



**WEST VIRGINIA
SECRETARY OF STATE**

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 5 -- NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE OR
A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

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

CITE AUTHORITY 3-3-2A(C)(5)

RULE IS LEGISLATIVE EXEMPT

Yes

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

29a-1-2(C)

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS

Thursday, July 13, 2017

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

Yes

Stephen Robert Connolly -- 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: 49438

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, 3-1-37, 3-3-2a, 3-9-6 and 3-9-9.

1.3. Filing Date. -- June 13, 2017.

1.4. Effective Date. -- July 14, 2017.

§153-8-2. Definitions.

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 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 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 One Hundred Foot (100') Area.

4.1. The law specifically allows persons to enter the 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 one hundred foot (100') area during primary, general and municipal elections.

§153-8-5. Electioneering Permitted on Citizen's Own Private Property.

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. Electioneering Prohibited on Early Voting Location Property During Early Voting Hours.

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 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 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 one hundred foot (100') restricted area 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 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.

Legitimate news media personnel with proper credentials may remain within the 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 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.