



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

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900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

Mr. Richard E. Sincere, Jr.
Chairman, City of Charlottesville Electoral Board
City Hall Annex
Charlottesville, Virginia 22902

Dear Mr. Sincere:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You ask on behalf of the City of Charlottesville Electoral Board whether (1) local electoral boards are the final authority on deciding issues regarding authorized representatives and their activities; (2) local electoral boards may prevent authorized representatives from causing a disturbance or otherwise interfering in an election; and (3) authorized representatives may move about a polling place or may they be confined to a designated area by local electoral boards or chief officers of election.

Response

It is my opinion that (1) local electoral boards have supervisory authority to govern authorized representatives, subject to the oversight of the State Board of Elections, but must honor the representatives' rights to observe the electoral process as provided for by law; (2) officers of election as well as local electoral boards may prevent authorized representatives from causing a disturbance or otherwise interfering with an election as set forth in the Code; and (3) authorized representatives may move about a polling place to hear and see what is occurring provided they do not run afoul of the prohibitions set forth in §§ 24.2-604(D) and 24.2-607 of the *Code of Virginia*.

Background

You state that in the City of Charlottesville and other localities, it is common practice to confine authorized representatives to a space immediately behind the registration table where the registered voters' list is kept and where voters come to check in to be authorized to vote. You further state that the traditional role of authorized representatives has been to note the names of voters, to report periodically to their parties the numbers of voters who have turned out, and to suggest names of potential voters who may be called to remind them to vote. You also point out that authorized representatives on "very rare occasion" exercise their rights to challenge a person's right to vote under § 24.2-651.

You further state that the City of Charlottesville Electoral Board has adopted rules requiring authorized representatives (1) to stay in a designated area; (2) to refrain from engaging in conversation

with voters and/or officers of election with two exceptions: (a) to request that a name or address be repeated and (b) to exercise a challenge pursuant to § 24.2-651; and (3) to refrain from using cameras, cell phones, or electronic communication devices. You state that these rules have been in place for decades.

You also reference two guidance documents from the State Board of Elections. The November 1994 guidance document provides that

Each representative shall be provided a chair. The representative may place the chair in a position to observe all activities in the polling place . . . The representative should be allowed to change his location subject to all rules [regarding a prohibition on hindering voters or officers of election].^[1]

The guidance document issued in July 2010 states in part that,

The representative **cannot** sit at the registration table with the officers of election but must be placed behind the registration table in a position that enables him to see and hear the voting process.^[2]

You indicate that your opinion request is made as a result of an incident that occurred during the election on November 2, 2010. In short, the authorized representatives at Carver Precinct insisted they not be confined behind the table with voting lists. You then received instructions from the State Board of Elections to reverse your long standing practice and to allow representatives to leave their designated areas and follow the movements of the chief election officer.

Applicable Law and Discussion

The General Assembly has afforded the State Board of Elections general authority over elections in the Commonwealth. Section 24.2-103 provides that

The State Board shall supervise and coordinate the work of the county and city electoral boards and of the registrars to obtain uniformity in their practices and proceedings and legality and purity in all elections. It shall make rules and regulations and issue instructions and provide information consistent with the election laws to the electoral boards and registrars to promote the proper administration of election laws.

The local electoral boards, which oversee the conduct of elections,³ are directed to “follow the (i) elections laws and (ii) the rules and regulations of the Board insofar as they do not conflict with Virginia or federal law.”⁴ Among the local electoral board’s statutory duties is the appointment of the officers of election,⁵ to include designating one such officer as the chief officer of election.⁶

Pursuant to § 24.2-604(C),

The officers of election shall permit one authorized representative of each political party or independent candidate in a general or special election, or one authorized representative

¹ VA. STATE BOARD OF ELECTIONS, HANDBOOK FOR OFFICERS OF ELECTION, § E.1 (1994).

² VA. STATE BOARD OF ELECTIONS, DOS AND DON’TS ON ELECTION DAY FOR CAMPAIGNERS AND AUTHORIZED REPRESENTATIVES at 3 (2010) (emphasis in original).

³ See VA. CODE ANN. § 24.2-109 (2011).

⁴ Section 24.2-103(A) (2011).

⁵ Section 24.2-115 (2011).

⁶ *Id.*

of each candidate in a primary election, to remain in the room in which the election is being conducted at all times. . . . The officers shall permit one such representative for each pollbook station. However, no more than one such representative for each pollbook station or three representatives of any political party or independent candidate, whichever number is larger, shall be permitted in the room at any one time. Each authorized representative shall be a qualified voter of any jurisdiction of the Commonwealth. . . . Authorized representatives shall be allowed, whether in a regular polling place or central absentee voter precinct, to be *close enough to the process to be able to hear and see what is occurring*. Any representative who complains to the chief officer of election that he is unable to hear or see the process may accept the chief officer's decision or, if dissatisfied, he may immediately appeal the decision to the local electoral board. . . . [Emphasis added].

Such authorized representatives, however, are subject to certain restrictions. For instance, § 24.2-604(D) provides that

It shall be unlawful for any authorized representative, voter, or any other person in the room to (i) hinder or delay a qualified voter; (ii) give, tender, or exhibit any ballot, ticket, or other campaign material to any person; (iii) solicit or in any manner attempt to influence any person in casting his vote; (iv) hinder or delay any officer of election; or (v) otherwise impede the orderly conduct of the election.^[7]

Enforcement of this provision rests with the officers of election, who “may require any person who is found by a majority of the officers present to be in violation of this section to remain outside of the prohibited area.”⁸

Thus, it is the officers of election that are generally tasked with maintaining order at elections, which includes the oversight of authorized representatives. Section 24.2-607 provides:

A. It shall be unlawful for *any person* to hinder, intimidate, or interfere with any qualified voter so as to prevent the voter from casting a secret ballot. The officers of election may order a person violating this subsection to cease such action. If such person does not promptly desist, the officers of election, or a majority of them, may order the arrest of such person by any person authorized by law to make arrests, and, by their warrant, may commit him to the county or city jail, as the case may be, for a period not exceeding twenty-four hours. Any person violating this subsection shall be guilty of a Class 1 misdemeanor. [Emphasis added].

B. *No person* shall conduct himself in a noisy or riotous manner at or about the polls so as to disturb the election or insult or abuse an officer of election. Any person authorized to make arrests may forthwith arrest a person engaging in such conduct and bring him before the officers of the election, and they, by their warrant, may commit him to the county or city jail, as the case may be, for a period not exceeding twenty-four hours; but they shall permit him to vote if he is so entitled. [Emphasis added].

These provisions providing that the officers maintain order apply to all persons, including the authorized representatives.⁹

⁷ Violation of this subsection constitutes a Class 1 misdemeanor. Section 24.2-604(E) (2011).

⁸ Section 24.2-604(E).

While the State Board of Elections has issued the two guidance documents you reference in your letter, they offer little assistance to resolving the issues at hand. The 1994 *Handbook for Officers of Election* guidance document predates the current statutory language in § 24.2-604, which has been amended many times since it was enacted. That document states that the representative should be given a chair and may position it to “observe all activities in the polling place.”¹⁰ This guidance document has been narrowly construed to confine authorized representatives to a specific, limited area. The more recent language of § 24.2-604, however, is controlling. It more broadly provides that the representative shall be “close enough to the process to be able to hear and see what is occurring.”¹¹ The 2010 “Dos and Don’ts on Election Day for Campaigners and Authorized Representatives” guidance document does not go into any greater detail with regard to the specific questions presented by this opinion request.

I therefore return to the applicable statutes.¹² With regard to the questions presented, the Code sets forth two basic principles regarding the representatives. First, they must be close enough to the process to hear and see what is occurring.¹³ Second, they cannot hinder or delay a qualified voter or the officers of election, provide or exhibit campaign materials, attempt to influence a person voting, or otherwise impede the orderly conduct of the election.¹⁴ In addition, authorized representatives are explicitly afforded one other right, a right that is accorded any qualified voter. Pursuant to § 24.2-651,

Any qualified voter may, and the officers of election shall, challenge the vote of any person who is listed on the pollbook but is known or suspected not to be a qualified voter. . . . The individual making the challenge shall complete and sign [a] statement on a form provided by the State Board

Accordingly, there is no authority in the *Code of Virginia* for the officers of election to confine the representatives to a general area. The officers of election must permit the authorized representatives access to the place of the election provided they do not run afoul of the restrictions on their conduct as set forth in Va. Code §§ 24.2-604(D) and 24.2-607. Thus, the Charlottesville rules confining the representatives to a specific area and prohibiting cell phone usage are contrary to the Code of Virginia.¹⁵ Because the electoral process does not take place only at the pollbook, the officers of election must give the authorized representatives leeway to perform their role as observers. With regard to your specific question about whether an authorized representative should be able to observe a phone call by an officer of election, if it is within the area where the election is taking place, the authorized representative’s rights

⁹ See VA. CODE ANN. § 1-230 (2011), which defines a person to include, among others, any individual, which would include an authorized representative.

¹⁰ See *supra*, note 1.

¹¹ Section 24.2-604 (2011).

¹² I note that it is well settled that statutes should be construed according to their plain language. *Signal Corp. v. Keane Federal Sys.*, 265 Va. 38, 46-47, 574 S.E.2d 253, 257 (2003). Furthermore, I must presume that the “legislature chose, with care, the words it used when it enacted the relevant statute, and we are bound by those words as we interpret the statute.” *City of Va. Beach v. ESG Enters, Inc.*, 243 Va. 149, 153, 413 S.E.2d 642, 644 (1992) (quoting *Barr v. Town & Country Props.*, 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990)).

¹³ Section 24.2-604.

¹⁴ *Id.*

¹⁵ With regard the Charlottesville rule of absolute prohibition of cell phones, it is expressly at odds with the terms of § 24.2-604 (“Authorized representatives shall be allowed . . . to use a handheld wireless communications device, except that authorized representatives shall not be allowed to use such devices when they contain a camera . . . to film or photograph inside a polling place or central absentee voter precinct.”).

under the Code to "hear and see what is occurring" control. If an officer of election wishes to make a private phone call, he or she may exit the place of election.

In sum, the representative's statutory rights are to hear and see the electoral process as well as challenge the vote of a person he suspects is not qualified. These rights, however, are subject to the officers' duties to enforce the provisions that the representatives do not hinder, delay or otherwise disturb authorized voters as well as those that govern persons in the polling place. The officers are given discretion in the performance of these duties to preserve order during the election and upon majority vote, may even order the arrest of any person, including a representative, who is engaged in prohibited conduct at the polling place.¹⁶ This discretion, however, does not override the plain language of the Code granting the representatives the ability to observe provided they do not run afoul of the plain language governing their conduct.

Conclusion

Accordingly, it is my opinion that (1) local electoral boards have supervisory authority to govern authorized representatives, subject to the oversight of the State Board of Elections, but must honor the representatives' rights to observe the electoral process as provided for by law; (2) officers of election as well as local electoral boards may prevent authorized representatives from causing a disturbance or otherwise interfering with an election as set forth in the Code; and (3) authorized representatives may move about a polling place to hear and see what is occurring provided they do not run afoul of the prohibitions set forth in §§ 24.2-604(D) and 24.2-607.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink, appearing to read "Ken C II", with a stylized flourish at the end.

Kenneth T. Cuccinelli, II
Attorney General

¹⁶ Section 24.2-607 (2011).