



Federal Election Observers

Key Powers and Constraints, and How Congress Can Regulate the Program

Nicole Hansen & Dan Brophy / September 15, 2026

The U.S. Department of Justice's (DOJ) election observation program—once a behind-the-scenes effort with a record of nonpartisan success—has made headlines during the 2026 midterm primaries because of conduct that state officials have called “dangerous” and “irregular.”¹ According to Wyoming Governor Mark Gordon, during the state's congressional primary, DOJ monitors attempted to access voting machines, and behaved in a manner that was “aggressive, unexpected, and disruptive.”² Laramie County Clerk Debra Lee, a Republican, reported that she had not been properly informed that monitors would be present in her jurisdiction for the primary, and called the program “a poorly managed exercise and one that showed complete disregard for [Wyoming's] state laws and administration of our elections.”³ In Minnesota, the DOJ deployed an attorney during its election monitoring efforts who was convicted in 2016 of hacking into state and local government election websites.⁴ In other states, the DOJ failed to inform local officials that monitors were being deployed to their jurisdictions until the day of the election.⁵

¹ Adam Edelman, Wyoming's Republican Governor Raises Concerns over “Aggressive” DOJ Election Monitors, NBC NEWS (Aug. 27, 2026), <https://www.nbcnews.com/politics/2026-election/wyoming-republican-governor-concerns-aggressive-doj-election-monitors-rcna594730>; see also Tim Balk, *Wyoming Governor Objects to ‘Very Odd’ D.O.J. Election Monitoring*, NYTIMES (Aug. 28, 2026), <https://www.nytimes.com/2026/08/28/us/politics/wyoming-governor-objects-to-very-odd-doj-election-monitoring.html>; Yunior Rivas, *Exclusive: Trump DOJ Appears to Have Hired Lawyer Convicted of Hacking Election Sites to Check Integrity*, DEMOCRACY DOCKET (Aug. 21, 2026), <https://www.democracymocket.com/news-alerts/trump-doj-appears-to-have-hired-lawyer-convicted-of-hacking-election-sites/>.

² Balk, *supra* note 1.

³ Edelman, *supra* note 1.

⁴ Rivas, *supra* note 1.

⁵ Justice Department to Conduct Election Monitoring in South Carolina Primary Election, U.S. Dep't of Just. (Aug. 25, 2026), <https://www.justice.gov/opa/pr/justice-department-conduct-election-monitoring-south-carolina-primary-election> (announcing decision to send DOJ election monitors to polling places during the primary election in South Carolina on the day of the election); Justice Department to Conduct Election Monitoring in Florida and Wyoming Primary Elections, U.S. Dep't of Just. (Aug. 18, 2026), <https://www.justice.gov/opa/pr/justice-department-conduct-election-monitoring-florida-and-wyoming-primary-elections> (announcing decision to send DOJ election monitors to polling places during primary elections in Florida and Wyoming on the day of the election).



This disruptive and unpredictable conduct is a sharp departure from how the program operated for almost three quarters of a century, and a problem that Congress can and *must* put an end to.

In 1965, Congress enacted the Voting Rights Act (VRA) with a goal of realizing the Fourteenth and Fifteenth Amendments' promise of a democracy free of racial discrimination. This landmark legislation put an end to nearly a century of violence and intimidation, literacy tests, and other state-sponsored voting barriers that had made the guarantee of equal access to the ballot largely illusory for communities of color.⁶ Because voting barriers were often imposed by the same local officials charged with administering elections, the VRA also established a federal election observer program, authorizing employees of the federal government to enter polling places and other election administration facilities to document voting discrimination firsthand.⁷ In the decades that followed, the federal government deployed these observers in states and localities with documented histories of discrimination to monitor those jurisdictions' compliance with federal election laws.⁸ Congress repeatedly recognized the program's success, finding that "the presence of observers tends to diminish the intimidation of minority voters, especially when they must vote in polling places located in traditionally hostile areas of a community," and noting the importance of observers' reports in subsequent enforcement actions.⁹

Today, heightened concerns surrounding the federal government's attempts to interfere in the electoral process have changed the stakes.¹⁰ Misinformation and disinformation are rampant,¹¹ nonpartisan state and local election officials have been subjected to threats of violence and prosecution,¹² and government leaders

⁶ R. Sam Garrett, CONG. RSCH. SERV., R47520, THE VOTING RIGHTS ACT: HISTORICAL DEVELOPMENT AND POLICY BACKGROUND (Jun. 3, 2026).

⁷ James Thomas Tucker, *The Power of Observation: The Role of Federal Observers Under the Voting Rights Act*, 13 MICH. J. RACE & L. 227 (2007).

⁸ See *id.*

⁹ S. Rep. 94-295, 21, 1975 U.S.C.C.A.N. 774, 787.

¹⁰ See Kim Zetter, *Ballots Have Been Seized Across the US. No One Knows What Will Happen Next*, WIRED (May 28, 2026), <https://www.wired.com/story/ballots-have-been-seized-across-the-us-no-one-knows-what-will-happen-next/>.

¹¹ Jude Joffe-Block and Miles Parks, *DHS Acknowledges the Noncitizen Numbers It Touted on Voter Rolls Were Inflated*, NPR (Aug. 25, 2026), <https://www.npr.org/2026/08/25/nx-s1-5940807/noncitizen-voters-trump-nevada-call>; Ernesto Londoño, *Justice Department Tells Prosecutors to Pursue Immigrant Vote Fraud Cases*, NYTIMES (Jun. 4, 2026), <https://www.nytimes.com/2026/06/04/us/immigrants-vote-fraud.html>.

¹² Nick Corasaniti & Dustin Volz, *Trump's Homeland Security Chief Threatens Election Officials With Prison Time*, NYTIMES (Jul. 17, 2026), <https://www.nytimes.com/2026/07/17/us/politics/markwayne-mullin-election-officials-threats-trump.html>.



themselves are often the ones undermining the legitimacy of our democratic process.¹³ Against that backdrop, Assistant Attorney General Harmeet Dhillon's recent announcement that the Department of Justice will deploy roughly 1,000 DOJ employees to monitor the 2026 midterm elections has generated widespread fears that federal election observer programs could be misused to interfere with the midterms, and future elections.¹⁴

That risk is heightened by the fact that federal election observers operate under only a limited set of formal constraints: they may not engage in political activity, interfere in election administration, or intimidate voters.¹⁵ Those restrictions are important, but they can be difficult for private parties to enforce in real time and, as a practical matter, they are easy to evade. **Thus, Campaign Legal Center recommends Congress enact reforms to the federal observer programs that would increase transparency, clarify that their role is confined to monitoring and documenting compliance with federal law, and establish a clear, enforceable standard of conduct, while providing for swift removal of observers who violate it.**

What Are Federal Election Observers?

Congress and the executive branch regularly deploy officials to observe elections and monitor compliance with the federal laws that govern our country's voting process. Historically, the majority of the observers from the executive branch were employees of the Office of Personnel Management (OPM), authorized pursuant to the Voting Rights Act of 1965. They played a key role in enforcing the VRA's protections against discrimination at the ballot box.¹⁶ Under the VRA, two types of observers could be deployed: (1) observers ordered by the Attorney General in certain jurisdictions that were subject to the VRA's preclearance

¹³ See Natalia Middelstadt, *Trump Alleges California Primary Election Theft Amid Delayed Mail Ballot Count*, WPDE ABC 15 NEWS (Jun. 4, 2026), <https://wpde.com/news/nation-world/trump-accuses-dumocrats-of-stealing-california-elections-says-doj-is-investigating-gavin-newsom-governor-los-angeles-mayor-mail-in-ballots>.

¹⁴ Sarah N. Lynch, *Justice Department to Send a Record 1,000 Monitors to Polling Places in Midterm Elections*, CBS NEWS (Aug. 18, 2026), <https://www.cbsnews.com/news/justice-department-election-monitors-midterms/>.

¹⁵ 5 U.S.C. §§ 7324(a)(1), 7323(a)(1); 52 U.S.C. § 10307; 18 U.S.C. § 594.

¹⁶ See 52 U.S.C. 10305; James Thomas Tucker, *The Power of Observation: The Role of Federal Observers Under the Voting Rights Act*, 13 MICH. J. RACE & L. 227 (2007).



requirements;¹⁷ and (2) observers ordered by federal courts in jurisdictions found to have intentionally discriminated against voters of color, in violation of the 14th or 15th Amendments.¹⁸ However, when the Supreme Court invalidated the VRA's formula to determine which jurisdictions should be subject to preclearance in *Shelby County v. Holder*,¹⁹ the Attorney General's authority to send election observers to covered jurisdictions was also called into question, so the Department of Justice voluntarily terminated the program.²⁰ This left a hole in the DOJ's ability to monitor compliance with federal voting rights law, which the Department has since attempted to fill using its own attorney staff.²¹

Today, the executive branch uses two types of election monitors. First, even after *Shelby County*, OPM still deploys federal observers to five jurisdictions where they have been ordered by federal courts ("OPM observers").²² Because these observers are specifically authorized by the VRA and federal court orders, they are permitted to be present at polling locations even when state or local officials object.²³

Second, to fill the gap left by *Shelby County*, DOJ deploys attorneys from its civil division to monitor compliance with federal law at polling places ("DOJ attorney monitors").²⁴ Importantly, because these attorney monitors are not explicitly mentioned in any statute or court order, they are sent to merely document any

¹⁷ 52 U.S.C. §§ 10305(a)(2), 10303(b). The Voting Rights Act's preclearance program required certain jurisdictions with histories of discriminatory voting practices to obtain federal approval before changing their voting laws or procedures. Its purpose was to prevent policies that could limit or dilute the ability of voters of color and language minority voters to access the ballot before those policies took effect. The program was an effective safeguard that helped expand voter participation and protect civil rights in areas with a record of discrimination.

¹⁸ 52 U.S.C. §§ 10302(a); 10305(a)(1).

¹⁹ 570 U.S. 529 (2013).

²⁰ Shelby County Impact Fact Sheet, U.S. Dep't of Just., Civ. Rts. Div., <https://www.justice.gov/crt/file/876246/dl> (last visited June 3, 2026) [hereinafter "DOJ, *Shelby County Fact Sheet*"].

²¹ Julia Harte, *U.S. Curtails Federal Election Observers*, REUTERS (Jul. 17, 2016), <https://www.reuters.com/article/world/exclusive-us-curtails-federal-election-observers-idUSKCN0ZX0QQ/>.

²² About Federal Observers and Election Monitoring, U.S. Dep't of Just., Civ. Rts. Div., <https://www.justice.gov/crt/about-federal-observers-and-election-monitoring> (last updated Oct. 16, 2024) [hereinafter "DOJ, *Federal Observers and Election Monitoring*"]; *Native Voting Rights and Language Access* (Toyukak v. Dahlstrom), Native Am. Rts. Fund, <https://narf.org/cases/toyukak-v-treadwell/> (last visited June 3, 2026) (Alaska observers extended to 2026).

²³ See 52 U.S.C. §§ 10302(a); 10303(b); 10305(a)(1).

²⁴ DOJ, *Federal Observers and Election Monitoring*, *supra* note 22; DOJ, *Shelby County Fact Sheet*, *supra* note 20; *Justice Department to Monitor Polling Sites in California, New Jersey*, U.S. Dep't of Just. (Oct. 24, 2025), <https://www.justice.gov/opa/pr/justice-department-monitor-polling-sites-california-new-jersey> [hereinafter "DOJ, *2025 DOJ Monitors Announcement*"]; Hannah Rabinowitz & Fredreka Schouten, *What to Know About Justice Department Election Monitors*, CNN (Nov. 3, 2025), <https://www.cnn.com/2025/11/03/politics/justice-department-election-monitors>.



perceived violations of federal voting laws,²⁵ including the VRA,²⁶ National Voter Registration Act (NVRA),²⁷ Help America Vote Act (HAVA),²⁸ Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA),²⁹ and Civil Rights Act.³⁰ DOJ generally relies on a lack of objection by state and local officials to give its attorney monitors permission to enter polling places.

What Can (and Can't) Federal Observers Do?

Both types of observers are subject to two primary constraints under federal law. First, as federal employees, OPM observers and DOJ attorney monitors are prohibited under the Hatch Act from engaging in political activity while on duty, and from using their official position to interfere with or affect the results of an election.³¹ This includes attempting to influence voters at the polling place while on duty. Violations of these prohibitions are investigated and prosecuted by the Office of Special Counsel (OSC) before the Merit Systems Protection Board (MSPB).³² Private citizens can file a complaint with the OSC, but if the Special Counsel declines to prosecute, there is no avenue for private parties (i.e., aggrieved voters) to independently enforce the Hatch Act in federal court.³³

Second, under federal laws meant to prevent voter intimidation, election observers are prohibited from intimidating, threatening, or coercing, or attempting to intimidate, threaten, or coerce, anyone who is voting, attempting to vote, or helping another person vote or attempt to vote.³⁴ Private citizens are authorized to sue to enforce these restrictions, but in many cases the damage of

²⁵ DOJ, *2025 DOJ Monitors Announcement*, *supra* note 24.

²⁶ 52 U.S.C. §§ 10101, 10301–10314, 10501–10508, 10701–10702.

²⁷ 52 U.S.C. § 20501–20511.

²⁸ 52 U.S.C. §§ 20901–21145.

²⁹ 52 U.S.C. §§ 20301–20311.

³⁰ 52 U.S.C. §§ 1981, *et seq.*

³¹ 5 U.S.C. §§ 7324(a)(1), 7323(a)(1). Employees are also prohibited from engaging in political activity in buildings being occupied in the discharge of official duties, while wearing a uniform or insignia identifying their office or position, and while using a vehicle owned or leased by the federal government. *Id.* § 7324(a).

³² 5 U.S.C. § 1216(a)(1)–(2); *see also How to File a Hatch Act Complaint*, U.S. Off. of Special Couns., <https://www.osc.gov/services/hatch-act/filecomplaint/> (last visited June 4, 2026); *Hatch Act FAQs*, U.S. Off. of Special Couns., <https://www.osc.gov/services/hatch-act/faq/> (last visited June 4, 2026).

³³ This is a sharp contrast to other laws that protect the right to vote and prohibit voter intimidation, including the Voting Rights Act, National Voter Registration Act, and Civil Rights Act which can be enforced either by the Attorney General or private citizens in federal court.

³⁴ 52 U.S.C. § 10307; 18 U.S.C. § 594 (criminalizing voter intimidation in federal elections and elections in Washington, D.C.).

the intimidating activity is difficult to rectify after the fact by court order, especially when the intimidation takes place on Election Day and causes voters to leave the polling place without casting a ballot.³⁵

In addition to these express constraints, it is unclear whether DOJ attorneys can claim lawful presence at a polling place or other election facility if state or local officials deny them permission to be on the premises. This uncertainty exists because DOJ attorney monitors are not expressly authorized by any federal statute, unlike OPM observers.

What Are the Risks of an Unregulated Program?

Beyond the narrow legal restrictions described above, any other constraints on executive branch election observers' conduct have historically been norm-based, meaning that they could be changed without notice or an opportunity for recourse. This is particularly concerning at a time when the executive branch has shown a willingness to break norms in pursuit of political gains.

Some of the potential harms of an unregulated federal election observer program include:

- **Serious Overreach:** Because the DOJ's attorney monitor program is not defined in federal law, the Department could try to assert authority beyond merely documenting compliance with federal law. This includes potential attempts by DOJ officials to intervene in the operations of a polling place or a voter's casting of their ballot to stop perceived noncompliance with federal law. In addition, attorney monitors who are present at ballot production, sorting, and tabulation facilities, and other places where election administration occurs, might attempt to interfere with those processes, or even the certification of election results.
- **Poll Worker Confusion from Inconsistent Notice Practices:** While DOJ traditionally provides notice to jurisdictions before deploying its monitors, nothing in federal law *requires* such notice. This could create confusion for election officials if an individual presents themselves at a polling location claiming to be an observer from the federal government. Where no notice has been given, election workers may improperly attempt to turn actual federal government officials away. At the same time, the lack of

³⁵ See Ben Cady & Tom Glazer, *Voters Strike Back: Litigating Against Modern Voter Intimidation*, 39 REV. L. & SOC. CHANGE 173 (2015).



a consistent notice practice opens the door for private individuals to fraudulently claim to be federal observers in order to interfere with the conduct of an election.³⁶

- **Voter and Worker Intimidation:** Whether intentional or not, the presence of federal officials can intimidate voters, poll workers, or local election staff, especially if those officials are traditionally associated with enforcement of criminal or immigration laws, rather than the protection of civil rights. With this understanding, nefarious actors might even strategically deploy attorney monitors from the criminal division in jurisdictions where they expect voters to prefer disfavored candidates.
- **Lack of Transparency:** DOJ has broad discretion over where and why its attorney monitors are deployed, with no requirement to explain their criteria or scope. This prevents public and congressional oversight of those decisions, while leaving open the possibility that DOJ will strategically deploy monitors in disfavored jurisdictions.
- **Undefined Criteria for Who Can Serve as a Monitor:** The lack of a statutory definition for DOJ's monitor program allows for the recruitment and deployment of potentially untrained, politically-motivated, or partisan attorneys or staff to serve as monitors. While program norms call for trained DOJ Civil Division attorneys to serve as monitors, DOJ's broad discretion over the program could open the door for individuals ill-suited to engage in documenting compliance with federal voting rights laws.

What Can Congress Do?

The executive branch's election observer programs remain an important tool to ensure states and localities comply with federal voter protections. Yet the lack of official authorization for DOJ's attorney monitors creates the potential for misuse and harm to voters across the country. **To balance these considerations, and pursuant to its authority under the Elections Clause and Fourteenth and Fifteenth Amendments, Congress should pass a law that ensures the executive branch's observers can fulfill their important mission, while operating under clear, accountable rules.**

The norms adopted by DOJ attorney monitors in prior years, as well as existing legislation that regulates the congressional election observer program, can serve as a model for legislation to formalize the DOJ monitor program. Indeed,

³⁶ This concern is not without precedent. Indeed, numerous individuals have used confusion surrounding the identity of federal officials to harass immigrant communities and target vulnerable individuals. See Dell Cameron & Caroline Haskins, *FBI Warns of Criminals Posing as ICE, Urges Agents to ID Themselves*, WIRED (Nov. 4, 2025), <https://www.wired.com/story/fbi-warns-of-criminals-posing-as-ice-urges-agents-to-id-themselves/>; Artemis Moshtaghian, Gloria Pazmino, & Nick Valencia, *Multiple ICE impersonation arrests made during nationwide immigration crackdown*, CNN (Feb. 5, 2025), <https://www.cnn.com/2025/02/04/us/ice-impersonators-on-the-rise-arrests-made-as-authorities-issue-national-warning>.



Congress has already established a framework for regulation of federal election observers through the Confirmation of Congressional Observer Access Act of 2024 (COCOA), which sets clear definitions, conduct standards, and removal procedures for congressional election observers. Similar clarity is urgently needed for DOJ monitors.

Effective legislation should:

- **Define the legal authority and limits of DOJ monitors,**³⁷ who currently operate without explicit legal authorization. This includes clarifying that the exclusive role of DOJ monitors is to observe and document perceived violations of federal law, and not to intervene. Any legislation should also explicitly prohibit DOJ monitors from directing election officials to act in a certain way, intervening in election processes (including post-election operations like ballot tabulation or certification), or interfering with a person who is voting, attempting to vote, or helping someone else attempt to vote. Congress might also consider whether DOJ monitors' presence should be restricted to polling places—a practice DOJ has adhered to in prior election cycles—or whether DOJ monitors should be permitted to enter other places where election administration occurs.
- **Create a clear process for removal of federal observers who intimidate voters or disrupt election administration.**
 - For DOJ monitors, the process could mirror local officials' removal authority under COCOA, which authorizes election officials to remove congressional observers where they have "reasonable basis to believe" that an 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 results."³⁸ Local officials should be required to promptly notify DOJ of the removal and give DOJ opportunity to address the local officials' concerns and replace the removed observers.³⁹
 - Because OPM observers are clearly authorized by the VRA and statutorily restricted to jurisdictions where there is a history of discrimination by state or local officials, these officials' removal authority should be significantly narrower. Rather than authorizing state and local officials to remove federal observers directly, Congress could create an expedited judicial process for removal of observers who have engaged in prohibited activities.

³⁷ This reform need only apply to DOJ attorney monitors as the legal authority for OPM observers is already detailed in the VRA.

³⁸ See 52 U.S.C. § 21083a(c)(1)(A) ("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 results, a State or local election official may remove that observer from the area involved.").

³⁹ See 52 U.S.C. § 21083a(c)(1)(B).



- **Require DOJ to provide advanced notice to state and local officials and the public in jurisdictions where monitors will be deployed.**⁴⁰ Notice should include the name and job title of each observer that will be deployed to a given jurisdiction. This aligns with DOJ's existing practice of announcing the jurisdictions where observers will be deployed prior to election day.⁴¹ Detailed notice will allow jurisdictions to train election workers on what to expect, explain election workers' authority to remove unruly federal officials, and ensures election officials can verify that any individual claiming to be an election observer from the federal government is who they claim to be.
- **Create an enforceable code of conduct for attorney monitors and OPM observers,** modeled on existing OPM and DOJ norms and COCOA restrictions. This includes requiring federal observers to identify themselves to officials at polling places they will be monitoring, prohibiting observers from interfering to prevent or rectify perceived violations of federal law (and instead reporting those violations through their chain of command), and prohibiting observers from interacting with voters before they cast a ballot, unless a voter is turned away by local officials. It should also require any attorney monitor to be from DOJ's civil division, rather than its criminal division.
- **Establish a private right of action to sue DOJ monitors and OPM observers who violate the Hatch Act while performing election observer duties.** Voters could use this provision to bring a private lawsuit against an observer who attempts to interfere with their ability to vote or persuade them to vote for or against a particular candidate.
- **Mandate transparency regarding deployment criteria and post-election reporting.**⁴² To provide an opportunity for oversight, Congress should require DOJ to publish its criteria for selecting jurisdictions where monitors are deployed as well as a post-election report of monitors' activities in the Federal Register or on DOJ's website.
- **Mandate monitor training.** Congress should require DOJ to conduct a comprehensive election monitoring training for civil division attorneys who are planning to deploy in upcoming elections, apprising them of their responsibilities, legal limitations, and code of conduct.

⁴⁰ This reform need only apply to the attorney monitor program as states and localities where OPM observers are authorized are already on notice that observers will be present in their jurisdiction by nature of the VRA.

⁴¹ DOJ, *2025 DOJ Monitors Announcement*, *supra* note 24; *Justice Department to Monitor Polls in 27 States for Compliance with Federal Voting Rights Laws*, U.S. Dep't of Just. (Nov. 1, 2024), <https://www.justice.gov/archives/opa/pr/justice-department-monitor-polls-27-states-compliance-federal-voting-rights-laws>; *Justice Department to Monitor Polls in 27 States for Compliance with Federal Voting Rights Laws*, U.S. Dep't of Just. (Nov. 7, 2022), <https://www.justice.gov/archives/opa/pr/justice-department-monitor-polls-24-states-compliance-federal-voting-rights-laws>.

⁴² This reform need only apply to the attorney monitor program as there is already transparency around where OPM observers are deployed by nature of the VRA.



Federal election observers can play an important role in protecting voters and documenting violations of federal law, but that role must be clearly defined and carefully bound. As this paper explains, the absence of explicit statutory authority for DOJ attorney monitors, combined with limited enforceable constraints and insufficient transparency for all executive branch election observers, creates unnecessary opportunities for confusion, intimidation, and interference in election administration. Congress can address those risks without undermining legitimate federal oversight by establishing clear authority and limits for DOJ monitors, requiring advance notice and public transparency for all executive branch observers, creating enforceable standards of conduct and removal procedures, and ensuring meaningful remedies when federal observers abuse their position. With the increasing abuses of federal power, Congress should act now to preserve the benefits of federal election monitoring while putting in place the guardrails necessary to protect voters, election workers, and the integrity of our democratic process.