



## **The Commonwealth of Massachusetts**

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Elections Division

### **Election Advisory #20-12**

Regarding Electioneering, the 150-foot Rule, and Maintaining Order in the Polling Place

October 30, 2020

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Massachusetts state law and regulations prohibit electioneering, campaigning, and specific other political activities within one hundred fifty (150) feet of a polling place on Election Day. The statutes and regulations which make up these prohibitions are collectively known as the 150-foot Rule. Enforcement of the 150-foot Rule lies primarily with the presiding officer at each polling place. This provision means that the 150-foot Rule's interpretation and enforcement often includes a great deal of discretionary judgement on the part of the presiding officer.

In an effort to standardize and avoid any actual or perceived partisan bias in the interpretation and enforcement of the 150-foot Rule, the Elections Division has issued the following Advisory which defines and clarifies the 150-foot Rule, its enforcement, and its exceptions. Presiding officers must enforce the 150-foot Rule according to the guidance in this Advisory and are permitted to use their discretion only on matters which are not explicitly prohibited or allowed herein and only after consultation with the local election official. Local election officials must provide all presiding officers with a copy of this Advisory and must make an additional copy available in each polling place.

#### **THE 150-foot RULE: DEFINITION & SCOPE**

The 150-foot Rule prohibits political and campaign activities in the areas in and around polling places on Election Day. However, the Rule's application is limited only to polling places and areas in the immediate vicinity of a polling place and only those activities intended to influence the ongoing election so as not to place an unreasonable restriction on political speech.

#### **Definition and Legal Authority**

Section 65 of chapter 54 of the Massachusetts General Laws provides that no activity or behavior prohibited by the 150-foot Rule may occur "in the polling place, in the building where

the polling place is located, on the walls thereof, on the premises on which the building stands, or within one hundred and fifty feet of the building entrance door to such polling place.”

#### **Areas Subject to the 150-foot Rule**

The 150-foot Rule applies to the actual polling place, the building in which the polling place is located, and the area within one hundred fifty feet of the building entrance door to the polling place. No activity or behavior prohibited by the 150-foot Rule may occur “in the polling place, in the building where the polling place is located, on the walls thereof, on the premises on which the building stands, or within one hundred and fifty feet of the building entrance door to such polling place.” G. L. c. 54, § 65.

The term “premises” is further defined by regulation to mean only the grounds in the immediate vicinity of the building, up to 150 feet from the building’s walls or entrance. 950 C.M.R. § 52.03(22)(c), 54.04(22)(c).

A city or town may extend application of the 150-foot Rule to a further distance if warranted by public safety concerns. For example, if 150 feet ends in the middle of a street or parking lot, the area where activity is permitted can be moved to the closest safe area. This Office recommends identifying the 150-foot Rule area with some sort of physical marking to ensure awareness.

#### **Areas Not Subject to the 150-foot Rule**

The 150-foot Rule does not apply to any activity taking place more than one hundred fifty feet from the walls of or entrance(s) to a polling place, or the building in which that polling place is located. If the property or land on which the building or polling place stands extends for more than 150 feet, the area more than 150 feet from the building or polling place is not subject to the prohibitions of the 150-foot Rule. 950 C.M.R. § 52.03(22)(c), 54.04(22)(c).

The Rule also does not apply to any location which is not a polling place on Election Day, including but not limited to Early Voting Locations, Central Tabulation Facilities, Advance Removal and Processing locations, ballot drop-boxes, or local election offices which are not housed in the same building as a polling place. The 150-foot rule also does not apply to any event taking place before or after Election Day, including post-election tabulation and post-election audits. Municipalities may have other reasonable time, place, and manner restrictions that may apply.

While the electioneering prohibitions are limited to 150-feet of a polling place as described above, a city or town may have by-laws or ordinances that regulate other areas and/or activities on municipal property generally. Questions relative to additional restrictions should be directed to the appropriate local election official.

### **PROHIBITIONS UNDER THE 150-foot RULE**

The 150-foot Rule applies only to activities, behaviors, and practices defined in the following section. The following activities are prohibited within 150 feet of a polling place on Election Day.

#### **Exhibition, Circulation, and Distribution of Materials**

Materials intending to influence the action or decision of a voter at the ongoing election may not be exhibited, circulated, distributed, posted, or otherwise displayed within the area subject to the 150-foot Rule. This includes, but is not limited to, pasters, posters, stickers, cards, leaflets, handbills, placards, pictures, and circulars. G. L. 54, § 65.

Materials are understood to be intended to influence the action or decision of a voter when they contain the name, policy proposals, or campaign slogan of a particular candidate or political party on the ballot or when they advocate for or against a position on a ballot question on the ballot. A list containing examples of materials which are prohibited under the 150-foot Rule is included in the Appendix. Images of candidates, their likenesses or other images directly related to or associate with a campaign are similarly prohibited.

Please note that voters may bring materials to assist them in the voting process, including campaign literature which is otherwise prohibited in the polling place. Such voters may be asked to act with discretion and cannot be found in violation of these prohibitions so long as they do not otherwise display such materials in a manner described above.

#### **Solicitation of Votes**

No person or group of people may solicit or attempt to solicit one or more votes for or against any person, political party, or ballot question to be voted on at the current election. 950 C.M.R. §§ 52.03(22)(d), 54.04(22)(d).

#### **Influencing One or More Voters**

No person or group of people may hold any campaign sign; wear any campaign buttons, clothing, or identifying signs or symbols; hand any person literature intended to influence their action at the polls; solicit a person's vote for or against a candidate or question on the ballot; or, in any way promote or oppose any person or political party or ballot question on the ballot. 950 C.M.R. §§ 52.03(22)(d), 54.04(22)(d).

#### **Interfering with One or More Voters**

No person or group of people is allowed to hinder, delay, or interfere with a voter during an Election without lawful authority. No person or group may attempt to induce a voter to disclose how they have voted before depositing their ballot. Further, no person or group of people may aid, assist, or induce another person to hinder, delay or interfere with a voter during an Election without lawful authority. G. L. c. 56, § 29

These prohibitions protect voters who are on their way to an Election, who are within the guard rail at a polling place, who are marking their ballot, who are voting or attempting to vote, and who have not yet cast their ballot. These prohibitions extend to all voters on Election Day, regardless of whether or not the voters are within 150 feet of a polling place.

Violations of these prohibitions are punishable by a fine of up to \$500 or imprisonment for up to one year. G. L. c. 56, § 29

### **Petitioning and Gathering of Signatures**

No person or group of people may gather signatures on nomination papers, initiative petitions, or petitions of any other kind within the area subject to the 150-foot Rule. G. L. c. 54, § 65.

### **ACTIVITIES NOT PROHIBITED BY THE 150-foot RULE**

The 150-foot Rule applies only to activities, behaviors, and practices defined in the previous section. It does not prohibit other activities. The following activities are allowed within the 150-foot Rule to the extent they do not interfere with election administration.

### **Exit Polling**

Exit polling is permitted within 150 feet of a polling place on Election Day, provided that the exit pollster does not interfere with a person entering a polling location to vote. Exit pollsters are also not permitted to disturb the peace, order, or decorum at the polls. G. L. c. 56, § 29; G. L. c. 54, § 71.

### **Issue Phrases and Slogans**

The display of materials, phrases, and slogans which promote an issue, position, or ideology which is not explicitly tied to the campaign or campaign material of a candidate, political party, or ballot question printed on the ballot cannot be prohibited under the 150-foot Rule. Examples of such protected materials, phrases, and slogans include but are not limited to the following:

- "Black Lives Matter"
- "Blue Lives Matter"
- "Defund the Police"
- "Thin Blue Line"
- "Back the Blue"
- "Obey"
- "Resist"

Note that any such phrase which is explicitly used by a candidate, political party, or ballot question campaign in campaign materials or messaging must be prohibited under the 150-foot Rule at polling places within the district in which such candidate, political party, or ballot question is printed on the ballot.

## **ENFORCEMENT OF THE 150-foot RULE AND ORDER AT THE POLLS**

The presiding officer of each precinct or polling place is responsible for enforcing the 150-foot Rule in accordance with this Advisory, along with statutory and regulatory authority, and is vested with the authority and obligation to maintain peace, order, and decorum at the polls. G. L. c. 54, §§ 65, 71. Regulations also require the presiding officer to ensure that polling places are open and unobstructed and that voters are not hindered. 950 C.M.R. §§ 52.03(22)(c), 54.04(22)(c).

### **Orders of the Presiding Officer**

To enforce the 150-foot Rule, maintain peace, order, and decorum at the polls, and ensure the polling place is open and unobstructed, the presiding officer may issue orders to any voter, observer, election official, or other individual to comply with the 150-foot Rule, other prohibitions provided in this Advisory, and health and safety guidelines provided in Election Advisory #20-03, Health and Safety Guidelines for Conducting Voting in Person.

### **Discretion of the Presiding Officer**

Pursuant to statutory and regulatory authority, the presiding officer has significant discretion in determining what they believe amounts to a disturbance to the peace, an obstruction in access to the polling place, or a hindrance to the voters. They do not have the same discretion in determining violations of the 150-foot Rule, as the terms and definitions of the Rule are clearly defined in this Advisory and in statute. Presiding officers may exercise discretion in matters pertaining to the 150-foot Rule only when such matters are not provided for in this Advisory, statute or regulation and only after consultation with the local election official.

### **Role of the Constable and/or Law Enforcement**

The police officer or constable detailed to each polling place assists, when requested, the election workers and aids in enforcing the laws relating to elections. The presiding officer may direct the constable or police officer stationed at the polling place to enforce any and all of the presiding officer's lawful orders. Further, they may request that the police officer take into custody and person who, by disorderly conduct, interrupts or disturbs the proceedings of the election or the work of an election officer or worker.

The constable or police officer must enforce lawful orders as directed by the presiding officer. The constable or police officer may only enforce lawful orders given by the presiding officer and may not otherwise act independently unless it relates to matters unrelated to election laws.

### **Conflict Negotiation & De-escalation Tactics**

Enforcement of the 150-foot Rule should occur in a manner which plainly and directly addresses the violation(s) of the Rule without stating or implying bias or prejudice on the part of the presiding officer. Further, officials invoking the 150-foot Rule must make every effort to emphasize that the voter's right to vote is not being infringed upon and that the voter will be allowed to vote if and when they comply with the Rule.

For clothing and other wearable campaign materials, voters should be asked to remove or cover the prohibited materials.

Voters may arrive expecting conflict and thus could have difficulty recognizing their right to vote is being respected because of their stress level on arrival. Officials should use de-escalation measures to lower the stress level of the voter and reach the best possible outcome. Since officials themselves may also find these encounters stressful, it will be helpful to practice de-escalation measures beforehand, as well as those measures required when de-escalation fails, using role-playing.

De-escalation measures include:

- Speaking with a calm voice at a normal volume and communicating with a posture and expression of confidence that the voter will understand that their right to vote will be respected.
- Resisting the urge to engage on the underlying objection or to use body language or other nonverbal gestures which minimize or ridicule the voter's argument or objection.
- Repeatedly reassuring the voter that they will be allowed to vote by using words such as "You're going to get to vote."

Election officials should role-play the possibility of a negative outcome to de-escalation and should be made aware of signs that de-escalation is failing, like changes in posture or tone from the voter that suggest they are getting angrier despite de-escalation attempts.

More than one election official should be present in any situation of conflict, with one worker engaging the voter and the other standing back to assess whether the situation is capable of being resolved quickly and without further conflict or whether further intervention is necessary.

Election workers and officials should be provided with instructions to call the local election office, or the state Elections Division, if they feel threatened or intimidated, if voters feel threatened or intimidated, or if a disturbance of any kind occurs. Election workers should be instructed to call local law enforcement first if they believe the immediate physical safety of any person in the polling place is in jeopardy.

### **QUESTIONS AND RECOURSE FOR IMPROPER ENFORCEMENT**

From time to time, scenarios may arise which cannot be easily or straightforwardly addressed relying solely on the guidance provided within this Advisory. The Elections Division can provide further guidance in individual cases.

#### **Questions**

Voters, election officials, campaign officials, and members of the media or the public may contact the Elections Divisions with any questions regarding the content of this Advisory or the

application and enforcement of the 150-foot Rule generally. Questions may be submitted via email to [elections@sec.state.ma.us](mailto:elections@sec.state.ma.us) or by phone at (617) 727-2828.

**Complaints to the Elections Division**

Individuals who have evidence that the 150-foot Rule has been incorrectly applied or enforced in a manner that is inconsistent with this Advisory, law or regulation, may file a complaint with the Elections Division via email to [elections@sec.state.ma.us](mailto:elections@sec.state.ma.us) or by phone at (617) 727-2828.

When sufficient evidence is provided, the Elections Division may contact the appropriate local election officials for appropriate application of the 150-foot Rule.