canvass (n.)
Compilation of election returns and validation of the outcome that forms the basis of the official results by a political subdivision.
—U.S. Election Assistance Commission: Glossary of Key Election Terminology

The Watchers Watching Elections

You go to the polls and who do you see? Your neighbors, maybe. Poll workers, of course (who may also be your neighbors). Who else?

Party designees known as “poll watchers” are likely. Members of the media too. Interested citizens and academics might be there. And, in a smattering of polling places spread throughout the nation, international observers may be there on Election Day, as well. As it turns out, who—besides voters—is allowed at the polls depends on which state you are in.

Regardless of which category these people fit in, they have at least three things in common:

- All are governed in some way by state law—which means legislators set the policy.
- None are permitted to interfere with the voting process, although some have authority to formally challenge a voter’s eligibility.
- All aim to ensure that the election is well-run, often by providing feedback to election officials.

Partisan Observers

Let’s start with partisan observers because they are at work in virtually every state. Often called “poll watchers” or “poll challengers,” these partisan volunteers have been deployed since well before 1934, when Joseph P. Harris wrote the seminal book on election administration titled, not surprisingly, *Election Administration in the United States*. A salient quote: “It is generally believed that the honesty of elections is safeguarded by having at the polls representatives of the several political parties as official watchers and challengers.”

In short, if both parties watch, stealing an election is harder. Partisan watchers still serve much the same function today.

But—of course—how each state regulates poll watchers varies. They may have laws regarding how they are appointed, where they can stand, what they can observe and how many can serve. It is common to permit two watchers per party and two per candidate in each polling place. In battleground states during general elections, indoor traffic jams may be a concern.

Forty-one states have a formal accreditation or appointment process for poll watchers and challengers. This appointment generally begins with the local party chairs submitting a list of potential poll watchers to the local election officials for approval. Once appointed, parties are likely to provide party-specific training and local election officials may require training as well. Poll watcher manuals are common, such as this one from Arizona (see pages 120-122).

(cont. on page 2)
Nonpartisan Observers

As for nonpartisan observers, such as nonprofit advocacy groups like the Citizens for Election Integrity Minnesota, state law is often less specific.

Many states, including Washington (RCW 29A.04.086), permit citizen observers at all stages. In fact, “anyone has the right to observe any part of the election process” in Washington, according to An Observer’s Guide to Washington State Elections. Washingtonians, whether they represent a formal group or not, can observe pre-election procedures such as logic and accuracy testing of voting equipment, processing of voted ballots and post-election procedures including ballot tabulation and recounts.

These observers sometimes come with concerns or even suspicions about election procedures and leave providing testimonials to the good work they saw. Additionally, these observers may have noted processes that worked well, or possibly procedures that could use streamlining. These reports include (or at least may include) recommendations that aim not to discredit election administrators, but to assist them in improving efficiency and accountability for future election cycles.

Academics

Academics may fit under the heading of “nonpartisan citizen observers,” but they deserve a special mention. Even when things are squeaky clean, the use of observation (and the data that it may produce) can help with planning for the next election. In Bernalillo County, N.M., every general election, is observed by a team of graduate students from the University of New Mexico. Under the direction of Professor Lonna Rae Atkeson, the group produces a report for each general election, such as this one from 2014. It’s part of a “continuous improvement” process in the Land of Enchantment.

Plenty of political scientists may be doing exit polling or other kinds of research during a big election in support of one research project or another, but academic election observers are looking at administration—not at outcomes.

International Observers

Whenever there is an election in Bosnia, Brazil, Botswana, or other countries, election coverage always includes a mention of the international observers who were on hand. Mostly these teams quietly keep tabs on election procedures and citizen access to the ballot, as just two measures of election quality. The most important product of these observations is an after-report that may include ideas for improvement for future elections.

Sometimes, the same organizations that send election observation teams to Eastern Europe, Africa, Latin America or Asia also send teams to the United States. The Organization for Security and Cooperation in Europe (OSCE) has observed the last several presidential elections, and expects to spread 400 observers across the nation this year. The Organization of American States (OAS) plans to send a delegation of observers as well. See NCSL’s International Election Observers At Home and Abroad webpage.

The U.S. is a signatory of the 1990 Copenhagen Agreement, an agreement that gives member countries the right to observe each other’s elections. Even so, these observers are still subject to the laws of each state.

Three states—California, Missouri and New Mexico—and the District of Columbia use the term “international observers” in statute. California’s AB 2021 is the most recent, signed into law on Sept. 29.

The role of these observers is much like that of nonpartisan observers: to observe, take notes and provide feedback. Many more states may permit international observers in practice, even if state law isn’t explicit on this topic.

On the flip side, 12 states have statutes that detail who can be in a polling place, and because observers are not mentioned, these laws effectively prohibit international observation. Legislatively, Tennessee enacted HB 2410 in 2014 that prohibits U.N. election monitors, unless they are expressly permitted by treaty signed by the U.S. Senate.

“Transparency is always important in elections,” says Christy McCormick, commissioner for the U.S. Election Assistance Commission and occasional international observer. “Therefore when we have observers able to go into polling places, we are supporting transparency and free and fair elections. I don’t think we should be fearful of observers if we’re doing our jobs.”

Logistics

From a logistical point of view, local election officials’ top priority is to meet the needs of the voters first. That means the needs of observers come second, or even further down the line.

However, many think that being open to observers also serves other purposes. “Election observation helps to strengthen election processes by providing information and recommendations to hard-working and over-stretched election administrators as the election unfolds,” says Avery Davis-Roberts from The Carter Center. She points out that observation regulations vary greatly across jurisdictions and that having clearer rules would help.

(continues on page 3)
“institutionalize trust and good communication between observers and election administrators.”
In fact, some election officials invite the public in a few weeks ahead of time to see their operation, ask questions about the mechanics of elections and to see a “test deck” of sample ballots run. Such transparency can allay anxiety about election fraud and restore confidence in the nation’s democracy.

**Recent Legislative Enactments**

- Who can be a partisan observer: Alaska HB 104 (2013) required observers to be citizens; Tennessee SB 1945 (2016) prohibited a candidate’s spouse from serving and both Montana HB 529 (2015) and New York AB 5075 (2014) prohibited candidates from serving.

- International observers: California AB 2021, signed into law in September 2016, gives international election observers the right to observe all phases of the election. Prior to that, in 2011, New Mexico (SB 403) permitted academics and international observers and North Dakota (SB 2256) permitted election observers of all kinds.

- The process for appointing or certifying partisan observers: Virginia HB 1333 (2015) specified that the state or district chairman may designate authorized representatives of political parties if the county or city chairman is unavailable to do so.

- How observers are to be treated: Wisconsin AB 202 (2014) required authorized observers to sign a log and created observation areas of not less than three feet or more than eight feet from the voter check-in table. Arkansas HB 1551 (2013) required the State Board of Elections to certify at least one election monitor for each congressional district and HB 1552 (2013) required training for certified election monitors. Texas SB 160 (2013) required election officials to provide poll watchers with identification.

- What parts of the election process can be observed: Maryland SB 5 (2015) permitted authorized observers for the canvass process and Virginia HB 319/SB 537 (2012) specified that observers may be close enough to the voter check-in table to hear what is occurring, but that observation shall not violate the secret vote or otherwise interfere with the election.

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**Then and Now: 2012 to 2016 Comparisons**

*From now until the November general election, we will be taking a look at one major election administration topic showing how it has changed at the legislative level from one presidential year to another.*

*This month: Electronic Ballot Transmission.*

**Amount of change:** Moderate

In **2012**: 29 states and D.C. allowed some form of electronic transmission of voted ballots for subsets of their voters—primarily those covered under the Uniformed & Overseas Citizens Absentee Voting Act (UOCAVA).

In **2016**: 31 states and D.C. allow some form of electronic ballot return (the same states since 2012 plus Alabama and Iowa).

- Alabama is now testing email and web portal ballot return for UOCAVA voters.

- Iowa began allowing some UOCAVA voters to fax and email their voted ballots for the first time in 2014.

Most states allow all UOCAVA voters to email and fax their voted ballots and some states also offer a web portal. Since 2012, five states have broadened their provisions by either adding a new form of approved technology such as email or a web portal or allowing more voters to participate (Hawaii, Mississippi, Missouri, Oklahoma, and Texas).

Electronic ballot transmission is typically available for UOCAVA voters or subsets of that population. However, in four states, electronic ballot transmission is available for voters in addition to those covered by UOCAVA:

- In Alaska, all qualified voters can become **no-excue absentee voters** and return voted ballots by mail, fax, or web portal.

- In Hawaii, legislation passed last session that allows all permanent absentee voters to email their voted ballots.

- **Utah allows** all UOCAVA voters and voters with disabilities to email and fax their ballots; and

- Since 2013, **Oklahomans** registered as absentee voters (in addition to all UOCAVA voters) can fax their ballot if the mail ballot is going to arrive late.

To learn more about electronic transmission of ballots including a 50-state analysis, visit our webpage and read up on internet voting.
Will Presidential Coattails Affect State Legislatures?

For the more than 10,000 candidates seeking state legislative seats this year, the wild race for the White House might feel like watching their investments rise and fall with the stock market. Investors have relatively little control over their stocks’ success, yet how they perform will have a dramatic impact on their portfolios. Likewise, state lawmakers have very little influence over their party’s presidential campaign, yet how their top candidate performs can affect their political future immensely.

On Nov. 8, officials will tally the ballots to determine the winners of 5,915 regularly scheduled elections for legislative seats in 86 chambers in 44 states. That’s more than 80 percent of all the 7,383 state legislators nationwide. Not on the ballot: legislators in Alabama and Maryland who serve four-year terms and were elected in 2014, all Michigan senators, and lawmakers from Louisiana, Mississippi, New Jersey and Virginia, as these states hold legislative elections in odd-numbered years.

How High Can the GOP Go?

Currently, Republicans control 68 percent (67 of 98) of the partisan legislative chambers in the country (the Nebraska Legislature is unicameral and nonpartisan, so is not counted in this total). That’s more than at any other time in the history of the Republican Party. They also hold more total seats, well over 4,100 of the 7,383, than they have since 1920. And in 30 states, Republicans have the majority in both chambers of the legislature.

Democrats control 31 chambers. They lead both chambers in 12 states and split control in seven states. While NCSL counts New York State among the states where Democrats control both chambers, others do not. The New York Senate is run by a coalition that consists of only a small number of Democrats who are allied with all of the Republicans. The chamber consists of 32 Democrats and 31 Republicans and is led by Republican John Flanagan, who serves as president pro tempore and majority leader.

Familiar Battlegrounds

Because of large majority margins and redistricting, some states are beyond the reach of the minority party for a takeover in 2016. Still, many of the chambers on the 2016 battleground list, like the Kentucky House, continue to be competitive. The Republicans’ success in the past three legislative election cycles, however, requires them to play far more defense this year just to hold on to previous gains.

At least 18 legislative chambers—11 Senates and seven Houses—are definitely in play this November and can easily be identified as true battlegrounds.
From The Chair

Councilmember Kenyan McDuffie is the chair of the Committee on the Judiciary in the Council of the District of Columbia. He represents Ward 5 and was first elected to the D.C. Council in 2012. Councilmember McDuffie spoke to The Canvass on Sept. 8.

- “We’ve focused on using our oversight of the board of elections to improve the overall administration of our elections given some of the challenges we’ve had in the past. Also we’ve encouraged the board to explore secure technological innovations for the District and it is a priority we’ve had in the committee.”

- “Voter registration is a really significant issue, particularly in regards to low income populations and young people. One of the things we’ve done is to support the board in their funding and their budget to hire outreach staff for these specific populations, and to encourage the board to envision the agency’s mission as expansion of the franchise and not just simply administration of an election but expanding opportunities for voter participation.”

- “One of the things that makes the District unique is that we are particularly transient. Many of the eligible voters move back and forth between the District, Maryland, Virginia and other jurisdictions. As a result it can be a challenge to maintain accurate voter rolls.”

- “One of the areas where we still have some challenges—and we are working on it—is accessibility at the polls. Some of the polling places in the District are old government buildings or old churches and private facilities that present challenges for individuals with disabilities. Being a former DOJ civil rights attorney and caring about running elections efficiently and properly, we want to remove those types of barriers.”

Read the full interview with Councilmember McDuffie.

The Election Administrator’s Perspective

Bryant Rains is the secretary of the election board in Cleveland County, Okla. The city of Norman serves as its county seat and it was named after President Grover Cleveland. Rains spoke to The Canvass on Sept. 5.

- “I think Oklahoma is unique in that we have the state election board and we are under that umbrella. There are 77 county secretaries and we report to the state election board. Paul Ziriax is the state election board secretary and also secretary of the senate.”

- “Cleveland County is the third largest county in Oklahoma. I don’t think our issues are unique to us. Our biggest challenge is finding and maintaining workers to work the polls on Election Day. People used to do it as their civic duty. Now I think people are having to work longer and put off retirement, so it’s getting harder to find workers to work that day. Their pay, here, is set by the state legislature.”

- “As far as technology issues, we have a great system. It’s all uniform, every county does the same thing and it all ties into the state election board. We get written instructions, policies, procedures and communication from them all the time. It keeps us up to date—there are really no problems there.”

- “If I’m speaking specifically to Oklahoma state legislators, I want them to know how much I and the other secretaries appreciate their leadership and how they work with us. We have great communication. I think it also helps that the secretary of the board of elections is also the secretary of the senate. They listen to us and do a lot of things to help us out.”

Read the full interview with Rains.
Worth Noting

- In the wake of cyber-attacks on state voter registration databases, the Department of Homeland Security is now assisting 33 states with securing aspects of election systems. Check last month’s special edition of The Canvass all about election security for more information.

- When presidential nominee Donald Trump suggested that the election could be "rigged" this November, it prompted all sorts of inquiries on things like poll watchers, international election observers and cybersecurity. Now national Republicans are saying it’s time to stop that speculation.

- Poll watchers have suddenly become a hot topic. Here’s a look at how they may affect Election Day in the key state of Pennsylvania. And here’s NCSL’s webpage on poll watcher qualifications.

- California has never been a state to shy away from bold actions on elections—the last several years they’ve moved to a top-two primary and passed automatic voter registration. Now the Golden State will officially move to a Colorado style of all-mail elections and vote centers starting in 2018.

- More news out of California—the long-awaited voter registration database has officially been certified. The certification means same-day registration and preregistration for 16 -and 17-year-olds will be on the way in 2017. The state will also allow those being held in county jails to vote while incarcerated.

- Legislators in Illinois have designs on overriding the governor’s veto of automatic voter registration. Keep an eye on the Prairie State in mid-November.

- Former Pew election gurus David Becker and Amy Cohen have launched the Center for Election Innovation and Research. No doubt you'll be seeing them both all over election news this fall. Best of luck in their new venture.

- Ballot selfies are making news again as a federal appeals court officially struck down the New Hampshire law banning them. In Michigan, a voter is challenging a law on the books since 1891 that prevents ballot exposure; while in Virginia, the attorney general has decided to weigh in and say ballot selfies are legal.

- Replacing aging voting machines will be a top priority for many states in the next few years and officials in Ohio are estimating that the state may have to spend up to $150 million on them. Check out NCSL’s compilation of news about buying and funding election equipment.

- Let’s strike some humor into an otherwise dour election cycle—here’s a list of the some of the best “Saturday Night Live” political sketches of all time. Dana Carvey as President George H.W. Bush is a personal favorite.

Do you think more states should offer more ranked-choice voting opportunities? Or that primaries should be nonpartisan or open to all voters? Do the Electoral College and redistricting need reform? Well then if you’re a legislator or legislative staff sign up to be on NCSL’s Mechanics of Democracy listserv where you can converse with other interested legislators from across the country on these and other topics. Just email Dan Diorio to be added to the list.

NCSL's Capitol Forum is just around the corner and will take place Dec. 6-9 in Washington, D.C. Find out how the 2016 elections will affect states. Be sure to join the elections team on Tuesday, Dec. 6 for a free preconference looking at the big election issues of the year and what legislatures may take action on in 2017. More information coming soon!

Browse the most recent entries from the election team on the NCSL Blog.

Look for #NCSLelections on Twitter for all NCSL election resources and news.

Thanks for reading, let us know your news and please stay in touch.

—Wendy Underhill, Dan Diorio and Amanda Buchanan

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