

## State Primary August 30, 2024

With the State Primary happening on Tuesday, we wanted to reach out and remind you that we are here to help. We are certain you have received many materials from the State Elections Division. Below are a few procedural issues that can help avoid recounts or other election challenges.

### **Appointment of Election Workers**

A relatively new law provides that within three weeks of an election, the municipal clerk may fill vacancies in election officer positions with a person of their choosing and without regard to any lists provided by the leading political parties.

Note, however, that the Conflict of Interest Law still applies to these appointments. For that reason, should the clerk appoint members of their immediate family (defined as, the clerk “and their spouse, as well as their parents, children, brothers and sisters”) to work at the election, this action, and supervising immediate family members, may constitute a violation of the law.

### **Election Workers who have Actively Supported or Opposed Candidates or Questions Appearing on Current Election Ballot**

Concerns are often raised about election workers who, while not related to a candidate, or having a financial interest in a question, appearing on the ballot, have actively supported or opposed candidates or questions appearing on that ballot. In the absence of a poll worker policy addressing this issue, it is important to be prepared to respond to allegations that a particular election worker cannot be fair and impartial because of activity undertaken as private individuals. If a clerk becomes aware of such a situation, at a minimum, it is appropriate to ask the poll worker to review and sign a disclosure under the Conflict of Interest Law rendering “unreasonable” the conclusion that such person might act or fail to act because of their personal position on matters, rather than in an impartial manner in the best interests of the municipality. Copies of the appropriate disclosure forms, found [here](#), can be sent to the polls with the supply boxes, although any writing setting forth the relevant facts will be sufficient for purposes of the law. Any such forms should be collected by the warden or clerk at the polling place and be filed with the municipal clerk; a copy should also be filed with the appropriate appointing authority as soon as is reasonable.

### **Observers**

As you are aware, the law allows for observers in the polling place on election day, provided that they are not disorderly or disrupting voter access. Observers must be permitted to, for example, witness the polls being

opened, voters checking in, the polling place closing and the tallying and sealing of the ballots. Observers must “remain at a fixed location in the polling place designated by the election officer near enough to the check-in table but behind the guardrail so as to hear and see a voter checking in to cast a ballot.” It may be useful, therefore, to mark the area where observers may stand, such as with masking tape. Importantly, while observers may take notes, they are not permitted to converse with poll workers, voters or others, or to talk on a mobile phone. It is important, therefore, that the election officials checking in voters loudly state the street address and last and first names of voters.

If there are more observers than can be accommodated, state law provides that “priority shall be given to individuals representing candidates and questions appearing on that election’s ballot and to those who provided written notice to the local election official prior to the election.”

### **Voter Challenges**

Observers may challenge the right of a voter to cast a ballot “for any legal reason.” However, the challenger must have information particular to the voter supporting that challenge, such as that the voter is not old enough to vote, not a citizen, should not be on the voter list, already voted, or is not who they claim to be. The challenger is required, when asked by the precinct warden, to “briefly set forth factual information specific and personal to the challenged voter as to the reasons that voter is not qualified to vote in the election at that precinct.” Whether or not the challenge is permitted, the incident must be recorded in the clerk’s book to include the name and address of the challenged voter, the name of the challenger, the factual basis for the challenge, and, if the challenge is rejected, the reason therefor.

If the warden finds that the challenge is legally appropriate, the warden must give the challenged voter the following oath:

You do solemnly swear or affirm that you are the identical person whom you represent yourself to be, that you are registered in this precinct, and that you have not voted in this primary.

The warden will also direct the voter to write their name and address on the ballot and the warden will add the name and address of the challenger, and the reason for the challenge. The ballot is then cast in the usual manner. The letters “CV” must be inserted on the voters list next to the name of the challenged voter.

If the warden finds that the challenger has not provided the legally required specific and personal factual information, the warden must reject the challenge.

### **Spoiled Ballots**

A voter may decide, for any reason or no reason, that they would like a different ballot, and may be allowed up to three ballots. In the event a voter requests a new ballot, the election officer must first write the word “spoiled” across the used ballot, preferably using a pen of any color other than black. It is a good practice for the election officer to also write their initials on the spoiled ballot. The spoiled ballot must then be placed into an envelope labeled “Spoiled Ballots”. The election officer should also note this occurrence in the clerk’s book.

The only ballots that may be placed in the spoiled ballot envelope are those that are spoiled at the specific request of a particular voter. Ballots that cannot be counted by the machine, for example, but which the voter did not decide to “spoil”, must not be placed in the spoiled ballot envelope. Instead, such a ballot must be placed in the auxiliary bin and be hand counted following the close of polls.

### **Write-in and Hand Count Ballots**

All ballots must be reviewed for write-ins and segregated from those that do not contain write-ins. It is not necessary for the voter to have also filled in the related oval when writing in the name of a candidate. Further, a write-in vote may be counted even if the voter did not spell the write-in candidate’s name correctly or omitted the candidate’s address, provided that the voter’s intent is “reasonably” clear. The Secretary of the Commonwealth, in a booklet entitled, *Election Recounts* (revised 2017), has summarized this “paper ballot standard” of review, as follows:

[T]he will of the voters, if it can be determined with reasonable certainty must be given effect. If the marks on the ballot fairly indicate the voter’s intent, the vote should be counted in accordance with that intent, as long as the voter has substantially complied with the election law. The voter is not to be disenfranchised because of minor irregularities. Where, however, the ballot is marked in a way that leaves the intent of the voter unclear, the vote should not be counted.

Write-ins and hand count ballots must be counted, tabulated, and results recorded at the polls on election night. The name of any person receiving a write-in vote must be recorded.

### **Inactive Voters**

Inactive voters are voters and must be allowed to vote. They must complete an affidavit of current and continuous residence, whether such affidavit is on a separate piece of paper or an inactive voter “roster”. In either case, the voter must affirm under oath that they are who they say they are and live where they say they live. They must also be asked for identification listing their residence in the municipality. For this purpose, “suitable written identification” includes: a driver’s license, recent utility bill, rent receipt on a landlord’s printed letterhead, lease, duplicate copy of a voter registration affidavit, or any other printed identification which contains the voter’s name and address. If they do not show suitable identification with their current address, they must still be allowed to vote; however, an election worker (or any other person) may choose to challenge their vote. It is imperative that the affirmations be maintained with the voters list; they may not be discarded.

### **End of Night Procedures**

Used ballots, including early voting, in person and by mail, ballots, and absentee ballots, and whether hand counted ballots or those containing write-ins, must be sealed at the end of election night in containers that are not subject to tampering. For that reason, it is a best practice to use containers, such as plastic tubs, certain plastic bags designed for this purpose, or “suitcase” style ballot containers, that can be sealed with numbered plastic zip-tie seals or their equivalent. If you do not have this type of ballot container or seal available, consider

in advance how to seal the containers in a manner that preserves the integrity of the seal and, in turn, the election.

Should questions arise at any time with regard to the September 3, 2024 State Primary, please contact Lauren Goldberg at 617-654-1754, Brian Riley at 617-654-1722 , Devan Braun at 617-654-1703 , or Michael D’Ortenzio at 617-654-1779.

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