

Office of
MONTANA SECRETARY OF STATE
LINDA McCULLOCH



**Guidelines on Electioneering and Signature
Gathering at the Polling Place on Election Day**

Updated May 2010



MONTANA SECRETARY OF STATE

LINDA McCULLOCH

May 25, 2010

Dear Election Administrators,

I am pleased to provide the **Electioneering and Signature Gathering Guide**, which may prove a valuable and informative resource for election officials on Election Day.

Copies of this guide should be provided to polling place managers and chief election judges, to political parties and campaigns, to signature gatherers, and to any Election Day worker who may need it.

Included are updated statutory guidelines regarding electioneering and signature gathering, Frequently Asked Questions with answers compiled by the Office of the Commissioner of Political Practices, and a signature gathering complaint form which should be made available to the public at every polling place location.

Thank you for serving as an election official and for upholding the democratic process in Montana. Following these guidelines will help ensure that Election Day continues to be a successful experience for you, for your staff and for Montana voters.

Best Regards,

A handwritten signature in blue ink that reads "Linda McCulloch".

Linda McCulloch
Secretary of State

Election Day is for the elector.

As a general rule, no person can obstruct the polling place or engage in solicitation of an elector in any manner that interferes with the election process or obstructs the access of electors to or from the polling place. Most unlawful polling place conduct can be punishable as a misdemeanor under Montana law.

In the initiative process, “**orderly** gathering of initiative petition signatures **at the polling place that does not interfere** with the election process **or obstruct elector access to the polls** may not be prohibited.” 39 A.G. Op. 62 (1982). Since this is an issue of free speech, the opponents of signature gathering have the same rights and responsibilities as signature gatherers.

The right of petition signature gatherers is constitutionally protected. However, “local election administrators have the authority to limit the collection of signatures if that activity creates an obstruction at a specific polling place.”

39 A.G. Op. 62 (1982).

Therefore, in addition to the general rules against interfering with or obstructing the election process, certain activities may take place around polling places:

In the polling place (room where voting takes place): electors, election judges, and poll watchers.

At the polling place (building where voting takes place): petition signature gatherers and opponents.

Outside the building (entrance to the building): exit pollsters.

At least 100 feet from any entrance to the building: individuals advocating the success or defeat of a candidate or issue on the ballot that day.

Election Administrators have certain responsibilities and authority.

Election administrators should take a look at each polling place and make some decisions about how to deal with non-electors at the polling place on Election Day. Set guidelines that are **reasonable, fairly applied, and documented before Election Day**. (An idea might be to draw lots to decide how signature gatherers and/or opponents will be arranged in the polling place to ensure that their placement is both neutral and fair.)

1. Evaluate the polling place **beforehand** to determine the nearest open space where petition signature gatherers and opponents can gather without obstructing electors or interfering with the election process. The placement of the signature gatherers and opponents **MUST** allow open passage. This may be a hallway or outside of a building.
2. Request that signature gatherers approach the elector **only after s/he has voted**.
3. Alert law enforcement that you may need their assistance on Election Day.
4. The Chief Election Judge or his/her designee must control the behavior of the non-electors at the polling place to prevent obstructions. The Chief Election Judge should call the election office at the first sign of trouble and the election administrator should call law enforcement if necessary.

Section 13-35-218 MCA provides in part:

(4) No person may, in any manner, interfere with a voter lawfully exercising his right to vote at an election so as to prevent the election from being fairly held and lawfully conducted.

(5) No person on election day may obstruct the doors or entries of any polling place or engage in any solicitation of a voter within the room where votes are being cast or elsewhere in any manner which in any way interferes with the election process or obstructs the access of voters to or from the polling place.

Section 13-13-122 MCA, also provides:

An election officer, sheriff, constable, or other peace officer may clear the passageway, prevent any obstruction, or arrest any individual obstructing the passageway to a polling place.

The right to gather petition signatures is a constitutionally protected First Amendment right. However, that process cannot interfere with the election process. The election officer has the authority to prevent any obstruction. In addition, the chief election judge "shall be responsible for the conduct of the proceedings in the polling place." 13-4-201, MCA.

Electioneering and Signature Gathering Statutes

13-35-211. Electioneering -- soliciting information from electors. (1) A person may not do any electioneering **on election day** (emphasis added) within any polling place or any building in which an election is being held or within 100 feet of any entrance to the building in which the polling place is located, which aids or promotes the success or defeat of any candidate or ballot issue to be voted upon at the election.

(2) A person may not buy, sell, give, wear, or display at or about the polls on an election day any badge, button, or other insignia which is designed or tends to aid or promote the success or defeat of any candidate or ballot issue to be voted upon at the election.

(3) A person within a polling place or any building in which an election is being held may not solicit from an elector, before or after the elector has marked a ballot and returned it to an election judge, information as to whether the elector intends to vote or has voted for or against a candidate or ballot issue.

13-27-210. Physical prevention of obtaining signatures or physical intimidation of signature gatherers prohibited.

A person may not knowingly or purposefully physically prevent an individual from obtaining signatures or attempting to obtain signatures on a petition for a ballot issue or physically intimidate another individual when that individual is obtaining or attempting to obtain signatures on a petition for a ballot issue. A person who violates this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$500, by imprisonment for not more than 90 days, or by both a fine and imprisonment.

13-27-102. Who may petition and gather signatures. (1) A petition for the initiative, the referendum, or to call a constitutional convention may be signed only by a qualified elector of the state of Montana.

(2) A person gathering signatures for the initiative, the referendum, or to call a constitutional convention:

(a) must be a resident, as provided in [1-1-215](#), of the state of Montana; and

(b) may not be paid anything of value based upon the number of signatures gathered.

13-35-218. Coercion or undue influence of voters. (1) No person, directly or indirectly, by himself or any other person in his behalf, in order to induce or compel a person to vote or refrain from voting for any candidate, the ticket of any political party, or any ballot issue before the people, may:

(a) use or threaten to use any force, coercion, violence, restraint, or undue influence against any person; or

(b) inflict or threaten to inflict, by himself or any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person.

(2) No person who is a minister, preacher, priest, or other church officer or who is an officer of any corporation or organization, religious or otherwise, may, other than by public speech or print, urge, persuade, or command any voter to vote or refrain from voting for or against any candidate, political party ticket, or ballot issue submitted to the people because of his religious duty or the interest of any corporation, church, or other organization.

(3) No person may, by abduction, duress, or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election or thereby compel, induce, or prevail upon any elector to give or to refrain from giving his vote at any election.

(4) No person may, in any manner, interfere with a voter lawfully exercising his right to vote at an election so as to prevent the election from being fairly held and lawfully conducted.

(5) No person on election day may obstruct the doors or entries of any polling place or engage in any solicitation of a voter within the room where votes are being cast or elsewhere in any manner which in any way interferes with the election process or obstructs the access of voters to or from the polling place.

13-13-120. Poll watchers -- announcement of elector's name. The election judges shall permit one poll watcher from each political party to station himself close to the poll lists in a location that does not interfere with the election procedures. At the time when each elector signs his name, one of the election judges shall pronounce the name loud enough to be heard by the poll watchers. A poll watcher who does not understand the pronunciation has the right to request that the judge repeat the name. Poll watchers shall also be permitted to observe all of the vote counting procedures of the judges after the closing of the polls and all entries of the results of the elections.

13-13-121. Additional poll watchers. A candidate, a group of candidates, or any group having an interest in the election may request the election administrator to allow additional poll watchers at any precinct. The election administrator shall grant such requests if the number of poll watchers at the polling place will not interfere with the election procedures.

13-13-122. Preventing obstructions. An election officer, sheriff, constable, or other peace officer may clear the passageway, prevent any obstruction, or arrest any individual obstructing the passageway to a polling place.

Frequently Asked Questions: ELECTIONEERING & SIGNATURE GATHERING

Answers Provided by Commissioner of Political Practices

Q What is the “**100 FOOT RULE**”?

A Montana law restricts campaigning, or “electioneering on election day within any polling place. . . or within 100 feet of any entrance to the building in which the polling place is located. . .” (13-35-211, MCA emphasis added)

Q What is “**ELECTIONEERING**”?

A Electioneering in this instance means soliciting support or opposition to a candidate or issue to be voted on at the polling place in question. Electioneering includes personal persuasion and the display or distribution of campaign materials. Offering or distributing food, drink, or any other material benefit in order to encourage recognition, support, or opposition to a candidate or issue is also prohibited. (44.10.311, ARM)

Q **HOW DO I MEASURE**—is it **100 FEET** beyond the parking lot, or beyond the building entrance? Which entrance?

A The law states “within 100 feet of any entrance to the building in which the polling place is located. . .” (13-35-211, MCA)

Q **WHAT DO I DO IF I SEE A VIOLATION?**

A Inform the polling place official. If the official is not able to correct the problem, he or she should call law enforcement.

“An election officer, sheriff, constable, or other peace officer may clear the passageway, prevent any obstruction, or arrest any individual obstructing the passageway to a polling place.” (13-13-122, MCA)

“No person on election day may obstruct the doors or entries of any polling place or engage in any solicitation of a voter within the room where votes are being cast or elsewhere in any manner which in any way interferes with the election process or obstructs the access of voters to or from the polling place.” (13-35-218(5), MCA)

Q How about campaigning/electioneering in the area **BEYOND 100 FEET** from the **POLLING PLACE**?

A The distance prohibiting electioneering was reduced from 200 feet to 100 feet in the 2001 Legislative Session to make the statute more likely to survive a constitutional First Amendment (“free speech”) challenge. Generally, speech beyond 100 feet from the polling place is not restricted.

Q Can I wear a **BADGE OR BUTTON TO THE POLLS**? How about a shirt promoting my candidate? And what about bumper stickers?

A A person “may not buy, sell, give, wear, or display at or about the polls on election day any badge, button or other insignia which is designed or tends to aid or promote the success or defeat of any candidate or ballot issue to be voted upon.” (13-35-211, MCA) “At or about the polls” is construed to include the 100 foot zone. The law does not specifically require that you remove political bumper stickers before parking at the polls, however.

Q Can **ELECTION MATERIALS** be brought into a **POLLING PLACE**?

A Soliciting support or opposition to a candidate or issue at a polling place is prohibited when that candidate or issue is on the ballot. Electors are not specifically prohibited from bringing other election materials into the polling place for their own use. However, to avoid problems or questions this practice should be discouraged.

Q Can people **GATHER SIGNATURES ON PETITIONS IN THE POLLING PLACE?**

A Orderly signature gathering that does not interfere with the election process or obstruct voter access to the polls is not prohibited by these statutes (as long as the petition does not concern an issue being voted on at the polling place).

Q Can **CANDIDATES BE PRESENT IN THE POLLING PLACE?** Can they work the polls?

A These statutes do not prohibit candidates in the polling place—they prohibit electioneering (which includes campaigning) in or about the polling place.

Q What **OTHER STATUTES, RULES, OR DECISIONS** do you suggest I read?

A **ELECTIONEERING**—soliciting information from electors.

(1) A person may not do any electioneering on election day within any polling place or any building in which an election is being held or within 100 feet of any entrance to the building in which the polling place is located, which aids or promotes the success or defeat of any candidate or ballot issue to be voted upon at the election.

(2) A person may not buy, sell, give, wear, or display at or about the polls on an election day any badge, button, or other insignia which is designed or tends to aid or promote the success or defeat of any candidate or ballot issue to be voted upon at the election.

(3) A person within a polling place or any building in which an election is being held may not solicit from an elector, before or after the elector has marked a ballot and returned it to an election judge, information as to whether the elector intends to vote or has voted for or against a candidate or ballot issue.” (13-35-211, MCA, emphasis added)

ELECTIONEERING—interpretive rule (1) As used in 13-35-211, MCA, "electioneering" means the *solicitation of support or opposition to a candidate or issue to be voted upon at the election or polling place in question, by means of:*

(a) *Personal persuasion, electronic amplification of the human voice, or the display or distribution of campaign materials.*

(b) *Offering or distribution of food, drink, or any other material benefit in a manner calculated to encourage recognition, support, or opposition to a candidate or issue.*

(c) *"Electioneering" does not include the display of ordinary bumper stickers on automobiles."* (44.10.311, ARM, emphasis added)

For more information regarding this issue, you may read the Commissioner of Political Practices decisions referenced below (found at www.politicalpractices.mt.gov)

Gee v. Childers (2/17/00) politicalpractices.mt.gov/2recentdecisions/campaignfinance.as

Butorovich v. Walsh (11/02/00) politicalpractices.mt.gov/2recentdecisions/campaignfinance.as

Important—This informal guidance is necessarily general and may not be applicable to a specific factual situation or scenario. It may be superseded, amended, or overruled by subsequent opinions or decisions of the Commissioner of Political Practices or changes in applicable statutes or rules. This communication does not waive any power or authority the Commissioner has to investigate and prosecute alleged violations of Montana laws and rules over which the Commissioner has jurisdiction.

The statutes governing electioneering generally fall under the jurisdiction of the Commissioner of Political Practices, 406-444-2942, dunsworth@mt.gov.

More Questions?

Call the Office of the Commissioner of Political Practices at 406-444-2942

Or

Contact the Office of the Secretary of State at soselection@mt.gov or call toll free 1-888-884-8683 or 406-444-5376



OFFICE OF THE SECRETARY OF STATE

PO BOX 202801
HELENA MT 59620-2801
www.sos.mt.gov
(406) 444-2034
(406) 444-3976 (FAX)
(406) 444-9068 (TTY)

Linda McCulloch
Secretary of State

BALLOT ISSUE SIGNATURE GATHERING COMPLAINT

Date _____

Name _____

Phone _____

Address _____

Email _____

Date of Incident _____

Ballot Issue Number

Incident Location (be specific)

Please describe what you witnessed (use back page if necessary)

PLEASE NOTE:

1. The purpose of filing this complaint is to create a record of possible violations.
2. The Office of the Secretary of State may share this form with local law enforcement in the county where the alleged violation occurred.
3. The sponsor of the ballot issue in question may be sent a copy of this complaint form.
4. **Mont. Code Ann. 13-27-317. Contest of ballot issue petitions.** (1) Any qualified elector may, within 30 days after the date on which the issue was certified to the governor, file an action in the district court in the county of residence of the qualified elector contesting the certification of a ballot issue for illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.
(2) If a court finds that illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures affected the outcome of the petition process and certification, the secretary of state shall decertify the contested ballot issue.

Signature: _____

Date: _____

