

## **Circulation of Petitions on Election Day**

Both the former State Elections Board (SEB) and the Government Accountability Board (GAB) have offered opinions and guidance on this topic.

Most recently in 2011, the GAB sent out a communication summarizing our guidance when groups informed us and local clerks that they intended to circulate recall petitions at the polls for the 2011 Spring Election. I have provided a link to this communication from our website below:

### **Memorandum to Voters, Local Election Officials, and Recall Petition Circulators – March 31, 2011**

<http://www.gab.wi.gov/node/1689>

The SEB issued a formal opinion in 2007 (reviewed and reaffirmed by the GAB on June 9, 2009) on the same topic of circulating a petition on Election Day that is not related to that election, in that case the circulation of a recall petition for a Milwaukee Alderman. I have provided a link to this formal opinion from our website below:

### **EI. Bd. Op. 2007-01 (reaffirmed by the GAB, June 9, 2008)**

<http://gab.wi.gov/node/624>

In this case, there appears to be some confusion over whether the group circulating the petitions can be within 100 feet of a polling place entrance and whether the group circulating the petitions can be located inside the building that contains a polling place. The 2011 GAB communication and the 2007 formal opinion both address these issues. While a detailed analysis is contained below, the bottom line to your questions is that individuals are permitted to circulate petitions unrelated to contests or issues on the ballot within 100 feet of a polling place entrance if they do not interfere with the orderly conduct of the election, but they are not permitted to circulate these petitions inside the building that contains a polling place.

### **Circulating petitions within 100 feet of polling place entrance**

It is *permissible* to circulate a petition within 100 feet of the entrance of the polling place, if the petition is unrelated to the candidate/contests/referenda on the ballot, subject to any separate rules governing the use and access of the property used as the polling location.

*Campaign activity.* Circulators must refrain from 'electioneering' (activity which is intended to influence voting at an election) or distributing 'election-related material' on public property within 100 feet of the entrance of a polling place. This includes any verbal or written statements on the petitions they are circulating that refers to a candidate or issue on the ballot.

Circulators should not stand in or block the entrance to the building. We have recommended that circulators remain at least 10 feet from the path of travel for voters entering and leaving the building.

The “100 foot” rule applies to individuals engaging in electioneering or posting/distributing election related material at the polls. The circulation of petitions not related to the election at hand is not per se electioneering within the meaning of Wis. Stat. § 12.03. The circulation of petitions calling for an amendment to the U.S. Constitution related to a U.S. Supreme Court ruling is not activity related to influencing the vote at the Spring Election and the content of the petition itself is unrelated to the rights or responsibilities of individuals voting or registering to vote. This type of activity is not considered electioneering, nor would the content of the petitions be categorized as “election related material.” Therefore the “100 foot” rule does not apply here.

### **Circulating petitions inside the building that contains a polling place**

Election officials *should not allow* petitions to be circulated inside the building that contains a polling location. If individuals are found to be petitioning inside the building the chief inspector should order these individuals to leave the building.

The actions of the circulators should not in any way interfere with or distract voters or elections officials, or interrupt/disturb the election proceedings.

The municipal clerk and election inspectors are tasked with preventing the interference with and distraction of electors at the polling place (maintain the orderly conduct of an election). The GAB has determined that petitioning in the immediate voting area or within the building containing the polling place is *inherently disruptive to the voting process* and is therefore prohibited under Wis. Stat. § 5.35(5). This information should be clearly communicated to the groups intending to circulate petitions in advance of Election Day.

### **Other important guidance to share with the groups that have contacted your office**

Petition circulators *should not* solicit signatures from voters in line to vote, but rather wait until voters are leaving the polling place.

If a circulator is causing a disruption of the polling place, the chief inspector should immediately address the situation and ask the circulator to cease the disruptive behavior. If the disruptive behavior continues, the chief inspector should contact law enforcement to enforce the lawful order issued by the chief inspector.