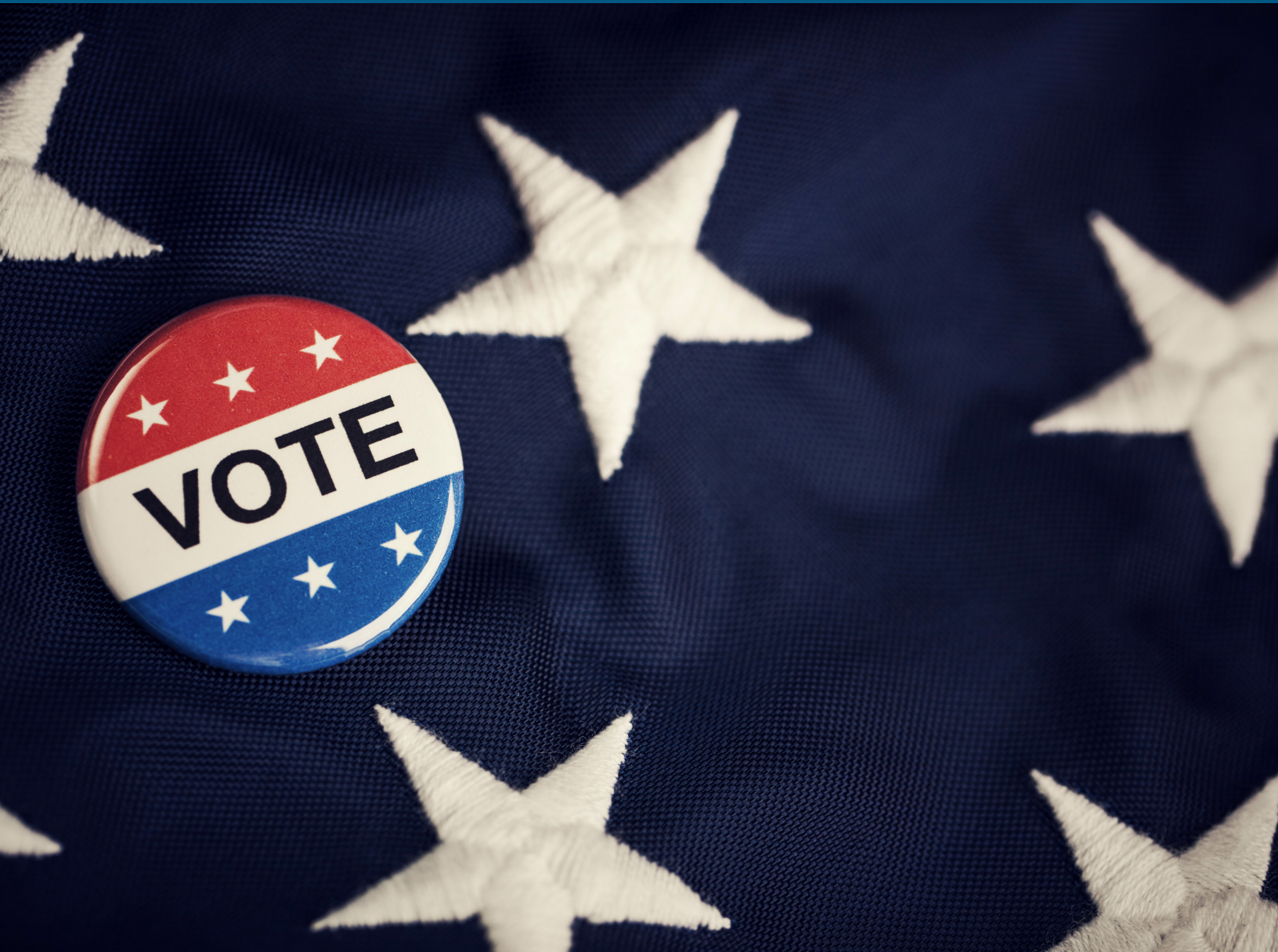


A Guide to Election Observer Policies in the United States



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About This Guide

The information in this booklet was compiled from various sources, including state statutes and regulations, state election manuals, interviews and follow-up conversations with state election directors, secretary of state websites, nonpartisan organization websites and publications, news and media articles, and U.S. Department of Justice publications. It is accurate as of October 2016.

The research for this project was conducted by The Carter Center, with support from the National Conference of State Legislatures. It was made possible through generous grants from the MacArthur Foundation. This information is available online at the NCSL website, where it will be regularly updated.

To offer comments or corrections, please contact elections-info@ncsl.org.

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Community members greet outside a polling station.



Voters wait in line to cast their ballots.

OVERVIEW

Election observation is the process by which parties, candidates, citizen groups or independent organizations deploy observers to witness the electoral process.

Different types of observers have very different goals for watching an election. While observers from political parties seek to ensure that election administration does not disadvantage their campaigns, nonpartisan observers focus on checking compliance with election administration regulations. Credible nonpartisan observers are interested in promoting integrity, transparency, and efficiency in the electoral process and have no stake in the political outcome. During contentious or highly competitive elections, impartial observation can provide an important avenue for reliable feedback about which aspects of an election went well and what parts could improve.

Credible observers can help ensure that procedures are properly followed and can increase public confidence in well-run elections. Nonpartisan international observers often use data-driven methods aimed at promoting transparency and integrity in elections, which in turn can improve the voter experience. International observers may or may not be permitted by state law, or the interpretation of state law.

In the United States, observers are trained to attentively watch without interfering. They examine not only Election Day activities, such as the casting of ballots, but also pre-election and postelection processes. Observer groups may watch such activities as voter registration, testing of voting machines, ballot tabulation and recounts, and much more. They gather relevant information about the electoral process and can report back to election officials when problems arise. Following an election, observer organizations that are not affiliated with political parties, whether international or domestic, often produce public reports to share key observations. These reports include recommendations that aim to assist election administrators in improving efficiency and accountability for future election cycles.

“It’s not, from our perspective, an exercise for observers to say ‘Got ya!’ but rather it’s about understanding that things are working the way they’re supposed to, because that does increase confidence.”

—Pam Smith, president, Verified Voting Foundation

The United States’ highly decentralized election administration system can make election observation especially challenging. While most democracies have a more centralized process, U.S. election administration occurs largely at the county level. As a result, regulations that govern observers vary widely across the 50 states and even across counties within a single state.

Details regarding observers’ proximity to polling places, how many observers can be present, which types of observers are permitted, which parts of the electoral process can be observed, etc. change depending on state election codes and county regulations. Legislators, therefore, play a key role in determining policies that reinforce transparency and protect against electoral fraud in very practical ways. Their decisions determine not only the guidelines by which elections are conducted and the quality of election administration, but also the level to which observers can be involved in collaborating to strengthen elections.

“We emphasize that our observers are observers. They’re not to interfere at any time. Our experience in Nebraska has always been that the election workers and administrators have been very cooperative.”

—Senator Adam Morfeld, Founder,
Nebraskans for Civic Reform

The Carter Center and the National Conference of State Legislatures (NCSL) partnered to examine election observation in the U.S. and the main regulations that shape observer access. In this 50-state statutory research, we look at the relevant laws and practices

for multiple types of election observers.

This booklet answers the following questions:

- Who can observe elections in the U.S., including partisan, nonpartisan, and international observers?
- What is the process for accrediting observers? Who ultimately decides whether observers are permitted in a state or county?
- Which aspects of an election can observers watch? Does this vary based on the type of observer?
- What role do federal observers play?
- Have states had past experiences with election observers (case studies)?

Who Can Observe?

Several kinds of groups conduct election observation in the U.S. This study examined the rules for four groups.

Partisan citizen observers. Usually referred to as poll watchers or challengers, these observers represent political parties, candidates, or groups in favor of or against a ballot proposition. Partisan citizen observers generally guard against activity that could undermine their own party or group's interests. These observers are permitted by statute in most U.S. states.

Nonpartisan citizen observers. Many U.S. nonpartisan organizations train citizens to observe elections, and most groups are based in the states or counties in which they seek to observe. These observers work to protect the integrity of the electoral process and advance electoral quality and accountability regardless of the political outcome.

International nonpartisan observers. International nonpartisan organizations deploy teams of international observers, who are non-citizens and non-residents of the country where an election is being held. They typically follow a professional methodology and assess elections based on international and domestic standards for democratic elections. Impartial international observers seek to provide a credible, data-driven assessment of the conduct of an election and are not interested in the political outcome. In 1990, the U.S. committed to inviting and providing access for international observers when it signed the Organization for Security and Cooperation in Europe (OSCE) Copenhagen Document.

Academic observers. Academic observers are associated with higher education institutions and university initiatives. Many academic observers study elections with a goal of strengthening democratic practices. Like nonpartisan observers, academics generally do not promote a particular campaign or political outcome. There are other types of observers apart from those examined in this study, including but not limited to media observers, youth observers (students learning about the electoral process), state-appointed observers and federal observers.

Summary of Findings

- Almost all states, with a few exceptions, have statutory provisions for partisan citizen election observers. It is common practice for political parties and candidates to appoint poll watchers and/or challengers to observe elections.
- At least 35 states and the District of Columbia allow *nonpartisan citizen observers* to be present at elections. This includes explicit access in statute, access in practice, and public access to observe the elections. Of these:
 - Nine states and the District of Columbia have explicit statutory provisions to allow for nonpartisan citizen observers: District of Columbia, Hawaii, Illinois, Maryland, Michigan, New Mexico, North Dakota, South Dakota, Tennessee and Virginia.
 - Nine states allow the public broad access to the election process, including observing polling place operations on Election Day (public access includes members of nonpartisan citizen groups): California, Massachusetts, Nevada, New Hampshire, Rhode Island, South Carolina, Vermont, Washington and Wisconsin. Note that other states may permit public access to other parts of the election process, such as the pre-election testing of voting machines, the counting process or postelection audits, but do not permit the public to access polling sites on Election Day.
 - 16 states don't explicitly authorize nonpartisan citizen observers in statute, but allowed them in practice in 2016. This may be left up to the

discretion of state or local election officials and evaluated on a case-by-case basis: Colorado, Delaware, Idaho, Kansas, Kentucky, Louisiana, Maine, Minnesota, Montana, Nebraska, New Jersey, New York, North Carolina, Ohio, Oregon and Utah.

- At least 33 states and the District of Columbia allow *international nonpartisan observers* to be present at elections. This includes explicit access in statute, access in practice, and public access to observe the elections. Of these, six states and the District of Columbia have explicit guidance in statute or rule to allow for international nonpartisan observers. See the section “International Election Observation Abroad and at Home” later in this booklet for more information.
- Many states have had experience with *academic observers*, though this category of observer is typically not explicitly permitted in statute (with the exception of New Mexico—see below for more details). In some states, academic observers may gain access to polling places through the same process as nonpartisan citizen observers, or access may be granted on a case-by-case basis. Here are a few examples of when academic observers have contributed to the practical administration of elections:
 - The joint CalTech/MIT Voting Technology Project conducted ongoing work on voting technology as well as line optimization and poll worker management. Today, MIT’s Election Data and Science Lab continues the work.
 - The University of California, Berkeley’s Election Administration Research Center (EARC) conducts research and develops materials for the improvement of elections within the U.S. and internationally.



An election worker waits outside a polling station.

- Universities often observe at polling places to provide data or recommendations to the state or local election authorities. See, for example: The University of Maryland report on Wait Time Observations from the Maryland 2014 General Elections; The University of Colorado, Denver report on Changing the Way Colorado Votes: A Study of Selected Reforms; A joint report from professors at Utah State University, the University of Utah and Brigham Young University on Evaluating the Feasibility of Vote by Mail in Utah; New Jersey’s Rutgers School of Law report *The Perfect Storm: Voting in New Jersey in the Wake of Superstorm Sandy*; and the University of New Mexico’s Center for the Study of Voting, Elections, and Democracy’s election administration reports.

The variation in terminology between states regarding regulation of election observers, along with varying interpretation in practice of statute and rule over time, makes the categorization above based to some extent on judgment. If you believe your state is not categorized correctly, please contact NCSL’s elections team at elections-info@ncsl.org.

TYPES OF OBSERVERS

Partisan Citizen Observers

In the U.S., voters can serve as election observers for the parties they support. Appointed by political parties, candidates or ballot issue groups, these individuals are partisan citizen observers. They are referred to by many different names in the U.S. but

are most commonly called poll watchers and challengers. While partisan observers’ specific responsibilities vary by state, they generally watch the casting of ballots, any testing of voting equipment, and counting procedures. Unlike other observers examined in this study, poll watchers and challengers have a specific or partisan interest in election results. They represent

political candidates, parties, and groups that advocate for or against specific policies.

A poll watcher's primary purpose is to ensure that their party has a fair chance of winning an election. Poll watchers closely monitor election administration and may keep track of voter turnout for their parties. They are not supposed to interfere in the electoral process apart from reporting issues to polling place authorities and party officials.

Challengers also watch to make sure procedures are properly followed in polling places, but they are distinct from partisan poll watchers in that they have power to contest voters' eligibility to cast a vote. A challenged voter may be required to prove his or her eligibility with documents and identification before proceeding to cast a regular or provisional ballot.

The majority of U.S. states have statutory regulations permitting partisan citizen observers. Most states specify how many partisan observers can be present, how they are appointed or trained, when and in which polling places they can be present, what their privileges and responsibilities are, and so on.

Nonpartisan Citizen Observers

Domestic nonpartisan organizations frequently seek to observe U.S. elections, and they train citizens to conduct impartial observation. Some organizations observe a single stage of election administration, such as postelection audits or recounts. Others seek to view all pre-election, Election Day, and postelection processes. While some states have no statutory provisions to allow nonpartisan citizen observers, others grant special approval for them to watch the elections. Nonpartisan citizen observers can usually observe in states that allow observation by the public, within a designated area or behind a guardrail.

Like international observers, nonpartisan citizen organizations have no stake in the political outcome of an election. They often will produce public reports with observation summaries and recommendations for how to improve future elections. Their presence can help build public trust in a transparent, verifiably democratic electoral process.

“We noticed a sudden spike in the number of challenges [by political party representatives] in a midsized town in the state. Within minutes our observers were able to report this. We could respond almost in real time! [The public] was so informed.

—Mark Halvorson, founder and board member for Citizens for Election Integrity Minnesota (CEIMN), about using an online platform to update the public about the conduct of elections. Halvorson was referring to his group's work during the 2008 Minnesota Senate statewide recount.

Nonpartisan observation can provide a particularly important way for citizens to encourage accountability in the democratic system outside of party structures. In some cases, nonpartisan citizen observers are able to report election administration issues as soon as they arise, thereby helping administrators to respond immediately and avoid further problems.

International Nonpartisan Observers

International election observations are widely accepted around the world today. These are conducted by intergovernmental and international nongovernmental organizations to provide an impartial and accurate assessment of the nature of election processes. These assessments are created for the benefit of the population of the country where an election is held and to demonstrate the interest of the international community.

Observers follow professional, data-driven methodologies that are developed by each organization consistent with international human rights standards and national laws. International observers must be invited by a country's electoral management body and welcomed by all major political parties. International observer groups go to great lengths to ensure the professionalism and integrity of long-term and short-term observers and members of other kinds of observer delegations. As a result, anyone participating

in one of these capacities on an election observation mission is expected to sign the Code of Conduct for International Election Observers. Additionally, international organizations check that their observers have no stake in elections' political outcome by recruiting only noncitizens and nonresidents of the countries where the elections are held.

“Since 2002, OSCE has observed six different U.S. elections. OSCE goes to 57 member states, using international standards for democratic elections and checking compliance with these standards.”

—Richard Lappin, *OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR)*

Because international observers come from around the world, they are often deployed in smaller numbers than those of citizen observers. Some international observation missions share information with domestic observer organizations, as the efforts of both groups can complement one another.

The main goal of international election observation is to help foster genuine democratic elections and promote respect for international human rights. International observers come to the United States during general elections under the auspices of the Organization for Security and Cooperation in Europe (OSCE), an intergovernmental organization. The OSCE has observed multiple U.S. elections since 2002. They issue public reports after every observation mission, assessing the democratic quality of elections in the United States. (For more information, see NCSL's webpage on international observers.)

Academic Observers

Academic observers typically must be granted permission by election administrators to provide an impartial, thorough and constructive evaluation of the electoral process. As with nonpartisan observers, this cooperation can be mutually beneficial. Academics are permitted to conduct research in their

fields and administrators are guaranteed an observational presence that builds public trust in the fairness, honesty and effectiveness of an election. Academic observers are granted observation access at the county level and often depend on good relationships with election officials.

Academic observers note that their observations are not informed by pre-existing conceptions, positive or negative, of election administrators. Like nonpartisan observation, academic monitoring aims to make impartial recommendations in a good faith understanding of the democratic commitments to be upheld within election administration. In some cases, academics in the field report problems immediately to administrators to ensure the greatest level of electoral integrity.

“Counties have said that we’re their eyes and ears on Election Day because they’re too busy administering the elections to be observing them and focusing on ways to improve them. At this point, if we see that there are big problems with the elections, we actually call the counties directly.”

—Lonna Rae Atkeson, *director, Center for the Study of Voting, Elections and Democracy*

New Mexico is one of a few states that explicitly includes academic observers in its election law (N.M. Stat. Ann §1-1-3.2). The state permits nonpartisan observation at all stages of the election and differentiates between “election observers” and “poll watchers or challengers.” Election observers include those who register with the U.S. Department of State as international observers, or with the New Mexico secretary of state as academics engaged in research on elections and the election process.

Lonna Rae Atkeson directs the Center for the Study of Voting, Elections and Democracy (C-SVED) at the University of New Mexico and has conducted academic observation in multiple counties. Her team works with the secretary of state's office and has built relationships with county officials over many years.

C-SVED is widely recognized for its work on such issues as voter flow and efficiency in polling places, training and professionalism among poll workers, and privacy for disabled voters.

When asked how relationships with county officials contributed to the success of C-SVED's observation work, Atkeson said: "Trust between observers and administrators to be working toward the same goals is so important. Building these relationships over time demonstrated our commitment to democracy. And having people in those positions who want feedback about the process was also critical." Collaboration between observers and election officials has created room for feedback loops in New Mexico's elections. Academic observers collect information over several election cycles, suggest ways for improvement, and work closely with administrators and lawmakers to implement sustainable changes.

Accreditation Process

Accreditation involves the issuing of any identification or documents required to conduct election observation. According to international standards and best practices, accreditation should be granted for all persons selected to be observers under clearly defined, reasonable and nondiscriminatory requirements for accreditation. (For more information, please visit <http://aceproject.org/main/english/ei/eie08.htm>.)

As international election observation has become common practice in many parts of the world today, most countries that allow observers have a centralized accreditation process. In the U.S., accreditation is less formal. Many states provide no official documentation or identification for approved international observers.

However, about 80 percent of state election codes specify procedures for appointing partisan citizen observers. This process looks something like the following: a party or candidate submits a list of observers' names to county officials within a pre-determined time window and obtains a set of signatures before sending observers to the polls. The appointment process typically does not require a code of conduct, special training, or identification for observers.

In most states, neither a formal accreditation nor an informal appointments process is specified for nonpartisan observers. Notably, these requirements vary widely by type of observer and state, but county level officials are usually in charge of the process. Here's what we've found as of October 2016:

- **40 states and the District of Columbia have a formal accreditation/appointments process for partisan citizen observers** (poll watchers and challengers). This process is led by local party chairs, candidates, or ballot issue groups and can require approval by election officials or the secretary of state's office (see table on next page for details).
- **10 states allow partisan citizen, nonpartisan citizen, and/or international observers but have no accreditation/appointment processes for any type of observer.** This is often because observer access is left to local election officials, or the public at large may observe the election process and formal accreditation is therefore not necessary.

Maine, Massachusetts, Mississippi, Montana, Nevada, New Hampshire, North Dakota, South Dakota, Vermont and West Virginia.

- **13 states and the District of Columbia have a formal accreditation/appointments process for nonpartisan citizen observers.** This occurs through collaboration between citizen organizations and state or county election boards, secretary of state offices, and/or county clerks' offices.

California, Colorado, District of Columbia, Hawaii, Idaho, Illinois, Kansas, Maryland, Michigan, New Mexico, Ohio, Tennessee, Virginia and Wisconsin.

- **10 states the District of Columbia have a formal accreditation/appointments process for international nonpartisan observers.** While international observation organizations may receive an invitation to observe from the Department of State, permission to access polling stations and any accreditation for these observers is managed under state law.

California, Colorado, District of Columbia, Hawaii, Idaho, Illinois, Kansas, Michigan, New Mexico, Virginia and Wisconsin.

ACCESS TO THE ELECTORAL PROCESS

States vary as to which stages of the election process observers can watch. Some states permit observers to monitor Election Day procedures at the polling place, pre-election procedures such as testing of voting machines and postelection procedures such as audits and tabulating absentee and provisional ballots. The following chart details which types of observers can have access to different parts of the electoral process.

Note that this chart does not guarantee that

observers could access *all* pre-election, Election Day, or postelection procedures in a state.

The information was compiled in 2016 from state statutes and conversations with state election directors. Details may vary at the county level. Please email elections-info@ncsl.org for details on relevant statutes and visit the case studies in this booklet for further information.

Chart reflects election laws as of Oct. 12, 2016.

Key: P=Partisan Citizen; N=Nonpartisan Citizen; I=International Nonpartisan; A=Academic

| State | Pre-election Procedures | Election Day Procedures | Postelection Procedures | Sources |
|----------------------|-------------------------|-------------------------|-------------------------|--|
| Alabama | P | P | P | Ala. Code §17-8-7, §17-9-29, §17-6-8, §17-11-11, §17-17-22, §11-46-35, §11-46-7(a & b); U.S. Elections Assistance Commission (EAC)- 2014 Statutory Overview |
| Alaska | | P | P | Alaska Stat. §15.10.170, §15.10.180, §15.40.140, §15.40.141, §15.20.900; Alaska Admin. Code tit. 6 §25.010-25.020, 15.20.800, 25.270; Alaska Div. of Elections: Guide for Poll Watchers 2013 (pp. 5-11); Alaska Div. of Elections: Polling Place Election Procedures 2013 (p. 12); Director, Alaska Division of Elections |
| Arizona | P, N, I, A | P | P | Ariz. Rev. Stat. §16-590, §16-590 (A), §16-311, §16-312, §16-341; State of Arizona Elections Procedures Manual, Revised 2014 (pp. 109, 121, 156); Election Director, Arizona Secretary of State's Office |
| Arkansas | | P | P, N, I, A | Ark. Election Code §7-5-312; Ark. Election Code §7-5-416 (a)(1); §7-5-603, §7-5-613; 7-1-103(a)(20)(G); Arkansas Rules for Appointment of Certified Election Monitors (Revised 2015), (§1003, §1001, §1004, §1005); State of Ark. Training Guide and Checklist for Poll Workers (p. 8, 17, 21, 36); Arkansas 2014 Poll Watcher Authorization Form; |
| California | P, N, I, A | P, N, I, A | P, N, I, A | Cal. Election Code § 15004, 15104, 15105, 15106, 2303, 14240, 18543, 353.5; CA SoS "Election Observation Rights and Responsibilities"; Verified Voting "Who Can Observe"; Chief of Elections, California Elections Division |
| Colorado | P, N, I, A | P, N, I, A | P, N, I, A | C.R.S. Title 1 (attn: §§ 1-4-104(51), 1-7-108, 1-9-101); C.R.S. §10-11-2; C.R.S. 1-7-106; C.R.S. 1-7-509 (2); C.R.S. § 1-13-111; C.R.S. 1-1.5-104; C.R.S. § 1-13-111; 1-13-702; C.R.S. 1-5-503; 1-7-105, 106, 107; C.R.S. 1-7-307(4); C.R.S. 1-7-507; C.R.S. 1-7.7-114; C.R.S.10.11.2; Colorado Election Rules [8 CCR 1505-1] Rule 8 (especially 8.17); Colorado SoS "Certificate of Appointment & Oath of Watcher"; Director of Elections, Colorado Secretary of State's Office |
| Connecticut | P, N, I, A | P | P, N, I, A | Conn. Gen. Stat. §§ Connecticut General Statutes §§ 9-232, 235; Director of Elections; Connecticut Assistant to Secretary of State for Elections |
| Delaware | P | P | P | Del. Code, Title 15, § 4913, 4932, 4933, 4934-4941, 4966, 4977; Delaware State Election Commissioner |
| District of Columbia | P, N, I, A | P, N, I, A | P, N, I, A | D.C. Municipal Regulations, Title 3, §§ 706; Acting Executive Director, Office of the General Counsel, D.C. Board of Elections |
| Florida | | P | | Fla. Stat. Title IX, §§101.131, 101.111, 104.29, 101.58; Director, Division of Elections, Florida Department of State |
| Georgia | P, N, I, A | P | P, N, I, A | Ga. Code § 21-2-406, 21-2-408, 21-2-413, 21-2-414, 21-2-483(b), 21-2-493; Director of Elections, Georgia Secretary of State's office |
| Hawaii | P, N, I, A | P, N, I, A | P, N, I, A | Hawaii Rev. Stat. § 11-25, 11-132; §16-45 (3); State of Hawaii Office of Elections, Counting Center Operations |

Key: P=Partisan Citizen; N=Nonpartisan Citizen; I=International nonpartisan; A=Academic

| State | Pre-election Procedures | Election Day Procedures | Postelection Procedures | Sources |
|---------------|-------------------------|-------------------------|-------------------------|---|
| Idaho | P | P | P | Idaho Elections Code, Title 34, § 304-34; Chief Deputy, Idaho Secretary of State |
| Illinois | P, N, A | P, N, A | P, N, A | Ill. Comp. Stats.10 ILCS 7-34 (3.5i-iii, 4), 7-47(c); Illinois State Board of Elections: A Guide for Pollwatchers 2016 [10 ILCS 5/7-34, 17-13, 17-14, 17-23, 19-10]; Illinois State Election Operations Division Director |
| Indiana | P | P | P | Ind. Elec. Code § 3-11-8-15; 3-6-7, 3-6-7-5, 3-6-8, 3-6-8-4, 3-6-9, 3-6-9-13, 3-6-10, and 3-6-10-5.5; Indiana Election Handbook p. 5-6; NASS 2013 "Individuals Authorized to Serve as Appointed/Designated Poll Watchers or Challengers and Other Authorized Polling Place Observers"; Co-Directors, Indiana Elections Division |
| Iowa | P, N, I, A | P, I | P, N, I, A | Iowa Code § 44.1, 49.104, 44.77, 49.104, 49.105, 49.63, 52.35, 50.1A, 50.11; Iowa Poll Watcher Guide (Revised Feb. 2014), p. 1-2; Iowa Deputy Secretary of State |
| Kansas | | P, N, I, A | | Kan. Stat. Ann. (K.S.A.) 25-3005a; Kansas Election Standards, pp. 63-65; Kansas Election Director |
| Kentucky | P, N, I, A | P | P, N, I, A | Ky. Rev. Stat. (KRS) 117.315-318, 117.235, 117.245, 117.087, 117.187, 242.070; Jefferson County Election Manual pp. 8-11; Kentucky Election Director |
| Louisiana | P | P | P | La. Rev. Stat. § 18:435 A. (2, 3); La R.S. 18:427, La R.S. 18:1486; LRS 18:435; LRS 18.553, LRS 18.565, LRS 18:571; Louisiana SoS webpage on "Poll Watchers for Candidates and Propositions"; Louisiana Poll Watchers Pamphlet/Procedures for Poll Watchers; NASS 2013 "Individuals Authorized to Serve as Appointed/Designated Poll Watchers or Challengers and Other Authorized Polling Place Observers"; Commissioner of Elections, Louisiana Secretary of State's Office |
| Maine | | P | | Me. Rev. Stat. (MRS) §627, §1(30-A), § 505(4), § 682(2-A)(A), §673 |
| Maryland | P, N, I, A | P, N, I, A | P, N, I, A | Md. Election Law Code § 10-308, 311, 314; Maryland State Board of Elections 2014 pp. 4, 5, 6, 11 |
| Massachusetts | P, N, I, A | P, N, I, A | P, N, I, A | Mass. Gen. Laws ch. 54 § 35, § 70 (2002 ed.), § 85, 85A (2002 ed.), 950; 950 C.M.R. § 54.04 (22)(a), 54.05(5), 54.05 (23), §54.13(c); Mass Secretary of State Election Day Legal Summary; Arab American Insitute (2014) Voter Guide Massachusetts, Yalla VOTE; NASS 2013 "Individuals Authorized to Serve as Appointed/Designated POLL Watchers or Challengers and Other Authorized Polling Place Observers"; Director and Legal Counsel, Elections Division, Office of the Mass. Secretary of the Commonwealth |
| Michigan | P, N, I, A | P, N, I, A | P, N, I, A | Michigan Department of State 2008 "The Appointment, rights, and duties of election challengers and poll watchers" (pp. 2-3, 9, 10); Michigan Election Law Project (est. 2004); Director, Election Liaison Division, Michigan Bureau of Elections |
| Minnesota | P, N, I, A | P | P, N, I, A | Minn. Stat. §§ 204C.06, 204C.07; NASS 2013 "Individuals Authorized to Serve as Appointed/Designated POLL Watchers or Challengers and Other Authorized Polling Place Observers"; University of Georgia Law (2015) "Watching the Watchers: An Analysis of Poll Watcher Statutes in the United States"; Minnestoa Secretary of State "Election Day 'Challengers", p. 2; Citizens for Election Integrity Minnesota (5/26/2009) 'Eyes on the Vote Count' ; OSCE/ODIHR 2008 U.S. Limited Election Observation Mission Final Report; Director of Elections, Office of Minnesota Secretary of State |
| Mississippi | P | P | P, N, I, A | Miss. Code Ann. § 23-15-245; §§ 23-15-571, § 23-15-577, §23-15-245; UGA Law- "Watching the Watchers: An Analysis of Poll Watcher Statutes in the U.S." 2015; U.S. Elections Assistance Commission (EAC)- 2014 Statutory Overview; Mississippi Secretary of State Poll Manager Guide 2014, Election Day Operations; Assistant Secretary of State, Mississippi Elections Division |
| Missouri | P, N, I, A | P, I | P, I | Mo. Rev. Stat. § 115.105.1, 2-6, § 115.107, § 115.409, §115.257; Moritz Law "Who may enter the polling place during the general election?" (Compendium of Statutes); League of Women Voters of St. Louis- In League Reporter (2011); OSCE/ODIHR U.S. Elections 2012 Limited Election Observation Mission–Interim Report No. 1; Deputy Chief of Staff, Missouri Secretary of State |

Key: P=Partisan Citizen; N=Nonpartisan Citizen; I=International nonpartisan; A=Academic

| State | Pre-election Procedures | Election Day Procedures | Postelection Procedures | Sources |
|----------------|-------------------------|-------------------------|-------------------------|--|
| Montana | P, N, I, A | P, N, I, A | P, N, I, A | Mont. Code Ann. § 13-13-120, § 13-13-121, § 13-13-241, § 24-26-661, § 44-10-305 (2015); Montana Secretary of State- Election Judge Handbook 2016; Deputy, Elections and Government Services Division, Office of Montana Secretary of State |
| Nebraska | P, N, I, A | P, N, I, A | P, N, I, A | Neb. Rev. Stat. § 32-926, § 32-1013; NASS 2013 "Individuals Authorized to Serve as Appointed/Designated Poll Watchers or Challengers and Other Authorized Polling Place Observers"; U.S. Elections Assistance Commission (EAC)- 2014 Statutory Overview; True the Vote Nebraska (http://truethevote.org/detail/Nebraska); Nebraskans for Civic Reform (2008, 2012); Deputy Secretary, Office of Nebraska Secretary of State |
| Nevada | P, N, I, A | P, N, I, A | P, N, I, A | Nev. Rev. Stat. § 293-274 § 293.287, § 293.303, § 293.182; U.S. Elections Assistance Commission (EAC)- 2014 Statutory Overview; NASS 2013 "Individuals Authorized to Serve as Appointed/Designated Poll Watchers or Challengers and Other Authorized Polling Place Observers" |
| New Hampshire | P, N, I, A | P, N, I, A | P, N, I, A | N.H. Rev. Stat. Ann. § 654:7.c; § 656; § 657; § 658:9, 31; § 659:21,27,49-55,60-65, 71-76; § 660; § 666:4; Department of State (2012-2013) New Hampshire Election Procedure Manual, pp. 61-62, 117; University of Georgia Law (2015) "Watching the Watchers: An Analysis of Poll Watcher Statutes in the United States"; U.S. Elections Assistance Commission- 2014 Statutory Overview; Assistant Secretary of State, New Hampshire |
| New Jersey | | P | P | N.J. Rev. Stat. Ann. §19:7-1, 2, 4, 5, 6; § 19-15-8; OSCE/ODIHR U.S. Elections 2012 Limited Election Observation Mission–Interim Report No. 1; NASS 2013 "Individuals Authorized to Serve as Appointed/Designated Poll Watchers or Challengers and Other Authorized Polling Place Observers"; Director of Elections, New Jersey |
| New Mexico | P, N, I, A | P, N, I, A | P, N, I, A | N.M. Stat. Ann. §1: 1-3.2; § 1:2-21, 22, 23, 25, 27, 29, 30, 31, 32; OSCE (10/19/2012) Interim Report No. 1; Caltech Voting Technology Project, Polling Process of the Future; The University of New Mexico (2011)- Assessing Electoral Performance in New Mexico Using an Ecosystem Approach Voter Survey Frequency Report; New Mexico, Secretary of State Elections Data Overview; New Mexico Interim SED, Office of Secretary of State |
| New York | P | P, N, I, A | P | N.Y. State Election Law § 3-102 (10); § 3-400, 401, 402; § 5-206; §5-218; § 7-202; § 8-102 (1-h), (2); § 8-104 (1), (2), (6); § 8-106; § 8-500; § 8-502; § 8-504; § 8-506; § 8-508; § 8-510; § 9-102 (2a) (3a); § 9-124(2); §9-209 (1b,c); §17-102(7); §17-106; § 6210.18 (2015); Voting Rights Act § 5, 203; New York Board of Elections "Poll Watcher's Guide"; Co-Directors, NY State Board of Elections |
| North Carolina | | P | | N.C. Gen. Stat. § 163-45; § 163-85 (1); UGA Law—"Watching the Watchers: An Analysis of Poll Watcher Statutes in the U.S." 2015, p. 14-16; U.S. Elections Assistance Commission- 2014 Statutory Overview; Moritz Law "Who may enter the polling place during the general election?"; Democracy North Carolina (12/30/2014) "Election Protection: A role for you at the Polls"; George Washington University (October, 2008) "OSCE begins monitoring of US elections"; Executive Director, North Carolina State Board of Elections |
| North Dakota | P, N, I, A | P, N, I, A | P, N, I, A | N.D. Cent. Code § 16.1-05-06, 09; North Dakota Secretary of State (July 2015) "Election Observers" document (PDF); Jim Silrum, North Dakota Deputy Secretary of State |
| Ohio | P | P | P | Ohio Rev. Code § 3501.26; § 3501.33; § 3505.16; §3505.19; §3505.20; § 3505.21 (B, C, E, D, F); §3505.16; § 3505.27; § 3505.183; Ohio Secretary of State: "Observer Fact Sheet"; "Poll Worker Training Guide"; "Precinct Election Officials Quick Reference Guide—Observers"; "Precinct Election Official Reminders"; "Challenger Affidavits"; "Certificate of Appointment of Observers" |
| Oklahoma | P | | P | Okla. Stat. § 26-7-130, § 26-7-108, § 26-7-112, § 26-8-114; U.S. Elections Assistance Commission (EAC)- 2014 Statutory Overview; Election Director, Oklahoma State Election Board |

Key: P=Partisan Citizen; N=Nonpartisan Citizen; I=International nonpartisan; A=Academic

| State | Pre-election Procedures | Election Day Procedures | Postelection Procedures | Sources |
|----------------|-------------------------|-------------------------|-------------------------|--|
| Oregon | P, N, I, A | N, A | P, N, I, A | Or Rev. Stat. Oregon Revised Statutes § 254.415-254.426, 254.482, 258.211 (2) (a); Oregon Vote by Mail Manual, p. 17; James R. Williams, Elections Director, Office of Oregon Secretary of State |
| Pennsylvania | P | P | P | Pa. Election Code (P.S.) § 2687; 25 P.S. 2687 section 417 (Act 2004-97); 52 Pa. Code 102.2, 102.4; 34 Pa. Code 95.52; Commonwealth of Pennsylvania: "Rights of Watchers, Candidates & Attorneys" |
| Rhode Island | P, N, I, A | P, N, I, A | P, N, I, A | R.I. Gen Laws §§ 17-19-22, 17-15-13, 17-19-23.1; 17-22-2, 17-23-17; R.I. Board of Elections "Rules and Regulations for Polling Place Conduct, p. 1-2"; Rhode Island Board of Elections "Voting at the Polling Place"; Rhode Island Board of Elections "Rules and Regulations for Polling Place Conduct"; Rhode Island Board of Elections Poll Worker Manual 2016; Rhode Island Board of Elections Supervisor Training 2014; Planning & Program Development Specialist, Rhode Island Board of Elections |
| South Carolina | P, N, I, A | P, N, I, A | P, N, I, A | S.C. §§ 7-13-140, 7-13-810, 7-13-860, 7-13-1110, 7-13-1390; South Carolina Poll Managers Handbook 2016, p. 26-29; Executive Director, South Carolina State Election Commission |
| South Dakota | P, N, I, A | P, N, I, A | P, N, I, A | S.D. Codified Laws Ann. § 12-18-8.1 (poll watchers), 12-18-9 (all observers), 12-18-9.1, 12-18-8.2, 12-18-8.3; South Dakota Deputy Secretary of State, Elections Services |
| Tennessee | P, N, I, A | P, N | P, N | Tenn. Election Code § 2-7-103, 2-7-104; Tennessee State Election Director |
| Texas | P | P | P | Tex. Election Code § 213.013 ; 33.001, .006, .031, .032, .034, .035, .051, .052, .054, .055, .056, .059, .060, .061; Texas Secretary of State- Poll Watcher's Guide 2015, p. 8; Texas Director of Elections |
| Utah | P, N, I, A | P, N, I, A | P, N, I, A | Utah Election Code § 20A-3-201 (1-7); Utah Director of Elections, Office of Lieutenant Governor |
| Vermont | P, N, I, A | P, N, I, A | P, N, I, A | Vt. Stat. Ann. § 17 VSA 2564, 2572; 2581; Vermont Secretary of State Election Procedures Guide 2014; Vermont Director of Elections, Office of the Secretary of State |
| Virginia | P | P | P | Va. Code § 24.2-103, .2-406, .2-407, .2-444, .2-604 (A, C, I), .2-655, .2-639, .2-671.1, .2-655; .2-671.1, .2-802(C); |
| Washington | P, N, I, A | P, N, I, A | P, N, I, A | Wash. Rev. Code § 29A.12.130, RCW 29A.60.110, 29A.60.170, RCW 29A.64.030, RCW 29A.64.041; WAC 434-261-010, WAC 434-250-110; Washington Secretary of State "An Observer's Guide to Washington State Elections" 2010, p. 5-6; Certification & Training Program Manager, Washington State Elections, Office of the Secretary of State |
| West Virginia | P, N, I, A | | P, N, I, A | W/ Va. Code §§ 3-1-37, 3-1-38, 3-4A-27; University of Georgia Law (2015) "Watching the Watchers: An Analysis of Poll Watcher Statutes in the United States"; Moritz Law "Who may enter the polling place during the general election?" (Compendium of Statutes); West Virginia Manager of Elections |
| Wisconsin | P, N, I, A | P, N, I, A | P, N, I, A | Wis. Stat. § 6.92, 7.41; Wisconsin Administrative Code (GAB) 4.01, 4.02, 4.07; Wisconsin Government Accountability Board (GAB) "Election Observer Rules at a Glance"; University of Georgia Law "Watching the Watchers: An Analysis of Poll Watcher Statutes in the United States," p. 17, 19; Director of General Counsel, Wisconsin Government Accountability Board |
| Wyoming | P | P | P | Wyo. Stat. Ann. § 22-15-109 (2015); Wyoming Election Judges Handbook 2012, p. 17; |

What Role Do Federal Observers Play?

The Voting Rights Act of 1965 allows the appointment of federal observers to monitor elections in local jurisdictions or states that have been certified by the Attorney General of the United States. Federal observers from the Department of Justice (DOJ) are appointed and sent when there are concerns about compliance with federal laws. Questions might relate to potential racial discrimination during the polling process, compliance with bilingual election procedures or inadequate accessibility for disabled voters. Observers are trained to remain neutral and impartial as they observe polls on Election Day and to cooperate with state and local election officials.

The number of states being observed, and therefore the number of federal observers being appointed and assigned, has varied over the years. In 2008 and 2012, the DOJ assigned federal observers to 23 states.

Following the decision of the Supreme Court in *Shelby Co. v Holder* (2013), the number of federal observers deployed in 2016 was much smaller. For the 2016 presidential elections, four states (Alabama, Alaska, California, and Louisiana), determined by court order, had federal observers, making it the smallest deployment since the passage of the Voting Rights Act. DOJ can send its own staff to observe elections, but only with permission from the local jurisdiction.



Observers typically use checklists to systematically gather data from across polling stations on Election Day.

Legislative Action

In the last several years there has been a trickle of legislation (one to four bills enacted per year) on the topic of election observation, relating to who can be an observer, the process of becoming an observer, and which aspects of the election process may be observed.

Modifications to who can be an election observer

- Tennessee SB1945 (2016) prohibited the appointment of a candidate's spouse to serve as an election observer.
- Montana HB529 (2015) prohibited a candidate from serving as a poll watcher.
- New York AB5075 (2014) prohibited candidates for public office in a given election from acting as poll watchers.
- Alaska HB104 (2013) set the requirement that poll watchers be U.S. citizens.

Modifications to the process of becoming an observer

- Virginia HB1333 (2015) specified that the state or district chairman may designate authorized representatives of political parties if the county or city chairman is unavailable to do so.
- Wisconsin AB202 (2014) required all authorized observers to sign in on a log provided at the polling place, and provided for observation areas of not less than 3 feet or more than 8 feet from the voter check-in table.
- Arkansas HB 1551 (2013) required the State Board of Elections to certify at least one state election monitor for each congressional district and HB1552 (2013) required training for certified state election monitors.
- Texas SB160 (2013) required election officials to provide poll watchers with identification to be displayed by the watcher at the polling place.

Modifications to which aspects of the election process may be observed

- Maryland SB5 (2015) permitted authorized partisan and nonpartisan observers, and any others who wish to be present, to observe the canvass process.
- Virginia HB319/SB537 (2012) specified that partisan observers may be close enough to the voter check-in table to be able to hear what is occurring, but that observation shall not violate the secret vote or otherwise interfere with the election.

Case Studies

Connecticut

In Connecticut, access to observe in polling places is reserved for political party representatives, termed challengers and unofficial checkers. These partisan citizen observers are designated by the town chairman of each party. At least two days ahead of an election, each chairman submits a list of names to the registrar of voters in order to appoint political party observers to watch all stages of the process. However, pre-election and postelection procedures are open to the public.

The Connecticut Voters Count, a nonpartisan citizen observer group, has observed all major postelection audits in Connecticut since 2007. The Citizen Audit has produced reports aimed at improving the observability of the audit and general transparency in the auditing process. In addition to several other recommendations, executive director Luther Weeks explained that his organization recommends well-defined notice periods for public audits, more enforceable procedures for audits and recounts, and clear standards for ballot protection.

North Dakota

In 2011, North Dakota became one of the few states to explicitly allow access for election observers by statute. The North Dakota Legislature passed a bill guaranteeing election observers “uniform and nondiscriminatory access to all stages of the election process” (see N.D. Century Code §16.1-05-09).

Senator Ray E. Holmberg (R) drafted the bill and worked with the Association of Counties to

find language with which county officials, who are ultimately responsible for administering the elections, would be comfortable. When recounting how the bill got started, Holmberg recalled thinking, “What’s good for the goose is good for the gander. Here in the U.S., we feel that we should send our citizens and representatives overseas to ensure that other countries’ elections are being run fairly. At the same time, we should make it possible for people to come over here and do the same thing for us and our elections.” The bill does not explicitly say “international” observers, but that was his intent, and it is how the law is interpreted in North Dakota.

North Dakota now welcomes different types of observers, who must each wear a badge with the individual’s name and the name of the organization she or he represents. Election observers are not permitted to wear campaign materials and may not interfere in the electoral process. While there is no official limit to the number of observers who can be present in North Dakota polling places, an election inspector has the right to limit numbers of observers based on space restrictions.

Georgia

Party observers are specifically permitted in the state of Georgia and are referred to as “poll watchers.” Each political party, independent candidate, and nonpartisan candidate (in nonpartisan elections) can designate two poll watchers per precinct. In addition, each designating group may appoint 25 statewide poll watchers who have the same powers and duties as precinct-specific poll watchers but can observe at any precinct in the state.

Georgia statute has generally been interpreted to mean that no one besides designated poll watchers can observe on Election Day. Certain procedures are required to be open to the public, however, such as the logic and accuracy testing of electronic voting machines and all proceedings at tabulation centers.

California

California’s administrative election code places requirements on county election officials to ensure public access for all kinds of observers to watch the elections. In addition, California provides for formal accreditation, credentialing, and registration

of observers. Each county has specific rules and procedures for election observation, and observers are requested to work with local election authorities to register and obtain necessary credentials. Formalized accreditation processes may enable counties and states to track observation activities and to require proper training and observers' compliance with laws.

California has a history of independent election observers being present during its elections. Each statewide election is observed by representatives of various nonpartisan citizen groups and academic groups, and international observers have been present during some past elections. Pam Smith, president of Verified Voting Foundation, provided some insight about the culture of election observation in the state. She noted the vast cultural differences across elections in each state and noted that, "In California, it's stated in statute that you can observe any part of electoral process as long as you're not making a nuisance of yourself."



Scholars from China observe voting in Washington, D.C. Their mission was to see how the United States organizes elections.

INTERNATIONAL ELECTION OBSERVATION ABROAD AND AT HOME

Democracy and the right of citizens to choose their representatives are fundamental values in the United States, and ones that this country seeks to promote abroad as well. One way these values are promoted globally is through international election observation.

While people may think international election observation teams are a boon for new or emerging democracies, these efforts can benefit well-established democracies as well.

At the invitation of the U.S. State Department, the Organization for Security and Cooperation in Europe (OSCE)'s Office of Democratic Institutions and Human Rights brings international election observers to this country to see firsthand how elections work here. These delegations most commonly visit during general elections, when teams of observers may fan out over a dozen or more states. Each team prepares reports on their observations that are compiled to create a national-level report of findings on the process. International election observation missions also offer recommendations on how the voter experience may be improved that are shared with election officials.

In 2010 the National Association of Secretaries of State (NASS) issued a resolution and protocol that welcomes OSCE international election observers to observe elections in states where it is permitted by state law. International observers only come to states where they are permitted and welcomed.

The U.S. was a founding member of the OSCE and signed the 1990 Copenhagen Agreement, which gives member countries the right to observe each other's elections. While U.S. citizens do go abroad to observe elections in participating countries through the OSCE, there are also other organizations that observe elections around the world. These include The Carter Center, The International Republican Institute (IRI), the National Democratic Institute (NDI) and the Organization of American States (OAS). The OAS also deployed observers to the U.S. in 2016, as well as the OSCE.

Many of these international election observation organizations have agreed to common guidelines for the conduct of good election observation by endorsing the Declaration of Principles for International Election Observation. In addition,

individual observers are required to abide by a code of conduct while they are serving in this role.

State Laws on International Election Observers

Because elections are decentralized in the U.S., laws and customs regarding international observers vary. More than half of all U.S. states allow international observers, at least for some elections. Regulation of international election observers is a patchwork, and there is no single way that states handle observers.

Explicit access for international observers

Four states plus the District of Columbia explicitly refer to international observers either in statute or written regulation. All except Tennessee do so to permit international election observers; Tennessee's statute prohibits international observers.

- California (2016's AB 2021): An international election observer may be provided uniform and nondiscriminatory access to all stages of the election process that are open to the public, including the public review period for the certification of a ballot marking system, the processing and counting of vote by mail ballots, the canvassing of ballots, and the recounting of ballots. An international election observer shall not interfere with a voter in the preparation or casting of the voter's ballot, with a precinct board member or an elections official in the performance of his or her duties, or with the orderly conduct of an election.
- District of Columbia (D.C. Code § 1-1001.02.25): "Election observers' means persons who witness the administration of elections, including individuals representing nonpartisan domestic and international organizations, including voting rights organizations, civil rights organizations, and civic organizations."
- Missouri (M.R.S. § 115.409): "Except election authority personnel, election judges, watchers and challengers appointed pursuant to section 115.105 or 115.107, law enforcement officials at the request of election officials or in the line of duty,

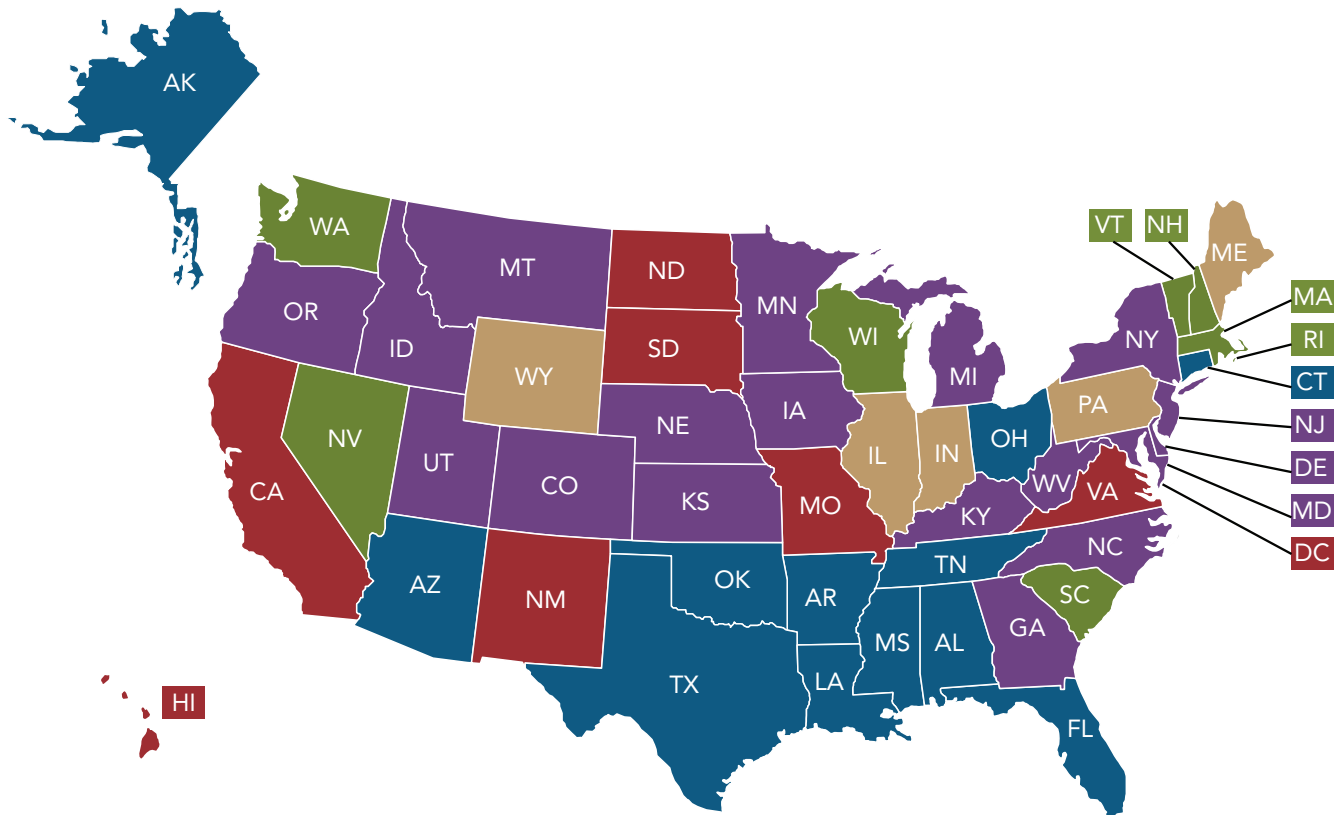
minor children under the age of 18 accompanying an adult who is in the process of voting, international observers who have registered as such with the election authority, persons designated by the election authority to administer a simulated youth election for persons ineligible to vote because of their age, members of the news media who present identification satisfactory to the election judges and who are present only for the purpose of bona fide news coverage...no person shall be admitted to a polling place."

- New Mexico (N.M. § 1-1-3.2): "As used in the Election Code, 'election observer' means a person registered with the United States department of state as an international election observer or a person registered with the New Mexico secretary of state who is an academic engaged in research on elections and the election process."
- Tennessee (Tenn. Code Ann. § 2-1-119): "Any representative of the United Nations appearing without a treaty ratified by the United States Senate stating that the United Nations can monitor elections in this state, shall not monitor elections in this state."

Four additional states have statutory language that is inclusive of many types of observers, which may include international observers:

- Hawaii (HI Rev Stat § 11-132-C-6): The list of people allowed in a polling place includes "Any person or nonvoter group authorized by the chief election officer or the clerk in county elections to observe the election at designated precincts for educational purposes provided that they conduct themselves so that they do not interfere with the election process."
- North Dakota (N.D. Cent. Code § 16.1-05-09.1): "Election observers must be allowed uniform and nondiscriminatory access to all stages of the election process, including the certification of election technologies, early voting, absentee voting, voter appeals, vote tabulation, and recounts."
- South Dakota (S.D. § 12-18-9): "Any person, except a candidate who is on the ballot being voted on at that polling place, may be present

State Laws on International Election Observers



- Explicitly allow international observers in statute or written regulation
- Explicitly prohibit or restrict international observers
- Allow international observers in practice
- Allow the public (including international observers) to view all aspects of the elections process
- Have no specified regulations or practice regarding international election observers

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at any polling place for the purpose of observing the voting process. Any person may be present to observe the counting process.”

- Virginia (Va. Code §24.2-604): “A local electoral board may authorize in writing the presence of additional neutral observers as it deems appropriate.”

States that allow the public to observe elections

In at least eight additional states, the election process, including pre- and postelection procedures as well as polling sites on Election Day, is open to the public. They are: Massachusetts, Nevada, New Hampshire, Rhode Island, South Carolina, Vermont, Washington

and Wisconsin. If the process is open to the public, this typically includes international observers as well. Many of these states specify that the public must stay a certain distance away from voters and ballot boxes, or that they must stay behind a guardrail while observing.

There are additional states whose statutes allow public access to other aspects of the process, such as the testing of voting machines prior to an election or the counting processes after an election, but access to observing at polling sites on Election Day is more restricted.

States that have allowed international observers in practice

Since it is not common for international election observation to be explicitly permitted in statute or administrative rule, state and local election officials often consider permitting international observers on a case-by-case basis.

In 2016, 18 states have permitted (or would likely permit) international election observers in practice, even though there is no formal statutory guidance: Colorado, Delaware, Georgia, Idaho, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Montana, Nebraska, New Jersey, New York, North Carolina, Oregon, Utah and West Virginia. Depending on the state, international observers could request access through the state election office, or county election offices, or both. Access may be granted on a case-by-case basis.

Some states or counties that have permitted international observers in the past may not continue to do so in the future, and jurisdictions that have prohibited observers in the past may reconsider at a future date as well.

States that prohibit international observers

Twelve states have statutory language that explicitly prohibits, or has been interpreted to prohibit, international observers: Alabama, Alaska, Arizona, Arkansas, Connecticut, Florida, Louisiana, Mississippi, Ohio, Oklahoma, Tennessee and Texas.

In most cases this is because election observation is limited to partisan observers who are often required to be residents or registered voters in the state, and affiliated with a political party or candidate. Alaska's statute, for example, requires that political party observers be citizens of the United States. In Connecticut the public may observe pre- and post-election procedures, but access to polling places is restricted to political party observers, voters, the press and poll workers.

In remaining states there is no statutory guidance for international observers nor a known practice on permitting or prohibiting international observer access.



An election worker uses this electronic poll book to check in voters.



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