

Midterms 2022: The Poll Observer Landscape | Georgia

Poll observers — members of the public permitted to monitor conduct at polling places — are a feature of elections in nearly every state. They add a degree of transparency in the electoral process that promotes the public confidence in elections that is the lifeblood of democracy. However, in some cases, poll observers have also caused major disruption at the polls. For example, during the 2020 election in Michigan, large groups including partisan poll observers crowded polling sites and attempted to enter vote counting rooms.

Later this month, the States United Democracy Center will release a report examining the relevant laws governing poll observers. We use this term to describe both *poll watchers*, private individuals who observe the election process, and *election challengers*, who have many of the same privileges and can also dispute whether a prospective voter is eligible to cast a ballot. (Our definition of “poll observers” for the purposes of this report does not include poll workers or other categories of officials permitted to be present at polling places.) This report will include detailed summaries of 12 key states that saw record voter participation, many of which were also subject to significant attempts to undermine the electoral process by a variety of partisan actors in 2020. We intend for this report to provide guidance regarding the power, privileges, and limitations of poll observers to statewide elected officials, law enforcement professionals, elections administrators, election protection groups, and others—regardless of partisan affiliation.

Today, in advance of upcoming primary elections, we are releasing a preview of our summaries of poll observer rights and responsibilities in four states: Georgia, Kentucky, North Carolina, and Pennsylvania. These summaries provide a review of state regulatory schemes concerning poll observers, detailing credentialing and training requirements as well as rights and responsibilities afforded to both poll watchers and election challengers in each state. We hope that these summaries will support the administration of free, fair, and secure elections.

Please note: this report does not purport to catalog all state statutes or rules that may regulate the behavior of individuals who serve as poll observers and should not be relied upon as legal advice. To ensure accuracy, completeness, and the most up-to-date language, please consult official sources before relying on the authorities described in this report.



Georgia

WHO IS PERMITTED TO WATCH OR CHALLENGE VOTERS AT THE POLLS AND HOW ARE THOSE ROLES DEFINED?

Poll Watchers:

The general public has a right to observe conduct at the polls outside of the “enclosed space” (that is, the area within the polling place where voting machines are located, generally behind a guardrail or other barrier). (Ga. Code Ann. § 21-2-267). Appointed poll watchers have an elevated privilege to observe conduct at the polls within the “enclosed space” where voting occurs. (Ga. Code Ann. §21-2-408).

Challengers:

Any elector of the county or municipality is also allowed to submit a written challenge contesting the eligibility of another voter within the same county or municipality prior to a vote being cast. (Ga. Code Ann. §21-2-230(a)). Challengers must specify distinctly the grounds of the challenge. (*Id.*).

HOW ARE WATCHERS AND CHALLENGERS APPOINTED OR DESIGNATED?

Poll Watchers:

Primaries. In a primary, each candidate appearing on the ballot may submit the name of one poll watcher for each precinct to the chairperson or secretary of the appropriate party executive committee at least 21 days prior to the primary. Party executive committees then may designate, at least seven days prior to an election, no more than two poll watchers for each precinct at least seven days before the primary. Official poll watchers must be given a letter signed by the party chair and secretary, containing the following information: name of the poll watcher, address, precinct in which they will serve, and the name and date of the primary. At least three days prior the primary, a copy of the letter must be delivered to the superintendent of the county or municipality in which the watcher will serve. (Ga. Code Ann. §21-2-408(a)(1)). The same procedure applies for advance voting locations, except the deadlines are measured from the start of advance voting, rather than the primary date. (Ga. Code Ann. §21-2-408(a)(2)).



General Election. In a general election, each political party is entitled to designate no more than two official poll watchers in each precinct at least seven days prior to the election. Each independent candidate is entitled to designate one poll watcher in each precinct. Political parties and independent candidates may also designate, at least 14 days prior to an election, an additional 25 official state-wide poll watchers that may observe in any precinct in the state. (Ga. Code Ann. §21-2-408(b)(2)). No more than four poll watchers (two local and two state-wide) may be present in a precinct at a single time. (Ga. Code Ann. §21-2-408(b)(1)(2)). Each poll watcher shall be given a letter signed by the appropriate party chairperson and secretary containing the following information: name of the poll watcher, address, precinct in which they will serve or a statement that the watcher is a state-wide watcher, and the date of the election. At least three days prior to the election, a copy of the letter must be delivered to the superintendent of the county or municipality in which the watcher will serve. (Ga. Code Ann. §21-2-408(b)(1)). The same system of local and state-wide poll watchers applies to the advance voting period, except the deadlines are measured from the start of advance voting, rather than the general election. (Ga. Code. Ann. §21-2-408(b)(3)).

Challengers:

Any voter of a county or municipality may challenge the right of any person of the same jurisdiction to vote. (Ga. Code. Ann. § 21-2-230(a)). There is no formal credentialing process for challengers.

ARE THERE ANY RESIDENCY OR TRAINING REQUIREMENTS FOR WATCHERS OR CHALLENGERS?

Poll Watchers:

Watchers must complete training provided by a political party, political body, or a candidate before they may serve. (Ga. Code Ann. §21-2-408(e)). There is no residency requirement for watchers.

Challengers:

Voters must reside in the same county or municipality as the voter they are challenging. (Ga. Code Ann. §21-2-230(a)).



WHAT PRIVILEGES OR SPECIAL RIGHTS DO WATCHERS OR CHALLENGERS HAVE AT POLLING SITES?

Poll Watchers:

Credentialed poll watchers are allowed “behind the enclosed space” (Ga. Code Ann. §21-2-267) for the purpose of observing the conduct of the election and counting and recording votes. (Ga. Code Ann. §21-2-408(d)). If a jurisdiction uses electronic or optical-scanning voting systems, watchers may remain in the check-in area, computer room, the duplication area, and other areas as the superintendent deems necessary to ensure fair and honest procedures in the tabulating center. (Ga. Code Ann. § 21-2-408(c)). However, it should be noted that poll managers may make reasonable regulations to ensure that poll watchers do not interfere with the conduct of an election. (Ga. Code Ann. § 21-2-408(d)).

Challengers:

No explicit privileges or rights exist for challengers beyond the right to challenge a voter of the same county or municipality. There are no limits on the number of challenges a voter may make. (Ga. Code Ann. §21-2-230(a)).

WHAT ARE WATCHERS OR CHALLENGERS RESTRICTED FROM DOING AT THE POLLS?

Poll Watchers:

Watchers are prohibited from talking to voters, checking voter rolls, or from using photography or cell phones. (Ga. Code Ann. §21-2-408(d)). The poll manager or superintendent may remove a watcher for interfering with the conduct of the election or for violating any provisions of the election code. (*Id.*). Watchers must also report any infraction or irregularity to the superintendent of the county or municipality where the election is held, not the poll manager. (*Id.*). Watchers are also required to wear an “Official Poll Watcher” badge at all times while on duty. (*Id.*).

Challengers:

There are no explicit restrictions specifically on challengers’ behavior.



WHAT ARE THE GENERALLY APPLICABLE CIVIL OR CRIMINAL PROHIBITIONS ON INTERFERING WITH THE VOTING PROCESS?

Georgia law treats interference with elections as a felony offense punishable by imprisonment of up to ten years or a fine of up to \$100,000. (Ga. Code Ann. §21-2-566). Prohibited behavior includes:

- Preventing or attempting to prevent a poll officer from holding an election;
- Using or threatening violence in a manner that would prevent a poll officer from executing their duties;
- Blocking or attempting to block entry to any polling place;
- Using or Threatening violence in a manner that prevents voters from voting;
- Preparing or presenting to a poll officer a fraudulent voter's certificate;
- Depositing fraudulent votes in a ballot;
- Registering fraudulent votes on any voting machine;
- Tampering with any electors list, voter's certificate, numbered list of voters, ballot box, voting machine, direct recording electronic equipment, electronic ballot marker, or tabulating machine. (Ga. Code Ann. §21-2-566).

Georgia law also separately prohibits a variety of activities that interfere with the voting process, including voter intimidation, providing unlawful assistance to voters, observing voters while casting ballots, photographing ballots, and interfering with poll officers, and other offenses. (E.g., Ga. Code Ann. §§21-2-567, 21-2-568, 21-2-568.1, 21-2-568.2, 21-2-569).

WHAT ARE THE CIVIL OR CRIMINAL PENALTIES FOR PEOPLE WHO INTERFERE WITH THE LAWFUL ACTIVITIES OF WATCHERS OR CHALLENGERS?

Georgia does not appear to impose any specific civil or criminal penalties for interfering with the lawful activities of watchers or challengers. However, any public officer who willfully neglects or refuses to perform any duty under the election laws commits a misdemeanor. (Ga. Code Ann. §21-2-596). Similarly, any person who “intentionally interferes with, hinders, or delays or attempts to interfere with, hinder, or delay any other person in the performance of any act . . . authorized” by the election laws commits a misdemeanor. (Ga. Code Ann. §21-2-597). These acts may be punished by fines of up to \$1,000 and imprisonment for up to one year. (Ga. Code Ann. §21-2-599).



This report does not constitute legal advice. Please consult official sources before relying on any of the authorities described in this report.

This guidance document was prepared by the States United Democracy Center.

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