

## **Nevada Election Board Officers: Rules and Constraints**

In Nevada, election board officers (Nevada’s legal term for poll workers) play an important role in administering elections. Their election duties range from opening and closing polling places to assisting voters and preserving peace and good order at the polls. In recent years, Nevada — like other states — has worked tirelessly to [recruit](#) election board officers despite shortages. For elections to operate smoothly, it is critical that government officials appoint enough qualified individuals to serve as election board officers (“EBOs”). It is equally critical, however, that these EBOs serve in an impartial and non-disruptive manner.

Recent media [reports](#) have identified efforts around the country to recruit individuals who subscribe to falsehoods about election processes as poll workers. To be sure, government officials should not exclude EBOs based solely on their political beliefs. Officials can, however, take reasonable steps to ensure that EBOs are willing to follow the law and lawful instructions on Election Day.

Nevada, like other states, already has many guardrails in place to prevent EBOs from disrupting the lawful administration of elections. These guardrails are detailed below, along with further actions that government officials can take to avoid disruptions on Election Day.

### **Legal Constraints on Election Board Officers**

#### **Eligibility**

**Applicants must meet certain eligibility requirements under Nevada law.** In Nevada, county clerks<sup>1</sup> are tasked with appointing EBOs, including one election board chair, to staff each polling location and vote center located within the county.<sup>2</sup> Applicants may apply directly to their county clerk’s office, or the county clerk may accept recommendations from election board chairs.<sup>3</sup> Nevada law requires that all EBOs: (1) be registered to vote in Nevada, (2) not be a candidate for nomination or election, and (3) not be related to a candidate for nomination or election (“within the second degree of consanguinity or affinity”).<sup>4</sup> In practice, some counties impose additional eligibility requirements, such as maintaining a professional demeanor and following written and verbal instructions.<sup>5</sup> Sixteen and seventeen-year-old high school students also may serve as trainee EBOs (but not chairs) provided they obtain parental or guardian approval and permission from their school.<sup>6</sup> And to ensure fairness and the nonpartisan execution of election duties, state law provides that the EBOs for any polling location cannot all be from the same political party.<sup>7</sup>

**EBOs must attend training.** Under Nevada law, the county clerk must train EBOs in “the election laws, duties of election boards, regulations of the Secretary of State, and with the procedure for making the records of election and using the register for election boards.”<sup>8</sup> County

clerks must also train EBOs in how to operate voting machines.<sup>9</sup> EBOs cannot serve in an election without attending this training.<sup>10</sup>

**EBOs must be willing to follow applicable laws and procedures.** Nevada counties generally require that EBOs take an oath or otherwise sign agreements to adhere to certain EBO commitments before opening the polls on Election Day.<sup>11</sup> These commitments include attending the mandatory training; working well as a team member; and following applicable directions, procedures, and instructions from county officials on Election Day.<sup>12</sup> Further, state law provides that any person who helps prepare “mechanical recording devices” (i.e., electronic voting equipment) must take an oath to perform their duties honestly and faithfully.<sup>13</sup> Consistent with these oaths and agreements, county clerks can and should screen out applicants who demonstrate an unwillingness to follow applicable laws and instructions. Counties should not turn away applicants solely based on their viewpoints or beliefs so long as they are consistent with laws governing elections.<sup>14</sup>

### **Chain of Command**

**EBOs must answer only to their designated county officials.** Under Nevada law, EBOs are compensated by the county and appointed and trained by their county clerk.<sup>15</sup> County clerks also maintain the authority to remove and appoint replacement EBOs as necessary.<sup>16</sup> Accordingly, EBOs must answer only to their county clerk (or, in practice, delegates in the clerk’s office) rather than to their political party or any party official. Further, during the early voting process, state law requires that county clerks appoint a deputy clerk to serve as the election officer in charge of the polling place for early voting.<sup>17</sup> EBOs must therefore answer to their appointed deputy clerk if serving during the early voting period.<sup>18</sup> Relatedly, as detailed above, state law ensures the nonpartisan execution of election duties by mandating that the EBOs for any polling location must not all be members of the same political party.<sup>19</sup> County clerks, in turn, must take an oath to “support, protect and defend” state and federal laws and faithfully perform the duties of their office.<sup>20</sup> Consistent with this oath, county clerks must execute a penal bond of \$10,000, “conditioned for the faithful discharge of the duties” of their office, to the county before taking office.<sup>21</sup>

**EBOs perform their duties within a clear chain of command structure.** Appointed and supervised by the county clerk, election board chairs assist the clerk in overseeing election administration and EBOs at each polling location.<sup>22</sup> EBOs perform a broad range of duties to assist the chair and county clerk in conducting elections, including, but not limited to, setting up the polling place, checking in voters, directing voters and verifying eligibility, and making all required records of voters and challenges throughout the day.<sup>23</sup> Counties may provide additional guidance as to how chairs and EBOs should divide up these tasks as well as create additional roles — such as assistant clerks and individuals specifically hired to prepare mechanical recording devices — within the chain of command structure as needed.<sup>24</sup>

**Special election board members must answer to their county clerk.** In addition to election boards, state law permits county clerks to create special election boards to facilitate the processing of votes.<sup>25</sup> These boards include, for example, a computer program and processing accuracy board, a central ballot inspection board, and a mail ballot inspection board.<sup>26</sup> The county clerk need not appoint EBOs to serve on special election boards. Rather, clerks can

generally appoint “competent persons” registered to vote in Nevada, provided that each board represents all political parties as equally as possible and that duplication boards have members of more than one political party.<sup>27</sup> All special election board members serve at the county clerk’s discretion and must, like EBOs, ultimately answer to the clerk and not any political party or party official.<sup>28</sup>

### **Following Applicable Laws**

EBOs are further constrained by their duty to follow applicable local, state, and federal laws. Failure to do so may result in civil and criminal liability and violate the EBO’s oath of office.<sup>29</sup> These applicable laws include the following constraints:

**EBOs shall not intimidate and harass voters.** Federal and state laws prohibit actual or attempted intimidation, threats, or coercion against a voter with the purpose of interfering with the right to vote.<sup>30</sup> Nevada law specifically prohibits:

- using, or threatening to use, any force, intimidation, coercion, violence, restraint, or undue influence;
- inflicting, or threatening to inflict, any physical or mental injury, damage, harm, or loss upon another person or their property;
- exposing or publishing, or threatening to expose or publish, a fact about another person intending to induce or compel that person to vote a certain way or refrain from voting;
- impeding or preventing the free exercise of another’s right to vote by abduction, duress, or fraudulent contrivance; and
- compelling, inducing, or prevailing upon another to give or refrain from giving their vote by abduction, duress, or fraudulent contrivance.<sup>31</sup>

Violators — including EBOs — are subject to significant civil and criminal liability.<sup>32</sup> State law further prohibits EBOs from bribing, offering to bribe, or otherwise using corrupt means to influence or deter a voter from voting a certain way.<sup>33</sup>

**EBOs may not engage in electioneering.** Under Nevada law, it is unlawful for any person, including an EBO, to solicit a vote or electioneer within 100 feet of a polling location.<sup>34</sup> Electioneering means “campaigning for or against a candidate, ballot question, or political party” by, for example, posting signs, distributing literature, using loudspeakers to broadcast information, and wearing badges or other insignia.<sup>35</sup>

**EBOs may not prevent eligible voters from casting a ballot.** Nevada law requires that its election laws be “liberally construed” such that: (1) all eligible voters have an opportunity to participate in elections and cast their votes privately; (2) an eligible voter is not denied the right to vote solely because of a physical or mental disability; and (3) the “real will” of the voters is not defeated by any failure to substantially comply with Nevada’s election laws governing notice, conducting elections, or certifying the results.<sup>36</sup> Consistent with this liberal construction, registered voters making an oral challenge may contest another voter’s eligibility only based on personal knowledge, for limited reasons (residence, identity, voting more than once, and political party affiliation), and pursuant to the designated statutory process.<sup>37</sup> If a voter is challenged, an

EBO must first administer an oath to the challenged voter.<sup>38</sup> Based on the type of challenge and the voter's response, Nevada law sets forth a clear procedure for whether the EBO must provide the voter with a regular or provisional ballot.<sup>39</sup> The EBO then must record the challenge along with the name of the challenged person, the name of the challenger, and the result.<sup>40</sup> If possible, the EBO must orally notify the challenger.<sup>41</sup>

**EBOs must complete certain tasks in teams.** To ensure impartiality and fairness, state law requires that EBOs complete certain tasks in teams. For example, if a county clerk uses an electronic device to verify signatures on mail ballots, the county clerk must enlist multiple EBOs — who cannot all be of the same political party — to manually review the signatures.<sup>42</sup> Similarly, when an EBO rejects a ballot for any alleged defect or illegality, all EBOs at the polling location — who also cannot all be of the same political party — must sign the envelope.<sup>43</sup> Some counties require that additional tasks be completed in bipartisan teams; Washoe County, Nevada's second-largest county, requires two EBOs from different political parties to aid voters who seek assistance in the voting booth.<sup>44</sup>

**EBOs may not tamper with election equipment or results.** In Nevada, any person — including an EBO — who removes or destroys any supplies or equipment from voting booths or defaces ballot instruction cards, may face gross misdemeanor charges.<sup>45</sup> EBOs are further prohibited from altering, defacing, removing, or destroying election results posted outside a polling location.<sup>46</sup>

### **Available Enforcement Mechanisms**

County officials have broad authority to ensure that elections run smoothly and remain free from disruptions on Election Day. Available enforcement mechanisms include:

**Screening process.** As noted above, county clerks exercise authority over EBOs through the appointment process.<sup>47</sup> They can — and in many instances already do — develop additional eligibility requirements to ensure that applicants understand their roles and are willing to follow all applicable laws and procedures.<sup>48</sup> Consistent with this authority, county clerks can refuse to appoint individuals who cannot meet or are unwilling to follow the above eligibility criteria and constraints.

**Training content.** As noted above, state law requires EBOs to complete trainings before the election.<sup>49</sup> At this training, officials should remind EBOs about relevant laws and rules, including their duty to answer only to their proper chain of command rather than their political parties, any party official, or any other outside individual or entity. Similarly, officials should train officials to identify and report any violations of these procedures. These training sessions provide an opportunity for officials to clearly explain the checks in place to prevent voter fraud or manipulation of the election process and provide context to correct common rumors and misperceptions.

**Assigning poll workers.** Given the chair's role in overseeing election administration and EBOs, county clerks should choose — to the extent possible — to appoint election board chairs with previous EBO experience and demonstrated knowledge of voting procedures. Local officials can, if they do not already, aim to track where first-time poll workers are placed, distribute first-time

EBOs evenly across the jurisdiction, and ensure that every precinct has at least one EBO with previous experience. In the event that vacancies occur, counties may choose to create lists of back-up EBOs to cover staffing shortages.<sup>50</sup>

**Dispute resolution.** From time to time, EBOs may disagree over election rules and procedures. Counties may choose to create a set procedure for reporting disputes up the chain of command so they can be resolved quickly. To minimize disruptions to the election process, counties can also train EBOs — especially chairs — in effective dispute resolution methods.

**Oath of office.** If they do not do so already, counties should consider requiring all EBOs to take an oath of office before serving at the polls and at central counting facilities (where election returns are compiled). As noted above, oaths are already mandatory for any person who helps prepare mechanical recording devices.<sup>51</sup>

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<sup>1</sup> County clerks are synonymous with “registrar of voters” in certain counties. Nev. Rev. Stat. § 293.044. For city elections, city clerks must appoint and supervise EBOs for all polling locations in the city pursuant to the same statutory process that county clerks must follow. *See* Nev. Rev. Stat. § 293C.220(1).

<sup>2</sup> Nev. Rev. Stat. §§ 293.050, 293.217(1), 293.220, 293.227(1), 293.3072. Vote centers are polling locations in which any person entitled to vote in the county may do so on Election Day. Nev. Rev. Stat. § 293.3072(1).

<sup>3</sup> Nev. Rev. Stat. § 293.218. For the application process in one county, see [https://www.clarkcountynv.gov/government/departments/elections/services/poll\\_workers.php](https://www.clarkcountynv.gov/government/departments/elections/services/poll_workers.php) (last revised April 25, 2022).

<sup>4</sup> Nev. Rev. Stat. § 293.217(1).

<sup>5</sup> *See, e.g., Clark County Poll Worker Application*, CLARK CNTY. NEV., <https://files.clarkcountynv.gov/clarknv/Election%20Department/Forms%20and%20Info%20Flyers/EBOAPPL-20G.pdf> (last visited Sept. 23, 2022); *Washoe County Election Board Officer Application*, WASHOE POLL CHIEF, <https://washoe.plocation.net/pollaccess/PollWorkerReview.aspx> (last visited Sept. 23, 2022); *Churchill County Election Board Worker Application*, CHURCHILL CNTY. NEV., <https://www.churchillcountynv.gov/DocumentCenter/View/16229/Election-Board-Worker-Application> (last visited Sept. 23, 2022).

<sup>6</sup> Nev. Rev. Stat. §§ 293.2175(1), (2)(a)-(e), 293.227(2).

<sup>7</sup> Nev. Rev. Stat. § 293.217(1).

<sup>8</sup> Nev. Rev. Stat. § 293.227(3).

<sup>9</sup> Nev. Rev. Stat. § 293B.260.

<sup>10</sup> Nev. Rev. Stat. § 293B.265.

<sup>11</sup> *See, e.g., Nye County Poll Worker Instructions*, NYE CNTY. NEV., <https://www.leg.state.nv.us/App/InterimCommittee/REL/Document/27175> (last visited Sept. 23, 2022); *Washoe County, Election Work Manual*, WASHOE CNTY. NEV., [https://www.washoecounty.gov/voters/files/electionworkerresources/ROV-ElectionDayManual\\_vfin-4-12-2022.pdf](https://www.washoecounty.gov/voters/files/electionworkerresources/ROV-ElectionDayManual_vfin-4-12-2022.pdf) (last visited September 23, 2022); *Churchill County Election Board Worker Application*, CHURCHILL CNTY. NEV., <https://www.churchillcountynv.gov/DocumentCenter/View/16229/Election-Board-Worker-Application> (last visited Sept. 23, 2022).

<sup>12</sup> *Id.*

<sup>13</sup> Nev. Rev. Stat. § 293B.225. Clerks also may choose to require oaths based on provisions such as Nev. Rev. Stat. § 293B.355, which requires clerks to ensure that any use of a computer or counting device owned or leased by the state complies with the law.

<sup>14</sup> *See generally* U.S. CONST. amend. I.

<sup>15</sup> Nev. Rev. Stat. §§ 293.217(1), 293.220, 293.227(3), 293.460, 293B.260.

<sup>16</sup> Nev. Rev. Stat. §§ 293.223, 293.460.

<sup>17</sup> Nev. Rev. Stat. §§ 293.046, 293.358.

<sup>18</sup> *Id.*

<sup>19</sup> *See* Nev. Rev. Stat. § 293.217(1).

<sup>20</sup> Nev. Rev. Stat. §§ 246.020, 282.010, 282.020.

<sup>21</sup> *Id.* § 246.020.

<sup>22</sup> Nev. Rev. Stat. §§ 293.218, 293.227(1); *see also, e.g., id.* § 293B.235.

<sup>23</sup> *See, e.g.,* Nev. Rev. Stat. §§ 293.040, 293.273, 293.525, 293.2725, 293.3075, 293B.295, 293B.330; *see also, e.g., Nye County Poll Worker Instructions*, *supra* note 11; *Washoe County, Election Work Manual*, *supra* note 11.

<sup>24</sup> Nev. Rev. Stat. §§ 293.446; Nev. Rev. Stat. § 293B.225; *see also, e.g., Nye County Poll Worker Instructions*, *supra* note 11; *Washoe County, Election Work Manual*, *supra* note 11.

<sup>25</sup> Nev. Rev. Stat. § 293B.360.

<sup>26</sup> Nev. Rev. Stat. § 293B.360(1).

<sup>27</sup> Nev. Rev. Stat. § 293B.360(2)-(3).

<sup>28</sup> Nev. Rev. Stat. § 293B.360(4).

<sup>29</sup> Nev. Rev. Stat. §§ 293.700-293.840.

<sup>30</sup> 52 U.S.C. §§ 10101(b), 10307(b); 42 U.S.C. § 1985(3); 18 U.S.C. § 594; Nev. Rev. Stat. § 293.710(1); *see also* Nev. Const. Art. 2 §1A (guaranteeing the right to vote “without being intimidated, threatened or coerced”).

<sup>31</sup> *See* Nev. Rev. Stat. § 293.710(1). Such violation will result in a category E felony under Nev. Rev. Stat. § 193.130. *See id.* § 293.710(2).

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- <sup>32</sup> 52 U.S.C. §§ 10101(b), 10307(b); 42 U.S.C. § 1985(3); 18 U.S.C. § 594; Nev. Rev. Stat. § 293.710(1); *see also* Nev. Rev. Stat. §§ 293.710(2), 293.840.
- <sup>33</sup> Nev. Rev. Stat. § 293.700. Such violation will result in a category D felony under Nev. Rev. Stat. § 193.130. *See id.*
- <sup>34</sup> Nev. Rev. Stat. §§ 293.740(1)-(4), 293.361(1). Such violation will result in a gross misdemeanor. *See id.* §§ 293.740(3), 293.361(4).
- <sup>35</sup> *See* Nev. Rev. Stat. § 293.740(4).
- <sup>36</sup> *See* Nev. Rev. Stat. § 293.127. *See also* Nev. Const. Art. 2, § 1A (guaranteeing the right to vote and have that vote accurately recorded).
- <sup>37</sup> Nev. Rev. Stat. § 293.303(1). Voters making a written challenge must do so with their county clerk before Election Day. *Id.* § 293.547.
- <sup>38</sup> Nev. Rev. Stat. § 293.303(1)-(2).
- <sup>39</sup> Nev. Rev. Stat. § 293.303.
- <sup>40</sup> Nev. Rev. Stat. § 293.303(9).
- <sup>41</sup> Nev. Rev. Stat. § 293.303(9)(b).
- <sup>42</sup> Nev. Rev. Stat. § 293.269937(2).
- <sup>43</sup> Nev. Rev. Stat. § 293.367(2)(e).
- <sup>44</sup> *See, e.g., Washoe County, Election Work Manual, supra* note 11, at 10.
- <sup>45</sup> Nev. Rev. Stat. § 293.750.
- <sup>46</sup> *See* Nev. Rev. Stat. § 293.760. Such violation will result in a gross misdemeanor. *See id.*
- <sup>47</sup> *See* Nev. Rev. Stat. §§ 293.217, 293.218.
- <sup>48</sup> *See, e.g., Clark County Poll Worker Application, supra* note 5; *Washoe County Election Board Officer Application, supra* note 5; *Churchill County Election Board Worker Application, supra* note 5.
- <sup>49</sup> *See* Nev. Rev. Stat. §§ 293.227, 293B.260.
- <sup>50</sup> *See, e.g., Nev. Rev. Stat. § 293.218(2).*
- <sup>51</sup> Nev. Rev. Stat. § 293B.225. Clerks may also choose to require oaths based on provisions such as Nev. Rev. Stat. § 293B.355, which requires clerks to ensure that any use of a computer or counting device owned or leased by the state complies with the law.