



**Jon Husted**  
Ohio Secretary of State

180 East Broad Street, 16th Floor  
Columbus, Ohio 43215  
Tel: (877) 767-6446 Fax: (614) 644-0649  
[www.OhioSecretaryofState.gov](http://www.OhioSecretaryofState.gov)

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**DIRECTIVE 2012-29**

**August 2, 2012**

**To: ALL BOARDS OF ELECTIONS**  
**Directors, Deputy Directors and Board Members**

**Re: Polling Location Conduct and Media Access**

**Summary**

This Directive is to provide guidance to boards of elections on permissible conduct in and around a polling location, which includes an in-person absentee voting location.

This Directive rescinds and replaces Advisory 2008-03 and the Memoranda of November 3, 2008, and May 3, 2010.

**Polling Locations Are Neutral Zones**

A polling location is a “neutral zone.” Accordingly, Ohio law imposes specific limitations on who may enter a polling location and what conduct is permissible therein. Only an election official,<sup>1</sup> an observer,<sup>2</sup> 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.<sup>3</sup>

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). No one, other than an election official, observer, police officer, or an elector waiting to mark, marking, or casting his/her ballot, 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

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<sup>1</sup> R.C.3501.01(U). An “election official” includes the following individuals:

- (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 polling place judges;
- (8) Employees appointed by the boards of elections on a temporary or part-time basis.

<sup>2</sup> See Directive 2012-21.

<sup>3</sup> R.C.3501.35(B); R.C.3503.23(C).

to vote if the line of voters extends beyond the flags.<sup>4</sup> 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.<sup>5</sup>

### **Media Access to a Polling Location**

Elections officials must grant members of the media reasonable access to polling locations. This mandate stems from a United States Court of Appeals decision, which 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."<sup>6</sup>

In its decision, the court did not define "reasonable access." Therefore, 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);<sup>7</sup>
- the length of time the media is present at a polling location;
- the length of voter lines at the polling location;
- 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.

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

No person may attempt to subvert the statutory observer process by attempting to gain access to a polling place as member of the media.

Precinct election officials should inform the Director and Deputy Director if the media visits a polling location.

### **Exit Polling at a Polling Location**

Exit polling is not electioneering and is therefore 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).<sup>8</sup>

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<sup>4</sup> R.C.3501.30(A)(4).

<sup>5</sup> R.C.3501.35(A); R.C.3599.24; R.C.3599.26.

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

<sup>7</sup> A board of elections does not issue credentials to a member of the media. A member of the media already should possess press credentials. These credentials are sufficient to grant the member access to a polling location.

<sup>8</sup> *American Broadcasting Co., Inc. v. Blackwell* (S.D. Ohio 2006), 479 F.Supp.2d 719 at 744.

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

### **Collecting Signatures at a Polling Location**

Occasionally, groups may station persons outside of a polling location to gather signatures on a petition. 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).<sup>9</sup> However, there is no prohibition against collecting signatures outside the neutral zone.

### **Distributing Food and Campaigning at a Polling Location**

Campaigning, displaying campaign material or distributing food inside of the neutral zone of a polling location is prohibited.<sup>10</sup> However, 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).

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.”<sup>11</sup> Food, discounts, and other such inducements are “things of value” for purposes of the election law statutes on bribery.<sup>12</sup>

### **Problems With Conduct at a Polling Location**

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.

If you have questions regarding this Directive, please contact the Secretary of State’s elections attorney assigned to your county.

Sincerely,



Jon Husted

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<sup>9</sup> R.C.3501.35(A); *United Food & Commercial Workers Local 1099 v. City of Sidney* (6<sup>th</sup> Cir. 2004), 364 F.3d 738 (circulators were not deprived of their free speech rights when they were prohibited from collecting signatures within the “campaign-free zone”).

<sup>10</sup> R.C.3501.35(A).

<sup>11</sup> R.C.3599.01(A)(3); See also the prohibitions contained in R.C.3599.02.

<sup>12</sup> Even a professor’s award of extra credit to a student who votes in an election has been considered to be “a thing of value.” Ohio Attorney General Opinion No. 96-033.