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EXPERT INSIGHT | Election Integrity

DOJ ELECTION MONITORING AUTHORITY AND OBSERVER DEPLOYMENT

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TOPLINE POINTS

- ★ The Department of Justice (DOJ) has the authority to deploy Civil Rights Division staff election **monitors** to election sites without a request or court order—unlike federal **observers**, which require judicial authorization and serve a different role and have different legal authority.
- ★ In 2024, federal **observers** were authorized in only four political subdivisions, including Union County, New Jersey, while DOJ staff election **monitors** were deployed to 86 jurisdictions across 27 states.
- ★ That 2024 baseline shows DOJ does not need to wait for invitations from local officials, requests from political parties, or reports from the public to deploy **monitors** and maintain a robust nationwide election monitoring program that deters misconduct and provides real-time visibility into the electoral process.
- ★ In 2026, election administration changes, observer-access issues, and voter-facing confusion continue to arise, so DOJ staff election **monitors** should be deployed proactively to primary and general elections across the country to promote transparency in the voting process and ensure election integrity.

DOJ Election Monitoring: Background, Current Authority, and Practice

The Department of Justice (DOJ) has monitored federal elections for decades as part of its broader enforcement of federal voting rights laws. That monitoring takes two distinct forms: DOJ staff **monitors** deployed under the DOJ's general enforcement authority, and federal employees who serve as **observers** authorized by court order under Section 3(a) of the Voting Rights Act (VRA). The distinction matters. Staff **monitors** can be deployed widely and without court approval; federal **observers** are reserved for jurisdictions where a court has found a constitutional or statutory violation warranting potentially more robust federal oversight. In 2024, DOJ deployed staff **monitors** to 86 jurisdictions across 27 states while federal **observers** operated in only four political subdivisions under active court orders.



The need for broader DOJ election monitoring in 2026 follows from the continuing reality that election administration changes, observer-access issues, and voter-facing confusion continue to arise, including during primary elections that receive less scrutiny than general elections. A robust DOJ election monitoring program deters misconduct, improves public confidence, provides real-time visibility into recurring problem areas, and helps ensure that federal voting rights protections are enforced before local failures escalate into larger disputes. Because court-ordered federal **observers** remain available in only a small number of jurisdictions, DOJ cannot rely on that mechanism alone and should build on its existing election **monitor** program to deploy staff more proactively throughout the 2026 election cycle.

With the first statewide primary elections of the 2026 midterm cycle already complete and the remainder of the primary calendar underway, DOJ has both the authority and the opportunity to build on its 2024 and 2025 footprint that helped ensure that jurisdictions across the country administer elections as securely, transparently, and lawfully as possible. This document sets out the legal framework for staff **monitor** and federal **observer** deployment, identifies common misconceptions about DOJ's post-*Shelby County* authority, and recommends steps DOJ should take ahead of the November 3 general election.

What Is DOJ's Monitoring Authority?

Under federal voting rights statutes and related civil rights laws, DOJ deploys two types of election monitors:

- **DOJ Staff Monitors:** Civil Rights Division attorneys and staff deployed far and wide under general enforcement authority (VRA §§10101, 10307, 10308; National Voter Registration Act (NVRA) §20510; Americans with Disabilities Act (ADA); Help America Vote Act (HAVA)) ([United States Department of Justice, 2024](#)).
- **Federal Observers** (52 U.S.C. §10305): Federal employees recruited, trained, and supervised by the Office of Personnel Management (OPM), deployed sparingly by DOJ and require **court authorization** under VRA §3(a) (52 U.S.C. §10302(a)) ([United States Department of Justice, 2024](#)).

DOJ may deploy Civil Rights Division staff **monitors** under its own existing enforcement authority, and those deployments do not require a request or invitation from a state, locality, or voter. Absent a court order or explicit local invitation, monitors follow ordinary public-access/non-interference rules, a fact even Texas agreed to in its 2024 settlement agreement with DOJ ([Texas v. Garland, 2024](#)).

By contrast, federal **observers** require a court order. OPM plays a supporting administrative role in recruiting, training, and supervising federal **observers**, but OPM does not deploy personnel on its own authority. No federal agency has statutory authority to deploy election personnel independent of DOJ direction or a specific court order. DOJ is therefore the right—and, as a matter of law, the only—executive branch institution positioned to operate a nationwide election monitoring program.

Prior to 2013, nine states and select jurisdictions in another six states could not make any change in voting procedures until approved by specified federal authorities in Washington, D.C. ([United States Department of Justice, n.d.](#)). Such approval is known as “preclearance.” In *Shelby County v. Holder* (2013), the Supreme Court struck down the coverage formula in VRA §4(b), which



determined which jurisdictions were subject to preclearance under §5 ([Shelby County v. Holder, 2013](#)). However, the Court did not strike down Sections 3 or 8, nor did it invalidate DOJ’s general enforcement powers under other statutes. As a result, although DOJ cannot unilaterally impose preclearance under the old formula, it can develop a robust election oversight model similar to the pre-2013 framework and still:

- Deploy election **monitors** under DOJ’s general authority (VRA §§10101, 10307, 10308; NVRA; ADA; HAVA).
- Enforce voter protections under federal laws like the ADA and HAVA.
- Seek preclearance-like authority with federal **observers** through court orders under Section 3(a).

What Is the Need for Election Monitoring?

Texas provides a recent example underscoring the need for election monitoring: after election administration changes were made in Dallas and Williamson counties for the March 3 primary election, there was widespread voter confusion, with hundreds of voters redirected from polling locations ([Martinez, 2026](#)), prompting a judge to extend voting hours before the Texas Supreme Court stayed the order and required separation of after-hours ballots ([Texas Supreme Court, 2026](#)).

What Is the Scope of Election Monitoring Tools?

Current DOJ leadership is not legally bound by post-*Shelby County* enforcement choices by previous administrations. DOJ’s two election oversight tools remain Civil Rights Division **monitors** and court-authorized **observers**. Sections 3(a) and 8 remain on the books, and DOJ continues to conduct election **monitoring** using its own attorneys and staff apart from the narrower **observer** program it conducts with federal employees who volunteer to serve and are trained by OPM. Where the facts support stronger federal oversight, DOJ can use its enforcement authority under the VRA, ADA, HAVA, and NVRA, along with consent decrees, settlements, and Section 3(a) relief to secure in court federal **observer** access. DOJ’s October 2025 deployment of Civil Rights Division personnel to Passaic County, New Jersey, and multiple California counties demonstrates that staff **monitoring** remains an available and scalable tool ([United States Department of Justice, 2025](#)). For 2026, DOJ should consider using both tools more assertively through the remaining primary calendar and into the November 3 general election, prioritizing jurisdictions with documented observer-access issues, ballot-processing weaknesses, or other election-administration breakdowns.

Both “wide” and “deep” deployment models should be employed by the DOJ—wide deployments to maximize federal presence across jurisdictions, and deep deployments to observe every stage of the electoral process in historically problematic areas. Both of these models—and a combination of the two in select jurisdictions—allow DOJ to calibrate the intensity of its presence to the facts of each jurisdiction. This expanded monitoring program is a proactive investment in transparency and deterrence ahead of elections in 2026 and 2028.

Is There Congressional Support for Federal Election Monitoring and Observation?

Congress reinforced support for federal election monitoring in 2024 when the Confirmation of Congressional Observer Access Act (COCOA) passed the House on a bipartisan basis, passed the Senate by unanimous consent, and was signed into law ([The American Presidency Project, 2024](#)).



COCOA confirms that federal election observation is not a uniquely partisan concept—it is an institutional safeguard tied to Congress’s constitutional role in judging the elections of its own members ([National Association of Counties, 2024](#)). The House’s own guidance likewise makes it clear that its election observers may be regularly employed by either Republican or Democratic offices and may be deployed by either the Committee on House Administration’s Majority or Minority ([U.S. House Committee on House Administration, 2024](#)). Although opinions on robust DOJ election monitoring tend to change depending on who is in office, DOJ should continue to employ a robust DOJ election monitoring program to promote transparency in the voting process and ensure election integrity.

Policy Recommendations

DOJ already has the authority to deploy as many Civil Rights Division attorney and staff **monitors** as it determines are necessary on its own initiative, and to seek court-ordered federal **observers** where the record supports Section 3(a) relief. The recommendations below translate the analysis above into concrete steps DOJ should take in 2026 to expand its election-monitoring footprint and ensure that Civil Rights Division attorneys and staff are broadly available for proactive deployment:

1. **Expand DOJ Staff Election Monitor Deployment Proactively, Not Just in Response to Requests**
 - Assert DOJ’s independent authority to send staff election **monitors** on its own under the VRA, ADA, and HAVA, rather than waiting for invitations, requests, or reports from election officials, political parties, or the general public.
 - Train all Civil Rights Division attorneys and staff to be effective election **monitors** and set the expectation that they can be deployed across the country.
 - Use U.S. Attorneys’ Offices located throughout the country to deploy local staff election **monitors** to ease the travel and financial burden of deploying staff from Washington, D.C.
2. **Use Court-Authorized Observers via §3(a) and Settlements** (where supported by the record)
 - Where facts establish constitutional or VRA violations, DOJ should seek tailored **observer** authority through §3(a) bail-in or court-approved consent decrees; otherwise DOJ should prioritize **monitors** and use ADA/HAVA/NVRA enforcement for access.
 - An active order exists for four political subdivisions, including Union County, New Jersey, effective until December 31, 2026. DOJ should gather information during the 2026 election cycle to determine whether to seek an extension of the orders before each expires.
3. **Resist Overbroad State Challenges**
 - Defend federal oversight using disability access decrees, consent orders, and federal supremacy to preserve DOJ monitoring.
4. **Reclaim DOJ’s Election Oversight Role**
 - DOJ should not treat post-*Shelby County* limitations self-imposed by previous administrations as binding. Update all sub-regulatory training and public guidance to reflect a broader, litigation-ready approach to federal election monitoring.

Conclusion



DOJ has the legal authority, the institutional precedent, and the operational infrastructure to conduct robust election monitoring in 2026. Sections 3(a) and 8 of the VRA remain in force, general enforcement authority under the ADA, HAVA, and NVRA remains intact, and DOJ's own 2024 deployment to 86 jurisdictions across 27 states confirms that DOJ already acts at scale without waiting for external requests. With the 2026 primary season well underway, DOJ should move now to deploy staff **monitors** across the remaining primary calendar, pursue §3(a) relief where the record supports it, defend its authority against state challenges, and update its internal guidance to reflect the full scope of its post-*Shelby County* enforcement powers.

