

**California Secretary of State
Proposed Regulatory Action:
Election Observations Rights and Responsibilities**

Proposed Regulation Text

ALL NEW TEXT

These proposed regulations will add Chapter 8.2 to Division 7 of Title 2 of the California Code of Regulations. All sections in Chapter 8.2 are new and proposed for adoption and are, therefore, not underlined in the text.

Title 2. Administration
Division 7. Secretary of
State

Chapter 8.2. Election Observation: Rights and Responsibilities

20871. General Provisions.

The purpose of this Chapter is to establish uniform requirements and procedures for elections officials and any person who observes the election process in California. These regulations are intended to increase transparency in the elections process and shall apply to all elections in California conducted under the California Elections Code.

*Note: Authority cited: Section 12172.5, Government Code; Section 10, Elections Code.
Reference: Section 10, Elections Code.*

20872. Definitions.

As used in this Chapter, the following terms have the following definitions:

- (a) “Bona fide association of citizens” means an organization or association that is organized by articles of incorporation, articles of organization, statement of organization, articles of association, partnership documents, bylaws, or any similar document.
- (b) “Central counting site” means a location or locations where ballots are counted by the elections official.
- (c) “County elections official” shall mean the county registrar of voters or county clerk.
- (d) “County election observer panel member” means individuals, interested organizations, groups, and entities who have accepted an invitation from their county elections official to observe and provide feedback in an official capacity on the election process.
- (e) “County election observation plan” shall mean the official plan designed by the county elections official and submitted to the Secretary of State that outlines the county’s election observation processes and protocols as set forth in Section 20877.

- (f) “Election observer” means a person who observes the conduct of elections in California.
- (g) “Elections official” shall have the meaning set forth in Elections Code section 320. As used in this Chapter, an elections official has decision making authority for election processes and activities.
- (h) “Election worker” is a person who assists with the conduct of the election. An election worker includes poll workers, employees of the elections official, volunteers, and any other person designated or assigned by the elections official to assist with the conduct of the election.
- (i) “Observe” means to watch, view, listen, take notes and ask questions.
- (j) “Polling place” shall have the meaning set forth in Elections Code section 338.5, which includes vote centers, and shall also include any satellite office as provided in Elections Code section 3018.
- (k) “Precinct board” shall have the meaning set forth in Elections Code section 339.
- (l) “Precinct” shall have the meaning set forth in Elections Code section 338.6.
- (m) “Sufficiently close” shall mean the distance determined by the elections official that enables an observer to observe the complete processing of vote-by-mail ballots and vote-by-mail identification envelopes, except that confidential voter registration information identified in Elections Code section 2194 shall not be disclosed.
- (n) “Vote-by-mail ballot processing” shall mean the activities set forth in Elections Code section 15101 and shall also include the activities set forth in Section 20873(c).
- (o) “Voting equipment” as used in this Chapter shall include the following:
- (1) “Ballot on demand system” as defined in Elections Code section 303.4,
 - (2) “Electronic poll book” as defined in Elections Code section 2550,
 - (3) “Vote tabulating device” as defined in Elections Code section 358,
 - (4) “Voting device” as defined in Elections Code section 360,
 - (5) “Voting machine” as defined in Elections Code section 361,
 - (6) “Voting system” as defined in Elections Code section 362, and
- (p) “Voter list” shall have the same meaning set forth in Elections Code section 359.2.

*Note: Authority cited: Section 12172.5, Government Code; Section 10, Elections Code.
Reference: Sections 303.4, 320, 335.5, 338.5, 338.6, 339, 358, 359.2, 360, 361, 362, 2194, 2550, 3018, 15101, and 15104, Elections Code.*

20873. Rights of Election Observers.

- (a) As provided in Elections Code section 15004(a), each political party qualified to participate in an election in California may employ and may have present at the central counting site or sites, not more than two representatives to check and review the preparation and operation of the tabulating devices, their programming and testing, and have the representatives in attendance at any or all phases of the election.
- (b) As provided in Elections Code section 15004(b), any bona fide association of citizens or a media organization may employ and may have present at the central counting site or sites, not

more than two representatives to check and review the preparation and operation of the tabulating devices, their programming and testing, and have the representatives in attendance at any or all phases of the election.

(c) An election observer shall have the right to observe the processing of vote-by-mail identification envelopes and vote-by-mail ballots pursuant to Elections Code section 15104.

Observers shall be allowed sufficiently close access to enable them to observe the vote-by-mail identification envelopes, and the signatures and dates thereon. The processing of vote-by-mail identification envelopes and vote-by-mail ballots includes, but is not limited to, the following:

(1) Securing vote-by-mail ballots to prevent tampering with them before, during and after the ballots are counted.

(2) Verifying signatures on the vote-by-mail identification envelope, which may include the use of signature verification technology, in accordance with Section 20960.

(3) Identifying whether there are multiple signatures on the vote-by-mail identification envelope, and whether there is more than one ballot in the vote-by-mail identification envelope and verifying signatures accordingly pursuant to Section 20991.

(4) Checking the opened vote-by-mail identification envelopes to ensure that all of the contents have been removed.

(5) Duplicating damaged or defective ballots, votes cast on a sample ballot, or ballots cast using a remote accessible vote-by-mail system in accordance with Elections Code section 15210.

(6) Checking postmarks on vote-by-mail identification envelopes or the time and date stamps on envelopes or packages delivered by a bona fide private mail delivery company received after Election Day, and checking postmarks on vote-by-mail ballots that are enclosed in an envelope or package delivered by a bona fide private mail delivery company.

(7) Checking the statewide voter registration system to confirm that the voter has not already voted, or that the conditional voter registration is proper.

(8) Adjudicating scanned images of hand-marked ballots where the ballot tabulator cannot discern the voter's choice.

(9) Counting valid ballots.

(10) Making notes on rejected ballots in accordance with Elections Code section 15154.

(d) An election observer shall have the right to make challenges pursuant to Section 20879.

(e) An election observer shall have the right observe any proceedings at a polling place before it opens to the public, during polling hours, and after the polls close.

(f) An election observer has the right to inspect any information available from the voter list that is or should be posted or otherwise available at the polling place or at the office of the elections official pursuant to Elections Code sections 14223 and 14294. However, the inspection shall occur at a time or in a manner which will not impede, interfere, or interrupt the normal process of voting.

(g) An election observer has the right to observe the election processes and activities at the central counting site beginning when the elections official starts processing vote-by-mail ballots, through Election Day, and until the elections official has certified the results of the election.

(h) An election observer has the right to observe the activities of the semifinal official canvass

and the official canvass as defined in Elections Code sections 353.5 and 335.5, respectively.

(i) An election observer has the right to ask questions of poll workers and receive answers so long as they do not interfere with the conduct of any part of the voting process. If questioning disrupts the execution of the duties of the precinct board, the precinct board may discontinue responding to questions from that observer. The elections official may designate a member of the precinct board to whom an election observer may ask questions at the polling place. If the elections official has not designated a person, or that person is not available, the observer may pose questions to any member of the precinct board.

(j) An election observer has the right to ask questions and receive answers during the observation of an elections process or activity so long as they do not interfere with the conduct of the elections process or activity being observed. If questioning disrupts the execution of the duties of the elections official, the elections official may discontinue responding to questions from that observer. The elections official may designate a person to whom an election observer may ask questions about the process being observed. If the elections official has not designated a person, or that person is not available, the observer may pose questions to the elections official or to any election worker.

(k) If the elections official utilizes signature verification technology to verify signatures on vote-by-mail identification envelopes, an observer shall be permitted to ask questions about that process and technology. The elections official may designate a person to whom an election observer may ask questions about signature verification technology. If the elections official has not designated a person, or that person is not available, the observer may pose questions to the elections official or to any election worker.

(l) An election observer may use an electronic device, including a smartphone, tablet, or other handheld device, at a polling place pursuant to Elections Code section 2302 and any restrictions established by the elections official as authorized in Section 20876(b).

(m) An international election observer, as defined in Elections Code section 2301(b), shall have the same rights and responsibilities as any other person who observes election activities.

Note: Authority cited: Section 12172.5, Government Code; Section 10, Elections Code.

Reference: 335.5, 353.5, 2300, 2301, 2302, 14223, 14240, 14251, 14294, 15004, 15101, 15104, 15105, 15106, and 15210, Elections Code.

20874. Rights of Elections Officials.

(a) The elections official, at their discretion, while maintaining the right to observe the elections process and ensuring that observers have the ability to see and view the election process or activity being observed, may determine the distance at which the observer(s) shall observe any election process or activity. In making its determination, the elections officials may take into consideration, among other things, the following:

- (1) the size and area of the polling place;
- (2) the size and configuration of the building and the elections office;
- (3) the presence and path of travel of staff;
- (4) the size and configuration of the location where ballots are being processed and

counted;

(5) the elections official's staffing levels and the number of observers who are requesting access to observe a particular process;

(6) the maintaining of security and limiting observer access to voting equipment to ensure that it cannot be touched or tampered with;

(7) the maintaining of privacy and security of the ballot and the voter's confidential information, which does not include the voter's signature or address for the purpose of observing the processing of vote-by-mail identification envelopes;

(8) the elections process that is being observed (for example, observers shall have sufficiently close access to view the processing of vote-by-mail ballots);

(9) the lighting in the location where the elections activity or process is occurring;

(10) the angle at which the observer can view the elections activity or process;

(11) the right of a voter to vote safely, securely, and free from intimidation or corruption;

(12) the safety and security of elections officials, workers, and the public, which may include any health and safety measures or requirements in place at the time observation is occurring;

(13) the use of video displays to magnify voting materials and closed-circuit video displays of election processes or activities;

(14) technological limitations of the elections official's office; and,

(15) the maintaining of security and limiting observer access to other county or city departments.

(b) At the discretion of the elections official, an election observer may be required to wear election official-issued identification to ensure that observers are readily identifiable by name.

(c) The elections official may designate a person to whom an election observer can ask questions and present a challenge(s) during the observation process. The designation may either be in writing or verbal, as determined by the elections official.

(d) The elections official may designate a person to whom an election observer may present a challenge during the processing of vote-by-mail identification envelopes and vote-by-mail ballots. The designation may either be in writing or verbal, as determined by the elections official.

(e) The elections official may require an election observer to remain silent inside the observation area if the talk from or the conduct of an observer is disrupting the elections activity or process being observed, unless the observer is posing a question to the person designated by the elections official to respond to questions or any other inquiries.

(f) If an election observer is not following the observation rules provided for and developed pursuant to this Chapter, the elections official or their designee shall give a verbal or written warning to that observer that they shall comply with the observation rules. The warning shall include an explanation of what observation rules are not being complied with. However, if an election observer continues to not comply with the observation rules, the elections official or their designee may require an election observer to leave the observation area, the premises, or both. In addition, if the situation warrants, the elections official or their designee may require an election observer to leave the observation area, the premises, or both immediately.

(g) Subject to the provisions of Elections Code section 15004, the elections official may limit the

number of election observers permitted in an observation area in order to prevent interference with the conduct of voting and elections processes.

(h) Subject to the provisions of Elections Code section 15004, in the event there are more observers than can be accommodated at a particular site, the elections official may limit the number of observers. In addition, the elections official may provide for a rotation of observers or provide a random lottery-type drawing to provide an equal opportunity for those present to observe the elections process or activity.

(i) In accordance with Section 20876(b), to ensure the safety and security of election workers and to prevent interference with the conduct of the elections process, the elections official may restrict the size and type of items the election observer can bring into the location where observation is taking place.

(j) The elections official may develop and provide additional written rules and procedures, but those additional written rules and procedures shall be consistent with the intent of this Chapter and the provisions of the California Elections Code.

Note: Authority cited: Section 12172.5, Government Code; Section 10, Elections Code.

Reference: Sections 10 and 15004, Elections Code.

20875. Duties of Election Observers.

(a) Upon entering at any polling location, central counting site, or any other location where election processes or activities are occurring, an election observer shall check in at the site designated by the elections official.

(b) The elections official has the discretion to require an observer to wear identification provided by the elections official. An election observer may also wear their own identification at any time, but that identification shall not include any electioneering information or information that could intimidate a voter.

(c) At all times while observing, an election observer shall not disrupt or interfere with the election process or activity being observed, and shall follow the procedures and requirements provided in this Chapter and any additional written rules and procedures established by the elections official in accordance with Section 20874(j).

Note: Authority cited: Section 12172.5, Government Code; Section 10, Elections Code.

Reference: Section 10, Elections Code.

20876. Duties of Election Officials.

(a) The elections official shall make available written observation rules and procedures for the election process being observed to the election observers or post the written observation rules and any written procedures for the election process being observed conspicuously at any location where observation is taking place. If the elections official has their own website, the elections official shall also make the written observation rules and procedures available on that elections

website.

(b) The elections official shall, consistent with the intent of this Chapter and the provisions of the California Elections Code, establish written security rules for observation. These security rules may include, but shall not be limited to, the use of sign-in sheets and identification and prohibiting or limiting the use of cell phones, pagers, cameras, and other audio or video equipment or electronic devices, if the use of such item(s) is interfering with or will interfere with the conduct of the elections process, the privacy of voters, or if the use of those items compromises the security of the location where observation is taking place.

(c) The elections official shall maintain the integrity of the election process and shall, while considering the content of this Chapter, have the discretion to determine what constitutes election observer misconduct or interference. Examples of election observer misconduct or interference may include, but are not limited to unauthorized touching of voting equipment or elections officials, obstructing ballot transportation and handling, threatening elections officials, election workers, and voters, and attempting to view confidential voter registration information.

(d) The elections official shall provide notice(s) to the public which shall contain the specific date(s), time(s) and place(s) of the election process or activity that may be observed by the public. The notices shall be conspicuously posted on the elections official's website if the elections official has their own website, and at the location where the elections activity or process is taking place. The following notice(s) are required, as applicable:

- (1) one percent manual tally (Elections Code section 15360),
- (2) logic and accuracy testing (Elections Code section 15000),
- (3) early ballot retrieval (Elections Code section 14422; Section 20142), and
- (4) vote-by-mail processing and counting (Elections Code section 15104, subdivision (c)).

(e) If the elections official requires an election observer to wear identification while observing a particular elections process or activity, a designated area for the election observers to check in and receive identification shall be provided.

(f) An elections official need not delay or interrupt scheduled operations and processes solely because an election observer is, will be, or is not yet present, and shall not halt scheduled operations because an election observer is present.

(g) Except as provided in Elections Code section 2194(c)(2), when vote-by-mail ballot identification envelopes and vote-by-mail ballots are being processed, the elections official shall use reasonable measures to ensure that the voter registration information that is deemed confidential under Elections Code section 2194 is not visible to election observers.

(h) In the event an elections official provides a live video feed for a remote observation for the observation of an elections activity or process in response to a threat or emergency that impairs in-person observation of election activities and processes, the elections official shall provide a mechanism for an election observer to ask questions about the activity or process being conducted or make a challenge to that activity or process.

Note: Authority cited: Section 12172.5, Government Code; Section 10, Elections Code.

Reference: Sections 336.5, 3203, 14422, 15104, 15105, 15360, and 15367, Elections Code.

20877. County Election Observation Plans

(a) Each county elections official shall develop and submit to the Secretary of State, thirty (30) calendar days prior to the date of the statewide election, a county election observation plan that outlines election observation processes and protocols. The county elections official shall also make available to the public a copy of the county election observation plan on the county website, if the county elections official has their own website, and in person at the county elections office.

(b) The county election observation plan shall include the following information:

(1) County information, which shall include the following:

(A) Name of county.

(B) Name of county contact.

(C) County contact's telephone number and email address.

(D) Voting technology used in county for each election.

(2) Name of voting system used by the county and the version number of that voting system.

(3) Whether the county uses a central tabulator, a precinct tabulator, or both.

(4) Type of ballot marking device used by the county for accessible voting.

(5) The name of the electronic poll book or EMS Lite used by the county, if any.

(6) The name of the ballot on demand system used by the county, if any.

(7) Any existing county election observation rules and procedures, which may include,

(A) A list of election observer rights, duties, and conduct as described in this Chapter;

(B) A list of elections officials rights and duties as described in this Chapter;

(C) A list of observable activities (i.e., pre-election, election day, and post-election);

(D) County check-in procedures for election observers;

(E) General description of security procedures used by the county for chain of custody of voting equipment and ballots;

(F) Designated observation areas, which are located as to allow continuous observation and prevent the need to interrupt or obscure the election observer's view at any point during the polling; and

(G) Designated county point of contact for election observers and back-up point of contact, as needed.

(8) Planned implementation date of county election observer plan.

(9) List of county election observer panel members, if applicable.

(10) County established mechanics of feedback for election observer panel members.

(c) The county shall invite the following to become a member of the county election observer panel, if applicable to the county:

(1) County grand jury

(2) Political party central committees in the county.

(3) The entities and groups identified in Elections Code section 15004, any other group, interested organization, or individual known to the county elections official that has expressed interest in observing the elections process.

(d) The invitations to those individuals and entities described in subdivision (c) shall be sent between 90 to 30 days prior to the day of the election.

(1) After the county elections official sends the invitations, if any individual or entity accepts the invitation to become part of the county election observer panel, the county elections official shall appoint that individual or entity to the county election observer panel and issue that individual or

entity an appointment letter appointing them to the county election observer panel and to introduce the panelist(s) to the precinct workers.

(2) The county elections official shall prepare materials for each panelist which shall include, but not be limited to, a list of all polling places in the county for the specific election, as well as the central counting site location and hours of operation.

(3) The county elections official shall provide the county elections observer panel members, a checklist or questionnaire to provide feedback regarding the observation for return to the elections official at the end of the observation process.

Note: Authority cited: Section 12172.5, Government Code; Section 10, Elections Code.

Reference: Section 12172.5, Government Code; Sections 10 and 15004, Elections Code.

20878. Conduct of Election Observers.

(a) In order to minimize distraction or disruption an elections observer shall not:

(1) Interfere with the:

(A) retrieval of vote-by-mail ballots from vote-by-mail drop boxes and vote-by-mail dropoff locations, processing of vote-by-mail ballot identification envelopes, or the processing and counting of vote-by-mail ballots.

(B) conduct of the election in general, or disrupt any other elections activity or process.

(2) Touch or handle any ballots.

(3) Physically handle any voting equipment or voting materials.

(4) Move or rearrange tables, chairs, or voting booths at the polling place or central counting site without the express permission of the elections official.

(5) Sit at the elections official worktables or view confidential voter information on any computer terminal or document, except as provided in Elections Code section 2194(c)(2).

(6) Engage in any electioneering activities.

(7) Display any political party or campaign material or wear political party or campaign badges, buttons or apparel.

(8) Solicit a vote, speak to a voter on the subject of marking the voter's ballot while electioneering, or communicate with voters regarding their qualification to vote within 100 feet of the locations identified in Elections Code section 319.5. However, an election observer may conduct exit polling of voters, provided it is conducted at least 25 feet away from the locations identified in Elections Code section 319.5. This provision shall not apply to a voter who has asked for assistance casting their ballot.

(9) Wear the uniform of a peace officer, a private guard, or security personnel.

(10) Stop or attempt to stop poll workers or the central counting site workers while they are processing voted ballots. However, the election observer shall retain the right to make a challenge, and the elections official shall determine whether or not the processing of the ballots shall be stopped.

(11) Use the elections officials' phones, computers, or any other polling place equipment at polling places or the central counting site.

(12) Eat or drink in a polling place or the central counting site without the express permission of the elections official.

- (13) Assist in operations at any polling place or the central counting site without the express permission of the elections official.
- (14) Intentionally prevent other elections observers from observing election materials or an elections process or activity.
- (15) Enter secure areas without the express permission of the elections official.
- (16) Enter any area other than an identified observation area without the express permission of the elections official.
- (b) An election observer shall refrain from touching an elections official.

*Note: Authority cited: Section 12172.5, Government Code; Section 10, Elections Code.
Reference: Sections 319.5, 338.5, 3018, 2194, 15104, and 18370, Elections Code.*

20879. Voter Challenges.

(a) During the processing of vote-by-mail identification envelopes and vote-by-mail ballots, an elections observer shall have the right to make challenges as provided in Elections Code section 15104(b).

(1) Election observers and the groups identified in Elections Code section 15104(b) shall be permitted to observe and challenge the manner in which the vote-by-mail ballots are handled, from the processing of vote-by-mail ballot identification envelopes through the counting and disposition of the ballots.

(2) Election observers may challenge whether those individuals handling vote-by-mail ballots are following established procedures, including all of the following:

(A) Verifying signatures on the vote-by-mail ballot identification envelopes by comparing them to the signature(s) in the voter's registration record in accordance with Section 20960.

(B) Accurately duplicating damaged or defective ballots in accordance with Elections Code section 15210.

(C) Securing vote-by-mail ballots to prevent tampering with them before they are counted on Election Day.

(3) Challenges to a vote-by-mail voter may be made for the same reasons as those made against a voter at a polling place. Additionally, a challenge may be entered on the grounds that the vote-by-mail ballot was not timely received, or that the voter is imprisoned for a conviction of a felony. These challenges shall be made prior to the opening of the identification envelope of the challenged vote-by-mail voter.

(b) As provided in Elections Code section 15106, because the voter is not present, the challenger shall have the burden of establishing extraordinary proof of the validity of the challenge at the time the challenge is made. An example of such proof would be if a challenger alleges that a vote-by-mail ballot was cast by a voter who was deceased before vote-by-mail ballots were issued by the elections official, and the challenger provided a copy of that voter's death certificate to the elections official showing that the voter was deceased prior to the time vote-by-mail ballots were issued. Any doubt in the interpretation of the Elections Code applicable to the challenge shall be resolved in favor of the challenged voter.

(c) The elections official shall have the discretion to halt challenges from a person or group if

multiple challenges are being made by the same person or group, and those challenges are disrupting the processing of the vote-by-mail identification envelopes.

(d) As provided in Elections Code section 14240, only a member of the precinct board has the authority to challenge a voter's right to vote. An election observer is not authorized to directly challenge a voter.

(e) An election observer requesting a challenge under Elections Code section 14240(c) has the burden of providing evidence to the elections official that establishes, at a minimum, probable cause for the requested challenge. Any doubt in the interpretation of the provisions of the California Elections Code shall be resolved in favor of the challenged voter.

(f) The elections official has the discretion as to whether or not a challenge made during the processing of vote-by-mail identification envelopes and vote-by-mail ballots can be made verbally or in writing.

(g) In the event the elections official determines that challenges appear frivolous or meritless, the elections official shall have the right to halt the challenge process for those making the frivolous or meritless challenges in order to prevent interference with the conduct of the elections activity or process being undertaken.

(h) The elections official shall develop written procedures for maintaining, reviewing, and determining the outcome of challenges made by elections observers. These procedures shall include retaining the name and organization (if applicable) of the challenger, a description of the proposed issue, date and time issue was reported, the type of election equipment used at the location/station where the problem was noted (identification number, make, model, and serial number), and pictures of sufficient quantity depicting the right details and positions necessary to document the problem(s) associated with the challenge. These procedures shall be made available to election observers where an elections activity or process is occurring.

(i) Upon the resolution of a challenge made by an election observer, the elections official shall provide the election observer with the disposition of the challenge as soon as is reasonably practicable. The elections official must ensure that no confidential voter registration information is disclosed when providing the disposition of the challenge.

Note: Authority cited: Section 12172.5, Government Code; Section 10, Elections Code.

Reference: 14240, 14251, 15101, 15104, 15106, and 15210, Elections Code.