

24 for '24:

Urgent Recommendations in Law, Media, Politics, and Tech
for Fair and Legitimate 2024 U.S. Elections

September 2023

Ad Hoc Committee for 2024 Election Fairness and Legitimacy

Convened under the Auspices of the
Safeguarding Democracy Project, UCLA Law
and Generously Supported by



This report is available for download at:
law.ucla.edu/24SDP

LAW • MEDIA • POLITICS • TECH

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

Members of the Ad Hoc Committee for 2024 Election Fairness and Legitimacy

(Institutional affiliations are for identification purposes only; longer biographies of Committee members appear in the Appendix of this Report.)

Andrew W. Appel

Eugene Higgins Professor of Computer Science
Princeton University

Julia Azari

Associate Professor of Political Science
Marquette University

Bruce E. Cain

Professor of Political Science
Stanford University

Larry Diamond

William L. Clayton Senior Fellow at the Hoover Institution, the Mosbacher Senior Fellow in Global Democracy at the Freeman Spogli Institute for International Studies (FSI), and Bass University Fellow in Undergraduate Education
Stanford University

Pam Fessler

Editor and Correspondent, NPR News (Retired)

Edward B. Foley

Ebersold Chair in Constitutional Law
Director, Election Law
Ohio State University Moritz College of Law

John C. Fortier

Senior Fellow
American Enterprise Institute

Richard L. Hasen, Chair

Professor of Law and Political Science
Director, Safeguarding Democracy Project
UCLA School of Law

Liz Howard

Deputy Director, Elections and Government Program, Democracy, Brennan Center for Justice

David Kaye

Clinical Professor of Law
UC Irvine School of Law

Neal Kelley

Registrar of Voters, Orange County, California (Retired)

Jack Lerner

Clinical Professor of Law
Director, UCI Intellectual Property, Arts, and Technology Clinic
UC Irvine School of Law

Matt Masterson

Director of Information Integrity
Microsoft

Michael T. Morley

Sheila M. McDevitt Professor of Law
Florida State University College of Law

Janai S. Nelson

President and Director-Counsel
NAACP Legal Defense and Educational Fund, Inc.

Brendan Nyhan

James O. Freedman Presidential Professor
Department of Government
Dartmouth College

Norman Ornstein

Emeritus Scholar
American Enterprise Institute

Nina Perales

Vice President of Litigation
Mexican American Legal Defense and Educational Fund

Richard H. Pildes

Sudler Family Professor of Constitutional Law
New York University School of Law

Bertrall Ross

Justice Thurgood Marshall Distinguished Professor of Law
Director, Karsh Center for Law and Democracy
University of Virginia School of Law

Charles Stewart III

Kenan Sahin Distinguished Professor of Political Science
Massachusetts Institute of Technology

Michael Tesler

Professor of Political Science
UC Irvine

Ciara Torres-Spelliscy

Professor of Law
Stetson University College of Law
Brennan Center Fellow

Emily Rong Zhang

Assistant Professor of Law
UC Berkeley School of Law

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

TABLE OF CONTENTS

Executive Summary	3
Acknowledgments	7
Background	8
Legal Recommendations	10
Media and Social Media Recommendations	18
Politics and Norms Recommendations	21
Tech Recommendations	23
Conclusion	28
Endnotes	29
Appendix: Brief Biographies of Ad Hoc Committee Members	36

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

EXECUTIVE SUMMARY

The United States electoral process, and indeed American democracy itself, is under great stress.

Over the last two decades, hyperpolarized politics and very close elections have led to fights over election rules and controversy over the administration of U.S. elections. The emergence of these “voting wars” has caused some people, especially those on the losing end of election battles, to question the fairness and integrity of the systems and rules used for conducting elections and tabulating results. This crisis of confidence emerged even as election administration has become more professionalized and even after some of the worst-performing voting systems were taken out of service.

Concerns about election fairness and legitimacy exploded during and after the 2020 elections. That election was conducted during a worldwide COVID-19 pandemic and as one of the two major presidential candidates, Donald J. Trump, repeatedly made false and unsubstantiated claims against the integrity of the electoral process. After losing the election, Trump and his allies engaged in an unprecedented series of maneuvers in an unsuccessful attempt to overturn the 2020 U.S. presidential results. All reliable evidence indicates that the election was conducted without widespread fraud or irregularities under difficult circumstances.

“No longer can we take for granted that people will accept election results as legitimate.”

Contention around the 2020 election led to a violent attack at the United States Capitol, leaving 4 dead and 140 law enforcement officers injured. Continued disagreement about election integrity led to threats and attacks against public officials and widespread concern over the conduct of the upcoming 2024 elections. It has also raised a new potential “insider threat” of election workers or officials attempting to sabotage results.

Although the crisis of confidence flourishes today more on the right side of the political spectrum, it is easy to see how policies or events in the 2024 election cycle could lead to a crisis in confidence on the left, even if the 2024 elections are conducted fairly. No longer can we take for granted that people will accept election results as legitimate. The United States faces continued threats to peaceful transitions of power after election authorities (or courts) have declared a presidential election winner.

The United States election process also faces other serious challenges. Jurisdictions vary in their voting policies, which sometimes triggers contentious fights. Unlike most other advanced democracies using nationalized elections with uniform procedures and machinery, elections in the United States are administered at the local level, meaning thousands of different electoral jurisdictions must conduct 51 simultaneous elections for president ending on a single day in November. Most election administrators in the United States do an admirable job often under severe budget constraints, but occasional election administrator incompetence and changes in election rules and technology contribute to concerns that the elections will not be run in a fair way and will not be perceived to have produced a clear winner and a legitimate result. Variation and fragmentation of authority leave ample room for litigation in the case of close election results.



Photo credit: Associated Press

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

Further, inadequate public funding of elections is a perennial problem, exacerbated by controversy over private election grants during the 2020 COVID-19 pandemic and election.

The election information environment provides its own challenges. Technological and economic change in recent years has made it harder for voters to get reliable political information, and bad actors, both foreign and domestic, abound in cyberspace.

The continuing crisis over election legitimacy and fairness raises issues in law, media, politics and norms, and tech. Solutions must be not only interdisciplinary but also broadly acceptable across the political spectrum. Generating change in politically diverse communities and by legislative leaders from both sides of the aisle requires finding areas of consensus and agreement.

Solutions must be not only interdisciplinary but also broadly acceptable across the political spectrum.”

Recognizing the need for multifaceted and cross-ideological solutions to the issue of the legitimacy and acceptance of fair election results in the United States, Richard L. Hasen, Professor of Law and Political Science and director of UCLA Law’s Safeguarding Democracy Project, convened both a conference and an ad hoc committee made up of 24 diverse, prominent scholars and leaders to tackle these issues from an interdisciplinary perspective.

After public meetings and further online deliberations, this Committee makes the following 24 recommendations for immediate change that should be implemented to increase the fairness and help bolster the legitimacy of the 2024 elections. These recommendations are aimed collectively at assuring access to the ballot for all eligible voters, protecting election integrity, and enhancing the public’s confidence in the fairness of the election and the accuracy of the results.*

The recommendations listed below call for specific action from legislators on the federal, state, and local levels; journalists and editors; tech companies; and civic leaders, nonprofit organizations, citizens, and social media influencers.

LEGAL RECOMMENDATIONS FOR 2024

Recommendation 1

Those who write rules governing the electoral process should ensure that they are clear before the process starts, and promote early resolution of election-related disputes when feasible.

Recommendation 2

States should adopt permanent, general election emergency statutes to protect the right to vote.

Recommendation 3

States should strengthen laws to protect election officials from violence, threats of violence, and intimidation, and alleviate unnecessary burdens on such officials.

Recommendation 4

States should promote transparency and security in the electoral process.

Recommendation 5

States should reduce opportunities for baseless conspiracy theories by promoting rapid determination of election results while ensuring ample and robust voting opportunities for all eligible voters.

* This report of the Ad Hoc Committee for 2024 Election Fairness and Legitimacy represents the personal views of its members in their personal capacities. Members do not speak for their employers, organizations, or funders. The views expressed here are those of the Committee members and do not represent the views of the Safeguarding Democracy Project as an organization or its funders.

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

Recommendation 6

States should reform election administration to ensure ample and robust voting opportunities for all eligible voters and promote public confidence in the electoral process.

Recommendation 7

Congress and the states should ensure adequate public funding for elections and fair, non-partisan allocation of any emergency private funding.

MEDIA AND SOCIAL MEDIA RECOMMENDATIONS FOR 2024

Recommendation 8

News organizations and nonprofits should fund, develop, and implement training workshops to improve reporters' understanding of election processes and relevant election law, and to help develop relationships between election professionals and journalists. Special attention should be paid to helping local and non-English language news outlets.

Recommendation 9

The media should make a special effort to inform the public about the process of counting ballots and when the public should expect complete results, framing incomplete results as "too early to call" rather than as one candidate being "in the lead."

Recommendation 10

Journalists should continue prioritizing accuracy over false equivalence in their coverage of election-related issues and disputes. When reporting on demonstrably false claims, journalists should use the "truth sandwich" approach — i.e., start with the facts, describe the false claim, and then explain why the claim is inaccurate.

Recommendation 11

Social media and website platforms should preserve their capacity to address false information about when, where, and how people vote and other threats to free and fair elections by maintaining policy and trust and safety teams, fact-checking programs, voter and election information centers, and transparency reports and tools. They should do so while recognizing the importance of robust political speech in a democracy.

Recommendation 12

Platforms should provide regular transparency and risk assessment reporting in the context of U.S. elections.

POLITICS AND NORMS RECOMMENDATIONS FOR 2024

Recommendation 13

Election officials, government leaders, and others should embrace the democratic principle that all eligible voters, and only eligible voters, should be able to register and vote in a fair election free of intimidation with orderly vote counting. Should unexpected events occur during elections, they should rely as much as possible on existing election rules and infrastructure to run elections. If new measures must be taken, they must honor the principle of allowing all and only eligible voters to vote freely and fairly.

Recommendation 14

Losers of fair elections should quickly accept election results. Challenges to election results should only be undertaken pursuant to state and local rules for recounts or contests or under state or federal statutory or constitutional law when there is clear and convincing evidence that democratic principles have been violated. Should post-election disputes arise, they should be resolved consistent with fair election principles, established and trusted practices, and in good faith.

Recommendation 15

Nonprofit organizations and foundations should establish an independent bipartisan commission well before the election to gather and amplify prominent pro-democracy voices warning against the erosion of core democratic norms. The Commission should alert

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

the public to instances of democratic erosion, encourage candidates and other political actors to embrace pro-democracy norms, and weigh in post-election, if necessary, to promote resolution of election disputes in a manner that is consistent with democratic principles.

Recommendation 16

Threats to the administration of elections, from pandemics to natural disasters such as hurricanes, significantly increase the costs of elections. Congress and states should create escrowed funds to deal with increased election costs that might be incurred in the future.

TECH RECOMMENDATIONS FOR 2024

Recommendation 17

Election administrators should review and strengthen measures to secure election systems against insider threats, such as mandatory background checks for vendors and staff with access to critical systems, access controls, and robust chain-of-custody procedures.

Recommendation 18

Election administrators should implement commonsense security and transparency measures that could help to bolster public confidence in elections, including enhanced ballot tracking systems that monitor the delivery, return, and processing of ballots; tools to allow voters to update missing information on ballot envelopes; post-election audits; and measures such as robust electronic pollbook systems and vote centers that aid in shortening the canvass (vote-counting) period.

Recommendation 19

Election officials should avoid and prohibit the use of electronic ballot return, except for voters who have no other means at all of returning a voted paper ballot.

Recommendation 20

In jurisdictions of over 1000 voters, paper ballots should be tabulated by optical-scan computers; ballots should be tabulated in smaller jurisdictions either by optical-scan computers or by hand counting. Post-election audits should be conducted by human inspection of the human-readable portions of the paper ballots.

Recommendation 21

Where state laws allow citizens to request recounts, election administrators should organize procedures in advance to make manual recounts of paper ballots substantively available at reasonable cost.

Recommendation 22

For states that voluntarily agree, the U.S. Election Assistance Commission should build an online tool to allow paperless voter registration for all eligible voters using the National Voter Registration Form.

Recommendation 23

Election officials should obtain a .gov domain for an authenticated internet presence.

Recommendation 24

Federal agencies should prepare election officials and voters to respond to artificial intelligence risks in 2024 and invest in technological innovation to defend against AI-enhanced cyberattacks on election infrastructure.

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

ACKNOWLEDGMENTS

The work of this Committee would not have been possible without the tremendous support of the UCLA School of Law, its interim dean Russell Korobkin, and its new dean Michael Waterstone. Members of the UCLA Law staff, especially Ben Austin-Docampo and Harlisha Hamm, provided outstanding support for the public conference. Thanks as well to Annabel Adams, Patricia Biggi, Callie Brazil, David Cappoli, Laura Fuentes, Frank Lopez, and Alexis Schrock for supporting the conference, fundraising, and production of the report.

The Democracy Fund, the Hewlett Foundation, the Knight Foundation, and the Mertz Gilmore Foundation provided strong financial support; thanks to Carla Bernal, Lindsay Daniels, John Sands, and Trellis Stepter of the foundations for insightful guidance.

Members of the ad hoc committee met after a public conference entitled “Can American Democracy Survive the 2024 Elections?” held March 17, 2023 on the UCLA campus. In addition to the committee members, the public heard at the conference from an array of impressive speakers: Bob Bauer, Jocelyn Benson, Joey Fishkin, Ben Ginsberg, Sarah Longwell, Nate Persily, Stephen Richer, and Kim Wyman. These speakers were not part of the ad hoc committee or its deliberations.

Bruce Cain, Liz Howard, Michael Morley, Brendan Nyhan, and Emily Zhang of the ad hoc committee served admirably as subgroup Committee leaders as deliberations continued over many months. Joshua Ferrer assisted in keeping track of the Committee’s deliberations. Mekela Panditharatne assisted the tech team. Gennifer Birkenfeld-Malpass assisted with citation checking.

This Committee offers enormous thanks to everyone who contributed to this effort to support a vibrant and well-functioning American election system.

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

BACKGROUND

The State of U.S. Elections and Voters' Confidence in Election Results

The United States electoral process, and indeed American democracy itself, is under great stress.

Over the last two decades, hyperpolarized politics and very close elections have led to fights over election rules. The emergence of these “voting wars” has caused some people, especially those on the losing end of election battles, to question the fairness and integrity of the systems and rules used for conducting elections and tabulating results. This crisis of confidence emerged even as election administration has become more professionalized and even after some of the worst-performing voting systems, such as machines using punch card ballots, were taken out of service. Some replacement voting technologies that have been introduced in recent years raise new security challenges.¹



Photo credit: Lev Radin, Shutterstock.com

Concerns about election fairness and legitimacy exploded during and after the 2020 elections. That election was conducted during a worldwide COVID-19 pandemic and as one of the two major presidential candidates, Donald J. Trump, repeatedly made false and unsubstantiated claims against the integrity of the electoral process. After losing the election, Trump and his allies engaged in an unprecedented series of maneuvers in an unsuccessful attempt to overturn the 2020 U.S. presidential results.² All reliable evidence indicates that the election was conducted without widespread fraud or irregularities under difficult circumstances.³

Contention around the 2020 election led to a violent attack at the United States Capitol, leaving 4 dead and 140 law enforcement

officers injured. Continued disagreement about election integrity led to threats and attacks against public officials and widespread concern over the conduct of the upcoming 2024 elections. It has also raised a new potential “insider threat” of election workers or officials attempting to sabotage results.

Although the crisis of confidence flourishes today more on the right side of the political spectrum, it is easy to see how policies or events in the 2024 election cycle could lead to a crisis in confidence on the left, even if the 2024 elections are conducted fairly. No longer can we take for granted that people will accept election results as legitimate. The United States faces continued threats to peaceful transitions of power after election authorities (or courts) have declared a presidential election winner.

The United States election process also faces other serious challenges. Jurisdictions vary in their voting policies, which sometimes triggers contentious fights. Unlike most other advanced democracies using nationalized elections with uniform procedures and machinery, elections in the United States are administered at the local level, meaning thousands of different electoral jurisdictions must conduct 51 simultaneous elections for President ending on a single day in November. Most election administrators in the United States do an admirable job often under severe budget constraints, but occasional election administrator incompetence and changes in election rules and technology contribute to concerns that the elections will not be run in a fair way and will not be perceived to have produced a clear winner and a legitimate result. Variation and fragmentation of authority leave ample room for litigation in the case of close election results.

As described below, inadequate public funding is a perennial problem. Voting technology requires maintenance and periodic updating; elections are expensive endeavors. During the 2020 pandemic, costs for running safe and fair elections rose sharply, but Congress and the states did not provide sufficient adequate additional funding. Private foundations stepped up to fill the gap, providing hundreds of millions in additional funding to support election administration activities. These efforts themselves engendered controversy, with some Trump supporters claiming that the aid to election administration was directed to help Democratic-leaning counties. A number of jurisdictions recently barred private funding for election administration in future elections, but they generally have not increased available public funding to make up for potential shortfalls.

The election information environment creates its own challenges. Technological and economic change in recent

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

years has made it is harder for voters to get reliable political information. The rise of social media and the decline of local journalism have both undermined traditional sources of information for voters and enabled the spread of false information about elections, campaigns, politicians, and the state of the world more generally. The potential use of AI in campaigns raises new threats for the information environment. Some scholars who have studied and warned of election disinformation in 2020 have themselves been attacked and unfairly accused of “election interference.”⁴

The Need for Multifaceted and Cross-Ideological Solutions

The reasons for growing voter concern about the fairness and legitimacy of the U.S. election process are multifaceted, raising issues in law, media, politics and norms, and tech. This means that solutions to bolster American confidence in the fairness and accuracy of the elections must be multifaceted as well, drawing upon expertise in diverse areas.

Solutions must be not only interdisciplinary but also broadly acceptable across the political spectrum. Generating change in politically diverse communities and by legislative leaders from across the political aisle requires finding areas of consensus and agreement. In the current hyperpolarized atmosphere with election administration itself a political issue, achieving such agreement requires hard work and compromise.

The Work of the Ad Hoc Committee

This report of the Ad Hoc Committee for 2024 Election Fairness and Legitimacy is both multifaceted and cross-ideological, presenting 24 recommendations across four distinct areas: law, media, politics and norms, and tech.

This report builds upon the work of an earlier ad hoc committee. Professor Richard L. Hasen, then of UC Irvine, convened a conference on February 28, 2020, entitled: “Can American Democracy Survive the 2020 Elections?” An ad hoc committee met after the conference, just as the COVID-19 pandemic was reaching the United States. After extensive deliberations, the committee issued its report in April 2020, *Fair Elections During a Crisis: Urgent Recommendations in Law, Media, Politics, and Tech to Advance the Legitimacy of, and the Public’s Confidence in, the November 2020 U.S. Elections.*⁵ The report contained 14 recommendations in law, media, politics, and tech for a fairer and safer 2020 election. Many of the recommendations were specific to running

fairer elections during the pandemic and contending with a presidential candidate who was questioning the integrity of the 2020 election.

Hasen, now Professor of Law and Political Science at UCLA School of Law and Director of its Safeguarding Democracy Project, convened a follow-up conference on March 17, 2023, *Can American Democracy Survive the 2024 Elections?*⁶ Hasen chaired a new ad hoc committee focused on the 2024 elections. The Committee contains some overlapping members from the 2020 committee and some new members. The Committee’s 24 members began deliberating at a meeting immediately after the conference.

Following an initial meeting, the four subgroups in law, media and social media, politics and norms, and tech each discussed and wrote up their draft recommendations over many months, and Hasen then integrated the four subgroup reports into a larger draft report. Committee members then gave feedback on the draft report. The final recommendations in each of the four areas are set out in this final report.

This report of the Ad Hoc Committee for 2024 Election Fairness and Legitimacy represents the personal views of its members in their personal capacities. Members do not speak for their employers, organizations, or funders. The views expressed here are those of the Committee members and do not represent the views of the Safeguarding Democracy Project as an organization or its funders.



Photo credit: Rob Crandall, Shutterstock.com

RECOMMENDATIONS

LEGAL RECOMMENDATIONS FOR 2024

RECOMMENDATION 1

Those who write rules governing the electoral process should ensure that they are clear before the process starts, and promote early resolution of election-related disputes when feasible.

Public trust in the 2024 election could be greatly bolstered by ensuring that the rules governing the election are established and clear well before the voting period starts, and that disputes relating to the election or electoral process are resolved as early as possible. Early resolution of disputes increases the likelihood that they will be resolved fairly, based on legal rather than political considerations, because the specific beneficiaries of various potential outcomes will probably not yet be known definitively. Voters also may be more likely to accept the determination of an administrator, court, or other decisionmaker as legitimate when the outcome of a particular contested race does not directly hinge on such a determination. In addition, early dispute resolution allows issues to be researched and briefed more thoroughly and gives decisionmakers time to calmly and dispassionately consider the matter outside the rushed, harried, and politically charged atmosphere of a contested election.

Moreover, when a resolution is reached well in advance of an election, election officials and voters have more of an opportunity to familiarize themselves with the new rules or procedures, reducing the risk of mistake or confusion. And when plaintiffs file well before voting is imminent, the so-called *Purcell Principle*⁷—which has evolved from the

application of traditional equitable principles on a case-by-case basis into a significantly stronger admonition against granting election-related relief shortly before a voting period commences⁸—will not bar federal courts from granting relief. Resolving important legal issues well in advance of an election eliminates the need for courts to weigh the potential negative impact of last-minute changes when crafting relief.

“Early resolution of disputes increases the likelihood that they will be resolved fairly, based on legal rather than political considerations, because the specific beneficiaries of various potential outcomes will probably not yet be definitively known.”

Early in 2024, election officials, state attorneys general, and other appropriate decisionmakers should issue regulations or legal guidance to clarify ambiguous provisions, fill interstitial gaps, or otherwise resolve areas of uncertainty regarding their state’s electoral process. For example, many statutes governing the authority of county- and state-level canvasses are brief and frequently fail to identify limits on canvassers’ authority. Canvassers have taken advantage of such laws in recent years to attempt to reject valid election results for frivolous reasons.⁹ Similarly, though Congress has made substantial progress by enacting the Electoral Count Reform Act,¹⁰ it should adopt a statute or joint resolution expressly addressing issues about which the ECRA remains silent to further reduce opportunities for mischief. Potential revisions include identifying the circumstances under which Congress may reject electoral votes may be rejected as not “regularly given,”¹¹ and specifying the rules governing late cast electoral votes, “faithless” votes (particularly in states that either do not bind their electors or whose binding laws do not expressly empower state officials to reject “faithless” electoral votes),¹² or votes for deceased or imprisoned candidates.¹³

Political parties, candidates, and third-party groups should be encouraged to bring any litigation challenging the validity of an election statute or regulation as far in advance of the election as practicable. Courts should facilitate such early challenges, including pre-enforcement challenges, as necessary by lenient applications of standing (for litigants who face the threat of concrete injury from a challenged legal provision) and ripeness doctrines. Justiciability requirements should not be construed to require such litigation to be brought close to, or during, the voting period for the election.¹⁴ Reducing potential barriers to pre-election litigation in this manner also puts courts in a better position to

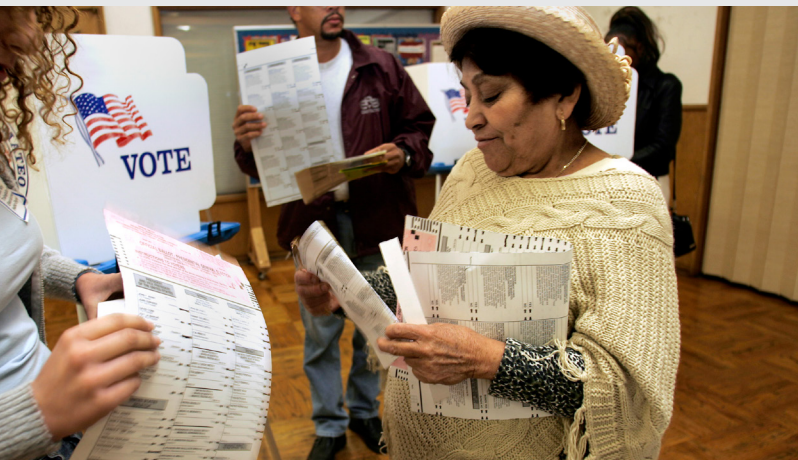


Photo credit: Liz Hafalia San Francisco Chronicle, Associated Press

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

reject unnecessarily belated post-election challenges to votes that have already been cast.

Along those lines, courts could further encourage timely litigation through doctrines prohibiting plaintiffs who could have sued earlier from bringing post-election challenges to the validity of votes that were cast in accordance with legal provisions or court orders in effect during the election. Courts may invoke laches—a doctrine giving courts discretion to reject suits when a plaintiff waits too long to sue—to bar plaintiffs from seeking injunctions or other forms of equitable relief on the grounds those plaintiffs prejudiced the defendant election officials, as well as voters, by unnecessarily waiting until after the election to pursue their claims.¹⁵ Courts may also invoke equitable considerations, such as the “balance of hardships” and “public interest” factors in the test for injunctive relief,¹⁶ in lawsuits that were unnecessarily delayed until after an election as a basis for refusing to issue injunctions invalidating votes.¹⁷

Disputes around candidate eligibility likewise should be resolved at the earliest opportunity—if possible, before a candidate’s name appears on the ballot, and especially before the candidate prevails. There would be a substantial likelihood of public unrest if Congress were to determine that the winning presidential candidate were constitutionally disqualified from serving and refuse to count electoral votes for that person.¹⁸

This issue may have particular salience for the 2024 presidential election. Section 3 of the Fourteenth Amendment prohibits any federal or state officer who swore to support the Constitution and subsequently engaged in “insurrection or rebellion” against the United States, or gave “aid or comfort to the enemies thereof,” from holding civil office under the United States.¹⁹ This provision raises a range of unsettled legal questions. The possibility of major post-election unrest might be substantially reduced if any uncertainty about candidates’ potential disqualifications under § 3 of the 14th Amendment were resolved well in advance of the election. It may be possible for election officials or state courts to entertain ballot-access challenges under § 3 of the Fourteenth Amendment to potential presidential candidates. Scholarly debate exists, however, as to whether Congress would have to enact a statute to authorize such challenges, as well as whether either Congress’ constitutional prerogatives or federalism-related concerns arising from the national nature of modern presidential elections²⁰ would preclude potentially inconsistent state-by-state qualification determinations to exclude a candidate from a presidential preference primary ballot or general election ballot.

“The possibility of major post-election unrest might be substantially reduced if any uncertainty about candidates’ potential disqualification under § 3 of the 14th Amendment were resolved well in advance of the election.”

Recommendation 2

States should adopt permanent, general election emergency statutes to protect the right to vote.

Most election reform discussions tend to focus on the rules that generally govern the electoral process. States should also enact general, permanent election emergency laws to ensure election officials have the authority necessary to conduct elections despite unexpected contingencies such as natural disasters,²¹ pandemics,²² terrorist attacks,²³ or other calamities. States respond to emergencies that impact the electoral process in a range of ways. Many states rely on general state-of-emergency laws that empower the Governor to suspend state laws—either any laws, or “regulatory statute[s] prescribing procedures for the conduct of state business”—during declared states of emergency when enforcing them would jeopardize public safety.²⁴ Others, in contrast, enact emergency-specific statutes, modifying or suspending certain rules governing the electoral process only for certain elections in response to a particular disaster.²⁵ A few states require election officials to develop plans for addressing emergencies²⁶ or delegate to them the authority to act, either on their own or with the approval of the legislature²⁷ or court,²⁸ to modify election rules under such circumstances.²⁹

In recent years, some states have been going even further by enacting election modification laws that allow officials to take designated steps to modify or suspend particular rules or procedures in the electoral process when a natural disaster or other crisis has made it impracticable or too dangerous to apply the standard procedures. Virtually every state has laws authorizing emergency departures from certain discrete rules, such as statutes allowing election officials to relocate polling places that become inaccessible or unusable due to a disaster³⁰ or to use paper ballots when electronic equipment becomes inoperable.³¹ Beyond such narrow statutes, some states allow election officials to suspend restrictions or requirements for absentee voting during emergencies,³² modify residency restrictions for voter eligibility³³ or ballot-access requirements for potential candidates,³⁴ or conduct voting outdoors.³⁵ Several states adopt a different approach, instead allowing election officials to postpone certain kinds

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

of elections—ranging from only local or special elections to all races other than federal general elections—during emergencies.³⁶

States should adopt permanent election emergency statutes to clarify which officials have authority to determine that an election emergency has occurred, and specify the measures various actors may take to ensure that unexpected disasters do not undermine the electoral process or violate people’s constitutional right to vote. Existing election emergency laws, scholarly analysis, and model frameworks can provide helpful guidance for states seeking to craft such statutes. States should consider forming an independent non-partisan commission with diverse representation, including election officials, public health officers, election security experts, emergency responders, disability advocates, the state National Guard, computer scientists or other networking experts, and others of varying backgrounds to make recommendations concerning a general election emergency law to ensure that it could not be used to disenfranchise voters or increase burdens on voters.

Carefully drafted statutes would eliminate disputes or uncertainty over the scope of election officials’ power or the legitimacy of their actions. Such election emergency laws should empower election officials to authorize a wide range of secure alternate voting procedures so they are able to respond to a broad range of unpredictable threats. By authorizing modifications to various election-related procedures or requirements through clearly specified processes and under specific circumstances in advance of a particular crisis or election, a legislature can reduce the concern that such modifications would be made for political purposes. Empowering election officials to adequately address unexpected crises will also reduce the need for *ad hoc* emergency litigation, which puts courts in the position to

impose their own remedies, often at the behest of a partisan campaign or political party, in the midst of an ongoing emergency as a matter of constitutional law.³⁷

“By authorizing modifications to various election-related procedures or requirements through clearly specified processes and under specific circumstances in advance of a particular crisis or election, a legislature can reduce the concern that such modifications would be made for political purposes.”

These statutes should authorize modifications to each stage of the electoral process, including candidate qualification, voter residency requirements, absentee voting eligibility (for states that employ for-cause voting), and polling place locations and procedures. Legislatures should likewise consider what “red lines” to include, identifying measures election officials are barred from taking, even during a declared emergency. Expressly prohibiting the return of completed ballots via the Internet, for example, is one such “red line.” North Carolina offers another example of a red line, though we do not take a position on the particular policies it precludes. North Carolina law empowers the Executive Director of the State Board of Elections authority to “conduct an election” in any district where a natural disaster disrupts the normal schedule,³⁸ but specifies that the Director “[u]nder no circumstances” may either send absentee ballots to voters who failed to submit valid request forms or require the election to be conducted “using all mail-in ballots.”³⁹ Virginia, by comparison, allows the Commissioner of Elections to “designate alternative methods and procedures” for requesting and returning absentee ballots during a declared emergency, but prohibits the Commissioner from “authoriz[ing] the counting of any absentee ballot returned after the polls have closed.”⁴⁰

In crafting election emergency statutes, states should consider whether they wish to allow election officials to exercise emergency authority on their own, or instead require them to seek court approval. Such statutes should also require election officials to address emergencies primarily by modifying the rules governing the conduct of the election. Postponing the election or extending the deadline by which ballots must be returned or other deadlines voters have had ample opportunity to satisfy are more extreme remedies that should be reserved only for extreme situations where other types of modifications would be insufficient to allow the election to proceed.⁴¹ Moreover, in federal elections, federal law might constrain the power of a state to change the date



Photo credit: Associated Press

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

of the election. States should also consider establishing, in advance, a procedure or remedy to address a disaster close to, on, or shortly after Election Day that causes the destruction of completed absentee ballots that have not yet been tallied.

Recommendation 3

States should strengthen laws to protect election officials from violence, threats of violence, and intimidation, and alleviate unnecessary burdens on such officials.

Since the 2020 election, election officials throughout the nation have faced increasingly more frequent threats of physical violence. According to one recent poll, nearly one-third of election officials have been “harassed, abused, or threatened.”⁴² These threats have led unusually high numbers of election officials from various jurisdictions to resign.⁴³ Less than three months before the 2022 primaries, for example, all three employees of the Gillespie County elections office resigned due to “threats and even stalking.”⁴⁴ At nearly the same time, the County Recorder and Elections Director for Yavapai County, Arizona, quit for the same reasons.⁴⁵ Ruby Freeman and Wandrea “Shaye” Moss, two Georgia election workers, falsely accused by Trump attorney Rudy Giuliani of engaging in fraud in connection with the 2020 U.S. presidential election, have faced threats and sued for defamation.⁴⁶ Nationwide, approximately 20% of local election officials have stated they may quit before the 2024 election in response to such threats, which would lead to substantial losses of institutional knowledge.⁴⁷

States should strengthen laws prohibiting threats against, and harassment of, election officials, while also ensuring vigorous enforcement of existing restrictions. Election officials are entitled to perform their job safely, and states have a strong interest in retaining experienced personnel who are able to help ensure elections run smoothly. Moreover, qualified candidates will not choose to become election officials or otherwise assist with the electoral process if such service will attract threats to themselves or their families. Failing to investigate threats and prosecute offenders will likely embolden offenders and encourage others to engage in similar behavior, further jeopardizing our electoral system.

“Failing to investigate threats and prosecute offenders will likely embolden offenders and encourage others to engage in similar behavior, further jeopardizing our electoral system.”

States may further protect election officials in a range of other, less direct ways. For example, election officials’ home address should be treated as confidential information in voter registration records and for purposes of the state’s freedom of information statutes. In many jurisdictions, the address information for judges and certain other officials already receives such protection. States should also permit election officials who have been subjected to credible threats to use election-related funding to purchase and maintain home security systems to protect themselves and their families. They should also make resources available to enable police officers or security guards to be posted at election offices when such credible threats have occurred, for the safety of both election officials and voters. When law enforcement is present at polling places, safeguards should be put in place to ensure that their presence does not have a deterrent or intimidating effect on voters seeking to lawfully cast ballots, including voters of color who had been the target of earlier efforts.

In addition to addressing threats of physical violence, states may alleviate unnecessary burdens on election officials in a range of other ways. For example, some states in recent years have enacted laws that punish, or increase the penalties for, election officials who violate the state election code.⁴⁸ While criminal laws have long prohibited intentional misconduct by election officials,⁴⁹ states should reform their election codes as necessary to ensure that election officials are not punished for unintentional mistakes or even ordinary negligence in good-faith attempts to perform their duties. Election officials’ errors or incompetence generally should be handled through administrative and internal disciplinary or employment-related channels rather than the criminal justice system. States will find it difficult to hire or retain the most qualified personnel if election officials face a risk of substantial criminal penalties for innocent mistakes that occur in the course of their work.



Photo credit: Associated Press, Chicago Tribune

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

Recommendation 4

States should promote transparency and security in the electoral process.

Because election officials have such important responsibilities, as well as access to information and systems which could be abused to undermine the electoral process, governmental entities at all levels should be cautious about who is hired to serve in these important positions. States should take reasonable steps to protect against “insider” threats by ensuring that the people they hire support the work of their offices and do not seek to sabotage or undermine it.⁵⁰ (See **Recommendation 17** for more specific recommendations.) Beyond the hiring stage, the processes and procedures that election officials follow to administer the election should also be revisited with potential “insider” threats in mind. As the Cybersecurity and Infrastructure Security Agency explains, “handling ballots in teams of two,” “robust chain-of-custody procedures,” and “the presence of observers during voting and counting” are all examples of procedures “designed with insider threat mitigation in mind.”⁵¹

Greater transparency throughout each stage of the electoral process may also help to both bolster public confidence in the electoral process and reduce at least some threats to election officials. Granting members of the public opportunities to meaningfully observe important steps in the electoral process while preserving voter privacy—such as confirming voter identity, determining whether individuals have already cast a ballot, engaging in signature verification, or processing ballots through tabulators—can make it more difficult for fabricated conspiracy theories or other misinformation to spread.⁵²

States should provide ample opportunities for political parties and others to send trained poll watchers to observe election operations. Local election officials should have the authority to call for the immediate removal of any poll watchers—including those from a different region of the state—who disrupt the electoral process or illegally intimidate voters, disqualify such individuals from future service, and recommend potential prosecution where appropriate. Livestreaming election operations where reasonably possible may bolster public confidence even further by allowing the average voter to see for themselves election officials’ diligence and care.⁵³ In short, enhancing both security for election officials and the transparency of the electoral process will enhance the likelihood that the 2024 election runs smoothly and make it more difficult for disappointed candidates to maintain baseless challenges to its results.

Recommendation 5

States should reduce opportunities for baseless conspiracy theories by promoting rapid determination of election results while ensuring ample and robust voting opportunities for all eligible voters.

States should reform their election administration procedures to enable election officials to accurately determine unofficial election results as soon as reasonably possible following the close of polls on Election Day, while ensuring all eligible voters have ample and robust opportunities to cast their ballots. Lengthy delays in announcing unofficial election results are a substantial contributing factor to baseless conspiracy theories about election fraud, undermining public confidence in the electoral process, and unnecessarily increasing the likelihood of post-election unrest.⁵⁴ The risk of perceived impropriety is exacerbated by the fact that, for a variety of reasons, changes in the apparent results of an election between the interim unofficial tally on Election Night and the final tally have systematically benefited Democratic candidates in recent years; researchers call this phenomenon the “blue shift.”⁵⁵ But no matter which party’s candidates benefit, lengthy delays in determining electoral outcomes run a significant risk of causing the losing candidate’s supporters to become suspicious that improprieties have occurred, even when tallying is conducted entirely in accordance with the law.

“States may adopt measures to avoid unnecessarily long delays in determining election results while preserving robust opportunities to vote for all members of the electorate, including members of historically marginalized groups.”

In Arizona’s 2018 U.S. Senate election, for example, Republican candidate Martha McSally held a 14,000 vote lead over Democrat Krysten Sinema as of Election Night.⁵⁶ By the following Monday, nearly a half-million additional votes had been counted and Sinema prevailed by a 38,000-vote margin.⁵⁷ Notwithstanding efforts to educate the public about the need for lengthy vote-counting periods,⁵⁸ such systematic changes in ballot tallies will contribute to partisan distrust of the electoral process and fuel conspiracy theories. States may adopt measures to avoid unnecessarily long delays in determining election results while preserving robust opportunities to vote for all members of the electorate, including members of historically marginalized groups.

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

States should provide ample and robust opportunities for voting in a variety of ways, including early voting, absentee voting, and Election Day voting. They should nevertheless encourage voters to take advantage, if they are able, of casting their ballots in person during the early voting period or on Election Day. Voting in person ensures a voter's ballot will be accepted as valid, tends to increase voters' confidence in the process, and promotes more rapid determination of election results.

Some members of the ad hoc Committee believe states should consider moving up the deadline by which election officials must receive absentee ballots for them to be valid; others on the ad hoc Committee are concerned that such a change could potentially cause the disqualification of ballots from eligible voters through no fault of their own, because of USPS or other delays. Fortunately, in the 2020 election, very few ballots were received after Election Day, even in states where the deadline changed and became shorter close to Election Day.⁵⁹ As a matter of practice, a majority of states require absentee ballots to be received by the time the polls close on Election Day, but some states accept absentee ballots from domestic voters as many as ten days after Election Day.⁶⁰ The primary benefit of shortening periods for the receipt of ballots is to reduce the extent to which an election's apparent results continue to change after Election Day, shifts which could affect voter trust in election results.⁶¹ This benefit should be weighed against the risk of disqualifying ballots cast by eligible voters solely on the ground that their receipt was untimely. Informing voters of deadlines early and stressing pertinent deadlines as the election approaches can minimize the risk of disqualification.

States should similarly review their deadlines for voters to request absentee ballots, balancing the benefits for election administration and trust with the risks of additional burdens on voters. Many states require absentee ballot requests to be submitted between four and ten days before Election Day. Those on the Committee who support earlier deadlines argue that requiring voters to request absentee ballots more than a day or two before Election Day makes it more practicable for states to require that election officials receive completed absentee ballots by the close of polls on Election Day. They argue that such earlier deadlines have the additional benefit of ensuring that requestors have sufficient time to receive their ballots by mail, complete them, return them by mail, ensure that election officials receive them, and address any problems with the completion or transmission of the ballots.⁶²

States should permit election officials to begin pre-processing completed absentee ballots well in advance of Election



Photo Credit: Rob Crandall, Shutterstock.com

Day. Pre-processing generally involves performing all of the steps to determine a ballot's validity—and, depending on the jurisdiction, scanning a ballot for tabulation—without actually calculating or revealing the tallies. States that receive substantial quantities of absentee ballots but do not permit election officials to begin processing them until shortly before Election Day—or, even worse, on Election Day⁶³—are likely to have substantial delays in determining unofficial election results. To the extent the political preferences of people who vote in person differ from people who choose to cast absentee ballots, pre-processing delays are also likely to cause the ballot tallies to shift between Election Night and completion of the initial tally. Allowing officials to begin pre-processing absentee ballots at least ten days before Election Day is an easy way to improve election administration without burdening voters or giving either political party an advantage.

Finally, there are many steps that states can take to streamline the process for dealing with curing ballots and processing and counting ballots. See **Recommendation 18**.

Recommendation 6

States should reform election administration to ensure ample and robust voting opportunities for all eligible voters and promote public confidence in the electoral process.

States should assess their electoral systems holistically to ensure they are providing ample and robust voting opportunities—particularly for members of historically marginalized communities—in ways that promote public confidence in the electoral process. Historically, states delegated primary responsibility for administering elections to county and local officials. This responsibility often carried with it delegations of authority to promulgate rules governing

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

important aspects of the voting process. Even today, many states continue to grant local officials discretion—at least to some extent—over a range of issues, including hours and locations for early voting, use of dropboxes, the canvassing process, and other policies that may substantially impact people’s opportunity to vote or have their votes counted.⁶⁴ Sometimes, election officials take it upon themselves to implement unique policies. In the 2020 election in the midst of the pandemic, for example, 24-hour voting and drive-thru voting was available only for voters in a single county in Texas;⁶⁵ the legislature subsequently banned the practice.⁶⁶

Differences among county policies may disproportionately impact voters in counties with fewer financial resources or who face other obstacles to voting. States should consider enacting laws to standardize rules that substantially impact voters’ opportunities to cast ballots, as well as the rules for canvassing ballots and determining their validity. Similarly, election officials should likewise seek to harmonize their policies or guidelines, where they have the authority to do so and it would be practicable, to bring about more statewide uniformity. Greater uniformity may also bolster public confidence in the electoral process, by reducing potential perceptions that the rules governing the electoral process facilitate voting to a greater extent in areas of a state that favor a particular political party. While genuine differences exist between rural and urban counties that might justify different policies on certain aspects of the voting process, increasing uniformity and consistency can help promote confidence in the process. Uniformity across counties regarding most substantive rules for obtaining, casting, and counting ballots would typically be the best way of equalizing voting opportunities. With regard to resources, such as funding or the number of polling places or drop boxes, in contrast, the best way to promote equal voting opportunities among counties will often be to allocate them on a pro rata or proportional basis in each jurisdiction.⁶⁷

Congress should also reform the National Voter Registration Act⁶⁸ and Help America Vote Act⁶⁹ to bolster protections against eligible voters erroneously being removed from a state’s voter registration database (which often occurs disproportionately to members of racial minority communities) and ensure the information it contains is accurate and current. The current rules governing voter database maintenance are at least two decades old, and many of them predated the Internet. They are also unclear in several respects, leading to confusion and litigation.⁷⁰

States should be required to take additional reasonable steps to ensure that efforts to update voter lists do not disproportionately target members of racial minority groups

who are eligible to vote. For example, states should require election officials to cross-reference voter data against federal and state databases with methodologies that accurately report applicants’ or voters’ eligibility to vote, including their citizenship status, current residence, and whether the voter is deceased, incarcerated, or subject to a court determination of mental incompetence. Due process protections should be expanded to reduce the likelihood of eligible voters being erroneously removed from voter registration rolls, particularly without their knowledge. States such as Florida that require persons with felony convictions to complete all the terms of their sentences, including repaying fines and restitution, before having their voting rights restored⁷¹ should be required to provide timely, accurate information to both election officials and potential registrants to allow them to confirm their eligibility to register.

In addition, states should share voter information with each other to prevent duplicative records and ensure information remains current. States should likewise ensure the accuracy of the information in their voter databases and avoid procedures or algorithms for cross-referencing voter records with other databases that disproportionately and incorrectly flag racial minorities.⁷² For example, in 2019, Texas was forced to abandon an effort to update its voter registration records by confirming the citizenship of 98,000 registrants and investigate ineligible voters, because at least a quarter of those people had been erroneously identified as potential non-citizens despite having been naturalized before registering to vote.⁷³ Ensuring that eligible voters are included in the voter registration database, while incorrect, outdated, or fraudulent records are corrected or removed, are nonpartisan goals that would greatly bolster public confidence in the electoral process and remove potential grounds for baseless conspiracy theories.

States should similarly revisit other aspects of their election administration rules to ensure they strike the appropriate balances among ensuring that all eligible voters—particularly members of historically marginalized and underrepresented groups—have adequate opportunity to cast their ballots and have them counted; minimizing the likelihood of mistakes, irregularities, accidents, fraud, or other problems that could impact the electoral process; and enhancing public confidence in the electoral system and its outcomes. For example, states should adopt reasonable requirements to allow election officials to authenticate absentee ballot requests and absentee ballots without imposing undue burdens on voters. One potential way of achieving this goal is to collect, for each voter, a driver’s license number, state non-driver ID number, or the last four digits of their social security number, and then require voters to put those numbers on their ballot request form and ballot

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

return envelope to confirm their identity. States that adopt such an approach must ensure they have collected such information from voters—particularly elderly and minority voters—before implementing this practice to ensure eligible voters are not denied ballots due to administrative problems.



Photo credit: Felipe Sanchez, Shutterstock.com

Another example of a way states might choose to strike a balance among these goals is by allowing voters to return absentee ballots through dropboxes or at polling places, but allowing ballot collection and delivery only by the voter herself or a member of her immediate family, a caretaker, or other similar individual. Particularly in states that rely heavily on voting by mail, expanding access through dropboxes while limiting third parties' involvement with absentee ballots may be one way to reduce barriers to voting while addressing concerns about potential election interference.

Recommendation 7

Congress and the states should ensure adequate public funding for elections and fair, non-partisan allocation of any emergency private funding.

One of the potentially least controversial ways to improve the administration of the 2024 election is to increase funding available for election officials. Congress should provide states with sufficient regular funding to conduct free, fair, and secure elections. It is important that such funding be regular so that election officials may include it in their budgets. When funding is sporadic, election officials may hoard funds in case unexpected needs arise, rather than spending them immediately to improve the system in the way Congress intended.⁷⁴

Among the main sources of election funding have been General Improvement Grants (more recently referred to as election security grants⁷⁵) administered through the U.S. Election Assistance Commission, which allow states to improve aspects of election administration they deem most pressing. Funding is uncertain and varies substantially each year. The 2018 Consolidated Appropriations Act made \$380 million in funding available;⁷⁶ that figure dropped to \$75 million in the Consolidated Appropriations Act for 2023.⁷⁷ Each state is guaranteed to receive at least \$1 million if it satisfies a 20% match requirement,⁷⁸ down from a \$3 million guarantee and a 5% match requirement in 2018.⁷⁹ Congress also appropriated \$400 million in the CARES Act to help election officials attempt to remediate the threat that COVID-19 posed to the electoral process,⁸⁰ despite estimates that at least \$2 billion was necessary.⁸¹ If Congress chooses to provide permanent, stable federal funding to improve the election administration process, it should be adopted in a non-partisan manner, without controversial conditions or riders that leverage such funding to compel states to adopt election-related rules favored by only one of the major parties.

“Congress should provide states with sufficient regular funding to conduct free, fair, and secure elections.”

States should similarly ensure adequate funding for local governmental entities such as counties or municipalities which are primarily responsible for conducting elections. Requiring municipal entities to fund their electoral systems mostly through locally raised funds may contribute to substantial disparities in per-voter election-related expenditures and corresponding inequities in voting opportunities. Increased election funding would allow election officials to improve election administration in a broad variety of ways, including hiring more personnel; updating voting machines and optical scan equipment; purchasing new equipment to process voter mail; enhancing network security; and increasing public engagement. States should also provide sufficient resources to local personnel to respond to unusually large and burdensome requests for copies of election-related records, which have become significantly more common since the 2020 election.⁸²

The availability of stable, predictable, sufficient public funding for elections recognizes that maintenance of the electoral process is a core governmental responsibility. During the 2020 election, the Center for Technology in Public Life—relying in large part on \$350 million in donations from Mark Zuckerberg and Priscilla Chan⁸³—provided hundreds of millions of dollars

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

in private funding to local election agencies throughout the nation. Election officials should not have to rely on private parties to ensure adequate funding of elections, though it may be necessary as a last resort in unforeseen crises. Accordingly, funding for election administration should be public, and election officials generally should not accept funds or other resources from private parties, with the possible exception of when extreme emergencies such as the onset of COVID-19 unexpectedly arise in the midst of an ongoing presidential election.

Election systems should not depend on such large infusions of funding from private sources. The possibility exists that some private funders might allocate grants in a partisan manner, giving unfair advantage to municipalities or areas of a state believed to favor the funder's preferred candidates. And private funding may undermine public confidence in the electoral system, leading some voters to believe that wealthy benefactors are manipulating the system to gain preferential treatment or unfair advantages for their preferred parties or candidates. Many states have enacted statutes completely prohibiting private parties from providing election funding or strictly limiting it.⁸⁴

States that choose to accept private funding in emergency circumstances should ensure any allocation of such contributions occurs in a fair, non-partisan manner, according to a transparent formula. One example of a potentially effective way of allaying concerns about private funding of election administration would be to require that any private emergency funding be provided to the state's Chief Election Officer, to be disbursed proportionally among counties based on their respective numbers of registered voters. Any such restrictions on private funding should contain express exceptions allowing election officials to continue to accept donations of space on private property to use as polling locations, as well as bottled water to distribute to voters at polling locations. These laws should further clarify that election officials acting in their individual capacities may accept pro bono legal representation for acts performed in the course of their duties, to the extent permitted by generally applicable restrictions on gratuities and gifts to public officers.⁸⁵

MEDIA AND SOCIAL MEDIA RECOMMENDATIONS FOR 2024

Recommendation 8

News organizations and nonprofits should fund, develop, and implement training workshops to improve reporters' understanding of election processes and relevant election

law, and to help develop relationships between election professionals and journalists. Special attention should be paid to helping local and non-English language news outlets.

The media's coverage of election administration has improved substantially in recent years. News outlets published a number of impressive pieces during and after the 2020 election explaining the process by which an accurate vote count is conducted and debunking misinformation about the process. In addition, several major outlets have assigned teams of reporters and editors to cover elections and democracy.

Still, the percentage of Americans who express doubts about the legitimacy of elections remains alarmingly high. Social media and alternative "news" outlets claiming to be unbiased continue to proliferate and to spread misinformation, fueling uncertainty and distrust.

In addition, public trust in the media remains low and mainstream news organizations — especially at the local level — are losing staff and resources at a rapid rate. Bankruptcies in news organizations are only exacerbating this problem. As a result, experienced journalists who covered past elections will likely be replaced, if at all, in 2024 by reporters who are new to the beat and are spread thin across a number of issues, leaving them with little time to learn the intricacies of the election process.

Those seeking to undermine trust in the voting process have exploited these factors, making it more crucial than ever for the media to improve its coverage of elections and democracy. News outlets must act quickly to train reporters and editors on how to meet these challenges as we approach what will be an especially fierce battle for votes in 2024.

In particular, we recommend the following:

- **Media outlets and reporting programs should offer more courses and workshops on the mechanics of running elections.** Journalists need to understand the complexities of the voting process so that they can inform the public and more easily recognize false and misleading information. This training should include coverage of the basics of election administration and election law, and also provide advice to reporters on how to cover the spread of misinformation without amplifying it. If possible, journalists should be instructed on other potential threats to safe and secure elections, such as cyberattacks and AI tools.

This training can be provided at journalism schools or as part of professional development programs, such as those

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

offered to journalists by the Poynter Institute, the American Press Institute, the National Press Foundation, and other nonprofits. Several of these groups have provided guidance on covering elections in recent years;⁸⁶ we encourage them to continue and expand their offerings.

Resource guides are especially helpful for reporters who are new to the topic and working on a tight deadline. The American Press Institute and a project called Election SOS compiled a list of nonpartisan election administration experts for reporters to consult as sources in 2022.⁸⁷ We encourage the expansion and updating of such lists.

These guides could also include contact information for the many organizations involved in overseeing elections, such as the National Association of Secretaries of State, the Election Center, the U.S. Election Assistance Commission, and the Federal Election Commission. There are also numerous nonprofits, such as the Bipartisan Policy Center, that work closely with election officials and are valuable sources of expertise. Election experts should try to make themselves available whenever possible to members of the media.

- **Journalists should try to connect with local election officials before Election Day controversies and misinformation emerge.** Election officials should also reach out to local media as early as possible to help ensure accurate coverage. These frontline professionals know more than anyone about how the process works, the challenges they face, and the questions voters most frequently ask. One valuable approach is to bring journalists in for extensive tours of election offices, which helps them learn about the process and in turn better explain it to voters. Facilitating these connections also helps ensure that reporters can get timely answers to questions when they arise.
- **We recommend that all these efforts be directed at as broad an audience of journalists as possible, especially reporters and editors from non-English media outlets.** For example, the nation's Hispanic voters are increasingly reliant on social media for information, which makes them more susceptible to online misinformation.⁸⁸ However, this misinformation is more likely to be in Spanish than in English. Online Vietnamese misinformation has also reportedly circulated widely in the American Vietnamese community, seemingly helping to inspire, for instance, the flag of South Vietnam being flown at the Capitol on January 6.⁸⁹ Translating 2024 coverage into locally predominant languages will also be important for English-language outlets.

Recommendation 9

The media should make a special effort to inform the public about the process of counting ballots and when the public should expect complete results, framing incomplete results as “too early to call” rather than as one candidate being “in the lead.”

In light of the growing use of mail ballots, we recommend that the media make a special effort to inform the public about the process of counting ballots and when they can expect complete results. It appears that many voters were confused in 2020 by the shift in vote margins after the evening of the election, which was the result of the ongoing count of legitimate mail ballots. This shift created an opening for people on the losing side to allege widespread fraud and seek to undermine confidence in the election. While media outlets tried to prepare voters for this so-called “blue shift”⁹⁰ or “red mirage” in 2020, more needs to be done in 2024. It is crucial that news stories about elections repeatedly and clearly explain how voters' ballots are being counted, how many ballots remain to be counted, and when final results might be available. Election night projections based on partial returns should be avoided or only made when news outlets have the highest confidence in their accuracy.

In particular, media should avoid framing incomplete results before many ballots are tallied as a candidate being “in the lead.” The better framing is that in such races results are “too early to call.”

As jurisdictions follow **Recommendation 5** on speeding the production of election results, the need for this recommendation will diminish over time.

Recommendation 10

Journalists should continue prioritizing accuracy over false equivalence in their coverage of election-related issues and disputes. When reporting on demonstrably false claims, journalists should use the “truth sandwich” approach — i.e., start with the facts, describe the false claim, and then explain why the claim is inaccurate.

Too many journalists treat both sides of debates over election integrity as equally valid even when one side bases its arguments on clear falsehoods. This style of coverage does a disservice to the public. Journalists can maintain political neutrality while still reporting the truth. Avoiding “he said,” “she said” coverage will better inform their audience.

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

Journalists reporting on demonstrably false misinformation should strive to begin their stories with the facts before describing the falsehood and then reiterating the facts. The purpose of this so-called “truth sandwich” is to avoid amplifying misinformation by giving it credibility and too much prominence. Journalists should also avoid repeating words and phrases used by those spreading the misinformation such as “the election was rigged.”

“TRUTH SANDWICH”

Linguist George Lakoff defines a “truth sandwich” this way:⁹¹

1. Start with the truth. The first frame gets the advantage.
2. Indicate the lie. Avoid amplifying the specific language if possible.
3. Return to the truth. Always repeat truths more than lies.”

Many news outlets have adopted this approach since 2020. However, the practice is far from universal, doing a disservice to voters.

Recommendation 11

Social media and website platforms should preserve their capacity to address false information about when, where, and how people vote and other threats to free and fair elections by maintaining policy and trust and safety teams, fact-checking programs, voter and election information centers, and transparency reports and tools. They should do so while recognizing the importance of robust political speech in a democracy.

In recent months, trust and safety teams have been reduced or eliminated at Meta, X (formerly known as Twitter), and Alphabet, diminishing the capacity of platforms to counter election misinformation and other potentially harmful content.⁹² Corresponding changes have been made to platform policies such as allowing denial of the legitimacy of the 2020 election on YouTube and reinstating Trump’s accounts on X, YouTube, and Facebook/Instagram.⁹³ Fears have also grown that reduced platform transparency will diminish the ability of journalists, civic groups, and scholars to track and study misinformation. Meanwhile X in particular has alienated reliable sources of information such as NPR and

PBS while opening itself to claims of partisan bias by hosting the campaign announcement of a 2024 Republican candidate for the presidency.⁹⁴ Facebook’s CrowdTangle tool faces an uncertain future,⁹⁵ and X and Reddit have imposed prohibitive costs on users of platform data,⁹⁶ endangering research into content and behavior on the platforms.⁹⁷

“These reductions in content moderation capacity and data transparency threaten to worsen the information environment during the 2024 campaign.”

These reductions in content moderation capacity and data transparency threaten to worsen the information environment during the 2024 campaign. It is vital for platforms to maintain their existing programs (e.g., third party fact-checking and voter/election information centers at Meta), to reinvest in the staff and technical capacity necessary to monitor and respond to misinformation, and to provide the transparency reports and tools that third-party experts and groups need to monitor their performance and identify emerging threats.

Platforms must be careful in policing election-related speech to not squelch robust political speech that assists voters in making electoral choices.

Recommendation 12

Platforms should provide regular transparency and risk assessment reporting in the context of U.S. elections.

Stakeholders frequently object that platforms provide limited information about the details of their content moderation work and its impact on democratic processes and institutions. In response, platforms have provided more information regarding government demands such as requests for user data. But transparency into platform governance itself remains woefully limited. As a result, it can be difficult for researchers, journalists, and activists to respond meaningfully to problems they see on the platforms. This opacity has also enabled the spread of conspiracy theories about platform behavior.

All platforms should improve their transparency reporting by regularly providing detailed information about the scale of election misinformation and electoral interference and the steps that they are taking to address them. Platforms should also provide secure data access to researchers who can analyze behavioral data and translate it for non-specialist audiences, especially legislators, who need to know the nature

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

of the problems as they determine appropriate policy or legal responses. If platforms are unwilling to provide such access voluntarily, Congress should enact appropriate legislation.⁹⁸

In addition to greater transparency, platforms should conduct risk assessments well in advance of the 2024 elections to identify key threats to the integrity of the electoral process. These assessments should be made public and/or vetted with non-company stakeholders and experts to ensure that they identify the most important risks and effective mitigation plans.

None of these steps should be onerous for the platforms. The largest ones are already subject to risk assessment and transparency requirements under the EU's recently adopted Digital Services Act, which include threats to democratic institutions. They have no excuse to avoid such reviews in the context of similar threats in the U.S.

POLITICS AND NORMS RECOMMENDATIONS FOR 2024

Recommendation 13

Election officials, government leaders, and others should embrace the democratic principle that all eligible voters, and only eligible voters, should be able to register and vote in a fair election free of intimidation with orderly vote counting. Should unexpected events occur during elections, they should rely as much as possible on existing election rules and infrastructure to run elections. If new measures must be taken, they must honor the principle of allowing all and only eligible voters to vote freely and fairly.

Our core democratic commitment is to a system that accurately reveals the will of the people in all stages of voting and representation. This can only happen if the electoral system fosters conditions and rules that do the following:

1. They enable voters to make choices that are informed (that result from having, for example, freedom of speech, association, and the press) and autonomous (that result from being free of intimidation and undue influence);
2. They encourage full and inclusive participation; and
3. They secure the process of casting and counting ballots from fraud and error.

Although laws govern the conduct of democratic elections, they are also shaped by a set of informal norms. We should strive for a system that upholds democratic principles that are embodied in both law and norms, one in which all eligible

voters, and only eligible voters, can easily cast a vote free of intimidation that can be fairly and accurately counted. Striking a reasonable balance between competing values of full participation and fraud prevention is a necessary and critical goal, one that must be evidence-based, resolved in good faith, and favoring no party over another.

Given high political polarization, election officials' actions will, for better or worse, be subject to intense scrutiny of political actors, the media, and the public. It must be clear that their work upholds the aforementioned principles. To the extent that special circumstances arise during elections, such as natural disasters, election officials should rely, as much as possible, on existing procedures available to address these scenarios. See **Recommendation 2** (in the law section of this report). If appropriate, some procedures for military and overseas (UOCAVA) voters, which have long been implemented to allow American citizens overseas to cast their ballots, might present one potential solution to problems that arise.⁹⁹ If it is impossible to use any existing procedures to address special circumstances, election officials must implement procedures that best reflect commitment to the aforementioned principles.

Recommendation 14

Losers of fair elections should quickly accept election results. Challenges to election results should only be undertaken pursuant to state and local rules for recounts or contests or under state or federal statutory or constitutional law when there is clear and convincing evidence that democratic principles have been violated. Should post-election disputes arise, they should be resolved consistent with fair election principles, established and trusted practices, and in good faith.



Photo credit: Sipa USA, Associated Press

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

A winner-take-all mentality in a time of high political polarization contributes to claims of stolen and rigged elections. Elected officials, political leaders, and others should embrace basic democratic principles about fair election contestation and should continue to ensure the peaceful transition of power and acceptance of election results when on the losing end of a hard-fought, but fair, election. Candidates, parties, and others have every right to raise bona fide legal claims to resolve close elections or remedy serious election irregularities and mishaps; but lawsuits should not be brought for frivolous reasons or to delay certification of elections or peaceful transfers of power.

“Even if unsubstantiated challenges to election results ultimately fail on the merits, they damage public confidence in elections and disturb the peaceful transition of power.”

Once fair election decisions are final, losers should concede rather than raise unsubstantiated claims of fraud or incompetence. Even if unsubstantiated challenges to election results ultimately fail on the merits, they damage public confidence in elections and disturb the peaceful transition of power. Post-election challenges should thus be undertaken only pursuant to recount and contest provisions, federal statutory law, or under federal constitutional law when there is strong evidence that democratic principles have been violated in the election process. When election officials or other actors attempt to use the dispute process in bad faith, to overturn or delegitimize an election, it should be roundly condemned by both parties and outside groups, including the Commission described in **Recommendation 15**.

Recommendation 15

Nonprofit organizations and foundations should establish an independent bipartisan Commission well before the election to gather and amplify prominent pro-democracy voices warning against the erosion of core democratic norms. The Commission should alert the public to instances of democratic erosion, encourage candidates and other political actors to embrace pro-democracy norms, and weigh in post-election, if necessary, to promote resolution of election disputes in a manner that is consistent with democratic principles.

Nonprofit organizations and foundations should establish a blue-ribbon Commission far in advance of the 2024 general election to clarify, reaffirm, and communicate to the public

the commitment to basic electoral norms. It should also plan for various emergency contingencies that could occur in the 2024 election and offer disseminate solutions to stakeholders far in advance of the election.

Filling the Commission’s membership with credible and powerful pro-democracy messengers is of the utmost importance in ensuring the Commission’s maximal impact. Thus, it should have extensive national and state bipartisan representation. Initially, the priority of the Commission is to include members from the political arena, including former officials who have been elected to statewide or national office. Former public officials who have served in prominent offices, for instance former presidents, congresspersons, governors, etc. from both parties, would be especially valued members of the Commission. The political composition of former political officials should, at a minimum, be balanced to guard against any perceptions or reality that the Commission serves a partisan aim.

The Commission should solicit the participation of notable and trusted individuals who are prominent outside of politics, for instance in entertainment, sports, and business. These individuals would help the Commission reach a wide audience and help reinforce the notion that democratic norms are a concern for every member of society, not only those who are highly politically engaged. Moreover, the Commission should also include members from traditionally underrepresented groups, including racial, ethnic, and language minorities, and persons of differing abilities. Finally, to ensure that the Commission has relevant expertise at its disposal, it should also include as members or advisors subject matter experts from a variety of fields, including election administration, public health, civil rights, media, and democratic norms.

It is important the Commission meet, make plans, and communicate with the public long before the election. First, the Commission should come together to affirm a set of core principles that should govern elections and warn against the erosion of core democratic norms. These norms include the idea that all candidates, parties, and political actors should accept the results of elections that comply with principles of fundamental fairness and to use legal means to resolve election disputes. It also includes the principle set forth in the prior recommendation, that all eligible voters, but only eligible voters, should be able to register and vote in a fair election with accurate vote-counting.

In preparation for communicating with the public, the Commission should consider a wide variety of media outlets and platforms in order to reach as large and diverse a population

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

as possible. Partisan fragmentation of media markets, as well as proliferation of social media platforms, make it difficult to reach a wide audience easily. The Commission should develop competence and make connections necessary to disseminate its messages as widely as possible.

After the Commission adopts its set of principles, it should urge voters and groups to get commitments from politicians, other political actors, and election officials to pledge to adhere to these principles in the upcoming election for the sake of preserving system legitimacy and stability. The Commission should also monitor current events. If it determines that democratic norms are violated and if otherwise appropriate, it should issue warnings and condemn such behavior. It is important that condemnation of political actors come from members of the Commission who are of the same party as those violating democratic norms. It is also important that the Commission condemn norm-violating behavior from all actors. If it determines that certain emergency contingencies pose significant risk of disrupting the election, it should work with stakeholders and experts on and off the Commission to highlight such risks and devise solutions as much ahead of the election as possible.

The Commission should remain available post-election in the event there are disputes over 2024 election results. In a post-election environment, the Commission should weigh in, as appropriate, on the conduct of the campaigns and other political actors in terms of the democratic norms that the Commission articulated at the first stage of its work. The initial Commission work should be funded by an array of foundations, and efforts after the election might be directed into needed legislation to fill in gaps and problems that cannot be handled by voluntary efforts alone.



Photo credit: Associated Press

Recommendation 16

Threats to the administration of elections, from pandemics to natural disasters such as hurricanes, significantly increase the costs of elections. Congress and states should create escrowed funds to deal with increased election costs that might be incurred in the future.

Non-political threats to elections, for instance pandemics and natural disasters, can nevertheless produce deleterious political repercussions and affect the public's perception of elections' legitimacy. Covid will not be the last pandemic. And hurricanes like Michael (Category V) that hit Florida's panhandle weeks before the 2018 midterm election are likely to be more common. Being prepared for the full administrative and political consequences of these non-political threats will require more than having ready emergency plans. See **Recommendation 2** (in the law section of this report). Financial commitments to these plans are vital for the short and long term.

TECH RECOMMENDATIONS FOR 2024

Recommendation 17

Election administrators should review and strengthen measures to secure election systems against insider threats, such as mandatory background checks for vendors and staff with access to critical systems, access controls, and robust chain-of-custody procedures.

The U.S. Department of Homeland Security defines an "insider threat" as "the potential for an insider to use their authorized access or understanding of an organization to harm that organization."¹⁰⁰ These threats can manifest in various ways, including cybersecurity incidents, violence, sabotage, espionage, and theft.¹⁰¹ Insider threat mitigation strategies and measures have long been an important component of cybersecurity resiliency plans of public and private organizations, as well as for election infrastructure. However, there is uneven implementation of robust insider threat protections in state and local election offices across the country.

Unfortunately, some insiders have recently attempted to undermine or harm our elections.¹⁰² While these insiders have been unsuccessful at altering election outcomes, their actions have further eroded public confidence in our elections. Fortunately, there are established common-sense solutions to mitigate these threats, which can also serve to help restore and retain the public's trust in our election administration system.

“While these insiders have been unsuccessful at altering election outcomes, their actions have further eroded public confidence in our elections.”

The U.S. Cybersecurity and Infrastructure Security Agency has identified basic insider threat mitigation strategies that apply to all critical infrastructure sectors.¹⁰³ Recommended tools include database monitoring (to track transactions and block unauthorized access), whitelisting (to block any unauthorized program from being placed on a network), and network flow analysis (to monitor data packets).¹⁰⁴ In addition, CISA published the “Election Infrastructure Insider Threat Mitigation Guide,” which provides an overview of insider threat mitigation measures for the election infrastructure sector.¹⁰⁵

Insider threat tools and measures will vary across election offices because insider threat approaches should be tailored based on “the unique nature of their operating environment.”¹⁰⁶ However, there are at least three mitigation strategies that can be implemented by all, or almost all, elections administrators across the country before the 2024 presidential election.

(1) Election administrators should implement appropriate access controls that limit the level of physical or digital access an individual has to critical systems or structures using the principle of “least privilege,” which only grants access to systems when required to perform their essential functions.¹⁰⁷ Access controls can include video surveillance systems and entry logs of voting equipment storage facilities or require bipartisan pairs to access or change certain information.

(2) Election administrators should review and, as necessary, strengthen their chain-of-custody procedures. CISA notes that “[c]hain of custody is a transparent process to track the movement and control of physical and digital assets by documenting each person and organization that handled an asset; the date and time it was collected, transported, or transferred; and why the asset was handled.”¹⁰⁸ As CISA has recommended, “[e]very election office should have written chain of custody procedures available for public inspection prior to every election ... [because it] is essential to a transparent and trustworthy election.”¹⁰⁹ Robust chain of custody procedures can serve as a deterrent for potential bad actors, and limit the risk that improperly access and manipulation of election systems or assets by threat actors is undetected. The U.S. Election Assistance Commission has identified chain of custody best practices for elections.¹¹⁰

(3) Election officials should implement mandatory background checks for full-time, part-time, temporary or seasonal staff, vendors, and contractors. This is especially important in the elections sector as “[e]very two years, election officials collectively hire over 1 million [workers—] the largest one-day workforce in the nation for a low-paying weekday 10-14 hour stint.”¹¹¹ Colorado, a leader in addressing election threats, has adopted a regulation that restricts voting system access to individuals who have passed a background check and are an employee of the county, a voting system provider, or the secretary of state’s office.¹¹²

Election officials also should be mindful of the appropriate record retention timelines for the documents, videos and other materials created as part of the recommendations above. The timeline should mirror the applicable statutory election materials retention schedule. For federal elections, the retention period is 22 months.¹¹³ State law may require a longer retention period.

Recommendation 18

Election administrators should implement commonsense security and transparency measures that could help to bolster public confidence in elections, including enhanced ballot tracking systems that monitor the delivery, return, and processing of ballots; tools to allow voters to update missing information on ballot envelopes; post-election audits; and measures such as robust electronic pollbook systems and vote centers that aid in shortening the canvass (vote-counting) period.

Ballot tracking systems have been used in many jurisdictions for nearly a decade. Many started as simple outbound and inbound tracking systems only, with voters required to log in to a web service to see their ballot status. Over the years these systems expanded to offer text alerts about ballot status, but many of these systems still only track a few points of ballot processing (such as initial mailing, return received status, and in some cases scanned status).¹¹⁴

The benefits to voters of these services include:

- Ballot-tracking technology lets the voter see that their ballot is on its way to them and whether it has safely arrived once they have mailed it in.
- The voter’s choices remain totally private because voters still need to mail or drop off their ballot; the technology does not give the government a new way to track citizens.

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

- Voters can sign up for proactive updates or alerts about their ballot.¹¹⁵

Ballot tracking may help to increase public confidence and engage a larger portion of the electorate with the state's elections system. But, funding permitting, additional features could offer more opportunities to bolster public confidence at a time when it is urgently needed.

First, election officials should expand the tracking points of voters' ballots. Technology exists in the medical field to track tissue samples from the doorstep of a doctor's office to a medical lab.¹¹⁶ These devices can be retrofitted and attached to existing ballot drop boxes. This would allow a voter to scan their ballot when it is deposited into the drop box, immediately providing an alert to the voter's mobile device, verifying that the voter's ballot has been secured in the drop box. Ballots would be scanned only when they are fully deposited into the drop box.

From this point, election officials should add scan points at every step along the way through final scanning. Additional tracking points should include:

- Arrival at the central count facility from drop box pickup (using in-bound ballot sorting systems, or individual hand scanning for smaller jurisdictions).¹¹⁷
- Signature verification stage (scan point captured during ballot signature capture).¹¹⁸ The voter should be alerted that their ballot and/or signature is under review.
- Signature adjudication phase, which is the point where the voter's signature is verified, requires further review, or has been rejected (and, if rejected, notifications should alert the voter as to how to cure the deficient signature¹¹⁹).
- Opening phase. The voter should be alerted once their eligibility has been confirmed, and the ballot return envelope has been authorized for opening.
- Final scanning phase. At the point when the ballot has been separated from its envelope and can no longer be tracked as a single packet, the voter should receive an alert that their ballot has been sent for counting.

Use of independent verification technology (end-to-end verifiability technology, which can allow voters to verify that their individual ballots are counted in an election) should be considered in order to provide the final critical alert that the voter's ballot has in fact been included in the tally. While use of end-to-end technology is not in

widespread use, this addition would likely enhance voter confidence for those voters looking for added security. Election officials in Idaho, Wisconsin and a limited number of other states have piloted ElectionGuard, a technology product that enables independent verification.¹²⁰

Second, election officials should consider implementing robust tracking technology in post-election audits. In many post-election audits, "batches" of ballots are randomly selected for auditing. Each ballot within these batches can be assigned barcodes that is scanned at each point as the ballot proceeds through the audit process. This type of tracking can be used to measure the productivity of ballot auditing boards, track identified precincts, and verify that the ballots identified for audit have in fact been included in the audit process. This technology is fairly easy to implement and can be used in risk limiting audits as well as standard post-election manual tally audits.

Third, election officials should make efforts to shorten the canvass period, which is often a source of distrust for some voters. Shortening the ballot processing period could help to increase confidence of members of the media, campaigns and voters alike. Uses of technology to shorten the canvas period includes, but are not limited to:

- Deploying e-pollbook systems for use at voter check-in points in polling places or vote centers. Election officials should consider, depending upon their state laws, allowing voters to update their registration data at the point of check in, which would eliminate manual data entry post-election.
- Consider the use of vote centers, if allowed under state law, combined with e-pollbooks to allow voters to vote in any precinct. Vote centers eliminate many provisional ballots, which removes a lengthy post-election component of processing.
- Take steps to streamline and speed up the process by which voters supply missing information necessary to process their vote-by-mail or provisional ballots.

Election officials should take a proactive approach to these recommendations as most are not required under state election laws. While not mandated, they can serve to improve voter confidence while providing a positive narrative against mis- and disinformation.

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

Recommendation 19

Election officials should avoid and prohibit the use of electronic ballot return, except for voters who have no other means at all of returning a voted paper ballot.

A wealth of scientific studies have concluded that there is no known method to guarantee the security of a voted ballot returned through the internet.¹²¹ This includes return by e-mail, upload, fax, phone, or dedicated app (all of which use the internet). In addition, the Cybersecurity and Infrastructure Security Agency, the Election Assistance Commission, the Federal Bureau of Investigation, and other federal bodies have repeatedly issued warnings to states urging them not to implement Internet-based voting.¹²²

The Federal Voting Assistance Program (fvap.gov) has many programs to assist overseas and military voters in getting prompt access to and expedited return of paper ballots. With respect to voters with disabilities, election officials should continue to explore means other than internet voting by which to accommodate voters with disabilities, including assistance voting by mail and remote accessible vote-by-mail systems.¹²³

Jurisdictions should consider electronic ballot return only when there is no alternative means for voting and a voter faces a severe risk of disenfranchisement.

Recommendation 20

In jurisdictions of over 1000 voters, paper ballots should be tabulated by optical-scan computers; ballots should be tabulated in smaller jurisdictions either by optical-scan computers or by hand counting. Post-election audits should be conducted by human inspection of the human-readable portions of the paper ballots.

Studies show that optical-scan computers are quite accurate in counting votes and make fewer mistakes than humans.¹²⁴ In addition, hand counting is slow. This concern is more significant in the United States, which tends to have longer ballots than other countries.¹²⁵ A recent report notes that “[c]ounting all of the contests on them by hand introduces delay, which itself causes uncertainty and makes room for unfounded claims of fraud.”¹²⁶ Of course, election officials using optical scanners to obtain election results should implement best practices to protect against election interference (intentional or unintentional), such as rigorous logic and accuracy testing and robust post-election audits.

Despite the slowness of hand counting, it is an essential feature of post-election audits, which use such counting of a sample of ballots to confirm that the machine-read count is accurate.

Recommendation 21

Where state laws allow citizens to request recounts, election administrators should organize procedures in advance to make manual recounts of paper ballots substantively available at reasonable cost.

Many states provide for on-demand recounts with reasonable labor costs paid by the authorized requestor. However, ballot-handling practices adopted by some jurisdictions in the past few years make it extremely time-consuming (and thus expensive) to find and sort the relevant ballots before counting them.¹²⁷ For example, some systems mingle precincts, towns, or subdivisions together through the use of vote centers or in the way they collect mail-in ballots. In such cases, the cost of recounts can increase by factors of three or even ten.¹²⁸ When recounts are available only to those with substantial resources, citizens may become mistrustful of election results.

Election officials should establish procedures to sort mail-in or dropbox ballot envelopes into precincts *before* opening them. This can be done by hand or, as many jurisdictions do, using readily available high-speed envelope sorters.¹²⁹

Recommendation 22

For states that voluntarily agree, the U.S. Election Assistance Commission should build an online tool to allow paperless voter registration for all eligible voters using the National Voter Registration Form.

Pursuant to the National Voter Registration Act, the U.S. Election Assistance Commission developed a voter registration form that each state must accept and use (National Voter Registration Form or National Form) for use in federal elections.¹³⁰ Currently, all registrants who use the National Form must print out the paper form and submit it to the appropriate state or local election authority.¹³¹ The EAC does not have an online tool that would allow qualified voters to complete or submit the National Form paperlessly. It should develop and implement such a tool in time for the 2024 election.

The benefits of online voter registration (OVR), which include cost savings and more accurate voter registration lists, have long been understood by state and local election officials,

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

policymakers, and appropriators. OVR was first offered in 2002 in Arizona,¹³² which saw voter registration costs plummet from 83 cents per form to 3 cents per online voter registration form by 2014.¹³³ By removing the need for a data entry clerk at an election official's office to manually enter data from a paper form into an electronic database, OVR not only saves time and money, but it also decreases data entry errors, resulting in more accurate voter registration lists and better election security.

Today, forty-two states offer online voter registration.¹³⁴ Because state voter registration requirements and options vary by state, each OVR state has a unique online voter registration tool and voter registration database. For example, some states require registrants to provide the last four digits of their social security number, while at least one state requires registrants to provide their full social security number.¹³⁵ Some states allow registrants to identify as a member of a political party (which often determines in which primary elections the registrant can participate), and some do not.¹³⁶

In some OVR states, outside groups have built or use online tools that allow any agency or group with state authorization to seamlessly transfer voter registration applicant information to the state voter registration database.¹³⁷ The 2014 Presidential Commission on Election Administration encouraged the use of these tools, stating, "The Commission strongly recommends not only that states adopt online voter registration, but that they do so in a way that allows secure and direct data entry by prospective voters through multiple web-based internet portals approved by the state."¹³⁸

The EAC is the only agency authorized to offer voter registration on a national form. As most states have now embraced OVR, it is time for the EAC to offer eligible voters the ability to submit the National Form paperlessly. To seamlessly transfer registrant data to individual states, this tool would require state-specific implementations, which should be built in partnership with the individual states on a voluntary basis. We recommend the EAC build an online tool that will allow National Form registrants to submit their applications paperlessly on a state-by-state basis as the EAC obtains permission from the individual states. The EAC would only be gathering the information for states; it would not be creating any kind of national voter registration database.

Recommendation 23

Election officials should obtain a .gov domain for an authenticated internet presence.

Election officials should obtain a .gov internet domain. The .gov domain is a top-level domain name that was established to easily identify official government accounts. Because .gov is only available to bona fide U.S.-based government organizations, its use signals trust and credibility, which is especially critical when election officials need to distribute important information about emergencies or other timely election administration information that may impact voters. Congress acknowledged this important benefit when it passed the DOTGOV Online Trust in Government Act of 2020, finding that "when online public services and official communications from any level and branch of government use the .gov internet domain, they are easily recognized as official and difficult to impersonate."¹³⁹ In addition, the Cybersecurity & Infrastructure Security Agency (CISA) and the National Institute of Standards and Technology (NIST) provide free monitoring of namespace issued to .gov users. Obstacles and fees facing election officials attempting to migrate to a .gov domain have recently been reduced or eliminated.¹⁴⁰ In 2021, CISA took over responsibility for administering the .gov program, and announced that the \$400 annual fee would be eliminated.¹⁴¹

Recommendation 24

Federal agencies should prepare election officials and voters to respond to artificial intelligence risks in 2024 and invest in technological innovation to defend against AI-enhanced cyberattacks on election infrastructure.

Broader deployment of AI-supported systems has led to legitimate concern regarding the possible increase of risk to elections and democracy as a whole. CISA should take steps to identify and educate election officials and the public on possible risks posed by broader deployment of AI-supported technology and possible mitigations to those risks. To do this CISA should convene AI developers, technology companies, researchers, civic organizations, and election officials to anticipate, evaluate and prepare for AI-related risks to the 2024 election. Specifically, CISA should evaluate the risks posed by AI—deepfake tools and language models—and related election risks including disinformation campaigns,¹⁴² high-volume AI-generated messages to election officials and records requests from fake constituents; and AI-enhanced cyberattacks aimed at election infrastructure.¹⁴³

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

CONCLUSION

The 2020 elections confirmed that confidence in the fairness and legitimacy of the election system in the United States can no longer be taken for granted. Without the losing side accepting the results of a fair election as legitimate, the social fabric that holds democracy together can fray or tear.

It is a testament to election administrators and other responsible parties that the 2020 election was run without major problems and irregularities in the midst of a global pandemic and unprecedented attacks on the integrity of the electoral process. But those attacks have continued, and new threats have emerged with changes in political attitudes, technology, and the economy.

To meet these challenges, members of the Ad Hoc Committee for 2024 Election Fairness and Legitimacy have offered specific solutions in the areas of law, media, politics and norms, and tech that can bolster both the fairness of the 2024 electoral process and the public's acceptance of the results. These suggestions are cross-ideological and meant to ensure a fair process, not to give any candidate or party any advantage.

Adoption of the Committee's 24 recommendations would be a strong step forward toward a safer and fairer election in 2024, and for future elections.

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

Endnotes

- 1 On the emergence of these voting wars, see RICHARD L. HASEN, *THE VOTING WARS: FROM FLORIDA 2000 TO THE NEXT ELECTION MELTDOWN* (2012) and RICHARD L. HASEN, *ELECTION MELTDOWN: DIRTY TRICKS, DISTRUST, AND THE THREAT TO AMERICAN DEMOCRACY* (2020). On declining voter confidence, and correlation of confidence with election results, see Jesse T. Clark, Princeton Univ., & Charles Stewart III, Mass. Inst. of Tech., Election Science, Research, and Administration Conference: *The Confidence Earthquake: Seismic Shifts in Trust in the 2020 Election* (July 15, 2001), at 4, <https://bit.ly/3COEgRP> [<https://perma.cc/UHH5-5E7H>] (“Among all voters, confidence in both one’s own vote and in the nation’s vote gradually declined in parallel in the years 2000 – 2016”).
- 2 For detail and background, see Richard L. Hasen, *Identifying and Minimizing the Risk of Election Subversion and Stolen Elections in the Contemporary United States*, 135 HARV. L. REV. F. 265, 267–82 (2022); Select Committee to Investigate the January 6th Attack on the U.S. Capitol, *Final Report*, H.R. 117–663 (2022) [<https://perma.cc/A7K7-S3SC>].
- 3 JOHN DANFORTH, SEN., ET AL., *LOST, NOT STOLEN: THE CONSERVATIVE CASE THAT TRUMP LOST AND BIDEN WON THE 2020 PRESIDENTIAL ELECTION* (July 2022) [<https://perma.cc/5N5Q-JTBH>]; Cybersecurity & Infrastructure Security Agency, *Joint Statement from Elections Administrator Governing Council & the Elections Infrastructure Sector Coordinating Executive Committees*, November 12, 2020, <https://www.cisa.gov/news-events/news/joint-statement-elections-infrastructure-government-coordinating-council-election> [<https://perma.cc/EF8E-NVQL>] (“The November 3rd election was the most secure in American history.”); Christina A. Cassidy, *Far Too Little Vote Fraud to Tip Election to Trump*, AP Finds, AP, December 14, 2021, <https://apnews.com/article/voter-fraud-election-2020-joe-biden-donald-trump-7fcb6f134e528fee8237c7601db3328f> [<https://perma.cc/8QR5-Q9VH>] (“An Associated Press review of every potential case of voter fraud in the six battleground states disputed by former President Donald Trump has found fewer than 475—a number that would have made no difference in the 2020 presidential election.”); Nathaniel Persily & Charles Stewart III, *The Miracle and Tragedy of the 2020 U.S. Election*, 32 J. DEMOCRACY 159, 159 (2021).
- 4 Naomi Nix & Joseph Menn, *These Academics Studied Falsehoods Spread by Trump. Now the GOP Wants Answers*, WASH. POST (June 6, 2023, 1:56 PM), <https://www.washingtonpost.com/technology/2023/06/06/disinformation-researchers-congress-jim-jordan/>.
- 5 The 2020 ad hoc committee report is archived at: <https://perma.cc/C3X5-URGJ>.
- 6 Videos of the conference are available for viewing at: https://www.youtube.com/playlist?list=PLOkHWP6bM5o17qT4yjZ_o5a8T7xrT4Qsb.
- 7 *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006).
- 8 See Richard L. Hasen, *Reining in the Purcell Principle*, 43 FLA. ST. U. L. REV. 427, 429 (2013).
- 9 See Zach Montellaro, *Lawsuits Likely After Handful of Counties Refuse to Certify Midterm Results*, POLITICO (Nov. 28, 2022, 4:01 PM), <https://www.politico.com/news/2022/11/28/lawsuits-certifying-midterm-election-results-2022-00070992>; Morgan Lee, *GOP Commission Refuses to Certify New Mexico Primary Results Over Distrust of Voting Machines*, PBS (June 14, 2022, 9:08 pm), <https://www.pbs.org/newshour/politics/gop-commission-refuses-to-certify-new-mexico-primary-results-over-distrust-of-voting-machines>; Kathleen Gray, Jim Rutenberg & Nick Corasaniti, *Michigan Republicans Backtrack After Refusing to Certify Election Results*, N.Y. TIMES (Nov. 17, 2020), <https://www.nytimes.com/2020/11/17/us/politics/michigan-certify-election-results.html>.
- 10 Electoral Count Reform Act, Pub. L. No. 117-328, Div. P, 136 Stat. 4459, 5233–41 (codified as part of numerous statutes).
- 11 *Id.* § 109(a), 136 Stat. at 5238–39 (codified at 3 U.S.C. § 15(d)(2)(B)(ii)(II), (e)(1)(A)(ii)).
- 12 *Cf. Chiafalo v. Washington*, 140 S. Ct. 2316 (2020) (allowing states to bind their presidential electors).
- 13 See Derek T. Muller, *Electoral Votes Regularly Given*, 55 GA. L. REV. 1529 (2021) (offering an interpretation of the statutory term “regularly given”).
- 14 Richard Pildes, *Why There’s So Much Legal Uncertainty About Resolving a Disputed Presidential Election*, CONVERSATION (Oct. 30, 2020, 8:48 AM), <https://theconversation.com/why-theres-so-much-legal-uncertainty-about-resolving-a-disputed-presidential-election-146960> [<https://perma.cc/X7DV-DN6P>].
- 15 See, e.g., *Trump v. Wis. Elections Comm’n*, 983 F.3d 919, 925–26 (7th Cir. 2020) (declining to consider post-election challenge to the validity of votes due to laches).
- 16 See *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006) (setting forth test in federal court for permanent injunctions).
- 17 See, e.g., *Donald J. Trump for Pres., Inc. v. Sec’y Pa.*, 830 F. App’x 377, 391 (3d Cir. 2020) (“[T]here is no basis to grant the unprecedented injunction sought here. . . . [T]he public interest strongly favors finality, counting every lawful voter’s vote, and not disenfranchising millions of Pennsylvania voters who voted by mail.”).
- 18 See Electoral Count Reform Act, *supra* note 10 (setting forth grounds for objecting to electoral votes during the joint session of Congress).

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

- 19 U.S. CONST. amend. XIV, § 3. On the scope and rules related to section 3, see William Baude & Michael Stokes Paulsen, *The Sweep and Force of Section Three*, 172 U. PA. L. REV. (forthcoming 2024) (draft available, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4532751).
- 20 See *Anderson v. Celebrezze*, 460 U.S. 780, 794–95 (1983).
- 21 See Michael T. Morley, *Voting in the Wake of Natural Disaster and Terrorist Attacks*, 67 EMORY L.J. 545 (2018).
- 22 See Michael T. Morley, *Voting in Times of Pandemic*, 80 WASH. & LEE L. REV. 359 (2023).
- 23 See Jerry H. Goldfeder, *Could Terrorists Derail a Presidential Election?*, 32 FORDHAM URB. L.J. 523 (2005).
- 24 MICHAEL T. MORLEY, *Election Emergencies*, in OXFORD HANDBOOK ON AMERICAN ELECTION LAW 6 & n.14 (forthcoming 2024) (hereinafter MORLEY, OXFORD HANDBOOK) (draft available, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4542205).
- 25 *Id.* at 9–11. See, e.g., An Act to Enact the Hurricane Florence Emergency Response Act, 2018 N.C. Sess. Laws 2018-134, § 5.3(a)–(b), 3rd Extra Sess.
- 26 MORLEY, OXFORD HANDBOOK, *supra* note 24, at 11 & n.32.
- 27 See, e.g., IOWA CODE § 47.1(2)(a) (2023); LA. REV. STAT. § 18:401.3(A)–(C) (2022).
- 28 See, e.g., MD. LAWS, ELEC. LAW § 8-103(a), (b)(1) (2021); MO. REV. STAT. § 115.024.2–024.3 (2006).
- 29 See, e.g., UTAH CODE ANN. § 20A-1-308(1)–(2) (WEST 2020); N.C. GEN. STAT. § 163-27.1(a)(1)–(3) (2014).
- 30 MORLEY, OXFORD HANDBOOK, *supra* note 24, at 15–16 & n.49–53.
- 31 MORLEY, OXFORD HANDBOOK, *supra* note 24, at 17 & n.56.
- 32 See, e.g., IND. CODE § 3-11-4-1(c) (2021).
- 33 See, e.g., COLO. REV. STAT. § 1-2-102(1)(a)(I.5) (2023); LA. REV. STAT. §§ 18:101(F) (2017).
- 34 See, e.g., OR. REV. STAT. §§ 249.005(1) (2021); GA. CODE ANN. § 21-2-50.1 (2022).
- 35 See, e.g., VA. CODE ANN. § 24.2-649.1(A) (2021).
- 36 See, e.g., DEL. CODE tit. 15, § 7550(h) (2022); VA. CODE ANN. § 24.2-603.1 (2002).
- 37 Morley, *supra* note 22, at 433.
- 38 N.C. GEN. STAT. § 163-27.1(a)(1)–(3) (2020).
- 39 *Id.* § 163-27.1(d)(1)–(2) (2020).
- 40 VA. CODE ANN. § 24.2-713 (2013); *cf.* OKLA. STAT. tit. 26, §§ 22-104, 22-105 (2011) (allowing the secretary of the state election board to prescribe procedures for “the counting and recounting of ballots,” but specifying that such manual counts must involve, if possible, people of different political parties).
- 41 *Cf. Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1207–08 (2020) (per curiam).
- 42 Michael Waldman, *The Great Resignation . . . of Election Officials*, BRENNAN CTR. FOR JUSTICE (Apr. 25, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/great-resignation-election-officials>.
- 43 See, e.g., Cat Zakrzewski, *Election Workers Brace for a Torrent of Threats: ‘I KNOW WHERE YOU SLEEP,’* WASH. POST (Nov. 8, 2022, 7:00 AM), <https://www.washingtonpost.com/technology/2022/11/08/election-workers-online-threats/>; Christina A. Cassidy, *Facing Harassment and Death Threats, Some Election Workers Weigh Whether to Stay*, PBS NEWS HOUR (July 8, 2022, 2:36 PM), <https://www.pbs.org/newshour/politics/facing-harassment-and-death-threats-some-election-workers-weigh-whether-to-stay>.
- 44 Monica Madden, *Gillespie County Elections Office Resigns Due to Threats, Stalking*, KXAN (Aug. 17, 2022, 9:59 AM), <https://www.kxan.com/news/local/hill-country/gillespie-county-elections-office-resigns-due-to-threats-stalking/>.
- 45 Associated Press, *Top Election Officials in Arizona County Leave Amid Threats*, U.S. NEWS & WORLD RPT. (July 1, 2022), <https://www.usnews.com/news/politics/articles/2022-07-01/top-election-officials-in-arizona-county-leave-amid-threats>.
- 46 Jacklyn Diaz, *Rudy Giuliani Concedes He Made False Statements Against 2 Georgia Election Workers*, NPR (Jul. 26, 2023, 12:03 PM), <https://www.npr.org/2023/07/26/1190173929/rudy-giuliani-georgia-election-workers>.
- 47 Peter Eisler & Linda So, *One in Five U.S. Election Workers May Quit Amid Threats*, POLITICS, REUTERS (Mar. 10, 2022, 3:05 AM), <https://www.reuters.com/world/us/one-five-us-election-workers-may-quit-amid-threats-politics-survey-2022-03-10/>.

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

- 48 Ryan Teague Beckworth, *U.S. Election Officials Face Their Biggest Threat Yet—Jail Time*, BLOOMBERG (Apr. 19, 2022, 9:01 AM), <https://www.bloomberg.com/news/articles/2022-04-19/jail-threat-dangles-over-election-officials-in-new-gop-vote-laws>; Anthony Izaguirre, *Election Officials Face Fines, Charges in GOP Voting Laws*, ASSOC. PRESS (May 8, 2021, 6:58 AM), <https://apnews.com/article/donald-trump-laws-elections-voting-health-4cb9244c381f1031c9ce20610c79a931>.
- 49 See, e.g., Enforcement Act of 1870, ch. 114, §§ 2–3, 16 Stat. 140, 140–41.
- 50 See, e.g., Zach Montellaro, *Election Officials Fear Copycat Attacks as ‘Insider Threats’ Loom*, POLITICO (July 13, 2022, 4:30 AM), <https://www.politico.com/news/2022/07/13/election-fraud-local-states-00045444>.
- 51 CYBERSEC. & INFRASTRUCTURE SEC. AGENCY, ELECTION INFRASTRUCTURE INSIDER THREAT MITIGATION GUIDE 3 (2020), https://www.cisa.gov/sites/default/files/publications/election_insider_threat_mitigation_guide_508_0.pdf (hereinafter CISA ELECTION INFRASTRUCTURE GUIDE).
- 52 See Rick Pildes, *Election Law in an Age of Distrust*, 74 STAN. L. REV. ONLINE 100, 112 (2022); Rebecca Green, *Rethinking Transparency in U.S. Elections*, 75 OHIO ST. L.J. 779, 813, 816 (2014).
- 53 Green, *supra* note 52, at 809–10, 814. Some committee members believe that states should consider, potentially on a trial or interim basis, allowing registered voters from other counties to serve as poll watchers or polling place officials to assure that it is not impracticable either for each political party to be represented in polling places throughout the state, or for unaffiliated voters to get involved.
- 54 Tom Hamburger, Yvonne Wingett Sanchez & Patrick Marley, *Election Officials Fear Counting Delays Will Help Fuel Claims of Fraud*, WASH. POST (Nov. 7, 2022, 6:00 AM), <https://www.washingtonpost.com/nation/2022/11/07/election-officials-fear-counting-delays-will-help-fuel-claims-fraud/>; Michael Wines, *The Perils of Slow Vote-Counting and Delayed Election Results*, N.Y. TIMES (July 1, 2022), <https://www.nytimes.com/2022/07/01/us/politics/election-delay-vote-count.html>.
- 55 Edward B. Foley, *Big Blue Shift: Measuring an Asymmetrically Increasing Margin of Litigation*, 28 J. L. & POL. 501, 525 (2013). See also David A. Graham, *The ‘Blue Shift’ Will Decide the Election*, ATLANTIC (Aug. 10, 2020), <https://www.theatlantic.com/ideas/archive/2020/08/brace-blue-shift/615097/>.
- 56 Chuck Todd, Mark Murray, Carrie Dunn & Melissa Holzberg, *Say Goodbye to ‘Election Night’ and Hello to ‘Election Week’*, NBC NEWS (June 9, 2020, 5:49 AM), <https://www.nbcnews.com/politics/meet-the-press/say-goodbye-election-night-hello-election-week-n1228206>.
- 57 *Id.*
- 58 See *Voting Outside the Polling Place: Absentee, All-Mail, and Other Voting at Home Options*, tbl. 5: Applying for an Absentee Ballot, Including Third-Party Voter Registration Drives, NAT’L CONF. OF STATE LEGIS. (July 12, 2022), <https://www.ncsl.org/elections-and-campaigns/table-5-applying-for-an-absentee-ballot>.
- 59 Rick Pildes, *There’s a Surprising Ending to all the 2020 Election Conflicts Over Absentee Ballot Deadlines*, CONVERSATION (Apr. 7, 2021, 8:30 AM), <https://theconversation.com/theres-a-surprising-ending-to-all-the-2020-election-conflicts-over-absentee-ballot-deadlines-158010> [https://perma.cc/9LGD-4TU8]. He explains:
- the number of ballots that came in too late to be valid was extremely small, regardless of what deadline states used, or how much that deadline shifted back and forth in the months before the election. The numbers were nowhere close to the number of votes that could have changed the outcome of any significant race
- 60 See *Voting Outside the Polling Place: Absentee, All-Mail, and Other Voting at Home Options*, tbl. 11: Receipt and Postmark Deadlines for Absentee/Mail Ballots, NAT’L CONF. OF STATE LEGIS. (July 12, 2022), <https://www.ncsl.org/elections-and-campaigns/table-11-receipt-and-postmark-deadlines-for-absentee-mail-ballots>.
- 61 See Pildes, *supra* note 52, at 108–09 (“[D]eadlines for the receipt of absentee ballots need to be thought about in this context of distrust.”).
- 62 Professor Pildes notes:
- [E]ven if some voters who want to vote absentee do not get around to requesting a ballot on time, they will still be able to vote in person early or on Election Day. The small burden of moving up a bit the date by which absentee[] [ballots] must be requested is a price worth paying to reduce the problem of ballots not being delivered or returned on time.
- Rick Pildes, *How to Accommodate a Massive Surge in Absentee Voting*, U. CHI. L. REV. ONLINE BLOG (June 26, 2020), <https://lawreviewblog.uchicago.edu/2020/06/26/pandemic-pildes/>.

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

- 63 See *Voting Outside the Polling Place: Absentee, All-Mail, and Other Voting at Home Options*, tbl. 16: When Absentee/Mail Ballot Processing and Counting Can Begin, NAT'L CONF. OF STATE LEGIS. (July 12, 2022), <https://www.ncsl.org/elections-and-campaigns/table-16-when-absentee-mail-ballot-processing-and-counting-can-begin>.
- 64 See Michael T. Morley, *Bush v. Gore's Uniformity Principle and the Equal Protection Right to Vote*, 28 GEO. MASON L. REV. 229 (2020). Some on the committee believe that shortening the cure period could be another reasonable step toward speeding final election results, so long as the cure period is long enough to assure that eligible voters will have a reasonable opportunity to cure.
- 65 See Juan A. Lozano, *Houston Looks to Boost Turnout by Offering 24-Hour Voting*, ASSOC. PRESS (Oct. 30, 2020, 12:19 PM), <https://apnews.com/article/election-2020-politics-houston-voting-texas-351f6e1c4820d8f2b2eb7468a725cce0>.
- 66 See Gina Gaston, *State Leaders Overhaul Some Election Laws, Including Option for Drive-Thru Voting*, ABC13 (Oct. 27, 2022), <https://abc13.com/drive-thru-voting-curb-side-new-election-laws-harris-county/12381837/>.
- 67 See Michael T. Morley, *Bush v. Gore's Uniformity Principle and the 2020 Election*, 58 WAKE FOREST L. REV. 179, 206–08 (2023); Richard L. Hasen, *When Is Uniformity of People, Not Counties, Appropriate in Election Administration? The Cases of Early and Sunday Voting*, 2015 U. CHI. LEGAL F. 193 (2015).
- 68 Pub. L. No. 103-31, § 8, 107 Stat. 77, 82 (codified as 52 U.S.C. § 20507).
- 69 Pub. L. No. 107-252, § 303(a)(2), (a)(5), 116 Stat. 1666, 1708 (codified as 52 U.S.C. § 21803).
- 70 See, e.g., *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833 (2018).
- 71 See FLA. CONST. art. VI, § 4(a); *Jones v. Gov. of Fla.*, 975 F.3d 1016 (11th Cir. 2020); Advisory Op. to the Gov. re: Implementation of Amend. 4, 288 So. 3d 1070, 1084 (Fla. 2020).
- 72 See e.g. *Fair Fight Action, Inc. v. Raffensperger*, 634 F. Supp. 3d 1128, 1227 (2022) (finding that, under Georgia's procedures for matching records in its voter registration database with other databases, "voters of color are overwhelmingly and disproportionately [flagged] compared to the overall composition of the voter file").
- 73 See Emma Platoff, *Federal Judge Temporarily Blocks Texas from Purging Voters in Citizenship Review*, TEX. TRIBUNE (February 27, 2019, 2 PM), <https://www.texastribune.org/2019/02/27/federal-blocks-texas-purging-voters-citizenship-review/>.
- 74 Congressional Research Serv., *Election Administration: Federal Grant Funding for States and Localities*, CRS Rep. No. R46646, at 23 (May 8, 2023). See also Rachel Orey, Grace Gordon, Michael Thorning & Matthew Weil, *The Path of Federal Election Funding*, BIPARTISAN POL'Y CTR. (June 16, 2022), <https://bipartisanpolicy.org/explainer/federal-election-funding-path/>.
- 75 Consolidated Appropriations Act of 2023, Pub. L. No. 117-328, Div. E, Tit. V, 136 Stat. 4459, 4679.
- 76 Consolidated Appropriations Act of 2018, Pub. L. No. 115-141, Div. E, Tit. V, 132 Stat. 348, 561–62 (hereinafter CAA of 2018).
- 77 Pub. L. No. 117-328, Div. E, Tit. V, 136 Stat. 4459, 4679.
- 78 *Id.*
- 79 CAA of 2018, Div. E, Tit. V, 132 Stat. at 561–62.
- 80 Coronavirus Aid, Relief, and Economic Security ("CARES") Act, Pub. L. No. 116-136, Div. B, Tit. V, 134 Stat. 281, 530–31 (2020).
- 81 Lawrence Norden, et al., *Estimated Costs of COVID-19 Election Resiliency Measures*, BRENNAN CTR. FOR JUSTICE (Apr. 18, 2020), <https://www.brennancenter.org/our-work/research-reports/estimated-costs-covid-19-election-resiliency-measures>.
- 82 See Jane C. Timm, *Amateur Fraud Hunters Bury Election Officials in Public Records Requests*, NBC NEWS (Feb. 12, 2022, 2:00 AM), <https://www.nbcnews.com/politics/elections/amateur-fraud-hunters-bury-election-officials-public-records-requests-rcna15432>; Fredreka Schouten, *Election Officials Confront Waves of Public Records Requests from Trump Supporters*, CNN POLITICS (Sept. 21, 2022, 7:13 AM), <https://www.cnn.com/2022/09/21/politics/public-records-requests-trump-supporters/index.html>.
- 83 *Press Release: Priscilla Chan and Mark Zuckerberg Commit Additional \$100 Million for Safe and Reliable Voting to Meet Overwhelming Demand*, CTR. FOR TECH & CIVIL LIFE (Oct. 13, 2020), <https://www.techandcivillife.org/100m/>.
- 84 See Morley, OXFORD HANDBOOK, *supra* note 24, at 34 & n.142-144.
- 85 See, e.g., ELECTION OFF. LEGAL DEF. NETWORK, <https://eoldn.org/>.
- 86 Hope Kahn, *What Keeps the Experts Up at Night?*, NAT'L PRESS FOUND. (Sept. 12, 2022), <https://nationalpress.org/topic/election-audit-security-misinformation-center-for-democracy-technology/>.
- 87 The current version of the expert list is available at: <https://electionsos.com/expert-network/>.

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

- 88 Antonio Flores & Mark Hugo Lopez, *Among U.S. Latinos, the Internet Now Rivals Television as a Source for News*, PEW RESEARCH CTR. (Jan. 11, 2018), <https://www.pewresearch.org/short-reads/2018/01/11/among-u-s-latinos-the-internet-now-rivals-television-as-a-source-for-news/>; News Release, *Latino Support Significantly Up for Republicans, Down for Democrats Compared to 2018*, NALEO (Oct. 12, 2022), https://naleo.org/wp-content/uploads/2022/10/10_11_22_-_NEF_Release_-_Tracking_Poll_-_Week_5_FINAL.pdf.
- 89 Claire Wang, *Why the Defunct South Vietnam Flag Was Flown at the Capitol Riot*, NBC NEWS (Jan. 15, 2021, 8:25 AM), <https://www.nbcnews.com/news/asian-america/why-defunct-south-vietnam-flag-was-flown-capitol-riot-n1254306>; Dan Nguyen, *Opinion: Why the Flag of South Vietnam as Waved Jan. 6 at Capitol*, LANCASTER ONLINE, (Feb. 7, 2021), https://lancasteronline.com/opinion/columnists/why-the-flag-of-south-vietnam-was-waved-jan-6-at-capitol-opinion/article_3dd0265e-6755-11eb-a70f-53d907805c32.html.
- 90 See *supra* note 55 and accompanying text.
- 91 George Lakoff (@GeorgeLakoff), TWITTER (Dec. 1, 2018, 7:37 AM), <https://twitter.com/GeorgeLakoff/status/1068891959882846208>.
- 92 Hayden Field & Jonathan Vanian, *Tech Layoffs Ravage the Teams that Fight Online Misinformation and Hate Speech*, CNBC (May 26, 2023, 9:00 AM), <https://www.cnbc.com/2023/05/26/tech-companies-are-laying-off-their-ethics-and-safety-teams-.html>.
- 93 Jon Brodtkin, *YouTube Now Allows Videos That Falsely Claim Trump Won 2020 Election*, ARSTECHNICA (Jun. 2, 2023, 1:30 PM), <https://arstechnica.com/tech-policy/2023/06/youtube-now-allows-videos-that-falsely-claim-trump-won-2020-election/>; Clare Duffy & Paul LeBlanc, *Elon Musk Restores Donald Trump's Twitter Account*, CNN (Nov. 20, 2022, 9:30 AM), <https://www.cnn.com/2022/11/19/business/twitter-musk-trump-reinstate/index.html>; Amanda Silberling, *YouTube Restores Donald Trump's Account*, TECHCRUNCH (Mar. 17, 2023, 8:04 AM), <https://techcrunch.com/2023/03/17/youtube-reinstates-donald-trumps-account/>; Sheera Frenkel & Mike Isaac, *Meta to Reinstate Trump's Facebook and Instagram Accounts*, N.Y. TIMES (Jan. 25, 2023), <https://www.nytimes.com/2023/01/25/technology/trump-facebook-instagram-accounts-meta.html>.
- 94 David Folkenflik, *NPR Quits Twitter after Being Falsely Labeled as 'State-Affiliated Media'*, NPR (Apr. 12, 2023, 4:29 PM), <https://www.npr.org/2023/04/12/1169269161/npr-leaves-twitter-government-funded-media-label>; Alex Berinka & Aisha Counts, *DeSantis Twitter Campaign Debut Shows Musk's Embrace of Politics*, BLOOMBERG (May 23, 2023, 3:50 PM), <https://www.bloomberg.com/news/articles/2023-05-23/musk-s-hosting-desantis-signals-starker-partisanship-on-twitter#xj4y7vzkg>.
- 95 Huo Jignan, *Twitter's New Data Access Rules Will Make Social Media Research Harder*, NPR (Feb. 9, 2023, 7:00 AM), <https://www.npr.org/2023/02/09/1155543369/twitters-new-data-access-rules-will-make-social-media-research-harder>.
- 96 Matt Binder, *Twitter and Reddit's High-Priced APIs are Bad News for the Internet's Future*, MASHABLE (June 3, 2023), <https://mashable.com/article/social-media-paid-api-internet-future>.
- 97 *Letter: Imposing Fees to Access the Twitter API Threatens Public-Interest Research*, COALITION FOR INDEPENDENT TECH. RSCH. (Feb. 6, 2023), <https://independenttechresearch.org/letter-twitter-api-access-threatens-public-interest-research/>; *Letter: Restricting Reddit Data Threatens Online Safety & Public-Interest Research*, COALITION FOR INDEPENDENT TECH. RSCH. (May 10, 2023), <https://independenttechresearch.org/reddit-data-access-letter/>.
- 98 One potential congressional solution is the Platform Accountability and Transparency Act, a bipartisan bill first introduced in the 117th Congress S.5339, 117th Cong. (2d. Sess. 2022).
- 99 For an overview, see *How Election Officials Serve UOCAVA Voters*, FEDERAL VOTING ASSISTANCE PROGRAM, <https://www.fvap.gov/eo/overview> (last visited Jul. 26, 2023).
- 100 Cybersec. & Infrastructure Sec. Agency, *Defining Insider Threats*, <https://www.cisa.gov/topics/physical-security/insider-threat-mitigation/defining-insider-threats> (last visited Jul. 26, 2023).
- 101 CYBERSEC. & INFRASTRUCTURE SEC. AGENCY, *INSIDER THREAT MITIGATION GUIDE* (Sept. 2020), https://www.cisa.gov/sites/default/files/2022-11/Insider%20Threat%20Mitigation%20Guide_Final_508.pdf (hereafter CISA INSIDER THREAT REPORT); CISA ELECTION INFRASTRUCTURE GUIDE, *supra* note 51.
- 102 Lawrence Norden & Derek Tisler, *Addressing Insider Threats in Elections*, BRENNAN CTR. FOR JUSTICE (Dec. 8, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/addressing-insider-threats-elections> (citing examples, including in Colorado, where a county clerk gave unauthorized access to county voting systems causing the county's voting equipment to be decertified and replaced; Michigan, where a town clerk refused to allow a vendor to perform routine maintenance resulting a criminal investigation; and Ohio, where an individual inside a county commissioner's office connected a private laptop to the county network, resulting in the sharing of confidential network traffic).

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

- 103 Cybersec. & Infrastructure Sec. Agency, *Insider Threat Mitigation*, <https://www.cisa.gov/topics/physical-security/insider-threat-mitigation> (last visited Jul. 26, 2023)
- 104 CISA INSIDER THREAT REPORT, *supra* note 101, at 40.
- 105 CISA ELECTION INFRASTRUCTURE GUIDE, *supra* note 51.
- 106 CISA INSIDER THREAT REPORT, *supra* note 101, at 10.
- 107 See e.g., Ctr. for Internet Sec., *Election Security Spotlight — What Are Insider Threats?*, <https://www.cisecurity.org/insights/spotlight/election-security-spotlight-what-are-insider-threats> (last visited Jul. 26, 2023); CISA INSIDER THREAT REPORT, *supra* note 101.
- 108 CISA ELECTION INFRASTRUCTURE GUIDE, *supra* note 51, at 5.
- 109 U.S. ELECTION ASSIST. COMM’N, BEST PRACTICES: CHAIN OF CUSTODY 2 (Jul. 13, 2021), https://www.eac.gov/sites/default/files/bestpractices/Chain_of_Custody_Best_Practices.pdf.
- 110 *Id.*
- 111 Daniel Seligson, *Election Administrators Struggle with Workforce Problem*, STATELINE (Apr. 24, 2001, 12:00 AM), <https://stateline.org/2001/04/24/election-administrators-struggle-with-workforce-problem/>.
- 112 State of Colorado, Notice of Temporary Adoption, Election Rules 8 CCR 1501-1 (adopted Jun. 17, 2021), https://www.sos.state.co.us/pubs/rule_making/files/2021/20210617ElectionsNoticeTempAdoption.pdf.
- 113 52 U.S.C. § 20701.
- 114 Cybersec. & Infrastructure Sec. Agency, *Election Security Rumor Versus Reality*, <https://www.cisa.gov/rumor-vs-reality> (last visited Jul. 26, 2023).
- 115 Geoffrey A. Fowler, *You Can Now Track Your Ballot Online in Half of States*, WASH. POST (Oct. 27, 2022, 7:00 AM), <https://www.washingtonpost.com/technology/2022/10/27/track-ballot-online/>.
- 116 *Guidelines for Human Biospecimen Storage, Tracking, Sharing, and Disposal within the NIH Intramural Research Program*, NAT’L INSTS. OF HEALTH (Sept. 2019) <https://oir.nih.gov/system/files/media/file/2021-11/guidelines-biospecimen.pdf>.
- 117 This scan point should also include the ballot drop box number, which provides additional verification to the voter that the initial drop box alert (from drop box insertion) matches the arrival text.
- 118 In many jurisdictions this is the same phase as the ballot arrival point, which is the scan pass indicating arrival and signature capture).
- 119 Cybersec. & Infrastructure Sec. Agency Elections Infrastructure Gov’t Coordinating Council and Sector Coordinating Council’s Joint COVID Working Group, *Signature Verification and Cure Process*, https://www.cisa.gov/sites/default/files/publications/signature-verification_cure_process_final_508.pdf (last visited July 26, 2023).
- 120 See MICROSOFT, END-TO-END VERIFIABILITY IN REAL-WORLD ELECTIONS (Jan. 2023), <http://www.electionguard.vote/images/EAC%20Report%20Final.pdf>. See generally ELECTION GUARD, <http://www.electionguard.vote/>.
- 121 U.S. VOTE FOUND. & GALOIS, THE FUTURE OF VOTING: END-TO-END VERIFIABLE INTERNET VOTING (July 2015), https://usvotefoundation-drupal.s3.amazonaws.com/prod/E2EVIV_executive_summary.pdf; NAT’L ACADS. OF SCIENCE, ENG’G, & MED., SECURING THE VOTE: PROTECTING AMERICAN DEMOCRACY (2018), <https://nap.nationalacademies.org/catalog/25120/securing-the-vote-protecting-american-democracy>; Am. Assoc. for the Advancement of Science, *Letter To All Governors, Secretaries of State and State Election Directors on the Insecurity of Online Voting* (Apr. 9, 2020), <https://www.aaas.org/programs/epi-center/internet-voting-letter>; Ctr. for Sec.in Politics, *Working Group Statement On Developing Standards For Internet Ballot Return*, UNIV. OF CAL. (Dec. 2022), <https://csp.berkeley.edu/wp-content/uploads/2022/12/Working-Group-Statement-on-Internet-Ballot-Return.pdf>; Scott Wolchok, Eric Wustrow, Dawn Isable & J. Alex Halderman, *Attacking the Washington, D.C. Internet Voting System*, UNIV. OF MICH., 16TH CONF. ON FINANCIAL CRYPTOGRAPHY & DATA SEC. (Feb. 2012), <https://jhalderm.com/pub/papers/dcvoting-fc12.pdf>; Andrew W. Appel, *Is Internet Voting Trustworthy? The Science and the Policy Battles*, 21 U.N.H. L. REV. 523 (2023).
- 122 NAT’L INST. FOR STANDARDS & TECH., CYBERSEC. & INFRASTRUCTURE SEC. AGENCY, ELECTION ASSISTANCE COMM’N & FED. BUREAU OF INVESTIGATION, *Risk Management for Electronic Ballot Delivery, Marking and Return* (2020), <https://www.politico.com/f/?id=00000172-9406-dd0c-ab73-fe6e10070001>; CYBERSEC. & INFRASTRUCTURE SEC. AGENCY, *Critical Infrastructure Security and Resilience*, <https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience> (last visited July 26, 2023); U.S. SENATE SELECT COMM. ON INTEL., *Report on Russian Active Measures, Campaigns and Interference in the 2016 Election, Volume 1: Russian Efforts Against Election Infrastructure With Additional Views* (2019), <https://www.intelligence.senate.gov/publications/report-select-committee-intelligence-united-states-senate-russian-active-measures/>.
- 123 CAL. SEC’Y OF STATE, *Remote Accessible Vote-By-Mail*, <https://www.sos.ca.gov/elections/voting-resources/remote-accessible-vote-mail> (last visited July 26, 2023).

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

- 124 Rachel Orey, Christopher Thomas & Grace Gordon, *How Ballot Tabulators Improve Elections*, BIPARTISAN POLICY CTR. (Apr. 25, 2022), <https://bipartisanpolicy.org/explainer/how-ballot-tabulators-improve-elections/>. See also Alice Clapman & Ben Goldstein, *Hand-Counting Votes: A Proven Bad Idea*, BRENNAN CTR. FOR JUSTICE (Nov. 23, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/hand-counting-votes-proven-bad-idea> (“For example, in an experiment from Rice University using only 120 ballots, people counting by hand got it right only 58 percent of the time.”) (citing Stephen N. Goggin & Michael D. Byrne, *An Examination of the Auditability of Voter Verified Paper Audit Trail (VVPAT) Ballots*, <https://accurate-voting.rice.edu/wp-content/uploads/2007/08/evt07-goggin.pdf>).
- 125 MIT ELECTION SCI. DATA LAB, *Voting Technology* (last updated Apr. 21, 2023), <https://electionlab.mit.edu/research/voting-technology>.
- 126 Clapman & Goldstein, *supra* note 124.
- 127 See Andrew Appel, *Sort the Mail-in Ballot Envelopes, or Don't?*, Parts 1–3, FREEDOM TO TINKER (May 1, 2023), <https://freedom-to-tinker.com/2023/05/01/sort-the-mail-in-ballot-envelopes-or-dont/>.
- 128 *Id.*
- 129 *Id.*
- 130 52 U.S.C. §§ 20505, 20508(a)(2). The Federal Form is available at https://www.eac.gov/sites/default/files/eac_assets/1/6/Federal_Voter_Registration_ENG.pdf (last visited Jul. 26, 2023). North Dakota and Wyoming do not accept the Federal Form.
- 131 See *Register to Vote in Your State by Using this Postcard Form and Guide*, OMB Control No. 3265-0015, https://www.eac.gov/sites/default/files/eac_assets/1/6/Federal_Voter_Registration_ENG.pdf.
- 132 Peter Martin, *Online Voter Registration: Good for States, Good for Voters*, LDF (Aug. 11, 2020), <https://www.naacpldf.org/naacp-publications/ldf-blog/online-voter-registration-good-for-states-good-for-voters/>; Rachel V. Cobb, *The Many Benefits of Online Voter Registration*, SCHOLARS STRATEGY NETWORK (February 27, 2014), <https://scholars.org/contribution/many-benefits-online-voter-registration>.
- 133 Cobb, *supra* note 132.
- 134 NAT’L CONF. OF STATE LEG., *Online Voter Registration* (updated Mar. 8, 2023), <https://www.ncsl.org/elections-and-campaigns/online-voter-registration>.
- 135 See VA. CONST. ART. II, § 2.
- 136 Rhodes Cook, *Registering by Party, Where the Democrats and Republicans Are Ahead*, UVA CENTER FOR POLITICS: SABATO’S CRYSTAL BALL (July 12, 2018), <https://centerforpolitics.org/crystalball/articles/registering-by-party-where-the-democrats-and-republicans-are-ahead/>.
- 137 M. Mindy Moretti, *In Focus This Week*, ELECTION ONLINE (Apr. 18, 2019), <https://electionline.org/electionline-weekly/2019/04-18/> (discussing the use of third-party organizations for voter registration in California, Colorado, Pennsylvania, Virginia, and Washington).
- 138 THE AMERICAN VOTING EXPERIENCE: REPORT AND RECOMMENDATIONS OF THE PRESIDENTIAL COMMISSION ON ELECTION ADMINISTRATION 27 (2014), available at <http://web.mit.edu/supportthevoter/www/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf> (“To assist jurisdictions that have not yet moved toward online voter registration, the Commission has placed as an example on its website [comprising] computer code that facilitates interaction between an outside website and a state’s registration system... voter information can be entered by a user in one setting and, through a simple platform, seamlessly integrated with a state’s registration list.”).
- 139 William Adler, *Only 1 in 4 Election Websites Uses the .gov Domain. That’s a Problem — and an Opportunity*, CTR. FOR DEMOCRACY AND TECH. (Oct. 19, 2022), <https://cdt.org/insights/only-1-in-4-election-websites-uses-the-gov-domain-thats-a-problem-and-an-opportunity/> (citing H.R. 133, 116th Cong. (2019-20)).
- 140 *Id.*
- 141 *Id.*
- 142 David Klepper & Ali Swenson, *AI-generated Disinformation Poses Threat of Misleading Voters in 2024 Election*, PBS NEWS HOUR (May 14, 2023, 7:52 PM), <https://www.pbs.org/newshour/politics/ai-generated-disinformation-poses-threat-of-misleading-voters-in-2024-election>.
- 143 Bob Violino, *Artificial Intelligence Is Playing a Bigger Role in Cybersecurity but the Bad Guys May Benefit the Most*, CNBC (Sept. 13, 2022, 11:24 AM), <https://www.cnbc.com/2022/09/13/ai-has-bigger-role-in-cybersecurity-but-hackers-may-benefit-the-most.html>.

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

APPENDIX: BRIEF BIOGRAPHIES OF AD HOC COMMITTEE MEMBERS

Andrew Appel is Eugene Higgins Professor of Computer Science at Princeton University, where he has been on the faculty since 1986. He served as Department Chair from 2009–2015. His research is in software verification, computer security, programming languages and compilers, and technology policy. He received his A.B. *summa cum laude* in physics from Princeton in 1981, and his PhD in computer science from Carnegie Mellon University in 1985. He is a Fellow of the ACM (Association for Computing Machinery). He has worked on fast N-body algorithms (1980s), Standard ML of New Jersey (1990s), Foundational Proof-Carrying Code (2000s), Verified Software Toolchain (2010s), Verified Network Toolchain and Verified Numerical Methods (2020s). His public policy research focuses on voting machines and election systems: technology, security, policy.

Julia Azari is a Professor of Political Science at Marquette University. She is the author of *Delivering the People’s Message: the Changing Politics of the Presidential Mandate*. An award-winning public-facing scholar, she has written about political parties, elections and the American presidency for *FiveThirtyEight*, *Vox*, *The New York Times*, *Politico*, and *Grid News*. Her scholarly work has been published at *The Forum*, *Perspectives on Politics*, *Social Science History*, and in numerous edited collections. She is currently working on a book about race and presidential impeachment and co-editing a volume on the legacy of the Trump presidency.

Bruce Cain is a Professor of Political Science at Stanford University and Director of the Bill Lane Center for the American West. He received a BA from Bowdoin College (1970), a B. Phil. from Oxford University (1972) as a Rhodes Scholar, and a PhD from Harvard University (1976). He taught at Caltech (1976–89) and UC Berkeley (1989–2012) before moving to Stanford. Cain was Director of the Institute of Governmental Studies at UC Berkeley from 1990–2007 and Executive Director of the UC Washington Center from 2005–2012. He was elected to the American Academy of Arts and Sciences in 2000 and has won awards for his research (Richard F. Fenno Prize, 1988), teaching (Caltech 1988 and UC Berkeley 2003) and public service (Zale Award for Outstanding Achievement in Policy Research and Public Service, 2000). His areas of expertise include political regulation, applied democratic theory, representation, and state politics. His most recent book is *Democracy More or Less*. He is currently working on problems of environmental governance.

Larry Diamond is the William L. Clayton Senior Fellow at the Hoover Institution, the Mosbacher Senior Fellow in Global Democracy at the Freeman Spogli Institute for International Studies (FSI), and a Bass University Fellow in Undergraduate Education at Stanford University. He is also professor by courtesy of Political Science and Sociology at Stanford. He leads the Hoover Institution’s programs on China’s Global Sharp Power and on Taiwan in the Indo-Pacific Region. At FSI, he leads the Program on Arab Reform and Democracy, based at the Center on Democracy, Development and the Rule of Law, which he directed for more than six years. He also co-leads with (Eileen Donahoe) the Global Digital Policy Incubator, based at FSI’s Cyber Policy Center. He is the founding co-editor of the *Journal of Democracy* and also serves as senior consultant at the International Forum for Democratic Studies of the National Endowment for Democracy. Diamond’s book, *Ill Winds: Saving Democracy from Russian Rage, Chinese Ambition, and American Complacency*, analyzes the challenges confronting liberal democracy in the United States and around the world at this potential “hinge in history,” and offers an agenda for strengthening and defending democracy at home and abroad.

Pam Fessler was an editor and correspondent at *NPR News* for more than 28 years. As a correspondent on the National Desk, she covered voting issues, poverty, and philanthropy. For much of her time at *NPR*, Fessler reported on elections and voting, including efforts to make voting more accessible, accurate, and secure. She did countless stories on everything from the debate over state voter laws to Russian hacking attempts and the impact of misinformation. Fessler has a Master of Public Administration degree from the Maxwell School at Syracuse University and a bachelor’s degree from Douglass College at Rutgers University. Her first book, *Carville’s Cure: Leprosy, Stigma, and the Fight for Justice*, was published in 2020.

Edward Foley is the Ebersold Chair in Constitutional Law at The Ohio State University, where he also directs its election law program. He is a contributing opinion columnist for the *Washington Post*, and for the 2020 election season, he served as an NBC News election law analyst. His most recent book is *Presidential Elections and Majority Rule*. His book *Ballot Battles: The History of Disputed Elections in the United States* was named Finalist for the David J. Langum, Sr. Prize in American Legal History

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

and listed as one of 100 “must-read books about law and social justice.” As Reporter for the American Law Institute’s Project on Election Administration, Foley drafted *Principles of Law: Non-Precinct Voting and Resolution of Ballot-Counting Disputes*, which provides nonpartisan guidance for the resolution of election disputes.

John Fortier is a senior fellow at the American Enterprise Institute (AEI), where he focuses on Congress and elections, election administration, election demographics, voting (and absentee voting), the US presidency, and the Electoral College. He is also continuing his work on the continuity of government. Before rejoining AEI, Dr. Fortier was director of governmental studies at the Bipartisan Policy Center, and the principal contributor to the AEI-Brookings Election Reform Project. He also has taught at Kenyon College, the University of Pennsylvania, the University of Delaware, Boston College, and Harvard University. He is the author and editor of *After the People Vote: A Guide to the Electoral College*; *Second-Term Blues: How George W. Bush Has Governed*; and *Absentee and Early Voting: Trends, Promises, and Perils*.

Richard Hasen (Ad hoc committee chair) is Professor of Law and Director, Safeguarding Democracy Project, at UCLA School of Law. He is an internationally recognized expert in election law, writing as well in the areas of legislation and statutory interpretation, remedies, and torts. From 2001–2010, he served (with Dan Lowenstein) as founding co-editor of the quarterly peer-reviewed publication, *Election Law Journal*. He was elected to The American Law Institute in 2009 and serves as Reporter (with Professor Douglas Laycock) on the ALI’s law reform project: Restatement (Third) of Torts: Remedies. *The Green Bag* recognized his 2018 book, *The Justice of Contradictions: Antonin Scalia and the Politics of Disruption*, for exemplary legal writing, and his 2016 book, *Plutocrats United*, received a Scribes Book Award Honorable Mention. His most recent book, *Cheap Speech: How Disinformation Poisons Our Politics—and How to Cure It*, published in March 2022 by Yale University Press, was named one of the four best books on disinformation by the *New York Times*. Hasen served in 2020 as a CNN Election Law Analyst and as an NBC News/MSNBC Election Law Analyst in 2022. He earned his J.D. and PhD from UCLA, and served as Chief Article Editor for the *UCLA Law Review*.

Elizabeth Howard is Deputy Director of the Elections and Government Program at the Brennan Center for Justice. Her work focuses on election security. Howard regularly comments for television, radio, and print media on issues relating to election security and election administration and has testified before the U.S. House Committee on Homeland Security and in a variety of state legislatures. She has also co-authored multiple Brennan Center reports and white papers: *Better Safe Than Sorry* (2018), *Defending Elections: Federal Funding Needs for State Election Security* (2019), *Trump-Russia Investigations: A Guide Preparing for Cyberattacks* and *Technical Failures: A Guide for Election Officials* (2019). Prior to joining the Brennan Center, Howard served as deputy commissioner for the Virginia Department of Elections. During her tenure, she coordinated many election administration modernization projects, including the decertification of all paperless voting systems, implementation of the e-Motor Voter program, and adoption of online, paperless absentee ballot applications, for which the department received a 2017 Innovations in American Government Bright Ideas Award from the Ash Center for Democratic Governance and Innovation at the Harvard Kennedy School.

David Kaye is a clinical professor of law at the University of California, Irvine, and the former United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (2014–2020). His 2019 book, *Speech Police: The Global Struggle to Govern the Internet* (Columbia Global Reports), explores the ways in which companies, governments, and activists struggle to define the rules for online expression. Appointed by the UN Human Rights Council in June 2014, David served through July 2020 as the global body’s principal monitor for freedom of expression issues worldwide. He reported to the UN on COVID-19 and freedom of expression and, in 2019, to the UN General Assembly on online hate speech. His earlier reporting addressed, among other topics, the ways in which artificial intelligence technologies implicate human rights issues, the global private surveillance industry and its impact on freedom of expression, growing repression of freedom of expression globally, encryption and anonymity as promoters of freedom of expression, the protection of whistleblowers and journalistic sources, the roles and responsibilities of private Internet companies, and the regulation of online content by social media and search companies.

Neal Kelley is the retired Registrar of Voters for Orange County, California, the fifth largest voting jurisdiction in the United States, serving more than 1.9 million registered voters. Kelley served as the Registrar of Voters from 2005 through 2022 and led the office through the largest cycle of elections since Orange County was founded in 1889. Prior to joining Orange County, Kelley developed

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

and grew several companies of his own, employing hundreds of people from 1989 to 2004. He has been the recipient of numerous state and national awards for election administration and is a past recipient of the “Public Official of the Year” award by the National Association of County Recorders, Election Officials and Clerks (iGO). Kelley is a former appointee and founding member of the U.S. Department of Homeland Security Election Security Task Force Government Coordinating Council (GCC), where he helped to oversee the protection of the nation’s election infrastructure. He also served as a member and past chair of the U.S. Election Assistance Commission (EAC) Board of Advisors, is a former member of the EAC Voting Systems Standards Board and a former member of the EAC Technical Guidelines Development Committee (TGDC). In addition, he served as a member of the 2018 National Academies of Sciences, Engineering and Medicine’s Committee on the Future of Voting.

Jack Lerner is Clinical Professor of Law and Director, UCI Intellectual Property, Arts, & Technology Clinic at the University of California, Irvine School of Law. Lerner works to find solutions to problems at the intersection of law and technology, particularly how technology law and policy affect creative expression and innovation. He has written and spoken widely on copyright, privacy and other areas of technology law. Before joining UC Irvine School of Law in 2014, Lerner was Clinical Professor of Law at the USC Gould School of Law and Director of the USC Intellectual Property and Technology Law Clinic, and he was a Clinic Fellow at the Samuelson Law, Technology, and Public Policy Clinic at the University of California, Berkeley, School of Law and a fellow at the Berkman Center for Internet and Society at Harvard Law School.

Matt Masterson is the Director of Information Integrity for Microsoft. Previously, he served as a non-resident policy fellow with the Stanford Internet Observatory. He served as Senior Cybersecurity Advisor at the Department of Homeland Security, where he focused on election security issues. He previously served as a Commissioner at the Election Assistance Commission from December 2014 until March 2018, including serving as the Commission’s Chairman in 2017–2018. Prior to that, he held staff positions with the Ohio Secretary of State’s office, where he oversaw voting system certification efforts and helped develop an online voter registration system. Masterson holds a law degree from the University of Dayton School of Law and BS and BA degrees from Miami University in Oxford, Ohio.

Michael Morley is the Sheila M. McDevitt Professor at Florida State University College of Law. Morley joined FSU Law in 2018 and teaches and writes in the areas of election law, constitutional law, remedies, and the federal courts. His research focuses on election emergencies, the constitutional right to vote, and the Electoral Count Act, as well as the equitable powers of the federal courts. He is an elected member of the American Law Institute and serves as an advisor for the ALI’s Restatement of Torts: Remedies project. Morley is a member of the Florida Advisory Committee for the U.S. Commission on Civil Rights, and was the 2021 Chair of the AALS Section on Election Law. He has testified before congressional committees, made presentations to election officials for the U.S. Election Assistance Commission, and participated in bipartisan blue-ribbon groups to develop election reforms. The Governor of Florida also appointed Morley to the Criminal Punishment Code Task Force to propose potential revisions to the legislature.

Janai Nelson is President and Director-Counsel of the NAACP Legal Defense Fund (LDF), the nation’s premier civil rights law organization fighting for racial justice and equality. Nelson formerly served as Associate Director-Counsel and as a member of LDF’s litigation and policy teams. Prior to joining LDF in June 2014, Nelson was Associate Dean for Faculty Scholarship and Associate Director of the Ronald H. Brown Center for Civil Rights and Economic Development at St. John’s University School of Law where she was also a full professor of law and served on the law school’s Senior Leadership Team. A renowned scholar of voting rights and election law, Nelson continues to produce cutting-edge scholarship on domestic and comparative election law, race, and democratic theory. Nelson has taught courses in Election Law and Political Participation, Comparative Election Law, Voting Rights, Professional Responsibility, and Constitutional Law and a seminar on Racial Equity Strategies, in addition to guest lecturing at law schools around the country. Nelson is also the recipient of the 2013 Derrick A. Bell Award from the American Association of Law Schools (AALS) Section on Minority Groups and was named one of Lawyers of Color’s 50 Under 50 minority professors making an impact in legal education. She received a B.A. from New York University and a J.D. from UCLA School of Law where she served as Articles Editor of the *UCLA Law Review*, Consulting Editor of the *National Black Law Journal*, and Associate Editor of the *UCLA Women’s Law Journal*.

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

Brendan Nyhan is the James O. Freedman Presidential Professor in the Department of Government at Dartmouth College. His research, which focuses on misperceptions about politics and health care, has been published in journals including the *American Journal of Political Science*, *Journal of Politics*, *Nature Human Behaviour*, *Proceedings of the National Academy of Sciences*, *Pediatrics*, and *Vaccine*. He has been named a Guggenheim Fellow by the Guggenheim Foundation, an Andrew Carnegie Fellow by the Carnegie Corporation of New York, and a Belfer Fellow by the Anti-Defamation League. He is a co-founder of Bright Line Watch, a watchdog group that monitors the status of American democracy, and a contributor to The Upshot at the *New York Times*.

Norman Ornstein is an emeritus scholar at the American Enterprise Institute. He is a contributing editor and writer for *The Atlantic* and has been an election eve analyst for *CBS News* and *BBC News*. He is also chairman emeritus of the Campaign Legal Center. He was a political science professor at Johns Hopkins University and The Catholic University of America for fifteen years. Ornstein was elected as a fellow of the American Academy of Arts and Sciences in 2004. He was named one of the top 100 global thinkers in 2012 by *Foreign Policy Magazine* and one of the 250 most influential people in Washington in 2021 by *Washingtonian Magazine*. He was given the Frank Goodnow award by the American Political Science Association for distinguished service to the profession. His many books include *The New York Times* bestseller, *It's Even Worse Than It Looks* with Tom Mann and *One Nation After Trump: A Guide for the Perplexed, the Disillusioned, the Desperate and the Not-Yet-Deported* with EJ Dionne and Tom Mann, which was immediately on the *New York Times* and *Washington Post* bestseller lists. Ornstein has a BA from the University of Minnesota and an MA and PhD from the University of Michigan.

Nina Perales is Vice President of Litigation for MALDEF, the Mexican American Legal Defense and Educational Fund. In that role, Perales supervises the legal staff and litigation in MALDEF's offices across the United States. Perales is best known for her work in voting rights. She tried and argued successfully before the U.S. Supreme Court a challenge to Texas redistricting that resulted in that Court's first ruling of Latino vote dilution under the Voting Rights Act. She also secured favorable U.S. Supreme Court rulings in challenges to an Arizona voter registration law in 2013 and Texas redistricting in 2018. Perales has presented more than ten oral arguments to the U.S. Courts of Appeals. She has testified numerous times before the U.S. Congress and state legislatures on voting rights and also currently serves as an adjunct professor at Harvard Law School where she teaches a course called "Current Topics in Latino Civil Rights." Perales earned her undergraduate degree from Brown University and law degree from Columbia University School of Law.

Richard H. Pildes is the Sudler Family Professor of Constitutional Law, NYU School of Law. He is one of the nation's leading scholars of constitutional law and a specialist in legal issues affecting democracy. He is a Member of the American Academy of Arts and Sciences and the American Law Institute and has received recognition as a Guggenheim Fellow and a Carnegie Scholar. His acclaimed casebook, *The Law of Democracy: Legal Structure of the Political Process* (now in its sixth edition), helped create an entirely new field of study in the law schools. He has written extensively on the rise of political polarization in the United States, the Voting Rights Act, the dysfunction of America's political processes, the role of the Supreme Court in overseeing American democracy, the powers of the American President and Congress, and he has criticized excessively "romantic" understandings of democracy. In addition to his scholarship on these issues, he has written on national-security law, the design of the regulatory state, and American constitutional history and theory.

Bertrall Ross is Justice Thurgood Marshall Distinguished Professor of Law and Director, Karsh Center for Law and Democracy, at the University of Virginia School of Law. He teaches and writes in the areas of constitutional law, constitutional theory, election law, administrative law and statutory interpretation. Ross' research is driven by a concern about democratic responsiveness and accountability, as well as the inclusion of marginalized communities in administrative and political processes. His past scholarship has been published in several books and journals, including the *Columbia Law Review*, *New York University Law Review* and the *University of Chicago Law Review*. Prior to joining the Virginia faculty, Ross taught at the University of California, Berkeley School of Law, where he received the Rutter Award for Teaching Excellence. He has also been awarded the Berlin Prize from the American Academy in Berlin, the Princeton University Law and Public Affairs Fellowship, the Columbia Law School Kellis Parker Academic Fellowship and the Marshall Scholarship. Ross is currently serving on the Administrative Conference of the United States and the Presidential Commission on the Supreme Court.

24 RECOMMENDATIONS FOR THE 2024 ELECTIONS

Charles Stewart III is the Kenan Sahin Distinguished Professor of Political Science at MIT, where he has taught since 1985, and a Fellow of the American Academy of Arts and Sciences. His research and teaching areas include congressional politics, elections, and American political development. His current research about Congress touches on the historical development of committees, origins of partisan polarization, and Senate elections. His recent books of congressional research include *Electing the Senate* (with Wendy J. Schiller), *Fighting for the Speakership* (with Jeffery A. Jenkins), and *Analyzing Congress*. Since 2001, Stewart has been a member of the Caltech/MIT Voting Technology Project, a leading research effort that applies scientific analysis to questions about election technology, election administration, and election reform. He is currently the MIT director of the project. Stewart is an established leader in the analysis of the performance of election systems and the quantitative assessment of election performance. Working with the Pew Charitable Trusts, he helped with the development of Pew's Elections Performance Index. Stewart also provided advice to the Presidential Commission on Election Administration. His research on measuring the performance of elections and polling place operations is funded by Pew, the Democracy Fund, and the Hewlett Foundation. He recently published *The Measure of American Elections* (with Barry C. Burden). With the support of the William and Flora Hewlett Foundation, Democracy Fund, and the Joyce Foundation, in 2017 Stewart established the MIT Election Data and Science Lab, which applies scientific principles to how elections are studied and administered. In 2020, he partnered with Professor Nate Persily of the Stanford Law School to establish the Stanford-MIT Healthy Elections Project.

Michael Tesler is a professor of political science at UC Irvine, where he teaches courses on public opinion, racial politics, elections, political psychology, American government, and quantitative research methods. He is author of *Post-Racial or Most Racial? Race and Politics in the Obama Era*, co-author with David O. Sears of *Obama's Race: The 2008 Election and the Dream of a Post-Racial America*, and co-author with John Sides and Lynn Vavreck of *Identity Crisis: The 2016 Presidential Campaign and the Battle for the Meaning of America*. His current book project, coauthored with Mary McThomas, is entitled *Pit Bull Politics: What a Dog Breed Can Teach Us About Prejudice and Racial Politics*. His research has been funded by the National Science Foundation, featured in several prominent media outlets, and published in such scholarly journals as the *American Journal of Political Science* and the *Journal of Politics*. As a former contributing editor for the *Washington Post's* Monkey Cage Blog and current contributor at *FiveThirtyEight*, his work has received recognition from both popular and academic sources. Before arriving at UCI, Michael earned a Ph.D. in political science from UCLA in 2011 and was on the faculty at Brown University from 2011 to 2014.

Ciara Torres-Spelliscy is a Brennan Center fellow and professor of law at Stetson University College of Law, where she teaches courses in election law, corporate governance, business entities, and constitutional law. Prior to joining Stetson's faculty, Torres-Spelliscy was counsel in the Brennan Center's Democracy Program, where she provided guidance on money in politics and the judiciary to state and federal lawmakers. She was previously an associate at Arnold & Porter LLP and a staffer for Senator Richard Durbin. Torres-Spelliscy has testified before Congress and state and local legislative bodies as an expert on campaign finance reform. She has also helped draft legislation and Supreme Court briefs. Torres-Spelliscy specializes in campaign finance law and constitutional law and has presented at symposia across the United States and abroad. In 2016 she addressed the Federal Election Commission at a forum on dark and foreign money in U.S. elections. Torres-Spelliscy is the author of *Political Brands* and *Corporate Citizen? An Argument for the Separation of Corporation and State*. Her work has been published in *The New York Times*, *New York Law Journal*, *Slate*, the *Los Angeles Times*, and *U.S. News & World Report*, among others.

Emily Rong Zhang is assistant professor of law at UC Berkeley School of Law. She studies how the law can promote political participation and representation, especially of individuals from historically disadvantaged communities. Before joining Berkeley, she was a Skadden Fellow at the ACLU Voting Rights Project. She holds a J.D. and PhD from Stanford University. Her new article in the *UCLA Law Review* is entitled, *Questioning Questions in the Law of Democracy: What the Debate Over Voter ID Laws' Effects Teaches About Asking the Right Questions*.