

ADVISORY 2008-34

October 31, 2008

TO: ALL COUNTY BOARDS OF ELECTIONS

RE: International Observers

The Secretary of State's office has received numerous inquiries regarding the ability of a citizen from another country to observe the election process on Election Day. A review of applicable statutory provisions and directives indicates that international visitors cannot visit the area of a board of elections that is in use for the processing or counting of absentee, provisional, military, overseas, or regular ballots. This advisory outlines the circumstance that would enable a citizen of another country to enter a polling location.

Ohio law limits access to a polling location to specified persons. R.C.3505.21 provides that "[n]o persons other than the judges of elections, the observers, a police officer, other persons who are detailed to any precinct on request of the board of elections, or the secretary of state or the secretary of state's legal representative shall be admitted to the polling place, or any room in which a board of election is counting ballots, after the closing of the polls until the counting, certifying and signing of the final returns of each election have been completed." Also, R.C.3501.35(B) states that "[e]xcept 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 a polling place during the election, except for the purpose of voting or assisting another person to vote * * * ." A non-U.S. citizen does not fit most categories of persons listed.¹

Nonetheless, R.C.3503.23(C) states that "* * *any person may enter the polling place for the sole purpose of reviewing the official registration list* * * ." Because the statute does not restrict or define "any person," persons (including citizens of another country) may enter the polling place for the sole purpose of reviewing official registration lists that are posted and updated during the time that the polls are open. Although international visitors cannot serve as observers, they are permitted to visit a precinct for the limited purpose of reviewing posted registration lists.

A federal court made one exception to applicable statutory provisions when it declared that the media must be granted "reasonable access to any polling place for the purpose of news-gathering and reporting so long as [they] do not interfere with poll workers and voters as voters exercise their right to vote."² As a result of this exception, poll workers must grant

¹ A non-U.S. citizen does not qualify to serve as an observer, because an observer must be a qualified elector. R.C.3505.21.

² *Beacon Journal Publishing Co., Inc. v. Blackwell*, 389 F.3d 683 (6th Cir. 2004).

representatives of the media access to a polling location after considering several factors to ensure that voters are not disturbed or delayed by the media's presence. Those factors include, but are not limited to:

1. the credentials of the media representative, and whether the purported media representative is from an accredited source as opposed to an internet writer;
2. the length of time the media is present;
3. the length of voter lines;
4. the layout of the polling location;
5. whether voter secrecy may be compromised;
6. the conduct of the representatives of the media who are present; and
7. the effect the presence of the media has on voters and poll workers.³

Under this exception, non-citizens with media credentials may be granted access to a polling location that is not limited to a review of registration lists at polling locations. If your board is contacted by a representative from another country who would like to enter a polling location on Election Day, your board should advise the representative that he or she will need to present media credentials to poll workers, unless the sole purpose of visiting the precinct polling location is to review registration lists. As long as the representative has media credentials, even if those credentials are from another country, access should be granted. International representatives with media credentials also should be provided access at the offices of the board of elections similar to any other local or national media representative.

If the proposed international representative does not hold media credentials, the international representative will be limited to reviewing registration lists at the polling location. No credentials are required of any person who requests to review registration lists.

It is advisable to review with board staff if there are requests for visits to polling locations or to the board of elections from international representatives. In the event that this becomes an issue for your board of elections, it is also advisable for the board to adopt a policy regarding how it will handle such requests.

If you have any questions regarding this advisory, please feel free to contact the elections attorney assigned to your county.

Sincerely,

Jennifer Brunner

³ Advisory 2008-03, *Polling Place Conduct*.