

How More Robust Election Observation Could Help Save U.S. Elections

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not sufficient observation of the 2020 election, in part because of pandemic conditions. This short guide provides a roadmap for ways to help rectify this issue in a manner that can improve the integrity of future elections at a time when we face growing anti-democratic threats both inside and outside our country's borders. In addition to defining nonpartisan observation, we outline several good practices that balance equal and robust observer access to election processes with the responsibilities of observers to provide accurate assessments of the election.

WHAT IS NONPARTISAN OBSERVATION?

Genuine nonpartisan election observation is the “impartial and professional” analysis of systematically gathered information on the conduct of an election. Unlike partisan observers, who generally watch for any activity that could undermine their own party's or candidate's interests, domestic nonpartisan observers are interested in ensuring the fairness and credibility of the election process for all candidates — and in some cases even monitor for irregularities in real time. For example, during voting, such observers can alert election officials to issues such as electioneering, which can help officials respond to complaints and concerns in a timely manner. International nonpartisan observers, in contrast, usually are not there to help correct irregularities, but to identify whether an election meets international standards and issue a report after the election on their findings. Both often have previous experience administering or studying elections themselves, which helps explain why [nonpartisan observers](#) widely agreed that the 2020 election was conducted in a free and fair manner, despite the lack of such a consensus from the American public. Both also use established methods of data collection and analysis, and, together, international and domestic observation can help those who lost an election to accept that the elections were free and fair, thus persuading them (and their supporters) to accept the election results. This has the potential to shore up a country's election system and [enhance its legitimacy and credibility](#) more broadly.

Credible observers not only help validate the critical work being done by those on the front lines of our democracy — including our election administrators and poll workers — they can serve as a reminder to those seeking to interfere in elections or cast doubt on the integrity of democratic institutions: No one is above the law, and others are watching. Reputable scholars such as [Susan Hyde](#) and [Judith Kelly](#) have published research showing that nonpartisan observers help tilt countries further toward democracy, discouraging both malfeasance and violent protest. Election observers have helped deter actual fraud and intimidation, increase trust in the systems, and promote peaceful transfers of power.

BEST PRACTICES

Equal Access: Election administrators should seek to make their electoral processes as accessible to nonpartisan election observers as they are to partisan ones.

Nearly every state [permits partisan observers](#) to witness all stages of the election process. We believe that the time has come for such access to be extended to nonpartisan observers as well — a right that is accorded to nonpartisan observers in most

democracies throughout the world but only in a little [over half of U.S. states](#). In the past, partisan observation of U.S. elections in some places has been considered sufficient to ensure that elections were [fairly administered](#). While _____

According to the [National Conference on State Legislatures](#), the majority of states have rules permitting observation of some kind for 1) preelection processes, such as voting equipment testing; 2) in-person voting; 3) absentee ballot processing and counting, and 4) post-election processes, such as the tabulation of the vote. Considering the recent erosion in U.S. electoral trust, jurisdictions should ensure observation of all of these processes.

Providing more access to nonpartisan observers has many benefits. First, as the 2020 presidential election showed, perceptions about electoral processes have a direct impact on public trust. Those serving on the front lines of our elections often have [systems and contingency procedures](#) in place to handle actual problems. However, a bigger challenge for election workers, and society at large, are things that people think are problems but aren't. For example, when cameras livestreaming the Windham, New Hampshire, audit accidentally went off for nearly 90 minutes, some speculated that such a snag was "[potentially obscuring any problematic intervention](#)" even though there was [no evidence](#) to support such an assertion.

If observers cannot monitor certain stages of the electoral process that are commonly watched in other jurisdictions, bad actors could exploit this lack of access to try to undermine trust in the electoral process, such as by spreading disinformation that equates lack of access to questions about the reliability and integrity of that election. In addition, a valuable opportunity is missed for increasing citizen awareness about the myriad checks and safeguards in place to facilitate voting and to protect the security and integrity of elections.

Second, providing access to additional parts of the electoral process for nonpartisan observers can deepen and enrich the feedback that election officials receive about the strengths and weaknesses of their policies, procedures, and technologies.

To be clear, opening more stages of the election process to observation is not without potential complications. For example, as the 2020 presidential election showed, not all election observer laws have been updated to reflect changes in voting procedures. Pennsylvania's observer statute for the 2020 presidential election [directed observers on how to monitor Election Day](#) but made no provision for how observers should observe preelection in-person voting, even though Pennsylvania implemented this by statute in 2019. Observers were therefore denied access to a critical element of the process. This led to litigation over whether early voting could be observed, and Pennsylvania courts subsequently upheld Pennsylvania election officials' refusal to allow anyone to observe early voting.

Situations like this can be addressed by undertaking adequate advance planning (both legal and administrative), as well as by allocating sufficient resources. State and local election officials have repeatedly demonstrated that they know how to ensure that any voting location can be made both secure and observable. Prohibiting such observation needlessly raises suspicions and provides an additional way for bad actors to try to undermine public trust in the electoral process. The potential benefits of observation outweigh perceived risks.

ballots or be perceived as intimidating behavior that scares someone from voting. In short, being “conveniently near” election workers and voters is sufficient for observing election activities.

Experienced election observer organizations also conduct trainings on how to observe in the areas where their organizations will be monitoring an election. Such trainings cover the rules governing the election and are based on the procedures and practices election officials implement, as documented in election officials’ manuals or training and reference materials. Training for observers also could include mock observations to simulate the kinds of challenges they may encounter during an actual election. If election administrators offer observer trainings, observers should try to attend them or, if permitted, sit in on poll worker trainings. [Several states](#) have written guidance and handbooks for observers that might serve as models for other jurisdictions, and the [Election Assistance Commission](#) also provides tips and guidance on this topic. Some states also provide more interactive training. For example, the [Secretary of State in Colorado](#) has an online [election watcher training](#) on the roles and responsibilities of watchers that is required to get certified.

In that vein, it’s important that organizations planning to observe U.S. elections continually update their observation approaches to keep up with changing voting methods or new or changing voting technologies, which can impact observer training, the timing and duration of observation efforts, resources, and recruitment. For example, it might be necessary to observe a post-election audit or recruit observers familiar with certain voting technologies to help ensure that findings are accurate and aren’t weaponized in attempts to undermine confidence in election results. In 2016, one of the co-authors of this paper helped provide legal support for the OSCE election observation mission of the 2016 U.S. presidential election and saw that several of the long-term observers had difficulty fully grasping the complexity of certain pieces of election technology used in a number of jurisdictions, including electronic poll books, direct recording electronic voting machines, and optical scanners.

Observer trainings also should cover the rules regulating the observers themselves, as dictated by statute or regulations. This could include issues such as whether and when observers can ask election workers questions at a voting location, and if/when it is permissible for an observer to speak to voters. It’s important for observers to understand these issues ahead of time to ensure the relationship between observers and election workers remains polite and effective, no matter how contentious other aspects of an election may become.

Finally, it is important for observer training to include a focus on the observation methods used, how their findings will be collected, used, and analyzed (including any [standards](#) or benchmarks for assessment), and how the observation data will be shared with election officials and the public. Good practice demonstrates the value of methodically collecting data by using checklists, like this [one used in Ghana](#), and drafting written reports that summarize key findings from the observation group and highlight recommendations for improving future elections. This [report of The Carter Center](#) on the post-election audit in Georgia in 2020 is an example of what such reports can look like. Like other aspects of the election process, there is great variation among states and in state-level jurisdictions regarding the accreditation procedures for observers. [Accreditation procedures](#) that facilitate identification of observers but otherwise are not onerous are widely implemented around the world.
