind may not be used by

observers at the check-in table to take pictures of individual voters as it is disruptive to the voting process. That area is to observe the check-in and challenge when necessary.

MISCELLANEOUS MATTERS

- Observers are there to observe not converse.
- Wardens should be responsive to legitimate issues brought to their attention by observers.
- At the discretion of the warden and when available, observers may be supplied with a tag identifying that person as an observer. However, while it is encouraged, observers cannot be compelled to wear an identifying tag.
- No prior approval is required to be an observer.
- Any observer who fails to obey the warden may be removed from the poll and may potentially face criminal penalties.