

Queer the Vote: Massachusetts Democracy Toolkit

NATIONAL
LGBTQ
TASK FORCE



Calendar

Wednesday, August 15, 2018:

Last day to register to vote and to change political party affiliations for state primary elections.

Tuesday, September 4, 2018:

State Primary Election.*

Wednesday, October 17, 2018:

Last day to register to vote for the General Election.

Tuesday, November 6, 2018:

General Election Day.

*Massachusetts has a hybrid primary system. A voter registered [as a Democrat, Republican, or Libertarian](#) may only vote in that party's primary, but a voter without a specific party affiliation may choose which party's primary to vote in.

Voting Informationⁱ

Registering to vote in Massachusetts

There are three ways to register to vote in Massachusetts: online, in person, or by mail.

- **In-person registration** can be done at any [local election office](#), at the [Elections Division](#) of the Secretary of the Commonwealth's office, or at the [Registry of Motor Vehicles](#). In-person registrations are valid as of the day they are signed.
- **To [register to vote online](#)**, individuals must have a signature on file with the Registry of Motor Vehicles, which limits online registration to individuals with a Massachusetts driver's license or state ID card. Online applications must be submitted by midnight on the date of the voter registration deadline, which is currently set at 20 days prior to an election.
- Forms to **register by mail** can be [downloaded](#) from the [Secretary of the Commonwealth's website](#). The voter registration form must be completed, signed, and delivered to the individual's local election official and must be postmarked no later than the registration deadline.

Age Requirements

Although individuals must be 18 years old to vote in Massachusetts, state law allows individuals to pre-register to vote beginning at age 16. Individuals who are 16 or 17 may submit a voter registration form to their local election official online, in-person, or by mail and will be placed on a list of pre-registrants. Those who pre-register will then receive a pre-registration notice by mail confirming receipt of the application and will be able to vote at age 18. Beyond age requirements, anyone may register to vote as long as they are a United States citizen and are not currently incarcerated due to a felony conviction. Individuals with felony convictions are not able to vote only during the period when they are in prison. Individuals on parole or probation are still able to vote.

Voting: At the Polls

Every precinct in Massachusetts is assigned a specific polling place. After someone registers to vote, that individual should receive a notice from the local election office that lists the polling place for their address. In-person voting must be done at that individual's assigned polling place. Voters can locate their assigned polling place [online](#).

Massachusetts has early voting for general elections in even-numbered years (although not for primary elections), which includes the upcoming November 6, 2018 election. For early voting, polls will open 11 days prior to Election Day. In all state general and primary elections, polling places must be open from at least 7 a.m. until 8 p.m. However, towns can choose to open polls as early as 5:45 a.m. Voters who are in line when polls close at 8 p.m. must be allowed to vote.

Under Massachusetts law, employers are required to give employees in manufacturing, mechanical, or retail sectors two hours of time off to vote if an employee requests that time.ⁱⁱ If an employer refuses to give time off to a covered employee, the employee can [file a complaint](#) with the Attorney General's Office and the employer could be fined up to \$500.ⁱⁱⁱ

Massachusetts law prohibits the posting, exhibition, circulation, or distribution of materials such as posters, stickers, signs, or buttons within 150 feet of a polling place.^{iv} The law also prohibits the promotion or opposition of a person, political party, or position on a ballot measure within 150 feet of a polling place, which means voters should avoid wearing campaign buttons, t-shirts, hats, pins, or anything else that could be considered supportive of a particular candidate or position on a ballot measure while voting. Voters wearing such materials may be asked to leave, risking their chance of voting in that election.

ID Requirements^v

Under federal law, anyone may be required to show identification when voting for the first time in a federal election after registering to vote by mail. The Secretary of the Commonwealth recommends including a copy of identification with a mail-in registration form. An individual may also be asked to show identification if they are on the list of inactive voters or if a poll worker has reasonable cause to request it. If an individual is unable to provide identification after being asked, they must still be permitted to vote, but the ballot may not be counted if the voter's registration cannot be verified.

NOTE: Identification for this purpose does NOT have to be a photo ID. Acceptable identification may be anything that includes the voter's name and the address at which the voter is registered.

Examples of acceptable identification include:

- driver's license
- state-issued ID card
- recent utility bill
- rent receipt
- lease
- copy of a voter registration affidavit
- any other printed identification which contains the voter's name and address.

What does it mean to be an “inactive voter”?^{vi}

There are three potential statuses that someone can have regarding voting in Massachusetts. A person can be a registered active voter, a registered inactive voter, or unregistered.

Under state law, every city and town must communicate with each household and compile an annual street list – also known as a city or town census. Most cities and towns choose to communicate with residents by mail. If a voter fails to respond to the annual street list, they will be placed on the inactive voters list and their local election official will send out a confirmation notice, to the voter's address on file, that the voter is asked to sign and return. The confirmation notice is meant to confirm that the voter continues to reside at the address at which he or she is registered. Voters who fail to return confirmation notices will remain on the inactive voters list. An inactive voter will remain registered to vote until the voter fails to vote in two consecutive even-year elections, after which point the voter will be removed from the voting rolls and will become unregistered.

If someone is an inactive voter, they will be informed of that status when they check in at a polling place. They will be asked to complete a form confirming their current address and to provide a form of identification that lists their name and the address where they are registered to vote. An inactive voter will be restored to active voter status after completing the form and will be able to vote. An inactive voter will also be restored to active voter status if the voter fills out a new voter registration form or submits anything to the voter's local election official that is signed and confirms the voter's address. Voter registration status can be checked online [here](#).

An unregistered voter cannot vote. Therefore, if an individual is unregistered and would like to vote, that individual must register through one of the processes described above (online, by mail, or in-person registration) at least twenty days prior to an election to become eligible to vote in that election.

Cases impacting voting rights in Massachusetts

In 2013, the United States Supreme Court issued its decision in *Shelby County v. Holder*, striking down the section of the Voting Rights Act of 1965 that imposed a preclearance requirement for new voting laws in states with a history of discrimination.^{vii} Essentially, this requirement meant that states like Alabama—which historically put significant barriers in place to prevent people of color from

voting/registering to vote, such as literacy tests and poll taxes—had to get approval from the Department of Justice before putting in place any new restrictions that may have been racially discriminatory. Although Massachusetts was not one of the states subject to the preclearance requirement, the *Shelby* decision sparked a significant uptick in actions taken around the country to restrict voting rights—from redistricting to the passage of voter ID laws and laws purging voter rolls.

Recent decisions out of the U.S. Supreme Court on voting rights have centered around several challenges to such restrictions, including a challenge to Ohio’s system of purging voter rolls, a challenge to a ban on “political apparel” at polls, and challenges to both partisan and racial gerrymandering—the practice of drawing district lines in a way that favors a particular party or limits the voting power of particular racial groups.^{viii} Of these, the most relevant to any potential challenge to the [Massachusetts law](#) on voter eligibility and voter roll purging^{ix} is the Court’s decision in *Husted v. A. Philip Randolph Institute*. *Husted* held that Ohio’s scheme of purging voters from its voter rolls after someone fails to return an address confirmation and fails to vote within four years was constitutional. The policy at issue in *Husted* appears to be the same as the current policy in Massachusetts regarding inactive voters and voter roll purging. Although the [Massachusetts law](#) has not been challenged, with *Husted* now as precedent, a future challenge would be unlikely to succeed.

In Massachusetts itself, the Supreme Judicial Court (SJC) recently upheld the state’s 20-day voter registration deadline in *Chelsea Collaborative v. Galvin*.^x The SJC reversed a Massachusetts Superior Court ruling from July 2017 holding that the deadline was illegal under the Massachusetts constitution. The SJC ruling means that it is constitutional to require individuals to register prior to an election, even if the deadline may appear arbitrary. Now, a decision to change the law is in the hands of the Massachusetts legislature, where pending bills, if approved and signed into law, would institute same-day voter registration throughout the state.^{xi}

White Paper: Nondiscrimination in Massachusetts

Voting is a key part of any democracy. The ability to participate in electing representatives who will go on to make laws that impact the daily lives of the public gives people, especially people who experience multiple systems of oppression, the opportunity to help make change for their communities. For LGBTQ folks and people of color—groups that have historically been underrepresented in government and policy—voting is a way to make their voices heard. In Massachusetts, the LGBTQ community has been effective at lobbying the legislature for nondiscrimination protections. However, for transgender individuals, this process has been especially contentious.

In 2011, the legislature passed “[An Act Relative to Gender Identity](#),” a law prohibiting discrimination against transgender individuals in employment, credit, education, and housing.^{xii} Notably, the law did not include protections in places of public accommodation. Five years later, the legislature passed “[An Act Relative to Transgender Anti-Discrimination](#),” a bill amending the state’s nondiscrimination law.^{xiii} The amendment extended gender identity nondiscrimination protections to places of public accommodation, including but not limited to: public transportation, restaurants, health care facilities, hotels, and stores. The law also clarified that denying transgender individuals access to sex-segregated spaces like bathrooms and locker rooms consistent with their gender identities is a prohibited form of discrimination.^{xiv}

This expansion of Massachusetts public accommodations protections was the result of years of advocacy, but one report was particularly crucial for the ultimate passage of the law. In 2013, Project VOICE—a collaboration between Fenway Health and the Massachusetts Transgender Political Coalition— conducted an extensive survey to gauge the experiences of the Massachusetts transgender population regarding public accommodations. With respondents from every Massachusetts county, the survey found that:^{xv}

- The majority of respondents (86%) had completed some college or more; however, respondents still had much lower incomes than the Massachusetts population as a whole, with many living near or below the poverty line
- 65% of respondents had experienced some form of mistreatment in at least one place of public accommodation within a year of the survey, including verbal harassment and physical assault
- The public accommodations where discrimination was the most prevalent were transportation, restaurants, retail, public gathering spaces, and health care facilities/services
- Visual nonconforming gender expression/presentation was significantly associated with experiencing discrimination in public accommodations
- 68% of respondents reported experiencing negative emotional symptoms within 30 days of the survey as a result of discrimination
- Public accommodations discrimination statistically predicted an increased risk of specific health outcomes including physical symptoms (ex. headache, upset stomach, pounding heart), asthma diagnosis, and gastrointestinal diagnosis (ex. Crohn’s disease, irritable bowel syndrome)
- Nearly 20% of respondents reported avoiding medical care when sick or injured due to fear of mistreatment, with 24% avoiding preventative care for the same reason
- Discrimination in one or more public accommodation was significantly associated with negative healthcare behaviors, including postponing necessary medical care, postponing preventative care, and postponing care that resulted in a medical emergency
- Policy briefs and fact sheets were made with this data and other information from the report. Those materials were shared with legislators during lobbying efforts to pass the 2016 nondiscrimination law, emphasizing the necessity of nondiscrimination protections for transgender people in places of public accommodation.

Path to the Ballot

Massachusetts law provides a process for Massachusetts citizens to put a newly enacted law on the ballot for public veto. In other words, if voters oppose a law that the legislature has passed, they can seek to repeal the law by popular vote during a general election. To repeal a law by popular vote (a

process known as a veto referendum), supporters of the repeal must first put together a petition, gather signatures from the public, and submit the signed petition to the Secretary of State. If enough signatures are gathered, the law at issue will be placed on the ballot.

In this case, the Massachusetts Family Institute (MFI), a group that describes itself as a “non-partisan public policy organization” that is also “dedicated to strengthening the family and affirming the Judeo-Christian values upon which it is based,” formed a committee named Keep MA Safe which certified 34,231 signatures with Secretary of State William Galvin’s office to ensure that the nondiscrimination law protecting transgender individuals from discrimination in places of public accommodation will appear on the statewide general election ballot in November 2018 for a public veto. Notably, although MFI gathered enough signatures to put the issue on the ballot, it did not gather enough signatures to suspend the implementation of the law until the vote. Therefore, the nondiscrimination law went into effect on October 1, 2016 and has been in place and enforced since that time.

A national organization called the Alliance Defending Freedom (ADF) filed a lawsuit challenging the nondiscrimination law on behalf of four Massachusetts churches.^{xvi} The plaintiffs were concerned that under the law, churches might be considered places of public accommodation and felt that requiring churches to follow the law would infringe on the religious freedom rights of pastors and church officials. The lawsuit was dropped in December 2016 after the MA attorney general’s office removed places of worship from its list of covered public accommodations.^{xvii}

Text of the Measure and Concerns

This measure will appear on the Massachusetts 2018 ballot as Question 3. The text of the measure is:

“Do you approve of a law summarized below, which was approved by the House of Representatives by a vote of 117-36 on July 7, 2016, and approved by the Senate by a voice vote on July 7, 2016?”^{xviii}

Based on a [survey](#) recently conducted by Suffolk University's Political Research Center, this issue is the most contentious issue on the ballot this year. Additionally, due to concerns that the wording of the measure is confusing to voters, Secretary Galvin recently clarified that a “yes” vote on the measure will keep the current law and its nondiscrimination protections. Freedom Massachusetts has engaged in public education to clarify how to vote on the measure.

Arguments

Currently, the Keep MA Safe campaign has employed strategies used successfully in anti-transgender initiatives. Namely, the campaign has framed the conversation to be about bathrooms, arguing that public accommodations access for transgender individuals is a public safety issue because the law will allow cisgender men to harass and assault women and children in sex-segregated spaces. By contrast, Freedom Massachusetts has partnered with faith groups, businesses, law enforcement, and state women’s and victims’ rights advocacy organizations to remind voters that: 1) there are already laws that protect people from harassment and assault, which would apply to anyone harassing someone in a bathroom regardless of the perpetrator’s gender identity; 2) since the law went into effect, there have

been no examples of individuals abusing the law; 3) that these nondiscrimination protections are critical for trans individuals; and 4) that strong nondiscrimination laws are good for the economy.

Conclusion

Nondiscrimination protections in public accommodations for transgender individuals are critical for their health and safety. Should this law be repealed in the November election, it will likely embolden discrimination against transgender individuals in Massachusetts and around the country. Opposition groups will likely feel encouraged to repeal similar laws in other states. Therefore, it is key that everyone who can register and vote in this upcoming election do so. **Vote “Yes” on Question 3.**

Resources

Voting

[General Information](#)

[The Voting Process](#)

[Register to Vote](#)

[ID Requirements](#)

[Check Registration Status](#)

[Find Your Polling Place](#)

[List of Election Offices](#)

[Election Day Legal Summary](#)

[Voter Leave Law Violations: Filing a](#)

[Complaint With the MA Attorney General's](#)

[Office](#)

Information about Question 3

[Quick Description](#)

[Myths](#)

[The Economic Case for Nondiscrimination](#)

[How Can I Help the Campaign?](#)

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- ⁱ <http://www.sec.state.ma.us/ele/eleifv/howreg.htm>
- ⁱⁱ M.G.L. c. 149 § 178. <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter149/Section178>
- ⁱⁱⁱ M.G.L. c. 149 § 180. <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter149/Section180>
- ^{iv} M.G.L. c. 54 § 65. <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVIII/Chapter54/Section65>
- ^v <http://www.sec.state.ma.us/ele/eleidreq/idrequirementsidx.htm>
- ^{vi} <http://www.sec.state.ma.us/ele/eleinactivevoters/inactivevotersidx.htm>
- ^{vii} https://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf
- ^{viii} Gill v. Whitford (https://www.supremecourt.gov/opinions/17pdf/16-1161_dc8f.pdf); Abbot v. Perez (https://www.supremecourt.gov/opinions/17pdf/17-586_o7kq.pdf); Husted v. A. Philip Randolph Institute (https://www.supremecourt.gov/opinions/17pdf/16-980_f2q3.pdf); Minnesota Voters Alliance v. Mansky (https://www.supremecourt.gov/opinions/17pdf/16-1435_2co3.pdf).
- ^{ix} M.G.L. c. 51 § 37A. <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVIII/Chapter51/Section37A>
- ^x Chelsea Collaborative v. Secretary of the Commonwealth (SJC 12435) (July 2, 2018). <https://www.mass.gov/files/documents/2018/07/02/12435.pdf>
- ^{xi} <https://aclum.org/uncategorized/massachusetts-supreme-court-decision-allows-voter-disenfranchisement-continue/>
- ^{xii} <https://malegislature.gov/Bills/187/H3810>
- ^{xiii} <https://malegislature.gov/Laws/SessionLaws/Acts/2016/Chapter134>
- ^{xiv} <https://malegislature.gov/Laws/SessionLaws/Acts/2016/Chapter134>
- ^{xv} Reisner, S.L., White, J.M., Dunham, E.E., Heflin, K., Begenyi, J., Cahill, S., and the Project Voice Team. (2014). Discrimination and Health in Massachusetts: A Statewide Survey of Transgender and Gender Nonconforming Adults. <http://fenwayhealth.org/wp-content/uploads/The-Fenway-Institute-MTPC-Project-VOICE-Report-July-2014.pdf>
- ^{xvi} <http://www.wbur.org/news/2016/10/11/churches-sue-transgender-accommodations-law>
- ^{xvii} <https://www.metroweekly.com/2016/12/churches-drop-lawsuit-massachusetts-transgender-law/>
- ^{xviii} [https://ballotpedia.org/Massachusetts_Gender_Identity_Anti-Discrimination_Veto_Referendum_\(2018\)](https://ballotpedia.org/Massachusetts_Gender_Identity_Anti-Discrimination_Veto_Referendum_(2018))