

## **Ohio Precinct Election Officials: Rules and Constraints**

In Ohio, precinct election officials (Ohio’s legal term for poll workers) play a pivotal role in administering elections. Their election duties range from opening and closing polling places to assisting voters and ensuring peace and good order in polling locations.<sup>1</sup> Like other states across the country, Ohio has [faced](#) election worker shortages in recent years.<sup>2</sup> For elections to operate well, it is critical that government officials recruit enough qualified individuals to serve as precinct election officials (“PEOs”). It is equally critical, however, that these PEOs serve in an impartial and nondisruptive manner.

Recent media [reports](#) have identified efforts around the country to politicize poll worker recruitment and encourage individuals who subscribe to falsehoods about elections and the integrity of the democratic process to take positions in which they could potentially impact electoral outcomes. To be sure, no poll worker should be prevented from participating in the electoral process based on their viewpoints or beliefs. State and local officials can, however, take reasonable steps to ensure that PEOs are willing to follow the law and lawful instructions on Election Day.

Ohio, like other states, already has many guardrails in place to prevent PEOs from disrupting the lawful administration of an election. These requirements and procedures are detailed below, along with further actions that election officials can take.

### **Legal Constraints on Precinct Election Officials**

#### **Eligibility**

**Applicants must meet certain eligibility requirements under Ohio law.** In Ohio, county boards of elections are tasked with appointing at least four PEOs to each precinct and, as such, must carefully examine and investigate each applicant’s qualifications.<sup>3</sup> Ohio law requires that PEOs be: (1) registered voters and residents of the county in which their assigned precinct is located; (2) not convicted of a felony or election law violation; (3) able to read and write English; (4) not a candidate in the election<sup>4</sup>; and (5) fully trained as required by their board of elections.<sup>5</sup> Seventeen-year-old Ohio residents also may serve as PEOs if they participate in a qualifying high school program or if a county board determines that not enough qualified voters in a precinct are available to serve as PEOs for an election.<sup>6</sup> Upon appointment, each PEO receives a certificate of appointment from their board of elections that may — for “good and sufficient reasons” detailed below — be revoked at any time.<sup>7</sup> Serving without a certificate of appointment constitutes a first-degree misdemeanor.<sup>8</sup>

**Applicants must be willing to follow applicable laws and procedures.** Before opening the polls, Ohio law requires PEOs to take an oath to “support the constitution of the United States of America and the constitution of the state of Ohio and its laws” and discharge the duties of a PEO

“as required by law and the rules and instructions of the board of elections” of their respective counties.<sup>9</sup> The oath further requires PEOs to immediately report to their respective board of elections “any violations of the election laws” that come to their attention.<sup>10</sup> Pursuant to this oath, boards may refuse to appoint applicants who demonstrate an unwillingness to follow applicable laws and instructions. Boards should not turn away applicants solely on the basis of their viewpoints or beliefs so long as they are consistent with laws governing elections.<sup>11</sup>

**PEOs must attend a training.** Each board of elections must establish a training program for PEOs, as prescribed by the secretary of state, at least 60 days before the election.<sup>12</sup> The secretary of state provides training materials, and boards may also use additional materials prepared by or on behalf of the board.<sup>13</sup> New PEOs must be trained in person on the county’s voting equipment before participating in their first election.<sup>14</sup> Once trained, PEOs must receive additional instruction once every three years, when the county changes voting equipment, or whenever the board or secretary of state considers additional instruction necessary.<sup>15</sup>

### **Chain of Command**

**PEOs must answer only to their designated election officials.** Under Ohio law, PEOs are appointed and compensated by their respective boards, which may remove PEOs for “neglect of duty, malfeasance, or misconduct in office or for any other good and sufficient reason.”<sup>16</sup> Each county board must appoint a director and deputy director from different political parties to manage the day-to-day operations of the board of elections office, including recruiting, training, and assisting in the hiring of PEOs.<sup>17</sup> Accordingly, and pursuant to their oath, PEOs must answer only to their board, director, and deputy director rather than to their political party or any party official.<sup>18</sup> To ensure fairness and the nonpartisan execution of election duties, Ohio law further mandates that no more than half of the PEOs in a particular precinct may be members of the same political party. Individuals unaffiliated with a political party also may serve.<sup>19</sup>

**Voting location managers oversee the election process and PEOs.** Boards of elections designate one precinct election official per voting precinct or polling location as the voting location manager (“VLM”).<sup>20</sup> VLMs, who must be members of the party that garnered the most votes in that precinct in the previous gubernatorial election, increase efficiency at polling locations by overseeing the election process (including the PEOs) in a given precinct and performing certain additional duties, including assigning tasks and administering the oath of office to PEOs.<sup>21</sup> PEOs must perform all lawful tasks assigned by their VLM.<sup>22</sup>

### **Following Applicable Laws**

PEOs are further constrained by their duty to support and protect federal, state, and local election laws.<sup>23</sup> Failure to do so may violate their oath of office, warrant immediate removal, and result in criminal liability.<sup>24</sup> Further, PEOs must actively prevent unlawful behavior in elections, including by other PEOs, and promptly report any violations to the board of elections.<sup>25</sup>

**No person, including PEOs, may intimidate or harass voters.** Federal and state laws prohibit actual or attempted intimidation, threats, or coercion against a voter for the purpose of interfering with the right to vote.<sup>26</sup> Violators are subject to significant civil and criminal liability.<sup>27</sup> Indeed, Ohio law requires PEOs to “prevent and stop” any behavior that “obstruct[s], intimidate[s], or

interfere[s] with any elector in registering or voting.”<sup>28</sup> Examples of prohibited intimidation may include using insulting, offensive, or threatening language.<sup>29</sup>

**PEOs may not disrupt elections through disinformation.** In addition to prohibiting voter intimidation, state law explicitly requires PEOs to prevent “tumult, or disorder” and “enforce peace and good order.”<sup>30</sup> Spreading disinformation that creates disruptions and disorder — including false information about who can vote, how and when they can vote, or other aspects of the election process, including vote counting and registration list maintenance — may therefore violate state law and warrant removal. Similarly, PEOs may not influence or attempt to influence any voter for or against any candidate or issue.<sup>31</sup>

**PEOs may not prevent an eligible voter from casting a ballot.** In Ohio, PEOs may challenge a voter’s eligibility only for limited reasons and pursuant to the process set forth by statute.<sup>32</sup> Specifically, PEOs are limited to challenging a potential voter’s eligibility based on issues of citizenship, state residency, precinct residency, and age.<sup>33</sup> Ohio law provides a set list of questions that PEOs may ask for a challenge based on any of these grounds.<sup>34</sup> Unless a PEO is unable to verify the challenged voter’s eligibility, the voter may cast a regular ballot.<sup>35</sup> If the challenged voter’s eligibility cannot be verified, the PEO must provide a provisional ballot.<sup>36</sup> If a challenged voter is in the wrong polling location, the PEO must direct the voter to the correct one.<sup>37</sup> And if the challenged voter refuses to go to their correct polling location, the PEO must provide the individual with a provisional ballot.<sup>38</sup> In short, Ohio voters who affirm they are qualified should not leave a polling location without at least the opportunity to cast a provisional ballot.

**PEOs must complete certain tasks in bipartisan teams.** State law and secretary of state guidelines require bipartisan teams to handle and sign off on certain critical election tasks so as to limit the access that any one individual has to ballots and other sensitive materials without oversight. These tasks include issuing provisional ballots, opening voting machines, and returning materials to the board of elections after the polls close.<sup>39</sup>

**PEOs are prohibited from intentionally interfering with election ballots, supplies, and polling areas.** Ohio law provides a comprehensive list of prohibited PEO activities, including, but not limited to:

- opening, or allowing to be opened, any sealed package containing registration lists, ballots, blanks, pollbooks, or other materials used in the election;
- destroying, losing, or failing to deliver registration lists, ballots, blanks, pollbooks, or other materials used in the election;
- receiving a ballot from an unqualified voter or refusing a ballot from a qualified voter;
- counting, or allowing to be counted, an illegal or fraudulent ballot;
- misleading a voter who cannot prepare their ballot;
- admitting unauthorized individuals to the polling room;
- refusing to admit authorized individuals to the polling room; or
- counting the ballots in a way that violates the law.<sup>40</sup>

Engaging in any of these behaviors constitutes a first-degree misdemeanor.<sup>41</sup>

## Available Enforcement Mechanisms

Ohio boards of elections have broad authority to appoint, remove, oversee, and train PEOs to ensure that elections run smoothly and remain free from disruptions. Available enforcement mechanisms include:

**Screening process.** As noted above, boards of elections exercise authority over PEOs through the certificate of appointment process.<sup>42</sup> Consistent with this authority, boards can refuse to appoint individuals who cannot meet or are unwilling to follow the above eligibility criteria and constraints. Further, a county board of elections may require a PEO to appear before the board for review of their qualifications, and failure to appear may result in a first-degree misdemeanor.<sup>43</sup>

**Training content.** As noted above, state law requires PEOs to complete training before the election. Each board of elections must establish a training program for PEOs, as prescribed by the secretary of state, at least 60 days before the election.<sup>44</sup> At this training, officials should remind PEOs 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.<sup>45</sup> Similarly, officials should train PEOs to identify and report any violations of these procedures.<sup>46</sup> 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 VLMs and PEOs.** Given the VLM's role in overseeing the election process and PEOs, boards may choose — to the extent possible — to appoint in this role only individuals with previous PEO experience and demonstrated knowledge of voting procedures. Local officials can also aim to track where first-time PEOs are placed, distribute first-time managers evenly across the jurisdiction, and ensure that every precinct has at least one PEO with previous experience.

**Recruiting and removal procedures.** As detailed above, any PEO may be “summarily removed” from office at any time for “neglect of duty, malfeasance, or misconduct in office or for any other good and sufficient reason” — including refusal to follow the chain of command or applicable laws.<sup>47</sup> To ensure that boards maintain an adequate number of PEOs for Election Day in the event of PEO removal, the Ohio Secretary of State's Office recommends recruiting at least 15 percent more PEOs than required for each polling location.<sup>48</sup>

**Dispute resolution.** Under Ohio law, PEOs work as a team to conduct an election at their assigned precinct.<sup>49</sup> PEOs may from time to time disagree over election rules and procedures. County boards may choose to create a set procedure for reporting disputes up the chain of command so they can be quickly resolved. To minimize disruptions to the election process, boards also can train all PEOs — especially VLMs — in effective methods of dispute resolution.

**Oath of office.** The oath of office provides a strong legal basis for preventing and addressing abuses by PEOs.<sup>50</sup>

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<sup>1</sup> Ohio Rev. Code §§ 3501.22, 3501.26; FRANK LAROSE, OHIO SEC'Y OF STATE, DIRECTIVE 2022-10, CHAPTER 6: PRECINCTS, POLLING LOCATIONS, AND PRECINCT ELECTION (hereinafter "Directive 2022-10"), 178, <https://www.ohiosos.gov/globalassets/elections/directives/2022/eom/dir2022-10-ch06.pdf>; FRANK LAROSE, OHIO SEC'Y OF STATE, PRECINCT ELECTION OFFICIAL MANUAL (June 15, 2021) (hereinafter "PEO Manual"), 5-6, <https://www.ohiosos.gov/globalassets/elections/eoresources/peo-training/peotrainingmanual.pdf>.

<sup>2</sup> In fact, Ohio has exceeded its 2022 statewide poll worker recruitment goals due to a number of targeted poll worker recruitment programs implemented by the secretary of state.

<sup>3</sup> Ohio Rev. Code § 3501.22(A)(1).

<sup>4</sup> Similarly, the secretary of state's Election Official Manual directs that a PEO "may not serve in any precinct in which a family member or business associate is a candidate for elected office." FRANK LAROSE, OHIO SECRETARY OF STATE, ELECTION OFFICIAL MANUAL (Feb. 2, 2022) (hereinafter "Election Manual"), 186, [https://www.ohiosos.gov/globalassets/elections/directives/2022/eom/eom\\_fullversion\\_2022-02.pdf](https://www.ohiosos.gov/globalassets/elections/directives/2022/eom/eom_fullversion_2022-02.pdf).

<sup>5</sup> *Id.*; Ohio Rev. Code § 3501.27(A).

<sup>6</sup> Ohio Rev. Code §§ 3501.22(B)-(C).

<sup>7</sup> Ohio Rev. Code § 3501.27(A).

<sup>8</sup> Ohio Rev. Code §§ 3599.17(A)(6), (B).

<sup>9</sup> Ohio Rev. Code § 3501.31.

<sup>10</sup> *Id.*

<sup>11</sup> *See generally*, U.S. CONST. amend. I.

<sup>12</sup> Ohio Rev. Code § 3501.27(B); Directive 2022-10, *supra* note 1, at 184.

<sup>13</sup> Directive 2022-10 at 184; *see also, e.g.*, PEO Manual, *supra* note 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Ohio Rev. Code §§ 3501.22(A)(1), 3501.11(D).

<sup>17</sup> Ohio Rev. Code §§ 3501.09, 3501.13; Election Manual, *supra* note 4, at 8, 10.

<sup>18</sup> Ohio Rev. Code § 3501.31.

<sup>19</sup> Ohio Rev. Code § 3501.22(A)(1); Directive 2022-10, *supra* note 1, at 179.

<sup>20</sup> Ohio Rev. Code § 3501.22(A)(1).

<sup>21</sup> *Id.*; PEO Manual, *supra* note 1, at 4-5; Directive 2022-10, *supra* note 1, at 178. A board of elections may vote to have a single voting location for multiple precincts, in which case the board may designate a single VLM. Ohio Rev. Code § 3501.22(A)(2). That VLM must be a member of the same political party as the gubernatorial candidate who, in the most recent election, received the largest share of the combined vote for all of the precincts using that voting location. *Id.*

<sup>22</sup> PEO Manual, *supra* note 1, at 5.

<sup>23</sup> Ohio Rev. Code § 3501.31.

<sup>24</sup> Ohio Rev. Code §§ 3501.11(D), 3501.22(A)(1), 3501.31, 3599.19.

<sup>25</sup> *Id.*

<sup>26</sup> *See, e.g.*, 52 U.S.C. §§ 10101(b), 10307(b); 42 U.S.C. § 1985(3); 18 U.S.C. § 594; Ohio Rev. Code §§ 3501.33, 3501.35(A).

<sup>27</sup> *Id.*

<sup>28</sup> Ohio Rev. Code § 3501.33; Directive, 2022-10, *supra* note 1, at 178. In fulfilling their duties to prevent disorder and voter intimidation, PEOs may seek aid from the sheriff, police, or peace officers, and the officers must obey the PEO's lawful orders. *Id.* PEOs may order the removal or arrest of any person who causes interference. However, the order for removal or arrest may not prevent any eligible person from registering or voting. *Id.*

<sup>29</sup> *See, e.g.*, U.S. DEP'T OF JUSTICE, FEDERAL LAW CONSTRAINTS ON POST-ELECTION "AUDITS" (2021), <https://www.justice.gov/opa/press-release/file/1417796/download> (explaining federal voter intimidation laws and explaining that intimidation may be in the form of both physical and non-physical threats); *see also Fact Sheet: Protecting Against Voter Intimidation*, INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION, GEORGETOWN LAW, <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2020/10/Voter-Intimidation-Fact-Sheet.pdf> (last visited August 4, 2022).

<sup>30</sup> Ohio Rev. Code § 3501.33.

<sup>31</sup> Ohio Rev. Code § 3599.38.

<sup>32</sup> Ohio Rev. Code § 3505.20.

<sup>33</sup> *Id.* During primary elections, a PEO may also challenge a potential voter based on their party affiliation. Ohio Rev. Code § 3513.19(A)(3). If challenged on this ground, a voter may make a statement under penalty of election

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falsification giving the facts necessary to determine their eligibility to vote. Ohio Rev. Code § 3513.20. If the voter declines to provide such statement, they must be permitted to cast a provisional ballot. *Id.*

<sup>34</sup> Ohio Rev. Code § 3505.20.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*; *see also* Ohio Rev. Code § 3505.181 (governing provisional ballots).

<sup>37</sup> Ohio Rev. Code § 3505.20(C).

<sup>38</sup> *Id.*

<sup>39</sup> Ohio Rev. Code § 3505.183(A); Election Manual at 188.

<sup>40</sup> Ohio Rev. Code § 3599.19. *See also* Ohio Rev. Code § 3599.17. Other prohibited conduct can be found in the Ohio Secretary of State's PEO training manual. *See* PEO Manual, *supra* note 1, at 6-7.

<sup>41</sup> *Id.*

<sup>42</sup> Ohio Rev. Code §§ 3501.27(A), 3501.22(A)(1).

<sup>43</sup> Ohio Rev. Code § 3599.17(A)(1), (B).

<sup>44</sup> Ohio Rev. Code § 3501.27(B); Directive 2022-10, *supra* note 1, at 184.

<sup>45</sup> *See generally* PEO Manual, *supra* note 1.

<sup>46</sup> Ohio Rev. Code § 3501.31.

<sup>47</sup> Ohio Rev. Code §§ 3501.11(D), 3501.22(A)(1).

<sup>48</sup> Directive 2022-10, *supra* note 1, at 180.

<sup>49</sup> *Id.* at 178 (citing Ohio Rev. Code § 3501.22).

<sup>50</sup> Ohio Rev. Code § 3501.31. Failure to take the oath may result in a first-degree misdemeanor. Ohio Rev. Code § 3599.17(A)(3), (B).