

# POLL WATCHERS GUIDE

*Issued by the*

**SECRETARY OF STATE**

**ELECTIONS DIVISION**

P.O. Box 12060

Capitol Station

Austin, Texas 78711-2060

(512) 463-5650

1-800-252-VOTE (8683)

TDD (800) 735-2989

## **INTRODUCTION**

**Poll Watcher**/ a person appointed to observe the conduct of an election on behalf of:

- a candidate,
- a political party, or
- the proponents or opponents of a measure (specific-purpose political committees).

A poll watchers role in an election is established by Chapter 33 of the Texas Election Code.

This "Poll Watchers Guide" has been designed to familiarize poll watchers with their basic responsibilities. The integrity of elections is a concern of all citizens, and although poll watchers may represent particular candidates, political parties or specific-purpose political committees, their main interest is in the conduct of a fair and honest election.

Throughout this guide, all references are made to appropriate sections in the Texas Election Code, unless otherwise noted.

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## **QUALIFICATIONS OF WATCHER**

**Q. What are the qualifications of a watcher?**

A. A watcher must be a registered voter:

- of the county if the election is countywide;
- of that part of the county in which the election is held if the election is less than countywide; or
- of a political subdivision in which the election is held. [Sec. 33.031].

**Q. Does a poll watcher need to live within the election precinct in which the watcher is serving?**

A. No, except in a local option election. [Sec. 251.35, Alcoholic Beverage Code].

**Q. Can a person serve as a watcher in an election if the watcher is a candidate running for a public office?**

A. No, not if the person is a candidate running for office in an election to be held on the same day. [Sec. 33.032].

**Q. Can a watcher work with or be related to any of the election officials?**

A. No. The election judge, election clerk, early voting clerk or deputy clerk serving at a particular location cannot be:

- the watchers employer;
- the watchers employee;
- related within the second degree to the watcher by consanguinity (blood);
- related within the second degree to the watcher by affinity (marriage). [Sec. 33.033].

**Q. Are elected public officials allowed to serve as watchers in any election?**

A. No. [Sec. 33.034].

**Q. Can officers of a political party serve as watchers?**

A. Yes. They may serve because they are not public officers. [Sec. 33.034].

## **APPOINTMENT OF WATCHER**

### **Appointment of watcher by political parties:**

**Q. Who appoints a watcher for political parties?**

A.

- The county chair of each political party that has a nominee(s) on the official ballot at the general election may appoint watchers. [Sec. 33.003(a)].
- Any three members of the county executive committee may appoint watchers if the county chair fails to act. [Sec. 33.003(b)].

**Appointment of watcher by a candidate:**

**Q. Who appoints a watcher for candidates?**

A.

1. A candidate whose name appears on the official ballot in an election for any office (other than the office of Vice-President of the United States) may appoint a watcher. The candidates campaign treasurer may appoint a watcher in elections involving voters of more than one county. [Sec. 33.002(a) & (b)].
2. A group of registered voters may appoint watchers on behalf of a write-in candidate. The minimum number of voters required to make an appointment under this section is the lesser of 15 or five percent of the registered voters of the appropriate territory as determined from the list of registered voters to be used for the election. [Sec. 33.004].
  - To be eligible to sign an appointment of a watcher to a precinct polling place, a person must be a registered voter of the precinct.
  - To be eligible to appoint a watcher to an early voting polling place, early ballot board, or a central counting station, a person must be a registered voter of the county, city, school district or other political subdivision conducting the election.

**Appointment of watcher for elections on measures:**

**Q. Who appoints a watcher for elections on measures?**

A. The campaign treasurer or an assistant campaign treasurer of a specific purpose political committee that supports or opposes a measure may appoint watchers. [Sec. 33.005(a)].

**Maximum number of watchers:**

**Q. What is the maximum number of watchers that can be appointed by each appointing authority?**

A.

- 1. seven (7) for each early voting polling place; and
- 2. two (2) for each precinct polling place, meeting place for an early voting ballot board, or central counting station involved in the election. [Sec. 33.007].

**Activities a poll watcher can observe:**

- 1. Early voting polling place activities.
- 2. Election day polling place activities.
- 3. Early voting ballot board meeting activities.
- 4. Central counting station.

- 5. Voter being assisted by an election official.
- 6. Inspecting and securing the voting equipment Sec. 33.059. Must present certificate of appointment. Certificate must be returned to the watcher.
- 7. Delivery of election results.
- 8. Canvass of election results.
- 9. Signature verification committee.
- 10. Defective application: a watcher may accompany the clerk to deliver a voter a second application in person if the defective original application is timely and received before deadline. Sec. 86.008d.

### **ACCEPTANCE OF WATCHER**

#### **Time for reporting to the polling place:**

**Q. What time do watchers need to report to the polling place, and how long do they need to stay at that polling place?**

A. 1. At the polling place on election day.

**A poll watcher:**

- must be present at 7:00 a.m. when polls open.
- may begin service at any time after the presiding judge arrives and may stay at the polling place until elections officials complete their duties.
- may not be accepted if the watcher is not present at the time the polls open for voting. [Sec. 33.052].

2. Early voting polling place.

A poll watcher:

- may be present at the polling place at any time it is open and until voting equipment is secured on the close of voting each day.
- may serve during the hours the watcher chooses. [Sec. 33.053].

**NOTE:** A poll watcher may be appointed to observe early voting by personal appearance only; a poll watcher is not entitled to observe the procedures related to early voting by mail. However, poll watcher can obtain a copy of an application for a ballot to be voted by mail from the Early Voting Clerk (County Clerk) 48 hours after the receipt of the application by the clerk. [Sec. 86.014].

3. Early voting ballot board (including signature verification committee).

A poll watcher:

- may be present at any time the board is processing or counting ballots and until the board completes its duties.
- may not leave during voting hours on election day without the early voting ballot board judges permission once the board has begun counting the ballots. [Sec. 33.054].

4. Central counting station.

- A poll watcher:
- may be present at any time the station is open for the purpose of processing or preparing to process election results and until the election officers complete their duties at the station.
- may not leave during voting hours without the presiding judges permission if the counting of ballots at the central counting station has begun. [Sec. 33.055].

## **CERTIFICATE OF APPOINTMENT**

### **Issuance of certificate:**

The appointing authority must issue a certificate of appointment to the watcher. [Sec. 33.006(a)].

### **Elements of certificate:**

#### **Q. What elements must be contained in the certificate?**

A. 1. The certificate of appointment must be in writing and must include the following:

- Name, residence address, voter registration number, and signature of the watcher;
- The election and the number of the precinct where the watcher is to serve;
- The signature of the person(s) making the appointment;
- An indication of the capacity in which the appointing authority is acting, (example: as a candidate, on behalf of a political party, etc.).
- In an election on a measure, an identification of the measure (if more than one is to be voted on) and a statement identifying which side the appointee represents; [Sec. 33.006(b)].
- Include an affidavit executed by the appointee stating that the appointee will not have possession of any audio or video equipment while serving as a watcher. (This affidavit is signed in the presence of the presiding judge and also serves as the countersignature, which is discussed below.)

### **Requirements for a certificate of a watcher appointed on behalf of a write-in candidate:**

2. Additional requirements necessary for a certificate of appointment of a watcher for a write-in candidate include:

- the residence address and voter registration number of 15 eligible signers in the precinct or political subdivision, as applicable;
- the signed statement of the candidate, or a person who would be authorized to make appointments on the candidates behalf if the candidates name appeared on the ballot, that the appointment is made with the signers consent; and
- the residence or office address of the write-in candidate or the person who would be authorized to make appointments on the candidates behalf if the candidates name appeared on the ballot. If the candidate does not sign, the signer must indicate his or her relationship to the candidate. [Sec. 33.006(c)].

**Presenting certificate of appointment:**

1. A watcher must deliver a certificate of appointment to the presiding judge at the time the watcher reports for service. [Sec. 33.051(a)].
2. The officer presented with a watchers certificate of appointment must require the watcher to countersign the certificate a second time in the officers presence to erify that the watcher is the same person who originally signed the certificate. The watchers signature in the portion of the certificate containing the affidavit that the watcher does not have possession of any prohibited recording devices serves as the countersignature. [Sec. 33.051(b)].
3. A watcher may not be accepted for service if the watcher has possession of audio or video equipment. The presiding judge may inquire whether a watcher has possession of any prohibited recording devices before accepting the watcher for service. [Sec. 33.051(c)].
4. The judge must keep the certificate in envelope no. 2 which is returned to the custodian of election records after the election. [Sec. 66.023(7)].
5. The certificate of a watcher serving at an early voting polling place must be retained at the polling place until voting is concluded at the polling place. [Sec. 33.051(d)].
6. If the watcher is rejected, the certificate should be returned to the watcher with a signed statement of the reason for the rejection. [Sec. 33.051(e)].

**DUTIES AND PRIVILEGES OF WATCHER**

**Q. What are the duties of watcher?**

A. The primary duty of a watcher is to observe the conduct of the election at the location where the watcher has been appointed. A watcher may point out to an election judge or clerk any observed irregularity or violation of the Texas Election Code. However, if the clerk refers the watcher to the judge, the watcher may not discuss the matter further with the clerk unless the presiding judge invites the discussion. [Sec. 33.058(b)].

**Q. What are watchers not allowed to do while on duty?**

- A. 1. Talk with an election officer regarding the election except to call attention to an irregularity or violation. [Sec. 33.058(a)(1)].
2. Converse with a voter. [Sec. 33.058(a)(2)].
3. Converse with other watchers.
4. Communicate in any manner with a voter regarding the election. [Sec. 33.058(a)(3)].
5. Leave during voting hours on election day without the presiding judges permission. If the watcher leaves without permission, the presiding judge may refuse to readmit the watcher. [Sec. 33.052(b)].
6. Reveal the following information before the polls close:
  - How a voter has voted. This offense is a third degree felony. [Sec. 61.006(b)].
  - The number of votes that have been received for a candidate or for or against a measure. This offense is a Class C misdemeanor. [Sec. 61.007(a)(1)].
  - A candidates position relative to other candidates in the tabulation of the votes. This offense is a Class C misdemeanor. [Sec. 61.007(a)(2)].
  - Whether a measure is passing or failing. This offense is a Class C misdemeanor. [Sec. 61.007(a)(3)].
  - The names of persons who have or have not voted in the election. This offense is a Class C misdemeanor. [Sec. 61.007(a)(4)].

**Q. What is a watcher permitted to do while on duty?**

A. A watcher must be permitted, but is not required to:

1. Witness installation of voting machines at the polling place. [Sec. 125.032(e)(4)].
2. Observe the securing of voting system equipment before the election. [Sec. 33.059].
3. Bring into the polling place a portable telephone, only on the approval of the election judge. Note: The use of the telephone will be at the discretion of the election judge.
4. Sit or stand conveniently near the election officials to observe the activities of the election. [Sec. 33.056(a)].
5. Make written notes while on duty. However, if the watcher is permitted to leave the polling place while the polls are open, the watcher may be required to leave his or her written notes with another person selected by the watcher, who is on duty at the polling place. [Sec. 33.056(d)].
6. Observe assistance given to voters by election officials and inspect the ballot before it is deposited in the ballot box to determine if it was prepared in accordance with the voters wishes. [Sec. 33.056(c)].

7. Inspect the returns and other records prepared by the election officers. [Sec. 33.056(c)].
8. A watcher may not participate but may observe the tallying and counting of the votes to verify that the votes are tallied and read correctly. [Sec. 33.056(b)].
9. Accompany authorized election officials in delivering election records from a precinct polling place, an early voting polling place, a meeting place for an early voting ballot board, or a central counting station. [Sec. 33.060(a)]. Note: Poll watcher and election officials do not need to ride in the same vehicle. [Sec. 33.060(b)].
10. Witness securing of the voting machines at the time the polls close. [Sec. 125.035(b)(4)].
11. Receive an English translation of any language other than English by a voter or by an election official. [Sec. 61.036].

**Q. Can a watcher leave the election day polling place temporarily during the time the polls are open?**

A. Yes. If the presiding judge permits the election clerks to leave the polling place temporarily during the time the polls are open, the judge must grant the same privilege to watchers. [Sec. 33.052(b)].

**Q. Can a watcher leave the polling place after the time for closing the polls without obtaining permission from the presiding judge?**

A. Yes. After the polls close, the watcher may leave and the presiding judge must readmit the watcher on request. [Sec. 33.052(e)].

**Q. Can a watcher leave in order to vote at another polling place?**

A. Yes. A watcher may leave an election day polling place within the first two hours that the polls are open for the purpose of voting if the watcher is registered in a different precinct. [Sec. 33.052(c)].

## **MISCELLANEOUS**

### **Possible illegal activities:**

**Q. What illegal activities should a watcher look for?**

A. The election judge of an election may be notified of any activity that appears to be prohibited by law. If any of the following activities occurs, bring it to the election judges attention, note the individual(s) involved, including time and place of occurrence, if possible.

1. Electioneering and loitering within 100 feet of the entrance of the building in which a polling place is located. [Sec. 61.003]. Examples of electioneering include, but are not limited to, the following:

- wearing a badge, insignia, emblem, or other item relating to a candidate or a measure. [Sec. 61.010(a)].



- unauthorized posting of signs, posters or other similar items. [Sec. 62.013]
  - unlawful operation of a vehicle with a loudspeaker used for campaigning purposes within 1,000 feet of a building in which a polling place is located. [Sec. 61.004]
2. Bribery of voters [Sec. 36.02, Penal Code];
  3. Unlawfully influencing voter [Sec. 61.008];
  4. Coercion of voters [Sec. 36.03, Penal Code];
  5. Unlawfully telling another person information that was obtained at the polling place about how a voter has voted [Sec. 61.006];
  6. Unlawfully giving information about the status of the count or the names of people who have voted before polls close [Sec. 61.007];
  7. Tampering with voting equipment [Sec. 127.127];
  8. Illegal voting [Sec. 64.012];
  9. Unlawful removal of ballot from ballot box [Sec. 276.003];
  10. Harassing the election officials [Sec. 32.075];
  11. Unlawful voter assistance or instruction [Secs. 63.012 & 61.009];
  12. Interfering with the voting process; and
  13. Disregard of Texas election laws.

**Persons allowed in the polling place:**

**Q. Who is allowed inside the polling place?**

- A. 1. Election judge and clerks. [Secs. 32.071 & 32.072].
2. Poll watchers and inspectors. [Secs. 33.052 & 34.002].
3. Persons admitted to vote. [Sec. 63.001].
4. Children under 18 years old who are accompanying a parent who is admitted to vote. [Sec. 64.002(b)].
5. Persons providing assistance to or interpreting for a voter who is entitled to assistance or to an interpreter. [Secs. 61.032 & 64.032; 42 U.S.C. 197aa-6].
6. Persons admitted by the presiding judge to preserve order. [Sec. 32.075].
7. Federal inspectors appointed by the Department of Justice.
8. Peace officers summoned or appointed by the presiding election judge. [Sec. 32.075].

### **Challenge of voter:**

The eligibility of a person offering to vote may be challenged. However, before refusing to accept a voter, an election officer must inform the voter of the voters right to vote under the challenge procedure. The presiding judge must inform the voter of the challenge and the issues raised by the challenge. [Sec. 63.010].

#### **Q. Who can challenge a voter?**

A. 1. A voters qualifications to vote may be challenged by:

- An election official;
- A poll watcher or inspector; or
- Any person legally entitled to be within the polling place. [Sec. 63.010(a)].

2. A challenge by anyone other than the presiding judge must be directed to the presiding judge. [Sec. 63.01(b)].

#### **Q. When must a challenge occur?**

A. A challenge may occur before or after a person is accepted for voting, but may not occur after an accepted voter enters a voting station. [Sec. 63.010(c)].

#### **Q. When is a challenge needed?**

A. Voters must sign an affidavit of challenged voter in order to vote if:

1. they do not have their voter registration certificates,
2. their names do not appear on the list of registered voters, and
3. their status as registered voters cannot be verified by the voter registrar.

#### **Q. What does the affidavit mean?**

A. By signing, voters swear that they are qualified to vote and that they are registered to vote. If challenged voters swear by affidavit that they are a qualified voter of the precinct, they must be permitted to vote. [Sec. 63.010(e)].

#### **Q. What are possible reasons for a challenge?**

- A. 1. Voter is not a resident of the political subdivision. [Sec. 11.001(2)].
2. Voter is convicted of a felony. [Sec. 11.002(4)].

Exceptions:

- the conviction has not yet become final;
- two-year time period has lapsed since the receipt of a certificate of discharge by the

Board of Pardons and Paroles or completion of a period of probation ordered by a court;

- voter has been pardoned; or
- the conviction has otherwise been dismissed. Article 42.12, Sec. 23, Code of Criminal Procedure.

3. Voter is not a U.S. citizen [Sec. 11.002(2)].
4. Voter has been determined mentally incompetent by a final judgment of court [Sec. 11.002(3)].
5. Voter is not 18 years of age or older (at time of election) [Sec. 11.002(1)].
6. Voter is not registered to vote [Sec. 11.002(6)].
7. With respect to mail ballot counting, the signatures on the application and the carrier envelope do not match.

### **Using English and interpreters:**

All election officials, while on duty at the polling place, must use English, except when helping a voter who does not understand English. [Sec. 61.031(a)].

#### **Q. What is an interpreter, and when is one used?**

- A. 1. If a voter cannot communicate in English, an election official may communicate with the voter in a language the official and the voter understand. [Sec. 61.031(b)].
2. An interpreter may be used when the voter and the election official(s) helping the voter cannot speak the same language. [Sec. 61.032].
3. Upon taking the oath of interpreter, any registered voter of the county may act as an interpreter for one or more voters. [Secs. 61.035 & 61.033].
4. The interpreter may be a person provided by the authority conducting the election. However, even if an interpreter is provided, a voter may use his own interpreter. [Sec. 61.032].
5. A watcher may request and receive an English translation of anything spoken in a language other than English by a voter or by an election official. [Sec. 61.036].

### **Casting the ballot:**

#### **Q. If voters make a mistake marking their ballot, can they start over?**

A. Yes. Voters who make mistakes while marking their ballots may take the spoiled ballot to an election official and exchange it for a new ballot. [Sec. 64.007(a)].

#### **Q. How many replacement ballots can a voter receive?**

A. A voter may only receive up to two replacement ballots (original plus 2 for a total of 3). [Sec. 64.007(b)].

## **CONCLUSION**

As a poll watcher, you are entitled to observe the conduct of the election at the polling location to which you are assigned. Please remember, however, that the election judge is in charge of the polling place and must maintain control and order in the polling place. You should establish a cooperative relationship with the judge and work with the judge to ensure that the voting process works smoothly. If any questions arise during your service that the election judge cannot answer, please call the Elections Division at our toll-free number, 1-800-252-8683, with the permission of the election judge. The Elections Division is open Monday through Friday from 8:00 a.m. to 5:00 p.m., and during all uniform election dates from before the polls open until after they close. If you desire to learn more about the election process, please call our office to request one of our handbooks on election day procedures. Thank you for your participation in the election process.

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