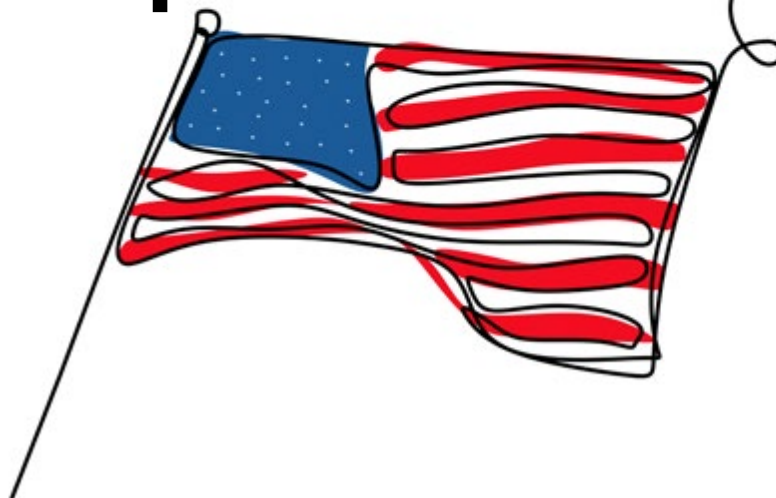


How More Robust Election Observation **Could Help Save U.S. Elections**



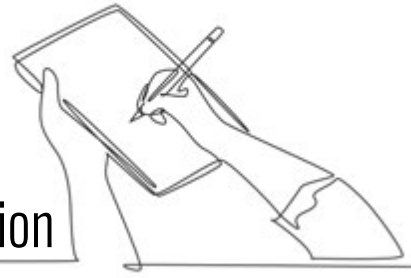
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democracy

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INTRODUCTION

Though the 2020 election was called the [most secure](#) ever conducted in the United States, confidence in the presidential election results remains [strongly divided along partisan lines](#), and bad-faith actors continue to find fertile ground for their efforts to undermine trust in U.S. elections. [Deficient and potentially dangerous post-election reviews](#) of the 2020 election, like that in Arizona, have exposed sensitive information about election equipment and data. Leaks of election technology [by rogue election administrators](#) have made election infrastructure more vulnerable. Significant numbers of [experienced election officials](#) are resigning in response to violent threats.

These developments have coincided with many new state laws that make U.S. elections more vulnerable to potential autocratic interference and do not address proven election administration issues. As two eminent election experts — former Kentucky GOP Secretary of State Trey Grayson and Dr. Barry C. Burden of the Elections Research Center at the University of Wisconsin-Madison — [noted](#), the Arizona Senate review of the 2020 election in Maricopa County used inexperienced, biased personnel and procedures that were not rooted in scientific principles nor justified in terms of convenience and security. As a result, its findings did little more than feed disinformation and conspiracy theories. And in Texas, the governor [signed a law](#) that targets local elections officials and poll workers with unwarranted penalties, needlessly empowers partisan poll watchers, and significantly reduces access to voting. Such actions have undoubtedly contributed to the United States being labeled a [“backsliding democracy”](#) for the first time. Despite the ongoing efforts by bad-faith actors to make sure the next attempt at U.S. election subversion succeeds, there are [few indications](#) that such efforts will be effectively countered anytime soon.

Given the barrage of threats to U.S. elections, more robust election observation efforts — particularly nonpartisan observation — could be critical to helping ensure the integrity of future elections, beginning with the 2022 midterms. Nonpartisan observation could provide an opportunity for the public to learn directly about the election process and give them greater faith that elections are free and fair. It also could help check bad-faith actors actively seeking to undermine confidence in U.S. elections through [improper actions or baseless assertions](#) about election rigging and malfeasance. In addition, nonpartisan observation could provide important information to those on the front lines of elections as they strive to continuously improve their election processes.

There was broad agreement among [domestic](#) and [international](#) experts that while the election results were legitimate, there was

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 afforded 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 [partisan observers](#) are often focused on protecting their candidate(s) or political party, they also have monitored for elections mishaps and served as a resource to help some supporters better understand the election process. In general, if observers from multiple parties are watching the administration of an election, it is harder for anyone to tamper with the conduct of the elections.

Recent U.S. elections, especially the 2020 presidential election, have demonstrated that partisan observation is no longer sufficient to engender trust that elections have been conducted fairly. In the lead-up to 2020 and in its aftermath, many elected officials and their supporters challenged the [integrity of U.S. elections and democracy](#) with misinformation, disinformation, and mal-information, sowing discord and undermining trust in America's electoral process. A [number of states](#) have recently passed legislation making it easier to interfere in the counting of votes, which has the potential to make this problem even worse. There is reason to believe that some partisan observers may continue to use subversive tactics to promote a partisan agenda to the detriment of the administration of free and fair elections.

One way to deter such behavior by partisan observers is to have nonpartisan observers in their midst during as many stages of the electoral process as possible. This is in keeping with [international obligations and best practices](#). It is also an idea that enjoys bipartisan support among [election officials](#) and could serve as an additional deterrent against [malfeasance and violent behavior](#) from unruly observers. Nonpartisan observers are adept at identifying bad behavior, whether it's ballot stuffing or voter intimidation. [Initial research](#) also finds that having both partisan and nonpartisan observers at the polls increases public confidence in the process.

While a number of states explicitly allow [nonpartisan observers](#), many others leave such decisions up to the [discretion of state and local election officials](#). Jurisdictions that can make these decisions should strongly consider providing access to their election process to nonpartisan observers, including citizen nonpartisan monitors, international nonpartisan monitors, and academic researchers.

Robust Access: Election administrators should seek to permit observers, both partisan and nonpartisan, to observe as much of their election processes as possible without compromising the security of the electoral infrastructure.

Elections are far more than a one-day event; they are a [continuous administrative cycle](#), many elements of which can and should be subject to nonpartisan observation. These include preelection activities, such as maintaining and updating the voter registration database and administering pre-Election Day processes; voting processes, such as in-person early voting, vote by mail, and Election Day processes; and post-election activities, such as certifying official election results and performing recounts, if necessary.

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.

In-person Access: Election observers should seek to observe any voting and election activities in person where the risk of private information being exposed is minimal.

Despite [technological advances](#) that make it possible to livestream key elements of the election process, we believe that safe in-person observation best promotes the credibility of the election process. It helps to ensure that knowledgeable nonpartisan experts witnessing these processes can more easily report on what took place. During the 2020 presidential election cycle, there were several high-profile instances of livestreamed election processes that [fed massive conspiracy theories](#). For example, the website The Gateway Pundit [published false information](#) that one Georgia election worker, Ruby Freeman, had “somewhere” found a “suitcase” full of ballots from “underneath a table,” when in fact there was no suitcase. Election workers, including Freeman, who had previously been told by local officials to stop counting ballots and pack up for the night were told by state officials to restart the ballot count, and Freeman was simply continuing her work. Unfortunately, the conspiracy theory persisted and contributed to a deluge of intimidation, harassment, and threats directed against Freeman and her daughter.

A common concern is that allowing nonpartisan observation of elections will lead to crowding of already small election offices or polling places. This can be addressed with adequate planning and observation rules that can be uniformly and evenly applied. [The Bipartisan Policy Center Task Force on Elections](#) recently released some recommendations and suggestions for how to tackle this problem, such as allowing each observation entity one observer for every 10 election judges at a central counting site. In Georgia’s [2020 post-election hand tally](#), the Office of the Secretary of State allowed two monitors from the parties and designated organizations on the audit floor at any given time, with an additional monitor allowed for every 10 additional audit tables. And, in Washington, D.C., [election observers can be rotated in and out of polling places](#) and ballot counting locations on an equitable basis in the event of space constraints.

Responsible Access: Observers should behave responsibly and conduct observation in a manner that enables one to draw accurate conclusions about the election process without interfering with it.

Credible election observation relies on observers having meaningful access to the [various aspects of the electoral process](#) and having the knowledge and experience to put what they are seeing into context so that they can provide accurate reports on the process to election officials and the public. While it is essential that election observers are allowed [sufficient access](#) to watch and accurately understand what is occurring, it also is important for there to be clear guidelines for their access and activities, including reasonable limitations. For example, it is appropriate and recognized practice for election authorities to place some limits on the movement and activities of election observers to ensure they don’t crowd election officials or voters (especially during the pandemic), or otherwise hinder the electoral process. Good election observers should not need to consistently be alongside voters or poll workers to assess voting wait times, the check-in process, the casting of ballots, or other election procedures. On the other hand, they do need to be close enough to reasonably see and hear voter and poll worker interactions that are publicly observable, such as when a voter checks in to vote. Being unnecessarily close to voters or election officials could prevent the private casting of

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.

In many countries, observers or their organizations are required to submit only a simple form that asks for the observer's name, organizational affiliation, and contact details. This information, along with a photo of the observer, is used to create a badge or credential that allows for easy identification of observers by poll workers and voters. Similarly, [a code of conduct for observers](#) that reflects the dos and don'ts of observation, contextualized to a specific state or jurisdiction, is important to establish expectations regarding the rights and responsibilities of observers. Codes of conduct are widely used by international and citizen observers around the world.

CONCLUSION

Robust election observation can play a critical role in ensuring the integrity of genuine, democratic elections. It can build public confidence in the honesty of electoral processes, help ensure the voting rights of eligible voters, and detect actual errors or deficient practices that warrant correction. Well-documented reports from credible and impartial election observation groups can build trust in the democratic process and enhance the legitimacy of the governments that emerge from elections. This requires that election observers are well-intentioned and have the requisite training and experience to assess the democratic quality of an election.

After all the false claims of election rigging and malfeasance in the 2020 election and the subsequent toll they have taken on American society, it's clear that more needs to be done to ensure that Americans and our institutions can withstand similar malign efforts. While more robust election observation efforts will certainly not be able to counteract all threats to elections, adopting some or all of the suggestions in this paper could go a long way toward ensuring that such threats are prevented, detected, and/or responded to in a timely manner.

