

Election Observer Rules and Litigation in the 2020 General Election

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Abstract:

Election observers were a focal point of much of the litigation and misinformation surrounding the 2020 election. Election observers, sometimes called poll watchers, are people who watch over the U.S. voting process to report inconsistencies, flag legal or procedural violations, and challenge the eligibility or identity of voters. Poll watchers have important roles and responsibilities in election operations. Many post-election lawsuits alleged that election observers affiliated with the Republican Party were improperly denied access to the areas where votes were being counted. These claims were typically accompanied by implications of improper activities behind closed doors. This memorandum details the specific allegations laid out in battleground state litigation concerning the role of election observers in the 2020 election and the alleged issues regarding access throughout the vote tabulation process.

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Other Contributors: This report builds on research published in a prior memo by the Healthy Elections Project:

- [“Election Observation: Rules and Laws,”](#) Jacob McCall, Haley Schwab, and Mat Simkovits (October 9, 2020)

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I. Background

Many states allow poll watchers to observe the entire voting process—from voters casting their ballots to election officials counting the votes. While overseeing the election, poll watchers can report discrepancies in procedure and violations of rules to their respective boards of elections depending on state law. These reports of rule violations can include accusations of on-site electioneering (in which a person attempts to politically campaign at a polling station) and identification issues concerning voters. In some states, poll watchers can even challenge the identity and eligibility of any voter and seek verification of the voter's identity before the individual is allowed to cast a ballot.

After voting has ended, many states allow election observers to watch and report on the tabulation and counting process. This oversight promotes transparency in the election process and trust that is integral to the democratic system. In most election cycles, election observation typically does not result in litigation or accusations of fraud, even where observers are appointed by a political party. The 2020 election cycle was different, with lawsuits across the country alleging issues of inadequate access to the ballot counting process or outright fraud and misconduct.

Key battleground states were the epicenter of election observer lawsuits. These lawsuits mostly concerned access issues, with election observers, alongside President Trump and the Republican Party, arguing that observers did not have full access to the vote tabulation process. For the most part, these lawsuits ended unfavorably for the plaintiffs.

II. Election Observation Across the Battleground States

Allegations of problems with election observation centered around six battleground states that President Trump lost: Pennsylvania, Michigan, Wisconsin, Georgia, Arizona, and Nevada. The allegations fell largely into two categories: allegations of insufficient access to vote centers and allegations that coronavirus pandemic restrictions put too much distance between observers and the counters.

Much of the litigation concerning election observers alleged insufficient access to the vote tabulation process. Republican-appointed election observers alleged in several complaints that

they were denied access to vote centers and polling places and were, therefore, unable to observe vote counts. These allegations proved largely either false or misrepresented, and were dismissed by courts for lack of evidence and refuted by reputable fact-checking agencies.

Some allegations focused on social distancing protocols in the vote count areas. In several suits, election observers argued that they should be allowed to be closer to officials conducting the count. They argued that, because they were put several feet away from the ballots, they were not given “meaningful access” to observe the election. Judges dismissed these allegations because the distances did not violate state election law and were reasonable measures under the circumstances.

A. Arizona

There was one major lawsuit in Arizona that dealt with election observers, [Ward v. Jackson](#). Kelli Ward, chairperson of the Arizona Republican Party, [alleged](#) that election observers were not allowed to be close enough to the ballots to be able to read the signatures on the mail-in ballots. The [complaint](#), filed in Arizona state court, asserted that, once election observers complained to officials about the distance between observers and the ballots, election officials provided the election observers with binoculars. But for a variety of reasons, the litigation contended, binoculars did not solve the issue, and many election observers still could not see the signatures on the mail-in ballots.

Under [Arizona state law](#), election observers are appointed by the county chairs of each political party. These election observers are then allowed to [observe](#) “[a]ll proceedings at the counting center” which, according to the secretary of state’s Elections Procedures Manual, includes “[o]pening the voting location, [v]oting at the voting location (but may not observe in the voting booth or otherwise impede voters’ ability to maintain a secret ballot), [c]losing the voting location, [t]ransport of ballots from the voting location to a receiving site (using a separate vehicle), and/or [a]ny other significant voting or processing activities at the voting location provided that it does not interfere with or impede the election procedures or staff.” Ward argued that being kept [10 to 12 feet](#) away from the ballots violated state law because election observers were unable to fully observe a part of the “processing activities.”

Arizona Superior Court Judge Randall Warner disagreed, [dismissing](#) the allegations surrounding the election observers’ access to the mail-in ballots and other claims in the lawsuit. According to the judge’s [decision](#), the plaintiffs failed to show that there was any fraud, misconduct, illegal votes cast, or an erroneous vote count.

B. Georgia

In an unprecedented move, the Texas attorney general, Ken Paxton, filed a motion directly to the U.S. Supreme Court, challenging the validity of the electoral outcome in several states, including Georgia. This lawsuit, [Texas v. Pennsylvania](#), argued, among other things, that election officials in Georgia and other states blocked election observers from entering vote counting centers. It further alleged that Georgia officials told observers to leave for the day and, after the election observers departed, officials took out “suitcases full of ballots” in order to count more votes in secret.

According to [Georgia state law](#), political parties may appoint two election observers per precinct and may also appoint up to 25 statewide election observers to observe any precinct of their choosing. These election observers are also allowed to observe “the counting and recording of votes” and, as such, are allowed to access the area where the ballots are counted and observe both the counting and recording of these ballots. Denying election observers access to the count would be a serious violation of state law.

There was no evidence to support the claim that observers in Georgia were asked to leave or were not provided meaningful access. The suitcase allegations arose from a [video](#) and were disproven. According to PolitiFact, the non-partisan fact-checking website run by the Poynter Institute, the video does not show suitcases of fraudulently cast ballots. Rather, it shows standard ballot containers full of legitimate ballots waiting to be counted. Georgia election officials also stated that election officials never told observers to leave. The U.S. Supreme Court, in a [7-2 decision](#), denied leave for Texas to file its motion. The brief order said Texas lacked standing to sue Georgia, Michigan, Pennsylvania, or Wisconsin. According to the Supreme Court’s ruling, Texas does not have a “judicially cognizable interest” in how another state conducts its own elections. The two dissenters, Justices Clarence Thomas and Samuel Alito, disagreed, saying they believed they could not dismiss a case that falls under their original jurisdiction, but they added that they “would not grant other relief.” In a similar lawsuit, [Favorito v. Cooney](#), a Fulton County election observer alleged voter fraud involving election workers bringing out cases of ballots to tilt the state towards a Biden victory; the case remains pending as of March 2021.

C. Michigan

There were several election observer-related lawsuits in Michigan. The first lawsuit, [Trump v. Benson](#), was a federal suit filed in the U.S. District Court for the Western District of Michigan. In

this lawsuit, the Trump campaign alleged that election observers were forced to stand six feet away from election officials and, thus, were unable to properly observe the counting and tabulating of ballots. The campaign also alleged that election officials allowed more Democrat-appointed challengers while refusing to admit more Republican-appointed challengers. Further, the lawsuit alleged that election observers and poll challengers were barred from accessing vote centers, with barriers being put up to prevent them from viewing the count. For context, Michigan [created](#) poll challengers to observe election-related activity “as a safeguard against election fraud.” Poll challengers are appointed by state-recognized political parties, incorporated organizations, and political committees formed for the purpose of advocating for a particular ballot measure. They may observe voting precincts and absentee ballot counting precincts, and they may examine voting equipment, pollbooks, and other materials before and after polls are open. Poll watchers may also challenge the voting rights of any voter and challenge an improperly performed election procedure.

The allegations in the lawsuit, however, were largely false. According to election officials, poll watchers and poll challengers were [allowed](#) into the vote centers, but each party was capped at 134 challengers in the vote center at one time. Both parties exceeded 200 poll challengers, so election officials prevented others from entering until the numbers dipped below 134. Election officials did put up posters on the windows to prevent people outside the vote centers from recording what was going on inside the vote centers, which is [not allowed](#). But these barriers did not prevent poll watchers or poll challengers already inside the vote centers from being able to observe the count. The campaign [withdrew](#) the lawsuit in mid-November.

In the second lawsuit, [Trump v. Benson](#), filed in the Michigan Court of Claims, the Trump campaign sought injunctive relief to stop the counting of absentee ballots in the state until the court allowed for more poll challengers to observe the count. However, Judge Cynthia Diane Stephens [denied](#) the request for injunctive relief on the grounds that “evidence” to support the claims were “inadmissible hearsay within hearsay.” Furthermore, Judge Stephens also denied the request on the grounds of [mootness](#), after finding that “the votes had largely been counted” by the time the Plaintiffs filed their complaint.

In the third lawsuit, [Stoddard v. City Election Commission](#), an election challenger requested an injunction to stop the ballot tabulation process, alleging that vote centers in Detroit did not have at least one election observer from each political party present. However, this request for injunctive relief was [denied](#) because the plaintiff failed to provide evidence of the allegations.

Finally, the fourth lawsuit, [King v. Whitmer](#), involved a group of election observers who alleged that they were denied a meaningful opportunity to observe the ballot tabulation process. The

court ruled against the plaintiffs, arguing that not only was the case moot (the plaintiffs filed on November 25) but that the Eleventh Amendment barred this lawsuit from progressing forward.

D. Nevada

There were two main lawsuits in Nevada pertaining to election observation: *Stokke v. Cegavske* and *Kraus v. Cegavske*. The first lawsuit, *Stokke v. Cegavske*, filed in the U.S. District Court of Nevada, [asked](#) the court to allow election observers within six feet of the vote tabulation process and alleged that, otherwise, election observers would lack “meaningful access” to the vote tabulation process. The judge [dismissed](#) the lawsuit, holding that the state legislature was more equipped to handle these access issues. Under [Nevada state law](#), any member of the public can be a poll watcher and observe election-related activities. However, this general rule does not apply to the press or any person who gathers information in order to distribute it to the public. This carve-out for media affiliates became particularly relevant here because one of the parties in *Stokke v. Cegavske*, [Chris Prudhome](#), was a member of the media who attempted to observe the vote tabulation process.

The Trump campaign filed the other [lawsuit](#), *Kraus v. Cegavske*, in state court, seeking injunctive relief to stop the count in Clark County, which encompasses Las Vegas and its suburbs. The lawsuit was initially dismissed by Judge James Wilson after the judge found there was no evidence of irregularities, fraud, or improper access for election observers. The campaign [appealed](#) to the Nevada Supreme Court, but dropped the appeal after reaching a [settlement](#) with the Clark County Registrar of Voters to increase the number of election observers at vote centers.

E. Pennsylvania

In [In re: Canvassing Observation](#), filed in Pennsylvania state court, the Trump campaign [alleged](#) that its election observers were being kept too far away from the actual tabulation of the vote to be able to observe the process properly. Election observers were kept at least 15 feet away to comply with social distancing measures necessitated by the coronavirus pandemic. Under [Pennsylvania state law](#), each candidate for office is entitled to two poll watchers in each precinct in which the candidate is on the ballot. Each political party is also entitled to three additional poll watchers in each precinct. In its [finding](#), the Pennsylvania Supreme Court (which ultimately found that the main complainant did not present himself to officials as an observer) noted that the Philadelphia Board of Elections did not violate Pennsylvania law by maintaining distance between the election observers and the vote counters, because “the Election Code

does not specify minimum distance parameters for the location of such representatives” and because “the Board’s regulations as applied herein were reasonable in that they allowed candidate representatives to observe the Board conducting its activities as prescribed under the Election Code.”

The Trump campaign filed a second lawsuit in Pennsylvania, this one [filed](#) in federal court, [Donald J. Trump for President, Inc., v. Philadelphia County Board of Elections](#). The lawsuit sought injunctive relief to stop the counting of mail-in ballots, alleging that Philadelphia election officials denied Republican-appointed election observers access to the vote tabulation process. Judge Paul Diamond, a U.S. District Court judge for the Eastern District of Pennsylvania, oversaw an [agreement](#) between the parties to increase the number of observers in the convention center from [at least 19](#) Republican-appointed observers to no more than 60 from each party. Judge Diamond also pushed the plaintiff’s attorney to admit that there was a “[non-zero number](#)” of election observers in the room, thereby undercutting President Trump’s public claim that election officials had refused to allow access to “[any representatives and poll watchers for President Trump and the Republican Party.](#)”

Trump v. Philadelphia was the biggest win for President Trump, as it did expand the number of election observers in one polling location. It was the Trump campaign’s only victory in election observer-related litigation across all the states. Yet, even still, *Trump v. Philadelphia* failed to unearth any evidence of fraud or misconduct by election officials. The court found that election observers were not denied access to the count and did not have sufficient evidence to prove fraud.

F. Wisconsin

There was one major lawsuit in Wisconsin concerning access for election observers or distance between the election observers and ballots. Further, Wisconsin was not free of other isolated observer-related issues, including mask compliance issues, excessive challenges by certain observers, and one incident of pushing an election official.

The lawsuit, [Trump v. Wisconsin Elections Commission](#), Trump alleged, among other things, that the Wisconsin Elections Commission failed to provide adequate access to election observers. However, the court [ruled](#) that Trump had failed to prove that the Wisconsin Elections Commission violated any of his rights, and dismissed the case.

Unlike other battleground states, [Wisconsin](#) allows for any member of the public to be present at any polling place for the purpose of observing an election, with the exception of a candidate appearing on the ballot. To that end, the [public](#) may observe all aspects of the election process, including the counting of mail-in ballots, signature verification, and vote tabulation.

Even though any member of the public can serve as an election observer, many do so on [behalf of political campaigns](#). Wisconsin, like many other states, allows political parties to appoint individuals to serve as election observers on behalf of the party. In 2020, there were numerous [reports](#) by Wisconsin election officials that election observers associated with the Trump campaign were slowing down the tabulation process and even attempting to obstruct the count of the votes. [According to election officials](#), one election observer associated with the Trump campaign asserted a challenge to every ballot from a bag—without accusations of fraud or misconduct—simply because the ballots were folded. All mail-in ballots must be [folded](#) to fit into the official return envelope, so the sole fact of a ballot being folded is not indicative of fraud. Two election observers associated with the Trump campaign had to be [escorted out](#) of their vote centers—one for pushing an election official and the other for refusing to wear a mask. Tim Posnanski, a Milwaukee County election commissioner, [called](#) these actions “prima facie evidence of bad faith by the Trump campaign.” In a state with such a tight margin of victory, where a small number of successfully challenged ballots could swing the results, election observers wielded substantial influence over the potential outcome.

III. Conclusion

Much of the post-election litigation in the battleground states centered on election observation. Most of this litigation dealt with access issues to vote centers and limits on proximity to the count amid coronavirus pandemic restrictions. With one exception, these lawsuits were unsuccessful, with judges dismissing the lawsuits because of lack of evidence or because the restrictions were reasonable in light of the pandemic. The Trump campaign scored a modest victory in Pennsylvania, with *Donald J. Trump for President, Inc., v. Philadelphia County Board of Elections*, which allowed both the Democratic and Republican parties to add more election observers in vote centers. But these election observer lawsuits were unsuccessful at demonstrating fraud, misconduct, or any other form of impropriety. While election observation lawsuits were fairly common in the battleground states, they rarely resulted in any form of relief and did not alter the results of the election.

Appendix A: Election Observation Rules and Laws

This appendix was excerpted from a memorandum originally published on the Healthy Elections Project website on October 9, 2020, and reflects the laws and rules governing election observation in the November 3, 2020, general election. The full report can be found [here](#).

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Summary

The responsibilities of election observers and the manner in which they are selected varies across states. Many states allow poll watchers to observe the entire voting process, from voters casting ballots to election officials counting those ballots. And, poll watchers can report discrepancies in procedure or rule violations to their respective boards of elections. Reports of rule violations can include a variety of accusations, including on-site electioneering or voter identification issues. In some states, poll watchers can challenge the authenticity of any voter and seek verification before that voter casts a ballot. In some states, the political parties appoint people to observe the process on the party's behalf. In others, any member of the public, regardless of party, may observe the way ballots are cast and counted. The rules that govern election observation are created at the state level. However, some counties have power over how these rules are implemented, with some states allowing county committees or county political parties to nominate poll watchers.

Rules for Observers in Battleground States

States have different rules for observing in-person voting, signature matching and mail ballot verification, and ballot counting. This excerpt covers the battleground states of Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin.

Election observers of in-person voting generally fall into one of two categories: party-appointed or public. Arizona, Georgia, and Pennsylvania require poll observers to be appointed or nominated by a county or state party chair. Wisconsin permits any member of the public to observe elections. Michigan has party-appointed poll challengers but poll watchers can be any member of the public. Whether party-appointed or public, election observers cannot promote candidates on the ballots, as that would violate state electioneering laws.

States also have differing requirements for observation of the signature matching and ballot verification processes. Some states appoint observers for these processes through political parties, others allow any member of the public to observe the process, and a few allow both public and party oversight. Regardless of the appointment process, the power of observers in each state varies greatly, from being able to challenge individual ballots to being permitted only to observe signature and mail ballot verification.

Likewise, the battleground states have different policies governing oversight of the ballot counting process. Some states (such as Arizona and Georgia) employ an oversight process by which poll watchers nominated by political parties can see the tabulation of ballots. Other states (such as Michigan, Pennsylvania, and Wisconsin) use a public oversight process, in which any person can witness the tabulation of the ballots. Overall, states do not allow poll watchers to interfere with the process; they can only observe.

Arizona

In [Arizona](#), political party observers are nominated by the county chair of each party and are approved by the county recorder to [observe](#) (1) specific voting locations on Election Day, (2) a central counting place, or (3) multiple voting locations. Parties may agree to the same number of observers at each voting place; but, if an agreement cannot be reached, the parties are limited to one observer at each location.

Political party observers may observe (1) the opening of polling places, (2) voting at polling places (although, to uphold the integrity of the secret ballot, observers must maintain distance between themselves and the voter), (3) the closing of polling places, (4) the transport of ballots from polling places to a specified receiving site, and/or (5) any other significant voting or processing activity, including vote counting.

Counties are charged with signature matching under the supervision of the county recorder. During the signature verification process, the county recorder or other election officer will compare the signatures on the affidavit with the voter's signature on their voter registration form. Up to two party observers, one from each party, may watch over "any significant voting or processing activities," including the signature verification process. In addition, some counties, including the state's most populous (Maricopa County), have discretion to allow up to two members of the public to observe the process. During ballot counting, poll watchers can observe every stage of the ballot counting process, from inspecting ballots to tabulating ballots to reviewing ballots.

Georgia

In [Georgia](#), each political party may appoint two poll watchers per precinct. Each independent or nonpartisan candidate may also appoint one poll watcher. All poll watchers must be nominated at least seven days prior to the election and will be appointed to serve in the locations designated by the superintendent within the tabulating center. Designated locations where watchers can legally observe include the voter check-in area, computer room, duplication area, and other areas as the superintendent may deem necessary to assure fair and honest procedures in the tabulating center, which includes the counting and recording of votes. Similarly, at least seven days prior to the start of early voting, political parties or candidates must nominate poll watchers for early voting sites.

At least 14 days prior to the election, parties, political bodies, and independent candidates may designate up to 25 statewide poll watchers and submit their names to the State Election Board. Statewide observers may observe in any precinct and can move around to other precincts throughout Election Day, but they are otherwise subject to all limitations as precinct-nominated poll watchers. Further, no more than two poll watchers from each political party, political body, or independent candidate may be at the same precinct at the same time.

Poll watchers may also observe “the counting and recording of votes.” They may not directly challenge observed irregularities or infractions or file complaints with the poll managers. However, they may report any observed issues to the election superintendent. Further, poll watchers are allowed to access the area where the ballots are counted and can observe both the counting and recording of these ballots.

Michigan

Michigan designates [two entirely different positions](#)—poll watchers and poll challengers—with different rights and responsibilities. Poll challengers have more rights than poll watchers. Challengers are appointed by state-recognized political parties, incorporated organizations, and political committees formed for the purpose of advocating for a particular ballot measure. Poll challengers, however, cannot be appointed by a candidate or group affiliated with a candidate. There can be no more than two challengers per precinct. Poll challengers must be registered voters in the state of Michigan and carry identification cards.

As noted, these challengers have significant latitude in their operation. They may observe at voting precincts and at absentee voter counting board precincts. They can examine voting equipment before and after polls are open. They may observe the checking in of voters; inspect the pollbooks, registration lists, or other materials; and they can remain in the precinct until the precinct board completes its work. Poll challengers may challenge, with good reason, any person's right to vote in the precinct, and they may also challenge the actions of election inspectors serving in the precinct. They may report any instances of alleged improper handling of a ballot by a voter or a precinct official, and they may challenge any voter that was issued an absentee ballot who shows up to vote in person on Election Day. That said, challengers are prohibited from "[disorderly conduct](#)" in the precinct, including drinking alcohol, and may not speak to voters or use recording devices or in any way touch the voting equipment.

Poll watchers comprise a different group of poll observers. Watchers can be any interested non-candidate person who wishes to observe the integrity of the election. Distinctions between poll watchers and challengers include the provision that watchers do not need to be registered to vote in Michigan, are not permitted to challenge a person's right to vote or the actions of the board, and are permitted only to observe until the polls close at 8 p.m.

Michigan also provides for the observation of mail-in ballot counting. One appointed election challenger per eligible group may observe the conduct of the "absent voter counting board." If a challenger believes an absentee ballot was submitted by a person unqualified to vote in their precinct, they may challenge that ballot. Additionally, members of the public may also observe the conduct of the board. However, unlike election challengers, who may come and go as they please, if a member of the public wishes to observe, that person must remain in the room in which the board is working until close of the polls.

[Michigan](#) also allows any member of the public to watch the ballot tabulation process. Essentially, any person with a desire to oversee this process can do so, including any party-appointed poll watchers.

Pennsylvania

In [Pennsylvania](#), each candidate for office is entitled to two poll watchers in each precinct in which the candidate is on the ballot. Political parties are also entitled to three additional poll watchers in each precinct. Poll watchers must be registered to vote in the county in which they serve and can serve in only one precinct in that county. As made clear in a [lawsuit](#), Board of

Elections offices, where voters can request and submit ballots, do not constitute precincts, and so poll watchers are not allowed in these areas.

Poll watchers can challenge the authenticity of any voter and request the voter produce the proper documentation before casting a ballot. Watchers can be paid but only by the party or candidate that appointed them to the position, and payment may not exceed \$120 for the entire day. [Nonpartisan](#) election observers are not permitted in Pennsylvania.

Poll watchers from both parties serve on the boards which conduct mail-in ballot verification. However, as of September 15, 2020, signature mismatch is no longer a reason to reject ballots in Pennsylvania, limiting the power of poll watchers on those boards to challenge mail-in ballots. [Pennsylvania](#) allows any member of the public to watch the ballot tabulation process.

Wisconsin

In [Wisconsin](#), any member of the public may be present at any polling place for the purpose of observing an election, with the exception of a candidate who appears on the ballot. Election observers must sign a log book at the polling place and must remain in the clearly marked, designated observation area between three to eight feet from the voter check-in table, though they may, within these restrictions, position themselves so as to observe all public aspects of the voting process. The chief inspector or municipal clerk may reasonably limit the number of persons representing the same organization who are permitted to observe at the same time.

The public may [observe all aspects](#) of the election process, including the counting of mail-in ballots and signature verification. Further, [Wisconsin](#) allows any member of the public to watch the ballot tabulation process. Essentially, any person with a desire to oversee this process can do so.