



FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

October 24, 2012

President Barack Obama
Obama for America
130 East Randolph Street
Chicago, Illinois 60601

Governor Mitt Romney
Romney – Believe in America
585 Commercial Street
Boston, Massachusetts 02109

RE: DE 12-13 Poll Watchers; Supervisors of
Elections – Use of mobile electronic devices by poll
watchers in the polls -- §§ 101.111(1), 101.131(1),
101.23, and 102.031, Florida Statutes

Dear President Obama and Governor Romney:

This letter responds to separate requests for an advisory opinion from your presidential campaigns concerning the same subject – whether poll watchers may use mobile electronic devices in the polls in Florida while performing their poll watcher duties. Because each of your campaign organizations is an organization engaged in political activity in Florida, the Division of Elections has the authority to issue the campaign organization an opinion pursuant to section 106.23(2), Florida Statutes (2012).

The short answer to your campaign's inquiry is that poll watchers may use mobile electronic devices inside polling rooms and early voting sites in a *non-disruptive* manner while performing their duties consistent with the parameters expressed in this opinion and they may not use the camera function on their mobile electronic devices while in the polling room or early voting area. Also, the Division of Elections opines that supervisors must permit *non-disruptive* use of mobile electronic devices by poll watchers.



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Section 101.131(1), Florida Statutes (2102), provides, in part:

No poll watcher shall be permitted to come closer to the officials' table or the voting booths that is reasonably necessary to properly perform his or her functions, but each shall be allowed within the polling room or early voting area to watch and observe the conduct of electors and officials. The poll watchers shall furnish their own materials and necessities and shall not obstruct the orderly conduct of any election. The poll watchers shall pose any questions regarding polling place procedures directly to the clerk for resolution. They may not interact with voters.

Section 101.23, Florida Statutes (2012), further provides that one of the poll inspectors shall keep a list on which is indicated the voters who have voted and "such lists shall be available for inspection during regular voting hours by poll watchers ..., except the election inspector may regulate access to the lists so as to ensure that such inspection does not unreasonably interfere with the orderly operation of the polling place." Also, section 101.111(1)(a), Florida Statutes (2012), indicates that a poll watcher may challenge the voter's right to vote by following the statutory challenge procedures. These provisions regarding the conduct of poll watchers must be viewed in light of section 102.031(1), Florida Statutes (2012), which gives each election board "full authority to maintain order at the polls and enforce obedience to its lawful commands during an election...." Sections 102.031(4)(a) and (5) further prohibit any person (which would include poll watchers) soliciting voters inside the polling place or within 100 feet of the entrance to any polling place or early voting cite, as well as providing, "No photography is permitted in the polling room or early voting area." Section 102.031(4)(c) further provides that the supervisor of elections or clerk "may take any reasonable action necessary to ensure order at the polling places, including, but not limited to, having disruptive and unruly persons removed by law enforcement officers...."

With the foregoing provided as the existing statutory law regulating poll watchers and their conduct,¹ and in answer to your campaign's specific inquiry, I take this opportunity to also clarify and expound upon informal opinions previously provided by representatives of the Division of Elections to some supervisors of elections and their staffs about the instant question. These informal opinions emphasized an election board's authority to maintain order at the polls, which necessarily includes some discretion in formulating policies regarding the use of mobile electronic devices by poll watchers. Your request advises that, perhaps based upon the direction

¹ See also Fla. Admin. Code R. 1S-2.034 and its incorporated Form DS-DE 11, *Polling Place Procedure Manual*, eff. 01/2012. (Regulatory limitations for poll watchers are listed at p. 6, e.g., "Poll watchers are not allowed to wear campaign buttons, shirts, hats, or other campaign items while they are in the polling room.")

provided in the informal opinions, supervisors of elections have taken very different approaches to this matter, with some supervisors of elections prohibiting all use of electronic devices (to include cellular telephones) by poll watchers. This advisory opinion is intended to remove any uncertainty that may have been created by the informal opinions provided by representatives of the Division of Elections and the adoption of different procedures among the counties.

Modern technology has enabled mobile electronic devices (*e.g.*, cellular smart phones, personal digital assistants, and computer tablets) to operate without producing any noise or visual disturbances. So, after giving this matter serious consideration and trying to accommodate the interests of both the ability of the election board to maintain order at the polls and the ability of poll watchers to perform their duties in this modern age of instant communications, I conclude that a poll watcher's proper and inaudible use of a smart phone or other electronic device to silently report data or issues to a campaign should not create a disruption in the polling room. In fact, the use of mobile electronic devices for any purpose, except for photography, is not expressly prohibited by Florida statute. Also, section 101.131(1), Florida Statutes (2012), provides that the poll watcher "shall furnish their own materials and necessities." In today's world, mobile electronic devices could be considered a necessity for instant communications for the poll watcher to alert the campaign of problems at the polls (*e.g.*, long lines, malfunctioning voting equipment, power outages, *etc.*). Therefore, in an attempt to balance the responsibilities of a poll watcher with those of the election board's responsibility to maintain order at the polls, the Division of Elections now formally opines that the Florida Election Code permits the *non-disruptive* use of mobile electronic devices by poll watchers performing their statutory duties. Any disruption caused by a poll watcher's use of mobile electronic devices should be handled in line with any other disruptive conduct, that is, on a case-by-case basis under the existing statutory authority of the election board to maintain order at the polls.

In order to provide further guidance to supervisors of elections and poll watchers on this matter under the present state of the law, the Division of Elections now opines that poll watchers may use mobile electronic devices subject to the following conditions:

- (1) The devices must be set so as to produce no noise or a low volume vibration;
- (2) The devices may not be used to take photographs or to record conversations unlawfully inside the polling room or early voting site;
- (3) The poll watcher may not have an audible telephone conversation inside the polling room or early voting site; and
- (4) The poll watcher may not use the mobile electronic device in any manner to create a specific disruption or disturbance within the polling room or early voting site.

The Division of Elections believes the above conditions strike a proper balance between the competing demands between poll watchers being able to perform their proper functions and the

requirement for order to be maintained at the polls and they will help “[o]btain and maintain uniformity in the interpretation and implementation of the election laws”² across Florida. The election board may take reasonable actions to enforce a violation of the above conditions, including, but not limited to, having the poll watcher removed from the polling room or early voting site.³

SUMMARY

Poll watchers may use mobile electronic devices subject to the following conditions:

- (1) The devices must be set so as to produce no noise or a low volume vibration;
- (2) The devices may not be used to take photographs or to record conversations unlawfully inside the polling room or early voting site;
- (3) The poll watcher may not have an audible telephone conversation inside the polling room or early voting site; and
- (4) The poll watcher may not use the mobile electronic device in any manner to create a specific disruption or disturbance within the polling room or early voting site.

Sincerely,



John Boynton
Acting Director, Division of Elections
Deputy Secretary of State for Administrative Services,
Corporations and Elections

cc: Stephen F. Rosenthal, Esq., Florida State Counsel, Obama for America
Lee Rudofsky, Esq., Deputy General Counsel, Romney – Believe in America

² § 97.012(1), Fla. Stat. (2012). (The Secretary of State has the responsibility to: “Obtain and maintain uniformity in the interpretation and implementation of the elections laws.”)

³ Regarding violations of *statutory* provisions governing poll watcher misconduct, *e.g.*, the prohibition against a poll watcher interacting with a voter as contained in § 101.131(1), Fla. Stat. (2012), poll watchers must be cognizant of § 104.41, Fla. Stat. (2012) -- any violation of the Election Code *for which a penalty is not otherwise prescribed* is a misdemeanor of the first degree. [Emphasis supplied.]