

Midterms 2022: The Poll Observer Landscape | **Arizona**

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.

The States United Democracy Center’s report “Midterms 2022: The Poll Observer Landscape” examines 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.). 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 report includes 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. 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. The state summary provided here is among those included in our full report. We have excerpted it for greater ease of use, as we hope that these summaries will support the administration of free, fair, and secure elections.

Please note: this summary 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.



Arizona

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

Party Agent/Representative:

Arizona allows party agents, also referred to as representatives, to observe conduct at the polls. (Ariz. Rev. Stat. § 16-590(A)). Party agents are also allowed to serve as challengers for the party that appoints them. (*Id.*).

Challengers:

In addition to party agents who may serve as challengers, any voter may orally challenge other voters of the same county as not qualified under § 16-121.01 or on the ground that they have already voted in the election. (Ariz. Rev. Stat. § 16-591).

HOW ARE PARTY AGENTS/REPRESENTATIVES AND CHALLENGERS APPOINTED OR DESIGNATED?

Party Agent/Representative:

The county chair of each party, by written appointment addressed to the election board, may designate a party agent and alternates for each polling place in each precinct. (Ariz. Rev. Stat. § 16-590(A)). The County Recorder or officer in charge of elections may require reasonable deadlines for advance notice of appointments. (Arizona Secretary of State, 2019 Elections Procedures Manual, Pg. 139).¹ Unless an agreement is made between the parties, not more than one party agent may be present for each party at a single polling place at any time. (Ariz. Rev. Stat. § 16-590(C)). However, only one representative for each party is permitted within the 75-foot limit while the polls are open. (Ariz. Rev. Stat. §§ 16-515(A), (B), (H)).

¹ On June 17, 2022, the Yavapai County Superior Court concluded that because an updated 2021 Elections Procedures Manual had not been approved by the Governor and Attorney General, the 2019 Elections Procedures Manual was the last approved manual and “currently remains the [manual] for Arizona elections.” *Brnovich v. Hobbs*, Yavapai County Superior Court Case No. CV-2022-00269. As of the publication of this report, an appeal in this matter remains pending. Accordingly, this report cites to applicable provisions of the 2019 Elections Procedures Manual.



Challengers:

At each polling place, political parties may designate one challenger (the party agent). (Ariz. Rev. Stat. § 16-590(B)). In addition, any voter at the polls may challenge other voters of the same county. (Ariz. Rev. Stat. § 16-591). There is no formal credentialing process required for a voter to challenge other voters of the same county. However, Arizona law only allows a voter to remain inside the seventy-five foot limit while the polls are open for the purpose of voting. Ariz. Rev. Stat. § 16-515(A).

ARE THERE ANY RESIDENCY OR TRAINING REQUIREMENTS FOR PARTY AGENTS/REPRESENTATIVES OR CHALLENGERS?

Party Agent/Representative:

Party agents must be residents of the state and registered to vote. (Ariz. Rev. Stat. § 16-590(D)). There are no training requirements for party agents.

Challengers:

Challengers appointed by a political party need only be residents and registered voters in the state. (Ariz. Rev. Stat. § 16-590(D)). All other challengers must be registered voters and reside in the same county as the voter they are challenging (Ariz. Rev. Stat. § 16-591). There are no training requirements for challengers.

WHAT PRIVILEGES OR SPECIAL RIGHTS DO PARTY AGENTS/REPRESENTATIVES OR CHALLENGERS HOLD AT POLLING SITES?

Party Agent/Representative:

Party agents may observe the following activities at a voting location:

- Opening the voting location;
- Voting at the voting location (but may not observe in the voting booth);
- Closing the voting location;
- Transport of ballots from the voting location to a receiving site; and
- Any other significant voting or processing activities at the voting location provided that it does not interfere with or impede the election procedures or staff. (Arizona Secretary of State, 2019 Election Procedures Manual, Pg. 140).



Party agents may also observe the following at central counting places:

- Receiving ballots at the County Recorder's office or central counting place;
- Inspecting ballots;
- Reviewing ballots by the Write-in Tally Board;
- Duplicating ballots by the Ballot Duplication Board;
- Adjudicating ballots by the Electronic Vote Adjudication Board;
- Receiving electronic media or processing voting results by the Accuracy Certification Board;
- Tabulation of ballots; and
- Any other significant tabulation or processing activities provided that it does not interfere with or impede the election procedures or staff. (Arizona Secretary of State, 2019 Elections Procedures Manual, Pg. 141).

Challengers:

Beyond the right to challenge, challengers appointed by a political party are permitted to remain within the 75-foot perimeter around the voting location. (Ariz. Rev. Stat. § 16-515(A)). There are no limits on the number of good faith challenges a voter may make.

WHAT ARE PARTY AGENTS/REPRESENTATIVES OR CHALLENGERS RESTRICTED FROM DOING AT THE POLLS?

Party Agent/Representative:

Party agents are prohibited from any of the following:

- Marking any ballot or otherwise touching a ballot during observation;
- Offering to assist any voter in the process of voting;
- Touching or handling election materials, rosters, early ballot envelopes, provisional ballot envelopes, ballot transfer containers, or voting machines;
- Interfering with or impeding election procedures or staff;
- Wearing, carrying, or displaying any materials that identify or express support or opposition for a political party, political organization, or a candidate or ballot measure appearing on the ballot;
- In cases where multiple ballots are dropped off at a voting location, within the 75-foot limit: (1) inspecting, copying, or photographing the early ballot envelopes in an effort to discern voters' identities; or (2) confronting, questioning, or photographing the individual who dropped off the early ballots. (Arizona Secretary of State, 2019 Elections Procedures Manual, Pg. 141-42).



Party agents remain under the supervision of the County Recorder or other officer in charge of elections and may be removed for failure to comply with state or federal law. (See Arizona Secretary of State, 2019 Election Procedures Manual, Pg. 140).

Challengers:

As part of “intimidating conduct” prohibited at the polls, Arizona law prohibits raising frivolous voter challenges without any good faith basis, or raising voter challenges solely based on race, ethnicity, national origin, language, religion or disability.” (Arizona Secretary of State, 2019 Election Procedures Manual, Pg. 181). Further, challenges may only be brought for the following reasons:

- The voter has voted before at that election;
- The voter is not the person whose name appears in the signature roster or e-pollbook;
- The voter has not resided in Arizona (or the relevant local jurisdiction) for at least 29 days before the election, (Ariz. Rev. Stat. § 16-121.01(B)(2));
- The voter is registered at an address that is not permitted for registration purposes; or
- The voter is not otherwise a qualified elector, for example, the voter does not live within the proper electoral district or is not at least 18 years old. (Arizona Secretary of State, 2019 Elections Procedures Manual, Pg. 189-90).

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

In Arizona, voter coercion or intimidation is a class 1 misdemeanor. (Ariz. Rev. Stat. § 16-1013). Additionally, Arizona imposes criminal penalties on a number of acts that interfere with the voting process, including the distribution of unlawful ballots; interfering with an election officer or voting equipment; and ballot abuse. (Ariz. Rev. Stat. §§ 16-1002 – 16-1005).



WHAT ARE THE CIVIL OR CRIMINAL PENALTIES FOR PEOPLE WHO INTERFERE WITH THE LAWFUL ACTIVITIES OF PARTY AGENTS/REPRESENTATIVES OR CHALLENGERS?

Arizona does not appear to impose any civil or criminal penalties specifically for interfering with the lawful activities of party agents or challengers. However, Arizona law provides generally that a public officer or any person charged with performing a duty under any law relating to elections who knowingly fails or refuses to perform that duty in the manner prescribed by law, or who knowingly acts in violation of any provision of the law, is guilty of either a class 6 felony or class 3 misdemeanor. (Ariz. Rev. Stat. §§ 16-1009, 1010). Further, any violation of provisions the Elections Procedures Manual is punishable as a class 2 misdemeanor. (Ariz. Rev. Stat. § 16-452(C)).

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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