

Midterms 2022: The Poll Observer Landscape | Michigan

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.



Michigan

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

Poll Watchers:

In Michigan, the general public is permitted to observe conduct at polling places on election day. (Michigan Department of State Bureau of Elections, The Appointment, Rights, and Duties of Election Challengers and Poll Watchers, Pg. 23 (May 2022)). There is no formal credentialing procedure for poll watchers, and poll watchers do not need to be registered to vote. *Id.* A candidate for elective office being voted on in the election, however, cannot serve as a poll watcher. *Id.*

Challengers:

Michigan allows the following “credentialing organizations” to appoint and credential challengers:

- State-recognized political parties;
- An organized group of citizens in favor or opposed to ballot questions;
- An organized group of citizens interested in preserving the purity of elections and guarding against the abuse of the elective franchise; or
- Incorporated organizations. (Michigan Department of State Bureau of Elections, The Appointment, Rights, and Duties of Election Challengers and Poll Watchers, Pg. 1 (May 2022)); see also (MCL § 168.730(1)).

A person cannot serve as a challenger if they are:

- Serving as an election inspector during the same election;
- Running for nomination or for office during the same election, with the exception that precinct delegate candidates can serve as challengers so long as they do not serve at the precinct in which they are running for office. (Michigan Department of State Bureau of Elections, The Appointment, Rights, and Duties of Election Challengers and Poll Watchers, Pg. 3 (May 2022)); see also MCL § 168.730(2).



Further, a registered voter of a precinct who is present at that precinct on Election Day may challenge the eligibility of another person to vote in that precinct if the challenging voter knows or has good reason to suspect that the challenged person is not eligible to vote in that precinct. (Michigan Department of State Bureau of Elections, *The Appointment, Rights, and Duties of Election Challengers and Poll Watchers*, Pg. 1 (May 2022)); see also (MCL § 168.727(1)). All persons attempting to challenge another voter, whether as an appointed challenger or as a member of the public, must be registered Michigan voters. (MCL §§ 168.727(1), 168.730(2)).

Challenge to a Voter's Eligibility

A challenger may make a challenge to a voter's eligibility to cast a ballot only if the challenger has a good reason to believe that the person in question is not a registered voter. (Michigan Department of State Bureau of Elections, *The Appointment, Rights, and Duties of Election Challengers and Poll Watchers*, Pg. 11 (May 2022)). There are four permissible reasons to challenge a voter's eligibility:

- The person is not registered to vote;
- The person is less than 18 years of age;
- The person is not a United States citizen; or
- The person has not lived in the city or township in which they are attempting to vote for 30 or more days prior to the election. *Id.* at 11–12.

In addition to citing one of the four permissible causes for a challenge, a challenger must state the reason the challenger holds that belief. *Id.* at 12.

Challenge to an Absent Voter in the Polls

A challenger may also make a challenge to an absent voter in the polls. (Michigan Department of State Bureau of Elections, *The Appointment, Rights, and Duties of Election Challengers and Poll Watchers*, Pg. 16 (May 2022)). A voter who requested an absent voter ballot may vote in person so long as their local clerk has not received their absent voter ballot by Election Day. (*Id.*). In some situations these voters may be subject to challenge as an absent voter in the polling place. (*Id.*). A voter is subject to challenge as an absent voter in the polling place only if the poll book indicates that an absent voter ballot was sent to the voter and only if the voter does not surrender the absent voter ballot at the polling place on Election Day. (*Id.*).



Challenge to an Election Process

A challenger may make a challenge to an election process. (Michigan Department of State Bureau of Elections, *The Appointment, Rights, and Duties of Election Challengers and Poll Watchers*, Pg. 18 (May 2022)). A challenger may challenge a voting process, including the way that election inspectors are operating a polling place or processing absent voter ballots at an absent voter ballot processing facility. (*Id.*). A challenge to an election process must state the specific element or elements of the process that the challenger believes are being improperly performed and the basis for the challenger's belief. (*Id.*).

Lastly, all challenges must be made to a challenger liaison, who determines if the challenge is permissible. (Michigan Department of State Bureau of Election, *The Appointment, Rights, and Duties of Election Challengers and Poll Watchers*, Pg. 10 (May 2022)). Assuming the challenge is permissible, (1) the substance of the challenge, (2) the time of the challenge, (3) the name of the challenger, and (4) the resolution of the challenge must be recorded in the poll book. (*Id.*). If the challenge is rejected, the reason for the rejection must be recorded in the poll book. (*Id.*). An impermissible challenge need not be noted in the poll book. (*Id.*).

HOW ARE WATCHERS AND CHALLENGERS APPOINTED OR DESIGNATED?

Poll Watchers:

There is no formal credentialing process for poll watchers in Michigan.

Challengers:

In Michigan, challengers are appointed by political parties, incorporated organizations, and organizations in favor or opposed to ballot questions, or organized groups interested in preserving the purity of elections and in guarding against the abuse of the elective franchise. (MCL § 168.730(1)). Not more than two challengers appointed by the same political party or sponsoring organization may serve at a precinct and not more than one challenger appointed by the same political party or sponsoring organization may serve on a counting board. (MCL § 168.730(1)).

Additionally, any registered voter of a precinct may challenge the right of anyone attempting to vote if they know or have good reason to suspect that individual is not a registered voter in that precinct. (MCL § 168.727(1)). No appointment or designation is required for one registered voter to challenge another voter of the same precinct. (*Id.*).



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

Poll Watchers:

There are no residency or training requirements for poll watchers in Michigan.

Challengers:

Appointed challengers must be registered Michigan voters. (MCL § 168.730(2)). Otherwise, persons attempting to challenge other voters must be registered voters of the precinct in which they wish to challenge other voters. (MCL § 168.727(1)). There are no training requirements for challengers. However, credentialing organizations are strongly encouraged to provide challengers with training on both the basic aspects of election administration in Michigan and the rights and duties of challengers in Michigan. (Michigan Department of State Bureau of Elections, The Appointment, Rights, and Duties of Election Challengers and Poll Watchers, Pg. 3 (May 2022)).

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

Poll Watchers:

Poll watchers are permitted to be present in a polling place or an absent voter ballot processing facility and observe the electoral process so long as the total number of poll watchers does not cause the process to be disrupted. (Michigan Department of State Bureau of Elections, The Appointment, Rights, and Duties of Election Challengers and Poll Watchers, Pg. 23 (May 2022)). Clerks or challenger liaisons must designate a Public Viewing Area from which watchers can observe the electoral process. (*Id.*). A poll watcher may request that the challenger liaison allow the watcher to view the poll book without handling it, but the challenger liaison may decline the request. (*Id.* at 24).



Challengers:

Challengers have the right to:

- Be present in the polling place;
- Make challenges to the challenger liaison or the challenger liaison's designee;
- Be treated with respect by election inspectors;
- Be provided with reasonable assistance in performing their duties as a challenger;
- Inspect applications to vote, registration lists, and other printed materials used to conduct elections, so long as the challenger does not touch or handle any of those materials and so long as the inspection does not impede the voting process;
- Observe election inspectors' preparation of voting equipment at the polling place before the opening of the polls on Election Day, and observe election inspectors' handling of voting equipment after the close of polls on Election Day, so long as the challenger does not touch or handle any of that equipment and so long as that observation does not impede the election inspectors in completion of their duties;
- Observe the election process from a reasonable distance, so long as election inspectors have sufficient room to perform their duties and voters are not impeded in any way;
- If serving in a polling place on Election Day, to use electronic devices, so long as the device is not disruptive and so long as the device is not used to make video or audio recordings of the polling place;
- Observe election-related activities at a polling place on Election Day at any time the polling place is open to the public, including prior to the opening of polls or after the closing of polls;
- Take notes about the election process;
- Notify the challenger liaison of perceived violations of election laws by third parties, including electioneering within 100 feet of the precinct, improper handling of a ballot by a voter, or other issues;
- Remain in the precinct after the close of polls or the end of tabulation and until the election inspectors complete their duties;
- If serving in a polling place where ballots are being issued, stand behind the processing table and close enough to view the poll book as ballots are issued to voters and the voters' names are entered into the poll book, so long as the challenger does not touch or handle the poll book or otherwise interfere with the work of the election inspectors; and



- If serving at an absent voter ballot processing facility, to stand in a location where the tabulation of absent voter ballots can be observed, or to stand in a location where the entry of the names of voters whose ballots are being processed into the poll book can be viewed, so long as the challenger does not touch or handle any election-related materials. (Michigan Department of State Bureau of Elections, The Appointment, Rights, and Duties of Election Challengers and Poll Watchers, Pg. 20 (May 2022)).

WHAT ARE WATCHERS AND CHALLENGERS RESTRICTED FROM DOING AT THE POLLS?

Poll Watchers:

Poll watchers are subject to all of the same restrictions as credentialed challengers. In addition, poll watchers cannot:

- Issue challenges;
- Stand behind the election inspectors as voters are processed; or
- Be present in any part of the polling place, clerk's office, or absent voter ballot processing facility except the designated Public Viewing Area. (Michigan Department of State Bureau of Elections, The Appointment, Rights, and Duties of Election Challengers and Poll Watchers, Pg. 24 (May 2022)).

A poll watcher who repeatedly fails to follow instructions, who acts in a manner that disrupts the peace or order of the polling place or absent voter ballot processing facility, who acts to delay the work of any election inspector, or who threatens or intimidates a voter, election inspector, or election staff, may be ejected by any election inspector. If the poll watcher refuses to leave after being informed of their ejection by an election inspector, the election inspector may request law enforcement remove the poll watcher. (Michigan Department of State Bureau of Elections, The Appointment, Rights, and Duties of Election Challengers and Poll Watchers, Pg. 24 (May 2022)).

Challengers:

Challengers may not make a challenge indiscriminately without good cause; handle poll books while observing election procedures or ballots during the counting process; or interfere with or unduly delay the work of election inspectors. Any individual who challenges another voter for the purpose of annoying or delaying voters is guilty of a misdemeanor. (MCL § 168.727(3)).



Challengers are additionally prohibited from:

- Speaking with or interacting in any way with voters;
- Threatening or intimidating voters or election inspectors, or attempting to threaten or intimidate voters or election inspectors at any stage of the voting process;
- Speaking with or interacting with election inspectors who are not the challenger liaison or the challenger liaison's designee, unless given explicit permission by the challenger liaison or a member of the clerk's staff;
- Making repeated impermissible challenges;
- Making a challenge indiscriminately or without good cause, or for the purpose of harassing, delaying, or annoying voters, election inspectors, or any other person;
- Physically touching or interacting with ballots, absent voter ballot envelopes, electronic poll books, physical poll books, or any other election materials;
- Standing so close to the poll book or other materials that the challenger's proximity to those materials interferes with the election inspectors' ability to perform their duties;
- Using a device to make video or audio recordings in a polling place, clerk's office, or absent voter ballot processing facility;
- Providing or offering to provide assistance to voters;
- Wearing any clothing or other apparel relating to any party, candidate, or proposition on the ballot or which disrupts the peace or order of the polling place, unless the challenger is serving at an absent voter ballot processing facility and is given permission or instructed to wear such an identifier;
- Wearing clothing or other apparel expressly advocating for or against the election of a candidate or advocating the passage or defeat of a ballot measure;
- Setting up a table or other furniture in the polling place;
- If serving at an absent voter ballot processing facility, possessing a mobile phone or any other device capable of sending or receiving information between the opening and closing of polls on Election Day; or
- Taking any actions to disrupt or interfere with voting, ballot tabulation, or any other election process. (Michigan Department of State Bureau of Elections, The Appointment, Rights, and Duties of Election Challengers and Poll Watchers, Pg. 21 (May 2022)).



A challenger who repeatedly fails to follow any of the instructions or directions set out in this manual or issued by election inspectors may be ejected by any election inspector. A challenger who acts in a manner that disrupts the peace or order of the polling place or absent voter ballot processing facility, who acts to delay the work of any election inspector, or who threatens or intimidates a voter, election inspector, or election staff, may also be ejected by any election inspector. The ejection should be noted in the poll book. If the challenger refuses to leave after being informed of their ejection by an election inspector, the election inspector may request law enforcement remove the challenger. (Michigan Department of State Bureau of Elections, The Appointment, Rights, and Duties of Election Challengers and Poll Watchers, Pg. 22 (May 2022)).

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

In Michigan, it is a misdemeanor to attempt to persuade a voter to vote for a particular candidate or ballot issue at a polling site. (MCL § 168.931). It is a felony to attempt to bribe or use corrupt means to influence a voter (MCL § 168.932).

It is a misdemeanor for an election inspector or any other person in a polling room, in a compartment connected to a polling room, or within 100 feet from any entrance to a building in which a polling place is located shall not persuade or endeavor to persuade a person to vote for or against any particular candidate or party ticket or for or against any ballot question that is being voted on at the election. (MCL § 168.744 (1)). A person shall not place or distribute stickers, other than stickers provided by the election officials pursuant to law, in a polling room, in a compartment connected to a polling room, or within 100 feet from any entrance to a building in which a polling place is located. (Id.).

It is a felony for a person, at an election, to falsely impersonate another person, or vote or attempt to vote under the name of another person, or induce or attempt to induce a person to impersonate another person or to vote or attempt to vote under the name of another person. (MCL § 168.932a (a)).

It is a felony for a person to intentionally misrepresent by word or act in a polling place on election day that he or she is an election official if that person is not an election official. (MCL § 168.932e).



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

Michigan law imposes a fine not exceeding \$1,000 or a prison sentence of not more than two years on election officials who prevent the lawful presence of a challenger. (MCL § 168.734).

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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