



Statement of

L. Paige Whitaker
Legislative Attorney

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Chairwoman Lee, Ranking Member Sewell, and Members of the Subcommittee:

My name is L. Paige Whitaker, and I am a Legislative Attorney with the American Law Division of the Congressional Research Service (CRS). Thank you for inviting me to testify regarding the Confirmation of Congressional Observer Access Act of 2024, its legislative history, and Congress's general constitutional authority to regulate elections. My testimony will not address other matters, including best practices for election observation, contested elections, and other election observation programs besides the congressional program outlined in the COCOA Act, but CRS would be pleased to provide such analysis in the future.

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Overview of Congressional Authority Over Elections

Federal elections are primarily administered according to state laws. The Elections Clause of the U.S. Constitution, in Article I, Section 4, Clause 1, confers upon the states the initial and principal authority to administer “the times, places and manner” of congressional elections within their jurisdictions.¹ As a result of this decentralized authority, states vary in how they administer elections.² At the same time, the Elections Clause provides Congress with the power to “make or alter” rules regulating congressional elections, which the Supreme Court has described as an “override” authority.³ Under that authority, Congress has enacted federal laws, such as the Help America Vote Act of 2002 (HAVA)⁴ and the National Voter Registration Act of 1993,⁵ that regulate aspects of congressional elections.⁶ Article I, Section 5, Clause 1 of the Constitution further provides that each house of Congress has the express authority to be the final judge of the “elections, returns and qualifications” of its Members.⁷ For presidential elections, Article II, Section 1, Clause 4 of the Constitution provides that Congress may determine the “time” of choosing presidential electors and the day the electors shall cast their votes.⁸

The Constitution does not provide Congress with general regulatory authority over state and local elections but does grant Congress regulatory authority in specific contexts. For instance, the Spending Clause of the Constitution, in Article I, Section 8, Clause 1, authorizes Congress to condition the receipt of federal funds for state or local elections on compliance with federal requirements.⁹ The Fifteenth

¹ U.S. CONST. art. I, § 4, cl. 1. *See* *Smiley v. Holm*, 285 U.S. 355, 366 (1932) (determining that the Elections Clause provides to Congress the “authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns”).

² *See, e.g., Voting Outside the Poling Place: Absentee, All-Mail and Other Voting at Home Options*, NAT’L CONF. OF STATE LEGISLATURES (Aug 1, 2025), <https://www.ncsl.org/elections-and-campaigns/voting-outside-the-polling-place> [<https://perma.cc/ELK9-39ZA>] (providing an overview of state laws addressing absentee voting procedures).

³ U.S. CONST. art. I, § 4, cl. 1; *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 814 (2015).

⁴ Pub. L. No. 107-252, 116 Stat. 1666 (codified as amended at 52 U.S.C. §§ 20901–21145).

⁵ Pub. L. No. 103-31, 107 Stat. 77 (codified as amended at 52 U.S.C. §§ 20501–20511).

⁶ For further information, see CRS In Focus IF13267, *Congressional Authority Over Elections: Key Constitutional Provisions, Federal Statutes, and Supreme Court Rulings*, by L. Paige Whitaker (2026).

⁷ U.S. CONST. art. I, § 5, cl. 1. *See* *Roudebush v. Hartke*, 405 U.S. 15, 19 (1972) (ruling that, in judging congressional elections, Congress’s determination of the right to a seat is “a nonjusticiable political question,” resulting in “an unconditional and final judgment under Art. I, § 5.”).

⁸ *Id.* art. II, § 1, cl. 4.

⁹ *Id.* art. I, § 8, cl. 1. For further information, see CRS Report R46827, *Funding Conditions: Constitutional Limits on Congress’s Spending Power*, by Victoria L. Killion (2021); CRS In Focus IF13013, *Conditioning Federal Funding on Elections Policies: Options and Considerations for Congress*, by Karen L. Shanton (2026).

Amendment also prohibits the denial or abridgement of the right to vote based on race or color and provides Congress with the authority to enforce the Amendment through legislation.¹⁰ Invoking that authority, Congress enacted the Voting Rights Act of 1965 (VRA)¹¹ to achieve the Fifteenth Amendment’s goal of bringing “an end to the denial of the right to vote based on race.”¹²

Overview of Confirmation of Congressional Observer Access Act of 2024

The Confirmation of Congressional Observer Access Act of 2024 (COCOA Act, or Act),¹³ is codified at 52 U.S.C. § 21083a. The COCOA Act amended HAVA,¹⁴ which establishes requirements for state administration of federal elections, including relating to the removal of registrants from federal election voter rolls, and authorizes federal funding to support election administration.¹⁵ HAVA also established the Election Assistance Commission (EAC) to, among other responsibilities, develop voluntary voting system guidelines, provide for the testing and certifying of voting system hardware and software, and administer grants.¹⁶

Findings and Authorities

The COCOA Act states that it was enacted under Congress’s authorities set forth in Article I, Section 5, Clause 1 and Article I, Section 4, Clause 1 of the Constitution.¹⁷ The Act declares that, irrespective of any legislative action, Congress may act pursuant to these constitutional authorities to dispatch 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” relating to federal elections.¹⁸ The Act further states that the procedures set forth in the statute do not create “any new authorities or procedures,” and are instead “provided simply to permit a convenient statutory reference for existing congressional authority and activity.”¹⁹

Access

The COCOA Act requires states²⁰ to provide “full access” to an individual who is a “designated congressional election observer” (election observer) for federal elections to observe all aspects of election administration, including access to areas where ballots are “cast, processed, scanned, tabulated,

¹⁰ U.S. CONST. amend. XV.

¹¹ Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 52 U.S.C. §§ 10301–10314, 10501–10508, 10701–10702).

¹² *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 655 (2021). Supreme Court and lower court decisions have significantly shaped the contours and applicability of the VRA. *See, e.g., Shelby County v. Holder*, 570 U.S. 529, 557 (2013) (invalidating the VRA’s coverage formula that identified states and localities that were required to obtain federal government approval before implementing a change to a voting law or practice, known as preclearance) and *Louisiana v. Callais*, 146 S. Ct. 1131, 1156 (2026) (significantly narrowing the circumstances under which a racial vote dilution challenge to a redistricting map can be made under Section 2 of the VRA, holding that violations require evidence supporting “a strong inference that the State intentionally drew its districts to afford minority voters less opportunity because of their race.”).

¹³ Pub. L. No. 118-106, 138 Stat. 1591 (codified at 52 U.S.C. § 21083a).

¹⁴ Pub. L. No. 107-252, tit. III, §§ 304–306, 116 Stat. 1666, 1714 (codified as amended at 52 U.S.C. §§ 21083a–21085).

¹⁵ Pub. L. No. 107-252, 116 Stat. 1666 (codified as amended at 52 U.S.C. §§ 20901–21145).

¹⁶ 52 U.S.C. § 20922. For further information, see CRS Report R45770, *The U.S. Election Assistance Commission (EAC): Overview and Selected Issues for Congress*, by Karen L. Shanton (2026).

¹⁷ COCOA Act, Pub. L. No. 118-106, § 2(a)(2), 138 Stat. at 1591 (adding Section 304 to HAVA).

¹⁸ 52 U.S.C. § 21083a(a).

¹⁹ *Id.*

²⁰ The Act defines the term “state” to mean “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.” 52 U.S.C. § 21083a(e).

canvassed, recounted, audited, or certified” during both “pre- and post-election procedures.”²¹ At the same time, the COCOA Act expressly prohibits an election observer from (1) handling ballots and election equipment; (2) advocating for any issue or candidate; (3) acting in such a manner that reduces ballot or voter secrecy; and (4) interfering with a voter casting a ballot, an election administrator fulfilling their duties, or otherwise with the process of election administration.²² The Act provides, however, that election observers are not prohibited from asking questions of election administrators, officials, election workers, or any other state or local official.²³

Designation

The COCOA Act provides that an election observer covered by the Act is a House or Senate employee.²⁴ The Act further provides that an election observer must be “designated in writing” either by the Chair or Ranking Minority Member of the Committee on House Administration or the Senate Committee on Rules and Administration, or a successor committee, “to gather information with respect to an election,” including with respect to contested congressional elections and “for other purposes permitted by article 1, section 5, clause 1 and article 1, section 4, clause 1 of the Constitution.”²⁵

Removal and Replacement

Upon “a reasonable basis to believe” that an election observer “has engaged in or imminently will engage in intimidation or deceptive practices” that are prohibited under federal law “or in the disruption of voting, processing, scanning, tabulating, canvassing, or recounting of ballots, or the certification of results,” the COCOA Act provides that “a State or local election official may remove that observer from the area involved.”²⁶ The Act further provides that the “mere presence” of an election observer “is not a sufficient reason for removal” absent “any additional indicia supporting a reasonable basis for removal.”²⁷

Within 24 hours of such a removal, the Act requires an election official to “inform” the Chair and Ranking Member of the Committee on House Administration or the Senate Rules and Administration Committee, as applicable, and “provide written notice” of the reason(s) for the removal.²⁸

If an election observer has been “properly removed,” in accordance with the process set forth above, the Chair or Ranking Member of the Committee on House Administration or the Senate Rules and Administration Committee, as applicable, may dispatch a replacement election observer.²⁹

COCOA Act Legislative History³⁰

Prior to the passage of the COCOA Act by the 118th Congress, the House of Representatives had for decades³¹ conducted a congressional election observer program. According to a 2023 memorandum from

²¹ *Id.* § 21083a(b)(1).

²² *Id.* § 21083a(b)(2).

²³ *Id.* § 21083a(b)(3).

²⁴ *Id.* § 21083a(d).

²⁵ *Id.*

²⁶ *Id.* § 21083a(c)(1)(A).

²⁷ *Id.* § 21083a(c)(2).

²⁸ *Id.* § 21083a(c)(1)(B).

²⁹ *Id.* § 21083a(c)(3).

³⁰ This portion of the testimony was authored by CRS Legislative Attorney Jimmy Balser.

³¹ Letter from H. Comm. on H. Admin., to Matt Chase, Exec. Dir., Nat’l Ass’n of Cntys. (Oct. 28, 2024), <https://naco.sharefile.com/share/view/s7fc8d3e9490c406ea4c30f93eb1aa86d> [<https://perma.cc/D444-5B8P>].

the minority staff of the Committee on House Administration, there is evidence of congressional election observers dating back to the 97th Congress.³² In 2010, a *Roll Call* article reported that the Committee Chairman at the time, Representative Robert Brady of Pennsylvania, sent observers from both sides of the aisle to contested districts.³³ The article described the purpose of this effort being to ensure that the committee had “firsthand observers on deck,” not just “partisan attorneys and witnesses.”³⁴ More recently, Chairman Steil stated that during the 2022 election cycle:

[O]bservers were deployed to roughly 25 sites across the country. This long-running program has deployed trained congressional staff as election observers to sites nationwide with close congressional contests. Deploying election observers is much needed. Strong election integrity increases confidence and participation in our elections³⁵

The text and legislative history of the COCOA Act assert Congress’s underlying constitutional authority, rather than a statute, as the source of the observer program.³⁶ However, as the committee report on the COCOA Act clarified, “[w]hile 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 [at the time] . . . created difficulties for observers in some States.”³⁷ In particular, the report cited an incident during the 2020 House race for the Sixth Congressional District of Arizona.³⁸ Despite the majority and minority having dispatched staff to observe the election, Arizona election officials blocked their admission. According to the committee report, “[a]ll calls for assistance went unanswered, and no congressional election observers designated by the House were permitted entry.”³⁹ The report also cited at least one incident where House election observers were “threatened with arrest.”⁴⁰

Beyond incidents like these, before the COCOA Act’s passage the Committee reported direct outreach from state and local election officials to Congress requesting a “statutory citation of convenience” for the election observer program.⁴¹ Other election officials cited concerns that the program potentially conflicted with state election law.⁴² Accordingly, the committee report indicated that the Act was developed to

³² MIN. STAFF OF H. COMM. ON H. ADMIN., 118TH CONG., CONGRESSIONAL ELECTION OBSERVATION AND CONTESTED ELECTIONS: A PRIMER (Mar. 2023).

³³ Daniel Newhauser, *House Panel Could Hold Hearings on Close Races*, ROLL CALL (Nov. 11, 2010, at 12:10 ET), <https://rollcall.com/2010/11/11/house-panel-could-hold-hearings-on-close-races/> [<https://perma.cc/WV98-FTPJ>].

³⁴ *Id.*

³⁵ 170 CONG. REC. H5050 (2024) (statement of Chairman Bryan Steil).

³⁶ See 52 U.S.C. § 21083a(a) (“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.”); see also H.R. REP. 118-361, at 5 (2024) (“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.”).

³⁷ H.R. REP. 118-361, at 6.

³⁸ See *id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See *id.* at 6, 8.

⁴² See *id.* at 6.

“ensure clear expectations—and no unintentional surprises—for all parties involved.”⁴³ As articulated elsewhere in the report, “[t]he 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.”⁴⁴

The COCOA Act legislation was first introduced during the 117th Congress both as a stand-alone piece of legislation⁴⁵ and as part of a larger legislative proposal, the American Confidence in Elections (ACE) Act.⁴⁶ Following bipartisan discussions,⁴⁷ in the 118th Congress, the legislation was reintroduced in a stand-alone version which was enacted with near unanimous support.⁴⁸

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⁴³ *Id.*

⁴⁴ *Id.* at 3.

⁴⁵ COCOA Act of 2022, H.R. 8517, 117th Cong. (2022).

⁴⁶ H.R. 8528, 117th Cong. (2022).

⁴⁷ See H.R. REP. 118-361, at 5.

⁴⁸ COCOA Act of 2024, H.R. 6513, 118th Cong. (2024).