

The First Amendment and the Government's Authority to Regulate Poll Observer Conduct

Poll observers¹—members of the public permitted to monitor voting and election processes at polling places and sometimes at ballot processing centers—are a feature of elections in nearly every state. They provide a degree of transparency in the electoral process, promoting public confidence in elections, which is the lifeblood of democracy. In some cases, however, observers have also caused significant disruption at the polls. As such, in advance of any major election it is prudent to review the legal parameters governing poll observers' roles and responsibilities.

State law determines whether poll observers are permitted in the state and what rules govern their eligibility, selection, conduct, and duties. This includes whether poll observers may observe (1) early voting, (2) the voting process within a polling place on election day, and/or (3) the ballot-counting process on and after election day; and whether they may challenge the eligibility of a prospective voter.² Against this backdrop, questions sometimes arise about how the U.S. Constitution, and specifically, the First Amendment right to freedom of speech and peaceable assembly, applies to poll observers. This guidance is intended to help answer these questions.

Is there a constitutional right to serve as a poll observer?

No. There is no federal constitutional right to be a poll observer³ and states are not required by the U.S. Constitution to allow poll observers to monitor their elections.⁴ Neither the Due Process Clause nor the First Amendment of the U.S. Constitution requires the participation of non-governmental observers in the election process.⁵ Poll observers “are not universal” and “are absent from much of our history.”⁶ The role of poll observers and limitations on that role are entirely determined by state law.⁷

¹ In this guidance, “poll observers” includes those who may also be called “poll watchers,” “election observers,” or “challengers,” depending on the jurisdiction or context.

² For more information about poll observers, voter eligibility challenges, and their intersection with potential voter intimidation, see Inst. for Const. Advoc. & Prot., *Fact Sheet: Protecting Against Voter Intimidation*, <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2024/08/Voter-Intimidation-Fact-Sheet.pdf> (last visited July 15, 2026).

³ *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 413-14 (W.D. Pa. 2020) (citing cases); *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 385 (Pa. 2020).

⁴ *Donald J. Trump for President, Inc. v. Sec'y of Pennsylvania*, 830 F. App'x 377, 387 (3d Cir. 2020); *Dailey v. Hands*, No. 14-00423-KD-M, 2015 WL 1293188, at *5 (S.D. Ala. Mar. 23, 2015); *Turner v. Cooper*, 583 F. Supp. 1160, 1162 (N.D. Ill. 1983).

⁵ *Sec'y of Pennsylvania*, 830 F. App'x at 387 (Due Process); *Dailey*, 2015 WL 1293188, at *4-*5 (First Amendment); *Turner*, 583 F. Supp. at 1162 (same).

⁶ *Republican Party of Pennsylvania v. Cortés*, 218 F. Supp. 3d 396, 414 (E.D. Pa. 2016).

⁷ *Cortés*, 218 F. Supp. 3d at 414; *Boockvar*, 493 F. Supp. 3d at 414. In West Virginia, for example, poll observers are not allowed at all. W. VA. CODE §§ 3-1-37, 3-1-41 (2024).

Is it constitutional for states to limit where poll observers can go and what they can observe?

Yes. Because poll observers are not required by the U.S. Constitution, each state can set its own laws for the role including whether to allow poll observers at all.⁸ In other words, states are permitted to determine for themselves the “Who, What, Why, When, Where, and How” of poll observing. For example, a number of states have residency, voter registration, training, or other credentialing requirements in order to serve as a poll observer.⁹ State law also determines which election sites poll observers can monitor and when they can engage in monitoring.¹⁰ Even at sites where poll observers are allowed, state law determines which parts of the sites they can access and how close they are allowed to get to the activities they are observing.¹¹ Poll observers are not automatically entitled to be within a certain distance of the activities they are observing.¹² Election officials are generally responsible for enforcing these state limits.

Do poll observers have a First Amendment right to express themselves freely at election sites, and may that right be limited?

Poll observers have First Amendment speech rights, but those rights may be significantly restricted at the election sites where they are permitted to observe. Poll observing itself “does not implicate core political speech” and has no distinct First Amendment protection.¹³

The First Amendment right to free speech is strongest in places that are set aside for public expression and assembly, which are called “public forums.” The law is clear that polling places themselves (as opposed to the public sidewalks surrounding them) are not public forums.¹⁴ States are thus entitled to make polling places “an island of calm in which voters can peacefully contemplate their choices” and can choose to impose more stringent restrictions on expressive activity than might be allowable elsewhere.¹⁵ Similarly, because a ballot

⁸ *Id.*; see also *Boockvar*, 238 A.3d at 385 (poll observer regulations reviewed on rational basis standard). Limitations on observing are not treated as limitations on the right to vote—limits on poll observers do not limit the voters’ range of choices “or make the actual act of casting a vote any harder.” *Boockvar*, 493 F. Supp. 3d at 414.

⁹ See, e.g., ARIZ. REV. STAT. § 16-515(A) (West 2025) (credentialing by county political party requirement); GA. CODE ANN. § 21-2-408 (West 2025) (prior designation of poll watchers) & (e) (training requirement); 25 PA. STAT. AND CONST. STAT. § 2687(b) (West 2025) (voter registration, residency, and certification requirement); TEX. ELEC. CODE §§ 33.031 (West 2025) (citizenship, residency, and training requirements), 33.051(a)(2) (West 2025) (requirement to certify training); see also *Boockvar*, 493 F. Supp. 3d at 419 (upholding Pennsylvania’s requirement that poll watchers be residents of the counties in which they serve as rationally related to Pennsylvania’s county-based scheme for managing elections).

¹⁰ For instance, in Pennsylvania poll observers were not given access to satellite election offices because the statutes defining the role in that state did not include those locations. *Trump v. Philadelphia Cnty. Bd. of Elections*, 241 A.3d 120 (Pa. Commw. Ct. 2020) (unpublished decision). Similarly, in New Mexico the state supreme court denied a petition demanding that observers be permitted at the initial stage of absentee ballot processing. *Republican Party of New Mexico v. Toulouse Oliver*, No. S-1-SC-38537 (N.M. Oct. 27, 2020). In contrast, in Ohio the state supreme court found that the secretary of state erred in barring poll observers from early voting sites, reading the relevant statutes as permitting them to attend those proceedings. *State ex rel. Stokes v. Brunner*, 898 N.E.2d 23, 29 (2008).

¹¹ *In re Canvassing Observation*, 241 A.3d 339, 349–50 (Pa. 2020) (statute permitting observers to be “in the room” could not be read to require access within a certain number of feet); *Kraus v. Cegavske*, No. 20 OC 00142 1B, 2020 WL 8340238, at *5 (Nev. Dist. Ct. Oct. 29, 2020) (poll observers not entitled to “unlimited access to all areas of the ballot counting area and observation of all information involved in the ballot counting process”).

¹² *In re Canvassing Observation*, 241 A.3d at 349–50.

¹³ *Cortés*, 218 F. Supp. 3d at 415; see also *Arizona Democratic Party v. Arizona Republican Party*, No. CV-16-03752-PHX-JJT, 2016 WL 8669978, at *13 (D. Ariz. Nov. 4, 2016) (“[P]oll watching is not a fundamental right that enjoys distinct First Amendment protection.”); *Dailey*, 2015 WL 1293188, at *4 (same).

¹⁴ *Minnesota Voters All. v. Mansky*, 585 U.S. 1, 10-14 (2018); *PG Pub. Co. v. Aichele*, 705 F.3d 91, 100 n.10 (3d Cir. 2013) (citing cases).

¹⁵ *Mansky*, 585 U.S. at 14-17.

processing site is also a nonpublic forum, states can set rules to promote election integrity by preserving the confidentiality of the work performed there and minimizing harmful disruption.¹⁶

Unless specifically exempted, poll observers are subject to all the rules applicable to members of the general public at a polling place. Prohibitions at polling places may include:

- Behaving disruptively or interfering with the voting process or the orderly administration of the site¹⁷
- Taking photographs¹⁸
- Wearing campaign-related clothing and accessories¹⁹
- Advocating for or against a candidate or issue on the ballot (“electioneering”²⁰) within a certain distance of the polling place²¹
- Intentionally trying to observe who or what voters are voting for²²
- Trying to interfere with voters’ marking of their ballots, or trying to induce voters to show how they voted or disclose how they voted without their consent²³
- Coercing or intimidating voters²⁴
- Interfering with an election worker or voting equipment²⁵

States may also enforce communication rules that are specific to poll observers.²⁶ For instance, these rules may include barring them from talking to voters,²⁷ limiting their use of cell phones,²⁸ or barring them from talking to

¹⁶ *Coal. for Good Governance v. Kemp*, 558 F. Supp. 3d 1370, 1385 (N.D. Ga. 2021).

¹⁷ See, e.g., FLA. STAT. § 102.031(4)(c) (West 2025); IDAHO CODE ANN. § 18-2318 (West 2025); WASH. REV. CODE § 29A.84.510(1)(a) (West 2025); see also *Cotz v. Mastroeni*, 476 F. Supp. 2d 332, 366-67 (S.D.N.Y. 2007) (dismissing claim against officer who had probable cause to remove disruptive poll watcher).

¹⁸ See, e.g., NEV. REV. STAT. § 293.274(2) (West 2025); See Nat’l Ass’n of Secretaries of State, *State Laws Prohibiting Electioneering Activities Within a Certain Distance of the Polling Place* (Oct. 2022), <https://www.nass.org/sites/default/files/reports/state-laws-polling-place-electioneering-Oct2022.pdf>; *Silberberg v. Bd. of Elections of New York*, 272 F. Supp. 3d 454, 479 (S.D.N.Y. 2017); see also *Kemp*, 558 F. Supp. 3d at 1385.

¹⁹ *Mansky*, 585 U.S. at 21-23 (invalidating ban on all political apparel as too indeterminate but recognizing that bans on clothing and buttons related to a candidate, ballot measure, or political party appearing on the ballot may be consistent with the First Amendment, and in dicta favorably citing to limitations on clothing and accessories in CAL. ELEC. CODE § 319.5 and TEX. ELEC. CODE § 61.010).

²⁰ While electioneering is generally considered to involve communications that aim to convince voters to vote for or against a candidate or issue, in some states and localities “electioneering” is broadly interpreted to prohibit any form of poll observer communication with voters within a certain distance. See, e.g., ARIZ. REV. STAT. ANN. § 16-515 (West 2025); NEV. REV. STAT. § 293.361 (West 2025); WIS. STAT. § 5.35(5) (West 2025) (prohibiting any interference or distraction of voters at polling places); Mich. Dep’t of State Bureau of Elections, *The Appointment, Rights, and Duties of Election Challengers and Poll Watchers* 20, 24 (Oct. 2024), https://www.michigan.gov/sos/-/media/Project/Websites/sos/01vanderroest/SOS_ED_2_CHALLENGERS.pdf.

²¹ See, e.g., ARIZ. REV. STAT. § 16-1018(1) (West 2025); IDAHO CODE ANN. § 18-2318 (West 2025); MICH. COMP. LAWS § 168.744 (West 2025); 25 PA. STAT. AND CONST. STAT. § 3060(c) (West 2025); UTAH CODE ANN. § 20A-3a-501 (West 2025); WASH. REV. CODE § 29A.84.510 (West 2025).

²² See, e.g., GA. CODE ANN. § 21-2-568.1(a) (West 2025).

²³ See, e.g., *Id.*; N.C. GEN. STAT. ANN. § 163-273 (West 2025); UTAH CODE ANN. § 20A-3a-504 (West 2025).

²⁴ See, e.g., ARIZ. REV. STAT. § 16-1013 (West 2025); GA. CODE ANN. § 21-2-567 (West 2025); IDAHO CODE ANN. § 18-2319 (West 2024); NEV. REV. STAT. § 293.710 (West 2025); 25 PA. STAT. AND CONST. STAT. § 3547 (West 2024); UTAH CODE ANN. § 20A-3a-501 (West 2025); WIS. STAT. § 12.09 (West 2025).

²⁵ See, e.g., ARIZ. REV. STAT. § 16-1004 (West 2025); GA. CODE ANN. §§ 21-2-566(1)-(2) & (8), 21-2-569 (West 2025); NEV. REV. STAT. 293.755 (West 2025); N.C. GEN. STAT. ANN. § 163-274 (West 2025).

²⁶ *Kemp*, 558 F. Supp. 3d at 1385 (plaintiffs failed to establish a substantial likelihood of succeeding on their claim that a rule limiting communications during the monitoring of absentee ballot processing rule violated the First Amendment).

²⁷ See *supra* note 21; e.g., GA. CODE ANN. § 21-2-408(d) (West 2025); NEV. ADMIN. CODE § 293.245(2) (West 2025); TEX. ELEC. CODE § 33.058(a)(2)-(3) (West 2025).

²⁸ See, e.g., GA. CODE ANN. § 21-2-408(d) (West 2025); NEV. ADMIN. CODE § 293.245(2) (West 2025).

election officers about the election except to call attention to an irregularity or violation of law.²⁹ Some states also have catchall laws specific to poll observers that prohibit them from interfering with or impeding the election.³⁰

What happens if poll observers are excluded or limited in violation of state law?

Although poll observers can provide helpful additional transparency, they “are in no sense public officials charged by law with the responsibilities of conducting fair and impartial elections.”³¹ Every state’s election laws and processes include multiple safeguards against fraud or mistakes, and there is every reason to think that other aspects of the election process do more to detect and prevent these issues than poll observers do.³²

As a result, even in cases where poll observers were permitted by state law but were wrongly excluded, courts have declined to conclude that the absence of poll observers meant that fraud or mistakes occurred in the administration of the election.³³ Because the presence or absence of a poll observer “does not affect the free and intelligent casting of the vote or the ascertainment of the result, and further does not affect an essential element of the election,” courts have declined to order a new election or throw out ballots even where poll observers were improperly denied access.³⁴

This fact sheet was prepared jointly by the States United Democracy Center, the Institute for Constitutional Advocacy and Protection (ICAP) at Georgetown University Law Center, and 21st Century Policing Solutions (21CP Solutions).

States United is a nonpartisan 501(c)(3) organization dedicated to the rule of law and free, fair, secure elections. We provide direct support to state officials and law enforcement leaders as they uphold the law and our system of checks and balances, protect public safety, defend elections, and preserve our democracy. For more information, visit statesunited.org.

ICAP’s mission is to use litigation, policy, and public education to protect constitutional rights, while working to hold our governmental institutions to the highest standards of integrity and accountability. Visit us at law.georgetown.edu/icap or contact us at reachICAP@georgetown.edu.

21CP Solutions is a team of forward-thinking thought leaders on public safety that helps cities and communities tackle the challenges of delivering safe, effective, just, and constitutional public safety services. Learn more at 21cpsolutions.com.

²⁹ See, e.g., TEX. ELEC. CODE § 33.058(a)(1) & (b) (West 2025).

³⁰ See, e.g., GA. CODE ANN. § 21-2-408(d) (West 2025); NEV. ADMIN. CODE § 293.245(3) (West 2025).

³¹ *Preisler v. Calcaterra*, 243 S.W.2d 62, 65 (Mo. 1951).

³² See, e.g., *Id.* at 65-66 (regarding election officials’ duty: “to safeguard for all voters the constitutional guaranty of free and open elections.”); *Cortés*, 218 F. Supp. 3d at 403-04 (“So while poll watchers may help guard the integrity of the vote, they are not the Election Code’s only, or even best, means of doing so.”)

³³ See *Cortés*, 218 F. Supp. 3d at 407 (dismissing as “speculation” the assumption that the presence of excluded poll watchers would have prevented fraud); *Boockvar*, 493 F. Supp. 3d at 342, 377 (same); *Benavente v. Taitano*, 2006 Guam 16 ¶ 89-90 (Guam Dec. 12, 2006) (no evidence that results of election would have changed if poll watchers had been present); *Pressley v. Casar*, 567 S.W.3d 28, 48-49 (Tex. App. 2016) (candidate contesting election results failed to produce evidence showing that poll watchers’ inability to observe certain activities resulted in them being performed incorrectly), *rev’d in other part*, 567 S.W.3d 327 (Tex. 2019) (vacating sanctions against candidate contesting election results and her attorney but leaving decision against her on the merits undisturbed).

³⁴ *Benavente*, 2006 Guam 16 ¶ 90; see also *supra* note 33.