



Poll Watchers

Texas Secretary of State – Elections Division



OVERVIEW



Purpose

- Poll watchers are allowed to observe and report on irregularities in the conduct of any election, but may not interfere in the orderly conduct of an election.
- A duly appointed poll watcher shall observe without obstructing the conduct of an election.



A Poll Watcher is NOT ...

- An election worker – election judges and clerks are responsible for the management and conduct of an election. Do not ask poll watchers to assist with official duties!
- A state inspector – an individual appointed and trained by the SOS to observe election activities.
- An auditor - person authorized to review and verify the accuracy of records.



Duties and Privileges

- 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 is entitled to sit or stand near enough to see and hear the election officers conducting the observed activity.
- A watcher may not be denied free movement where election activity is occurring within the location at which the watcher is serving.
 - It is an offense if a person serving in an official capacity takes any action to obstruct the view of a watcher or distance the watcher from the activity in a manner that would make observation not reasonably effective.

[Secs. 33.056 and 33.061]



BECOMING A POLL WATCHER



Qualifications of a Watcher

- A watcher MUST:
 - Be a registered voter of the territory covered by the election and of the county for November general elections;
 - NOT be a candidate for public office in an election held on the day the watcher seeks to serve;
 - NOT hold an elective public office;
 - Does not include party officers
 - NOT be an employee of an election judge or clerk serving at the same polling place;
 - NOT have been finally convicted of an election-related offense; and
 - NOT be related within the second degree of consanguinity or affinity to an election judge or clerk serving at that polling place.
 - A watcher can be related to a candidate.



Appointment of Watcher

- A poll watcher may be appointed by:
 - **A political party** – the county chair of each political party that has nominee(s) on the official ballot; or three members of the county executive committee if the chair fails to act (Not applicable in Primary Elections)
 - **A candidate** whose name appears on the official ballot or on the list of declared write-in candidates
 - A campaign treasurer or assistant campaign treasurer of a **specific-purpose political action committee** that supports or opposes a measure



Watchers are Required to:

- Provide the following to the Presiding Judge:
 - A certificate of appointment
 - A certificate of completion of the poll watching training program administered by the SOS
 - The judge must keep the certificate of appointment and certificate of completion in envelope no. 2
 - If a watcher is serving at more than one location the watcher must provide a certificate of appointment and certificate of completion for EACH location the watcher is appointed to serve
- Wear a form of identification (name tag) provided by the presiding judge or other election officer
- Take the following oath administered by the presiding judge, before they are accepted as a watcher:
 - *“I swear (or affirm) that I will not disrupt the voting process or harass voters in the discharge of my duties.”*



Poll Watcher Training

- Poll watchers who completed the required training before August 31, 2022 will need to retake the poll watcher training before the November 8, 2022 general election.
 - In order to ensure poll watchers are trained on any law changes, the certificate of completion will cover the following dates:
 - **January 1 – August 31**
 - **September 1 – December 31**



WHAT WATCHERS CAN AND CANNOT DO



A Watcher is Permitted to...

- Witness the installation of voting system equipment at the polling place
- Observe the securing of voting system equipment before the election
- Leave the polling place temporarily in order to use a cell phone or other wireless communication device
- Observe any activity conducted at the location at which the watcher is serving, and sit or stand near enough to see and hear the election officials to observe the activities of the election
- Observe any activity related to curbside voting (except when a voter is being assisted by a person of the voter's choice)
- Make written notes while on duty
 - Can be required to leave their written notes with another person if the watcher is permitted to leave the polling place while the polls are open
- 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
 - A watcher may not be 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



A Watcher is Permitted to...

- Inspect the returns and other records prepared by election officers
- Observe, but not participate in, the tallying and counting of the votes to verify that the votes are tallied and read correctly
- Observe all election activities relating to closing the polling place, including the sealing and transfer of a memory card, flash drive, hard drive, data storage device, or other medium now existing or later developed for use with voting system equipment
- 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
 - The poll watcher and election officials do NOT need to ride in the same vehicle
- Witness the securing of the voting system equipment at the time the polls close
- Follow the transfer of election materials from the polling place to the regional tabulating center, central counting station, or other location designated to process election materials
- Receive an English translation of any language spoken other than English between an election official and a voter



A Watcher CANNOT...

- Converse with a voter
- Talk with an election worker except to call attention to an irregularity or violation of law
- Communicate in any manner with a voter regarding the election
- Use certain devices in the polling place
 - A watcher may not have possession of a device capable of recording images or sound. If the watcher does have such a device, the watcher must disable or deactivate the device while serving as a watcher
- Leave during voting hours **on election day** without the presiding judge's permission unless the watcher has completed 5 consecutive hours of service at the polling place
 - If the watcher leaves without permission prior to completing the 5 hours of service, the presiding judge may refuse to readmit the watcher



A Watcher CANNOT...

- Observe a voter voting independently or a voter being assisted by a person of the voter's choice
- Cause a disruption or breach of the peace or harass voters
- 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 A 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 A misdemeanor. [Sec. 61.007(a)(2)]
 - Whether a measure is passing or failing; this offense is a Class A misdemeanor. [Sec. 61.007(a)(3)]
 - The names of persons who have or have not voted in the election; this offense is a Class A misdemeanor. [Sec. 61.007(a)(4)]



REMOVAL OF A POLL WATCHER



Removal of a Poll Watcher

- A presiding judge may NOT have a watcher removed from the polling place for violating a provision of the Election Code *unless* the violation was observed by an election judge or clerk.
- A presiding judge may remove a poll watcher for a violation of the Penal Code, regardless of whether the election judge or clerk observed the violation
- A presiding judge may call a law enforcement officer to request a poll watcher be removed if the poll watcher commits a breach of the peace or a violation of law.

[Sec. 32.075]



Removal of a Poll Watcher from EVBB or Central Count

- The process for removal of a watcher from the EVBB or Central Counting Station is the same as that addressed in Section 32.075
 - Utilize the licensed peace officer that is required to be present at the central counting station per Section 127.1232

[Sec. 32.075]



RECOMMENDATIONS



Transfer of Early Voting Materials

- A watcher who has been appointed to serve at an early voting polling place may observe all election activities relating to the closing of the polling place.
 - This includes: the sealing and transfer of a memory card, flash drive, hard drive, data storage device and the transfer of these election materials from the polling place to the locations in which they are going to be processed.
- While the delivery of election supplies back to your office for storage is not a designated poll watching location, you are permitted to allow whoever you choose in your office. You may want to consider allowing CCS or EVBB workers to be present for this process.



Central Count Receiving Station

- Poll watchers may follow the transfer of election materials from the polling place to the regional tabulating center, central counting station, or other location designated to process election materials.
 - Once the chain of custody paperwork has been completed for the polling place where the watcher was assigned, they must leave (unless they have a separate appointment as a watcher for central count).
- Watchers assigned to central count may observe the delivery of election materials.



Public Information

- Most election records are public information.
 - Exception: The Roster of Voters with Defective Carrier Envelopes is not eligible for public inspection **until after** the voter has returned the corrected carrier envelope, canceled their mail ballot, or appeared in person to correct any necessary defects.
- Make sure you print time-stamped reports from your tabulation devices on election night.
- Be proactive in sharing documents!
 - Watchers are allowed to inspect the returns and other records prepared by election officials at the time central count is convened.
 - If a record has been generated during a previous meeting of the CCS, the watcher does not have the authority to stop the current CCS and ask for older records.
 - If a watcher wants to inspect older records, they are permitted to do so under the Public Information Act.
 - The watcher should present the information request in writing.



Unlawfully Revealing Information Before Polls Close

- Remind all election workers and watchers that revealing the following information before the polls close or the last voter has voted, whichever is later, is a Class A misdemeanor:
 - the number of votes that have been received for a candidate or for or against a measure;
 - a candidate's position relative to other candidates in the tabulation of the votes;
 - whether a measure is passing or failing; or
 - the names of persons who have or have not voted in the election

[Sec. 61.007]



THE PRACTICAL SIDE OF POLL WATCHERS



The Practical Side of Poll Watchers

- You just heard about the legal parameters to serve as a poll watcher, how to appoint a watcher, how to remove a watcher, and what watchers are and are not allowed to do.
- What actually happens when a poll watcher shows up?



At the Polling Place

- Train your election workers on how to interact with poll watchers.
- Greet the poll watcher.
 - Make introductions
 - Take and review paperwork
 - Countersign the certificate of appointment
 - Retain completed paperwork in correct envelope/folder
 - Administer the poll watcher's oath
- Make sure the poll watchers are aware of any places for them to sit.
- If time allows, walk the poll watchers through the polling place/check-in station to see if they have any questions.
- Discuss what records the watchers will want to review and when it's the least disruptive to voters to do so.
- Make sure that official actions are taken in full view of the poll watchers.
- Be transparent.



The Five Hour Rule

- Poll watchers at the polling place must follow the five hour rule. This means once a watcher has served at the polling place for 5 consecutive hours, they may come and go.
- Before serving for 5 consecutive hours, the watcher can still leave to use the restroom or make a call, as long as they return promptly.
- The rules for EVBB and central count are different.
 - Once counting has started, the watcher must get permission from the Presiding Judge to step away.



Can a Poll Watcher Serve at the Polls and Central Count?

- A poll watcher can serve at a polling place and central count as long as they have the proper documentation.
- A watcher must present their certificate of appointment and training certificate and surrender them to the Presiding Judge for each location.
- If a watcher starts at a polling place and has a certificate of appointment and training certificate for central count, they may follow the returns and then report to central count.

NOTE: This does not mean that a watcher can go back and forth between the intake dock and central count. They must serve at the location designated on the certificate of appointment.



Central Count Best Practices

- Welcome poll watchers! Remain calm and courteous when they arrive.
- While poll watchers are required to wear a badge, find ways to identify your workers. Some counties have their central count personnel wear vests or shirts of different colors to identify their duties (runner, central count manager, tabulation supervisor, etc.).
- Consider including guidelines on how the CCS will address poll watcher concerns in your central count plan. It is the duty of the Presiding Judge to preserve order and prevent breaches of the peace at central count. If removal of a poll watcher is necessary, follow the provisions in the Election Code. (Sec. 32.075)
- Engage peace officers in central count. Give them a copy of the central count plan. Consider providing additional resources on what actions may be taken if a poll watcher becomes disruptive.
- Be **transparent** with poll watchers. If an issue arises, inform them of what is going on and what you are doing to correct it.
 - Example: Provide poll watchers with reports as they are run, inform them if a media stick won't read and that you are scanning ballots to re-create the media stick, etc.



Results, Results, Results

Election results cannot be released until 7 p.m. on Election Day. This means that early voting and ballot by mail results cannot be released or published before the polls close. However, the results may be queued up and ready to upload before 7 p.m.

NOTE: It is a Class A misdemeanor to release results before this time.



Results, continued

- Everyone wants to see the results, so getting in your flow is extremely important.
- A central count plan is a requirement. You should consider having the plan readily available for watchers. (Sec. 127.007)
- Providing watchers a copy of the central count plan allows the watchers to look at that instead of asking questions that may be in the plan.



What Can Poll Watchers Look At?

- Poll watchers can inspect reports that are public information. They may not review or inspect material that is not public information yet (example: the roster of voters with defective carrier envelopes). Be securely transparent!
- At the polling place, poll watchers may observe an election worker handling a voter's ID, but the watcher may not ask a voter for their ID or transcribe confidential information from the voter's ID for their notes.
- If you are unsure about what a watcher can view, please contact your county attorney or the SOS legal team.



Inspecting vs. Auditing

- While poll watchers have the authority to inspect certain documents, there are differences between inspecting and auditing.
- Inspecting: Observing the election and writing reports. Giving documents a “facial review.”
- Auditing: Taking a deeper dive of documents, comparing to code and/or creating spreadsheets **onsite**. May require a public information request.

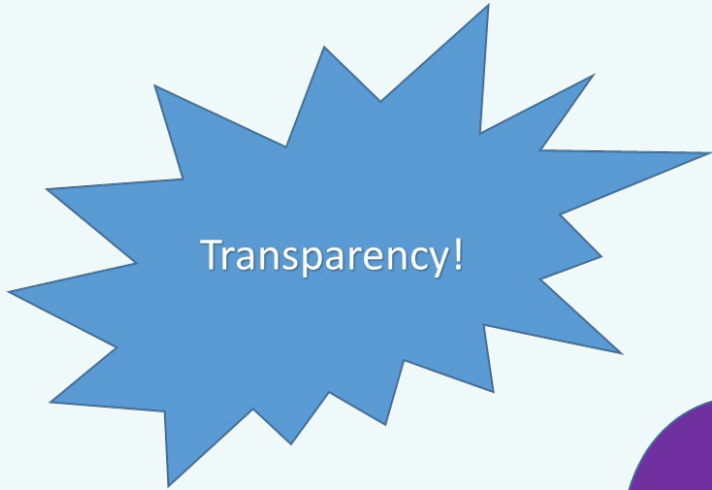


What Are Your Best Practices?

- Have you considered making your poll watcher badges a different color than your employee badges?
- Or having your workers easily identifiable? Wearing colored shirts or vests that complement their duties?
- Do you provide a copy of reports to your watchers at central count as they are ready?
- Are your tabulation workers calling out the locations/precincts as they are being run?
- Do you have large monitors so the watchers can see the screen more easily without hovering over the worker's shoulders?
- Have you and your staff taken the poll watcher training?
- Are you communicating issues with poll watchers to help address any distrust?



Do You Have the Following in Place?



Transparency!



Central
Count Plan!



A Verifiable
Process!



Security!

