

# The State of Texas



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John B. Scott  
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## **ELECTION ADVISORY** **NO. 2022-09**

TO: Election Officials

FROM: Keith Ingram, Director, Elections Division 

DATE: February 4, 2022

RE: NEW LAW: Changes to Poll Watcher Requirements Under House Bill 3107 and Senate Bill 1

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As you prepare for elections in 2022, we wish to advise you of recent changes in state law relating to poll watchers. This advisory addresses changes in the Texas Election Code that resulted from [House Bill 3107](#) (87th Leg., R.S., effective September 1, 2021) and [Senate Bill 1](#) (87th Leg., 2nd C.S., effective December 2, 2021).

All statutory references in this advisory are to the Texas Election Code (“the Code”), unless otherwise indicated.

### **Purpose and Duty of Poll Watchers**

Section 33.0015 of the Code provides that it is the intent of the legislature that poll watchers duly accepted for service under Chapter 33 be 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 poll watcher appointed under Chapter 33 shall observe without obstructing the conduct of an election and call to the attention of an election officer any observed or suspected irregularity or violation of law in the conduct of the election.

### **Training Requirements for Poll Watchers**

Pursuant to Senate Bill 1, the Secretary of State’s Office (“SOS”) must develop and maintain a training program for poll watchers. The training must be available entirely via the Internet and at any time, without a requirement for prior registration. The training also must provide the poll watcher with a certificate of completion. To be eligible to serve as a poll watcher, a person must complete the SOS training. To be accepted for service, a poll watcher must present a certificate of completion of the SOS training and a certificate of appointment to the presiding judge of the polling place, early voting ballot board (EVBB), signature verification committee (SVC), or central counting station (CCS). (Secs. 33.008, 33.031, 33.051).

The poll watcher training can be accessed on the SOS's website through the [Texas Election Training Portal](#) available on [www.VoteTexas.gov](http://www.VoteTexas.gov) and on the SOS's main website, [www.sos.texas.gov](http://www.sos.texas.gov). Upon entering the portal, the poll watcher will click the tab "Sign up for the Course here!" and select Poll Watcher training from the drop-down menu. The poll watcher will be required to set up an online account by providing their name and email address, and create a username and password. After creating their account, the poll watcher will be able to complete the training. Upon completion, the poll watcher will be emailed link that can be used to access their certificate of completion. Poll watchers should print their certificate of completion. They may want to print multiple copies of this certificate as they will be required to surrender a copy of the certificate of completion along with their certificate of appointment to the presiding judge at the location at which they want to serve as a poll watcher.

**The current training will expire on August 31, 2022.** Once the watcher completes training, the training certificate will be valid for all elections occurring during this time period, including, but is not limited to, the primary election, primary runoff election, May 7, 2022 uniform election, and any resulting runoff elections. After August 31, 2022, poll watchers will be expected to complete the training for any elections occurring after August 31, 2022 through August 31, 2023.

## **Oath for Poll Watchers**

Before accepting a watcher, an election officer shall require the watcher to take the following oath: "I swear (or affirm) that I will not disrupt the voting process or harass voters in the discharge of my duties." (Sec. 33.051(h)). This oath has been added to the certificate of appointment that the poll watcher presents and signs in the presence of the presiding judge.

## **Certificate of Appointment**

A poll watcher appointed to serve at a polling place, meeting of the early voting ballot board, meeting of the signature verification committee, or central counting station must deliver 1) their certificate of appointment; and 2) their certificate of completion from SOS training to the presiding judge at the time the poll watcher reports for service. Poll watchers will be required to counter-sign the certificate of appointment in front of the election judge. This serves not only to certify that the person presenting themselves as a poll watcher is the person named on the appointment, but also as the execution of the affidavit that the poll watcher does not have possession of any prohibited recording devices and an acknowledgment of the new oath that is required for poll watchers. Revised certificates of appointment have been posted to the SOS website and are included below.

- [Certificate of Appointment of Poll Watcher by Candidate](#)
- [Certificate of Appointment of Poll Watcher by Political Party](#)
- [Certificate of Appointment of Poll Watcher for Propositions or Measures](#)
- [Certificate of Appointment of Poll Watcher by Registered Voters on Behalf of Write-in Candidate](#)

## **Rights of Poll Watchers**

As amended by SB 1, Section 33.056 of the Code provides that a poll watcher is entitled to sit or stand near enough to see and hear the election officers conducting the observed activity, except as otherwise prohibited by Chapter 33. Except as provided by Section 33.057(b), a poll

watcher may not be denied free movement where election activity is occurring within the location at which the watcher is serving. A poll watcher who is entitled to “observe” an election activity under the Code is entitled to sit or stand near enough to see and hear the activity. (Sec. 33.056).

While a poll watcher may be present if an election worker is assisting a voter, a poll 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, including by a person also serving as an interpreter at the voting station. (Sec. 33.057(b)).

A poll watcher does not have the right to free movement in other areas of an election office that is not being used for the designated activities. Because election offices often possess confidential voter information that may not be subject to inspection by poll watchers, this information must be closely guarded and election officials should clearly designate what rooms and locations are needed for specified election activities.

It is an offense if a person serving in an official capacity takes any action to obstruct the view of a poll watcher or distance the poll watcher from the activity or procedure to be observed in a manner that would make observation not reasonably effective. (Sec. 33.061). A poll watcher's appointing authority who believes that the poll watcher was unlawfully prevented or obstructed from the performance of the watcher's duties may seek: (1) injunctive relief under Section 273.081, including temporary relief; (2) a writ of mandamus under Section 161.009 or Section 273.061; and (3) any other remedy available under law. (Sec. 33.063).

### **Poll Watchers Allowed at Signature Verification Committee**

As amended by HB 3107, Section 33.054 permits poll watchers to be present at any meeting of the signature verification committee, if an SVC has been created for the election. (Sec. 33.054).

### **Observing Data Storage Sealing and Transfer**

A poll watcher appointed to serve at a polling place may 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. (Sec. 33.0605(a)).

A poll watcher duly accepted for service at a polling location is entitled to 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. The authority responsible for administering the designated location must accept a duly appointed poll watcher for service in the same manner as a poll watcher is accepted under Section 33.051 and must accept the same number of poll watchers that may serve under Section 33.007(a). (Sec. 33.0605(b)). A poll watcher may observe the transfer of these materials from the early voting or election day polling location to the appropriate county personnel. However, if the watcher would like to observe additional activities at that location such as EVBB or CCS meetings, they must present a new certificate of appointment and certificate of completion to extend their poll watching activities to the new location.

An election officer commits a Class A misdemeanor offense by intentionally or knowingly refusing to accept a poll watcher for service as required by Section 33.051. (Sec. 33.051(g)).

## **Hours of Service**

A poll watcher at a polling place may begin service at any time after the presiding judge arrives at the polling place on election day and may remain at the polling place until the presiding judge and the clerks complete their duties there. A poll watcher that serves for 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 ballots are counted, the watcher may not leave until the counting is complete. If a poll watcher leaves the polling area temporarily to use a cell phone or other wireless device, this temporary absence does not affect their 5 hours of continuous service. (Sec. 33.052).

## **Removal of a Poll Watcher**

A presiding judge may not have a poll watcher removed from the polling place for violating the Texas Election Code or any other law relating to the conduct of an election, other than a violation of the Penal Code, unless the violation was observed by an election judge or clerk. A presiding judge may call a law enforcement officer to request that a poll watcher be removed if the poll watcher commits a breach of the peace or a violation of law. (Sec. 32.075 (g), (h)).

## **Additional Resources**

For additional information on poll watcher activities, the SOS has released an updated version of the [Poll Watcher's Guide](#). Links to the SOS's poll watcher training and certificates of appointment for poll watchers can also be found on our Poll Watcher page on [VoteTexas.gov](http://VoteTexas.gov).

If you have any questions regarding the issues addressed in this advisory, please contact Elections Division toll-free at 1-800-252-2216.

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