



# State Legislative Employee Election Observers



## OVERVIEW

Generally, state legislatures are constitutionally assigned the duty of judging their elections and seating their members.<sup>1</sup> This is a duty similarly assigned to the respective chambers of Congress by the U.S. Constitution.<sup>2</sup> As has been the practice of the House Committee on House Administration,<sup>3</sup> **this duty empowers legislators to ensure electoral processes in their states are conducted in a fair and transparent manner by providing legislative staff as election observers.**



## THE LAW

While not every state's constitutional or electoral law is identical, the constitutional provisions related to judging elections demand fact-finding by legislators, since absent such fact-finding, no adjudication of a House election can be made. **However, in addition to the constitutional grant of authority to observe elections, legislators and staff should be mindful of other authorities including:**

### 1. House Structure

- Legislators should review their House manual and governing statutes particularly related to staff. Some state laws or House rules provide for shared authority by both the member and House leadership over staff, or another variation. Decisions impacting an observation assignment like poll watching may require clearance by a decision or vote of House leadership.

### 2. State Ethics

- State elected officials and their staff should review potential election observer assignments with their ethics authority to ensure compliance with all state rules.
- Legislative staff should understand the legality or illegality of interacting with partisans stemming from their actions in polling locations.

### 3. Election Law and Rules

- Staff should be adequately trained not only in their duties as observers but also in the statutes relating to polling location behavior including prohibited practices, observation setbacks, and observer capacity limitations.
- Staff should make and execute a plan to inform the polling place chief inspector of their duty as legislative officials and not as partisan operators. This should be done as far in advance of the election as possible.

## BOTTOM LINE:

**State legislators have an important role to play in judging their House's elections. It is a duty granted only to them and it is a critical tool for ensuring our elections are fair and transparent.**

1. See Pa. Const. Art. II, § 9, "Each House shall choose its other officers, and shall judge of the election and qualifications of its members."; Wis. Const. Art. IV, § 7, "Each house shall be the judge of the elections, returns and qualifications of its own members..."; Fla. Const. Art. III, "Each house shall be the sole judge of the qualifications, elections, and returns of its members..." and MCLS Const. Art. IV, § 16, "Each house shall be the sole judge of the qualifications, elections and returns of its members..."

2. See U.S. Const. art. I, § 5, "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members..."

3. <https://republicans-cha.house.gov/election-observer-program>



# Safeguarding Your Elections: State Observer Programs in Three Easy Steps

Public trust in elections is the foundation for confidence in government. **State legislatures themselves can act as independent safeguards to the election process by implementing measures similar to ones implemented by Congress.**

## Know Your Rights as a Legislature

The U.S. Constitution gives Congress the authority to appoint poll watchers. Generally, state constitutions do as well.



## Set Up Your Team

1. Inform elections officials of your observers
2. Appoint legislative staff
  - ✓ Have them represent the state legislature, not a candidate or party
  - ✓ Provide training: emphasize compliance and what to look for; they are observers
  - ✓ Deploy to polling districts of your choice



## Election Day

1. Observers are neutral and there only to watch the administration of the election.
2. Keep note of any activities that require further investigation
3. The presence of a neutral observer alone will encourage poll workers to observe best practices



*For more details and a legal explainer, see reverse side.*