



**THE APPOINTMENT, RIGHTS AND DUTIES OF
ELECTION CHALLENGERS AND POLL WATCHERS**

Michigan Department of
State Bureau of Elections
October 2020

This publication is designed to familiarize election inspectors, voters, interested organizations, and others with the rights and duties of election challengers and poll watchers. Election challengers and poll watchers who follow the guidance provided in this publication can play a constructive role in verifying that the election is conducted openly and fairly.

Challenges must not be based on an “impression” that the voter is ineligible due to his or her manner of dress; inability to read or write English; the voter’s perceived race, ethnic background, physical or mental disability, support for or opposition to a candidate or political party; or the voter’s need for assistance with the voting process. A challenger cannot challenge a voter’s right to vote unless the challenger has “good reason to believe” that the voter is not eligible to vote in the precinct.

A voter cannot be challenged simply because he or she does not have or is not in possession of acceptable picture ID, as long as the voter signs the *Affidavit of Voter Not in Possession of Picture ID*. However, a voter who is unable to show picture identification can be challenged if a challenger has good reason to believe that the person is not qualified to vote in the precinct, independent of the voter’s inability to provide acceptable picture ID.

NOTE for November 2020 general election: Pursuant to an MDHHS Emergency Order of October 9, 2020 (and any subsequent orders replacing it), all challengers and poll watchers must wear a face covering over their nose and mouth when in a polling location.

Abuse of the challenge process can have serious consequences including the disenfranchisement of qualified voters, criminal violations, and legal challenges over the election results. The precinct chairperson has the authority to expel challengers who abuse the challenge process.

Voters who have questions regarding election challengers or poll watchers must seek assistance from election inspectors or the city or township clerk. Election inspectors should direct any inquiries regarding this publication to their clerk.

Challengers and poll watchers requiring additional information should direct their inquiries to their sponsoring organization and/or legal counsel.

Introduction

Each election is an open and transparent process that may be observed by any interested person. Election challengers may be appointed by political parties and qualified interest groups to observe the election process. A person who wishes to observe but is not a qualified election challenger is commonly called a poll watcher. There are a number of important distinctions between challengers and poll watchers:

ELECTION CHALLENGERS AND POLL WATCHERS: SUMMARY OF RIGHTS AND DUTIES		
	Challengers	Poll Watchers
Must carry credentials issued by appointing authority.	Yes	No
Must be registered to vote in Michigan.	Yes	No
Has the right to challenge a person's eligibility to vote.	Yes	No
Has the right to challenge the actions of election inspectors.	Yes	No
May stand or sit behind processing table.	Yes	No – must remain in public area.
Must wear a face covering over their nose and mouth at all times while inside.	Yes	Yes
Has the right to look at the Pollbook and other election materials.	Yes	Yes – but only as permitted by precinct chairperson and when voting process will not be delayed.
May touch or handle the Pollbook and other election materials.	No	No
May use a video camera or recording device, or the camera or recording features of a smart phone or tablet in polling place or clerk's office.	No	No
May otherwise use a smart phone, tablet, laptop, or other electronic device in polling place or clerk's office.	Yes – if not disruptive.	Yes – if not disruptive.
May use a smart phone, tablet, laptop, camera or other electronic device in absent voter counting board.	No	No
May wear clothing, button, arm band, vest, etc. that identifies organization he or she represents.	No	No
May place tables in the polls.	No	No
Has the right to approach and question voters.	No	No
Can offer assistance to voters.	No	No

May remain in the polling place after the close of polls until the election inspectors complete their work.	Yes	Yes
May obtain the vote results generated in the precinct after the polls close.	Yes	Yes

ELECTION CHALLENGERS

Challenger Eligibility

All election challengers must be registered to vote in Michigan. Additionally, a challenger must not serve as an election inspector in the election, and must not be a candidate for any elective office in the election (except that during the August even-year election, a candidate for precinct delegate may serve as a challenger in a precinct where he or she is not a candidate.)

Appointment of Challengers

Election challengers may be appointed by:

- A political party that is eligible to appear on the ballot in Michigan.
- An organized group of citizens interested in the passage or defeat of a ballot proposal being voted on at the election.
- An organized group interested in preserving the purity of elections and guarding against the abuse of the elective franchise.
- An incorporated organization.

Note that candidates, candidate committees, or any other types of organizations expressly formed to support or oppose candidates are not authorized to appoint challengers.

Political parties may appoint election challengers to serve at partisan and nonpartisan elections, and the appointments may be made at any time through the date of the election. A political party is not required to follow the application process described below in order to appoint election challengers.

However, other sponsoring organizations must successfully complete the appointment authorization application process to appoint challengers. An incorporated organization, a group interested in the adoption or defeat of a proposal on the ballot, or a group interested in preserving the purity of elections and in guarding against the abuse of the elective franchise must file the following with the clerk of the county, city or township where the election will be held, between the 20th and 30th day prior to Election Day:

- A written statement indicating the organization's or group's intention to appoint election challengers and the reason why the right to make the appointments is claimed. The statement must be signed under oath (notarized) by the chief presiding officer, secretary or any other officer of the group or organization; and

- A copy of the challenger identification card which will be carried by the group's or organization's appointed challengers. The identification card must have entry spaces for the challenger's name, the group's or organization's name, the precinct or precincts in which the challenger is authorized to serve, and the signature of a recognized officer of the group or organization.

The county, city or township clerk receiving a challenger appointment authorization application must approve or deny the request **and** notify the group or organization of the decision within two business days. If the application is approved, the clerk must notify all precincts in the jurisdiction of the groups and organizations that have gained the right to appoint challengers at the election before the opening of the polls.

The clerk may deny a challenger appointment authorization application if the group or organization fails to demonstrate that it is qualified to appoint challengers, or the application is not timely filed. If the application is denied, the group or organization may appeal the decision to the Secretary of State within two business days after receipt of the denial. Upon the receipt of an appeal, the Secretary of State must render a decision and notify the organization or group of the decision within two business days. Notice of the decision is also forwarded to the clerk who issued the application denial.

Challenger Identification Cards

A challenger must have in his or her possession a challenger identification card issued by the political party, organization or group he or she represents.

When entering the precinct, the challenger must show the card to the chairperson of the precinct board.

It is recommended that a challenger also wear a badge with the words "ELECTION CHALLENGER," but the badge cannot refer to the challenger's political party or organization.

Challenger Conduct Standards

Challengers must conduct themselves in an orderly manner at all times. A challenger can be expelled from the precinct for unnecessarily obstructing or delaying the work of the election inspectors; touching ballots, election materials or voting equipment; campaigning; or acting in a disorderly manner.

NOTE: If a challenger violates these standards of conduct, an election inspector will ask them to leave. If they refuse to leave, an election inspector will call law enforcement.

- A challenger is prohibited from threatening or intimidating voters entering the polling place, applying to vote, entering a voting station, voting, or leaving the polling place.
- A challenger must have challenger credentials and have in his or her possession a challenger identification card issued by the political party, organization, or group that he

or she represents. If someone shows up without challenger credentials, then they are a poll watcher. See “POLLWATCHERS” section below. If they do not comply with the requirements of a poll watcher, they will be asked to leave. If they do not, law enforcement will be called.

- Challenges must not be made indiscriminately or without good cause.
- Challengers cannot campaign, distribute literature wear campaign apparel or display any campaign material in the polls or within 100 feet of any doorway used by voters to enter the building where the polling place is located.
- A challenger is prohibited from wearing a button, armband, vest, shirt, hat or similar item which identifies the organization he or she represents.
- **Challengers are not authorized to approach voters or talk directly to voters for any reason.**
- Challengers are prohibited from wearing, displaying, or saying anything that suggests or implies they are available to assist voters in any way or answer questions that voters may have.
- Challengers are not authorized to place tables in the polls.
- Challengers may stand behind the processing table, but must give precinct workers ample space to perform their duties and must not hinder or impede voters.
- Challengers are prohibited from using video cameras or recording devices in the polling place, including the camera or recording features of a smart phone or tablet.
- Challengers are prohibited from using phones, laptops, tablets or other electronic devices in an absent voter counting board.

In the polling place. Note that a challenger may be appointed to serve in more than one precinct. Up to two challengers appointed by the same political party or sponsoring organization may simultaneously serve in the same precinct. If two challengers are representing a political party or an organization in the precinct, only one of the challengers is authorized to challenge at any given time. The challengers may alternate who possesses the authority to challenge, but must advise the precinct board each time the authority is transferred.

In the absent voter counting board. Only one challenger per political party or sponsoring organization may serve in an absent voter counting board. Note that all electronic devices, including phones, laptops, tablets, cannot be used in an absent voter counting board. Additionally, any challenger who serves in an absent voter counting board is required to remain in the room where the absent voter counting board is working until polls close at 8:00 p.m., and must take and sign the following oath:

“I (name) do solemnly swear (or affirm) that I shall not communicate in any way information

relative to the processing or tallying of voters that may come to me while in this counting place until after the polls are closed.”

Rights of Challengers

Election challengers have the right to:

- Observe the election process in voting precincts and absent voter counting boards at a reasonable distance, allowing precinct workers sufficient room to perform their duties.
- Challenge a person's right to vote if the challenger has good reason to believe that the person is not eligible to vote in the precinct.
- Challenge the actions of the election inspectors if the challenger believes that election laws are not being followed.
- Examine the voting equipment before the polls open and after the polls close.
- Observe the processing of voters, but in a manner that does not hinder or impede voters.
- Observe each person offering to vote. (Challengers must respect the voter's right to a secret ballot and cannot monitor voters marking their ballots.)
- Inspect the Applications to Vote, Pollbook, registration list and any other materials used to process voters at the polling place. (When exercising this right, challengers cannot touch any of these materials.)
- Take notes on the persons offering to vote, the election procedures being carried out, and the actions of the precinct board. (Notes may be kept or recorded on a smart phone or tablet, but challengers are prohibited from using the camera or recording features of any electronic device in the polling place.)
- Notify the precinct board of any improper handling of a ballot by a voter or an election inspector; that the 100-foot campaign restriction is being violated; or that any other election law or procedure is being violated.
- Remain in the precinct until precinct inspectors complete their work.

The precinct board must provide space for challengers to enable them to observe all election procedures. Challengers may position themselves behind the election inspectors' table but must give election inspectors sufficient space to work.

Those present in the polls (including election inspectors and voters) are prohibited from threatening or intimidating any challengers present in the polling place.

Types of Challenges

Against a practice or procedure. In addition, challengers may challenge the actions of election inspectors if the challenger believes that election laws are not being followed.

Against a voter. A challenger cannot challenge a voter's right to vote unless the challenger has good reason to believe that the voter is not eligible to vote in the precinct. Challenges must not be based on an "impression" that the voter may be ineligible due to his or her manner of dress; inability to read or write English; the voter's perceived race, ethnic background, physical or mental disability, or support for or opposition to a candidate or political party; or the voter's need for assistance with the voting process.

A voter cannot be challenged simply because he or she does not have or is not in possession of acceptable picture ID, as long as the voter signs the *Affidavit of Voter Not in Possession of Picture ID*. However, a voter who is unable to show picture identification can be challenged if a challenger has good reason to believe that the person is not qualified to vote in the precinct, independent of the voter's inability to provide acceptable picture ID.

Every effort must be made to ensure that challenge procedures are properly carried out. Abuse of the challenge process can have serious consequences including the disenfranchisement of qualified voters, criminal violations, and legal challenges over the election results. The precinct chairperson has the authority to expel challengers who abuse the challenge process.

There are six types of challenges that may be made on Election Day: unqualified voter, absentee voter in the polls, precinct board's failure to issue a challenged ballot when required, challenge against an absent voter ballot, precinct board's failure to comply with election laws, or precinct board's administration of the voter identification requirement.

Unqualified Voter/Voter Lacks Qualifications to Vote. A challenger has the right to challenge a voter if the challenger has good reason to believe that a person who offers to vote: 1) is not a resident of the city or township, 2) is under 18 years of age, 3) is not a United States citizen, or 4) is not registered to vote in the precinct. Generally, these challenges are based on research conducted before Election Day by the challenger or organization he or she represents. In other cases, the voter may make a statement regarding his or her age, residency, registration or citizenship status when offering to vote that gives the challenger good reason to believe that the voter is not qualified to vote in the precinct.

Challenges must be directed to the precinct chairperson before the voter is issued a ballot. After the challenge is made, the chairperson (or an election inspector designated by the chairperson as responsible for supervising the challenge) must ensure it is conducted promptly and courteously. If there are other voters waiting in line, the challenged voter can be taken aside for questioning to avoid processing delays. The challenge proceeds as follows:

1. After the challenge is made, the precinct chairperson or designated election inspector administers the following oath to the voter:

"I swear (or affirm) that I will truthfully answer all questions put to me concerning

my qualifications as a voter.”

2. After the voter takes the oath, the precinct chairperson or designated election inspector questions the voter, confining the inquiry to the person’s qualifications to vote (age, residency, citizenship or registration status).
3. If the answers given under oath prove that the challenged voter is qualified to vote in the precinct, he or she is allowed to vote a specially prepared challenged ballot. **After voting, the voter deposits the ballot in the tabulator under the regular procedure. Challenged ballots are not placed in provisional ballot envelopes unless the voter is required to vote a provisional envelope ballot for some other reason.** However, a challenged voter cannot vote if he or she refuses to take the oath, refuses to answer appropriate questions under oath, or is found to be not qualified to vote through the answers given under oath.
4. A complete record of the challenge must be entered on the Challenged Voters page in the Pollbook. The record must include the name, address and telephone number of the person making the challenge; the reason for the challenge; the time of the challenge; the name, address and telephone number of the person challenged; and any other pertinent information.

Absentee Voter at Polls. A challenger has the right to challenge any voter issued an absentee ballot who appears at the polls to vote on Election Day claiming that he or she never received the absent voter ballot, or that the absent voter ballot was lost or destroyed.

If this type of challenge is made, instruct the voter to either: 1) Surrender the absent voter ballot, or 2) Complete the *Affidavit of Lost or Destroyed Absent Voter Ballot*, an election inspector must contact the clerk to verify that the absent voter ballot was not returned. Allow the voter to vote a specially prepared challenged ballot and enter a complete record of the challenge on the Challenged Voters page in the Pollbook. It is not necessary to question the voter under oath.

Precinct Board’s Failure to Issue a Challenged Ballot When Required: Under the circumstances described below, precinct inspectors must automatically issue a challenged ballot:

1. A voter who refuses to enter the day and month of birth or enters an incorrect birthdate on the *Application to Vote* form is required to vote a challenged ballot.
2. All provisional ballots must be prepared as challenged ballots.
3. If absent voter ballots are processed in the precinct, an absent voter ballot must be prepared as a challenged ballot if the ballot stub is missing or the ballot number does not match the number recorded.
4. A person who registers to vote in the 14 days immediately preceding Election Day without providing a driver’s license or state-issued personal identification card is required to vote a

challenged ballot. (The precinct list or voter registration receipt will indicate whether a challenged ballot is required.)

If a challenger has reason to believe that the precinct board is not issuing a challenged ballot when required, he or she must direct the challenge to the precinct chairperson. If the chairperson rejects the challenge, the challenger may contact the clerk to resolve the matter. The election inspectors must enter a complete record of the challenge on the Challenged Voters page in the Pollbook.

Challenge Against an Absent Voter Ballot. If an absent voter ballot is challenged, prepare the ballot as a challenged ballot and make a notation on the Challenged Voters page in the Pollbook. Proceed with routine processing and tabulation of the ballot.

Precinct Board's Failure to Comply with Election Laws. If a challenger has reason to believe that the precinct board is not following applicable election laws, the actions of the precinct board may be challenged by consulting with the precinct chairperson. If the chairperson rejects the challenge, the challenger may contact the clerk to resolve the matter. The election inspectors must enter a complete record of the challenge in the Pollbook.

Precinct Board's Administration of the Voter Identification Requirement. Every voter who attends the polls must show acceptable picture ID or sign an *Affidavit of Voter Not in Possession of Picture ID*. A challenge may be made if an election inspector attempts to issue a ballot to a voter who has not shown acceptable picture ID nor signed an *Affidavit of Voter Not in Possession of Picture ID*. A challenge may also be made if the challenger has good reason to believe that a person is not qualified to vote in the precinct (i.e., if a voter provides acceptable picture ID with an address that is different than the address in the Pollbook).

A voter cannot be challenged simply because he or she does not have or is not in possession of acceptable picture ID, **as long as** the voter signs the *Affidavit of Voter Not in Possession of Picture ID*. However, a voter who is unable to show picture identification can be challenged if a challenger has good reason to believe that the person is not qualified to vote in the precinct, independent of the voter's inability to provide acceptable picture ID.

Penalties

Michigan election law provides penalties in the event of the following:

- A person submits a challenger appointment authorization application on behalf of a group or organization that is not authorized to appoint challengers.
- A clerk knowingly fails to perform the duties related to the challenger appointment process.
- A person challenges a qualified elector for the purpose of annoying or delaying the voter.
- A challenged elector gives false information regarding his or her qualifications to vote.

- An election official or precinct board prevents a challenger from being present in the polls or refuses to provide a challenger with any conveniences needed for the performance of his or her duties.

POLL WATCHERS

A person who wishes to observe the election process but who is not a qualified election challenger is commonly called a poll watcher. Poll watchers must conduct themselves in an orderly manner at all times. A poll watcher can be expelled from the precinct for acting in a disorderly manner, including by campaigning; threatening or intimidating voters or election inspectors; touching any election equipment; or disrupting the administration of the election.

NOTE: If a poll watcher violates these standards of conduct, an election inspector will ask them to leave. If they refuse to leave, an election inspector will call law enforcement.

Poll watchers:

- Are not required to be registered to vote in Michigan.
- Are subject to the same conduct standards as challengers.
- Cannot be candidates for an elective office to be voted on at the election.
- Are not authorized to challenge a person's right to vote or the actions of the precinct board.
- Are not permitted to position themselves or sit behind the election inspectors' processing table.
- Must sit or stand in the "public area" of the polling place where they will not interfere with the voting process.
- Are not authorized to approach or talk to voters for any reason.
- Are allowed to view the Pollbook at the discretion of the precinct board chairperson.

Poll watchers who wish to be present in an absent voter counting board must remain in the room in which the absent voter counting board is working until close of the polls at 8:00 p.m., and are required to take and sign the following oath:

"I (name) do solemnly swear (or affirm) that I shall not communicate in any way information relative to the processing or tallying of voters that may come to me while in this counting place until after the polls are closed."