



# The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth  
Elections Division

## Election Advisory #22-06

Election Observers

September 1, 2022

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State law requires every election be held in the public view. To achieve this legal requirement, observers are permitted inside polling places, outside the guardrail, unless they are disorderly or obstruct the access of voters.

Observers must comply with the applicable laws and regulations and observing must be done in a manner that does not interfere with the voter or voting process and in conformity with the instructions of local officials. This Advisory is provided to give additional guidance regarding observers at the polls, in addition to information about public observation for election processes required under the law.

### **GENERAL INFORMATION**

While the election 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, advance deposit of ballots and central tabulation facilities. 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 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 a separate Elections Division Advisory, titled Press Access to Voting Locations.

### **NOTICE**

Observers are not required to provide notice of their intent to observe, but it is recommended that those who plan to observe in a voting location alert the local election official in advance. If

space is limited in a polling place, access will be provided on a first come-first served basis, though priority should also be given to those individuals representing candidates appearing on the ballot. If there are so many observers in the polling place that they obstruct voters, they may be asked to cooperate in collecting information.

Similarly, notice of election activities must be provided to the public. Polling hours and locations on Election Day must be posted in the form of the election warrant at least 7 days before each election. Early voting schedules and locations are also required to be publicly posted prior to and during the early voting period.

For central tabulation of ballots, advanced processing of ballots, and testing of voting equipment, state law requires public posting of each event, so that observers have the opportunity to be present.

### **OBSERVERS AT 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 30 minutes 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. While not every polling place is equipped with a physical guardrail, the area within the guardrail is defined as the area encircling the check-in table, the voting booths, the check-out table (if applicable), and the ballot box. It is recommended, though not required, that this area be marked in some way.

On Election Day, observers must be allowed to remain within the polling place after the polls close to watch the voting lists and 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 recommended that a physical barrier, such as the check-in table, be used to create a tangible guard rail for observers to stay behind while ballots are being handled.

**Location of Observers:** The location of where observers are location may depend on their function. 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.

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.

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 challenging voters, they can be located behind the guardrail, and need not be near the check-in table.

To observe the overall early voting process or Election Day proceedings, observers should be located outside the guardrail in a designated area, so as not to impede the travels of voters. 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.

When ballots are being handled during tallying or tabulation of ballots, observers should be stationed several feet away, to ensure the security of ballots. Observers are never permitted to touch a ballot at any time. Unlike a recount, observers are not permitted to view the ballots or the tally sheets during the counting of ballots.

**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, observers cannot be compelled to wear an identifying tag.

An observer may not:

- Speak directly to voters;
- Speak to each other inside the election area;
- 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 CMR 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 presiding officer in charge of the voting location. For all other observers, any communications can 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 CMR 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 that does not cause delay or interference in the voting process. Challenges can only be made when a voter is checking in at a polling place. Once a voter has received their ballot, the opportunity to challenge the voter has passed.

Early and absentee ballots may also be challenged. 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 state 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 CMR 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 their name and residential address in a blank space on the ballot. If it is an absentee or early 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. The voter may then take their challenged ballot to the voting booth, mark their selections, and insert the ballot into the ballot box as usual.

The election official must record 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 must also 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.

In the case of a rejected challenge, the election officer must 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 someone has 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, use of these devices is subject to certain 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 the office of the Elections Division 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 and notifications are silenced. Additionally, observers cannot plug in their electronic devices into power sources or access private wireless networks within the polling place.

### **CONFLICT NEGOTIATION & DE-ESCALATION TACTICS**

Due to heightened interest in election administration and processes, an increase in the number of election observers is expected. Those choosing to observe the voting process may be unfamiliar with the election laws and processes. Observers who have questions or concerns should be directed by the warden to bring those concerns to the local election official.

Though uncommon, election workers should be prepared for the possibility that observers may be disruptive. Workers should use de-escalation measures to attempt to calm the situation if there is a disruption.

Since workers themselves may also find these encounters stressful, it may be helpful to practice de-escalation measures beforehand, as well as those measures required when de-escalation fails, using role-playing.

De-escalation measures include:

- Speaking with a calm voice at a normal volume and communicating with a posture and expression of confidence that the observer will understand that their rights will be respected.
- Resisting the urge to engage on the underlying objection.

Local election officials should determine the appropriate response, including possible law enforcement involvement, when de-escalation fails. Officials should have specific incident response plans for each voting site.

Election workers should role-play the possibility of a negative outcome to de-escalation and should be made aware of signs that de-escalation is failing, like changes in posture or tone from the observer that suggest they are getting angrier despite de-escalation attempts.

**Election workers should be provided with instructions to call the local election office, or the state Elections Division, if they feel threatened or intimidated,** if voters feel threatened or intimidated, or if a disturbance of any kind occurs.

If a police officer is not present, election workers should be instructed to call local law enforcement first, if they believe the immediate physical safety of any person in the polling place is in jeopardy.

More than one election worker should be present in any situation of conflict, with one worker engaging the observer or voter, and the other standing back to assess whether the situation is capable of being resolved quickly and without further conflict or whether further intervention is necessary.

When deciding to seek outside help in dealing with the situation, an election worker should consider whether time devoted to the upset person is significantly delaying voters or otherwise disrupting the voting process.

#### **QUESTIONS?**

Contact the Elections Division at 617-727-2828 or [elections@sec.state.ma.us](mailto:elections@sec.state.ma.us).