



November 2, 2012

Attorney General

Dear General

The Organization for Security and Co-operation in Europe (OSCE) has declared its intention to dispatch “election observers” across the United States to monitor the November 2012 general election.¹ In less than 48 hours the American Center for Law and Justice (ACLJ) has heard from 40,000 people from across the country expressing grave concern regarding the OSCE's intent. This letter explains that the United States Constitution recognizes states’ authority and duty to regulate and ensure the integrity of their elections, and the 1990 OSCE Copenhagen Document does not preempt state election laws. OSCE or any other observers are not exempt from state election laws and should be held to the same standard as any non-state-authorized election observers.

By way of introduction, the ACLJ is a non-profit law firm dedicated to ensuring the ongoing viability of freedom and liberty in the United States and around the world. The ACLJ specializes in issues of Constitutional law and federalism.²

The United States Constitution is clear that “[t]he times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof”³ Further, the Constitution also determines how the President and Vice President are to be chosen.⁴ The United States Congress is the only body constitutionally authorized to preempt state election regulations.⁵

¹ Press Release, Organization for Security and Co-operation in Europe, *OSCE/ODIHR opens mission to observe general elections in United States* (Oct. 9, 2012), available at <http://www.osce.org/odihr/95107>.

² ACLJ attorneys have argued in numerous cases involving constitutional issues before the Supreme Court of the United States and other federal and state courts. See, e.g., *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009); *McConnell v. FEC*, 540 U.S. 93 (2003); *Lamb’s Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990); *Bd. of Airport Comm’rs v. Jews for Jesus*, 482 U.S. 569 (1987).

³ U.S. CONST. art. I, § 4.

⁴ U.S. CONST. art. II, § 1, amended by U.S. CONST. amend. XVII.

⁵ U.S. CONST. art. I, § 4.

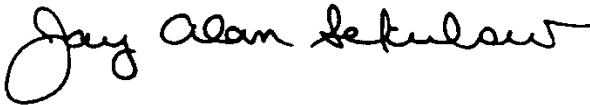


Although the United States has “joined” the 1990 Copenhagen Document, the document is aspirational, not ratified by the United States Senate, and not self-executing, and thus it “does not by itself give rise to domestically enforceable federal law. Whether such a treaty has domestic effect depends upon implementing legislation passed by Congress.”⁶ There is no implementing legislation by Congress.

In addition, the text of the Copenhagen Document itself is clear; it merely invites election observation “to the extent permitted by law.”⁷ No foreign observer has a right to act in violation of state law. Thus, to the extent that any state law prohibits non-election participants from maintaining a presence in a polling location, foreign observers must comply with that law or face prosecution. In fact, this principle of law, that OSCE’s election observation is regulated by state legislation, is recognized by the OSCE’s own operating documents.⁸

We trust this information is helpful and appreciate your ongoing efforts to ensure free, fair, and safe elections through the uniform enforcement of your state’s election laws.

Respectfully,

A handwritten signature in black ink, reading "Jay Alan Sekulow". The signature is fluid and cursive, with the first name "Jay" being particularly prominent.

Jay Alan Sekulow
Chief Counsel

⁶ *Medellin v. Texas*, 552 U.S. 491, 505 n. 2 (2008).

⁷ 1990 Copenhagen Document, § 8, *available at* <http://www.osce.org/odihr/elections/14304>.

⁸ *See* OSCE Office for Democratic Institutions and Human Rights, Interim Report I, § X *available at* <http://www.osce.org/odihr/96574> (“election observation is regulated by state legislation.”).