



**J. KENNETH BLACKWELL**  
**Ohio Secretary of State**

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**DIRECTIVE 2006-75**

October 13, 2006

**ALL COUNTY BOARDS OF ELECTIONS**

Section 3501.30 of the Revised Code provides that the county boards shall provide polling supplies for each polling place, including:

(4) Two or more small flags of the United States approximately fifteen inches in length along the top, which shall be placed at a distance of one hundred feet from the polling place on the thoroughfares or walkways leading to the polling place, to mark the distance within which persons other than election officials, observers, police officers, and electors waiting to mark, marking, or casting their ballots shall not loiter, congregate, or engage in any kind of election campaigning. Where small flags cannot reasonably be placed one hundred feet from the polling place, the presiding election judge shall place the flags as near to one hundred feet from the entrance to the polling place as is physically possible. Police officers and all election officials shall see that this prohibition against loitering and congregating is enforced.

Likewise, section 3501.35 of the Revised Code provides:

(A) During an election and the counting of the ballots, no person shall do any of the following:

- (1) Loiter, congregate, or engage in any kind of election campaigning within the area between the polling place and the small flags of the United States placed on the thoroughfares and walkways leading to the polling place, and if the line of electors waiting to vote extends beyond those small flags, within ten feet of any elector in that line;
- (2) In any manner hinder or delay an elector in reaching or leaving the place fixed for casting the elector's ballot;
- (3) Give, tender, or exhibit any ballot or ticket to any person other than the elector's own ballot to the judge of election within the area between the polling place and the small flags of the United States placed on the thoroughfares and walkways leading to the polling place, and if the line of electors waiting to vote extends beyond those small flags, within ten feet of any elector in that line;

- (4) Exhibit any ticket or ballot which the elector intends to cast;
- (5) Solicit or in any manner attempt to influence any elector in casting the elector's vote.

(B) Except as otherwise provided in division (C) of section 3503.23 of the Revised Code, no person who is not an election official, employee, observer, or police officer shall be allowed to enter the polling place during the election, except for the purpose of voting or assisting another person to vote as provided in section 3505.24 of the Revised Code.

(C) No more electors shall be allowed to approach the voting shelves at any time than there are voting shelves provided.

(D) The judges of election and the police officer shall strictly enforce the observance of this section.

Pursuant to section 3599.40 of the Revised Code, whoever violates either of the foregoing statutes is guilty of a misdemeanor of the first degree.

Finally, section 3599.24(A)(5) of the Revised Code provides that “[n]o person shall ... [l]oiter in or about a registration or polling place during registration or the casting and counting of ballots so as to hinder, delay, or interfere with the conduct of the registration or election.” Whoever violates this provision is guilty of a misdemeanor of the first degree.

Thus, according to the above Statutes:

- no person who is within the area designated between the polling place and the small flags and, if the line of electors waiting to vote extends beyond those small flags, within ten feet of any elector in that line, is permitted to “loiter,” “congregate,” “engage in any kind of election campaigning” or otherwise “in any manner hinder or delay an elector in reaching or leaving the place fixed for casting the elector’s ballot”
- no person not an election official, employee, observer, or police officer, shall be allowed to enter the polling place during the election except for the purpose of voting or assisting another person to vote as provided in section 3505 of the Revised Code.

If a person conducting exit polls is “loitering” or “congregating” within the designated area, or otherwise “hindering” or “delaying” an elector from leaving the polling place, that person could be in violation of one or more of the Statutes. Under no circumstances is any person permitted to conduct “exit polls” within any polling place.

Of course, to the extent possible, the Statutes should be construed to protect both the fundamental right to vote and the freedom of speech, rights which are guaranteed by the Ohio constitution and the United States Constitution. And, in accordance with an order issued on September 26, 2006, from Judge Michael H. Watson of the United States District Court for the Southern District of Ohio, we have been instructed to state:

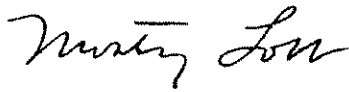
It would be unlawful, and a violation of the First Amendment to the U.S. Constitution, to interpret, apply, or enforce Ohio's election Loitering Statutes, Ohio Rev. Code §§ 3501.30, 3501.35 and 3599.24, to prohibit exit polls within 100 feet of polling places.

On election day, it is the responsibility of county election officials and, more specifically, precinct judges and clerks—working in cooperation with local police officers (see R.C. 3599.31)—to enforce the Statutes at each polling place. Any person charged with a violation of one or more of the Statutes may be subject to prosecution by the county prosecutor or local municipal authorities, as applicable.

This Directive supersedes all previous directives, advisories or other instructions from this office concerning the foregoing Statutes or polling place access.

If you have any questions regarding the interpretation of any of the foregoing Statutes, or their application (or potential application) to a specific context, I encourage you to contact your county prosecutor. If you have any questions regarding this Directive, please contact the Elections Division of this office at 466-2585.

Sincerely,

A handwritten signature in black ink, appearing to read "Monty Lobb". The signature is fluid and cursive, with the first name "Monty" and last name "Lobb" clearly distinguishable.

Monty Lobb