



**WEST VIRGINIA
SECRETARY OF STATE**

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 1)**

AGENCY Secretary Of State
RULE TYPE Interpretive AMENDMENT TO EXISTING RULE Yes TITLE-SERIES 153-
RULE NAME Electioneering Prohibition 08

CITE AUTHORITY 3-1A-6

COMMENTS LIMITED TO
Written

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS
Friday, June 09, 2017 4:00 PM

WRITTEN COMMENTS MAY BE MAILED TO
Donald Kersey
Elections Director
The Office of the Secretary of State
State Capitol Building
Charleston, WV 25305

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Chuck Flannery -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 153-08



Rule Id: 16434



Document: 49334



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**FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 2)**

AGENCY	Secretary Of State		
RULE TYPE	Interpretive	AMENDMENT TO EXISTING RULE	Yes
RULE NAME	Electioneering Prohibition	TITLE-SERIES	153-08

CITE AUTHORITY 3-1A-6

PROVIDE A BRIEF SUMMARY OF YOUR PROPOSAL

This rule updates the electioneering prohibition interpretive rule to account for recent changes made in W. Va. Code Sections 3-1-37 and 3-9-9.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)

AGENCY	Secretary Of State		
RULE TYPE	Interpretive	AMENDMENT TO EXISTING RULE	Yes
RULE NAME	Electioneering Prohibition	TITLE-SERIES	153-08

CITE AUTHORITY 3-1A-6

PRIMARY CONTACT

Donald Kersey
Elections Director
State Capitol Building
Charleston, WV 25305

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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)

AGENCY	Secretary Of State		
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RULE NAME	Electioneering Prohibition	TITLE-SERIES	153-08

CITE AUTHORITY 3-1A-6

SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

No costs will be imposed nor expenses incurred as a result of this rule.

Chuck Flannery -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 153-08



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 2)

AGENCY Secretary Of State
RULE TYPE Interpretive AMENDMENT TO EXISTING RULE Yes TITLE-SERIES 153-
RULE NAME Electioneering Prohibition 08

CITE AUTHORITY 3-1A-6

FISCAL NOTE DETAIL -- SHOW OVER-ALL EFFECT IN ITEM 1 AND 2 AND, IN ITEM 3, GIVE AN EXPLANATION OF BREAKDOWN BY FISCAL YEAR, INCLUDING LONG-RANGE EFFECT.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
--------------------	--	---------------------------------------	---

ESTIMATED
TOTAL COST

PERSONAL SERVICES

CURRENT EXPENSES

REPAIRS AND
ALTERATIONS

ASSETS

OTHER

ESTIMATED
TOTAL REVENUES

Chuck Flannery -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 3)

AGENCY	Secretary Of State		
RULE TYPE	Interpretive	AMENDMENT TO EXISTING RULE	Yes
RULE NAME	Electioneering Prohibition	TITLE-SERIES	153-08

CITE AUTHORITY 3-1A-6

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

None.

Chuck Flannery -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 153-08



Rule Id: 16434



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 4)

AGENCY	Secretary Of State		
RULE TYPE	Interpretive	AMENDMENT TO EXISTING RULE	Yes
RULE NAME	Electioneering Prohibition	TITLE-SERIES	153-08

CITE AUTHORITY 3-1A-6

PLEASE IDENTIFY ANY AREAS OF VAGUENESS, TECHNICAL DEFECTS, REASONS THE PROPOSED RULE WOULD NOT HAVE A FISCAL IMPACT, AND OR ANY SPECIAL ISSUES NOT CAPTURED ELSEWHERE ON THIS FORM.

None.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Chuck Flannery -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 153-08



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FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)

AGENCY	Secretary Of State		
RULE TYPE	Interpretive	AMENDMENT TO EXISTING RULE	Yes
RULE NAME	Electioneering Prohibition	TITLE-SERIES	153-08

CITE AUTHORITY 3-1A-6

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

This rule is required because of changes made in W. Va. Code Sections 3-1-37 and 3-9-9, as reflected in HB 2364.

Changes made to the previous rule reflect new electioneering restricted area distance, which was three hundred feet (300') from the outside entrance to the polling place but was shortened to one hundred feet (100') from the outside entrance. Also removed definition of "electioneering" from rule because it is included in the updated W. Va. Code Section 3-9-9. Also added exemption to the 100' rule for private property owners whose private property is within the 100' restricted area. Also clarified that in the event there are multiple entrances to a polling place, all entrances used for voters must have requisite placards and notices or otherwise shall not be used as an entrance for voters.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Chuck Flannery -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 153-08



Rule Id: 16434



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TITLE 153
INTERPRETIVE RULE
SECRETARY OF STATE

SERIES 8
ELECTIONEERING PROHIBITION

§153-8-1. General.

1.1. Scope. -- This interpretive rule relates to electioneering prohibitions found in the below West Virginia Code citations and the Secretary of State's position in the enforcement of these provisions.

1.2. Authority and Related Code Citations. -- W. Va. Code §§3-1A-6, ~~3-1-20~~, 3-1-37, 3-3-2a, 3-9-6 and 3-9-9.

1.3. Filing Date. -- ~~October 25, 1985~~.

1.4. Effective Date. -- ~~October 25, 1985~~.

1.4.1. This rule shall terminate and have no further force or effect upon the expiration of _____ years from its effective date.

§153-8-2. ~~Electioneering Defined~~ Definitions.

~~Electioneering means anything which aids or promotes the success or defeat of any candidate or ballot issue, such as displaying of signs, distribution of campaign literature, cards or handbills, or the solicitation of voters for or against any candidate or question on the ballot.~~

2.1. "Electioneering" is defined as provided in W. Va. Code §3-9-9(a).

2.2. "Expressly advocates" is defined as provided in W. Va. Code §3-8-1a(13).

§153-8-3. Measurement of Restricted Areas.

3.1. Where the West Virginia Code establishes the distance in which electioneering is prohibited on election day; or during the period in which early voting is offered during the hours while such early voting is actually taking place, that distance shall be measured from the outside entrance door(s) of the building containing the election room. The outside entrance door(s) shall be ~~that~~ the outside door(s) beside which the flags and placards designating the precinct numbers are placed.

3.1.1. In the event that there are multiple entrances to the building containing the election room, the measurement provided in this subsection shall be made from each outside entrance. Provided, That for multiple entrances to the building containing the election room which are available for voters to enter the voting place for the purpose of voting, each outside entrance must be appropriately marked with the requisite flags and placards designating the precinct number. An outside entrance that is not appropriately marked with the requisite flags and placards designating the precinct number shall not be considered an outside entrance for purposes of the measurement of restricted areas and shall not be used for voters to enter the voting place.

3.2. The officers of election shall, prior to the opening of the polls, measure from the outside door(s) of the building housing the voting place along access walkways and/or roadways to determine the ~~three hundred foot (300')~~ one hundred foot (100') distance and shall clearly mark the boundary of the restricted area(s) in at least two (2) places.

§153-8-4. Business Within Three Hundred Foot (300') Area Business Within One Hundred Foot (100') Area.

4.1. The law specifically allows persons to enter the ~~three hundred foot (300')~~ one hundred foot (100') restricted area “while in the discharge of their legitimate business,” or “whose business requires them to pass and repass within one hundred feet of such entrance.” All permanent and regular businesses may remain open, and people may come in and out on election day, but no person may use this exception to engage in electioneering under the cover of business.

4.2. Temporary business, such as bake sales or hot dog stands, must be established outside of the ~~three hundred foot (300')~~ one hundred foot (100') area during primary, general and municipal elections.

§153-8-5. Use of Private Residences Within Three Hundred Foot (300') Area Electioneering Permitted on Citizen's Own Private Property.

~~No house, office or other facility within the three hundred foot (300') limit may be used as a center where food and drink is mixed with campaign persuasion for a number of people, or for voters to receive political advice and literature.~~

5.1. Electioneering upon a citizen's own private property within the one hundred foot (100') restricted area is permitted under W. Va. Code §§ 3-1-37(a) and 3-9-9(c). Provided, That the law does not permit the private property owner to invite a non-property owner onto his or her property to engage in electioneering with the property owner's permission. Nor may a non-property owner trespass onto the private property of another to engage in electioneering. This exemption only applies to a private property owner engaging in electioneering on his or her own private property.

5.2. For purposes of this section, a property owner is only such a person who holds an ownership interest in the subject property and does not include property renters.

§153-8-6. Billboards and Signs Electioneering Prohibited on Early Voting Location Property During Early Voting Hours.

~~6.1. Permanent structures made continuously available for commercial advertising may display political advertising and are not required to be removed on election day if located within the three hundred foot (300') restricted area.~~

~~6.2. Electioneering signs erected on private property within the three hundred foot (300') restricted area are prohibited during the hours the polls are open and must be removed before 6:30 a.m. on election day.~~

~~6.3. Stopping, standing and parking vehicles displaying electioneering signs within the three hundred foot (300') restricted area is prohibited, except as provided in 7.3 or 7.4 of this rule.~~

Nothing in this rule shall modify the restrictions set forth in W. Va. Code §3-3-2a, which prohibits any electioneering on any early voting location property regardless the distance from the voting place during the entire period of regular in-person absentee voting.

§153-8-7. Driving to the Polls.

7.1. ~~Drivers who are regularly transporting groups of persons to the polls may drop off those persons within the three hundred foot (300') area, but must then remove the vehicle outside the three hundred foot (300') area until the time to pick up those persons after they have voted.~~ Drivers may transport persons or groups of persons to the voting place pursuant to the requirements set forth in W. Va. Code §3-1-37(b).

7.2. Drivers who are transporting elderly, handicapped or blind voters may remain within ~~three hundred foot (300')~~ one hundred foot (100') area while the voters are inside the polling place pursuant to the requirements set forth in W. Va. Code §3-1-37(b) and (e), but may not utilize such privilege for electioneering.

7.3. Such vehicles permitted within the ~~three hundred foot (300')~~ one hundred foot (100') restricted area ~~must remove all election signs from such vehicles. Small signs such as bumper stickers which are not easily removed may be left on the vehicle~~ for purposes of voting or transporting voters to the voting place shall not be required to remove any bumper stickers or signs affixed to the vehicle while parked or passing through the restricted area.

7.4. Voters may park within the ~~three hundred foot (300')~~ one hundred foot (100') area while they are voting. Small signs such as bumper stickers need not be removed from a voter's vehicle, but large signs must be removed unless they are affixed to the vehicle.

§153-8-8. Press Personnel.

~~8.1.~~ Legitimate news media personnel with proper credentials may remain within the ~~three hundred foot (300')~~ one hundred foot (100') restricted area while conducting their official and legitimate news-gathering business, including exit polling, but may not enter the polling place or the building housing the polling place. Provided, That press personnel conducting exit polling are prohibited from engaging in electioneering activities as provided in W. Va. Code § 3-9-9(a).

§153-8-9. Delivery of Lunches.

Lunches may be delivered to the door of the polling room during meal periods. Repeated visitation to the polling room to deliver messages, food or drink or for any other purpose is prohibited.

§153-8-10. "Checkers."

"Checkers" who keep lists of those who vote or attempt to ask questions of voters or urge voters to vote one way or another are not permitted within the ~~three hundred foot (300')~~ one hundred foot (100') restricted area.

§153-8-11. Billboards and Signs.

11.1. Permanent structures made continuously available for commercial advertising may display political advertising and are not required to be removed on election day if located within the one hundred foot (100') restricted area.

11.2. Electioneering signs erected on private property are permitted within the one hundred foot (100') restricted area.

11.3. Stopping, standing and parking vehicles displaying electioneering signs within the one hundred foot (100') restricted area is prohibited, except as provided in W. Va. Code §§3-1-37(b) and (e), 3-9-9(a) and sections 7.3 and 7.4 of this rule.