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

These proposed regulations will add Chapter 8.2 to Division 7 of Title 2 of the California Code of Regulations. All new sections in Chapter 8.2 are 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


The purpose of this Chapter is to establish guidelines and procedures for elections officials and any person who observes the election process in California.


20872. Definitions.

As used in this Article, 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 county elections official.
(c) “Election observer” means a person who observes the conduct of elections in California.
(d) “Election Observer Panel” means individuals or entities invited by the county election officials to observe and provide feedback in an official capacity on the election process.
(e) “Elections official” shall have the meaning set forth in Elections Code section 320. In addition, poll workers, elections employees, and volunteers shall be considered an “elections official” for the purposes of this Chapter.
(f) “Observe” means to watch, view, take notes and ask questions.
(g) “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 where election activity occurs and the office of the county elections official.
(h) “Precinct board” shall have the meaning set forth in Elections Code section 339.
(i) “Precinct” shall have the meaning set forth in Elections Code section 338.6.
(j) “Sufficiently close” shall mean the distance that enables an observer to observe the processing of vote-by-mail ballots and vote-by-mail identification envelopes without violating paragraph (1) of subdivision (b) of Section 2194.
(k) “Vote-by-mail ballot processing” shall mean the activities set forth in Elections Code section 15101.

(l) The term “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) “Vote tabulating device” as defined in Elections Code section 358,
(3) “Voting device” as defined in Elections Code section 360,
(4) “Voting machine” as defined in Elections Code section 361,
(5) “Voting equipment” as defined in Elections Code section 362, and

(m) “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.

20873. Rights of Election Observers.

(a) Individuals and groups identified in Elections Code section 15004 shall be allowed to observe the preparation and operation of the tabulating devices, their programming and testing.

(b) An election observer shall be permitted to observe the processing of vote-by-mail ballots and vote-by-mail identification envelopes 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 thereon and challenge whether those individuals handling vote-by-mail ballots are following established procedures.

(1) The processing of vote-by-mail ballots and vote-by-mail identification envelopes includes, but is not limited to, the following:
(A) Securing vote-by-mail ballots to prevent tampering with them before, during and after the ballots are counted.
(B) Verifying signatures on the vote-by-mail identification envelope.
(C) 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.
(D) Checking the opened vote-by-mail identification envelopes ensure that all of the contents have been removed.
(E) Duplicating damaged or defective ballots, or ballots cast using a remote accessible vote-by-mail system.
(F) Checking postmarks on vote-by-mail identification envelopes received after Election Day.
(G) Checking the statewide voter registration system to confirm that the voter has not already voted, or that the conditional voter registration is proper.
(H) Adjudicating scanned images of hand-marked ballots where the ballot tabulator cannot discern the voter’s choice.
(I) Counting valid ballots.

(c) An elections observer shall have the right to present a challenge, prior to the opening of the vote-by-mail identification envelope of a challenged vote-by-mail voter, for the same reasons as challenges may be made against a voter at a polling place under Elections Code
section 14240. Additionally, an elections observer may enter a challenge 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.

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

(e) An election observer shall be permitted to inspect any information available from the voter list that is posted or otherwise available at the polling place or at the office of the elections official pursuant to Elections Code sections 14223 and 14294.

(f) An election observer shall be permitted to observe election-related activities at the central counting site on Election Day.

(g) An election observer shall be permitted to observe the activities of the official canvass and the semiofficial canvass as defined in Elections Code sections 335.5 and 353.5.

(h) An election observer shall be permitted to ask questions of poll workers 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.

(i) An election observer shall be permitted to ask questions of supervisors at the central counting site so long as they do not interfere with the conduct of the election process. If questioning disrupts the execution of the duties of the elections official, the elections official may discontinue responding to questions.

(j) Notwithstanding subdivisions (h) and (i), an election observer at a polling location may only ask questions of a person designated by the county election official. If the county 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.

(k) An election observer shall not be prohibited from using an electronic device, including a smartphone, tablet, or other handheld device, at a polling place or central counting site pursuant to Elections Code section 2302, unless the use of that electronic device conflicts with the provisions set forth in Section 20786(b).

(l) 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, 14294, 15004, 15101, 15104, and 15105, Elections Code.

20874. Rights of County Elections Officials.

(a) The county elections official, at their discretion, while maintaining the right to observe the elections process, may determine the distance at which the observer(s) shall observe any election process or activity. In making its determination, the county 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/or 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 county elections official’s staffing levels and the number of observers who are requesting access to a particular process;
(6) how accessible the voting equipment is to the observers to ensure that it cannot be touched or tampered with;
(7) maintaining privacy and security of the ballot and/or the voter’s confidential information; and,
(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).

(b) The county elections official shall require an election observer to wear identification to ensure that observers are readily identifiable.

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

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

(e) The county elections official may require an election observer to remain silent inside the observation area, 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/or developed pursuant to this Chapter, the county elections official shall give a verbal or written warning to that observer that they shall comply with the observation rules. However, if an election observer continues to not comply with the observation rules, a county elections official may require an election observer to leave the observation area and/or the premises.

(g) The county elections official may restrict the number of election observers that are permitted in an observation area in order to prevent interference with the conduct of the voting and elections process.

(h) The county elections official may restrict the items the election observer can bring into the polling place or central counting site that they are observing such as large bags, backpacks or similar items, if that item is interfering or will interfere with the conduct of the elections process.

(i) The county elections official may develop and provide additional written rules and procedures, but those additional written rules and/or 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: Section 10, Elections Code.

20875. Duties of Election Observers.

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

(b) At all times while observing, an election observer shall wear identification provided by the elections official. An observer may also wear their own identification, but that identification
shall not include any electioneering information or information that would intimidate a voter.

(c) At all times while observing, an election observer shall not be disruptive to the election process and follow the procedures and requirements provided in this Chapter and any additional written rules and/or procedures established by the elections official in accordance with Section 20874(i).

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

20876. Duties of County Election Officials.

(a) The county elections official shall make available observation rules and/or any written procedures for the election process being observed, to the observers or post the observation rules and/or any written procedures for the election process being observed conspicuously at any location where observation is taking place.

(b) The county elections official shall, consistent with the intent of this Chapter and the provisions of the California Elections Code, establish 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, or if the use of those items compromises the security of the location where observation is taking place.

(c) The county elections official shall maintain the integrity of the election process and shall have the discretion to determine what constitutes observer misconduct or interference.

(d) The county elections official shall provide notice(s) to the public which shall contain the specific date(s), time(s) and place(s) of the election related activity that may be observed by the public. The following notice(s) are required, as applicable:

(1) one percent manual tally (Elections Code section 15360);
(2) risk limiting audit program (Elections Code section 15367);
(3) logic and accuracy testing (Elections Code section 15000);
(4) early ballot retrieval (Elections Code section 14422), and
(5) vote-by-mail processing and counting (Elections Code section 15104, subdivision (c)).

(e) The county elections official shall have a designated area for the election observers to check in and receive identification.

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

(g) Each county shall develop and submit to the Secretary of State, sixty (60) calendar days prior to the date of the statewide election, a County Election Observation Plan that outlines election observation processes and protocols. The county shall also make available to the public a copy of the County Election Observation Plan either on the county website or in person at the county elections office.

(1) The County Election Observation Plan shall include the following information:

(A) County Information, which shall include the following:

(i) Name of county.
(ii) Name of county contact.
(iii) County contact’s telephone number and email address.
(iv) Voting technology used in county for each election.
B) Name of voting system used by the county and the version number of that voting system.
(C) Whether the county uses a central tabulator, a precinct tabulator, or both.
(D) Type of ballot marking device used by the county for accessible voting.
(E) The name of the electronic poll book or EMS Lite used by the county, if any.
(F) The name of the ballot on demand system used by the county, if any.
(G) Any existing county election observation rules and procedures, which may include,
   (i) A list of election observer rights, duties, and conduct as described in this Chapter;
   (ii) A list of elections officials rights and duties as described in this Chapter;
   (iii) A list of observable activities (i.e., pre-election, election day, and post election);
   (iv) County check-in procedures for election observers;
   (v) County General description of security procedures used by the county for chain of custody of
       voting equipment and ballots;
   (vi) Designated observation areas; and
   (vii) Designated county point of contact for election observers and back-up point of contact, as
        needed.
(H) Planned implementation date of County Election Observer Plan.
(I) List of County Election Observer Panel members, if applicable.
(J) County established mechanics of feedback for panel members, if applicable.
(2) The county shall invite the following to become a member of the County Election
Observer Panel, if applicable to the county:
(A) County grand jury
(B) Political party central committees in the county.
(C) Any group or individual known to the county elections official that has expressed interest in
    observing the elections process.
(3) The invitations to the entities described in subdivision (2) shall be sent between 90 to 30
    days prior to the day of the election.
(A) After the county elections officials 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 entity
    or individual an appointment letter appointing them to the County Election Observer Panel and to
    introduce the panelist(s) to the precinct workers.
(B) The 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.
(C) The elections official may provide the County Election Observer Panel members, a
    checklist and/or questionnaire to provide feedback regarding the observation that shall be
    returned to the elections official at the end of the observation process.

Note: Authority cited: Section 12172.5, Government Code; Section 10, Elections Code.
Reference: Sections 336.5, 3203, 14215, 14422, 15104, 15015, 15360, and 15367, Elections
Code.

20877. Conduct of Election Observers.
(a) In order to minimize distraction or disruption an elections observer shall not:
(1) Interfere with the conduct of the election. An election observer shall not physically handle
    any voting materials without the express permission of the elections official.
(2) Physically handle any voting equipment.
(3) Move or rearrange tables, chairs, or voting booths at the polling place or central
counting facility without the express permission of the elections official.
(4) Sit at the elections official worktables or view confidential voter information on any
computer terminal or document.
(5) Engage in any electioneering activities.
(6) Display any political party or campaign material or wear political party or campaign
badges, buttons or apparel.
(7) Solicit a vote or speak to a voter on the subject of marking the voter’s ballot or communicate
with voters regarding their qualification to vote within 100 feet of the locations identified in
Elections Code section 319.5. However, an 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.
(A) This provision shall not apply to a voter who has asked for assistance casting their ballot.
(8) Wear the uniform of a peace officer, a private guard, or security personnel.
(9) Stop or attempt to stop poll workers or the central counting site workers while they are
processing ballots.
(10) Use the elections officials’ phones, computers, or any other polling place equipment at
polling places or the central counting site without the express permission of the elections official.
(11) Eat or drink in a polling place or the central counting site without permission of the
elections official.
(12) Assist in operations at any polling place or the central counting site without express
permission of the elections official.
(13) Intentionally prevent other elections observers from observing materials or a process.
(14) Enter secure areas without express permission of the elections official.
(15) 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.

20878. Voter Challenges.
(a) 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.
(b) An election observer is not authorized to directly challenge a voter. However, an election
observer may, pursuant to Elections Code section 14240(c), provide written evidence to a
member of the precinct board concerning the residence or other voting qualifications of any
person or persons, with the express or implied suggestion, request, or demand that the person or
persons be challenged. The precinct board member may, upon review, challenge a voter based
upon that evidence.

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