

# Observers & Other Election Day Issues



# Observers

# General Rules

All observers, except for recount observers, must be qualified electors in the State of Ohio.

# General Rules

However, an observer is not required to be registered in the county where they observe.

# General Rules

## Who May Not Observe

Some people are not eligible to observe at an in-person absentee voting location, at a board office prior to the official canvass, or at a precinct on Election Day.

# General Rules

## Who May Not Observe

- Uniformed peace officer;
- Uniformed state highway patrol trooper;
- Uniformed member of any fire department;
- Uniformed member of the armed services or the organized militia;
- A person wearing any other uniform; or
- A candidate, unless the candidate is also a member of the party controlling committee.

# General Rules

An observer may not accept compensation from a county, city, village, or township for serving as an observer.

# General Rules

## The Oath

All observers are required to take an oath prior to observing.



# General Rules

“You do solemnly swear that you will faithfully and impartially discharge the duties as an official observer, assigned by law; that you will not cause any delay to persons offering to vote; and/or that you will not disclose or communicate to any person how any elector has voted at such election.”

# General Rules

Observers are limited to observing the proceedings of the election.

# General Rules

## Helpful hints:

- Designate a person to administer the oaths.
- Provide voting locations with copies of the oath.
- Administer the oath only once to multiple day observers.

# General Rules

## Observer Communication with Election Officials

While observers are permitted to engage election officials in casual conversation during less busy times, even to gather information about the process, their statutory purpose is to watch.

# General Rules

## Observer Communication

Observers may use communication devices and audio/video devices in and about the polling place as long as they do not impede, interfere with or disrupt an election, risk the secrecy of a ballot, or intimidate any voter.

# General Rules

## Communication and Audio/Video Devices

No noise (low volume vibration settings are permitted);

No photographs, videos, or recordings/transcriptions of conversations in polling place;

# General Rules

## Communication and Audio/Video Devices

No audible conversations in polling place using a communications or audio/video device;

# General Rules

## Communication and Audio/Video Devices

May send and receive texts, e-mails, instant messages, and similar nonverbal, electronic communications;



# General Rules

## Limitations-Statutory Prohibitions

- i. Engaging in any kind of election campaigning;
- ii. Hindering or delaying an elector in reaching or leaving the polling place;
- iii. Impeding, interfering with, or disrupting the election in some manner;

# General Rules

## Limitations-Statutory Prohibitions

- iv. Intimidating, harassing, or attempting to influence voters or precinct election officials;
- v. Carrying a firearm or other deadly weapon; or
- vi. Violating the secrecy of the ballot or the privacy of voters.

# General Rules

## Limitations

Observers may not serve as enforcers of the laws nor act as advocates for voters before the precinct election officials.

# General Rules

## Removal

Under very limited circumstances, an election official may remove an observer for behavior inconsistent with Ohio law or Secretary of State Directive, or behavior that interferes with, impedes, or disrupts an election.

# General Rules

## Removal

Only the voting location managers, directors, deputy directors, and appointing authorities have the authority to administratively remove observers from their posts. Law enforcement officials have the statutory duty to remove observers at the order of one of the above-listed election officials.

# Who May Appoint Observers?

# Who May Appoint?

1. Any political party (county or state) that is supporting candidates to be voted upon at that election.
2. Any group of five or more candidates.
3. A ballot issue committee recognized by the board of elections pursuant to law as supporting or opposing a ballot issue.

# Forms

## **Notice of Appointment and Amendment of Appointment**

An appointing authority must first notify the board of elections in writing of the names and addresses of its appointees and the location(s) at which they will serve.



# Forms

## Certificate of Appointment

After filing a timely notice of appointment with the board of elections, the appointing authority is responsible for issuing a certificate of appointment to the observer.

# Types of Observers

# Types of Observers

1. In-Person Absentee Voting Location
2. Precincts on Election Day
3. Board of Elections Office prior to the Official Canvass
4. Official Canvass
5. Recount
6. Post-Election Audit

# Types of Observers

## Observers at an In-Person Absentee Voting Location

# Types of Observers

## In-Person Absentee

An appointing authority is permitted to appoint **one observer** per day to the in-person absentee voting location.

# Types of Observers

## **In-Person Absentee**

**Timing of Notice of Appointment**—No later than 11 days before the start of in-person absentee voting.

**Timing of Amendment**—No later than 4:00 p.m. the day before the observer is appointed to serve.

# Types of Observers

## Observers at Precincts on Election Day

# Types of Observers

## Precincts on Election Day

An appointing authority may appoint **one observer** to observe the casting and counting of ballots at one or more precincts on Election Day. An observer may be appointed to observe at multiple precincts, but no more than one observer may be appointed to each precinct.



# Types of Observers

## Precincts on Election Day

**Note: Observers for ballot questions or issues:**

No more than six total observers appointed by separate ballot issue committees.

# Types of Observers

## Precincts on Election Day

**Timing of Notice of Appointment**—No later than 11 days before Election Day.

**Timing of Amendment**—No later than 4:00 p.m. the day before Election Day.

# Types of Observers

## Observers at Board of Elections Office Prior to the Official Canvass

# Types of Observers

## Board of Elections Office Prior to the Official Canvass

An appointing authority is permitted to appoint **one observer** to board of elections office.

# Types of Observers

## Board of Elections Office Prior to the Official Canvass

**Note:** An observer appointed to observe at the board office is permitted to observe at the board office and at any precinct in the county.

# Types of Observers

## Board of Elections Office Prior to the Official Canvass

A board of elections must notify appointed observers of the times when the board will be processing and counting absent voters' ballots and when the board will be determining the eligibility of provisional ballots.

# Types of Observers

## Board of Elections Office Prior to the Official Canvass

**Timing of Notice of Appointment**—No later than 11 days before the first date the observer is appointed to serve.

**Timing of Amendment**—No later than 4:00 p.m. the day before Election Day or the first date the observer is appointed to serve.

# Types of Observers

## Observers at the Official Canvass



# Types of Observers

## Official Canvass

## Appointing Authorities

- The county executive committee of each political party;
- Each committee designated in the petition nominating of an independent or nonpartisan candidate;

# Types of Observers

## Official Canvass

## Appointing Authorities

- Each committee designated in a petition to represent the petitioners for a ballot question or issue; or
- Any committee opposing a ballot question or issue that was permitted to have a qualified elector serve as an observer at the election.

# Types of Observers

## Official Canvass

**Timing of Notice of Appointment—**  
Prior to the start of the official canvass.

# Types of Observers

## Observers at a Recount

# Types of Observers

## Recount-Candidate Contest

### Appointing Authority

Each candidate in a contest to be recounted may observe the recount and may designate one other person in addition to him or herself—not necessarily an elector—to also observe the recount on the candidate's behalf.

# Types of Observers

## Recount-Question or Issue

### Appointing Authority

The designated chairperson of a committee organized to support or oppose a ballot question or issue may observe a recount. Additionally, the committee may appoint legal counsel to observe the recount.

# Types of Observers

## Recount

### Timing of Notice of Appointment—

No later than 5 days following board notification of the date and time of the recount.

# Types of Observers

## Observers at a Post-Election Audit



# Types of Observers

## Post-Election Audit

Any entity that appointed observers pursuant to R.C. 3505.21, or official canvass observers pursuant to R.C. 3505.32, may appoint observers to the post-election audit.

# Types of Observers

## Post-Election Audit

**Timing of Notice of Appointment**—No later than 5 days after the board gives notice of the date and time of the post-election audit.

**Timing of Amendment**—No later than the day before the postelection audit.

# Types of Observers

## International Observers

State law limits the individuals permitted inside a polling location on Election Day.

By not including “international observers” and others not specifically listed in state law, the Ohio General Assembly has prohibited their presence in a polling place on Election Day.

# Other Election Day Issues

# Other Election Day Issues

Details on the following topics are in Chapter 7, Election Day Voting, of the Election Official Manual:

- Congregating, Campaigning, Distributing Food, or Soliciting Inside a Polling Location;
- Collecting Signatures at a Polling Location;
- Problems with Conduct at a Polling Location;
- Media Access to Polling Locations; and
- Exit Polling at a Polling Location.

# The Polling Location

A polling location is a “neutral zone.”

# The Polling Location

Two small United States flags must be placed 100 feet from the entrance to each polling location on the thoroughfares or walkways leading to the polling location (or as near to 100 feet as possible).

This is the “neutral zone.”

Zone extends to within 10 feet from any elector waiting in line to vote, if the line to vote extends beyond the flags.

# The Polling Location

Only an election official, an observer, a police officer, a person reviewing the 11 a.m. or 4 p.m. list of registered electors, a voter (including the voter's children who are of non-voting age when accompanied by the voter), or a person assisting another person to vote shall be allowed to enter the polling place during the election.



# The Polling Location

“Election official” includes the following persons:

1. Secretary of state;
2. Employees of the secretary of state serving the division of elections in the capacity of attorney, administrative officer, administrative assistant, elections administrator, office manager, or clerical supervisor;
3. Director of a board of elections;
4. Deputy director of a board of elections;
5. Member of a board of elections;
6. Employees of a board of elections;
7. Precinct election officials;
8. Employees appointed by the boards of elections on a temporary or part-time basis.

R.C. 3501.01(U).

# The Polling Location

No one may “loiter, congregate, or engage in any kind of election campaigning” within this “neutral zone” or within 10 feet of any elector waiting in line to vote if the line of voters extends beyond the flags.

R.C.3501.30(A)(4).

Ohio law prohibits anyone from soliciting or attempting to influence any elector’s vote at a polling location and from preventing or delaying an elector from entering or leaving a polling location. R.C.3501.35(A); R.C.3599.24; R.C.3599.26.

# Media

The United States Court of Appeals for the Sixth Circuit held that the media must be granted “reasonable access \* \* \* for the purpose of news-gathering and reporting so long as [the members of the media] do not interfere with poll workers and voters as voters exercise their right to vote.”

*Beacon Journal Publishing Company, Inc. v. Blackwell*  
(6<sup>th</sup> Cir. 2004), 389 F.3d 683 at 685.

*R.C. 3501.35(B)(2).*

# Media

Court did not define “reasonable access.”

# Media

A board of elections must consider the following factors to ensure that the voting process is not disrupted:

- whether the media representative is credentialed (i.e., is the person from an accredited media source);
- the length of time the media is present at a polling location;
- the length of voter lines at the polling location;

# Media

A board of elections must consider the following factors to ensure that the voting process is not disrupted (cont'd):

- the size and layout of the polling location;
- protecting voter secrecy during the media's presence;
- the conduct of the media representative; and
- the effect of the presence of the media on voters and election officials.

# Media

No person - including a representative of the media - may disrupt the voting process, interfere with the election, intimidate voters, or jeopardize the secrecy of any ballot. If a member of the media interferes with the administration of the election, intimidates a voter, or jeopardizes the secrecy of a ballot, he or she may be removed from the polling location.

# Media

The media must respect a voter's right to privacy by requesting the voter's permission prior to recording a voter or a voter's actions while in or about the polling place.

Permission is not required for “crowd shots.”



# Exit Polling

Exit polling is not electioneering and is permissible within 100 feet of the entrance to a polling location (i.e., within the area marked by the placement of two small U.S. flags).

*American Broadcasting Co., Inc. v. Blackwell* (S.D. Ohio 2006), 479 F.Supp.2d 719 at 744.

# Exit Polling

Persons conducting exit polls may not enter a polling location, interfere with or disrupt the election, or otherwise violate the law.

Persons conducting exit polls at a polling location may not wear anything that may be construed as campaigning for or against any candidate or issue on the ballot.

# Exit Polling

Edison Media Research has contacted our office regarding exit polling for the 2016 Election Cycle.

Our office has provided the company with a letter detailing the ground rules for exit polling in Ohio.

# Petitioning

Persons are not permitted to collect signatures inside of a polling location or within the “neutral zone” outside of the polling location (i.e., within the area marked by the placement of two small U.S. flags).

However, there is no prohibition against collecting signatures outside of the “neutral zone.”“

# Campaigning & Food

Campaigning, displaying campaign material, or distributing food inside of the neutral zone of a polling location is prohibited.

R.C. 3501.35(A).

# Campaigning & Food

Nothing in Ohio's election laws prohibit a person or entity from campaigning, displaying campaign material, or distributing food outside of the neutral zone of a polling location (i.e., outside of the flags marking the 100 foot barrier or beyond 10 feet from any elector waiting in line to vote, if the line to vote extends beyond the flags).

# Campaigning & Food

Ohio law prohibits anyone from procuring or offering “money or other valuable thing to or for the use of another, with the intent that it or part thereof shall be used to induce such person to vote or to refrain from voting.”

# Food

Precinct Election Officials are permitted to have eat and have food inside of polling location.

Food and beverages must not be consumed close to ballots, materials, pollbooks, or voting equipment.

Food and beverages should be consumed at times that do not interfere with the processing of voters or conduct of elections.



# Problems on Election Day

Boards of elections must instruct precinct election officials to contact the board office or the appropriate law enforcement official immediately if they experience a problem with the conduct of any person at a polling location.

# Problems on Election Day

Collect contact information now, if you have not already done so.

Have contact information ready for Election Day.

# Problems on Election Day

Secretary of State Memorandum 2016-03, *Special Powers and Responsibilities of Sheriffs on Election Day*, was issued last week and a copy was sent to the following law enforcement associations:

- Ohio State Highway Patrol;
- County Prosecuting Attorneys;
- Buckeye State Sheriff's Association;
- Ohio Association of Chiefs of Police; and
- Ohio Prosecuting Attorneys Association.

# Problems on Election Day

Do not hesitate to contact law enforcement if you need assistance.

Make a plan with your board and prosecuting attorney.

Please advise our office as quickly as possible of any serious issues.