

# BRENNAN CENTER --- FOR JUSTICE

Testimony of Gowri Ramachandran, Brennan Center for Justice at NYU Law  
Oregon Legislative Assembly, House Committee on Rules  
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On behalf of the Brennan Center for Justice at NYU Law,<sup>1</sup> I write to provide testimony on the alarming national trend of increased threats, harassment, and intimidation of election workers.

In the spring of 2021, the Brennan Center for Justice commissioned a national survey of election officials. We also held interviews and hosted conversations, along with the Bipartisan Policy Center and the Ash Center at Harvard's Kennedy School, with nearly three dozen election officials and over thirty experts. This culminated in a [report](#) entitled "Election Officials Under Attack: How to Protect Administrators and Safeguard Democracy," which I have included with my testimony.

What we learned from the survey, the interviews, and the discussions was heartbreaking. We found that roughly one in three election officials feel unsafe because of their job. Approximately one in six listed threats to their lives as a job-related concern. We also found that local election officials feel unsafe because they were, and in many cases still are, being harassed and threatened in the wake of the 2020 election. They told us that the quantity and severity of these attacks has dramatically increased as compared to past election cycles.

Several of the election workers we interviewed reported that their family members, including elderly parents and children, were harassed using crude language or threatened with violence. The voicemail of one elderly parent of an election official was filled to capacity with harassing and frightening messages. Multiple election officials told us that the [persistent](#) harassment forced them and their families to flee their homes and seek mental health treatment for their children. And when they reached out to law enforcement for help, the response was often insufficient to ensure the official, their staff, or other election workers felt safe.

For instance, one official was advised by the police to outfit her home with additional security features, such as a doorbell camera. But she did not have any money in her budget to pay for these services. Some described how they received advice about how to minimize the amount of one's personal information online, such as a home address or cell phone number, but they had no

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<sup>1</sup> The Brennan Center for Justice at New York University School of Law is a nonpartisan public policy and law institute that works to reform, revitalize, and defend our country's system of democracy and justice. I am a senior counsel in the Brennan Center's Democracy Program. My testimony does not purport to convey the views, if any, of the New York University School of Law.

time or staff to place multiple phone calls and requests to the data brokers who put this information online.

Nor did they have the resources to look into whether they were entitled to address obscuring in public databases, a service many states provide to victims of domestic violence. Many election officials said that such laws should be applicable to them and their staff. H.B. 4144 would ensure that election workers can take advantage of address confidentiality in Oregon.

In the months since we published our report, journalists at Reuters have [documented](#) violent threats and harassment against election officials across the country, even identifying nine of the harassers, none of whom had been held accountable, and few of whom showed any remorse for their actions. The U.S. Department of Justice has announced a task force to combat the problem and has brought charges against two individuals thus far.

It is important to supplement after-the-fact criminal accountability with steps that can help election workers feel safe and secure now, as they prepare to administer primary and general elections in 2022. H.B. 4144 does just that, as it allows election workers to keep their address confidential by virtue of their status as election workers, without waiting for bad actors to engage in threats, harassment, or other disturbing behavior.

Threats against election workers for doing their job are threats against democracy itself, and H.B. 4144 is a helpful step in promoting a safe and secure democracy.

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**BRENNAN  
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Bipartisan Policy Center

# **Election Officials Under Attack**

How to Protect Administrators  
and Safeguard Democracy

By the Brennan Center for Justice and the Bipartisan Policy Center PUBLISHED JUNE 16, 2021

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## **ABOUT THE BRENNAN CENTER FOR JUSTICE**

The Brennan Center for Justice at NYU School of Law is a nonpartisan law and policy institute that works to reform, revitalize — and when necessary defend — our country’s systems of democracy and justice. The Brennan Center is dedicated to protecting the rule of law and the values of constitutional democracy. We focus on voting rights, campaign finance reform, ending mass incarceration, and preserving our liberties while also maintaining our national security. Part think tank, part advocacy group, part cutting-edge communications hub, we start with rigorous research. We craft innovative policies. And we fight for them — in Congress and the states, in the courts, and in the court of public opinion.

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# Introduction

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**A**l Schmidt, the Republican city commissioner of Philadelphia, might seem an unlikely lightning rod for the 2020 election. The married father of three, described by local media as a “bespectacled” bureaucrat, is one of three commissioners responsible for overseeing election-related affairs for the city.<sup>1</sup> A decades-long Republican, he prided himself on bringing transparency to Philadelphia’s election processes.<sup>2</sup>

Threats against Schmidt and his board of elections colleagues began before Election Day, November 3, 2020. About a week prior, someone left an ominous phone message stating that the board members were “the reason why we have the Second Amendment.”<sup>3</sup> Shortly after that, police arrested two men in Philadelphia “after receiving an FBI tip that they were making threats against the Pennsylvania Convention Center,” where ballots were being counted. The men were armed with “two loaded semi-automatic Beretta pistols, one semi-automatic AR-15-style rifle, and ammunition” at the time of the arrest.<sup>4</sup>

In the days after Pennsylvania was called for Joe Biden, Schmidt appeared in the media to defend the integrity of the election. President Donald Trump and his campaign called out Schmidt and members of his staff. Stalkers tracked down the cell phone numbers of Schmidt and a staff member, who is Jewish, which “ignited . . . [a] wave of menacing and often anti-Semitic attacks.”<sup>5</sup>

Schmidt and his family received death threats. One text message, which mentioned his wife and children, read, “You lied. You a traitor. Perhaps 75cuts and 20bullets will soon arrive.”<sup>6</sup> His wife received the following threats via email the next morning: “ALBERT RINO SCHMIDT WILL BE FATALLY SHOT,” and “HEADS ON SPIKES. TREASONOUS SCHMIDTS.”<sup>7</sup> A 24-hour security detail remained at Schmidt’s and his parents’ houses well into 2021.<sup>8</sup> For their safety, his wife and children left their home after the election.<sup>9</sup>

Al Schmidt’s is not an exceptional case. Around the country, election officials have been under attack in the last year. Long used to staying in the background, they have now found themselves cast as villains, scapegoated for election outcomes that some politicians and voters did not like.

The most troubling and impactful villainization of election officials in the last year has come from some of America’s political leaders. Many have pointed to President Trump’s attempt to delegitimize the 2020 election results as “rigged” — and the “Stop the Steal” movement he inspired — as the reason for targeting election officials. But the problem goes far deeper than one man.

In several states, party leaders have censured and replaced officials who insisted on telling the truth about the security and accuracy of the election.<sup>10</sup> Legislators have introduced bills that would impose criminal penal-

ties on election officials and workers for taking steps like proactively sending mail ballot applications to voters or, under certain circumstances, purchasing advertisements about upcoming elections on social media platforms like Twitter or Facebook.<sup>11</sup> Finally, and most troublingly for the future of our democracy, state legislatures across the nation have taken steps to strip election officials of the power to run, count, and certify elections, consolidating power in their own hands over processes intended to be free of partisan or political interference.<sup>12</sup>

All of this represents a mortal danger to American democracy, which cannot survive without public servants who can freely and fairly run our elections. We must ensure that they feel not only safe but also supported and appreciated for their vital efforts.

## What Can Be Done?

Over the past few months, the Brennan Center for Justice, the Bipartisan Policy Center, and Harvard Kennedy School’s Ash Center for Democratic Governance and Innovation explored this question, interviewing and hosting conversations with nearly three dozen election officials and over 30 experts in democracy, election administration and technology, cybersecurity, disinformation, international elections, behavioral science, and criminal procedure. We identified four overlapping areas of concern that threaten the integrity of election administration in the United States. Each one represents a separate section of this report: violent threats against election workers and their families; disinformation about election administration; partisan and political interference; and challenges to keeping and recruiting talented workers committed to fairness in elections.

We summarize some of the most important findings and recommendations in this report below:

### **Finding 1: Violent threats against election workers reached an alarming level in 2020 and continue in 2021.**

A survey of election officials commissioned by the Brennan Center and conducted by Benenson Strategy Group

this spring found that one in three election officials feel unsafe because of their job, and nearly one in five listed threats to their lives as a job-related concern.<sup>13</sup>

### **Key Solutions:**

- The Department of Justice (DOJ) should create an election threats task force to work with federal, state, and local partners to prioritize identifying, investigating, and prosecuting threats against election officials and workers.
- States should pass new laws and appropriate funds to provide greater personal security for election officials and workers. Such measures should include providing greater protection of personally identifiable information, grants to purchase home intrusion detection systems, and funds for training and education related to maintaining greater personal security.
- States should prioritize implementing processes to coordinate swift investigation and, where appropriate, prosecution of those responsible for threats to election workers.

### **Finding 2: Disinformation has made election officials' jobs more difficult and more dangerous.**

In 2020, political actors ramped up the lies about election processes to try to influence election outcomes, often on social media. This disinformation has indelibly changed the lives and careers of election officials. Indeed, 78 percent of election officials surveyed by the Brennan Center said that social media, where mis- and disinformation about elections both took root and spread, has made their job more difficult; 54 percent said they believe that it has made their jobs more dangerous. Internet and media companies have a great deal of work to do to stem the amplification of disinformation. Here, we list a few key steps that they, along with the federal and state governments, can take to empower election officials in this struggle.

### **Key Solutions:**

- The Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA), working in conjunction with others — including the U.S. Vote Foundation, the Election Infrastructure Information Sharing and Analysis Center (EI-ISAC), the Election Assistance Commission (EAC), and state and national election official associations — should facilitate the creation of a directory of the more than 8,000 election officials who are authoritative sources on the elections

they administer. Internet companies should work with officials in those organizations to correct falsehoods and better ensure accurate content.

- States should clarify rules that govern party-appointed monitors and require training and accountability. In 2020, some party-appointed monitors who served as observers before, during, and after Election Day became sources of disinformation, at times unwittingly.
- Internet companies — namely, social media platforms and search engines — should develop and consistently apply transparent rules that respond to the problem of repeat mis- and disinformation spreaders, including prominent users. In severe cases, platforms should automatically delay the publication of posts, providing time to review them before countless users have a chance to see them.

### **Finding 3: Election officials increasingly face pressure to prioritize partisan interests over a fair, democratic process.**

The notorious recorded phone call during which President Trump pressured Georgia Secretary of State Brad Raffensperger to “find 11,780 votes . . . because we won the state” is only the most well-known and most flagrant effort to pressure an election official in 2020 to prioritize partisan interests over a fair democratic process. In our discussions with election officials, many shared their own stories of partisan actors attempting to interfere with the conduct of the election or pressure them to favor candidates of a particular party.

### **Key Solutions:**

- States should explore structural changes to election administration to insulate election officials from political interference, including changes that establish a protected scope of authority for election officials overcounting and certifying elections and guarantee a minimum level of funding. Citizen-sponsored ballot initiatives may be required to make these changes.
- Election officials should develop a robust code of ethics to help guide discretionary decision-making and avoid potential conflicts of interest.
- States should ensure that election officials have adequate legal representation to defend against politically motivated lawsuits and investigations, and election official associations should cultivate and organize pro bono legal assistance to the extent that states fail to do so.

**Finding 4: Despite their foundational importance to our democratic system, local election officials carry an unsustainable workload compared to other professional staff.**

Large numbers of election officials have resigned in the past year, raising alarm bells.<sup>14</sup> But the wave of departures could soon turn into a tsunami. As of 2020 almost 35 percent of local election officials were eligible to retire by the 2024 election, and it is not clear who will replace them, nor whether those willing to take the job in the future will share the commitment to free and fair elections that was so critical in 2020.<sup>15</sup> While election officials cited many reasons for leaving the field, the unsustainable workload came up repeatedly in our interviews.

***Key Solutions:***

- State and local election officials should adopt creative staffing solutions, including establishing relationships with colleges and universities, to ease work burdens and create a talent pool for future recruitment.
- State legislators should consolidate elections so that they occur concurrently rather than repeatedly throughout the year.
- Local election officials should use existing professional networks (such as state and national election official associations) to improve working conditions and to better empower election officials to impact election policy. They should also hire staff to coordinate with these networks and focus on education, lobbying, and communications.

# Violent Threats and Personal Safety

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Last November, after a postelection audit confirmed the accuracy of results showing that Joe Biden had won Georgia, anonymous trolls targeted election workers throughout the state, including a woman in Fulton County, whom they called a “bitch” and “crook” on Twitter.<sup>16</sup> They sent her hateful messages by text and even threatened her 14-year-old son, hurling racial slurs at him over the phone.

The same month in Michigan, dozens of armed individuals stood outside Secretary of State Jocelyn Benson’s home “shouting obscenities and chanting into bullhorns” as she was decorating the house for Christmas with her 4-year-old child.<sup>17</sup> In Washington, someone posted the state elections director’s home address, contact information, and photograph, superimposed with crosshairs, on a website describing “enemies of the people,” along with the message “Your days are numbered” and a timer clock.<sup>18</sup> The website, which similarly listed dozens of other election officials, has been tied to Iranian state actors by American intelligence authorities.<sup>19</sup>

As states around the country pass laws that will limit access to voting in the name of baseless “election integrity concerns,” they have almost entirely ignored one of the most pernicious threats to our democracy in decades: the harassment and intimidation of election workers. The threats got so bad in the weeks before and after Election Day 2020 that several officials had to temporarily abandon their homes, fearing for their safety. Many spent their own money on home security systems. Others required round-the-clock police surveillance.<sup>20</sup>

In conversations with us, several election workers reported that their family members, including elderly parents and children, were threatened with violence last year. Some election workers have since hired counselors for their traumatized children, while at least one election official reported purchasing “bug-out” bags for his daughters so that they could make a hasty escape if their home was attacked.<sup>21</sup> For women and election workers of color, the threats were particularly graphic and often laced with racist and gendered insults.<sup>22</sup> Of the dozens of election officials we interviewed for this report, many stated that the harassment and threats continue to this day.

As mentioned above, a recent survey of election officials commissioned by the Brennan Center for Justice found that one in three election officials feel unsafe because of their job, and nearly one in five listed their lives being threatened as a job-related concern. More than half said that social media has made their jobs more dangerous.

No one should be under the illusion that this is a problem that will fade as 2020 recedes into the rearview mirror. Indeed, election officials continue to come under fire in 2021. In May of this year, Arizona Secretary of State Katie Hobbs tweeted, “Earlier today a man called my office saying I deserve to die and wanting to know ‘what she is

wearing so she’ll be easy to get.’ It was one of at least three such threats today. Then a man who I’ve never seen before chased me and my staffer outside of our office.” The governor subsequently assigned state troopers to provide Hobbs with 24/7 protection.<sup>23</sup>

Before threats of violence turn into actual violence, it is imperative to take additional steps to protect election officials and workers from harm.

## Solutions

There are few more obvious roles for a democratic government than to ensure that the people entrusted with running its elections are safe from interference and the threat of violence. At the very least, that should mean prioritizing the prosecution of those who threaten election workers, in large part as a future deterrent to such behavior. It should also entail providing election workers with the resources needed to protect themselves, their families, and their personal property, and providing election officials with the assistance they need to protect their offices and staff.

Below, we detail key steps that federal and state governments should take to achieve these ends, along with measures that election officials can take to keep themselves, their staffs, and their voters secure.

### What Government Should Do

#### **Establish a Department of Justice Task Force to Confront the Problem of Election Officials Being Threatened with Violence**

Several election officials we spoke with expressed frustration that there appear to have been exceptionally few prosecutions of the individuals who have menaced (and continue to menace) them and their families. Many of the threats that election officials and workers have received violate federal and state laws.<sup>24</sup>

More than one election official expressed the worry that the lack of prosecution will normalize aggression against election officials, leading to similar or worse spikes in this behavior with each new election.<sup>25</sup> The consequences for American democracy could be dire: faced with such a dangerous climate, even more workers committed to protecting the integrity of our elections could leave the field.



Accordingly, we recommend a nationally coordinated response to this threat. Specifically, an election threats task force led by the DOJ Civil Rights Division should examine the scope of the problem and provide expertise and resources to combat violent threats against the people responsible for ensuring the integrity of American elections and their families. The task force should include the FBI, CISA, the U.S. Marshals Service; state and local prosecutors and election officials; the EAC; and election official associations. It should also serve to facilitate criminal referrals as needed.

The DOJ-sponsored Enhanced Collaborative Model to Combat Human Trafficking could serve as a useful template for this task force. That program was created “to develop and strengthen programs for victims of human trafficking, including enhancing the capacity of law enforcement and other stakeholders to identify victims and provide justice for those victims through the investigation and prosecution of their traffickers.”<sup>26</sup> Similarly, an election threats task force could work with federal, state, and local partners to enhance capacity and prioritize identifying, investigating, and prosecuting threats against election officials and workers.

The DOJ could also designate a staff member or team to review threats that election officials and workers report to federal, state, or local law enforcement, and to provide guidance to state and local law enforcement agencies for reporting and addressing incidents and keeping election workers, offices, and polling places safe.<sup>27</sup>

### **Pass New State Laws to Provide Greater Personal Security for Election Officials and Workers**

Nearly 80 percent of election officials surveyed by the Brennan Center in the aftermath of the 2020 election stated that government should provide security protection to election officials when needed. The Daniel Aderl Judicial Security and Privacy Act of 2020, introduced by Sen. Cory Booker and Sen. Bob Menendez and Rep. Mikie Sherrill of New Jersey, could be a template for how to do this. The bill was introduced shortly after a July 2020 attack on U.S. District Court Judge Esther Salas’s home that killed her 20-year-old son. It proposes three types of measures to provide greater personal security to federal judges that could be relevant for a bill seeking to provide extra security protection for election officials: greater protection of personally identifiable information; grants to purchase home intrusion detection systems; and training and education on how to maintain greater personal security.

### **Provide Greater Protection of Personally Identifiable Information**

A number of election officials we interviewed had their home addresses and phone numbers shared on the internet.<sup>28</sup> Some reported damage to personal property like

their cars.<sup>29</sup> Others had threats directed at family members, including children.<sup>30</sup> One election worker who received death threats complained that it took her and her coworkers many phone calls and several days to get data brokers to remove personally identifying information like phone numbers and home addresses from the internet.<sup>31</sup> Many agreed that they would like the option of protecting their private information ahead of future elections to make it more difficult for bad actors to harass or harm them, their families, or their property.

As with the Daniel Aderl Judicial Security and Privacy Act of 2020, state legislation could protect the personal information of election workers or election officials who ask for such protection by:

- allowing election workers to request the removal of their personally identifiable information from government databases within 72 hours;
- creating a grant program to help cover the costs to relevant agencies to remove such information from registries or databases they operate; and
- authorizing funding to create programs that would assist election workers in removing personally identifiable information listed, bought, or sold on the internet. These initiatives could include hiring third-party data brokers to scrub such records from the internet and working with CISA or state agencies to train election officials on preventing and responding to doxing.<sup>32</sup>

Programs that protect domestic violence and stalking victims could also serve as a model for protecting the personal information of election officials and workers who have been threatened. For instance, California’s Safe at Home program is a confidential program administered by the secretary of state’s office that, among other things, “offers a substitute mailing address to receive first class, certified, and registered mail.” The state’s governor recently expanded the program to cover local and public health officials who have been threatened or harassed in connection with their work.<sup>33</sup>

### **Issue Grants for Home Security Systems**

We spoke with more than one election official who stated that they or their colleagues have had police stationed outside their homes after receiving death threats. Others paid for home alarm systems out of pocket or said they would have purchased such systems had they the funds to do so. The Daniel Aderl Judicial Security and Privacy Act of 2020 proposed creating a fund that judges could access to purchase home intrusion detection systems; election officials we spoke with uniformly supported a similar fund for election officials and election workers who faced credible threats of violence.

### ***Appropriate Funds for Training and Education on How Election Workers Can Protect Themselves***

Election workers who were subject to online threats and harassment or physical damage to personal property frequently mentioned how unprepared they were for such attacks. They also described how steep the learning curve was to protect their personal information and take other steps to ensure that they and their families were more physically secure. Election officials we spoke with agreed that more training in (at least) the following areas would be helpful:

- best practices for using social media and maintaining online privacy;
- increasing security at home; and
- understanding programs and options to remove personally identifiable information from the internet.

After listening to the stories of several election officials who received persistent death threats, Eva Galperin, the Electronic Frontier Foundation’s director of cybersecurity, made two additional suggestions for how election officials might protect themselves:<sup>34</sup>

- putting someone else in charge of monitoring election officials’ social media accounts and answering their phones; and
- working with healthcare professionals to assist election workers and family members in developing coping mechanisms for dealing with such attacks.

We would add these as expenses that government grants should cover on behalf of election workers.

### ***Prioritize and Put in Place Processes at the State Level to Ensure Swift Investigation and, Where Appropriate, to Prosecute Those Responsible for Threats***

Election officials across the country reported widely divergent responses from law enforcement to threats they received depending on where in the country they reside. In some cases, perceptions about the speed and seriousness of law enforcement response even varied from jurisdiction to jurisdiction within the same state.

Regardless of whether the DOJ creates an election threats task force, states should examine and, where appropriate, create or revamp processes for responding to threats against election workers, their offices, and polling places. This effort should include participation from state attorneys general, state police, county prosecutors, and local law enforcement, as well as preexisting regional area task forces, with a united goal of mitigating and

quickly responding to election threats and establishing clear standards for how and when to investigate and prosecute such threats. It is critical that leadership from the top, including governors, clearly prioritize such threats for investigation and prosecution.

### ***Make Additional State-Level Investments to Secure Election Offices***

In addition to being threatened in their personal space, election officials and workers have also been threatened in their offices and at polling places. Election officials we spoke with reported more aggressive poll monitors and the appearance of protestors with guns in 2020. In Arizona, former Maricopa County Recorder Adrian Fontes described a mob of people carrying assault rifles and screaming outside the warehouse where staff was tabulating ballots.<sup>35</sup> In Nevada, Clark County Registrar of Voters Joe Gloria recounted that 25–50 protesters appeared outside his office every day, some openly carrying weapons, leading him to provide meals for his staff so that they did not have to leave the building. When they did leave, protesters harassed them in the parking lot. Security costs went up significantly, with \$400,000 spent on police overtime.<sup>36</sup> In Nevada County, California, Assistant Clerk-Recorder/Registrar of Voters Natalie Adona told us that 300 Trump supporters held a rally in the parking lot outside her office, both blocking access to a ballot drop box located there and potentially intimidating voters.<sup>37</sup> She also reported that observers “were borderline harassing her staff,” demanding to stand closer, use binoculars, and take pictures of signatures, and asking questions they knew the answers to multiple times.

The threats have continued long after the 2020 counting (and recounting) was over. Indeed, in March 2021, authorities found a pipe bomb in an Iowa polling place.<sup>38</sup> As with personal protection, election officials we spoke with agreed that a state program specifically invested in securing offices and polling places and providing grants for election worker de-escalation training would go a long way to making election workplaces safer.

### ***What Election Officials Should Do***

While election officials expressed frustration at the lack of consequences for those who menaced their families, many were also extremely grateful for the cooperation of law enforcement during and after election season. Many also shared that law enforcement assistance resulted in greater safety for themselves, their workers, and their voters.

### ***Use Tabletop Exercises to Prepare for Threats***

In the run-up to the 2020 election, many election officials we spoke with used tabletop exercises to prepare for worst-case scenarios. CISA ran or partnered in many of

these facilitator-guided, discussion-based sessions, which frequently focused on potential cyberattacks and disinformation.<sup>39</sup> Philadelphia City Commissioner Lisa Deeley reported that the city’s emergency management team used a tabletop exercise to go through potential worst-case scenarios for threats and physical violence.<sup>40</sup> She noted that “sadly, 99 percent of the worst-case scenarios actually happened,” but that being prepared for them was “invaluable” and allowed the city commissioners and law enforcement to better protect election workers during an extremely volatile postelection period.<sup>41</sup>

### **Build Cooperation with Law Enforcement, Including by Developing and Distributing Law Enforcement Pocket Guides**

Neal Kelley, registrar of voters in Orange County, California, developed a pocket guide for local law enforcement detailing key state penal provisions around things like electioneering near a polling place and intimidation of voters, as well as contact information for fusion centers and the Department of Homeland Security. He said that these pocket guides were useful in helping local police to understand what is and is not allowed around election offices and polling places. The guides also listed appropriate contacts to call if law enforcement was unsure of what action to take in response to a disturbance. Kelley stated, “We created a pocket guide for election crimes for the things we’re talking about here . . . your average street cops never deal with these things. If they show up after getting a call and need to figure it out, it could be challenging.” He noted that the pocket guides were in demand by other election officials around the country in 2020; he

sent them to officials in close to 20 states around the country, who adapted them for their own laws. Distribution of these guides also offers election officials an opportunity to educate law enforcement about the need to be sensitive about showing up at polling places, and about the general rule that they should only appear at polling places when called to respond to a specific issue.

More broadly, a recent report by the Elections Group titled *Running Elections Without Fear* offers numerous practical suggestions for how election officials can build cooperation with law enforcement and other government agencies like CISA to protect election workers. Recommendations include building consensus about the importance of election-related violence, jointly developing incident response plans, and improving physical security at the office, in polling places, and at home.<sup>42</sup>

### **Protect Personal Information**

Election officials can take a number of steps on behalf of themselves and their offices to protect their personally identifiable information, blunt the impact of online threats, and mitigate the impact of doxing. The Elections Group offers several proactive suggestions for minimizing the likelihood that personally identifiable information can become public, including scrubbing and closing old accounts and creating alternative public-facing contact information.<sup>43</sup> CISA also offers recommendations for controlling personal information shared online to reduce the likelihood of doxing, as well as steps to mitigate the impact of doxing after it has occurred, including where to report an incident and how to remove information from a website or application where it has appeared.<sup>44</sup>

# Disinformation

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**E**lection officials, media platforms (including social media), state and federal governments, and nongovernmental organizations (NGOs) in the United States knew that the 2020 election cycle might bring with it disinformation about elections and candidates. Many were worried about the threat of disinformation from foreign sources. Ultimately, though, the bulk of disinformation about election officials' work and the methods they employ to ensure accurate outcomes was propagated by people within the United States.<sup>45</sup>

Throughout the 2020 election season, individuals with large followings — including elected leaders and those collaborating with them — spread false narratives about the integrity of the election. They often infused their claims with racist tropes, such as accusations that election workers of color were engaged in fraud or that votes cast in cities with many voters of color were fraudulent.<sup>46</sup> In addition to the problem of people intentionally disseminating lies (*disinformation*), some people spread erroneous information without realizing that it was false (*misinformation*).

Election officials we spoke to saw a direct link between election disinformation and the violence and threats they experienced in conjunction with the 2020 election. Indeed, 54 percent said they believe that social media, where disinformation about elections took root and spread, has made their jobs more dangerous.

More generally, election officials said that the prevalence of mis- and disinformation has created new burdens for them, increasing their workloads as they combat false stories and demoralizing their staff as they contend with the effects of reading, watching, and hearing lies being told about their work.<sup>47</sup> Here are just a few examples:

- Cathy Darling Allen, county clerk and registrar of voters in Shasta County, California, noted that the volume of phone calls from the public coming into her office increased dramatically in this election cycle,<sup>48</sup> straining her and her staff as they attempted to explain to callers that the election was not stolen. Individual calls could take upwards of 15 to 20 minutes, as those who called were generally unwilling to accept truthful information.
- Neal Kelley in Orange County, California, operated a call center to handle inquiries from the public.<sup>49</sup> The call center workers received thousands of calls related to incorrect information about elections over a 40-day period.
- When President Trump encouraged voters to vote both by mail and in person in the same jurisdiction, the state board of elections in North Carolina issued a press

release, changed its website, and gave media interviews to educate the public that the practice is criminal and to explain the security measures in place to prevent double voting.<sup>50</sup>

Responding to rumors and disinformation is not just time-consuming; it can also be deeply demoralizing, as disinformation often includes claims that election officials and workers have themselves committed fraud or otherwise acted improperly. “I’ve never been called a liar so many times in my life,” Allen stated. In truth, election officials worked heroically, logging long hours and putting their own health at risk to ensure that voters could exercise their voting rights safely during the Covid-19 pandemic. In the face of these efforts, claims that officials and workers “stole” an election are particularly stinging.

Finally, nearly every election official we spoke with expressed concern that disinformation about elections would exacerbate the difficulty of retaining and hiring good staff.

Below, we provide some solutions for election officials, social media platforms, and the federal and state governments to respond to the many challenges caused by disinformation.

## Solutions

Disinformation is a problem that many sectors of society, from doctors to elementary school educators, will have to cope with in the coming years. Internet companies in particular, such as social media platforms and search engines, have a duty to ensure that they are not a vehicle for the amplification of disinformation, and much more needs to be done. Here, we limit our scope to what internet companies, election officials, and the federal and state governments can do in the short term to address falsehoods about elections specifically. As we discuss throughout this report, the job of local election officials and their staff has become increasingly difficult over the years and became especially burdensome in the 2020 election cycle. Yet the increase in responsibilities and the dramatic rise in physical safety concerns have not been met with a

sustained increase in resources to address these concerns. Federal and state governments and internet companies should provide assistance to election officials in implementing these solutions wherever possible.

## What Internet Companies Should Do

Major internet companies partnered with groups such as the Bipartisan Policy Center in the 2020 cycle to educate the public with accurate election information and to respond to election disinformation.<sup>51</sup> Still, there is no question that more needs to be done in the future. Too many falsehoods reached too many people. Companies must step up their efforts with stronger rules against election disinformation and better enforcement of those rules. Some companies have stated that they wish to do more, although specific proposals vary.<sup>52</sup>

Here, we recommend specific actions they can take to assist election officials in the absence of any major legislative or regulatory change. These actions would help election officials as they carry out their duties to safeguard free and fair elections in the face of disinformation campaigns.

### Boost Content from Election Officials Through an Authoritative Directory Compiled by the Cybersecurity and Infrastructure Security Agency

Many election officials reported that they encountered obstacles from internet companies when they tried to widely disseminate accurate information about elections online. Some expressed frustration with web and social media searches returning disinformation, such as “rigged election” narratives, when users searched for voting information.<sup>53</sup> Some had trouble creating official, verified government accounts on social media platforms due to requirements about having a personal account or a threshold number of followers. Some officials who tried to purchase online ads to educate the public were stymied by “political ad” rules intended to govern electioneering and other types of advocacy rather than official information about how to vote.

Information from election officials is authoritative on how to vote, vote counting procedures, and other aspects of elections. The internet companies that have served as powerful tools for spreading disinformation must actively work to bolster truth by boosting messages from election officials whenever possible. The suggestions below are based on services offered by some of the largest platforms. No doubt there are many ways to amplify official content, and we welcome innovation by internet companies.

An authoritative directory of officials would be a vital tool for companies’ amplification of official content through systematic mechanisms developed prior to high-stakes elections as opposed to through ad hoc requests.

CISA is now in charge of managing the .gov domain and has made it available to eligible entities for free.<sup>54</sup> Alongside a push to move all election offices to the .gov domain, CISA should compile an election official directory in conjunction with the EAC and trusted third parties such as the U.S. Vote Foundation, the National Association of State Election Directors (NASED), and the National Association of Secretaries of State (NASS).<sup>55</sup> The directory should include every election office, jurisdiction locations, and information about official websites and social media accounts.

Concurrently, platforms should offer accounts listed in the election official directory myriad options for prominently displaying their content, provided those officials abide by platform rules and do not themselves spread disinformation. Accounts listed in the directory could get free ad credits or have their organic content routinely amplified in platform feeds, especially for users in a given jurisdiction’s geographic area.<sup>56</sup> Platform-sponsored products such as Facebook’s Voter Information Center and other platforms’ like initiatives should reference and link to directory-listed officials’ in-platform accounts and websites. Search algorithms should ensure that accurate content from election officials in the directory is prominent when users search for terms related to voting and elections. The precedent exists: Twitter, for example, agreed to promote content produced by the Superior Electoral Court of Brazil during that country’s 2020 election cycle by elevating it to the very top of search results.<sup>57</sup>

In addition, internet companies should make it as easy as possible for election officials to promote true information. Doing so could include offering trainings early in the election cycle on search engine optimization and how to improve reach, and free templates for engaging ads and posts that officials can drop jurisdiction-specific information into.<sup>58</sup> An election official directory would be particularly helpful in these efforts, as platforms could use it to proactively reach out to officials to offer assistance with content creation.

The directory could also be used to facilitate timely removal and blocking of posts that include election officials’ personal information. Major social media platforms prohibit posting others’ personal information;<sup>59</sup> platforms could (and should) prioritize requests to remove personal information from those listed in the election official directory.

Finally, internet companies should exempt election officials in the directory from restrictions on political ads that may hinder their efforts to disseminate accurate election information. Many election officials reported that when they wanted to purchase ads, the policies of major social media platforms and search engines prevented them from doing so. For example, several companies attempted to fight disinformation with a blackout period, blocking political ads in the days leading up to the election; such

bans effectively prohibited any ad mentioning voting or elections. For one, the Colorado Secretary of State's office found itself blocked from using funds that it had allocated in advance for the express purpose of purchasing ads to debunk rumors with accurate information.<sup>60</sup> Some larger jurisdictions managed to reach out to the platforms and get their ads approved and run in time, but other jurisdictions lacked this capacity.<sup>61</sup>

A directory would reduce the impact of these disparities in election offices' capacities. Directory-listed officials should be permitted to post content and purchase ads referencing the election free from blanket restrictions that others are subject to. In the case of blackouts designed to block disinformation, exempting authoritative content from election officials would actually facilitate the purpose of these blackouts.

### **Limit Prominent Disinformation Spreaders by Delaying Publication of Their Posts**

In the 2020 election, certain politicians, traditional media personalities, and other prominent individuals pushed disinformation and associated narratives — often with verified, so-called “blue check” accounts on social media.

Even as a few bad actors were the source of so much of the disinformation threatening our democracy, major platforms repeatedly failed to enforce their own rules.<sup>62</sup> Donald Trump, for example, was suspended from major platforms after the election, but he had been posting falsehoods intended to affect voting for months before that, facing little or no consequences from the platforms.<sup>63</sup>

The violent threats against election workers during and after the 2020 election show that election disinformation can lead to real-world harm. Social media companies must have clear policies around election disinformation, make them transparent to users, and consistently enforce them, just as they must for other policy violations. Disinformation spreaders should not get special consideration due to fame or political power — indeed, famous and powerful people are often the most dangerous liars. As the Facebook Oversight Board reasoned in accordance with human rights norms, a speaker having prominent status and extensive “reach,” or dissemination of their message, can increase the risk that their speech incites “discrimination, violence, or other lawless action.”<sup>64</sup>

Furthermore, social media platforms have proven too slow to take down falsehoods and often unable to find all instances once they do decide to remove content. Even when a company acts within hours, false posts have often been seen by millions on their platform, not to mention screenshotted and shared in other forums. Applying policies that prohibit false statements can be challenging, but since falsehoods usually disseminate from a small number of accounts, platforms can make great strides against the problem by focusing on these accounts.

One mechanism that platforms should use is to identify repeat offenders and automatically delay publication of all their posts for a specified period of time, such as a few hours.<sup>65</sup> Doing so would require, as we recommend above, that platforms have clear, accessible rules that are applied consistently and transparently. There could be an intermediate step before this one in which platforms warn users or publicly mark the accounts of repeat offenders, which would serve both to alert audiences and offer users a chance to change course. This “pause” would act as a kind of circuit breaker on virality and misleading or inflammatory spins on breaking news stories.<sup>66</sup> Just as important, it could give companies time to review posts for violations of their terms of service *before* publication, stopping some disinformation before it starts.

### **Send Corrective Information to Users Who Have Interacted with Election Misinformation**

Internet companies have vast power to disseminate mis- and disinformation and a concomitant responsibility to address it when it occurs. Most of the largest social media platforms have worked hard in recent elections to remove content spreading misinformation about elections and how to vote. But identifying and removing falsehoods is, as companies have seen, difficult to scale and perform without the appearance of bias.<sup>67</sup> Moreover, removing or labeling falsehoods after they are posted is not enough.

When social media platforms confirm that a post contains election misinformation, they should reach out to users who interacted with it and provide corrective information.<sup>68</sup> There may be many ways for platforms to convey corrective information, and experimentation will be helpful. Facebook has implemented alerts for users who interacted with Covid-19 misinformation, which has likely generated lessons about good ways of reaching those harmed by election-related falsehoods.<sup>69</sup> Such notices should warn users about false information and include true information along with a link to an authoritative source, like an election official's website. In the interest of accountability, such policies could require platforms to provide a process for officials listed in the election official directory to notify them that a post is false, triggering a prioritized review of that content for both removal and corrective communication decisions.

### **Collaborate to Share Information About Emerging Threats Through an Information Sharing and Analysis Center or Organization**

There was ample awareness of disinformation narratives around elections in 2020, but there was no single authority collecting, analyzing, and sharing threat information across election systems and relevant media. The social media, search, and online advertising industries should collaborate to share information about emerging threats within the industry and with election officials.

An information sharing and analysis center or organization (ISAC or ISAO) is one way to achieve this collaboration.<sup>70</sup> The Election Integrity Partnership is another model.<sup>71</sup> Regardless of the form, Congress should make sure that the entity has sufficient resources. Stakeholders involved should include state and federal law enforcement and intelligence entities like CISA, as well as academics and civil society groups studying disinformation. CISA's participation could entail using a vendor to track domestic mis- and disinformation trends (examining only aggregate, not individually identifiable, data) while drawing on the work of the newly established Foreign Malign Influence Center, which the Office of the Director of National Intelligence created in 2021 to track foreign disinformation efforts.<sup>72</sup> These trends can then inform education efforts like “rumor control” websites.<sup>73</sup>

In addition to intelligence about emerging threats, this collaborative entity could collect and analyze data over longer time frames. Useful services would include post-election analyses for trends in sources, targets, and sharing patterns and virality of disinformation narratives and campaigns. One important function of this effort would be capturing and analyzing data about content that platforms have taken down. Platforms' efforts to remove election disinformation are laudable, but valuable information is lost when takedowns destroy data about the content and users' interactions with it.<sup>74</sup> Platforms should commit to preserving data about removed content for analysis.

## What the Federal and State Governments Should Do

Local elections officials alone cannot bear the burden of combatting election mis- and disinformation. Here, we detail actions that state and federal governments should take to help.<sup>75</sup>

### Develop and Maintain an Authoritative Election Official Directory

As discussed above, CISA, working with relevant stakeholders, should create and maintain an election official directory so that internet companies can effectively and efficiently take the actions we recommend above to amplify the content produced by those officials.

### Assign “Disinformation Navigators” to Provide Local Election Officials with Extra Resources to Combat Election Disinformation

During the 2020 election cycle, state and federal governments worked hard to assist local election officials in countering and responding to election disinformation. They participated in and supported information sharing partnerships, such as the EI-ISAC;<sup>76</sup> they issued threat advisories and updates that included disinformation threats; and CISA developed and deployed a rumor control page that

sought to “pre-bunk” mis- and disinformation before it spread widely.<sup>77</sup> But the officials we spoke with believe that more can be done to directly address the issue.<sup>78</sup>

Because local election officials typically lack the resources for a rapid response team, state governments should assign staff to smaller jurisdictions to assist them in identifying and responding to disinformation.<sup>79</sup> State officials can advocate with platforms to enforce their rules for content removal, corrective notices, and account suspensions. States could help local officials build local rumor control pages or host content related to local elections on state pages. Illinois's Cyber Navigator Program is one model.<sup>80</sup>

When human errors and other election administration issues spiral into disinformation campaigns, navigators can work closely with local election officials to identify the underlying issues and promptly report the details and proposed solutions to counter false narratives.<sup>81</sup>

States and the federal government should provide support for local election officials' anti-disinformation efforts to reduce the burden as much as possible. Entities such as CISA should provide fill-in-the-blank templates for ads and social media postings and templates for rumor control pages. NGOs can play a supporting role as well.<sup>82</sup>

### Require Party Monitor Training and Accountability

Party-appointed monitors often have the right to be present at pre-election logic and accuracy testing events, in which test ballots are run through machines to check for proper programming. They also often have the right to be present at polling places, warehouses where ballots are processed before and after elections, and postelection audits. Unfortunately, these monitors became a source of mis- or disinformation in some jurisdictions during the 2020 election cycle, at times unwittingly.

We recommend that states that do not already require training of party-appointed monitors do so, through legislation, enacting regulations, or issuing guidance. Georgia recently enacted a law requiring monitors to undergo training before their service.<sup>83</sup> Such trainings could be combined with poll worker trainings for efficiency. Training can head off confusion on the part of monitors before it can become a root source of mis- or disinformation. For instance, monitors witnessing misfeeds and paper jams may become confused and think they are seeing ballots being counted twice.<sup>84</sup> Or they may overhear the term “overvotes” and incorrectly believe that it refers to more voters casting ballots than are registered. (In fact, election administrators use the term to mean votes that do not count because a voter marked more selections than is permitted.) Training in technical vocabulary and the functioning of voting equipment may help clear up misunderstandings before they occur.

In addition to training, the rules governing monitors should be delineated clearly, and monitors should be

held accountable for their behavior. During the 2020 election cycle, disputes over how much distance (during a pandemic) monitors should keep from election workers turned into lawsuits and accusations of impropriety.<sup>85</sup> Rules for party-appointed monitors should be consistent with broadly accepted norms for meaningful access but with limits to prevent interference or intimidation. Some party-appointed monitors in the 2020 election cycle took photographs when they were not permitted to do so; in some cases, those pictures were then taken out of context, either by the monitors themselves or other individuals, and used in disinformation campaigns.<sup>86</sup> Some even took photographs of election worker's license plates in the parking lot of tabulation facilities. Regulations and guidance at the state level — including accountability measures if those rules are violated — could provide more clarity in advance.<sup>87</sup>

Unfortunately, some states are moving in the wrong direction, disempowering the local election officials and poll workers whose role it is to maintain an environment for election workers and voters that is safe, secure, and free from disruption or intimidation.<sup>88</sup> Instead, state officials, including chief election administrators, should lend their public support to the enforcement of safety and security rules: party-appointed monitors who take photographs or partake in other nonpermitted behavior should have their credentials revoked, and procedures should be available for holding political parties accountable when their monitors repeatedly violate safety and security rules.

### **Allocate Resources for Public Education**

States and the federal government should allocate resources for education for all ages and in all commonly spoken languages on civics, election processes, and media literacy so that when mis- or disinformation is propagated, the public is ready to resist and reject it with confidence. Building resilience to disinformation through long-term educational efforts requires investments and expertise from leaders in education. State and federal governments can also serve as trusted repositories of accurate election information, educating the public about when, where, and how to vote, how votes are counted, and other election administration issues.

### **Prohibit Misleading Fundraising Off Contesting Elections**

The 2020 election cycle saw a flurry of misleading fundraising. Funds solicited ostensibly for legal and other fees involved in requesting a recount or contesting an election in court were actually allocated to future campaign endeavors.<sup>89</sup> If recount and contest funds can be used for general-purpose political activities, then candidates and political committees are incentivized to keep contesting the legitimacy of elections long after there is any reasonable basis for doing so. To blunt this incentive,

Congress and the states should enact legislation requiring that funds raised in support of recounts and efforts to contest elections be spent on such activities related to the election in question.

## **What Election Officials Should Do**

In our conversations, election officials expressed an understanding that they play a crucial role in ensuring that U.S. elections remain free, fair, and trusted. Most Americans trust that their own votes were properly counted by their local election official, even if they express distrust in the election outcomes of other jurisdictions.<sup>90</sup> We list below some of the ways that local election officials can help counter mis- and disinformation, with the understanding that resources and support from both internet companies and state and federal governments are necessary.

### **Have a Crisis Communications Plan for Disinformation**

Once accusations that election workers have “rigged” an election, thrown out boxes of ballots, or “found” extra ballots go viral, there may not be time to reach out to communications experts and muster resources to develop a response plan — particularly when election officials suddenly find themselves subject to personal attack. Having a crisis communications plan in place ahead of time can help election officials respond quickly, confidently, and transparently to viral disinformation.<sup>91</sup> Unfortunately, many local election officials lack the time and resources to develop these plans from scratch and, therefore, federal and state governments should assist.<sup>92</sup>

### **Educate the Public About Election Processes and “Pre-bunk” Falsehoods via Local Rumor Control Pages**

State and local election officials already proactively educate their communities about the voting process — when, where, and how to vote — using a variety of platforms and tools and in the languages spoken in their communities.<sup>93</sup> We recommend two dimensions for officials to continue and expand on public education efforts.

The public could benefit from more education about the normal role of election officials and their staff in making sure that every valid vote counts.<sup>94</sup> For example, when the public does not know that poll workers routinely duplicate damaged ballots that otherwise could not go through a scanner, it is easy for people to misinterpret video of the activity as fraudulent changes being made to ballots.<sup>95</sup> Information not only about how to vote but also about how the election process works more broadly can give the public the tools to resist and reject mis- and disinformation about elections.



Even without the direct assistance from governments and internet companies recommended above, many election officials have invested in proactively countering specific false narratives.<sup>96</sup> Assistance and support from state and federal governments as well as internet companies would allow them to establish local rumor control pages — similar to the national-level page that CISA created in the 2020 election cycle — to “pre-bunk” falsehoods about election processes before they spin out of control.<sup>97</sup> These pages can serve as a resource for media outlets to get the facts, and they can be promoted and amplified by media platforms and search engines seeking to quell mis- and disinformation.

### **Support Education Efforts Through National Associations**

Because the burden on local election officials is so high, the Election Center (also known as the National Association of Election Officials), NASS, and NASED should supplement and support their work with proactive education of the sort described above, as well as fill-in-the-blank templates and guidelines for educating the public about election processes. In addition, professional organizations should educate internet companies about elections officials’ needs and advocate for the actions recommended above in the “What Internet Companies Should Do” section. Similarly, these organizations can advocate with state and federal governments for the measures discussed in the “What the Federal and State Governments Should Do” section.

# Partisan and Political Interference

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**T**hroughout the 2020 election cycle, election officials faced pressure to side with political parties at the expense of the truth. The most famous example of this attempted coercion was President Trump’s call to Georgia Secretary of State Brad Raffensperger during which, after reminding Raffensperger that he was a Republican, Trump stated that he just wanted to “find 11,780 votes . . . because we won the state.”<sup>98</sup> Secretary Raffensperger refused to entertain the demand, but the mere fact that a sitting president made it has rightly alarmed political observers across the political spectrum.

That phone call was far from the only incident involving the Trump campaign. According to a December 2020 *Politico* article, in the aftermath of the election, President Trump personally called or met with at least 31 Republicans — mostly local and state officials — across four battleground states that helped determine the outcome of the presidential election.<sup>99</sup> In our discussions with election officials, several shared stories of their own wherein partisan actors — including elected officials, party leaders, and partisan activists — attempted to interfere with the conduct of the election or to pressure them to favor candidates of their own party, both publicly and privately.<sup>100</sup>

We avoided a democratic crisis in this country because election officials stood their ground against that pressure and acted to protect the integrity of the election process. But many current election officials are concerned about the future, as partisan actors seem intent on making it harder to resist similar pressure in future elections. Efforts to this effect include “state legislatures across the country [that] are moving to assert their own power over elections — power that is currently, and has been traditionally, held by the executive branch and/or local officials.”<sup>101</sup>

One of the most dramatic examples of such efforts is the “audit” of the 2020 election commissioned by the Arizona Senate in Maricopa County. In an unprecedented move, and through reliance on its subpoena power, the GOP-controlled senate obtained possession of the county’s election materials, including approximately 2.1 million ballots.<sup>102</sup> When the local board — which Republicans also controlled — resisted these efforts and insisted that their elections were free and fair, the state senate threatened its members with contempt charges, and some senators threatened to put the supervisors in jail.<sup>103</sup> After a court compelled local officials to transfer possession of the election materials, the senate selected a firm led by an election fraud conspiracy theorist to conduct the audit. The legislature also acquiesced to a “right-wing cable channel” raising private funds for the audit — just days after voting to prohibit local election officials from accepting private funding.<sup>104</sup>

In other states, party leaders have censured and replaced officials who refused to cast doubt on the elec-

tion’s legitimacy.<sup>105</sup> State legislators have introduced bills that would impose criminal penalties on election officials and workers for taking steps like proactively sending mail ballot applications to voters or, under certain circumstances, purchasing advertisements or posting on social media to educate the public about upcoming elections.<sup>106</sup> And while states have always had laws on the books that would prevent election officials from engaging in certain activities, it is impossible to ignore the context in which legislators are introducing these new prohibitions — and the chilling effect that these trends may have on election officials in future elections. This concern also holds for new legislation that increases state legislative authority over elections at the expense of state and local election officials.<sup>107</sup>

Also troubling are recent decisions by local governments to defund election administration. In Ohio, the Stark County Board of Supervisors refused to pay for new Dominion voting systems unanimously chosen by the bipartisan Stark County Board of Elections.<sup>108</sup> The board was forced to file suit against the local board of supervisors to get the bill paid.<sup>109</sup> In Antrim County, Michigan, the board of commissioners rejected the local election official’s budget request of \$5,080 to pay for consultants necessary to prepare the voting machines for use in the May 2021 election after the “Dec. 6 forensic examination [by non-federally accredited laboratories] had rendered them unfit for use” in what appears to be an effort to force the official to violate state law by hand-counting the ballots.<sup>110</sup>

Sufficient funding is essential for free, fair, and secure elections. Yet federal, state, and local governments have continuously failed to fund election administration. And not only have they neglected to provide enough public funding, but state legislatures have also started blocking election officials’ access to private funding — a lifeline for many election officials who struggled to respond to the pandemic in 2020.<sup>111</sup> Several election officials have argued that this restriction will likely have the most significant impact on small, rural jurisdictions.<sup>112</sup>

Some of these ill-advised decisions by state and local politicians may stem from a lack of knowledge about the election administration process. Election administration

has become increasingly complex — and politicized — over the past decade. And election officials we spoke with believe that many lawmakers facing important election administration policy decisions lack sufficient technical election administration knowledge. Many election officials also expressed frustration about routine failures by lawmakers to simply ask election officials for feedback about their concerns or potential legislation.

## Solutions

Through our discussions with election officials and outside experts, we identified several steps that federal and state lawmakers — and election officials themselves — can take to protect election administration from partisan interference. While we believe that each of these is an important step in the right direction, we recognize that none of these proposed solutions will be enough, by themselves or together, to neutralize the increasing threat of partisan interference without broader structural reforms, culture change, and a commitment to democratic fairness from our public leaders.

We recommend that lawmakers promote election independence by building out channels of communication between lawmakers and election officials that allow election officials to have more input into policy changes that affect elections; insulating election results certification from outside influence; ensuring that election officials have dedicated legal counsel and support; and fully funding election administration. Election officials in turn should develop ethical guidelines to navigate discretionary authority and avoid conflicts of interest, and they should organize legal support ahead of each election to defend against partisan lawsuits, investigations, and prosecutions.

Finally, we consider the largest and most difficult structural challenge in this area: that the United States, when compared to other advanced democracies, uniquely puts partisan officials in charge of running elections and has surprisingly few barriers protecting the independence of election administration and certification from political actors.<sup>113</sup> This issue is not one that will be solved overnight, but we suggest some building blocks for what a sufficient solution could look like at the end of this section.

### What State and Federal Lawmakers Should Do

State legislatures have been criticized for their recent partisan efforts to “consolidate command over elections in the political hands of the legislative branch.”<sup>114</sup> As described above, these efforts include attempting to seize control over election results, stripping executive power

over elections, and degrading local authority and control “in favor of micromanagement by the legislature.”<sup>115</sup> While many election officials agree that it is critical to stop these efforts, many also believe that there are additional proactive steps that state and federal lawmakers should take to depoliticize election administration policies and ensure that election administrators remain independent.

### Establish Election Administration Advisory Boards to Improve Election Administration Policy

Election officials we interviewed expressed frustration that state lawmakers do not seek input from the people responsible for carrying out election laws and instead act to achieve partisan goals.<sup>116</sup>

States should establish permanent election administration advisory boards, staffed by election officials, with members who represent statewide officeholders, legislative leadership, local and state election officials, voting rights organizations, and other stakeholders. These boards would not only provide a venue to help educate lawmakers and other stakeholders but also foster effective communication and the depoliticization of election administration policymaking.<sup>117</sup>

Kentucky recently proved that even during a pandemic and significant national partisan rancor, this structure has many benefits and can help to minimize partisan election law and policy choices. Faced with the Covid-19 crisis and rigid state laws that did not, for example, authorize no-excuse absentee voting, Kentucky brought together important stakeholders, including representatives of statewide officeholders, legislators, local and state election officials, and others, to discuss how the state would conduct elections during the pandemic.<sup>118</sup>

The result of this collaboration was not only bipartisan support for temporary pro-voter policies — such as no-excuse absentee voting and early voting centers — during the pandemic, but also the “most significant election law updates in a century.”<sup>119</sup> Although the Brennan Center and others have criticized aspects of the bill, the process itself has been recognized as a model with promise for bipartisan election administration policymaking.<sup>120</sup>

### Prohibit Off-the-Record Communications with Officials Who Certify Elections

In each state, a public official or group of officials — typically the governor, the chief election official, or a board of canvassers — has legal responsibility for certifying the state’s complete and final election results.<sup>121</sup> Local officials or boards also play a role in this process by certifying results in their respective jurisdictions before review by the state officials. The process for certifying election results is normally a routine and technical event. But in 2020, officials in some states faced a wave of pressure from partisan actors to delay certification or reach a different outcome.

In Wayne County, Michigan, two members of the board of canvassers that voted to certify the county's election results asked to rescind their votes the next day after reportedly receiving a phone call from President Trump.<sup>122</sup> When the process moved to the state board of canvassers, board members again faced pressure campaigns from party leaders to vote against certification.<sup>123</sup> Much like Trump's call to Secretary Raffensperger in Georgia, these were clear efforts to persuade officials with authority to certify elections to change their minds.

To address such issues going forward, states should develop laws or guidelines that prohibit public officials who are responsible for certifying election results from initiating, permitting, or considering off-the-record communications with individuals attempting to influence the decision on whether to certify election results, particularly individuals acting on behalf of a campaign or party. Any advocacy on election results should instead take place in a public hearing, where all interested parties can hear and respond to arguments. States should require that officials who do receive unsolicited communications direct the individual to the appropriate public process and publicly disclose the conversation. This prohibition of off-the-record communications should begin as soon as states begin counting ballots for an election and end after results are final.

While prohibitions of off-the-record communications would not prevent a candidate or campaign from making their case before an official responsible for certifying elections, these rules would ensure that there is a clear public record of this advocacy and make it less likely that political actors would use coercive tactics. The rules would also draw a clear line for what constitutes impermissible interference in the election certification process and give officials cover when an interested party attempts to conduct such interference. These prohibitions — whether in statute, regulation, or ethics guidelines — should be designed to protect rather than penalize officials by closing off channels for inappropriate influence. Prohibitions of off-the-record communications are a common tool in judicial and administrative processes to promote fairness, reduce undue influence, and minimize perceived corruption.<sup>124</sup>

### **Ensure That Local Election Officials Have Adequate Legal Support**

Local election officials and election workers are facing increasing legal liability for errors made while carrying out their election administration duties.<sup>125</sup> Yet, election officials have complained, the legislators responsible for these new laws have failed to ensure that officials have the legal support necessary to help prevent such errors as they implement increasingly complex election laws<sup>126</sup> or to defend them in the event that they are subject to politically motivated investigations or litigations.<sup>127</sup>

Based on our conversations, adequate legal representation for local election officials and election workers was a concern prior to the recent passage of multiple bills criminalizing election administration errors.<sup>128</sup> Often with minimal legal support, these officials are responsible for making decisions about issues that are affected by a variety of federal, state, and local laws, ordinances, and policies, including everything from employment laws to the First Amendment to state election law, from the mundane (e.g., voting equipment contract disputes and employment law issues) to the complex (e.g., constitutional law issues and state election law questions).<sup>129</sup>

State and local governments must ensure that election officials have the legal resources necessary both to adequately defend them after a complaint is filed and to protect them while they are conducting their routine duties, including preparing for the next election. Providing election officials with adequate legal support during the entire planning cycle is a vital component of any system that effectively insulates election officials from partisan or other improper pressure. Government officials can ensure legal resources by providing direct legal assistance and by offering funding for local election officials to hire their own legal assistance.<sup>130</sup>

### **Fully Fund Election Administration**

Many of the election officials we spoke with identified insufficient resources, efforts to defund, or subtle threats of future resource withdrawal as an impediment to their independent decision-making ability. For example, in Ohio, the Stark County Board of Supervisors refused to pay for the voting machines that the local board of elections had selected in what appears to be an attempt to force the election officials to change vendors, and, similarly, in Michigan, the Antrim County Board of Commissioners refused the local election official's 2021 funding request for voting machine consultant services necessary to use her current machines in what appears to be an effort to force her to hand count ballots cast in the May 2021 election, in violation of state law.<sup>131</sup>

Congress should ensure that election officials have the resources necessary to administer federal elections and provide annual funding for election administration. Congress should also make sure that a portion of this funding reaches local election offices, either in cash or in kind, and require state governments to provide a partial match of these federal funds.

### **What Election Officials Should Do**

Even without legislative action, there are steps that election officials — and organizations that support them — can take to help insulate themselves against partisan pressure.

### Develop a Robust Code of Ethics

Many of the outside pressures or threats that election officials face arise when the law is not clear. Election officials have discretion to make important decisions about what services to offer and which votes are counted. This very discretion begets an opportunity for inappropriate partisan influence. And while many election officials take an oath of office requiring them to uphold the state and federal constitutions, none of these documents provide answers to some of the most difficult questions that election officials face in the performance of their duties.

Election official associations — such as NASS and state associations of local election officials — should draft and require members to uphold an election administrator code of ethics that provides guideposts to help election officials navigate their discretionary authority in a way that builds public trust.<sup>132</sup>

A robust code of ethics would have three key benefits. First, clear ethical guidelines would establish a range of best practices for maintaining the public interest and avoiding conflicts of interest that election officials could point to when facing pressure from partisan actors. Second, after the official exercises his or her discretion, ethical guidelines would provide a public rationale to help explain that choice to voters and fill a narrative vacuum that often exists when partisan actors launch misleading attacks on election officials' decisions. Finally, ethical guidelines would provide a benchmark against which election officials' decisions can be judged.

Codes of ethics are common in other fields where public trust is essential and where individuals tasked with carrying out that public trust routinely face outside pressure or potential conflicts of interest. The code of conduct for U.S. judges and rules of professional conduct for lawyers are two examples.<sup>133</sup> The codes of ethics developed in 1997 by the Election Center and the International Institute for Democracy and Electoral Assistance (International IDEA) could serve as a useful starting point for developing a robust set of guidelines.<sup>134</sup>

### Organize Pro Bono Legal Representation

Until federal, state, and local governments provide adequate access to legal resources, election officials and election official associations — such as the Election Center, NASS, the National Association of Counties (NACO), or state-based local election official associations — should proactively build relationships with organizations that connect lawyers to pro bono opportunities. One silver lining of 2020 has been a renewed interest among private actors in protecting the integrity of our democratic process. Election officials should tap into this energy, and lawyers interested in protecting democracy should begin to see election officials as paramount to this effort.

### Explore a New Structure That Insulates Election Administration from Partisan Legislative Interference

Some election officials expressed fear that the partisan pressure we saw in 2020 could make free and fair election administration extremely difficult in future elections. And the activity we have seen so far in 2021 has only amplified this fear. Election officials stood up for the integrity of the democratic process last year, but they may lack the means and the authority to do so in the future as legislatures seek more control over election administration. Or they may be driven out of their offices and replaced by individuals more willing to succumb to partisan pressures.

While there was no consensus on how to solve these election administration challenges among the election officials we spoke with, we detail below some ideas that could form the building blocks for structural independence from legislatures — which seem to have grown increasingly hostile to free and fair elections — in the event of election outcomes they do not favor.

When looking abroad to other advanced democracies, the United States stands out for how much we trust partisan actors to administer elections.<sup>135</sup> Many election experts, including Larry Diamond, Rick Hasen, and Daniel Tokaji, as well as the Commission on Federal Election Reform, have suggested that the United States adopt a similar system to many of our international counterparts and transition to an appointed, nonpartisan election administration structure to address the unavoidable conflicts of interest that exist when elected party-affiliated actors oversee elections involving fellow members of their party.<sup>136</sup>

An alternative mechanism for states is to conduct nonpartisan elections for election officials. For example, Chris Thomas — who served as Michigan's director of elections for 36 years under both Republican and Democratic secretaries of state — recommends that election officials run only on the nonpartisan portion of the ballot. Although it would not eliminate an elected official's party identification, this change could build stronger norms around nonpartisanship in election administration for both the public and election officials themselves.

We fully endorse the exploration of structural changes that could make election administration as nonpartisan as possible in both appearance and practice. But nonpartisan administration alone is not a silver bullet for the problem of independence. The challenge going forward is how to insulate election officials from partisan actors *outside* of the election office that assert pressure and control over the election process. For this challenge, making the election office nonpartisan will not be enough.

More recent legislative activity in the wake of the 2020 election provides a clear warning: so long as state legislatures can undercut or remove authority from an election

agency whenever it does something that the legislature disagrees with, that agency — regardless of its structure — will be vulnerable to partisan interference.<sup>137</sup>

To insulate election officials and the election administration process from this sort of partisan interference, election administration should be treated as independent of the legislative or executive branches of government, and officials tasked with upholding a free and fair democratic process should be provided with space to exercise discretion as competent professionals. Below, we detail two aspects of this vital framework that are especially critical:

### Protected Scope of Authority

If states want to insulate election administration from partisan interference, they should establish a range of decisions and responsibilities that are firmly under the purview of election officials and cannot be altered or removed by legislatures. In determining the scope of these responsibilities, states must strike a balance between those functions essential to a free and fair democratic process and those policy decisions that rightfully belong in the hands of elected representatives. But at a minimum, the election agency should be solely responsible for overseeing ballot counting and results certification.

To oversee election officials as they carry out these responsibilities, states could establish an independent and nonpartisan oversight board that can address questions of uniformity and fairness and ensure that election officials adhere to federal and state election law. Members of such a body should be appointed through a process that guarantees broad input and support, with a similar process outlined for their removal. States should prohibit individuals with party ties from serving in these roles, and political parties should be kept out of the nomination process.

Whereas recommending a particular structure is beyond the scope of this report, we encourage states to explore existing models for reform, such as the following:

- Wisconsin’s Government Accountability Board: Wisconsin previously administered elections through a nonpartisan board composed of six members serving staggered six-year terms. The governor nominated board members from a list of retired judges that a candidate committee put forth, and the state senate approved nominees by a two-thirds supermajority. Each of these provisions — retired judges, recommendations by candidate committee, and supermajority confirmation — was designed to promote consensus nominations, nonpartisan administration, and insulation from political actors.<sup>138</sup>

- Independent redistricting commissions: In response to similar concerns over partisan interference in the election process, states have increasingly moved redistricting responsibilities to nonpartisan commissions. States have adopted a range of structural models for these commissions, but a common method is to select a range of Republicans, Democrats, and unaffiliated individuals, or an even number of Republicans and Democrats that choose a nonpartisan chair by majority vote.<sup>139</sup> Both models try to avoid constant gridlock while also ensuring that decisions cannot be made by a single party.

- International election administration: Most advanced democracies place administrative authority in an independent electoral commission.<sup>140</sup> Australia, for example, utilizes a three-member commission composed of a current or retired judge, the electoral commissioner, and a nonjudicial member (traditionally a statistician).<sup>141</sup>

### Guaranteed Funding

If states want to establish financial independence for election administration, they must provide officials with enough funding to competently perform their responsibilities for every election and prohibit legislatures from reducing these funds to undercut these efforts. Funding levels should be based on a thorough, independent study on the cost of running elections, including salaries sufficient to maintain effective election personnel. Long-term protection for election funding may require amendments to state constitutions, a process that varies from state to state.<sup>142</sup>

A protected, baseline level of funding will not only ensure that election officials have enough resources to run free, fair, and secure elections, it will also prevent lawmakers from using cuts to funding or threats thereof as a tool to shape or scale back election administration. Recent incidents in Stark County, Ohio, and Antrim County, Michigan — where lawmakers attempted to use control over finances to force policy or equipment changes — provide examples of this tactic. Needed resources to ensure that every voter can cast a ballot and have their vote counted should not be used as a political bludgeon.

International election administration provides a model for reform here too. In Canada, for example, the independent agency that administers federal elections has statutory authority to draw all funds needed to run elections without prior approval from parliament.<sup>143</sup> This statutory authority serves as “a critical component in maintaining the integrity of the democratic process” and a recognition of the agency’s “independence from the Government and from the influence of political parties.”<sup>144</sup>

# Talent Pool Challenges

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**T**he large number of election officials who have resigned in the past year could be just the tip of the iceberg.<sup>145</sup> Almost 35 percent of local election officials are eligible to retire by the 2024 election. Given the challenges that election officials have faced in the last year, it is uncertain whether there will be enough interested and qualified talent committed to free and fair elections to replace them.<sup>146</sup> Beyond addressing the challenges identified above, what can be done to make the job of a local election official as attractive as possible?

To answer this question, we must understand the specific obstacles to ensuring a robust supply of local election officials. Among the biggest challenges identified by election officials and other experts are the heavy workload with extremely limited support; the dearth of meaningful time to reenergize between elections; and election official and staff salaries that are low compared to other government jobs, especially given the enormity and complexity of the work they do.

Election officials and staff have a heavy workload in terms of tasks that must be regularly undertaken and expertise that must be developed, combined with limited staff and resources. In a 2020 survey of local election officials, 88 percent of respondents reported that there were five or fewer permanent, full-time equivalent (FTE) employees working in their offices, and 17 percent of respondents reported that they were the sole permanent FTE employee.<sup>147</sup> Nevertheless, with this small number of people, election offices often administer four elections per year, and election officials must be experts in logistics, cybersecurity, communications, information technology, customer service, and voting law.<sup>148</sup> As Santa Barbara County, California, Registrar of Voters Joe Holland notes, “any one of these things is maybe not all that significant, but when you heap them all on top of each other, it just is approaching overwhelming.”<sup>149</sup> Beyond elections, many local election officials also oversee unrelated matters, such as cemeteries, city councils, cattle brands, public records, and liquor licenses.<sup>150</sup> The quantity of work and the increasing complexity of the responsibilities can make the job exponentially more difficult.<sup>151</sup>

With such a heavy workload — made even heavier in 2020 by the need to prepare a pandemic-safe election process — election officials and staff are exhausted and have no time to recuperate. One local election official shared that she and her team worked “70–80 hours a week for two and a half months.”<sup>152</sup> Another local election official reported working 110-hour weeks for six weeks straight during the 2020 election cycle.<sup>153</sup> And the norm seems to be that election officials can rarely if ever use their vacation time. One local election official in a moderately sized jurisdiction had 12 weeks — or two and a half

years’ worth — of unused vacation time.<sup>154</sup> A state election official reported that he has more than 500 hours of unused leave, much of which he is on the verge of losing for lack of use.<sup>155</sup> As a local election official remarked, “I’m exceeding my capacity for dealing with it. I’m tired, constantly. It’s stressful. I go home and crash, get up and do it again the next day. I think all election officials right now are kind of in that same boat.”<sup>156</sup>

Despite the job’s complexity, heavy workload, and limited usable vacation time, election officials and staff earn relatively low pay, particularly in smaller jurisdictions. Academic research has found that local election official pay “is unique compared to other executive level managers. . . . [P]ay trends more closely mimic trends among the country’s state and local employees who provide basic administrative support.”<sup>157</sup> The average local election official salary is \$50,000 — \$20,000 less than the \$70,000 median salary for “Official Administrators” (as defined by the U.S. Equal Employment Opportunity Commission), which includes comparable executive department heads.<sup>158</sup> For smaller jurisdictions, the pay disparity is significantly larger: “Just over 45 percent of local election officials from jurisdictions of 5,000 or fewer registered voters reported that they are paid less than \$35,000, with over a quarter earning less than \$20,000.”<sup>159</sup> Salary issues extend to local election staff as well. One former election official said that a salary study revealed that her deputy’s salary was lower than all other deputies in city hall. Another local election official confided that the starting pay on her county’s salary schedule is less than \$16 per hour and that county commission approval is required to hire above that level, which limits recruitment and retention possibilities.<sup>160</sup>

The elections field skews older and white. According to a 2020 survey of local election officials, 94.1 percent of respondents identified as white.<sup>161</sup> Seventy-four percent were older than 50, with a quarter over 65.<sup>162</sup> These demographics highlight the need for improved outreach; they also point to an important solution to the question of who can replace election officials leaving the field. Addressing the problems driving dedicated public servants away can open the door to untapped talent in diverse communities that can serve as future election officials.

# Solutions

## What Government and Election Officials Should Do to Improve Working Conditions

For both retention and recruitment of local election officials, government and election officials must improve working conditions, addressing the job’s complexity, heavy workload, limited usable vacation time, risk of harassment — including safety concerns — and relatively low pay. Grappling with the unsustainable workload will ameliorate several of these issues and therefore should be a high priority. Coordinating election calendars will also make a big difference. Addressing all of these issues will make the job more attractive and also express appreciation for the job performed, fostering resilience in the face of the myriad challenges identified elsewhere in this report.

### State Chief Election Officials and Local Election Officials Should Address Local Staffing and Resource Needs

The most effective way to reduce the overwhelming workload in election offices is for local governments to fund the hiring of additional staff. Even in the absence of significant additional resources, though, jurisdictions can improve staffing in several ways:

- A state’s chief election official can recruit and have on standby a pool of “backup workers,” either volunteer or temporary staff, to deploy around the state as needed in different local jurisdictions.<sup>163</sup>
- A state’s chief election official or local election officials can institute fellowship and internship programs.<sup>164</sup>
- Local election officials can “borrow” staff from other departments or divisions during those times of the year when the workload is especially high.<sup>165</sup> (Note that in some jurisdictions, borrowing staff can incur additional costs because of the need to account for salary costs of the borrowed employees in the budget.)<sup>166</sup>
- Jurisdictions can share staff with expertise in communications, cybersecurity, logistics, information technology, and law. Noah Praetz, a founding partner at the Elections Group, suggests that state chief election officials should provide shared staffing through “force augmentation teams” modeled on cyber or misinformation navigators (discussed earlier in this report). Shared staffing arrangements also can be coordinated between local jurisdictions individually, and associations representing local election officials can coordinate donated pro bono staffing from law firms or public relations firms.

## State and Local Government Officials Should Show Appreciation for Their Election Officials

The following three actions will improve the work life of election officials and staff by demonstrating appreciation for their work:

- State legislatures should consolidate the timing of different elections so that they occur concurrently rather than persistently throughout the year. Doing so would allow election officials needed time for vacation, recuperation, and self-care. Local governments should schedule local elections to coincide with state-scheduled elections whenever possible. In the absence of additional staffing, this single administrative change likely would provide the most relief to election administrators.
- Local governments should increase election official and staff pay to match their local government peers.
- State chief election officials, counties, and municipalities should all create recognition awards — especially in light of huge workloads under significant public pressure — to keep up morale. In the wake of the 2020 election, multiple government officials and local community leaders publicly honored state and local election officials for their service through proclamations and bipartisan statements of appreciation. These sentiments greatly improved election administrator morale and served as a reminder of these individuals’ important role in our democracy.

## Harassment Policies and Materials Should Address Harassment by the Public

Retaining a diverse set of employees requires an inclusive workplace in which bias and harassment do not interfere with candidates’ ability to thrive and succeed. In light of the rise in harassment of election officials and election workers, including gendered and racist attacks, all election offices must address the problem of harassment by members of the public.<sup>167</sup> Off-the-shelf policies and training materials do not always encompass this form of harassment, so election offices must tailor the policies and materials they use to address this particular barrier to a safe and inclusive workplace.<sup>168</sup> County and municipal governments should assist in this effort and may need to update their policies and materials more generally in this regard, as public health officials and others in government have similarly faced increased harassment.<sup>169</sup> Smaller jurisdictions may wish to join forces in collectively seeking out appropriate materials from county and municipal governments.

## What Local Election Officials Should Do to Leverage Existing Professional Networks to Improve Job Quality



Professional networks, whether formal associations or informal peer-networking arrangements, provide election officials with peer camaraderie and support that can bolster them in their jobs, offer thought partnership, and help problem solve different work issues. Associations specifically are important to build up and should be leveraged to better benefit election officials, especially at the local level. Many election officials we spoke with agreed that these kinds of associations could more aggressively advocate on their behalf, including by lobbying for policies that will help them do their jobs.

### **State Associations Should Hire Staff to Represent Election Officials' Interests**

Every state already has an association that represents local election officials, though how these organizations are funded and whether they have staff varies.<sup>170</sup> We recommend that election official associations without paid staff find ways to fund new hires.

With paid staff, associations can organize trainings, foster networking opportunities, coordinate pooled resources, help amplify election officials' voices when legislatures are contemplating new policy, and influence the public dialogue about the elections process through proactive communications work. For example, during the 2020 election, the California Association of Clerks and Election Officials helped educate counties with limited vote-by-mail experience by leaning on the experience of the 15 counties that had already implemented the state's Voter's Choice Act, which relies heavily on vote by mail. Associations can also counter misinformation, bad legislation, or adverse litigation. Associations — which represent the entirety of a particular community of election officials — provide a credible source to support and publicly vouch for the integrity and good work of specific election officials who may be unfairly targeted by portions of the public.

### **With Additional Capacity, State Associations Representing Local Election Officials Should Proactively Participate in the Development of State Policy**

State associations representing local election officials can and should help election officials provide input and feedback when policy is being considered so that policymakers have the benefit of real-world expert information about implementation issues. Associations can pursue this level of involvement, which has not been the norm for associations without hired staff, by organizing and through communications strategies. For example, the Colorado County Clerks Association successfully moved the state legislature toward the adoption of mail ballots and vote centers — two reforms supported by local election officials.<sup>171</sup> Relatedly, the same organization develops and contributes fiscal impact information for every elec-

tion bill that the legislature considers. For major impact bills, it regularly surveys its members to develop fiscal notes; the costs identified in the association's fiscal notes have a significant influence on election-related bills' likelihood of passage.<sup>172</sup>

### **Local Election Officials Should Advocate for National Policy**

Beyond state-specific associations, local election officials should leverage numerous other associations to influence public policy: the National Association of Counties (which has an elections subcommittee), the Election Center (which has a legislative subcommittee), and the International Association of Government Officials (which has an election officials division and a legislative subcommittee).<sup>173</sup> At the national level, local election officials currently lack a meaningful federally coordinated voice. The Election Center, which is the national organization representing local election officials, recently renewed its legislative committee and therefore may give local election officials an amplified voice on federal policy.

### **What State and Local Election Officials Should Do to Diversify the Field**

To broaden the field of election officials and staff, the most immediate needs are to recruit new people into the field of election administration and to build a pipeline of future election officials. Outreach should specifically target young people and communities of color, and election officials should partner with initiatives already focused on nationwide poll worker recruitment. In implementing each of these priority recruitment categories, states and local jurisdictions should beware of two potential challenges. For one thing, in some local jurisdictions, local election officials do not have direct hiring authority; rather, there are gatekeepers (such as counties and political parties) who oversee hiring. For example, in California, some counties hire election staff rather than the local election official who will oversee them.<sup>174</sup> The other potential hurdle is that some individuals may interpret the 2020 election as a signal that election officials can and should use their positions to favor certain political parties or candidates — something no current election official (or the public) should want. Election officials will have to navigate both of these challenges as they work to replenish the field.

### **State Election Offices Should Use Internships, Fellowships, and Community Colleges and Universities to Expand the Talent Pool, Especially Among Communities of Color**

State election offices can use student and young adult outreach to diversify the future pool of election administrators. Providing opportunities to work in and learn

about elections helps with immediate staffing shortages and expands the number of candidates with skill and knowledge for future jobs as election officials.

In 2020, Arizona piloted both a fellowship program and an internship program aligned with these goals, each of which is worthy of emulation by other states. For immediate staffing and longer-term needs, the Arizona secretary of state's office instituted a fellowship program called Democracy Corps, through which it hired three yearlong fellows to support the increased demands of election administration during the 2020 general election year. The program targeted college and graduate students, recent graduates, and interested community members. Two of the three fellows accepted permanent positions with the office. Indeed, the program worked so well in terms of staffing and recruitment that the state hopes to launch an expanded pilot program and then export it to states around the country.

In addition, Arizona's eight-week summer Initiative Internship Program staffed the secretary of state's office with more than 50 interns who provided needed short-term assistance processing initiative petitions (which are often challenged in litigation). The program, which targeted students interested in election administration as well as direct democracy, allowed for up-front training and gave participants an opportunity to debrief about the experience at the end. In its assessment of the program's impact, the secretary's office determined that it spent less money on the initiative process, finished processing the petitions earlier than the norm, and had a better-quality work product. It also inculcated more than 50 students with a deep appreciation of democracy.

State chief election officials nationwide — and, to the extent that they are able, local election officials — should replicate these programs. In implementing such internship and fellowship programs, election officials should look to partner with colleges and universities, many of whom have public service mandates (and therefore an incentive to funnel students as participants), as well as local initiatives such as workforce development boards. Internship and fellowship programs could be incorporated into AmeriCorps' offerings and be advertised as part of Service Year. Beyond just entry-level positions, fellowship programs specifically could also be used to train people for mid-level positions and management positions, where a capacity gap exists.

Notwithstanding the existence of many public administration programs, few local election officials have come to their jobs through college or university programs.<sup>175</sup> Public administration programs at the community college and university levels should incorporate election administration coursework and internships into their programs to whet the appetites of younger people for a career in election administration. One model might be to incorporate election administration coursework into existing

public administration programs. Another model might be to offer specific undergraduate or graduate certificates in election administration, as the University of Minnesota's Hubert H. Humphrey School of Public Affairs and Auburn University each offer.<sup>176</sup>

### **Where Election Officials Are Elected or Appointed, Jurisdictions Should Work with Groups That Support Diverse Candidates**

To improve representational diversity among local election officials chosen by voters or appointed by elected bodies (such as a county board of supervisors), relevant local jurisdictions should cooperate with nonpartisan groups that provide training, education, and resources for members of underrepresented groups considering a run for office or interested in appointments processes.<sup>177</sup> These nonpartisan groups — like the Campaign School at Yale University and Rutgers University's Ready to Run programs — should create trainings and develop resources specifically for those looking to enter election administration, covering what the positions entail and steps that can be taken to set oneself up for success. Elected and appointed local election officials can collaborate with these groups to assist with the development of this content, and groups should consider making some general sessions open to the public for free.

### **Election Officials Should Partner with Organizations That Recruit Poll Workers**

As the front line on Election Day, poll workers are important election workers. They perform crucial functions, and by experiencing election administration firsthand, they become community ambassadors and a talent pool for full-time election administration jobs. In 2020, a collaboration of nonprofits and private sector companies called Power the Polls targeted young people and catalyzed more than 700,000 people to become poll workers for the first time.<sup>178</sup> With "a budget of about \$1,000," an initiative called the Poll Hero Project recruited more than 37,000 young people to be poll workers using social media and academic networks.<sup>179</sup> Election officials should partner with these organizations in their recruitment efforts and then encourage the new poll workers to continue in the role. When staff positions are available, local election officials should recruit from their population of new poll workers, leveraging their experience in election administration.

### **Jurisdictions Should Conduct Office-Wide Diversity Self-Assessments**

Identifying and removing barriers — particularly any locally unique barriers — to diversifying the profession requires self-assessments and periodic data collection to assess the effects of one's efforts.<sup>180</sup> Information on categories like race, disabilities, sexual orientation, and

gender identity, as well as how employees learned about their positions, can reveal where in the process barriers are having an impact, and accordingly, what diversity and inclusion initiatives to prioritize.<sup>181</sup> For instance, data may reveal that those applying for employment in the elections office are not a diverse group. Or it may show that despite the applicants being diverse, they are not equally set up for success with the necessary experience or education. Local jurisdictions should then use this information to identify best practices for improving workplace diversity, such as implementing mentorship

programs or conducting college student outreach at an earlier stage.<sup>182</sup>

While smaller jurisdictions may lack the capacity to conduct a self-assessment annually, periodic, regular assessment along with continuous data collection with committed follow-up is key. Smaller jurisdictions might pool resources in these efforts and should request assistance and guidance from county or municipal governments in conducting these assessments. Data collection should be vetted with legal counsel so as to avoid running afoul of employment laws or labor agreements.

## Conclusion

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The year 2020 provided Americans with an extraordinary civics lesson on the importance of election officials to our democracy. In the face of a pandemic and a flood of disinformation about the election process and its integrity, these officials managed to run “the most secure election in American history,” with the highest turnout in more than 100 years.<sup>183</sup>

It is no accident that in 2021, as American democracy finds itself under assault,<sup>184</sup> these officials are a prime target. If we are going to protect American democracy, we must protect them. This will require a whole-of-society approach that includes federal and state legislatures, prosecutors, law enforcement, and social media companies. Most importantly, those with the power to do something should consult closely with election officials and workers themselves. It is no exaggeration to say that the survival of our democracy depends on it.

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- 12 A new Georgia law replaces the elected secretary of state as chair of the State Election Board with a chairperson appointed by the General Assembly and gives this reconstituted State Election Board the authority to suspend local election officials and appoint temporary replacements. S.B. 202, 156th Gen. Assemb., Reg. Sess. (Ga. 2021) (enacted). A new Arkansas law that the governor refused to sign because it amounted to "a takeover in the review of all elections" creates a process that allows the state legislature to directly review election law complaints, and another new law requires that election complaints made to county election boards be sent to the State Board of Election Commissioners instead of county clerks or local prosecutors. Rachel Herzog, "Arkansas Session Rolls Out Array of Vote Laws," *Arkansas Democrat-Gazette*, May 9, 2021, <https://www.arkansasonline.com/news/2021/may/09/session-rolls-out-array-of-vote-laws>. Kansas passed a law over the governor's veto that prohibits the executive branch or courts from altering election laws and requires approval from the Legislative Coordinating Council prior to the secretary of state entering into consent decrees with any court. H.B. 2332, 2021 Leg. Reg. Sess. (Kan. 2021) (enacted). Montana similarly passed a law that prevents the governor from changing election laws in an emergency without legislative approval. H.B. 429, 67th Leg., Reg. Sess. (Mont. 2021) (enacted). See generally Rakich, "It's Not Just Georgia"; Katie Bernard, "Changes to Kansas Election Rules Become Law Despite Governor Laura Kelly's Veto," *Kansas City Star*, May 3, 2021, <https://www.kansascity.com/news/politics-government/article251135959.html>; and Nathaniel Rakich and Elena Mejia, "Where Republicans Have Made It Harder to Vote (So Far)," *FiveThirtyEight*, May 11, 2021, <https://fivethirtyeight.com/features/republicans-have-made-it-harder-to-vote-in-11-states-so-far>.
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- 17 Office of the Secretary of State Jocelyn Benson, "Statement from Secretary of State Jocelyn Benson Concerning Threats Against Her and Her Family," December 6, 2020, <https://www.michigan.gov/sos/0,4670,7-127-93094-546741--,00.html>.
- 18 Joseph O'Sullivan, "Threat Made Against Washington Elections Official amid Anger over Trump Loss," *Seattle Times*, December 4, 2020, <https://www.seattletimes.com/seattle-news/politics/threat-made-against-washington-elections-official-amid-anger-over-trump-loss>.
- 19 Federal Bureau of Investigation, "Iranian Cyber Actors Responsible for Website Threatening U.S. Election Officials," December 23, 2020, <https://www.fbi.gov/news/pressrel/press-releases/iranian-cyber-actors-responsible-for-website-threatening-us-election-officials>.
- 20 Jonathan Lai, "Philly Elections Officials Are Getting Death Threats as Trump Targets the City," *Philadelphia Inquirer*, November

9, 2020, <https://www.inquirer.com/politics/election/philadelphia-elections-officials-death-threats-20201109.html> (“After Election Day, as threats came in, Philadelphia police stationed officers outside the commissioners’ homes. . . . On Wednesday, former Florida Attorney General Pam Bondi called out Schmidt’s chief deputy, Seth Bluestein, by name at a Trump campaign news conference. When the threats and anti-Semitic messages and calls started coming in, police took up guard outside his home, too.”); and Seth Bluestein (chief deputy commissioner for City Commissioner Al Schmidt, Philadelphia, PA), interview by Brennan Center, February 12, 2021.

**21** Comments from anonymous election officials.

**22** See Dillon Rosenblatt (@DillonReedRose), “For six months I’ve been trying to tell this story and for six months I’ve been met with pushback claiming it’s not a story worth telling. Women in politics face harassment/threats more than men. I think there are enough people who will back up that statement. 1/,” Twitter, May 15, 2021, 12:37 p.m., <https://twitter.com/DillonReedRose/status/1393606495166558209?s=20>; and Dillon Rosenblatt (@DillonReedRose), “I wrote a story about @katiehobbs and the constant barrage of harassment and death threats she has faced since the November 2020 election. Twice now she has been forced to request 24-hour security protection because the threats got so bad,” Twitter, May 15, 2021, 12:37 p.m., <https://twitter.com/DillonReedRose/status/1393606591371522050>.

**23** Katie Hobbs (@SecretaryHobbs), “Earlier today a man called my office saying I deserve to die and wanting to know “what she is wearing so she’ll be easy to get.” It was one of at least three such threats today. Then a man who I’ve never seen before chased me and my staffer outside of our office,” Twitter, May 6, 2021, 5:34 p.m., <https://twitter.com/SecretaryHobbs/status/1390465045620879361>; and Brahm Resnik (@brahmresnik), “NOW Arizona Gov. Doug Ducey’s office has assigned state troopers to provide round-the-clock protection to @SecretaryHobbs after report of death threats. Second time in 6 months that AZ’s top elections officer has received law-enforcement protection,” Twitter, May 7, 2021, 3:31 p.m., <https://twitter.com/brahmresnik/status/1390751246957481987?s=2>.

**24** For instance, under 18 U.S.C. § 875(c) (West 2021), which covers interstate threats made by phone or the internet (including social media): “Whoever transmits in interstate or foreign commerce any communication containing . . . any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both.” See also 18 U.S.C.A. § 2261 (West 2021); Ariz. Rev. Stat. Ann. § 13-1202 (2021); 18 Pa. Stat. and Cons. Stat. Ann. § 2706 (West 2021); 18 Pa. Stat. and Cons. Stat. Ann. § 2709 (West 2021); and Mich. Comp. Laws Ann. § 750.411i (West 2021).

**25** Tina Barton (former city clerk, Rochester Hills, MI), conversation with Ash Center for Democratic Governance and Innovation (hereafter Ash Center), Bipartisan Policy Center, and Brennan Center, April 13, 2021; Kathy Boockvar (former secretary of the Commonwealth of Pennsylvania), conversation with Ash Center, Bipartisan Policy Center, and Brennan Center, April 13, 2021; and Janice Winfrey (city clerk, Detroit, MI), conversation with Ash Center, Bipartisan Policy Center, and Brennan Center, April 13, 2021.

**26** U.S. Department of Justice, “Justice Department Awards Nearly \$101 Million to Combat Human Trafficking,” press release, September 21, 2020, <https://www.justice.gov/opa/pr/justice-department-awards-nearly-101-million-combat-human-trafficking>.

**27** This idea comes from the recently enacted Covid-19 hate crimes bill sponsored by Sen. Mazie Hirono. See Covid-19 Hate Crimes Act, S. 937, 117th Cong. (2021).

**28** Lori Augino (director of elections, Office of the Secretary of State, Washington), interview by Bipartisan Policy Center, February 11, 2021; Seth Bluestein interview, *supra* note 20; and Sambo “Bo” Dul (state elections director, Office of the Arizona Secretary of State, Phoenix, AZ), interview by Brennan Center, February 17, 2021. Other

election officials who experienced this asked to remain anonymous due to continuing safety concerns.

**29** Ricky Hatch (auditor/clerk, Weber County, UT), interview by Brennan Center, February 11, 2021.

**30** Tina Barton conversation, *supra* note 25; Adrian Fontes (former county recorder, Maricopa County, AZ), conversation with Ash Center, Bipartisan Policy Center, and Brennan Center, April 13, 2021; and Joe Gloria (registrar of voters, Clark County, NV), interview by Bipartisan Policy Center, Feb. 11, 2021. Other election officials experiencing this asked to remain anonymous due to continuing safety concerns for their families.

**31** Kay Stimson (vice president, government affairs, Dominion Voting Systems, Denver, CO), interview by Brennan Center, February 18, 2021.

**32** Doxing “refers to gathering an individual’s Personally Identifiable Information (PII) and disclosing or posting it publicly, usually for malicious purposes such as public humiliation, stalking, identity theft, or targeting an individual for harassment.” U.S. Department of Homeland Security, “How to Prevent Online Harassment From ‘Doxing,’” April 2017, <https://www.dhs.gov/sites/default/files/publications/How%20to%20Prevent%20Online%20Harassment%20From%20Doxing.pdf>.

**33** California Secretary of State, “Safe at Home,” accessed May 14, 2021, <https://www.sos.ca.gov/registries/safe-home>.

**34** Eva Galperin (director of cybersecurity, Electronic Frontier Foundation, San Francisco, CA), conversation with Ash Center, Bipartisan Policy Center, and Brennan Center, April 13, 2021.

**35** Adrian Fontes (former county recorder, Maricopa County, AZ), interview by Bipartisan Policy Center, February 12, 2021.

**36** Joe Gloria interview, *supra* note 30.

**37** Natalie Adona (assistant clerk-recorder/registrar of voters, Nevada County, CA), interview by Brennan Center, February 12, 2021. See also Joshua Partlow, “Shouting Matches, Partisan Rallies, Guns at Polling Places: Tensions High at Early-Voting Sites,” *Washington Post*, October 21, 2020, [https://www.washingtonpost.com/politics/voter-intimidation-allegations/2020/10/20/6722d0ae-123e-11eb-82af-864652063d61\\_story.html](https://www.washingtonpost.com/politics/voter-intimidation-allegations/2020/10/20/6722d0ae-123e-11eb-82af-864652063d61_story.html).

**38** AP News, “Police: Live Pipe Bomb Found at Polling Place in Iowa,” March 2, 2021, <https://apnews.com/article/live-pipe-bomb-found-iowa-polling-place-0bc917cc7ed94ca6221702e5731feab1>.

**39** Benjamin Freed, “Annual Election Security Tabletop Drill Put Officials Through ‘Armageddon-Like’ Test,” *State Scoop*, July 31, 2020, <https://statescoop.com/dhs-election-tabletop-exercise-2020>; and New York State Board of Elections, “New York State Board of Elections to Test Elections Cybersecurity Posture Through a Series of Statewide Tabletop Exercises,” July 20, 2020, <http://www.co.chenango.ny.us/elections/press-release/documents/NYSBOE%20Test%20Elections%20Cybersecurity%2020Jul2020.pdf>.

**40** Lisa Deeley (city commissioner, Philadelphia, PA), conversation with Ash Center, Bipartisan Policy Center, and Brennan Center, April 13, 2021.

**41** Lisa Deeley (city commissioner, Philadelphia, PA), email message to Andrea Córdova McCadney (Brennan Center), May 6, 2021.

**42** The Elections Group, *Running Elections Without Fear: Ensuring Physical Safety for Election Personnel*, 2020, <https://electionsgroup.com/assets/Running%20Elections%20Without%20Fear.pdf>.

**43** Security Positive and the Elections Group, *Defending Democracy: Protecting Election Officials from Digital Threats*, April 2021, 13, 15, [https://fe905b4f-785c-4a89-a73e-5999b9031591.filesusr.com/ugd/346ddd\\_9b3b967e26964ccc9ddcb2fbadd216c6.pdf](https://fe905b4f-785c-4a89-a73e-5999b9031591.filesusr.com/ugd/346ddd_9b3b967e26964ccc9ddcb2fbadd216c6.pdf).

**44** Cybersecurity and Infrastructure Security Agency, “Mitigating the Impacts of Doxing on Critical Infrastructure,” *CISA Insights*, May 12, 2021, [https://www.cisa.gov/sites/default/files/publications/CISA%20Insight\\_Mitigating%20the%20Impacts%20of%20Doxing\\_508.pdf](https://www.cisa.gov/sites/default/files/publications/CISA%20Insight_Mitigating%20the%20Impacts%20of%20Doxing_508.pdf).

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- 46** Johnny Kauffman, "'You Better Run': After Trump's False Attacks, Election Workers Faced Threats," NPR, February 5, 2021, <https://www.npr.org/2021/02/05/963828783/you-better-run-after-trumps-false-attacks-election-workers-faced-threats> ("As Georgia's recount of the presidential votes wound down, Trump and his allies focused their attacks on the Fulton County elections department, where all the staff, except for the director, are Black. Rudy Giuliani spun a conspiracy that targeted Shaye Moss and her mother Ruby Freeman, who had helped out as a temp worker. He compared them to drug dealers. . . ."); and Juana Summers, "Trump Push to Invalidate Votes in Heavily Black Cities Alarms Civil Rights Groups," NPR, November 24, 2020, <https://www.npr.org/2020/11/24/938187233/trump-push-to-invalidate-votes-in-heavily-black-cities-alarms-civil-rights-group>.
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- 53** Judd Choate (director, Division of Elections, Colorado Department of State), conversation with Ash Center, Bipartisan Policy Center, and Brennan Center, April 8, 2021.
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- 60** Nate Blumenthal (director, RESCU, Colorado Secretary of State), conversation with Ash Center, Bipartisan Policy Center, and Brennan Center, April 8, 2021. RESCU stands for Rapid Response Election Security Cyber Unit.
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- 62** Center for an Informed Public et al., *Long Fuse*, vi–vii, 38, 210 ("We find, overall, that platforms took action on 35% of URLs that we reported to them. . . . Despite what appeared to be clear policy to penalize or remove repeat spreaders and high-profile disinformation actors, platforms appeared to shy away from using this particular intervention.").
- 63** Rebecca Klar, "Civil Rights Group, Watchdog Formally Request Twitter Suspend Trump's Account over Disinformation," *The Hill*, November 5, 2020, <https://thehill.com/policy/technology/524679-civil-rights-group-watchdog-formally-request-twitter-suspend-trumps-account>; and Chris Mills Rodriguez, "Twitter Permanently Suspends Trump's Account," *The Hill*, January 8, 2021, <https://thehill.com/policy/technology/533439-twitter-permanently-suspends-trump>.
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- 72** 50 U.S.C. § 3059 (West 2021); and Olivia Gazis, "U.S. Intelligence Community to Create Center to Address Foreign Malign Influence," CBS News, April 26, 2021, <https://www.cbsnews.com/news/intelligence-community-foreign-malign-influence>.
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- 74** Researchers have documented this issue arising from analogous takedowns of content relating to war crimes. See Human Rights Watch, "Video Unavailable": *Social Media Platforms Remove Evidence of War Crimes*, September 10, 2020, <https://www.hrw.org/report/2020/09/10/video-unavailable/social-media-platforms-remove-evidence-war-crimes>.
- 75** Several legislative proposals would also help address election disinformation or support election officials as they confront it. Relevant federal bills include the Deceptive Practices and Voter Intimidation Prevention Act, H.R. 3281, S. 1834, 116th Cong. (2019) (prohibit and place criminal penalties on attempts to block people from voting or registering to vote, including by making false or misleading statements, allow citizens to sue to stop disinformation, and require the U.S. attorney general to work to correct instances of election disinformation); the Honest Ads Act, H.R. 4077, S. 1989, 115th Cong. (2017) (increase transparency for the sources of paid political ads online and bolster the ban on foreign political ads, update federal disclosure rules to apply to digital ads, and require the creation of a public database of online political ads); and the Digital Citizenship and Media Literacy Act, H.R. 4668, S. 2240, 116th Cong. (2019) (create a grant program to fund new and existing media literacy programs in schools, including through curriculum development, training for educators, and new hiring). Some of these proposals — the Deceptive Practices Act and Honest Ads Act — are included in the For the People Act, H.R. 1, S.1, 117th Cong. (2021). Designating election systems as critical infrastructure by statute would codify and potentially expand the scope of the designation by the Obama Administration in 2017. Brian E. Humphreys, "The Designation of Election Systems as Critical Infrastructure," Congressional Research Service, September 18, 2019, <https://fas.org/sgp/crs/misc/IF10677.pdf>. A designation could explicitly encompass disinformation from domestic sources as a threat to election infrastructure, providing greater resources for the fight.
- 76** Center for Internet Security, "EI-ISAC Charter," last updated January 2020, <https://www.cisecurity.org/ei-isac/ei-isac-charter>.
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- 80** Illinois State Board of Elections, "Submission for the U.S. Election Assistance Commission (EAC) Clearinghouse Award 'Outstanding Innovation in Election Cybersecurity and Technology,'" 2020, [https://www.eac.gov/sites/default/files/clearinghouseawards/2020/State\\_of\\_Illinois\\_Cyber.pdf](https://www.eac.gov/sites/default/files/clearinghouseawards/2020/State_of_Illinois_Cyber.pdf).
- 81** In Antrim County, MI, "a failure to properly update software was the reason for a computer glitch that caused massive errors in unofficial election results." Paul Egan, "Antrim Vote Glitch: Expert Shares How County Mistakenly Flipped from Red to Blue," *Detroit Free Press*, November 6, 2020, <https://www.freep.com/story/news/politics/elections/2020/11/06/antrim-county-vote-glitch-software-update/6194745002>.
- 82** The Arkansas Judicial Campaign Conduct and Education Committee, established to provide "a balance to the big dollar negative advertising from dark money and outside groups," employed a "rapid response" team to address "false and misleading" attacks in the 2016 judicial elections and serves as a good model. David Ramsey, "Judicial Campaign Watch Group Sends Cease-and-Desist Letter to Dark Money Group over Misleading Ads," *Arkansas Times*, May 11, 2018, <https://arktimes.com/arkansas-blog/2018/05/11/judicial-campaign-watch-group-sends-cess-and-desist-letter-to-dark-money-group-over-misleading-ads>.
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- 85** See, e.g., Alexandra Jones, "Pennsylvania High Court to Hear Trump Suit over Election Observers," *Courthouse News Service*, November 9, 2020, <https://www.courthousenews.com/pennsylvania-high-court-to-hear-trump-suit-over-election-observers>; and the Carter Center, *The Georgia Risk-Limiting Audit/Hand Tally: A Carter Center Observation Report*, November, 2020, 31, [https://www.cartercenter.org/resources/pdfs/news/peace\\_publications/democracy/georgia-audit-final-report-033121.pdf](https://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/georgia-audit-final-report-033121.pdf).
- 86** AP News, "Photo Does Not Show Shredded Ballots in Georgia," January 6, 2021, <https://apnews.com/article/fact-checking-afs:Content:9881424587>. See also Security Positive and the Elections Group, *Defending Democracy*.
- 87** Carter Jones interview, *supra* note 84.
- 88** Eliza Sweren-Becker, "Who Watches the Poll Watchers?," Brennan Center, April 29, 2021, <https://www.brennancenter.org/our-work/research-reports/who-watches-poll-watchers>.
- 89** Trevor Potter and Brendan Fischer, "Trump Tells His Donors They're Paying for Recounts. They Aren't," *Washington Post*,



November 13, 2020, <https://www.washingtonpost.com/outlook/2020/11/13/trump-fundraising-pac-recount/>; and Soo Rin Kim and Will Steakin, "How Trump, RNC, Raised Hundreds of Millions Pushing Baseless Election Fraud Claims," ABC News, February 2, 2021, <https://abcnews.go.com/US/trump-rnc-raised-hundreds-millions-pushing-baseless-election/story?id=75633798>.

**90** Charles Stewart III, "How We Voted in 2020: A First Look at the Survey of the Performance of American Elections," MIT Election Data and Science Lab, December 15, 2020, <http://electionlab.mit.edu/sites/default/files/2020-12/How-we-voted-in-2020-v01.pdf> (showing this historical confidence in election administration within one's own state as compared to national election administration, along with softening in state-level confidence in the 2020 election cycle, but alongside a much sharper drop in national-level confidence).

**91** Defending Digital Democracy Project, *The Cybersecurity Campaign Playbook*, Belfer Center for Science and International Affairs, Harvard University, November 2017, <https://www.belfercenter.org/publication/cybersecurity-campaign-playbook#step7>; and Defending Digital Democracy Project, *Election Cyber Incident Communications Plan Template*, Belfer Center for Science and International Affairs, Harvard University, February 2018, <https://www.belfercenter.org/publication/election-cyber-incident-communications-plan-template>.

**92** Cyber navigators are one way that federal and state governments can assist local election officials. Illinois's Cyber Navigator Program — a model for other such efforts — "seeks to train the end users in election authority offices to help guard against phishing, malware, and other security breaches. [...] Cyber Navigators have a technical background, often in network infrastructure or security, and visit the individual election authorities from their zones. A key aspect of the program is building trust and rapport with election authorities to help make sense of the complicated nature of cybersecurity." Illinois State Board of Elections, "Submission for the U.S. Election Assistance Commission (EAC) Clearinghouse Award."

**93** Neal Kelley interview, *supra* note 49; and Maribeth Witzel-Behl (city clerk, Madison, WI), interview by Brennan Center, February 10, 2021.

**94** Neal Kelley in Orange County, CA, has created videos for the public showing the mail sorting and processing facilities that his office uses. See, e.g., Orange County Registrar of Voters, "Ballot Mailing Process," YouTube video, March 20, 2020, 2:37, <https://www.youtube.com/watch?v=a3i6Jqmj5M4>; and Orange County Registrar of Voters, "Ballot Security [EXTENDED]," YouTube video, September 15, 2020, 1:15, <https://www.youtube.com/watch?v=mNDAl0UGKL8>. Maribeth Witzel-Behl of Madison, WI, made herself available for hourly interviews with the press on Election Day in November 2020 and was the subject of a behind-the-scenes article in her local newspaper that detailed the preparation efforts that she and her staff had been undertaking all year. The article showed images of paper ballots for in-person voting secured and prepared for transport out to polling places. See Katelyn Ferral and Abigail Becker, "Behind the Scenes at the Madison City Clerk's Office on Election Day," *Capital Times* (Madison, WI), November 3, 2020, [https://madison.com/ct/news/local/govt-and-politics/behind-the-scenes-at-the-madison-city-clerks-office-on-election-day/article\\_437ebcff-580a-5509-a7c1-634daf4ec7a2.html](https://madison.com/ct/news/local/govt-and-politics/behind-the-scenes-at-the-madison-city-clerks-office-on-election-day/article_437ebcff-580a-5509-a7c1-634daf4ec7a2.html).

**95** McKenzie Sadeghi, "Fact Check: Viral Video Shows Pennsylvania Workers Fixing Damaged Ballots," *USA Today*, November 6, 2020, <https://www.usatoday.com/story/news/factcheck/2020/11/06/fact-check-video-shows-pennsylvania-poll-workers-fixing-damaged-ballots/6185589002>.

**96** Nate Blumenthal conversation, *supra* note 60. Neal Kelley spent \$2 million prior to the March 2020 primary and \$2.1 million prior to the 2020 general election. Neal Kelley (registrar of voters, Orange County, CA), conversation with Ash Center, Bipartisan Policy Center, and Brennan Center, April 13, 2021.

**97** Cybersecurity and Infrastructure Security Agency, "#Protect2020 Rumor vs. Reality."

**98** Amy Gardner and Paulina Firozi, "Here's the Full Transcript and Audio of the Call Between Trump and Raffensperger," *Washington Post*, January 5, 2021, [https://www.washingtonpost.com/politics/trump-raffensperger-call-transcript-georgia-vote/2021/01/03/2768e0cc-4ddd-11eb-83e3-322644d82356\\_story.html](https://www.washingtonpost.com/politics/trump-raffensperger-call-transcript-georgia-vote/2021/01/03/2768e0cc-4ddd-11eb-83e3-322644d82356_story.html).

**99** Anita Kumar and Gabby Orr, "Inside Trump's Pressure Campaign to Overturn the Election," *Politico*, December 21, 2020, <https://www.politico.com/news/2020/12/21/trump-pressure-campaign-overturn-election-449486>.

**100** See, e.g., Peter Baker and Kathleen Gray, "In Key States, Republicans Were Critical in Resisting Trump's Election Narrative," *New York Times*, last updated February 1, 2021, <https://www.nytimes.com/2020/11/28/us/politics/trump-republicans-election-results.html> ("The telephone call would have been laugh-out-loud ridiculous if it had not been so serious. When Tina Barton picked up, she found someone from President Trump's campaign asking her to sign a letter raising doubts about the results of the election. The election that Ms. Barton as the Republican clerk of the small Michigan city of Rochester Hills had helped oversee. The election that she knew to be fair and accurate because she had helped make it so. The election that she had publicly defended amid threats that made her upgrade her home security system.")

**101** Protect Democracy et al., *Democracy Crisis in the Making*, 6.

**102** Howard Fischer, "Court Reluctant to Enforce Senate Subpoenas," *Arizona Capitol Times*, January 13, 2021, <https://azcapitol-times.com/news/2021/01/13/247582/>; and Nicole Valdes, "State Senate Granted Access to Maricopa County Ballots, but What Happens Now?," ABC 15 Arizona, March 3, 2021, <https://www.abc15.com/news/election-2020/state-senate-granted-access-to-maricopa-county-ballots-but-what-happens-now>.

**103** Alex Swoyer, "Maricopa County Official Tells Lawmakers Election Was Fair, Accurate," *Washington Times*, December 14, 2020, <https://www.washingtontimes.com/news/2020/dec/14/maricopa-county-official-tells-lawmakers-election/>; Jen Fifield, "Maricopa County Board of Supervisors Votes Unanimously to Certify Election Results," *AZ Central*, November 20, 2020, <https://www.azcentral.com/story/news/politics/elections/2020/11/20/maricopa-county-supervisors-meet-consider-certifying-election-results/6362991002>; Jen Fifield and Andrew Oxford, "Could Arizona Senate Contempt Vote on Election Audit Lead to Arrest of Maricopa County Supervisors?," *AZ Central*, February 7, 2021, <https://www.azcentral.com/story/news/politics/elections/2021/02/07/arizona-senate-contempt-vote-election-results-explained/4429075001>; and S. Res. 1005, 55th Leg., Reg. Sess. (Ariz. 2021) (failed) (declaring the members of the Maricopa County board of supervisors in contempt of the Arizona Senate).

**104** Jonathan J. Cooper and Bob Christie, "Election Conspiracies Live On with Audit by Arizona GOP," Associated Press, April 25, 2021, <https://apnews.com/article/elections-election-2020-business-government-and-politics-arizona-a56ee7c8214ecc876424ee3428e3ab72>; Brahm Resnik, "Promoter of False Election Fraud Claims Is Raising Money for Arizona Senate GOP's Election Audit. Is That Even Legal?," NBC 12 News, April 11, 2021, <https://www.12news.com/article/news/politics/Sunday-square-off/promoter-of-false-election-fraud-claims-is-raising-money-for-arizona-senate-gops-election-audit-is-that-even-legal/75-a00e4e89-20d8-4588-b91d-50a32abbe9e8>; and Jonathan J. Cooper, "Arizona Legislature Votes to Outlaw Private Election Grants," Associated Press, April 7, 2021, <https://apnews.com/article/legislature-arizona-phoenix-elections-doug-ducey-aac-21cf378c4139aad178d7d8f6e6ddc>.

**105** Riley Snyder, "Nevada Republicans Vote to Censure SOS Cegavske over Voter Fraud Allegations," *Nevada Independent*, April 10, 2021, <https://thenevadaindependent.com/article/nevada-republicans-vote-to-censure-sos-cegavske-over-voter-fraud-allegations>; and LeBlanc and Mauger, "Michigan Republicans Seek to Replace GOP Canvasser."

**106** See *supra* note 11.

107 See *supra* note 12.

108 Jaclyn Diaz, "Ohio County Rejects Dominion Voting Systems After Trump Supporters Balk," NPR, March 11, 2021, <https://www.npr.org/2021/03/11/975935129/ohio-county-rejects-dominion-voting-systems-after-trump-supporters-balk>.

109 Cassandra Nist, "Stark County Board of Elections Files Lawsuit in Dominion Voting Machine Dispute," *Repository* (Canton, OH), April 5, 2021, <https://www.cantonrep.com/story/news/2021/04/05/stark-county-board-elections-filed-lawsuit-ohio-supreme-court/7094394002/>; Kate Riga, "Ohio Supreme Court Sides With County Board of Elections in Case Clouded by Dominion Conspiracy Theory," *Talking Points Memo*, May 24, 2021, <https://talkingpointsmemo.com/news/ohio-supreme-court-board-elections-dominion-conspiracy> ("The Ohio Supreme Court sided with the Stark County, Ohio board of elections . . . compelling the county commissioners to unlock funds for new voting machines — money they'd previously blocked after a wave of Trump supporters besieged them with conspiracy theories."); and Vince Grzegorek, "Ohio Supreme Court Rules in Favor of Stark County Board of Elections Over County Commissioners in Dominion Voting Machines Dispute," *Cleveland Scene*, May 31, 2021, <https://www.clevescene.com/scene-and-heard/archives/2021/05/31/ohio-supreme-court-rules-in-favor-of-stark-county-board-of-elections-over-county-commissioners-in-dominion-voting-machines-dispute> ("The three Republican commissioners of Stark County who so very badly wanted to not buy new voting machines from Dominion, the company some right-wing MAGA folks think helped steal the last election away from Florida resident Donald. J. Trump, must do so, the Ohio Supreme Court ruled this week.").

110 The Antrim County clerk subsequently rented voting machines for the election. She explained that "[s]ince the county Board of Commissioners does not have the authority to determine which voting system to use in Antrim County, and because as county clerk, [she], in consultation with township clerks, [has] the authority to decide which electronic voting system can be used in Antrim County, [she] cannot legally hold the May 2021 election with paper ballots counted by hand." Beth LeBlanc, "Antrim County Clerk Rejects Demand, Will Use Electronic Tabulators in Election," *Detroit News*, April 5, 2021, <https://www.detroitnews.com/story/news/politics/2021/04/05/antrim-county-clerk-rejects-demand-use-electronic-tabulators-election/7095899002>. See also Marti Link, "Antrim to Hand County May 4 Primary Ballots; They May Defy State Law," *Traverse City Record Eagle*, March 20, 2021, [https://www.record-eagle.com/news/antrim-to-hand-count-may-4-primary-ballots-may-defy-state-law/article\\_8114c6e8-88c2-11eb-bddf-93c3541edc7b.html](https://www.record-eagle.com/news/antrim-to-hand-count-may-4-primary-ballots-may-defy-state-law/article_8114c6e8-88c2-11eb-bddf-93c3541edc7b.html).

111 At least seven states have passed laws prohibiting election officials from accepting private funding. See H.B. 1866, 55th Leg., Reg. Sess. (Ariz. 2021); H.B. 1866, 93rd Gen. Assemb., Reg. Sess. (Ark. 2021); H.B. 7041, 2021 Leg., Reg. Sess. (Fla. 2021); S.B. 202, 156th Gen. Assemb., Reg. Sess. (Ga. 2021); S.B. 398, 122nd Gen. Assemb., Reg. Sess. (Ind. 2021); H.B. 1256, 67th Leg. Assemb., Reg. Sess. (N.D. 2021); and S.B. 1315, 112th Gen. Assemb., Reg. Sess. (Tenn. 2021). See also Reid Wilson, "Republican Legislators Target Private Sector Election Grants," *The Hill*, Apr. 13, 2021, <https://thehill.com/homenews/campaign/547816-republican-legislators-target-private-sector-election-grants>; Emma Hurt, "Why Local Election Officials in Georgia Take Issue with Many Parts of New Law," NPR, April 16, 2021, <https://www.npr.org/2021/04/16/987825440/why-local-election-officials-in-georgia-take-issue-with-many-parts-of-new-law> ("Kidd said grants were the 'only reason' Douglas County was able to afford the 2020 election."); Tom Scheck, Geoff Hing, Sabby Robinson, and Gracie Stockton, "How Private Money from Facebook's CEO Saved the 2020 Election," *GPB News* (Atlanta, GA), December 9, 2020, <https://www.gpb.org/news/2020/12/09/how-private-money-facebooks-ceo-saved-the-2020-election>; and Marie Albiges, "Mark Zuckerberg Helped Some Pa. Counties Survive the 2020 Election. Right-wing Lawmakers Say That Was Unfair,"

*Spotlight PA*, May 28, 2021, <https://www.inquirer.com/politics/election/spl/pa-2020-election-zuckerberg-grants-gop-out-cry-20210528.html>.

112 Ben Giles, "Private Donations Helped Pay for 2020 Elections. Arizona Republicans Say No More," NPR, March 11, 2021, <https://www.npr.org/2021/03/11/975746051/private-donations-helped-pay-for-2020-elections-arizona-republicans-say-no-more> ("La Paz County, one of the smallest counties in Arizona, spent its \$18,000 replacing camera equipment that broke days before the August primary election. Deputy Elections Director Kimmy Olsen said without that equipment, officials had to use a laptop camera to livestream election headquarters, so that people could observe the vote-counting process. Now they've got a brand new camera for future elections. 'It was actually a godsend that it showed up on our doorstep the way that it did,' Olsen said. 'Because like I said, us smaller counties, we do struggle to survive, to get the things that we need.'"); Hurt, "Why Local Election Officials in Georgia Take Issue"; and Christopher R. Deluzio et al., *Defending Elections Federal Funding Needs for State Election Security*, Brennan Center for Justice et al., July 18, 2019, [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Defending\\_Elections.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Defending_Elections.pdf) ("State and local election officials would consider using additional election security funding to replace these legacy systems. Bullock County Court of Probate Judge James Tatum, the local chief election official, explained, 'Our [AutoMARKs] are old and becoming very difficult to maintain. . . . I would like to have the most secure equipment, cyber training, and election security [tools], but we simply can't afford it.' Judge Tatum further explained that although 'Secretary Merrill is a champion of rural counties,' they often must do without the tools and resources available in wealthy counties. 'While Huntsville and Birmingham can afford these [replacement] costs, when you're talking about rural counties, we simply can't afford these costs no matter how much they would improve our election security. For example, we would be responsible for paying for training. Of course, we have to compensate our poll workers for their time when they come to training. We can't afford it. Rural counties are all in need of some additional resources.'")

113 Larry Garber, Kevin Johnson, Edward McMahon, and Alexander Vanderklipp, "Guardrails for the Guardians: Reducing Secretary of State Conflict of Interest and Building More Impartial U.S. Election Administration," *Election Reformers Network*, Sept. 2020, <https://electionreformers.org/guardrails-report>.

114 Protect Democracy et al., *Democracy Crisis in the Making*, 6.

115 Protect Democracy et al., *Democracy Crisis in the Making*, 7.

116 Nick Custodio (deputy commissioner, Philadelphia, PA), interview by Brennan Center, February 16, 2021; Nathan Savidge (chief registrar/director of elections, Northumberland County, PA), interview by Brennan Center, February 19, 2021; and Joseph Kirk (elections supervisor, Bartow County, GA), interview by Brennan Center, February 19, 2021. An additional election official who experienced this asked to remain anonymous. See also Lisa Marra (@LisaMarra) (elections director, Cochise County, AZ), "I presented to 3 different groups this week. Lots of good questions. Best part of my job. Never had this question, asked by a Rotary member: Do our local Legislators call you about these election bills? #Arizona," Twitter, May 28, 2021, 11:22 a.m., <https://twitter.com/lisamarra/status/1398298728713261056?s=21>.

117 For instance, Virginia's General Registrar/Electoral Board (GREB) Workgroup proposed recommendations that have resulted in legislative revisions to the duties of the local election administrator. "Electoral Boards have had Code responsibility for Absentee Voting and Campaign Finance Reporting at the local level, but survey data showed registrars were actually performing the duties. Based on a recommendation approved by SBE and submitted to the General Assembly in 2015 via GREB efforts, Code responsibility for these two areas has been shifted to registrars, who have also now been designated Director of Elections for their locality." See General Registrar/Electoral Board Workgroup, *A Review of Duties and Respon-*

sibilities of Electoral Boards and General Registrars, 2015, 2, <https://www.elections.virginia.gov/media/boardpapers/grebworkgroup/GREBInterimreport.pdf>.

**118** Ky. Rev. Stat. Ann. § 117.085 (West 2020, amended by 2021 Ky. Acts, ch. 197); and Carrie Levine, “Tight Deadline, Savvy Pitch: How One Red State Expanded Access to the Ballot,” May 11, 2021, Center for Public Integrity, <https://publicintegrity.org/politics/elections/ballotboxbarriers/tight-deadline-savvy-pitch-kentucky-expanded-access-election-ballot>.

**119** Bruce Schreiner, “Kentucky Governor Signs Bipartisan Early Voting Measure,” Associated Press, Apr. 7, 2021, <https://apnews.com/article/bills-legislation-elections-kentucky-coronavirus-pandemic-cfae45798b5dee94f52a7782a562509a>.

**120** See, e.g., Lauren Whitney-Gottbraith, “Kentucky Governor Signs Bipartisan Bill Expanding Voting Access,” *Axios*, April 7, 2021, <https://www.axios.com/kentucky-elections-voting-access-bill-08a8e1d1-02bc-4a0c-bf9b-6e78a8acba1b.html>; and Carrie Levine, “Tight Deadline, Savvy Pitch: How One Red State Expanded Access to the Ballot,” Center for Public Integrity, May 11, 2021, <https://publicintegrity.org/politics/elections/ballotboxbarriers/tight-deadline-savvy-pitch-kentucky-expanded-access-election-ballot>.

**121** Cybersecurity and Infrastructure Security Agency, “Post Election Process Mapping,” accessed May 6, 2021, [https://www.cisa.gov/sites/default/files/publications/post-election-process-mapping\\_508.pdf](https://www.cisa.gov/sites/default/files/publications/post-election-process-mapping_508.pdf).

**122** Paul Egan, “GOP Member of Wayne County Board of Canvassers Say They Want to Rescind Votes to Certify,” *Detroit Free Press*, November 19, 2020, <https://www.freep.com/story/news/politics/elections/2020/11/19/wayne-county-board-of-canvassers-monica-palmer-william-hartmann/3775242001>.

**123** Johnathan Oosting and Madeline Halpert, “Michigan GOP Canvassers Under Pressure to Ignore Votes, Help Trump,” *Bridge MI*, November 18, 2020, <https://www.bridgemi.com/michigan-government/michigan-gop-canvassers-under-pressure-ignore-votes-help-trump>. See also Marc Elias (counsel to Virginia House Democratic Caucus), letter to James B. Alcorn (chairperson, Virginia State Board of Elections) et al., November 15, 2017, <https://web.archive.org/web/20171218031812/https://www.elections.virginia.gov/Files/Media/Agendas/2017/20171120BWP.pdf#page=10> (requesting that the state board of elections (SBE) “[d]ecline to certify a winner in the election for House District 28, based on the fact that the number of voters that were improperly denied their right to vote for their Delegate in House District 28 exceeds the current margin between the two leading candidates”).

**124** See 5 U.S.C. 557(d) (West 2021) (prohibiting ex parte communications in formal rulemaking); U.S. House Committee on Ethics, “Off-the-Record Ex Parte Communications,” accessed May 18, 2021, <https://ethics.house.gov/casework/record-ex-parte-communications>; and United States Courts, “Code of Conduct for United States Judges,” last updated March 12, 2019, <https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges> (“a judge should not initiate, permit, or consider ex parte communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or lawyers”).

**125** Nick Corasaniti, “Jail Time and Big Fines: G.O.P. Seeks Harsh Penalties for Poll Workers,” *New York Times*, May 15, 2021, <https://www.nytimes.com/2021/05/15/us/politics/republican-voting-bills-poll-workers.html>; and Lawrence Norden, “Protecting American Democracy Is No Crime,” *Foreign Affairs*, April 7, 2021, <https://www.foreignaffairs.com/articles/united-states/2021-04-07/protecting-american-democracy-no-crime>.

**126** See, e.g., Cathy Darling Allen (@cdarling\_allen), “Reviewed some new laws and some old laws today, and then @JoFrancescut pulled out some code books, and this illustrates our situation nicely. #ElectionTwitter,” Twitter, April 27, 2021, 7:45 p.m., [https://twitter.com/cdarling\\_allen/status/1387191220326211587](https://twitter.com/cdarling_allen/status/1387191220326211587) (with picture

showing 2021 California Law Code is about 33 percent larger than the 2001 California Election Law Code book to demonstrate increasing legal complexity of election administration). Tracy Howard (director of elections, Radford, VA) used the Virginia election law code books as visual aids at the special joint meeting of the privileges and elections committees on October 16, 2016. He compared the 1996 Virginia election code book to the 2016 election law code book to demonstrate the increase in election administration law complexity — and the 2016 version was approximately three times the size of the 1996 version. Tracy Howard (director of elections, Radford, VA), email message to Elizabeth Howard (Brennan Center), June 1, 2021.

**127** Dana DeBeauvoir (county clerk, Travis County, TX), email message to Elizabeth Howard, May 17, 2021.

**128** See, e.g., Toni Johnson (chairperson, Election Commissioner District 2, Hinds County, MS), email message to Elizabeth Howard, May 14, 2021; Ginny Vander Roest (former training and communications manager, Bureau of Elections, Michigan), email message to Elizabeth Howard, May 14, 2021; and Brenda Cabrera (director of elections, City of Fairfax, VA), phone call with Elizabeth Howard, May 14, 2021.

**129** See, e.g., Nick Corasaniti, “G.O.P. Seeks to Empower Poll Watchers, Raising Intimidation Worries,” *New York Times*, May 1, 2021, <https://www.nytimes.com/2021/05/01/us/politics/republican-pollwatchers.html> (“In recent decades, laws have often helped keep aggressive behavior at bay, preventing poll watchers from getting too close to voters or election officials, and maintaining a relatively low threshold for expelling anyone who misbehaves. But now Republican state lawmakers in 20 states have introduced at least 40 bills that would expand the powers of poll watchers, and 12 of those bills in six states are currently progressing through legislatures, according to the Brennan Center for Justice.”); Ilya Shapiro, “The First Amendment Is More than a Political Slogan,” *Cato Institute*, September, 10, 2013, <https://www.cato.org/blog/first-amendment-more-political-slogan> (“After several of their members were forced to cover up or remove clothing or accessories deemed to be political — in the sole discretion of an election official — a group of organizations and individuals brought suit to challenge the state law on the grounds that it unlawfully stifles core First Amendment-protected speech.”); and Everytown Law, *Election Protection: Preventing and Responding to Illegal Armed Voter Intimidation and Election Interference*, October 6, 2020, <https://everytownlaw.org/report/election-protection> (“Local officials should act now, first, by understanding the law, and second, by taking steps immediately to prevent and prepare to respond to potential voter intimidation and election interference, including by spreading the word that such conduct will not be tolerated. . . . Determining what exact conduct with a firearm will constitute a crime is highly fact-specific. . . .”).

**130** See, e.g., Va. Code Ann. § 24.2-121 (West 2021) (authorizing election officials to apply to the state for legal counsel under certain circumstances).

**131** See *supra* notes 108–110.

**132** Election officials implicitly acknowledged these benefits in 1997 when the Election Center made the first attempt to introduce a code of ethics for the profession. See Election Center, “About Us,” accessed May 19, 2021, <https://www.electioncenter.org/about-us.html>. We recommend that election officials update, build on, and develop a more robust set of guidelines that can better assist officials as they navigate their responsibilities.

**133** United States Courts, “Code of Conduct for United States Judges”; and American Bar Association, “Model Rules of Professional Conduct,” accessed May 6, 2021, [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_preamble\\_scope](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope).

**134** Election Center, *Professional Education Manual*, March 26,

- 2020, 41–42, <https://www.electioncenter.org/professional-education-program/2020/Professional-Education-Program-Manual-Released-2020-03-26.pdf> (“Standards of Conduct for Election/Registration Officials”) and “Principles of Election/Registration Officials”); and International Institute for Democracy and Electoral Assistance, “Code of Conduct for the Ethical and Professional Administration of Elections,” January 1, 1997, <https://www.idea.int/publications/catalogue/code-conduct-ethical-and-professional-administration-elections>.
- 135** Daniel P. Tokaji, “The Future of Election Reform: From Rules to Institutions,” *Yale Law & Policy Review* 28, no. 125 (2009): 137–42, <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1586&context=yldr>.
- 136** Larry Diamond, Kevin Johnson, and Miles Rapoport, “The Time Has Come for Nonpartisan State Election Leadership,” *The Hill*, April 4, 2021, <https://thehill.com/opinion/campaign/546307-the-time-has-come-for-nonpartisan-state-election-leadership>; Richard L. Hasen, “Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown,” *Washington & Lee Law Review* 68, no. 3 (2005): 983–84, <https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1284&context=wlulr>; Tokaji, “Future of Election Reform”; and Commission on Federal Election Reform, *Building Confidence in U.S. Elections*, Center for Democracy and Election Management, American University, September 2005, 49–53, <https://www.legislationline.org/download/id/1472/file/3b50795b2d0374cbef5c29766256.pdf>.
- 137** See, e.g., Protect Democracy et al., *Democracy Crisis in the Making*.
- 138** See, e.g., Daniel P. Tokaji, “America’s Top Model: The Wisconsin Government Accountability Board,” *Irvine Law Review* 3, no. 575 (2013): 581, <https://www.law.uci.edu/lawreview/vol3/no3/tokaji.pdf>. Wisconsin’s experiment with nonpartisan administration demonstrates the need to pair structural reforms for how election officials are selected with reforms that can ensure independence from partisan or political interference. While the board was generally lauded by experts for its fair and evidence-based decision-making, the state legislature abolished the board just seven years later and replaced the agency with an evenly split bipartisan board that increasingly deadlocks on important issues. Vanessa Swales, “With All Eyes on Wisconsin, Partisan Gridlock at State Elections Commission Frustrates Voters and Local Officials,” *Wisconsin Watch*, October 26, 2020, <https://www.propublica.org/article/with-all-eyes-on-wisconsin-partisan-gridlock-at-state-elections-commission-frustrates-voters-and-local-officials>.
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