



The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Elections Division

Election Advisory #20-10

Regarding Election Observers

October 20, 2020

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 in addition to information about public observation for election processes required under the law. Given precautions being taken as a result of the pandemic and social distancing requirements, the guidelines for observing any election process are different than in previous elections.

GENERAL INFORMATION

While the laws specifically allow for observation of polling places on Election Day, similar provisions exist relative to early voting, testing of voting equipment, advance removal of ballots and advance deposit of ballots. Accordingly, this advisory is designed to provide guidance for any provision that allows for public observation of an election process.

WHO CAN BE AN OBSERVER

Any person can be an observer. However, those persons representing campaigns are given priority when space is limited in a polling place or early voting location.

Media access to polling places and other election processes is addressed in Election Advisory #20-09.

NOTICE

Local election official can require any person who wants to observe any part of the election process to provide advance notice. When posting notice of any election process, local election

officials should include instructions including who to contact, how to contact them and the timeframe for making such requests.

Observers should notify the local election official in writing as soon as possible to request access. Access should be approved if the polling place has sufficient space to accommodate the observer and maintain social distancing. However, local election officials may limit the number of observers in a polling place or during any other election process.

OBSERVERS AT IN-PERSON VOTING LOCATIONS

Observers must be allowed into early voting locations during the early voting hours. 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 (zero tape) where scanning equipment is used. During the voting hours, observers may remain inside the early voting location or polling place but must remain behind the guardrail.

On Election Day, 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 remain outside the guardrail. It is likely that a polling place can accommodate more observers after the poll close than during the voting hours by rearranging the check-in table to create a physical guard rail.

If the early voting location or polling place is not large enough to accommodate all observers safely, 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 or are unable to maintain social distancing, they may be asked to cooperate in collecting information.

Location of Observers: The location of where observers are location may depend on their function. There are generally two functions of “observers,” which are sometimes also referred to as “poll checkers.” One function of observers is to observe the check-in process to gauge turnout and/or challenge voters at the check-in table. Another function of observers is to observe, generally, the early voting process or Election Day activities 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 or in a location where they may be confused for poll workers.

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. For observers who are only interested in voter turnout and not in challenging voters, they can be

located behind the guardrail but need not be near the check-in table and could be positioned closest to the check-out area.

To observe the overall early voting process or 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 early voting locations and polling places will be discussed in greater detail below.

Observers may not wander around the early voting location or polling place as it becomes disruptive and confusing. Election officials are not required to provide a table and/or chair to observers or allow observers to bring their own.

Conduct of Observers: Regardless of the function of an observer as described above, observers must not interfere with the election process in any way. Observers are to have absolutely no interaction with voters. Local election officials should be responsive to legitimate issues brought to their attention by observers.

At the discretion of the election official 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.

An observer may not:

- Speak directly to voters;
- Speak to each other;
- Talk on cell phones;
- Take pictures of individual voters checking-in;
- 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;
- Record audio of the check-in process;
- Converse with election workers; or
- 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
- Display or wear campaign buttons, t-shirts, hats, or any other material or item that supports or opposes or are otherwise intended to influence a candidate or question on the ballot at the current election. 950 C.M.R. § 54.04(22)(c).

An observer located at the check-in table may only speak when making a challenge or when requesting to speak with the warden or election official in charge of the early voting location. For all other observers, any communications can only be made only to the warden or election official in charge.

The election official may direct the police officer or constable to remove from the polling place any person who is disorderly or who obstructs the access of voters. 950 C.M.R. § 54.04(22)(a). Any observer who fails to obey the election official may be removed from the early voting location or polling place and may potentially face criminal penalties.

CHALLENGES

Observers located at the check-in table may challenge a voter as outlined below. 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 at either an early voting location or polling place. Once a voter has received their ballot, challenges cannot be made as it is too late.

Both early voting ballots and absentee ballots can be challenged as well. For early or absentee ballots being processed at the polling place, the challenge must be made when the name and address of the voter is being read from the envelope containing the ballot at the check-in table. For early voting ballots being advance-processed or processed at a central tabulation facility, the challenge must be made when the name and address of the voter is being read from the envelope containing the ballot before the envelope is opened and ballot separated from that envelope.

Challenge Process: If a voter is challenged, the election official must 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 in that precinct. If the challenger doesn't give a specific reason, the local election official must reject the challenge. The burden is on the challenger to provide such information, and the challenger must be ready to do so. If the election official determines that the challenge is valid, only then shall they process the challenge consistent with the regulations. G. L. c. 54, §§ 85, 85A; 950 C.M.R. § 54.04(23).

If the local election official believes that the reason stated by the challenger is factually specific and personal to the voter and therefore valid, they 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 election official shall require the challenged voter to write his name and present residence in the blank space on the header of the ballot. If it is an absentee or early vote by mail ballot, the election official shall insert the challenged voter's information. The election official shall then write on the ballot the name and address of the challenger and the stated reason for the challenge, and the voter may vote their ballot and cast it into the voting machine.

The election official 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 official determines that the challenger has not provided factual information specific and personal to that voter demonstrating that the voter is not qualified to vote in that precinct, the election official 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 election officer to have the observer/challenger removed from the polling location.

USE OF ELECTRONIC DEVICES

Use of electronic devices, including laptop computers, smart phones, and cameras is generally permitted within polling places. However, there are limitations. The taking of pictures and video (without audio) is allowed at the polling location outside the guardrail in an area designated by the election official. However, an observer is not permitted to:

- Take pictures or video in any manner that compromises the secrecy of any ballot;
- Take pictures of voters in an effort to intimidate them;
- Use public power sources;
- Use or display signage; or
- 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.

While telephones are allowed within the voting locations, observers should not be talking on such phones inside the voting area. If an observer needs to take or make a phone call, they must leave the voting location. For other electronic devices, such as smart phones, observers must be instructed to put them into "silent" mode so that the ringer is off and that keyboard noises are silenced. Additionally, observers cannot plug in their electronic devices or access private wireless networks within the polling place.

OBSERVING OTHER ELECTION PROCESSES

In addition to voting, other parts of the election process are open to the public. This includes testing of voting equipment and advance removal and advance deposit of early ballots. The local election official is required to post notice of the time and location for each process, if applicable. Given space limitations, capacity restrictions on gatherings and requirements for social-distancing, election officials may limit the number of observers and may require specific advance registration. Election officials requiring advance registration must include the method and timeframe of registration in the notice.

QUESTIONS?

Contact the Elections Division at 617-727-2828 or elections@sec.state.ma.us.