

POLL WATCHER'S GUIDE

*Issued by the*

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ELECTIONS DIVISION**

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**INTRODUCTION**

This "Poll Watcher's Guide" has been designed to familiarize poll watchers with their basic responsibilities. A poll watcher's role in an election is established by Chapter 33 of the Texas Election Code and is defined as follows:

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).

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

**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.

Q: Can a person who has been finally convicted of an offense in connection with conduct directly attributable to an election serve as a watcher?

A: No. A person convicted of an election offense cannot serve as a watcher. [Sec. 33.035]

Q. Can a person serve as a watcher in an election if he or she 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 for or be related to any of the election officials?

A. No. The watcher cannot be an employer of or employee of or related within the second degree to an election judge, election clerk, early voting clerk or deputy clerk.

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 party officers, not public officers. [Sec. 33.034].

## **APPOINTMENT OF WATCHER**

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

Q. Who appoints a watcher on behalf of political parties?

A.

1. 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)].
2. 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 on behalf of candidates?

A.

1. A candidate whose name appears on the official ballot or on the list of declared write-in candidates in an election for any office (other than the office of Vice-President of the United States) may appoint a watcher. For a state office that is filled by voters of more than one county, the candidate's campaign treasurer may appoint a watcher. [Sec. 33.002(a) & (b)].
2. For a federal office that is filled by voters of more than one county, the chair or treasurer of the candidate's principal campaign committee or a designated agent of the chair or treasurer may appoint a watcher. [Sec. 33.002(c)].
3. A group of registered voters may appoint watchers on behalf of a write-in candidate in an election in which declarations are not required to be filed. 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.
  - o 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.
  - o 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. [Sec. 33.004].

### **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)]. For information on establishing a specific purpose political committee, please contact the Texas Ethics Commission at 1-800-325-8506.

### **Maximum number of watchers:**

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

A.

1. A maximum of seven (7) watchers may be appointed for each early voting polling place (No more than two may be on duty at the same location and at the same time); and
2. A maximum of two (2) watchers may be appointed 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 may observe:**

1. Early voting polling place activities.
2. Election day polling place activities.
3. Early voting ballot board meeting activities.
4. Central counting station activities.
5. Signature verification committee activities.
6. Voter being assisted by an election official.
7. Inspecting and securing the voting equipment. [Sec. 33.059]. (Must present certificate of appointment; certificate must be returned to the watcher.)
8. Delivery of election results.
9. Return of a defective mail ballot 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. 86.008(d).

### **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:
  - o may begin service at any time after the presiding judge arrives and may stay at the polling place until election officials complete their duties.
  - o who serves more than five continuous hours may serve at the polling place during the hours the watcher chooses, except that if the watcher is present at the polling place when the ballots are counted, the watcher may not leave until the counting is complete. If a watcher has served for five continuous hours and no counting has begun, the watcher may leave and return without needing permission from the election judge.
  - o who serves less than five hours may arrive at a time of the watcher's choosing; however, if the watcher leaves the polling place without serving for five continuous hours, the judge may not readmit the watcher. [Sec. 33.052].

2. At an 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, a poll watcher may obtain a copy of an application for a ballot to be voted by mail from the Early Voting Clerk 72 hours after the ballot is mailed to the voter (48 hours after the time a ballot is mailed to the voter if the mailing occurs on the 4<sup>th</sup> day before election day). [Sec. 86.014].

3. At an early voting ballot board meeting (including the 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 judge's permission once the board has begun counting the ballots. [Sec. 33.054].
4. At the central counting station, a poll watcher:
  - may be present at any time the counting 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 judge's 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 at which the watcher is appointed 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)].
- 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 non-declared write-in candidate:**

2. Additional requirements necessary for a certificate of appointment of a watcher for a non-declared write-in candidate include:
  - the residence address and voter registration number of the lesser of 15 or 5% of 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 candidate's behalf if the candidate's name appeared on the ballot, that the appointment is made with the signer's consent; and
  - the residence or office address of the write-in candidate or the person who would be authorized to make appointments on the candidate's behalf if the candidate's 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 watcher's certificate of appointment must require the watcher to countersign the certificate in the officer's presence to verify that the watcher is the same person who originally signed the certificate. The watcher's 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. 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 a 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: Are watchers permitted to wear name tags?

A: Watchers are NOT allowed to wear name tags.

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. A watcher may not leave the polling place without first serving for five continuous hours. If the watcher leaves without first serving five hours, the presiding judge may not readmit the watcher. [Sec. 33.052(b)].
6. Reveal the following information before the polls close:
  - o How a voter has voted. This offense is a third degree felony. [Sec. 61.006(b)].
  - o 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 candidate's 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 the 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, and use it only 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 if the watcher intends to return. [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 voter's 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 communication spoken other than English between a voter and an election official. [Sec. 61.036].

## **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 judge's attention and note the individual(s) involved, including time and place of occurrence, if possible:

1. Election workers allowing voters who do not have a current voter registration certificate to vote without providing proof of identification. If a voter does not have his or her voter registration certificate, Texas law requires that he or she provide one of the following forms of identification:
  - a. drivers license or personal identification card issued by the Texas Department of Public Safety or similar documents from other states regardless of whether the license or card has expired;
  - b. form of ID containing a photograph that establishes a person's identity;
  - c. birth certificate or other document confirming birth that is admissible in a court of law and establishes a person's identity;
  - d. United States citizenship papers;
  - e. United States passport;
  - f. official mail addressed to the person by name from a governmental agency;
  - g. a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or
  - h. any other form of identification prescribed by the Secretary of State's office [Sec. 63.0101]
2. 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:
  - o wearing a badge, insignia, emblem, or other item relating to a candidate or a measure. [Sec. 61.010(a)].
  - o unauthorized posting of signs, posters or other similar items. [Sec. 62.013]
  - o 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]
3. A candidate in an election commits a Class C misdemeanor if he or she is in the polling place for a purpose other than (1) voting or (2) official business in the building in which the polling place is located. [Sec. 61.001(b)]

NOTE: A candidate may assist a voter without violating this section.

EXCEPTION: It is a defense to prosecution under Section 61.001(b) if the candidate is (1) not in plain view of persons in the voting area or the area where voters are being qualified and (2) not engaged in campaign activity. [Sec. 61.001(c)].

4. Bribery of voters [Sec. 36.02, Penal Code];

5. Unlawfully influencing voter [Sec. 61.008];
6. Coercion of voters [Sec. 36.03, Penal Code];
7. Unlawfully telling another person information that was obtained at the polling place about how a voter has voted [Sec. 61.006];
8. Unlawfully giving information about the status of the count or the names of people who have voted before the polls close [Sec. 61.007];
9. Tampering with voting equipment [Sec. 127.127];
10. Illegal voting [Sec. 64.012];
11. Unlawful removal of ballot from ballot box [Sec. 276.003];
12. Harassing the election officials [Sec. 32.075];
13. Unlawful voter assistance or instruction [Secs. 63.012 & 61.009];
14. Interfering with the voting process; and
15. 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 Secretary of State 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. Federal inspectors appointed by the Department of Justice.
7. Persons summoned or appointed by the presiding election judge to act as special peace officers to preserve order. [Sec. 32.075].

### **Provisional Voting Process:**

The Challenge Procedure has been eliminated and replaced by what is now called Provisional Voting. When a voter attempts to vote and the eligibility to vote is in question, the voter may be allowed to vote under the provisional voting process. The presiding judge must inform the voter of the provisional voting process and the procedures involved. A voter without a valid certificate or some other form of identification must vote under the provisional voting process. (See prior list of valid identification.) [Sec. 81.172].

Q. When must a voter be permitted to cast a provisional ballot?

A. Voters must complete an affidavit of provisional voter in order to vote if:

1. A Voter who claims to be properly registered and eligible to vote at the election precinct, but whose name does not appear on the list of registered Voters and whose registration cannot be determined by the Voter Registrar; or
2. A Voter who is designated as a first time Voter on the List of Registered Voters, but who is unable to produce the required identification; or
3. A Voter who has applied for a ballot by mail, but has not returned the ballot by mail; or
4. A Voter who votes during the polling hours that are extended by a state or federal court; or
5. A Voter who is registered to vote but attempting to vote in a different precinct other than the one in which the Voter is registered.
6. A Voter who is required to present identification but does not.
7. A Voter who is on the list, but registered residence address is outside the political subdivision.

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 the provisional voter completes the provisional affidavit, he or she must be permitted to vote. [Sec. 81.172].

Q. What is the effect of the provisional ballot affidavit envelope if the voter is not a registered voter?

A. The provisional ballot affidavit envelope will operate as a voter registration application if the voter is not a registered voter, and if the voter is registered, it will operate as an update if new information is provided.

### **Quick Summary of the Provisional Voting Procedure**

1. Voter does not appear to be an eligible voter. (See list of reasons for voting provisionally on page 11).
2. Voter presents valid I.D. (Note: if the voter has no I.D., the voter may still vote a provisional ballot, but it will not be counted.)
3. Election worker calls voter registrar to attempt to verify voter's registration status.
4. If voter registrar has no record of voter being registered or voter registrar could not be reached, election judge completes a portion of the provisional ballot affidavit envelope indicating reason for voter's casting a provisional ballot. Voter completes and signs provisional ballot affidavit envelope, affirming that voter is an eligible, registered voter of the precinct.
5. Election judge reviews the voter's affidavit and accepts voter. Accepted voter's name is added to the List of Provisional Voters and the Combination Form/Poll List where the box labeled "Provisional" is checked. Voter signs Combination Form/Signature Roster.

6. Voter is asked to select a provisional ballot, which must be sealed in a secrecy envelope after it is marked and then placed within the provisional ballot affidavit envelope previously completed by both the election judge and voter.
7. Voter is given Notice to Provisional Voter indicating the process by which the eligibility of the voter will be verified by the voter registrar. Notice tells voter that they will be informed within 10 days after election day as to whether the vote was counted.
8. Voter proceeds to voting booth to vote ballot, then places the sealed provisional ballot affidavit envelope in the regular ballot box or other designated container.

### **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].
6. If the number of bilingual clerks is insufficient to serve the needs of the Spanish-speaking voters, a bilingual clerk may be appointed at a central location to assist Spanish-speaking voters. [Sec. 272.009].

### **Casting the ballot:**

Q. If voters make a mistake marking their ballot, may 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)].

Q: If a voter is accepted under the provisional voting procedure, do they use the same type of ballot as a non-provisional voter?

A: Yes. However, the ballot selected by the voter will be previously stamped with the word "provisional" on the back of the ballot. Then the following steps must occur:

1. voter enters booth and fills out ballot as desired;
2. voter places ballot into secrecy envelope;
3. voter then seals the secrecy envelope inside the provisional ballot affidavit envelope; and
4. voter then places the envelope in the regular ballot box or other designated container.

NOTE: Some electronic voting systems allow the voter to cast a provisional ballot directly on the machine.

## **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-VOTE(8683). 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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