

GUIDANCE ON RULES IN EFFECT AT THE POLLING PLACE ON ELECTION DAY

The Department of State is committed to ensuring that elections run as smoothly and fairly as possible. The following document sets out the Department's guidance regarding the laws and rules in effect at the polling place to help voters, elections officials, attorneys and watchers understand their respective roles, responsibilities and rights. We encourage county election officials and Boards of Elections to review this advice with your county solicitor.

PERSONS EXPLICITLY PERMITTED IN THE POLLING PLACE

The following persons are permitted in the polling place while voting is occurring:

1. Precinct Election Officials. These include the Judge of Election, the Inspectors (Majority and Minority), appointed clerks and machine operators.
2. Voters in the process of voting but no more than 10 voters at a time. Others waiting to vote must wait outside the area where voting is occurring.
3. Persons lawfully providing assistance to voters.
4. Poll watchers. Poll watchers are registered voters in the county who have been appointed by a party or candidate to observe at the precinct. One poll watcher per party and one poll watcher per candidate may be inside at any given time. Watchers must remain at least 6 feet away from the area where voting is occurring.
5. Overseers are registered voters of the precinct who may be appointed, upon petition, by all of the judges of the county Court of Common Pleas to supervise the election. 25 P.S. § 2685. Two per precinct may be appointed and they must belong to two different political parties.
6. Constables and Deputy Constables for the purpose of preserving the peace. (Other officials may be summoned by the local elections officials as needed. Please see section on police and peace officers, below)

ROLE OF JUDGE OF ELECTIONS

The Judge of Elections is the officer in charge of the polling place and enforces the rules for the conduct of election at the polling place, e.g., who is permitted within the polling place, the number of voters permitted inside, electioneering rules. The Department interprets the Election Code as setting forth minimum requirements that must be met. The Judge of Elections is responsible for keeping order in the polling place and may call upon various law enforcement authorities to assist him or her to that end.

The Judge of Elections assigns the various election administration tasks to members of the Board of Election.

The Judge of Elections determines whether challenges to the identity or residency of voters are made in good faith. If the identity and residency of the voter is established to the Judge of Election's satisfaction, the voter may be permitted to vote normally, on the machine or by ballot as appropriate. See "challenges" below for procedures relating to challenges.

POLLWATCHERS (25. P.S. §2687)

Poll watchers are registered voters in the county who have been appointed by a party or candidate to observe at the precinct.

- Watchers must be identified in advance and assigned to specific precincts. Watchers receive a credential from the county Board of Elections and must present the credential upon demand.
- Each party is entitled to appoint three watchers per precinct and each candidate is entitled to appoint two watchers per precinct.
- The watcher must be a registered voter of the county in which the watcher is appointed. Typically, party watchers may watch at any precinct in the county. Candidate watchers can watch in any precinct in which the candidate is on the ballot.
- Watchers allowed in the polling place are permitted to keep a list of voters. Because of this, election officials must clearly and audibly announce the name of every voter who appears to vote.
- Watchers allowed in the polling place are among the persons entitled to challenge the qualifications of voters on the permitted grounds, i.e. identity and residency. See "Challenges" below.
- During times when voters are not present in the polling place, watchers are permitted to inspect the poll book and the numbered lists of voters but they are not permitted to mark or alter those documents in any way.
- **Watchers may not engage voters or otherwise interfere with the orderly process of voting.** Watchers should direct all challenges and other comments directly to the Judge of Elections who is the official in charge at the polling place.

POLICE OFFICERS AND OTHER PEACE OFFICERS

Generally, police officers are not permitted in the polling place. Uniformed or plain-clothes police officers must remain 100 feet or more from the entrance of a polling place.

The exceptions to this rule are:

- when a police officer is personally voting;
- when the polling place is located in a building that also houses a police station; and
- when police officers are summoned to preserve the peace. (25 P.S. § 3060).

If necessary, the local election officials or three voters in the precinct may call upon local officials, including constables, sheriffs, or police officers to:

- Clear a path to the door if it is obstructed and preventing voters from voting;

- Maintain order; and
- Quell any disturbance if it arises.

Uniformed peace officers, such as constables or sheriffs, stationed in a polling place may have the effect of intimidating voters. The Department recommends that counties balance the potentially intimidating effect of uniformed constables in the polling place with the need to preserve peace.

ITEMS BROUGHT INTO THE POLLING PLACE

The following guidance relates to questions that typically arise about specific items

1. Firearms

- Voters who have a legal right to carry a firearm cannot be prohibited from entering the polling place to vote.
- Pennsylvania law prohibits firearms in certain polling places, such as schools and courthouses. Since a firearm is not necessary to the process of voting, the Department recommends that counties prohibit firearms from being brought inside schools, especially if children are present and courthouses.
- Although a voter with a legal right to carry a firearm may not be precluded from voting, certain other behavior is illegal. Individuals inside or outside the polling place who behave aggressively with a firearm or who ostentatiously demonstrate that they are carrying a firearm and that behavior either is intended to or has the effect of intimidating voters will be removed, reported to the appropriate authorities for investigation and prosecution.

2. Electronic Devices

- Although the Election Code does not address the use of electronic devices in the polling place, the Department recommends that counties adopt common sense rules that take into account the need for order in the polling place and the right of citizens to vote unimpeded.
- Recent court cases have found a First Amendment right to take “ballot selfies,” i.e. a picture of oneself voting.
- The Department recommends that voters who want to take a picture of themselves voting take care that they not disclose the selections of voters other than themselves. The Department recommends that voters wait until after they leave the polling place to post ballot selfies on social media.
- The counties may permit other persons (such as poll watchers) who are lawfully in the polling place to use portable electronic devices, but should consider limiting the location of use to outside the area where voting occurs. For example, poll watchers may be permitted to have portable electronic devices as long as the devices remain 6 feet away from the area where voting occurs.

3. Campaign and Election Materials

- The Election Code prohibits electioneering at the polling place. 25 P.S. § 3060. This prohibition extends to the local election officials and those officials (Judge of Elections, Inspectors and Clerks) should not wear partisan apparel or buttons.
- Because poll watchers who remain in the polling place during the course of voting may be confused by voters as election officials, the Department believes that poll watchers should also refrain from wearing partisan apparel or buttons. No signs or other campaign material should be present in the polling place
- The Department recommends that enforcement of the prohibition on electioneering should not prevent eligible voters from voting. Thus, in the Department's view, individual voters who appear at the polling place to exercise their right to vote are permitted to wear clothing, buttons or hats that demonstrate their support for particular candidates. However, voters who are in the polling place to vote should not campaign for their chosen candidates, and Judges of Election should ask those voters to refrain from doing so while in the polling place.
- Voters are also permitted to bring campaign literature into the polling place and the voting booth if it will assist them in making their selections. However, the campaign literature should be removed when the voter leaves. The Judge of Elections should, from time to time during the course of the day, make a "sweep" of the room and remove all campaign literature left in the polling place.
- Any other person or voter not in the process of voting, campaign workers, signs and all other electioneering material must be located at least 10 feet away from the entrance to the room where voting occurs.

CHALLENGES TO VOTERS TO THE RIGHT TO VOTE AND RESOLUTION OF CHALLENGES

1. Grounds

- A person is presumed to be a *bona fide* qualified elector and must be allowed to vote if his or her name appears on the poll book.
- Voters who are lawfully in the polling place, local election officials, poll watchers and overseers may challenge a voter's right to vote.
- Such challenges are limited to **identity** and **residency**, i.e., that the voter is not the person they say they are or that the voter does not live in the voting precinct.
- A voter's eligibility to register to vote is not a permissible challenge at the polls. The laws governing voter registration include a process for such challenges and that process occurs before the election.

2. Process

- The Judge of Election has the obligation to determine if a challenge rests on a good faith basis. The Judge of Election must not permit routine or frivolous challenges that are not supported with a stated good faith basis.
- If the Judge of Election is satisfied as to the identity and residency of the voter and believes that the challenge does not have a good faith basis, the voter should be permitted to vote normally.
- If the Judge of Election cannot determine in good faith the residency or identity of the voter, the voter shall be permitted to bring another voter from the precinct to sign an affidavit vouching for the challenged voter's identity or residence.
- Once that procedure is followed, the voter must be permitted to vote normally.
- A challenged voter who is unable or unwilling to find a witness to vouch for him or her must be given a provisional ballot.
- The elected officers of the precinct (Judge of Elections, Majority and Minority Inspectors) have the responsibility of determining the qualifications of the persons presenting themselves to vote. In the event of a disagreement, the Judge of Elections decides.

3. Illegal Behavior and Penalties

- The two Inspectors of Election must swear an oath that they will not, without just cause, delay or refuse to permit any person to vote whom they believe to be entitled to vote.
- The Judge of Election must swear that he or she will use his or her best endeavors to prevent any fraud, deceit or abuse in carrying on the election process in the election district, including challenges made to electors' identity, residence or other qualifications to vote.
- Anyone who intentionally refuses to permit a person to vote who is entitled under the law to vote commits a crime under the Federal Voting Rights Act of 1965 and the Pennsylvania Election Code.
- Using lists compiled from returned mail from private direct mailings to challenge voters is illegal and does not amount to a good faith basis for challenging voters.
- Routine challenges based on race or ethnicity or other protected traits are unlawful. It is unlawful to challenge every African-American, every Latino, every student, etc. who appears to vote.