

Union Calendar No. 296

118TH CONGRESS
2^D SESSION

H. R. 6513

[Report No. 118–361]

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.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 30, 2023

Mr. CAREY (for himself, Mr. MORELLE, and Mr. STEIL) introduced the following bill; which was referred to the Committee on House Administration

JANUARY 29, 2024

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Confirmation Of Congressional Observer Access Act of
6 2023” or the “COCOA Act of 2023”.

7 (b) FINDINGS RELATING TO CONGRESSIONAL ELEC-
8 TION OBSERVERS.—Congress finds the following:

9 (1) Article 1, section 5, clause 1 of the Con-
10 stitution grants Congress the authority to “be the
11 Judge of the Elections, Returns and Qualifications
12 of its own Members”.

13 (2) The House of Representatives serves as the
14 final arbiter over any contest to the seating of any
15 putative Member-elect.

16 (3) Congress has exercised this authority—and
17 responsibility—since our Nation’s very beginning,
18 from the First Congress through the One Hundred
19 Eighteenth Congress. Over our history, election con-
20 tests have remained a normal and regular part of
21 the biennial process for electing, recognizing, and
22 seating new Members. Although Congress has opted
23 to revise the statutory framework by which it con-
24 siders election contests, consideration of such con-
25 tests has been a regular and recurring part of Con-

1 gress’ constitutional prerogatives and work. For ex-
2 ample, across our Nation’s history, more than ap-
3 proximately 610 elections have been contested in the
4 House—an average of more than 5 per Congress.
5 Indeed, even discounting the Reconstruction period
6 and its surge in election contests, there have been
7 110 contested election cases considered in the House
8 since 1933—an average of more than 2 contests per
9 Congress.

10 (4) These election contest procedures are con-
11 tained in the precedents of each House of Congress.
12 Further, for the House of Representatives the proce-
13 dures exist under the Federal Contested Elections
14 Act.

15 (5) For decades, the House of Representatives
16 has appointed its staff to watch the administration
17 of congressional elections in the States and terri-
18 tories. Critically, congressional observers serve to
19 gather real-time information and data for the House
20 in anticipation of an election contest being filed.

21 **SEC. 2. ACCESS FOR CONGRESSIONAL ELECTION OBSERV-**
22 **ERS.**

23 (a) ACCESS REQUIRED.—Title III of the Help Amer-
24 ica Vote Act of 2002 (52 U.S.C. 21081 et seq.) is amend-
25 ed—

1 (1) by redesignating section 304 and 305 as
2 sections 305 and 306; and

3 (2) by inserting after section 303 the following
4 new section:

5 **“SEC. 304. ACCESS FOR CONGRESSIONAL ELECTION OB-**
6 **SERVERS.**

7 “(a) FINDING OF CONSTITUTIONAL AUTHORITY.—
8 Congress finds that, regardless of legislative action, it has
9 the authority to send congressional election observers to
10 observe polling locations, any location where processing,
11 scanning, tabulating, canvassing, recounting, auditing, or
12 certifying voting results is occurring, or any other part
13 of the process associated with elections for Federal office
14 under the authorities granted under article 1, section 5,
15 clause 1 and article 1, section 4, clause 1 of the Constitu-
16 tion of the United States. Procedures described herein do
17 not establish any new authorities or procedures with re-
18 spect to Congress’ constitutional authority to observe con-
19 gressional elections but are provided simply to permit a
20 convenient statutory reference for existing congressional
21 authority and activity.

22 “(b) REQUIRING STATES TO PROVIDE ACCESS FOR
23 OBSERVERS.—

24 “(1) REQUIREMENT.—A State shall provide
25 each individual who is acting as a designated con-

1 gressional election observer for an election for Fed-
2 eral office with full access to clearly observe all ele-
3 ments of election administration procedures, includ-
4 ing, but not limited to, access to any area in which
5 a ballot is cast, processed, scanned, tabulated, can-
6 vassed, recounted, audited, or certified, including
7 during pre- and post-election procedures.

8 “(2) RESTRICTIONS ON ACTIVITIES OF OBSERV-
9 ERS.—No designated congressional election observer
10 may handle a ballot or election equipment (whether
11 voting or nonvoting or whether tabulating or nontab-
12 ulating), advocate for any position or candidate, take
13 any action to reduce ballot secrecy or voter privacy,
14 take any action to interfere with the ability of a
15 voter to cast a ballot or an election administrator to
16 carry the administrator’s duties, or otherwise inter-
17 fere with the election administration process.

18 “(3) RULE OF CONSTRUCTION.—Nothing in
19 this section shall prohibit a designated congressional
20 election observer from asking questions of an elec-
21 tion administrator, election official, or election work-
22 er, or any other State or local official.

23 “(c) CONDUCT OF OBSERVERS.—

24 “(1) REMOVAL.—

1 “(A) AUTHORIZATION REMOVAL BY ELEC-
2 TION OFFICIAL.—If a State or local election of-
3 ficial has a reasonable basis to believe that a
4 designated congressional election observer has
5 engaged in or imminently will engage in intimi-
6 dation or deceptive practices prohibited by Fed-
7 eral law, or in the disruption of voting, proc-
8 essing, scanning, tabulating, canvassing, or re-
9 counting of ballots, or the certification of re-
10 sults, a State or local election official may re-
11 move that observer from the area involved.

12 “(B) NOTICE TO COMMITTEE.—If a des-
13 ignated congressional election observer is re-
14 moved from an area under subparagraph (A),
15 the election official shall—

16 “(i) inform the chair and ranking mi-
17 nority member of the Committee on House
18 Administration of the House of Represent-
19 atives; and

20 “(ii) provide written notice detailing
21 the reason or reasons the designated con-
22 gressional election observer was removed.

23 “(2) RULE OF CONSTRUCTION.—For purposes
24 of this subsection, the mere presence of a designated
25 congressional election observer during an observation

1 of election administration procedures, without any
2 additional indicia supporting a reasonable basis for
3 removal, is not a sufficient reason for removal under
4 subparagraph (A).

5 “(3) RIGHT TO REPLACE OBSERVER.—If a des-
6 ignated congressional election observer is properly
7 removed under subparagraph (A), the chair or rank-
8 ing minority member of the Committee on House
9 Administration of the House of Representatives, as
10 appropriate, may send another designated congress-
11 sional election observer as a replacement for the re-
12 maining duration of the observation of election ad-
13 ministration procedures.

14 “(4) CLARIFICATION REGARDING APPLICA-
15 BILITY OF CODE OF OFFICIAL CONDUCT.—It is the
16 sense of Congress that, because the Code of Official
17 Conduct for the House of Representatives (rule
18 XXIII of the Rules of the House of Representatives)
19 requires all employees of the House to behave at all
20 times in a manner that reflects creditably on the
21 House, an employee of the House who serves as a
22 designated congressional election observer is subject
23 to the Code of Official Conduct in the employee’s
24 role as such an observer.

1 “(d) DESIGNATED CONGRESSIONAL ELECTION OB-
2 SERVER DESCRIBED.—In this section, a ‘designated con-
3 gressional election observer’ is a House employee (as con-
4 templated by the Rules of the House of Representatives)
5 who is designated in writing by the chair or ranking mi-
6 nority member of the Committee on House Administration
7 of the House of Representatives, or the successor com-
8 mittee, to gather information with respect to an election,
9 including in the event that the election is contested in the
10 House of Representatives and for other purposes per-
11 mitted by article 1, section 5, clause 1 and article 1, sec-
12 tion 4, clause 1 of the Constitution of the United States.

13 “(e) STATE DEFINED.—In this section ‘State’ means
14 each of the 50 States, the District of Columbia, the Com-
15 monwealth of Puerto Rico, the United States Virgin Is-
16 lands, Guam, American Samoa, and the Commonwealth
17 of the Northern Mariana Islands.”.

18 (b) CONFORMING AMENDMENT RELATING TO EN-
19 FORCEMENT.—Section 401 of such Act (52 U.S.C. 21111)
20 is amended by striking “and 303” and inserting “303, and
21 304”.

22 (c) CLERICAL AMENDMENT.—The table of contents
23 of such Act is amended—

1 (1) by redesignating the items relating to sec-
2 tions 304 and 305 as relating to sections 305 and
3 306; and

4 (2) by inserting after the item relating to sec-
5 tion 303 the following:

“Sec. 304. Confirming access for congressional election observers.”.

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