

.....  
(Original Signature of Member)

118TH CONGRESS  
1ST SESSION

**H. R.**

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

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

---

**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”.

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

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

7 (2) The House of Representatives serves as the  
8 final arbiter over any contest to the seating of any  
9 putative Member-elect.

10 (3) Congress has exercised this authority—and  
11 responsibility—since our Nation’s very beginning,  
12 from the First Congress through the One Hundred  
13 Eighteenth Congress. Over our history, election con-  
14 tests have remained a normal and regular part of  
15 the biennial process for electing, recognizing, and  
16 seating new Members. Although Congress has opted  
17 to revise the statutory framework by which it con-  
18 siders election contests, consideration of such con-  
19 tests has been a regular and recurring part of Con-  
20 gress’ constitutional prerogatives and work. For ex-  
21 ample, across our Nation’s history, more than ap-  
22 proximately 610 elections have been contested in the  
23 House—an average of more than 5 per Congress.  
24 Indeed, even discounting the Reconstruction period  
25 and its surge in election contests, there have been

1       110 contested election cases considered in the House  
2       since 1933—an average of more than 2 contests per  
3       Congress.

4           (4) These election contest procedures are con-  
5       tained in the precedents of each House of Congress.  
6       Further, for the House of Representatives the proce-  
7       dures exist under the Federal Contested Elections  
8       Act.

9           (5) For decades, the House of Representatives  
10       has appointed its staff to watch the administration  
11       of congressional elections in the States and terri-  
12       tories. Critically, congressional observers serve to  
13       gather real-time information and data for the House  
14       in anticipation of an election contest being filed.

15 **SEC. 2. ACCESS FOR CONGRESSIONAL ELECTION OBSERV-**  
16 **ERS.**

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

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

22           (2) by inserting after section 303 the following  
23       new section:

1 **“SEC. 304. ACCESS FOR CONGRESSIONAL ELECTION OB-**  
2 **SERVERS.**

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

18 “(b) REQUIRING STATES TO PROVIDE ACCESS FOR  
19 OBSERVERS.—

20 “(1) REQUIREMENT.—A State shall provide  
21 each individual who is acting as a designated con-  
22 gressional election observer for an election for Fed-  
23 eral office with full access to clearly observe all ele-  
24 ments of election administration procedures, includ-  
25 ing, but not limited to, access to any area in which  
26 a ballot is cast, processed, scanned, tabulated, can-

1 vassed, recounted, audited, or certified, including  
2 during pre- and post-election procedures.

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

13 “(3) RULE OF CONSTRUCTION.—Nothing in  
14 this section shall prohibit a designated congressional  
15 election observer from asking questions of an elec-  
16 tion administrator, election official, or election work-  
17 er, or any other State or local official.

18 “(c) CONDUCT OF OBSERVERS.—

19 “(1) REMOVAL.—

20 “(A) AUTHORIZATION REMOVAL BY ELEC-  
21 TION OFFICIAL.—If a State or local election of-  
22 ficial has a reasonable basis to believe that a  
23 designated congressional election observer has  
24 engaged in or imminently will engage in intimi-  
25 dation or deceptive practices prohibited by Fed-

1           eral law, or in the disruption of voting, proc-  
2           essing, scanning, tabulating, canvassing, or re-  
3           counting of ballots, or the certification of re-  
4           sults, a State or local election official may re-  
5           move that observer from the area involved.

6           “(B) NOTICE TO COMMITTEE.—If a des-  
7           ignated congressional election observer is re-  
8           moved from an area under subparagraph (A),  
9           the election official shall—

10                   “(i) inform the chair and ranking mi-  
11                   nority member of the Committee on House  
12                   Administration of the House of Represent-  
13                   atives; and

14                   “(ii) provide written notice detailing  
15                   the reason or reasons the designated con-  
16                   gressional election observer was removed.

17           “(2) RULE OF CONSTRUCTION.—For purposes  
18           of this subsection, the mere presence of a designated  
19           congressional election observer during an observation  
20           of election administration procedures, without any  
21           additional indicia supporting a reasonable basis for  
22           removal, is not a sufficient reason for removal under  
23           subparagraph (A).

24           “(3) RIGHT TO REPLACE OBSERVER.—If a des-  
25           ignated congressional election observer is properly

1 removed under subparagraph (A), the chair or rank-  
2 ing minority member of the Committee on House  
3 Administration of the House of Representatives, as  
4 appropriate, may send another designated congress-  
5 sional election observer as a replacement for the re-  
6 maining duration of the observation of election ad-  
7 ministration procedures.

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

19 “(d) DESIGNATED CONGRESSIONAL ELECTION OB-  
20 SERVER DESCRIBED.—In this section, a ‘designated con-  
21 gressional election observer’ is a House employee (as con-  
22 templated by the Rules of the House of Representatives)  
23 who is designated in writing by the chair or ranking mi-  
24 nority member of the Committee on House Administration  
25 of the House of Representatives, or the successor com-

1 mittee, to gather information with respect to an election,  
2 including in the event that the election is contested in the  
3 House of Representatives and for other purposes per-  
4 mitted by article 1, section 5, clause 1 and article 1, sec-  
5 tion 4, clause 1 of the Constitution of the United States.

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

11 (b) CONFORMING AMENDMENT RELATING TO EN-  
12 FORCEMENT.—Section 401 of such Act (52 U.S.C. 21111)  
13 is amended by striking “and 303” and inserting “303, and  
14 304”.

15 (c) CLERICAL AMENDMENT.—The table of contents  
16 of such Act is amended—

17 (1) by redesignating the items relating to sec-  
18 tions 304 and 305 as relating to sections 305 and  
19 306; and

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

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