DECEPTIVE DEMOCRACY

Subverting and Supporting American Elections through Policy

Prepared by Louisa Keeler on behalf of the Democracy Policy Initiative at UC Berkeley
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acknowledgements</td>
<td>2</td>
</tr>
<tr>
<td>About the Democracy Policy Initiative</td>
<td>2</td>
</tr>
<tr>
<td>Executive Summary</td>
<td>3</td>
</tr>
<tr>
<td>Part I: Introduction</td>
<td>4</td>
</tr>
<tr>
<td>What is Election Subversion?</td>
<td>4</td>
</tr>
<tr>
<td>Part II: Background</td>
<td>6</td>
</tr>
<tr>
<td>Election Administration in the United States</td>
<td>6</td>
</tr>
<tr>
<td>The Impact of the 2020 Election</td>
<td>7</td>
</tr>
<tr>
<td>The Electoral Count Reform Act</td>
<td>8</td>
</tr>
<tr>
<td>Part III: Pressure Points</td>
<td>10</td>
</tr>
<tr>
<td>Administrative Exceptions</td>
<td>10</td>
</tr>
<tr>
<td>Loopholes or purposeful aberrations in election procedures and processes</td>
<td>10</td>
</tr>
<tr>
<td>Checks &amp; Balances</td>
<td>17</td>
</tr>
<tr>
<td>Exploiting breakdowns in power-sharing</td>
<td>17</td>
</tr>
<tr>
<td>Partisan Interference</td>
<td>21</td>
</tr>
<tr>
<td>INJECTING partisan influence into BUREAUCRACY</td>
<td>21</td>
</tr>
<tr>
<td>Part IV: Strategic Recommendations</td>
<td>28</td>
</tr>
<tr>
<td>Standardizing Administration</td>
<td>28</td>
</tr>
<tr>
<td>Maintain a Balance of Authority</td>
<td>31</td>
</tr>
<tr>
<td>Depoliticize Election Observation</td>
<td>32</td>
</tr>
<tr>
<td>Part V. Conclusion</td>
<td>35</td>
</tr>
<tr>
<td>Bibliography</td>
<td>36</td>
</tr>
</tbody>
</table>
ACKNOWLEDGEMENTS

First and foremost, I would like to thank the Democracy Policy Initiative for making this report possible. In particular, I’m grateful for the support and leadership of Dr. Charlotte Hill, who shepherded this project from inception to final edits. Thank you also to my APA advisor, Dan Acland, for his instruction and endless patience, and for facilitating such a thoughtful and helpful seminar. I am also grateful to my academic advisor, Janet Napolitano, for her encouragement and guidance during my time at the Goldman School. Several organizations doing critical work in this space also provided invaluable assistance, including RepresentUs, the Brennan Center for Justice, Protect Democracy, and Every Texan, as well as other individuals working in legislation and election policy. The feedback from my peers—and the insights they shared about their own work—was always enlightening and enriched this entire experience. I received invaluable help and input from my friends and family, who listened patiently every time I needed to “bounce around some ideas.” I also have to thank my elderly cat, Johnny, for being such a good research and writing buddy and for more or less behaving himself during interviews.

It is an incredible privilege to live in a democratic country and be able to freely critique its leaders and institutions. I am eternally grateful for those in the United States and around the world working every day to build more just, democratic societies for all.

ABOUT THE DEMOCRACY POLICY INITIATIVE

The Democracy Policy Initiative at the UC Berkeley Goldman School of Public Policy is an interdisciplinary and action-oriented effort grounded in a commitment to democratic justice. Through the Democracy Policy Initiative, the Goldman School serves as a leader and conduit to connect and channel UC Berkeley’s vast academic expertise to support those beyond the campus walls—the true “public”—working to create a just society. The need for actionable and evidence-based policy solutions that strengthen democracy has never been greater—to ensure fair and trustworthy elections, to support free political expression and robust civic engagement, to promote racial justice, and to create equitable representation. Academic expertise is an important complement to the critical power building, grassroots organizing, thought leadership, inclusion, investment, and barrier busting that many on-the-ground organizations are already engaged in, and has the potential to magnify and deepen their impact.
EXECUTIVE SUMMARY

As elections become increasingly existential for each party and election conspiracies abound, the risk of election subversion is increasing. Election subversion is the utilization or manipulation of election policies to reach a specific election outcome in disregard of the legitimate election outcome as voted on freely and fairly by the people. The election “outcome” refers to the declared winner of the election, intended to be based on vote totals. Subversion attempts to change this election outcome.

This report serves as a starting point to begin the process of rebuilding and strengthening election integrity in the wake of unprecedented attempts to undermine the democratic process. Policymakers have made important improvements to election policy since the January 6 insurrection. However, at the state and local levels, there have been a number of worrying efforts to establish policies ahead of the next election making it easier to subvert outcomes, whether through new legislation or new interpretations of existing statutes that violate norms.

Because states are responsible for administering elections and counties handle most aspects of election implementation, it is at these levels that policy most effectively upholds or subverts election results. One of the advantages of the United States’ decentralized election system is that states are able to tailor election policy to their needs, for example based on population or population density. But this comes with a significant disadvantage: states are also able to tailor election policy to their wants.

This report identifies the three most significant areas of vulnerability in election policy: creating exceptions to rules, exploiting checks and balances, and injecting partisanship into bureaucracy. Each pressure point represents a policy strategy that undermines election integrity by overtly or tacitly giving election officials, policymakers, and politicians legal pathways to changing election outcomes. These findings are based on attempts to manipulate election outcomes in the 2020 and 2022 general elections, as well as ongoing legislative and judicial efforts to break down existing norms and regulations.

To address these vulnerabilities, this report suggests three strategic policy approaches, six specific policy recommendations, and a range of states at which these solutions should be targeted. The first strategic approach is standardizing election administration procedures at the state level, to prevent targeted manipulation based on voter demographics or other political factors. Second, there must be a balanced and clear distribution of authority in elections, with ultimate power to determine outcome residing with the people, so that one bad actor is not able to undermine the democratic process. Third, election observation—an essential part of transparent election systems—must be depoliticized to minimize the threat of partisan challenges and conspiracies harming the bureaucratic election process.

Because every state conducts their elections differently, the most effective solutions will need to be tailored to their specific needs, vulnerabilities, and political realities. There is only one-size-fits-all policy solution: to enshrine, in law, that a state’s electors will be according to the electorate. It is fitting that the only universal solution—if insufficient on its own—is to return to that most basic tenet of democracy, government by the people. But the myriad election systems in the United States also allow us to begin improvements where and when they are possible. Despite its roots in a movement decidedly not committed to election integrity, the unofficial slogan of election workers and experts across the country expresses it best: we need to make elections boring again.
PART I: INTRODUCTION

The United States has a highly decentralized election system.¹ States are responsible for administering and regulating elections, and localities—counties, most commonly—handle most aspects of election implementation. This also means that state and local elections are ground zero for manipulation and subversion. There are more opportunities to interfere than there are by the time the process reaches Congress, and a lower likelihood of public scrutiny than when all eyes are on one place. One of the advantages of the decentralized system is that states are able to tailor election policy to their needs, say based on population or population density. But a significant disadvantage is the other side of the coin: states are also able to tailor election policy to their wants. As elections and political competition become increasingly existential for each party, and election conspiracies abound, the risk of state and local elections being targeted for subversion increases substantially.

Whether or not policymakers are tailoring election policies specifically to enable subversion is sometimes hard to say, but is ultimately largely immaterial for this analysis: if the opportunity is there, the risk is there too. Politicians and strategists have been open about their interest in being able to overturn election outcomes, at least claiming that it is because they are skeptical that the results reflect reality due to rampant voter fraud and/or election mismanagement.²

Because the U.S. election system is so decentralized, it is more accurate to think of the presidential election as a combination of 51 different state elections than one cohesive process. This also underscores how important state election policy and administration are in shaping elections that affect the entire country: state elections determine the elector slate, which determines the president; not to mention, the outcomes of U.S. Senate and House of Representatives elections have significant bearing on the country as a whole, not only their own states (including, for example, their role in certifying the presidential election). Beyond the state level, there are very few ways to strategically subvert the election without being blatantly anti-democratic and breaking the law.

WHAT IS ELECTION SUBVERSION?

Election subversion is the utilization or manipulation of election policies to reach a specific election outcome in disregard of, or in direct conflict to, the legitimate election outcome as voted on freely and fairly by the people. The election “outcome” refers to the declared winner of the election and should be the person with the most votes (either individual or Electoral College). Subversion attempts to change the election outcome by manipulating the would-be result of votes already cast.

This report approaches election subversion with a narrow lens, to focus on a segment of the election process that faces a specific type of threat. Election policy encompasses a wide range of topics, from campaign finance to voter eligibility to transfers of power. These are all related and certainly have bearing on one another but are distinct in their input

factors and effects on the broader process. For example, attempting to manipulate who can and cannot vote is an attempt to influence the vote totals. Attempting to manipulate the relationship between vote totals and the election results is an attempt to determine the outcome. This analysis focuses solely on this latter process. In other words, while policies enabling subversion can be enacted prior to an election taking place, the act of subversion can only occur once ballots have been cast.

A central component of subverting elections in a democratic society is sowing doubt that the election was conducted fairly. Bad actors need to get a critical mass of people to agree that they are unconvinced of an election’s outcome (or predicted outcome) because they assume a specific, different outcome to be the only possible legitimate one. Thus, the threat from several of the areas of vulnerability identified in this report is that they amplify supposed problems—some real, some not—to enable or create doubt in the election process. It is then much easier for officials who are subverting the election to be seen as actually correcting the election. Even in political environments with as little mutual trust as we have now, political legitimacy is essential.

The structure of this report is as follows. First, it provides an overview of relevant information regarding election administration in the United States. Then, it addresses the current threat landscape and how it has been shaped since the 2020 election. Part III lays out the three most significant areas of vulnerability for election integrity, along with examples of how they have been introduced. Part IV provides strategic recommendations designed to address the shortcomings identified in Part III.

This report makes a few assumptions to simplify the analytical parameters. The most important is the line between election subversion pursued through legal means via policy, versus subversion that is illegal and violates the law. For the purposes of this analysis, “election subversion” refers to the former. Policies enabling subversion or specifically failing to prevent it give the strategy a tacit air of legitimacy, however illegitimate the actual outcome may be. Election fraud is illegal, and no number of carefully crafted policies will be able to outright prevent any attempts at fraud; policy can only limit the opportunities to succeed.

The second two assumptions are technical. First, while counties are not the only locality responsible for administering elections, this report uses the term “county” to refer to the administrative level just below the state. Some metropolitan areas have separate election authorities for the city and the county; some states use townships instead of or in addition to counties; etc. Second, this report only considers the election policies of the 50 states plus Washington, DC. No territories or other holdings are incorporated, although they may be impacted by similar issues.

---

3 For example, gerrymandering attempts to manipulate an election in pursuit of a specific outcome, but it manipulates who people can vote for. Similarly, voter ID laws address who is allowed to vote. These laws can be used in subversion attempts to throw out votes that have been cast, but restrictions on who may cast a ballot to begin with are not encompassed by this definition of subversion.
ELECTION ADMINISTRATION IN THE UNITED STATES

In the United States, states are responsible for managing both state and federal elections. While election policy and practice vary widely, there are some commonalities. Every state has a chief election authority responsible for overseeing elections, and 17 (plus Washington, DC) also have an elections board or commission. In some of the latter cases, the chief election official sits on the board, and in others they share oversight responsibilities with the board. The mechanism by which election officials are installed varies, from statewide elections to gubernatorial appointment.

County election administration operates in a similar fashion: each county has a chief election official or an elections board, or both (in some places where responsibilities are shared or divided across entities, it is only two officials in total). About a third of states have variable administrative structures for elections across counties; the rest of the states are generally uniform.4

Local election administrators—and the workers and volunteers they supervise—have more direct engagement with more of the election process than any other level of government. For this reason, they play a critical role in ensuring election integrity. As the National Conference of State Legislatures points out, “The job of an election administrator has evolved from a largely clerical position to become a multifaceted managerial position with lots of moving parts.”5 And it has only become more complicated in the last few years, with the pandemic and the rise in popularity of election conspiracies.

The following chart shows broadly how elections are managed and who the relevant players are at each stage, beginning with voting at the polls. Each level of government engages in roughly the same processes, at different scales.

---

4 NCSL, “Administration.”
5 Ibid.
Subversive attempts can occur at any point in this process once votes are cast. The 2020 general election has examples of subversion attempts at each stage. The January 6 insurrection attempted to disrupt the penultimate stage when Congress counts the electoral votes. When Trump attempted to coerce Georgia Secretary of State Brad Raffensberger into “finding” 12,000 votes in his favor, he was targeting the state certification process. As a local example, two Wayne County, MI Republicans on the county elections board initially refused to certify the county canvass.

While refusing to certify election results at the local level, as in Wayne County, or at the state level would certainly throw the process into disarray, the canvass provides another opportunity for bad actors to threaten election integrity. Local election or canvassing boards are trusted to appropriately and fairly oversee the resolution of disputes and reconcile any issues in their county, which typically includes a number of precincts. There are often minor errors or inconsistencies, and the chain of custody and multi-step canvass help address these. Violating the chain of custody—“the processes, or paper trail, that documents the transfer of materials from one person (or place) to the next”—would make challenges and allegations of fraud much harder to address and disprove.

THE IMPACT OF THE 2020 ELECTION

Election subversion became a dining room table issue for American voters, candidates, and everyone between during the 2020 general election. In the lead up to the 2020 election, however, then-President Donald Trump began talking about the possibility of refusing to accept election results if he lost, on the supposed basis that the results would not be reflective of the will of the voters and would instead be the result of political machinations to put Joe Biden into office. After the election and before the January 6 attack on the U.S. Capitol, Trump, his allies, and his supporters were pressuring election officials across the country to take action in Trump’s favor, deploying legal (if somewhat frivolous) and extralegal (often just illegal) tactics in pursuit of their goal.

While some wonks and savvy political operators had explored policy loopholes and gamed out theoretical scenarios in which election results were somehow undermined, much of the popular concern around election legitimacy centered around voting and technological fallibility. The idea that mainstream political actors would entertain—much less act on—the idea of actually changing election results after they were established rarely seemed like a serious threat. The most recent and well-publicized assaults on democratic elections involved technological manipulation, campaign financing, disinformation, and restrictions on voting access. These were designed to influence what the vote totals would be, either by swaying the number of votes cast for one candidate or another or by changing vote totals before they were tabulated.

But when mainstream factions of the GOP—not just those on the far right—hesitated to acknowledge the legitimacy of the 2020 election, it normalized the possibility that both voting fraud and election administration were leading to an

---


election outcome that was simply incorrect. Based on this perception, the strategy went as follows: If the outcome is wrong, then it needs correcting. To ensure that the outcome can be corrected, there need to be mechanisms in place to do so, without being immediately rejected by the courts as illegal or unfounded.

Going into the 2022 midterm election, there was widespread concern that races would be marred by legal challenges and rejections of election outcomes. But the election went relatively smoothly. Voters in battleground states rejected all candidates who spread election conspiracies for influential election administration positions like governor and secretary of state. Many experts are hopeful that politicians will be less emboldened to deny election outcomes in the future, seeing that there seems to be little public support. Without officials in top election positions who supported subversion in 2020, it is unlikely that there would be another attempt to undermine the process through the Electoral College. Congress further acted against that likelihood by passing the Electoral Count Reform Act at the very end of 2022.

**THE ELECTORAL COUNT REFORM ACT**

In an attempt to close some of the loopholes revealed by the 2020 election, Congress passed the Electoral Count Reform and Presidential Transitions Act (better known as the ECRA) in December 2022, strengthening the outdated Electoral Count Act and clarifying some of the issues with the law that had come into dispute. Much of the law deals with how Congress handles electoral counting; one expert described it as a way for Congress to ensure that it doesn’t have to be the body making the call about elector slates.

The ECRA has five key provisions for election administration at the state level. The first—which leaves relevant state-level language unchanged—is that members of Congress may only object to a slate of electors if the state’s certificate of ascertainment has not been “lawfully certified” or an elector’s vote is “not regularly given” (and an objection requires one-fifth of each chamber, rather than the previous singular member from each chamber). The definition of “not regularly given” is also a topic of some debate, but generally is understood to refer to rare and highly unusual technical circumstances.

The second is that states are bound by the election laws they set before Election Day. So, executives and election officials can’t retroactively change the rules of the game, to result in a different outcome or not. Third, states also need to make a determination prior to Election Day about which executive or official will be the one to appoint electors. Congress must recognize the slate appointed by the pre-designated executive—often the governor, but in some cases the Secretary of State or attorney general—so that there is no ambiguity if multiple officials submit competing elector slates. States also must have a “security feature...verifying the authenticity” of the certificate of ascertainment, to be

determined by the state before Election Day, also to limit opportunities for rogue actors to submit alternative elector slates.

Fourth, states may no longer change the voting period or have the legislature choose electors on the basis of a declared “failed election,” which left much about what counted as “failure” open to interpretation. Now, states may only change the election period in the case of “force majeure events that are extraordinary and catastrophic, as provided under laws of the state.” In the case of such an event, the ECRA makes clear that state legislatures still would not have the authority to appoint electors.

Finally, the certificate of ascertainment needs to be issued by the chosen state executive six days before the Electoral College meets. The Electoral College meets on the first Tuesday after the second Wednesday in December, which is roughly six weeks after Election Day. So, states will need to complete their canvass, audits, and recounts by the second Wednesday in December—one much shorter than the time that some states typically take (California is especially notorious for stretching the count).

Based on the above, states need to make sure that everything is in order well before November 5, 2024. Most of this should be relatively painless: make sure it is clear what the procedures are and who the certifying executive is before Election Day and choose a security feature for the certificate of ascertainment (they already include the state seal, which could suffice). States would be wise to determine ahead of time the parameters of what an “extraordinary and catastrophic” event would entail, and how—and under whose authority—procedural changes would be conducted (most states have some sort of emergency protocol already in place).

Ensuring that the canvass and certification are completed on time is more complicated, both because of the time it can take to conduct the initial tabulation and getting through audits and challenges. Much of this is dependent on how late ballots can be received, when processing can begin, and the nature of any reviews. Recommendations to accelerate those processes are in Part IV of this report.

The 2020 general election laid bare many of the loopholes, ambiguities, and shortcomings of election administration in the United States. It also highlighted a major fallibility of democratic processes: they are only as democratic, fair, and reliable as the people running them, from poll workers up to the vice president. There were no subversion attempts as brazen in the 2022 midterm election, but deep, widespread mistrust of the election system clearly remains. As election deniers and skeptics zero in on the significance of local and state election policies and procedures, policymakers and officials of the same inclination are similarly targeting these policies to prepare the way for a 2024 election outcome in their favor.

---


16 Ibid.
PART III: PRESSURE POINTS

This section identifies the three most significant areas of vulnerability into which policies enabling election subversion fall. Each pressure point represents a framework that can be used to undermine election integrity by overtly or tacitly giving election officials and policymakers legal pathways to changing election outcomes. Some of the specific policies used to illustrate these trends are currently moving through the legislative or judicial process, and not all have been applied specifically to subvert election outcomes. Other examples show how a failure to establish clear policy can be manipulated to threaten election integrity. An analysis of their context provides clear evidence of how these issues pose a serious risk.

The first area of vulnerability is administrative exceptions. This refers to loopholes or purposeful aberrations in election management procedures and processes. Election administration, like any effective bureaucratic system, relies on rules, regulations, and best practices to function properly. It should be completely politically neutral and easily enable election outcomes that are accurately reflective of the votes cast by the electorate. Policies that manipulate election administration away from these principles make it easier for bad actors to change election outcomes under the guise of bureaucratic election administration.

The second area of vulnerability is the system of checks and balances. This section looks at the exploitation of breakdowns in the power-sharing systems overseeing election implementation. The rules of the election game are determined ahead of time and go through a specific set of steps for repeated, balanced review and verification. The regulations that officials follow at each step are supposed to be transparent and impartial, serving only to ensure that the election process has been conducted properly and that outcomes are an accurate reflection of the vote. When these checks and balances are thrown off course or mishandled, the election outcome loses some integrity.

The final vulnerability for election integrity is that of partisan interference. The United States, more than any other democracy, permits remarkable levels of partisanship in election administration. They are not, however, supposed to administer elections in a way that reflects partisan interests. Partisan interference occurs when officials take advantage of opportunities to inject partisan influence into otherwise fair election processes, advancing their own party at the expense of another. Elected, partisan officials and bodies have substantial oversight of the very elections that will determine their own standing. For the purposes of this analysis, this does not address partisan influence on voting access, but rather partisan influence on ballot management, canvassing, and certification.

ADMINISTRATIVE EXCEPTIONS

LOOPHOLES OR PURPOSEFUL ABERRATIONS IN ELECTION PROCEDURES AND PROCESSES

One way to disrupt the bureaucratic, apolitical nature of election administration is by creating exceptions to the rules. When deployed responsibly, exceptions can improve functioning. If deployed maliciously, exceptions skirt the rules in place to enforce fairness, providing an easy path by which to attempt subversion. One expert on the subject put it bluntly: “The name of the game in election manipulation is setting up a system of exceptions to the rules.”

Overhauling the election system is complex and difficult, bureaucratically and politically. But making temporary, targeted adjustments is much easier, especially with a legislative majority. And at the county level, where election
officials in some states have considerable freedom to run elections in the manner they see fit, administrators may use local issues or concerns to justify procedural exceptions.

It's important for there to be flexibility in election administration, because—for all the same reasons the process is so complicated—it is prone to error. Elections are administered by humans, and humans make mistakes. But by the same token, bad actors can take advantage of this flexibility to exert undemocratic control over elections, including how ballots are managed, counted, and certified.

**POLICY STRATEGY: UNDUE INTERFERENCE**

Counties are responsible for administering elections. The state has oversight, but counties are integral to the actual implementation process and are the first point of engagement with voters. County election officials are typically not acting with the same partisan tilt that many elected officials have, and many serve on boards with a partisan balance. Multiple experts and advocates interviewed for this report identified local election administrators as a crucial part of the equation for promoting election integrity, but also noted that they often have limited resources, especially when one considers their volume of responsibility.

While the exact relationship between county and state officials varies from state to state (and county to county), there is a clear division of responsibility regarding elections: county election officials administer elections and report to state election officials. The legislature typically has control over funding and, of course, has the power to make laws about elections. That means that county election administrators are responsible for making sure that polls open on time, are fully staffed, have working machines and enough supplies, and that things are generally running smoothly. It also means that most accusations of fraud are directed at county election workers, for unfounded violations like allowing noncitizens to vote or adding or removing ballots during counting.

If county election officials don’t do their jobs properly, there are serious consequences for the election because of the impact on voting and chain of custody. In instances of misconduct or negligence, it is important that state authorities be able to step in and remedy the situation. But it can also be abused: particularly in large counties where vote outcomes are especially significant, state authorities can attempt to meddle and mis-manage in the county election process.

**CASE STUDY: TEXAS**

With a Republican trifecta and a reputation for “leading the charge in proposing and passing legislation that would increase the risk of election subversion,” it’s no surprise that the Texas legislature has returned to its biennial session with a wide-ranging package of election related bills. Many of the bills—all of which are currently moving through the legislature—address instances in which the state could take over county-level election administration and how.

---


The election administration bills are widely understood to be aimed squarely at Harris County. If Texas is a bellwether for a United States, as many have argued, its relationship with Harris County perfectly encapsulates the tension between entrenched conservative institutions and rapidly growing, left-leaning urban centers. Harris—where Houston is the county seat—has about 5 million residents, making up nearly 20% of the state’s total population. Clashes between the state and the county are a mix of politics and legitimate grievances: as the Texas Tribune summed up, “The county has made missteps in several recent elections, but the clash is also the latest entry in a long series of political battles over how [Harris County] runs its elections that ramped up in recent years after Republicans lost control of the county.”

The 2022 midterms in Harris County were troubled affairs. Administrator Clifford Tatum, who was appointed by the Elections Commission after his predecessor resigned following the primary elections, issued a report about the November 2022 general election. Among the problems detailed in the report are ballot shortages, malfunctioning and/or out-of-date election equipment, long lines and delays, and delayed openings at polling stations.

The Harris County GOP has sued Tatum and Harris County, alleging that Tatum “allowed the election to be run in such a manner that it illegally disenfranchised tens of thousands of registered voters from casting their votes for the candidates of their choice.” The suit also alleges “multiple instances of ill-advised and illegal alterations of election procedures which must be stopped immediately.”

The GOP claims that the election was so poorly handled, that it is impossible to determine who the actual winners are. Twenty-two Republican candidates have challenged the election results, including the county judge race, which was won by incumbent Democrat Lina Hidalgo with less than 2% of the vote. Except for one suit that was dropped, all of the trials have yet to be scheduled, and there is a litany of ongoing sub-challenges and legal issues making it unlikely that anything substantive will happen before late summer or even fall of 2023. In the meantime, challengers and skeptics see the results as unverified.

Although experts are skeptical that administrative problems swung the election, top state officials—including Governor Greg Abbott—have cast doubt on the veracity of the results, and Lieutenant Governor Dan Patrick called for a do-over.

---


23 In addition to logistical problems like excessively long lines, staffing shortages, and equipment issues, the county failed to include 10,000 ballots in its Election Night count.


25 Ibid.


of the entire Harris County election (which would require a court order). Abbott tweeted earlier this year that the ballot shortage issue “may have altered the outcome of elections” and that “it may necessitate new elections.” He added, “It WILL necessitate LAWS that prevent Harris Co. from ever doing this again.”

Of the bills currently moving through the Texas state legislature, three address, in broad terms, instances in which the state could take over election administration of a county. If passed, these laws would allow the state to intervene in Harris County’s election administration based on the issues identified in the 2022 election postmortem.

Senate Bill 823 would grant the secretary of state broad power to suspend and replace county election administrators, at any time, if “an administrative complaint is filed with the Secretary of State” or if “the Secretary of State has good cause to believe that a recurring pattern of problems with election administration exists in the county served by the administration.” The appointed replacement would serve until the first uniform election after the state determines the problems have been fixed, which could theoretically be an indefinite period.

The bill lists five issues that could be “problems” (voting technology malfunction; “unfair” election supply distribution; tabulation errors; election return reporting delays; and finding additional ballots after polls close) but makes clear that that list is not exhaustive. A “recurring pattern” is not defined. And in addition to granting significant control over elections to political positions, the bill could have a chilling effect on communication between local election officials and the secretary of state’s office for fear that reporting issues to the secretary of state would lead to suspension.

SB 1933 targets election administration more generally, allowing the state to take “administrative oversight of a county office administering elections or voter registration” based on the same criteria as in SB 823, plus the additional error of “failure to conduct maintenance activities on the lists of registered voters.” State oversight in this instance would last at least until December 31 of the year following the election. This bill also allows the state to appoint a “conservator” to oversee elections, whether the state has taken administrative oversight of the county or not.

SB 1993 also orders the Secretary of State to call a new election for any county with a population higher than 2.7 million if there is “good cause to believe” that more than 2% of polling locations run out of usable ballots or go more than one hour without supplemental ballots after making the request for extra. Currently, and likely in 2024 as well, Harris County is the only county with a population above 2.7 million; Dallas County is just under.

Bettencourt and supporters of the bills insist that the measures are only about improving “performance,” not attempts at political machinations. Experts disagree, cautioning that the bills represent “a bad-faith attempt at reforming
elections with the guise of election integrity but with the outcome of election intimidation.” Furthermore, more populous counties are likely to have more administrative errors than smaller counties due simply to having more voters, polling locations, and workers. Without clarification on what a “recurring pattern of problems” means, these larger counties are more likely to be targeted, and the legislation could be “politically weaponized to remove officials based on the results of the elections rather than any wrongdoing.”

IMPACT

- State would have control over the local canvass and certification process, giving it power to review alleged instances of fraud and possibly determine which ballots are counted (for example, rejecting ballots on the basis of mismatched signatures)
- Chilling effect on relationship between local election workers and state election authority, for fear that asking for guidance or assistance would lead to state takeover

POLICY STRATEGY: COMPLICATING COUNTING

After the 2020 election, Fox News and other high profile election deniers spread the unfounded claim that Dominion Voting Systems defrauded the election by changing votes. The belief that voting machines are unreliable, due either to poor technology or manipulation, spread like wildfire. Georgia Secretary of State Brad Raffensberger ordered a full hand count audit, beyond the state’s standard audit requirements, in response to public scrutiny and mistrust of the .3% margin between presidential candidates.

In the 2020 general election, fourteen states used some degree of hand counting in addition to electronic scanning or recording for the initial tabulation. Hand-counting ballots is a valuable strategy for auditing election results, when election workers can test sample amounts against electronic tabulation to verify results and ensure there isn’t anything off with the machines. But exclusively hand-counting all ballots is less accurate than machine tabulation, requires considerable resources, and opens the door wider for intentional interference.

In an academic study, hand counts of 120 ballots were found to be accurate only 58% of the time. A separate study found that the margin of error when ballots were hand counted was 2%, larger than the margin by which many

elections are won and lost.\textsuperscript{42} In other words, hand counting ballots could result in an incorrect election outcome by virtue of irresponsible policy, not malicious interference.\textsuperscript{43}

In Shasta County, CA, county supervisors decided in March 2023 to switch to hand counting ballots. The plan has not yet been approved by the secretary of state, but the county says it will cost more than $3.8 million for purchasing new equipment, finding a space to carry out the process, and salaries to pay additional staff.\textsuperscript{44} The county could have re-signed their contact with Dominion, which would have cost about one-third of the new figure and still allowed for audits. It is also a time-consuming process, and often has to be repeated to get consistent results because of its unreliable accuracy.\textsuperscript{45}

Despite oversight procedures for hand counts, there is still reason to doubt their integrity. Experts caution that as politically motivated election denialism and conspiracy—and resulting mistrust in the system—become more common, those engaged in the counting process may not all be reliably impartial. For example, there would be more opportunities for election workers to use their own discretion while tabulating, motivated by political interest. Furthermore, it only takes a few bad actors to cast doubt and spread mistrust. Even if the hand count is done properly, election observers will have more opportunity to challenge and question the proceedings, particularly because hand counts are so inaccurate to begin with. Claims of fraud—already prevalent with machine counting—would likely increase, causing greater uncertainty and controversy over the election outcome.\textsuperscript{46}

Nonetheless, full hand counts are becoming increasingly popular among those who do not trust the standard election process. It is unlikely that many additional precincts will opt to exclusively hand count ballots in the 2024 election; some very small counties already do it as a matter of practice. But it is possible that more counties led by election skeptics will add required hand counts to their tabulation process, especially in contentious or conspiratorially challenged counties.\textsuperscript{47}

\textsuperscript{45} Stern, “Nevada.”
\textsuperscript{46} Phillips, “Hand-Counting.”
\textsuperscript{47} “AZ S 1471,” last modified April 12, 2023, https://tracker.votingrightslab.org/pending/search/AZ2023S1471.
CASE STUDY: NEVADA

Nye County, NV made waves in the 2022 midterms by ordering a hand count of all ballots in response to residents’ concerns about voting machine conspiracies. Mark Kampf, the county clerk and top election official for Nye County, is an outright election denier-turned-skeptic and is considering a similar approach in the 2024 presidential election. There are two important caveats to this event: first, to comply with state law, the county was still required to conduct machine tabulation; and second, because the hand count was not completed by the November 17 state certification deadline, the certified result was from the machine counted one. While Kampf conceded that the hand count was done alongside a machine tabulation and that the initial rounds of hand counting had a 25% error rate, he also claimed it was ultimately the more accurate method.

While it produced reliable results, the hand count nonetheless highlighted the inherent potential threat to election integrity. Kampf recruited volunteers from across Nevada to participate in the count. They were clustered in multiple rooms to prevent counters from being exposed to the comprehensive results, and multiple people reviewed the same sets of ballots to ensure accuracy. This system certainly helps to prevent a coordinated subversion effort based on the election outcome, but it does not ensure it can’t happen. There is some security from the presence of poll watchers, but that, too, is not absolute: an ACLU-affiliated election observer was reportedly chased out of the room they were observing by an armed volunteer who turned out to be a local GOP official. The ACLU requested that the state investigate the possibility of Kampf delegating enforcement responsibilities to partisan officials.

It also took much longer to complete than a standard, partial hand count audit, which experts consulted for this report highlighted as a major risk factor for subversion because of the opportunity to introduce challenges, lawsuits, and further mistrust. In fairness, part of the delay in Nye County was due to a lawsuit filed by voting rights groups to prevent the hand count on the basis that it would violate the integrity of election results by revealing early and incomplete information about returns. The lawsuit argued that it would not be possible to include public observers and also sequester returns from the public. The hand count was temporarily halted before Kampf submitted a revised plan; the state Supreme Court ruled that it was the county’s and Secretary of State’s responsibility to ensure the process followed the law. Nonetheless, even after the process restarted, only the electronic tabulation was completed by the certification deadline; had there not been an electronic tabulation, Nye County would not have been able to submit certified results for the state canvass.

---

49 Hebrock, “Clerk.”
52 Ibid
Nye County has 33,000 registered voters, and as a point of comparison, other counties that exclusively use hand counting have a maximum of about 7,000 registered voters total. The county processed about 2,000 ballots per day once they got started, although the beginning was challenging and Kampf eventually whittled the counters down to a small team rather than a group of volunteers, which he said was more accurate and efficient. Kampf also noted, in a frankly devastating comment, that the advanced age of many of the volunteers made the process slower and more error-prone. This highlights the variability that a hand count introduces to tabulation: its accuracy depends entirely on the people involved.

Baseless but popular mistrust in voting machines and insider threats posed by partisan election workers (see “Partisan Interference”) increase the risk that best practices will be set aside in favor of unreliable, imprecise hand counts. Nevada has a new secretary of state who will oversee the 2024 elections (a Democrat, whose opponent was a right wing election denier) and Nye County has not finalized its strategy for 2024. Nonetheless, its 2022 strategy and the state court’s ruling set a precedent—and a road map—that could enable more comprehensive hand counting in the next election, whether alongside machine counting or on its own.

IMPACT
- Accuracy of tabulation decreases, increasing the chances of an incorrect outcome
- Replacement of automated, bureaucratic process by an imprecise process subject to human discretion, integrity, and consistency
- Time required could exceed that granted until certification

CHECKS & BALANCES

EXPLOITING BREAKDOWNS IN POWER-SHARING

Consolidating control over election administration in specific offices—like the governor or the legislature—reduces or removes the ability of other branches of government to restrain bad actors seeking to undermine or falsify election results. While the nature of a republican system of government requires a hierarchy of authority, it also requires power to be managed by the people and their representatives, providing checks on each authority to disperse power in a democratic fashion. U.S. elections permit partisan entities to have significant roles in election administration, making the principle of checks and balances and adherence to democratic values all the more important.

The Elections Clause of the U.S. Constitution says, “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.” In 2015, the Supreme Court clarified that this gives state legislative procedures—any body or process that can pass legislation—the power to regulate election code, although it can be superseded by the U.S. Congress. In 2001, the Supreme Court established that

---

55 Ibid
56 Forrest, “Tempers.”
Congress and state legislative bodies may not pass legislation designed to “dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints.”

Despite the 2015 ruling formalizing an expansive view of the Elections Clause, state legislatures are still largely responsible for establishing election administration policy. Each state has different election procedures, but the process of ensuring accurate outcomes always involves multiple offices and personnel, from local canvassing up to state certification. The top election authority in each state also differs: in title, selection mechanism, mandate, and responsibilities. Selection of the top election official is done by one of four mechanisms: direct election by voters; appointment by the governor; appointment by the legislature; and appointment by the state elections board. In some states, the top election official sits on the state’s elections board, which has oversight responsibilities; in some, oversight and responsibilities are shared between the top official and a separate board or commission; and in the rest, oversight sits entirely with the elections chief. (This should not be confused with the executive who certifies the state’s election results, which may or may not be the same.) At the local level, administration is similarly managed either by an elected or appointed individual, a board or commission, or both.

**POLICY STRATEGY: TRANSFERRING AUTHORITY**

When the clear division of responsibilities erodes between positions that administer elections jointly or between administrative entities and other authorities who certify elections (governor, legislature, board), the election process loses some of the strength of its foundation. Because some positions are appointed and others elected, officials’ loyalties may lie in different places, and there aren’t always clear guidelines regarding what to do when the process breaks down. For example, local elections in 16 states are managed by two or more entities. Often, one will be responsible for certain aspects of election administration, such as voter registration, while the other is responsible for, say, running Election Day. But what happens when one of these positions is empty, or one refuses to acknowledge the purview of the other? While this should, in theory, be nothing more than a standard bureaucratic issue of replacing empty roles or negotiating according to regulation or procedure, in the context of a decidedly unbureaucratic election environment, it becomes a threat to election integrity.

**CASE STUDY: ARIZONA**

In Arizona, county elections directors manage many aspects of Election Day activities, including vote tabulation. Generally speaking, however, election administration is split between the director and the County Recorder, making Arizona one of about 1/3 of all states that split election responsibilities across more than one local administrative office. The Director of Elections is a nonpartisan position, appointed either by the county’s Board of Supervisors or the County Recorder, both of which are elected.

In Arizona’s Cochise County, the Board of Supervisors recently transferred the director’s responsibilities to the recorder following a standoff between the director and the board, who wanted a full hand recount of the 2022 midterm

---

59 NCSL, “Administration.”
60 Ibid.
61 Ibid.
The director, Lisa Marra, had resigned in protest over what she said was “physically and emotionally threatening” behavior by the Republican county supervisors towards her when pushing for the hand recount.  

The Republican-led Board of Supervisors has said that this is a practical decision to prepare for the 2024 elections and that they have little choice, since Marra has resigned. But the recorder is a partisan position (in this case, a Republican), and the transfer of responsibilities is only mandated through the 2024 election, when the position will again be on the ballot. Moreover, David Stevens—the current recorder for Cochise County—has been outspoken with his criticisms of how other Arizona counties managed their elections, engaging in election denialism and supporting hand recounts. While Marra was still in office, she had authority to call for a hand recount, which she did not due to the inherent risks and baseless reasoning for it. Having the Director of Elections be a nonpartisan, appointed position gives them some protection from partisan and political influence, encouraging them to make technocratic administrative decisions. Stevens, however—in addition to his state beliefs—is beholden to his political party and his voters, as an elected official.

This strategy of transferring oversight responsibility was also attempted by the Arizona legislature in 2021. The Arizona Secretary of State—which was then Katie Hobbs, who now serves as governor—is responsible for defending the state’s election laws in court. The Republican-led legislature voted to transfer that responsibility to the attorney general, which was then held by Republican Mike Brnovich, through the end of Hobbs’ term. Hobbs and Brnovich were frequently in conflict with each other over election administration issues, including rules around how counties could run elections. The Arizona Supreme Court ultimately blocked the legislature’s move. Going into 2024, the governor, attorney general, and secretary of state are all Democrats, so this scenario is unlikely to be repeated, at least in Arizona. But it provides a blueprint for other states with divided government who may wish to restrict opponents in positions of authority over election administration. Moving that responsibility to a different role disrupts the established system and reduces the protections in place to protect elections, like having nonpartisan, not partisan, administrators.

**IMPACT**

- Decisions made over the course of administering elections are subject to less oversight and are more easily implemented, enabling bad actors to take advantage of their unchecked power to influence election outcomes

---

THE INDEPENDENT STATE LEGISLATURE DOCTRINE

The independent state legislature theory is an interpretation of the Elections Clause arguing that the term “legislature” actually refers to the state’s legislative body, not the legislative process. The latter includes directives of the governor and the courts, as well as the state legislature; the former would only count the powers of the legislature. If this theory—which has not been supported by the courts in the past—is accepted, it would grant state legislatures total control over their state’s federal elections process, from drawing district maps to approving slates of electors, without oversight.

At issue for election subversion, though, is the degree of control that a ruling in favor of the legislature could grant it wide-ranging power over election administration and, importantly, prevent others—including the state courts, governor, or even residents—from engaging in the process via rulings, vetoes, and even ballot measures.

There is plenty of skepticism about the likelihood of the Supreme Court handing down a ruling that supports the independent state legislature theory; while multiple conservative justices have expressed varying degrees of support for it in the past, during oral arguments they seemed less inclined.

However, in an unprecedented series of events, the North Carolina Supreme Court—now flipped to Republican-led—reheard the case and sided with the Republican legislature. The ruling does not explicitly address how it could affect election outcomes. However, it is important to understand the possible ramifications, which include a serious risk that the state court ruling will be used as a basis to challenge election outcomes, even if the legislature does not actively attempt to take over the election process. And, without a definitive ruling from the Supreme Court, various interpretations could still be argued in court.

CASE STUDY: PENNSYLVANIA

After the 2020 election, a resolution was introduced in the state legislature that would give the legislature freedom to choose its own slate of electors. The measure—introduced by state Senator Doug Mastriano, who would go on to lose the gubernatorial race in 2022, and seven colleagues—called for “the Pennsylvania legislature to exercise its Constitutional authority of appointing presidential electors,” citing unverified reports of irregularities at polling locations.

The resolution never made it out of committee, and it is not likely that there would have been sufficient support even from Mastriano’s GOP colleagues, who held a majority in both houses, if it had. Critically, Pennsylvania—as well as Georgia—requires the governor to approve replacement electors; then-Governor Tom Wolf, a Democrat, never entertained the idea. Nonetheless, it is instructive of the tactics some far right state legislators may utilize in 2024.

---

without a definitive ruling in Moore v. Harper that clearly delineates the legislature’s and court’s purview regarding not only redistricting maps, but all election powers.

Another warning sign for 2024 is that it wasn’t just select legislators advocating for this; the Pennsylvania GOP convened their electors in December 2020 to “cast a conditional vote” for the Trump campaign. The state party emphasized that the vote would only be recognized if it was determined that they represented the state’s genuine election results, and that this action was taken at the specific request of the Trump campaign.71

There is some skepticism that a different candidate, campaign, and election scenario would inspire the same strategy. Furthermore, the Electoral Count Reform Act bars Congress from counting electors not certified by the state election chief. So, while a repeat attempt in Pennsylvania is unlikely, it could be possible elsewhere with different procedures and authorities; and while the ECRA addresses competing elector slates in the Congressional count, it does not address the challenge of state level disputes.

**IMPACT**
- State legislatures could change a state’s presidential election outcome on the basis of perceived election fraud

---

**PARTISAN INTERFERENCE**

Even in instances of de facto partisan management—like when an election administrator is a partisan role—the rules, at least, are supposed to be nonpartisan. It is a feature of free and fair elections that their administration is unbiased. Many of the concerns about partisan control over election boards focus on the effect it will have on voting.72 But there are also serious concerns about what it means for canvassing and certification. Election boards make important calls about recounts and challenges. They have substantial insight into voting systems, including how ballots are counted and the chain of command. They certify results, and they do so with far less oversight or public attention than states or Congress.

**POLICY STRATEGY: TARGETED INTERFERENCE**

Perhaps no state is a better example of the importance of personal integrity and party management in elections than Georgia. Former President Trump’s call to Secretary of State Raffensberger highlighted just how significant it is to have the right person in the right position. In general, election policies are supposed to be applied equally and according to sets of conditions or characteristics, not individually. When they are tailored to specific jurisdictions, it is easier for policymakers to control the outcomes because they are isolating variables like who serves in which roles in one county versus who serves in the same role in another.

---


In Georgia, the Republican-held legislature has passed a set of policies regarding election administration that are agnostic to party, geography, and some voter characteristics, which on the surface suggests that an appropriate course of action. But the legislature has applied it in very specific and uneven ways. The criteria for legislative involvement is variable, but the outcome is consistent: county officials who are Democrats or perceived as insufficiently aligned with the legislature’s priorities are pushed out, giving the GOP more control over county election administration.

**CASE STUDY: GEORGIA**

Georgia was a hotbed for subversion attempts in the wake of the 2020 election, when it flipped blue. While the state’s leadership has not changed since, the General Assembly has since passed legislation giving it greater control over the State Elections Board, which in turn now has significant power over county elections. The Election Integrity Act of 2021, a package of election related statutes, drew widespread condemnation from opponents who said it was based on the Trump campaign’s false complaints about election integrity, rather than actually improving the electoral process. The 98-page bill passed the General Assembly along party lines.

Much of the law is about voting rights and access, but there are also a number of changes to election administration. The State Elections Board will now be chaired by a “nonpartisan” appointee by the legislature, rather than the elected Secretary of State, who was also stripped of his voting power on the board. To opponents, this was seen as clear retaliation against Raffensberger for not changing the election outcome as requested by then-President Donald Trump; Georgia Republicans said it was in response to Raffensberger’s refusal to attend legislative hearings about unverified fraud in the 2020 election. While the Secretary of State no longer has power on the Elections Board, they still certify election results and their office still supervises local election boards. However, the Elections Board is now also granted authority over local entities, potentially complicating matters if there is conflict between the Elections Board and the Secretary of State.

The Elections Board also now has the power to replace county election officials based on a performance review, investigation, or audit. To trigger a review, either the county commission or the county’s state representatives must file a request. The State Elections Board may also appoint an independent review board if it believes a county requires it. The replacement officials would then have oversight and management of everything related to the county’s election processes, including managing challenges to voter eligibility and certification of results. County election boards also typically decide things like how long polls are open and when early voting happens (including if it is held over weekends). Republican members of the General Assembly pointed to long lines, delayed results, staffing shortages, and other complications during the 2020 election—particularly during the primaries—as evidence that there needed to be greater oversight and opportunity for intervention by state authorities in county matters. But opponents say that

---


75 Ibid.

the legislation has “potential for abuse by partisan officials, who could target a Democratic county and impose changes on election administration,” like refusing to certify votes.\(^77\)

The mechanism for this process is through legislation targeting one specific county at a time. Unlike statewide legislation, local legislation is typically not as widely interrogated and debated, in the legislature or in the press.\(^78\) It also means that there is ample room for political maneuvering county by county, ensuring that the legislation results in a certain outcome based on that county's circumstances. For example: if a commission in County A is controlled by one party but the local judges align with the other party, the legislature can give the commission greater power than the judiciary over the election board. If, in County B, the commission is made up of less agreeable members and the judiciary is more reliably aligned with the legislative majority, the legislature can design the new regulations to favor the judiciary.

The first high profile investigation into county election management was in Democratic stronghold Fulton County, the site of many of the issues legislators pointed to in drafting the 2021 law—and also home to 10% of Georgia’s voters. The bipartisan Performance Review Board, made up of outside county election officials, ended up not recommending a takeover, but less high-profile counties have not been so lucky.\(^79\)

The legislature has used their new authority to creatively restructure election boards in at least 10 counties. Nearly all the officials who have been removed from their positions as a result are ideologically aligned with the Democratic Party, and many are people of color.\(^80\) There isn't uniformity across all Georgia counties when it comes to how election boards are selected, so in the counties the legislature has targeted (sometimes at the behest of the local county commission), protocol also varies. And yet, the result is that it is overwhelmingly Democratic-leaning officials who are forced out and replaced by Republicans.

There are two important caveats: Georgia does not make public the party affiliation of election board members, and none of these policies specifically identify the political party that has control. Regarding the former, based on the policies officials support and who they are nominated by (and sometimes what they say publicly), it isn't difficult to figure out. As for the latter, the strategy and outcome show a decidedly unbalanced outcome.

For example, in Troup County, authority to appoint members of the election board was transferred from a joint responsibility by the Republican and Democratic parties, the three largest municipalities in the county, and the county commission—to only the county commission. The county commission is Republican, and once they were in control they promptly relieved the Democratic-leaning members of their positions, to be replaced with officials of the commission's choosing.\(^81\) In Spalding County, the political parties choose two election board members each, and the fifth position—


\(^81\) Ibid
previously decided by a coin flip—is now named by local judges, all of whom lean conservative and were nominated by Republican governors. And the legislature recently passed a bill that would give control over four out of five election board positions in Ware County to the political party that receives the most votes in the preceding election. That would be the Republican Party, and it is widely assumed that they would remove and replace the three Democratic election officials who currently serve on the board. That bill is currently awaiting the governor’s signature.

When the Election Integrity Act was passed, some legislators criticized the bipartisan regulations for election boards because they could lead to stalemates and partisan infighting, which could get in the way of carrying out successful elections. This is a legitimate critique: some county boards were notorious for the minutiae over which they would fight just to go against the other party. And certainly not all election board decisions are motivated by partisanship: for example, some polling station closures in recent years really were driven by a lack of funds, not as a sneaky attempt to disenfranchise voters. Democrat-led election boards, too, have used their majority to take action that could undermine election integrity, such as when the Athens-Clarke County board ordered a switch to all paper ballots instead of electronic ballots.

**IMPACT**

- Political actors can manipulate select institutions likely to take an opposing stance on election decisions, like accepting or rejecting ballots, into flipping to their own party’s control and making more ‘agreeable’ decisions

**POLICY STRATEGY: PARTISAN POLL WATCHING**

Election observation is an important part of having transparent, open elections. The purpose of poll watchers is to add another layer of insurance that elections are being conducted properly so that every candidate or issue has a fair chance of winning. Many states have regulations regarding what types of observers may view which parts of the election process, with varying degrees of openness and specificity. Most poll watchers are appointed by their party (candidates and ballot issue groups can also appoint observers) and must go through a training or certification process to serve as an election observer. In the current political climate, with suspicion and mistrust at such high levels—exacerbated by partisan rivalry—poll watching has gone from something civil and somewhat dull to what is essentially a civilian law-enforcement activity, described by right wing activists as a “call to arms.”

Ahead of the 2022 midterms, there were substantial concerns about these highly partisan poll watchers potentially disrupting the election process and providing witness testimony that could be used to challenge election results. It is estimated that the number of people recruited by right wing groups supportive of election conspiracy theories was in

---

83 Niesse, “Bill.”
the tens of thousands, motivated by allegations of a “stolen election” in 2020 and determined to spot instances of “fraud.” There were no known disruptions significant enough to suggest that poll watchers’ behavior actually changed election outcomes, but voters and election workers alike reported harassment, intimidation, and just plain annoyance. It is safe to assume that this initiative will be repeated: activists in South Carolina described their election observation mission in 2022 as a “pilot program,” and the primary goal for these groups is to affect (or defend, in their view) the presidential election.

The threat is particularly acute in battleground states, but reliably Republican states like Texas also had reports of armed poll watchers and, separately, instances of racist voter intimidation by poll watchers: observers reportedly followed Black voters to the voting booths and stood just behind them while they filled out ballots, and asked only Black voters to repeat personal information out loud after they had been checked in by workers. In Arizona, poll watchers attempted to investigate private voter data and took pictures and video of election workers. At the Nye County hand count in Nevada, an armed volunteer—who turned out to be the county GOP’s vice chair—removed an ACLU observer from watching the proceedings.

Going into 2024, the primary concern is again that partisan poll watchers will use perceived anomalies or misconduct to challenge results, and sow misinformation undermining public trust in election outcomes. Observers’ testimony is used as evidence to adjudicate challenges and accusations of fraud, a process that assumes reliable, honest participation by witnesses to ensure the election outcome is closer to, not further from, accurate results.

What separates this from civicly responsible election observation is its origins in misinformation and commitment to specific outcomes, rather than unbiased, bureaucratic procedure. Partisan poll watching isn’t new or unusual, but the determination to uncover unsubstantiated evidence of misconduct is. In some cases—like the following two examples in Florida and Texas—state policies have enabled these efforts.

After the 2020 election, poll watchers in Florida were given greater freedom and latitude to review completed ballots and challenge their validity, with no limit on the number of challenges they could make, potentially tying up

87 Bergengruen, “Steal.”
88 For the purposes of this analysis, harassment against election workers by poll watchers at polling locations is considered separately from harassment against election workers outside of polling locations, which included rape and death threats, stalking, attempted blackmail, and other malicious and often criminal activities.
91 Bergengruen, “Steal.”
certification in legal battles.\textsuperscript{93} When the Department of Justice tried to send its own election monitors to Florida polls during the 2022 midterms, the state said it would not allow federal monitors inside polling locations.\textsuperscript{94}

Texas expanded privileges for poll watchers in early 2022. Among the specifications were that poll workers are barred from “any action to obstruct the view of a poll watcher or distance the poll watcher from the activity or procedure to be observed,” which includes counting and processing ballots.\textsuperscript{95} The Texas Senate just passed and sent to the House SB 220, establishing the position of election marshals, who are officers licensed by the Department of Public Safety responsible for responding to election violations at polling locations (Florida has a similar program).\textsuperscript{96} While the type of violations that election marshals could respond to is broad, the bill specifically mentions improper handling of completed ballots as one violation that election marshals would be empowered to address. This raises concerns that marshals recruited by right wing groups could take advantage of their powers to accuse workers of improper ballot handling, calling their validity into question.

**CASE STUDY: MICHIGAN**

Michigan elected a Democratic trifecta in 2022, rejecting candidates for governor and secretary of state who denied the legitimacy of the 2020 election. While there were plenty of legal challenges about the election, there was no evidence of fraud. That is despite election deniers' best efforts: both at looking for evidence of fraud, and inserting themselves into the election administration process, making Michigan a “hotspot” for groups hoping to undermine elections.\textsuperscript{97}

Going into the 2022 midterms, Michigan had a passionate and coordinated cohort of right wing activists, volunteers, elected officials, and lawyers determined to “provide ongoing citizen oversight, transparency, and accountability” in elections. The plan was to identify even the smallest of ballot integrity issues, target election workers perceived to be violating rules, get sympathetic people on canvassing boards, and more, all in pursuit of filing challenges to election results and combatting what they believed to be obvious election subversion by Democrats.

This was not the only group of its kind in the state or the country. GOP leadership in Wayne County—which includes Detroit—instructed both poll watchers and poll workers the night before the state primary to secretly video record and write down observations in polling locations and ballot processing and counting centers, against state laws.\textsuperscript{98} Michigan has relatively generous allowances for poll watchers, although they may not “issue challenges; stand behind the


election inspectors as voters are processed; or be present in any part of the polling place except the designated Public Viewing Area.\footnote{99}

By recruiting poll workers in addition to observers, these factions of the Republican party are poking holes in the system of having nonpartisan election administration even at the lowest levels (it is important to note, too, that there is plenty of disagreement within the party about this strategy, and it is not officially in the party platform). It is critical for election integrity that poll workers faithfully follow procedures, including the proper chain of custody and handling of ballots; not only so that protocol works as intended, but to avoid exacerbating election denial conspiracies.

Many of these organizations—like the Election Integrity Network and Michigan Fair Elections—have been less outspoken than they were leading up to the 2022 midterms. That is no guarantee that there won’t be similar actions in 2024. Michigan courts swiftly and decisively handled the challenges filed, and state leadership was dedicated to election integrity and didn’t give these efforts any airtime or support. But it is important to recognize that there are still serious threats to nonpartisan election administration even when state officials and election officials are committed to carrying out free and fair elections. And in a state with leadership or judges more sympathetic to election subversion, challenges that toe the line of legitimacy could have serious consequences. For example, small inconsistencies in the chain of custody could be used as evidence of fraud, leading to a determination that the canvassed results are inaccurate and should not be certified.

As the Bipartisan Policy Center said in a post-midterm report looking at the future of election policy, “an increasingly interconnected, complicated, and contentious political environment means that vulnerabilities in one jurisdiction could cast doubt on the election and, ultimately, on American democracy as a whole.”\footnote{100} Michigan may not have policy leaders sending election subversion policies downstream or establishing practices that explicitly benefit one party; but that does not eliminate the threat of increasingly partisan control over the elections process.

**IMPACT**

- Politically motivated poll observers and workers can sow distrust in the election process, granting perceived legitimacy to claims used to subvert election outcomes


\footnote{100} Rachel Orey et al., “Policy to Carry Us Beyond the Next Election | Bipartisan Policy Center,” last modified April 10, 2023, https://bipartisanpolicy.org/report/policy-beyond-the-next-election/.
PART IV: STRATEGIC RECOMMENDATIONS

The three major areas of vulnerability in election policy as outlined above are fair administration, shared or laterally divided oversight authority, and political influence over bureaucracy. As state elections are all conducted differently, it is more appropriate to identify principles and best practices that can be applied to state election regulations, rather than attempting to uniformly restructure them.

This section details five priority recommendations to address the shortcomings in these vulnerability areas. The first policy recommendation is to standardize administration, by establishing a system that incorporates specific remedies for specific scenarios, and approaches election administration from a technical, not political, perspective. The second recommendation is simply to enshrine clear mechanisms for maintaining a balance of command that is politically neutral and does not overly centralize power away from the electorate. Finally, election observation must be depoliticized through a two-pronged policy approach that clarifies and communicates the roles and responsibilities of election observers and challengers.

Recognizing that there is considerable overlap across each of these areas, sub-recommendations may also apply to instances that fall under a different category. This is illustrated in the impact summarization at the end of each section. Each recommendation also includes a brief analysis of the high level political feasibility of implementation.

A note on feasibility: As the 2024 election landscape becomes clearer, so will the threat assessments. State leaders and voters alike will be looking for specific steps in the election process that they believe are most at risk. The political feasibility assessment assumes a political environment similar to that of the 2022 midterms, with one important addition learned from that election: proof that voters are generally unsupportive of outspoken election deniers who root their claims in baseless fraud allegations. That said, depending on how the lead-up to the election goes, political preferences could easily change, as they are wont to do, shifting too the feasibility of implementing election reforms by ballot measure or through the legislature.

STANDARDIZING ADMINISTRATION

ELECTION ADMINISTRATION SHOULD BE UNIFORM AND EVENLY APPLIED ACROSS JURISDICTIONS.

- Statewide election policies should be applied as equally across counties as possible. When procedures or regulations are applied singularly or on a county-by-county basis—either in name or by default of the policy parameters—the application should be as uniform as possible, and subject to independent review. When election procedures are applied according to county population, counties should be divided into no more than three size bands: the smallest third, middle third, and largest third, by population.

  - Impact: This would make it more difficult for states to target specific counties for political gain. For example, the Georgia legislature would not be able to pass legislation that reorganizes the elections board in one county and reorganizes it in a completely different way in a similar county, with the end result in both that the Republican Party holds the majority of board seats.

Administrative jurisdictions of different sizes have different challenges and priorities, and adapting regulations to account for that (where it isn’t already) would reduce the ability of states to interfere in
counties on political grounds. The Texas legislature would have to change bill language targeting counties with more than 2.6 million people, which singles out Harris County. If such legislation were passed, it would have to go through an independent, nonpartisan review process to confirm that it was done for legitimate administrative reasons. While a review would not necessarily remove the risk of targeted subversion, it would add another layer of review.

- **Feasibility**: State legislatures are unlikely to be enthusiastic about passing regulations that would limit their own power in elections. The exception would be in swing states and purple states where there is a serious possibility of either party taking the majority in the next election; the risk of legislative overreach by the opposing party could be a motivating factor to implement some checks and balances. But, because this would limit legislative prerogative, it would still likely face steep opposition.

The greatest chance of implementation is in states without uniform local election administration that fit both of the following criteria: those that allow citizen-initiated ballot measures and have a Democratic trifecta and triplex. While it is difficult to assess the popularity of this issue among voters, introducing this type of measure through the initiative process would circumvent the challenge of convincing a legislature to limit their power. Democratic leaders are likely to be amenable to this measure because Republican legislators have been more inclined to target Democratic areas than the reverse. There is less of a risk that a state government would work within its power, in different offices, to push back on this measure.

- **Target States**: Hawaii, Illinois, Michigan, Oregon, Washington

- Reviews and investigations should be conducted by a nonpartisan or bipartisan committee, on a regular, rotating basis rather than only as needed. Ideally, such committees should be staffed by unelected members (i.e., not legislators or elected officials).

- **Impact**: This will reduce the politicization of election investigations and ensure that the focus is on election integrity and best practices generally, rather than specific election outcomes. In addition to reducing the likelihood of an election outcome being reversed due to political motivations, having nonpartisan or bipartisan leadership in these situations would increase trust in the process by not alienating voters along political lines.

Conducting reviews of counties’ election management on a regular and rotating basis will identify potential problems that can be addressed before the election, minimizing the risk of issues that could be used as evidence of misconduct.

- **Feasibility**: In states that already have election procedure and investigation guidelines that are nonpartisan or bipartisan, this could be built upon to include election reviews. However, it also requires sufficient funding, which substantially decreases its chances of survival. This policy would be likely only in states with legislatures or voters already dedicated to election integrity, to motivate both initial implementation and longterm accountability. It is possible, though less likely, to be implemented if a state legislature or government has a partisan split and is amenable to working together.

- **Target States**: Michigan, Pennsylvania
BALLOT COUNTING PROCEDURES SHOULD BALANCE ACCURACY AND EFFICIENCY.

- Accelerate the process of counting returns by beginning to tabulate—or at least process—early and mail-in ballots prior to Election Day.
- Hand counts should be avoided in favor of machine counting and risk-limiting audits, except in small precincts where hand counts are not a burden or when the margin of victory is especially narrow.
  
  ○ **Impact:** A shorter period of time between when voting ends and when results are announced reduces the opportunity to spread disinformation and garner support for subversive activities. Conducting the initial tabulation in a responsible and time-efficient manner allows election administrators to release unofficial results on Election Night or shortly thereafter. This also allows more time for audits before results are certified or officials are sworn in, which is an important component of verifying election results.

  ○ **Feasibility:** Due to the seemingly intractable and incompatible partisan divide on voting procedures, with the left trying to create more latitude for mail-in voting and the right increasingly wary of voting machines, passing new regulations on ballot counting will be an uphill battle. These priorities are largely incompatible: the longer the timeline is for submitting ballots, the quicker the tabulation should be to avoid dragging out results; machine counting goes considerably faster than hand counting. Even in states with single party governments, there is hesitation to pass new restrictions on ballot processing, tabulating, and reviewing because of concerns that new regulations will spark even further mistrust.  

Nonetheless, there are nine states that do not allow absentee and mail-in ballots to be processed until Election Day, including some swing states where the risk of disinformation is especially high. Those states should be prioritized for measures that allow, at minimum, for processing to begin earlier, and ideally for tabulation to begin earlier as well. The second priority category should be potential swing states that do not begin to tabulate early and mail-in ballots until Election Day, so that they can begin tabulating earlier and be able to announce results sooner after polls close.

○ **Target States**
  - **Priority:** Michigan, New Hampshire, Pennsylvania, Wisconsin
  - **Second:** Georgia, North Carolina

---


PROTECT THE SANCTITY OF DEMOCRATIC ELECTIONS.

● Enshrine, in law, that the state’s certified slate of electors will be according to the vote of the electorate, not any other body.

○ **Impact:** This would ensure that regardless of a court ruling on the independent state legislature theory, an election emergency, or other exceptional circumstances, neither the legislature, executive, or courts would be permitted to certify an elector slate that does not match the state’s popular vote. While many legal experts are highly skeptical that a state legislature-appointed elector slate would be recognized over the slate reflecting the popular vote, there is no harm in shoring up this issue, particularly as the political climate becomes increasingly volatile.

This does not solve the problem of disagreeing over what the real election returns are. A court could rule that the county election administrator did not, for whatever reason, have cause to extend polling hours past the regular closing time; in a close race, throwing out all of those ballots could change the election outcome. The proper application of this policy rests upon the assumption of a nonpartisan, truly independent judicial system.

Formalizing the state popular vote as the determining factor in election outcomes would also likely increase trust in the voting process, as it could reassure voters that their vote will not be overruled by an institution with which they disagree politically. This would have a second-order effect of increasing faith in election integrity, which further delegitimizes subversive activity.

○ **Feasibility:** If introduced as a ballot measure, the likelihood of this becoming law and effectively restraining legislative overreach is high. For the most part, voters want the election outcome to reflect their vote. Of the likely swing states in 2024, Arizona and Nevada both allow citizen-initiated amendments, statutes, and referendums. Furthermore, it is a fairly straightforward, simple policy, which is an important component of a ballot measure for two reasons: it is easier to get the initiative’s language right the first time (this is often the version that must be voted on), and it is an accessible policy idea for voters to grasp.

If introduced, it would be difficult for lawmakers to explain their opposition to formalizing the electorate’s chosen slate. In swing states with divided government or states with a powerful minority party, there is an incentive for lawmakers to hedge their bets against the other party and make sure that a popular vote in their favor would not be overturned. At the same time, the party with less

---

103 "States with Initiative or Referendum," Ballotpedia, https://ballotpedia.org/States_with_initiative_or_referendum.
confidence in the process may want to hold on to backup options in the case of legitimate fraud, or to play to their base in cases of perceived fraud.

Similarly, in states with very high levels of mistrust in elections and in those with leadership who entertain election conspiracy theories, this could be viewed as a negative check on opportunities to “correct” an election outcome perceived to be false.

○ **Target States:** All

**DISALLOW CHANGES TO THE CHAIN OF COMMAND AND SUCCESSION ORDER FOR ELECTION OFFICIALS THAT WOULD TRANSFER RESPONSIBILITIES OF A NONPARTISAN ROLE TO A PARTISAN ONE.**

- Establish a clear chain of command well before the beginning of an election to maintain impartiality.

  ○ **Impact:** Formalizing the correctly held assumption that voters choose election outcomes in the United States is a key step in preventing future attempts at “legally” subverting elections. This would minimize the number of opportunities for political actors to manipulate outcomes that should be protected not only by norms, but by administrative responsibility. For example, under this policy the Cochise County Recorder David Stevens would have two options for handling the election director’s resignation, neither of which would give him the role’s authority: nominate a new nonpartisan official to fill the empty elections director slot, or do nothing and a pre-established, nonpartisan official would have automatically stepped into the role upon Lisa Marra’s resignation.

  ○ **Feasibility:** In theory, this is a simple organizational management issue. In practice, the likelihood of partisan officials voluntarily giving up potentially expanded authority is low. Stevens, for example, is an election denier and unlikely to eagerly support a policy that would more firmly establish the certified results—which he disagrees with—as the election outcome. Whether introduced as a ballot measure or through the legislature, the policy’s language would have to be carefully tailored to the state or county elections organization chart, which could be quite challenging.\(^{105}\) In larger systems, there would be more complexities to work through; in smaller systems, there simply might not be many other people to choose from.

  ○ **Target States:** Battleground and swing states

**DEPOLITICIZE ELECTION OBSERVATION**

**MINIMIZE OPPORTUNITIES FOR POLITICAL INTERFERENCE OF ELECTION OBSERVATION.**

- Clarify what election observers and challengers may and may not do in each step of the election process at which they may be present.

  ○ **Impact:** This would make explicit where the lines are between transparency and privacy in election observation, reducing the likelihood of partisan observers to overstep their responsibilities in pursuit of \(^{105}\) ACE, “Advantages.”
a political outcome. During ballot processing, for example, it should be clear what activities and information observers may review, and what they cannot. Or, when the rule is that an observer may be “near” an election worker processing a ballot, it should be clarified what “near” means so that the observer is not impeding processing but is also able to judge accountability. Especially in places where there are broad allowances for election observers, providing specific parameters would protect transparency without sacrificing accountability.

Another important impact of clarifying observation parameters would be the restrictions on election officials to remove observers for illegitimate reasons. If an election official claims that an observer is interfering with the electoral process, having a more specific definition of what counts as “interference” would both raise the bar for removal and make it more difficult to back up accusations of political bias on the part of the official.

○ **Feasibility:** In order to most effectively implement fair policies around election observation, election officials, workers, and relevant organizations in each state must be central to the policy development process. They know best how their state’s election policies actually play out, and how counties’ needs or circumstances might differ from one another. In swing states, election workers have the clearest understanding of how competitive partisan observation can affect the process. As with other issues of partisan oversight, it is possible that swing states would be motivated to clarify and depoliticize election regulations to prevent the other party from taking action, although they would also be hesitant to give up their own latitude. The most likely opportunities for improvement are swing states with Democratic-led governments and states with already strong observation guidelines that can be expanded upon (like Colorado and Utah).

States with the most vague observation policies are, for the most part, red states that passed legislation in 2021 making it more difficult to remove observers for interference, but without any checks in the other direction. It is unlikely that those legislatures would be inclined to moderate their laws.

○ **Target States:** Michigan, Pennsylvania, Colorado, Utah

ENSURE THAT PARTISAN ELECTION OBSERVERS RECEIVE UNIFORM TRAINING.

- Require partisan poll watchers to undergo training designed by the state’s central election authority in order to serve as an observer.

○ **Impact:** Standardizing instruction for politically appointed election observers will add a degree of uniformity to the observation process, as observers are often trained by their political party, if they are trained at all. It would also ensure that expectations for election observers are clear across the entire state, reducing variability between counties, and easing the burden of underresourced local election offices to develop training material. This will also mitigate partisan efforts to undermine election

---

107 Orey and Thomas, “Observation.”
108 Orey and Thomas, “Observation.”
integrity by more clearly laying out the rules and regulations for poll watchers who may hear alternative information from their political party. This would not eliminate the possibility of improper instruction, but it would clarify to observers what is and is not within their responsibility. Michigan, for example, “strongly encourages” but does not require organizations to train their observers and challengers on state election law.

- **Feasibility:** In states where there is already some form of training or accreditation process, the feasibility of implementing standardized training is **high**: it could be as simple as requiring observers to watch a video of instructions before receiving their accreditation. Fewer than 10 states do not have an accreditation process in law, but a more than half do not have training requirements. States without accreditation processes should be prioritized to incorporate both certification and training qualifications, magnifying the policy’s impact on election accountability and transparency. Second priority states should be purple states currently without training requirements.

- **Target States**
  - **Priority:** Maine, Montana, Pennsylvania, South Dakota, West Virginia
  - **Second:** Arizona, Nevada, New Hampshire, North Carolina, Wisconsin

---

PART V. CONCLUSION

For decades, politicos and democracy advocates have stressed the importance of robust support for free and fair elections, almost to the point of begging. Now, after a series of hotly contested, frenzied elections, there is a new request: “Make democracy boring again.”

With political tension at a fever pitch and fast-spreading conspiracies coasting easily into the mainstream, it is a tall order. But the primary role of policy is not to push back on political trends, although that is certainly sometimes the impact. Policy should strengthen and clarify the roles and responsibilities of our government institutions, promoting stability and fair application. It is difficult to disentangle election policy from politics, given that it is an inherently political issue. Politics is rarely fair. But elections must ultimately be fair and stable: that is what grants them integrity.

The history of election policy is more or less a game of whack-a-mole. Many of the recommendations in this report are similarly reactive. But there is an opportunity now to prevent the full realization of subversion threats that have been previewed in 2020 and 2022, and to halt the implementation of policies threatening to seriously undermine our democracy. By seeking to protect election integrity according to a set of principles rather than only by addressing very specific threats, elections can be protected before they are even at risk.

There are a number of additional election threats not discussed in this report that nonetheless could be addressed through the listed recommendations. Out-of-date or faulty technology would be identified during regular reviews, before they could disrupt the election process. Unforeseen, disruptive events during an election would not give state legislatures the power to choose representatives, if that right is enshrined in law to the voters.

A separate but critical step that must be taken to protect election integrity is to increase funding. Election administrators need enough funding to carry out their duties, particularly as election administration becomes more politically fraught and dangerous. County officials need funding to provide training, hire competitively and widely, buy secure, up-to-date equipment, and provide additional security, all of which cost quite a bit of money.

After the attacks on election workers following the 2020 election, many have resigned, leaving a severe shortage not only of staff but of institutional knowledge. Without a well-trained workforce, the likelihood of procedural errors and honest mistakes increases, which gives fodder to election challengers and conspiracy theorists looking for any evidence of misconduct. Without enough staff or security, elections are at risk of more duplicitous subversive activity, such as election officials abusing their power to change results, or obviously criminal activity, like violent attacks.

It will likely take years to restore the faith in elections that has been lost, and that is a task that will require a much broader mandate than what policy alone can accomplish. But strong, transparent, neutral election policies are an important component of that process. If done properly, they will strengthen our elections not only against current threats but against future ones as well, regardless of party or motivation. And while it is a daunting challenge to consider affecting election policy not in one place but in 51, it is also an opportunity to make progress where possible and lay the groundwork for expansion.


