

Midterms 2022: The Poll Observer Landscape | Pennsylvania

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.



Pennsylvania

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

Poll Watchers:

In Pennsylvania, certified poll watchers are permitted to observe conduct at the polls. (25 P.S. §2687).

Challengers:

Pennsylvania law provides for certified poll watchers and qualified electors to challenge the qualifications of others to vote. (25 P.S. § 3050(d)). (Note, however, that Pennsylvania’s election code does not enumerate a distinct “challenger” position.)

HOW ARE WATCHERS AND CHALLENGERS APPOINTED OR DESIGNATED?

Poll Watchers:

Each candidate appearing on the ballot is entitled to appoint two watchers for each election district. Additionally, each political party appearing on the ballot is entitled to appoint three watchers for each election district. (25 P.S. § 2687(a)). However, although candidates and parties may appoint several watchers to each district, only one watcher may be present in a polling place at one time for each candidate or party. (25 P.S. § 2687(b)).

Challengers:

Credentialing is not required to challenge voters.



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

Poll Watchers:

Each watcher must be a registered voter of the county in which they serve. Each watcher shall be authorized to serve in the election district for which the watcher was appointed and, when the watcher is not serving in the election district for which the watcher was appointed, in any other election district in the county in which the watcher is a qualified voter. Watchers are not required to be a resident in the election district for which they are appointed. (25 P.S. §2687(b)). There are no training requirements for watchers.

Challengers:

Any qualified elector may challenge the right to vote of any voter. (25 P.S. § 3050(d)).

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

Poll Watchers:

Watchers are allowed in the polling place, are permitted to keep a list of voters, and are entitled to inspect the voting check list used by election officials. Watchers are also permitted to challenge the qualifications of voters. (25 P.S. §2687(b)).

Challengers:

Persons attempting to challenge other voters have no special rights at polling places.



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

Poll Watchers:

Watchers may not engage in any of the following activity:

- Photographing or videotaping voters;
- Disseminating false or misleading election information to voters;
- Blocking the entrance to a polling place;
- Confronting, hovering, or directly speaking to or questioning voters;
- Threatening behavior; or
- Asking voters for documentation. (Pennsylvania Department of State, Guidance Concerning Poll Watchers and Authorized Representatives).

Further, watchers may only make good faith challenges to an elector's identity, continued residence in the election district, or qualifications as an eligible voter. Watchers are required to direct their challenges directly to the Judge of Elections, who has the obligation to determine:

- Whether a challenge is based on actual evidence; and
- Whether there is a good faith basis to believe that the person is not, or may not be, a qualified elector.

Challenges cannot be based on race, national origin, appearance, surname, language, religion or other characteristics not relevant to the qualifications to vote, and Pennsylvania law explicitly prohibits discriminatory challenges. (Pennsylvania Department of State, Guidance on Voter Intimidation and Discriminatory Conduct).

Watchers are also required to carry and present when requested certificates of credentialing issued by the County Board of Elections containing their name and candidate or party they represent. (25 P.S. § 2687(b)).



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

In Pennsylvania, attempting to intimidate a voter is punishable by civil fine of up to \$5,000 and imprisonment of up to two years. (25 P.S. §3547). According to guidance issued by the Secretary of the Commonwealth, voter intimidation includes:

- Aggressive or threatening behavior inside or outside the polling place;
- Blocking or interfering with access to:
 - The entrance or exit to the polling place;
 - Accessible accommodations for voters with disabilities; or
 - Voter sign-in tables or voting booths or voting machines.
- Direct confrontation or questioning of voters, including asking voters for documentation or proof of eligibility when none is required;
- Disrupting voting lines inside or outside of the polling place;
- Disseminating false or misleading election information, including information on voting eligibility, polling place procedures, polling place hours, or voting methods;
- Treating a voter differently in any way based on race, ethnicity, national origin, language, disability or religion;
- Aggressive or threatening brandishing of weapons;
- Photographing or videotaping voters to intimidate them;
- Posting signs in the polling place to intimidate voters or drive support for a candidate;
- Routine and frivolous challenges to voter's eligibility by election workers or private citizens that are made without a stated good faith basis;
- Questioning voters about citizenship, criminal record, or political choices;
- Using raised voices, screaming, yelling or shouting; use of insulting, offensive or threatening language; chanting taunts; or threatening songs inside the polling place;
- Vandalism of polling places or polling place equipment/materials;
- Verbal or physical confrontation of voters by persons dressed in official-looking uniforms;
- Falsely representing oneself as an election official or law enforcement authority;
- Violence or using the threat of violence to interfere with a person's right to vote; and
- Interfering with or violating a voter's right to a secret ballot at any point in the process. (Pennsylvania Department of State, Guidance on Voter Intimidation and Discriminatory Conduct).



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

Any member of a county board of elections, judge of elections or inspector who in any manner prevents a certified poll watcher from being present at the polls shall be guilty of a misdemeanor punishable by a fine of up to \$1,000, imprisonment of up to one year, or both. (25 P.S. §3506). A judge or inspector of elections who permits a challenged voter to vote without requiring proof of the right to vote when it is required by law commits a third-degree felony. (25 P.S. § 3523). Any person who threatens or drives away a watcher through force or intimidation is guilty of a misdemeanor. (25 P.S. § 3507).

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.

The States United Democracy Center is a nonpartisan organization advancing free, fair, and secure elections. We focus on connecting state officials, law enforcement leaders, and pro-democracy partners across America with the tools and expertise they need to safeguard our democracy. For more information visit www.statesuniteddemocracy.org or follow us at @statesunited.