

CONFIRMATION OF CONGRESSIONAL OBSERVER ACCESS
ACT OF 2023

JANUARY 29, 2024.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. STEIL, from the Committee on House Administration,
submitted the following

R E P O R T

[To accompany H.R. 6513]

The Committee on House Administration, to whom was referred the bill (H.R. 6513) to amend the Help America Vote Act of 2002 to confirm the requirement that States allow access to designated congressional election observers to observe the election administration procedures in congressional elections, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

	Page
Purpose and Summary	2
Background and Need for Legislation	2
Committee Action	7
Committee Consideration	9
Committee Votes	9
Statement of Constitutional Authority	9
Committee Oversight Findings	9
Statement of Budget Authority and Related Items	9
Congressional Budget Office Estimate	10
Performance Goals and Objectives	10
Duplication of Federal Programs	10
Advisory on Earmarks	10
Federal Mandates Statement	10
Advisory Committee Statement	10
Applicability to Legislative Branch	10
Section-by-Section Analysis	10
Changes in Existing Law Made by the Bill, as Reported	12

PURPOSE AND SUMMARY

H.R. 6513, the Confirmation Of Congressional Observer Access Act (COCOA Act) of 2023, introduced by Representative Mike Carey (OH–15), and co-sponsored by Representative Bryan Steil (WI–01), Chairman of the Committee on House Administration, and Representative Joseph D. Morelle (NY–25), Ranking Member of the Committee on House Administration, provides a statutory citation for the long-running, constitutionally authorized congressional observer program operated by the House of Representatives.¹ It ensures that congressional observers authorized by the House have full access to view congressional election administration processes, including polling places and election tabulation facilities. The House’s congressional election observer program is authorized under the Constitution but is not codified in federal statute. While the constitutional authority of Congress to deploy election observers supersedes any state law to the contrary, the lack of statutorily codified authorization for the program has created difficulties for House observers and confusion for elections officials. The Committee on House Administration and its observers have received requests from state and county elections officials for a “statutory citation of convenience” for the Constitution’s grant of authority for the existing House program. Without purporting to expand the House’s authority or its existing observer program, this legislation provides that statutory citation.

BACKGROUND AND NEED FOR LEGISLATION

BACKGROUND

The Constitution delegates to each House of Congress the authority to “be the Judge of the Elections, Returns and Qualifications of its own Members.”² While, in general, Congress shall respect the authority of states to announce the election of individuals as members to Congress, the House of Representatives serves as the final arbiter as to the seating of any putative member-elect. In the post-Civil War era, more than 100 election contests have been filed with the House of Representatives. The Federal Contested Elections Act (“FCEA”) of 1969 established some procedures for how the House of Representatives handles certain contests.³ Further, members of the House have offered an additional 15 seating challenges pursuant solely to the precedents of the House using what is colloquially known as the “step aside” method.⁴ Rule X of the Rules of the House of Representatives delegates adjudicatory authority over all contests and seating challenges to the Committee on House Administration (“Committee”).⁵

The House’s constitutional authority to “be the Judge of the Elections, Returns and Qualifications of its own Members”⁶ inherently

¹ Nothing in the COCOA Act should be construed as affecting or limiting in any way any similar constitutional activities conducted by the U.S. Senate.

² U.S. CONST. art I, § 5, cl. 1.

³ 2 U.S.C. §§ 381–396.

⁴ Congressional Research Service. (October 18, 2016). *Procedures for Contested Election Cases in the House of Representatives*. (CRS Report No. RL33780). <https://crsreports.congress.gov/product/pdf/RL/RL33780>.

⁵ Rules of the United States House of Representatives, Rule X(k)(12), <https://rules.house.gov/sites/repUBLICans.rules118.house.gov/files/documents/Rules%20and%20Resources/118-House-Rules-Clerk.pdf>.

⁶ U.S. CONST. art I, § 5, cl. 1.

includes the authority to observe the administration of congressional elections so that the House may make informed decisions as constitutional judge. The House has delegated much of this authority under its rules to the Committee, which performs a quasi-judicial function through investigation and adjudication of election contests pursuant to the FCEA and/or the precedents of the House and the precedents of and rules established by the Committee. With this authority, the Committee trains and credentials employees of the House to serve as election observers so the House has its own official record of the administration of House elections. It is important that the House has its own, independent official record in the event of an election contest or seating challenge so it can accurately and faithfully perform its constitutional duty. Absent its own official evidence, the House would struggle to verify evidence received from non-House observers and be forced to rely on third-party reports to interpret results certified in a House election. Because the House operates its election observer program pursuant to the constitution, the supremacy clause⁷ dictates that this authority supersedes any state law to the contrary.

The Election Observer Program exists to serve the official interests of the House of Representatives to ensure free, fair, and secure congressional elections. While political candidates and parties deploy election observers to advocate for their position in key jurisdictions, official congressional observation of congressional elections fills another, necessary role by allowing for the creation of a useable record in the case of an election contest or seating challenge. As such, Congress has for decades appointed and trained official congressional staff as observers to watch the administration of congressional elections in the states and territories pursuant to its Article I, Section 5 authority.⁸

The purpose of congressional observation by the House of Representatives is to ensure the candidate seated is the one actually elected by the people in a free, fair, and secure election. House of Representatives staff members, designated and credentialed by the Committee,⁹ are on-site at the election offices or facility in close or difficult elections to observe election procedures to ensure the certified winner was chosen in a free and fair election. Only official employees of the House of Representatives may serve as congressional election observers; and while actively serving, no observer may engage in political advocacy or interfere with the administration of the election.

Observers play a critical role in maintaining election integrity and voter confidence by focusing on transparency and security in the election process. Their presence and their duties of watching, recording, and reporting on election administration activities is vital in ensuring ballots are counted and adjudicated according to law. The Election Observer Program aims to ensure that all eligible Americans can vote, all lawful votes are counted accurately, and the rightful winner is seated in the following Congress.

⁷ U.S. CONST. art. IV, cl. 2.

⁸ *House Election Observer Program*, Comm. on H. Admin. (Republicans), <https://republicans-cha.house.gov/election-observerprogram>. <https://rollcall.com/2010/11/11/house-panel-could-hold-hearings-on-close-races/>; <https://cha.house.gov/2022/10/ranking-member-davis-house-will-deploy-congressional-election-observers-during>.

⁹ Pursuant to Rule X of the Rules of the House of Representatives.

Each side of the Committee operates its own flavor of the Election Observer Program. Committee Republicans recruit, train, and deploy both D.C. and district Republican House staff members to election administration sites across the country. The Committee sends recruitment emails to Member offices with information regarding the Program and an invitation to future trainings.

Once recruited, staff are required to participate in a number of training sessions throughout the fall. While not all observers will be deployed, all observers are required to be trained. The Committee hosts in-person, virtual, and hybrid trainings for D.C. and district staff with current or former elections officials, elections attorneys, and other election observation experts as guest lecturers to ensure a well-rounded approach.

In addition to training, the Committee actively engages in outreach to the elections community, particularly with election officials. This outreach is a key aspect of ensuring a seamless and cooperative relationship between the Committee, congressional election observers designated by the House, and local election administrators. As part of this effort, the Committee provides election officials for a congressional district with copies of example credentials, identification of individuals anticipated to serve in that congressional district as congressional election observers, and the scope of observers' duties.

This proactive communication is intended to alert election officials to the congressional election observers' official status and to establish a line of communication between the Committee and those specifically relevant state and/or local elections officials. These efforts reflect the Committee's commitment to maintaining the integrity and professionalism of the election observer program and fostering constructive engagement with state and local election officials as we work toward the shared goal of free, fair, and secure elections.

On Election Day and the days following, Committee Republicans monitor races and send observers upon request of the Republican Nominee, with preference given to races expected to have close margins or with a history of election administration difficulties. Recruited and trained volunteer staff observers are deployed to close races to gather information and monitor the canvass, recount, or other stages of the election process to build a factual record for the Committee in the event a contested election ensues. The Committee makes every effort to take factors such as geography and familiarity into account when making deployment decisions. Since observers are on official business for the House, they do not have to take personal leave and their travel costs are paid by the Committee.

Election observers are present at the election office or facility solely to observe, take notes, ask questions when appropriate, and report back to the Committee. As official representatives of the House, congressional election observers are the "first among equals" with respect to other observers and have the constitutional authority—confirmed by the COCOA Act—to be in the rooms where local election officials process ballots and tabulate votes, to see where ballots are stored, and to observe other, non-public processes.

In the 117th Congress, two bills were introduced in the House of Representatives that would have provided a statutory citation of convenience for congressional election observers. Former Ranking Member of the Committee on House Administration Subcommittee on Elections, Representative Bryan Steil (WI-01), introduced H.R. 8517, the Confirmation of Congressional Observer Access (“COCOA”) Act of 2022,¹⁰ an earlier version of this bill that would have required States to provide designated congressional election observers with full access to observe the administration procedures of federal elections, and prohibited such an observer from handling ballots or elections equipment, advocating for a position or candidate, taking any action to reduce ballot secrecy, or otherwise interfering with the elections administration process. The legislation was cosponsored by former Ranking Member of the Committee on House Administration, Representative Rodney Davis (IL-13), and Committee member Representative Barry Loudermilk (GA-11).

Additionally, former Ranking Member Rodney Davis introduced H.R. 8528, the American Confidence in Elections Act,¹¹ in the 117th Congress, which included the version of the COCOA Act from the 117th Congress. That legislation featured 43 co-sponsors.

In the 118th Congress, the Chairman of the Committee on House Administration, Representative Bryan Steil, introduced H.R. 4563, an updated version of the American Confidence in Elections Act,¹² which included language to allow access to designated congressional election observers materially identical to the language of the COCOA Act from the 117th Congress. As of publication of this report, the legislation has 127 co-sponsors, including Representative Mike Carey (OH-15). Representative Carey also introduced H.R. 4474, the Confirmation Of Congressional Observer Access Act of 2023, which separately introduced the same language.¹³

After bipartisan discussions, H.R. 6513, the Confirmation Of Congressional Observer Access Act (COCOA Act) of 2023, was introduced on November 30, 2023, by Representative Mike Carey (OH-15) and co-sponsors Representative Bryan Steil (WI-01), Chairman of the Committee on House Administration, and Representative Joseph D. Morelle (NY-25), Ranking Member of the Committee on House Administration.

NEED FOR LEGISLATION

Under the power granted to the U.S. House in Article I, Section 5 of the U.S. Constitution to “be the Judge of Elections, Returns, and Qualifications of its own Members,” the Committee on House Administration is vested by House Rules with jurisdiction over contested House elections, which includes the House’s congressional observer program.

¹⁰ H.R. 8517—117th Congress (2021–2022): COCOA Act of 2022, H.R. 8517, 117th Cong. (2022), <https://www.congress.gov/bill/117th-congress/house-bill/8517/>.

¹¹ H.R. 8528—117th Congress (2021–2022): ACE Act, H.R. 8528, 117th Cong. (2022), <https://www.congress.gov/bill/117th-congress/house-bill/8528/>.

¹² H.R. 4563—118th Congress (2023–2024): American Confidence in Elections Act, H.R. 4563, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/house-bill/4563/>.

¹³ H.R. 4474—118th Congress (2023–2024): Confirmation Of Congressional Observer Access Act of 2023, H.R. 4474, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/house-bill/4474/>.

While the congressional election observer program is authorized under the Constitution,¹⁴ it is not codified in federal statute; as such, some states do not specifically recognize the authority of congressional election observers designated by the House to be present to observe House elections. This can result in scenarios where other observers are allowed access while official congressional observers are excluded.¹⁵ This distinction is significant as congressional observers designated by the House have a specific constitutional mandate to observe House, complementing the role of public observers who represent broader community interests.

While the constitutional authority of Congress to deploy election observers supersedes any state law to the contrary, the lack of statutorily codified authorization for the program has created difficulties for observers in some States. In recent years, the Committee has also received requests from state and county elections officials for a “statutory citation of convenience” for the Constitution’s grant of authority. For example, elections officials in Tarrant County, Texas, and Henrico County, Virginia, requested a “statutory citation of convenience” after removing or preventing the admission of congressional election observers, explaining that without a statutory citation, the county would find it difficult to permit observers not specifically authorized by state law. These good-faith conversations led to the development of the COCOA Act to ensure clear expectations—and no unintentional surprises—for all parties involved.

However, there are more serious examples, such as the 2020 race for the Office of Representative from the Sixth Congressional District of Arizona in Maricopa County, Arizona. Both sides of the Committee on House Administration designated and deployed staff to observe the election. However, election officials blocked the admission of official House election observers who were authorized to execute the House’s constitutional responsibilities with respect to serving as the final “Judge of the Elections, Returns, and Qualifications of its own Members.”¹⁶ All calls for assistance went unanswered, and no congressional election observers designated by the House were permitted entry. In other situations, House election observers have been threatened with arrest for requesting admission to polling locations.¹⁷

Previously, state officials operated under color of law to remove congressional election observers designated by the House on an *ad hoc* basis, usually arguing they were not authorized under state law to observe, leading frequently to a lengthy back-and-forth between attorneys for the state or county government and the Committee. The COCOA Act establishes a process for removal by state officials of congressional election observers designated by the House only when a State or local election official has a reasonable basis to believe that the designated congressional election observer has engaged in or imminently will engage in intimidation or deceptive practices prohibited by Federal law.

¹⁴ Grants the U.S. House of Representatives the authority to serve as the final “Judge of the Elections, Returns and Qualifications of its own Members”, which includes the authority to observe the administration of congressional elections.

¹⁵ Maricopa County, Arizona; 2020 election cycle.

¹⁶ U.S. Const. Art. 1, Sec. 5.

¹⁷ Harris County, Texas; 2020 election cycle.

The Code of Official Conduct for the House of Representatives requires all employees of the House to behave at all times in a manner that reflects creditably on the House, a requirement re-affirmed by the COCOA Act. As such, an employee of the House who serves as a designated congressional election observer is subject to the Code of Official Conduct in the employee's role as an observer, and the Committee expects the highest standards of professionalism from congressional election observers designated by the House. Should the Committee be made aware of an observer not living up to this standard, practice dictates that the Committee itself would immediately remove the observer itself.

To counter unwarranted removals and ensure that designated congressional election observers can accomplish what is directed by law, any election official who removes a congressional election observer is required to inform the Chair and Ranking Member of the Committee and to provide written notice detailing the reason or reasons the designated congressional election observer was removed. In the event of a lawful removal, the Chair or Ranking Member of the Committee may send another designated congressional election observer as a replacement.

Rep. Carey's Confirmation Of Congressional Observer Access Act of 2023 ("COCOA Act of 2023")¹⁸ would statutorily codify the House of Representatives' congressional election observer program, re-emphasizing that the Constitution requires states to allow authorized U.S. House staff full access to observe state administration of federal elections administration in order to effect the House's Article I, Section 5 authority. Under the COCOA Act, Congress restricts its authority to access for observation the state administration of federal elections to those activities absolutely necessary for its constitutional duties. Such access includes, but is not limited to, all areas of polling places and other facilities where ballots in the election are processed, scanned, tabulated, cast, canvassed, recounted, audited, or certified, including during pre- and post-election procedures. Consistent with long-standing instruction to House observers, the COCOA Act confirms in statute that House election observers may not handle ballots or election equipment, advocate for a position or candidate, or otherwise interfere with the administration of an election. This legislation does not establish new authorities or procedures for the existing election observer program, but does require that when an observer is removed, that the Chair or Ranking Member of the Committee are provided written notice detailing the reasons for dismissal. In the event this transpires, the Chair or Ranking Member can designate a new observer for that race.

COMMITTEE ACTION

INTRODUCTION AND REFERRAL

On November 30, 2023, Representative Mike Carey (OH-15), joined by Representative Bryan Steil (WI-01), Chairman of the Committee on House Administration, and Representative Joseph D. Morelle (NY-25), Ranking Member of the Committee on House Ad-

¹⁸H.R. 6513—118th Congress (2023–2024): COCOA Act of 2023, H.R. 6513, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/house-bill/6513>.

ministration, introduced H.R. 6513, the Confirmation Of Congressional Observer Access Act of 2023. The bill was referred to the U.S. House of Representatives Committee on House Administration.

HEARINGS

For the purposes of clause 3(c)(6)(A) of House rule XIII, in the 118th Congress, the Committee held two subcommittee hearings and one full committee hearing to develop H.R. 6513.

1. On March 10, 2023, the Committee held an elections subcommittee hearing titled, “2022 Midterms Look Back Series: Successes in the 2022 Midterm Elections.” The hearing focused on the strengths and weaknesses of the 2022 federal midterm election, lessons learned from newly implemented and administered State election laws, and how ACE Act can be strengthened based on new data from the midterm election. Witnesses included: The Honorable Kyle Ardoin, Louisiana Secretary of State, The Honorable Chris Anderson, Supervisor of Elections, Seminole County, Florida, The Honorable Frank LaRose, Ohio Secretary of State, and Damon Hewitt, President and Executive Director of the Lawyers’ Committee.¹⁹

2. On March 23, 2023, the Committee held an elections subcommittee hearing titled, “2022 Midterms Look Back Series: Election Observer Access.” The hearing focused on successful election observation practices, how they were utilized during the 2022 midterm election, and how ACE Act, which includes the Confirmation of Congressional Observer Access Act,⁵⁷³ can be strengthened based on new data from the midterm election. In this midterm and other past elections, the Committee and its observers have received requests from state and county elections officials for a “statutory citation of convenience” for the Constitution’s grant of authority for congressional observation. COCOA provides this statutory citation of convenience in plain language. Witnesses included: Ms. Lynn Taylor, President of the Virginia Institute for Public Policy, Mr. Josh Findlay, National Election Integrity Director of the Republican National Committee, Ms. Lisa Lyons, County Clerk, Kent County, Michigan, and The Honorable Benjamin Hovland, Commissioner, U.S. Election Assistance Commission.²⁰

3. On July 10, 2023, the Committee held a full committee field hearing titled, “American Confidence in Elections: The Path to Election Integrity Across America.” The hearing outlined the newly introduced ACE Act, which includes a previous version of the COCOA Act,²¹ and highlighted the successes of S.B. 202, 2021. Witnesses included: The Honorable Hans von Spakovsky, Manager, Election Law Reform Initiative and Senior Legal Fellow, The Heritage Foundation, Dr. Kathleen Ruth, Former Vice Chair, Fulton County Board of Registration and Elections, Mrs. Vernetta Keith Nuriddin, Elections Consultant,

¹⁹2022 Midterms Look Back Series: Successes in the 2022 Midterm Elections: Hearing Before the Subcommittee on Elections of the H. Comm. On Admin., 118th Cong. (2023).

²⁰2022 Midterms Look Back Series: Election Observer Access: Hearing Before the Subcomm. On Elections of the H. Comm. On Admin., 118th Cong. (2023).

²¹Sec. 126, H.R. 4563—118th Congress (2023–2024): American Confidence in Elections Act, H.R. 4563, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/house-bill/4563>.

City of Milton, and Ms. Cathy Woolard, Chair, Fulton County Board of Registration and Elections.²²

COMMITTEE CONSIDERATION

On November 30, 2023, the Committee on House Administration met in open session and ordered the bill, H.R. 6513, the Confirmation Of Congressional Observer Access Act of 2023, reported favorably to the House of Representatives, by voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of House rule XIII, the following vote occurred during the Committee’s consideration of H.R. 6513:

1. Vote to report H.R. 6513 favorably to the House of Representatives, passed by voice vote.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Congress has the power to enact this legislation pursuant to the following:

- Article I, Section 4, Clause 1—informs the Congress that the primary authority to set election law and to administer federal elections rests with the States and not with the Congress.²³
- Article I, Section 5, Clause 1—“Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members . . .”²⁴
- Article I, Section 8, Clause 18—“To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”²⁵

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

STATEMENT OF BUDGET AUTHORITY AND RELATED ITEMS

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(I) of the Congressional Budget Act of 1974, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority, and tax expenditures. The Committee believes that there will be no additional costs attributable to H.R. 3229.

²²*American Confidence in Elections: The Path to Election Integrity Across America: Hearing Before the H. Comm. On Admin.*, 118th Cong. (2023).

²³U.S. Const. art. I, § 4, cl. 1.

²⁴U.S. Const. art. I, § 5, cl. 1.

²⁵U.S. Const. art. I, § 8, cl. 18.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such an estimate to be printed in the Congressional Record if it is received by the Committee.

PERFORMANCE GOALS AND OBJECTIVES

The performance goals and objectives of H.R. 6513 are to provide a statutory citation for the long-standing congressional observer program. While the Constitution gives Congress the power to deploy election observers and supersedes any state law to the contrary, the lack of statutorily codified authorization for the program has created difficulties for observers in some States.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 6513 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

ADVISORY ON EARMARKS

In accordance with clause 9 of House rule XXI, H.R. 6513 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House rule XXI.

FEDERAL MANDATES STATEMENT

An estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such an estimate to be printed in the Congressional Record if it is received by the Committee.

ADVISORY COMMITTEE STATEMENT

H.R. 6513 does not establish or authorize any new advisory committees.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title, findings

Section 1(a) provides a short title for the “Confirmation Of Congressional Observer Access Act of 2023” or the “COCOA Act of 2023.”

Section 1(b) provides findings with respect to the congressional observer program. First, the Constitution authorizes Congress to “be the Judge of the Elections, Returns and Qualifications of its own Members” and that power gives the House of Representatives the power to serve as the final arbiter over any contest to the seating of any putative Member-elect. Second, Congress has exercised this authority from the very First Congress through the current Congress, the One Hundred Eighteenth Congress. Throughout that time, roughly 610 elections have been contested in the House. These precedents are contained in the precedents of each House of Congress.

For decades, the House of Representatives has appointed its staff to watch the administration of congressional elections in the States and territories. Critically, congressional observers serve to gather real-time information and data for the House in anticipation of an election contest being filed.

Section 2. Access for Congressional Election Observers

Section 2(a) amends the Help America Vote Act of 2002 by redesignating section numbers and inserting Sec. 304, the statutory citation for Access For Congressional Election Observers.

Section 304(a) provides the finding of constitutional authority for congressional observer access that, regardless of legislative action, it has the authority to send congressional election observers to observe polling locations, any location where processing, scanning, tabulating, canvassing, recounting, auditing, or certifying voting results is occurring, or any other part of the process associated with elections for Federal office under the authorities granted under the Constitution of the United States.

Section 304(b) requires States to provide full access for congressional election observers to clearly observe all elements of election administration procedures. It clarifies that while congressional election observers may not handle ballots or election equipment, advocate for a position or candidate, or otherwise interfere with the administration of an election, nothing in this section shall prohibit a designated congressional election observer from asking questions of an election administrator, election official, or election worker, or any other State or local official.

Section 304(c) provides for the conduct of observers. It provides the conduct for which designated congressional election observers may be removed by an election official and it requires that election official to inform the chair and ranking minority member of the Committee on House Administration of the House of Representatives (“Committee”) and provide written notice detailing the reason or reasons the designated congressional election observer was removed. If a designated congressional election observer is properly removed, the chair or ranking minority member of the Committee may send another designated congressional election observer as a replacement for the remaining duration of the observation of election administration procedures. It provides the sense of Congress that, because the Code of Official Conduct for the House of Representatives requires all employees of the House to behave at all times in a manner that reflects creditably on the House, an employee of the House who serves as a designated congressional elec-

tion observer is subject to the Code of Official Conduct in the employee’s role as such an observer.

Section 304(d) describes a designated congressional election observer as a House employee (as contemplated by the Rules of the House of Representatives) who is designated in writing by the chair or ranking minority member of the Committee, or the successor committee, to gather information with respect to an election, including in the event that the election is contested in the House of Representatives and for other purposes permitted by the Constitution of the United States.

Section 304(e) defines ‘State’ for the purposes of this section as each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Section 2(b) provides the conforming amendment relating to enforcement.

Section 2(c) provides the clerical amendment to the table of contents of the Help America Vote Act of 2002.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

HELP AMERICA VOTE ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Help America Vote Act of 2002”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

* * * * *

TITLE III—UNIFORM AND NONDISCRIMINATORY ELECTION TECHNOLOGY AND ADMINISTRATION REQUIREMENTS

Subtitle A—Requirements

* * * * *

Sec. 304. *Confirming access for congressional election observers.*

Sec. ~~304~~ 305. Minimum requirements.

Sec. ~~305~~ 306. Methods of implementation left to discretion of State.

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TITLE III—UNIFORM AND NONDISCRIMINATORY ELECTION TECHNOLOGY AND ADMINISTRATION REQUIREMENTS

Subtitle A—Requirements

* * * * *

SEC. 304. ACCESS FOR CONGRESSIONAL ELECTION OBSERVERS.

(a) *FINDING OF CONSTITUTIONAL AUTHORITY.*—Congress finds that, regardless of legislative action, it has the authority to send congressional election observers to observe polling locations, any location where processing, scanning, tabulating, canvassing, recounting, auditing, or certifying voting results is occurring, or any other part of the process associated with elections for Federal office under the authorities granted under article 1, section 5, clause 1 and article 1, section 4, clause 1 of the Constitution of the United States. Procedures described herein do not establish any new authorities or procedures with respect to Congress' constitutional authority to observe congressional elections but are provided simply to permit a convenient statutory reference for existing congressional authority and activity.

(b) *REQUIRING STATES TO PROVIDE ACCESS FOR OBSERVERS.*—

(1) *REQUIREMENT.*—A State shall provide each individual who is acting as a designated congressional election observer for an election for Federal office with full access to clearly observe all elements of election administration procedures, including, but not limited to, access to any area in which a ballot is cast, processed, scanned, tabulated, canvassed, recounted, audited, or certified, including during pre- and post-election procedures.

(2) *RESTRICTIONS ON ACTIVITIES OF OBSERVERS.*—No designated congressional election observer may handle a ballot or election equipment (whether voting or nonvoting or whether tabulating or nontabulating), advocate for any position or candidate, take any action to reduce ballot secrecy or voter privacy, take any action to interfere with the ability of a voter to cast a ballot or an election administrator to carry the administrator's duties, or otherwise interfere with the election administration process.

(3) *RULE OF CONSTRUCTION.*—Nothing in this section shall prohibit a designated congressional election observer from asking questions of an election administrator, election official, or election worker, or any other State or local official.

(c) *CONDUCT OF OBSERVERS.*—

(1) *REMOVAL.*—

(A) *AUTHORIZATION REMOVAL BY ELECTION OFFICIAL.*—If a State or local election official has a reasonable basis to believe that a designated congressional election observer has engaged in or imminently will engage in intimidation or deceptive practices prohibited by Federal law, or in the disruption of voting, processing, scanning, tabulating, canvassing, or recounting of ballots, or the certification of re-

sults, a State or local election official may remove that observer from the area involved.

(B) NOTICE TO COMMITTEE.—If a designated congressional election observer is removed from an area under subparagraph (A), the election official shall—

(i) inform the chair and ranking minority member of the Committee on House Administration of the House of Representatives; and

(ii) provide written notice detailing the reason or reasons the designated congressional election observer was removed.

(2) RULE OF CONSTRUCTION.—For purposes of this subsection, the mere presence of a designated congressional election observer during an observation of election administration procedures, without any additional indicia supporting a reasonable basis for removal, is not a sufficient reason for removal under subparagraph (A).

(3) RIGHT TO REPLACE OBSERVER.—If a designated congressional election observer is properly removed under subparagraph (A), the chair or ranking minority member of the Committee on House Administration of the House of Representatives, as appropriate, may send another designated congressional election observer as a replacement for the remaining duration of the observation of election administration procedures.

(4) CLARIFICATION REGARDING APPLICABILITY OF CODE OF OFFICIAL CONDUCT.—It is the sense of Congress that, because the Code of Official Conduct for the House of Representatives (rule XXIII of the Rules of the House of Representatives) requires all employees of the House to behave at all times in a manner that reflects creditably on the House, an employee of the House who serves as a designated congressional election observer is subject to the Code of Official Conduct in the employee's role as such an observer.

(d) DESIGNATED CONGRESSIONAL ELECTION OBSERVER DESCRIBED.—In this section, a “designated congressional election observer” is a House employee (as contemplated by the Rules of the House of Representatives) who is designated in writing by the chair or ranking minority member of the Committee on House Administration of the House of Representatives, or the successor committee, to gather information with respect to an election, including in the event that the election is contested in the House of Representatives and for other purposes permitted by article 1, section 5, clause 1 and article 1, section 4, clause 1 of the Constitution of the United States.

(e) STATE DEFINED.—In this section “State” means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

SEC. [304.] 305. MINIMUM REQUIREMENTS.

The requirements established by this title are minimum requirements and nothing in this title shall be construed to prevent a State from establishing election technology and administration requirements that are more strict than the requirements established under this title so long as such State requirements are not incon-

sistent with the Federal requirements under this title or any law described in section 906.

SEC. [305.] 306. METHODS OF IMPLEMENTATION LEFT TO DISCRETION OF STATE.

The specific choices on the methods of complying with the requirements of this title shall be left to the discretion of the State.

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TITLE IV—ENFORCEMENT

SEC. 401. ACTIONS BY THE ATTORNEY GENERAL FOR DECLARATORY AND INJUNCTIVE RELIEF.

The Attorney General may bring a civil action against any State or jurisdiction in an appropriate United States District Court for such declaratory and injunctive relief (including a temporary restraining order, a permanent or temporary injunction, or other order) as may be necessary to carry out the uniform and non-discriminatory election technology and administration requirements under sections 301, 302, [and 303] *303, and 304.*

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