

Midterms 2022: The Poll Observer Landscape | Wisconsin

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 Wisconsin 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.



Wisconsin

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

Poll Observers:

Any member of the public may be present at any polling place, in the office of any municipal clerk whose office is located in a public building on any day that absentee ballots may be cast in that office, or at an alternate site under Wis. Stat. § 6.855 on any day that absentee ballots may be cast at that site for the purpose of observation of an election and the absentee ballot voting process, except a candidate whose name appears on the ballot. (Wis. Stat. § 7.41(1)). The Wisconsin Election Commission has said that observers are also allowed at central counting locations. (Wisconsin Elections Commission, Election Administration Manual, pg. 183).

Challengers:

Any elector may challenge for cause any other person attempting to vote whom they know or suspect is not a qualified voter. (Wis. Stat. §6.925).

HOW ARE OBSERVERS AND CHALLENGERS APPOINTED OR DESIGNATED?

Poll Observers:

There is no formal credentialing process for observers in Wisconsin.

Challengers:

There is no formal credentialing process for observers in Wisconsin.

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

Poll Observers:

There are no residency or training requirements for observers in Wisconsin.



Challengers:

The Wisconsin Election Commission has interpreted Wis. Stat. § 6.925 to require that, in order to raise a challenge, electors must be “qualified electors[s] of the state.” (Wisconsin Elections Commission, Election Day Manual, pg. 74).

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

Poll Observers:

At the polls, the chief inspector or municipal clerk may designate observation areas for election observers that shall not be less than three feet and not more than eight feet from the table at which voters announce their name and address to be issued a voter number, and the same distance from the voter registration table. (Wis. Stat. § 7.41(2)). The observation areas must be positioned to allow any election observer to readily observe all public aspects of the voting process. (*Id.*).

Challengers:

Beyond the ability to challenge, there are no privileges or special rights for challengers.

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

Poll Observers:

To enter a polling place (other than to vote), observers must sign and date a log maintained by the chief inspector or municipal clerk of the polling place. (Wis. Stat. § 7.41(1)). The Wisconsin Election Commission has issued guidance stating that observers may not:

- Engage in electioneering;
- Use video or cameras;
- View registration forms and proof of residence documents;
- Handle official election documents; have conversations about candidates, parties, or ballot questions;
- Make phone calls;
- Wear clothing or buttons related to candidates, parties, or referenda that are intended to influence the election;
- Interact with voters unsolicited;



- View confidential information on the poll list; or
- Enter vehicles of curbside voters. (Wisconsin Elections Commission, Election Day Manual, pg. 173).

Observers remain under the purview of the chief inspector or municipal clerk and may be removed for committing an overt act that disrupts the operation of a polling place, clerk's office, or alternate absentee ballot site. (Wis. Stat. § 7.41(3)(a)). Observers may also be removed for electioneering during the hours that absentee ballots may be cast on any public property within 100 feet of an entrance to a building containing the municipal clerk's office or an alternate absentee ballot site in violation of Wis. Stat. § 12.03(2) or for posting or distributing election material in violation of Wis. Stat. § 12.035. (Wis. Stat. § 7.41(3)(b)).

Wisconsin law does not limit the number of observers, but the chief inspector may reasonably limit the number of observers representing the same organization and who are observing at the same time. (Wis. Stat. § 7.41(1)).

Challengers:

Challenges may only be brought if the challenging elector knows or suspects that any one of the following criteria apply to the person being challenged:

- The person is not a citizen of the United States;
- The person is not at least 18 years of age;
- The person has not resided in the election district for at least 28 days;¹
- The person has a felony conviction and has not been restored to civil rights;
- The person has been adjudicated incompetent; or
- The person has voted previously in the same election. (Wis. Admin. Code §EL 9.02).

Any challenger who is deemed to have abused the right to challenge will be subject to removal by an inspector. (Wis. Admin. Code § EL 9.02).

¹ Note that the administrative code lists the residency requirement as ten days, per the rule as originally promulgated. Wis. Adm. Code EL §9.02(2)(c). However, that requirement was subsequently changed to 28 days pursuant to litigation. *Luft v. Evers*, 963 F.3d 665, 668-69 (7th Cir. 2020).



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

No person may use force, violence, or restraint in order to induce or compel any person to vote or refrain from voting in an election. (Wis. Stat. § 12.09(1)). No person may by abduction, duress, or any fraudulent device or contrivance, impede or prevent the free exercise of the franchise at an election. (Wis. Stat. § 12.09(2)). No person may by any act compel, induce, or prevail upon an elector either to vote or refrain from voting at any election for or against a particular candidate or referendum. (See Wis. Stat. §§ 12.09(3)).

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

Wisconsin does not appear to impose any civil or criminal penalties for interfering with the lawful activities of watchers or challengers.

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.