

Midterms 2022: The Poll Observer Landscape | Texas

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 summer, 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.

This summary of poll observer rights and responsibilities in Texas is one of 12 that we will ultimately release. 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.



Texas

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

Poll Watchers:

In Texas, appointed poll watchers are permitted to observe conduct at the polls. (Tex. Elec. Code § 33.001).

Challengers:

Texas does not allow for challengers.

HOW ARE OBSERVERS APPOINTED OR DESIGNATED?

Poll Watchers:

Poll watchers are appointed to observe the conduct of an election on behalf of a candidate (including a write-in candidate), a political party, or the proponents or opponents of a ballot measure. (Tex. Elec. Code §§ 33.001, 33.002 - 33.004). In an election on a ballot measure other than a referendum measure at a primary election, poll watchers may be appointed by the campaign treasurer or an assistant campaign treasurer of the specific political committee that supports or opposes the measure. (Tex. Elec. Code § 33.005). The appointing authority must issue a written certificate of appointment to the watcher and the watcher must deliver that certificate to the presiding judge when the watcher reports for service. (Tex. Elec. Code §§ 33.006, 33.051). Each appointing authority may appoint up to two watchers for each precinct polling place, meeting place for an early voting ballot board, or central counting station involved in the election. (Tex. Elec. Code § 33.007(a)). Each appointing authority may appoint up to seven watchers for each main or branch early voting polling place involved in the election. (Tex. Elec. Code § 33.007(b)). Not more than two watchers appointed by the same authority may be on duty at the same early voting polling place at the same time. (*Id.*). For watchers appointed by supporters or opponents of ballot measures, these numerical restrictions govern the total number of watchers for each side. (Tex. Elec. Code § 33.007(d)).



Challengers:

Texas does not allow for challengers.

ARE THERE ANY RESIDENCY OR TRAINING REQUIREMENTS FOR WATCHERS?

Poll Watchers:

To serve as a watcher in Texas, a person must be a registered voter:

- In the county where they serve, in an election ordered by the governor or a county authority in a primary election;
- In the part of the county in which the election held, in an election ordered by the governor or a county authority that does not cover the entire county of the person's residence. (Tex. Elec. Code §§ 33.031(a)(1), (2)).

Watchers must also complete training developed by the Secretary of State and deliver a certificate of completion from the training to the presiding judge when they report for service. (Tex. Elec. Code §§ 33.008, 33.051(a)(2)).

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

Poll Watchers are permitted to:

- Observe any activity conducted at the location at which the watcher is serving and sit or stand near enough to election officers to see and hear them conducting any observed activity, except as specifically prohibited by the Elections Code. (Tex. Elec. Code § 33.056 (a)). This includes sitting or standing close enough to the member of a counting team who is announcing the votes to verify that the ballots are read correctly or to a member who is tallying the votes to verify that they are tallied correctly. (Tex. Elec. Code § 33.056 (b)). Except as provided by Section 33.057(b), a watcher may not be denied free movement where election activity is occurring at the polling location where the watcher is serving. (Tex. Elec. Code § 33.056(e)).¹ Watchers are permitted to sit or stand close enough to any activity to see and hear the activity. (Tex. Elec. Code § 33.056 (f)).

¹ As of this writing, this provision is currently being challenged in federal court on the grounds that it is unconstitutionally vague and will lead to improper interference with voting rights. See *La Union del Pueblo Entero et al. v. State of Texas et al.*, No. 5:21-cv-00844-XR (W.D. Tex.). Consult official sources before referring to this provision.



- Inspect the returns and other records prepared by the election officers at the location at which the watcher is serving. (Tex. Elec. Code § 33.056(c)).
- Make notes while on duty (though the presiding officer may require a watcher to leave the notes with another person, selected by the watcher, on duty at the polling place, prior to leaving the polling place while the polls are open for retention until the watcher returns to duty). (Tex. Elec. Code § 33.056(d)).
- Be present at the voting station when a voter is being assisted by an election officer and examine the ballot before it is deposited in the ballot box to determine whether it was prepared in accordance with the voter's wishes. (Tex. Elec. Code § 33.057(a)).
- Call to the attention of and discuss with an election officer any occurrence that the watcher believes to be an irregularity or violation of law. (Tex. Elec. Code § 33.058(b)).
- Observe the inspection and securing of voting system equipment. (Tex. Elec. Code § 33.059).

Further, a presiding judge may not remove an appointed poll watcher from the polling place for violating a provision of the Election Code or any other provision of law relating to the conduct of elections, other than a violation of the Penal Code, unless the violation was observed by an election judge or clerk. (Tex. Elec. Code § 32.075(g)).² A presiding judge may request that law enforcement remove a poll watcher who commits a breach of the peace or a violation of law. (Tex. Elec. Code § 32.075(h)). The appointing authority for a watcher who believes that the watcher was unlawfully prevented or obstructed from the performance of the watcher's duties may seek:

- injunctive relief under Section 273.081, including issuance of temporary orders;
- a writ of mandamus under Section 161.009 or 273.061; and
- any other remedy available under law. (Tex. Elec. Code § 33.063).³

² As of this writing, this provision is currently being challenged in federal court on the grounds that it is unconstitutionally vague and will lead to improper interference with voting rights. See *La Union del Pueblo Entero et al. v. State of Texas et al.*, No. 5:21-cv-00844-XR (W.D. Tex.). Consult official sources before referring to this provision.

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WHAT ARE WATCHERS RESTRICTED FROM DOING AT THE POLLS?

Poll watchers are prohibited from:

- Being present at the voting station when a voter is preparing the voter's ballot or is being assisted by a person of the voter's choice (Tex. Elec. Code § 33.057(b));
- Conversing with an election officer regarding the election, except to call attention to an irregularity or violation of law (Tex. Elec. Code § 33.058(a)(1));
- Conversing with a voter (Tex. Elec. Code § 33.058(a)(2));
- Communicating in any manner with a voter regarding the election (Tex. Elec. Code § 33.058(a)(3));
- At the meeting of an early voting ballot board or signature verification committee, or at a central counting station, leaving without the judge's permission once counting of the ballots has begun. (Tex. Elec. Code §§ 33.054, 33.055); or
- At a precinct polling place, leaving without judge's permission unless the worker has completed 5 consecutive hours of service, except to temporarily use a cell phone or similar device. (Tex. Elec. Code § 33.052).

Poll watchers who improperly leave may be barred from returning. (See Texas Secretary of State, Elections Division, Poll Watcher's Guide).

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

Texas imposes penalties on a number of activities that interfere with the orderly conduct of elections, including unlawful presence at the polls, unauthorized access to ballots, and unlawful influence on voters. (See Tex. Elec. Code §§ 61.001, 61.003 – 61.008, 61.010).



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

An election official, or any person serving in an official capacity at a polling location, commits a Class A misdemeanor offense if they knowingly prevent a poll watcher from observing an activity that they are entitled to observe, including obstructing the poll watcher's view or distancing the watcher from the activity or procedure to be observed in a manner that would make observation not reasonably effective. (Tex. Elec. Code § 33.061).⁴

⁴As of this writing, this provision is being challenged in federal court on the grounds that it is unconstitutionally vague and will lead to improper interference with voting rights. See *La Unión del Pueblo Entero et al. v. State of Texas et al.*, No. 5:21-cv-00844-XR (W.D. Tex.). Consult official sources before referring to this provision.

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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.