

CONGRESSIONAL TESTIMONY

American Confidence in Elections: State Tools to Promote Voter Confidence

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Introduction

My name is Hans A. von Spakovsky.¹ I appreciate the invitation to be here today.

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I am a Senior Legal Fellow and Manager of the Election Law Reform Initiative in the Edwin Meese III Center for Legal and Judicial Studies at The Heritage Foundation. Prior to joining The Heritage Foundation, I was a Commissioner on the U.S. Federal Election Commission for two years (2006-2007), where I was one of six commissioners responsible for enforcing the Federal Election Campaign Act.

Before that, I spent four years at the U.S. Department of Justice as a career civil service lawyer in the Civil Rights Division, where I received three Meritorious Service Awards (2003, 2004, and 2005). I began my tenure at the Justice Department as a trial attorney in 2001 and was promoted to be Counsel to the Assistant Attorney General for Civil Rights (2002-2005), where I helped coordinate the enforcement of federal voting rights laws, including the Voting Rights Act, the National Voter Registration Act (“NVRA”), the Help America Vote Act (“HAVA”), and the Uniformed and Overseas Citizens Absentee Voting Act.²

Introduction

One point that everyone should agree on, and that the public certainly believes, is that we ought to have both access and security in our elections. Contrary to what some mistakenly claim, it is possible to provide both access and security to fully protect the voting process – one does not cancel out the other. Furthermore, political speech and political activity are protected by the First Amendment, and neither the federal government nor state governments should attempt to restrict such speech or such activity even if it is not popular or voices sentiments that offend some and are not in accord with the political orthodoxy of the moment.

Maintaining Accurate Voter Registration Rolls

In addition to state laws that require state election officials to maintain accurate voter registration rolls, federal law imposes the same requirement for federal elections. The HAVA contains detailed “provisions to ensure that voter registration records in the State are accurate and are updated regularly.”³ Similarly, the NVRA requires states to “protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for election for federal office” by removing “the names of ineligible voters from the official lists of eligible voters.”⁴

As the HAVA directs, such maintenance can be conducted by comparing and coordinating the statewide voter registration list with other “agency databases within the State” such as department of motor vehicles drivers’ license records.⁵ Federal databases are also important, which is why the

² I was also a member of the first Board of Advisors of the U.S. Election Assistance Commission. I spent five years in Atlanta, Georgia, on the Fulton County Board of Registration and Elections, which is responsible for administering elections in the largest county in Georgia. In Virginia, I served for three years as the Vice Chairman of the Fairfax County Electoral Board, which administers elections in the largest county in that state. I formerly served on the Virginia Advisory Board to the U.S. Commission on Civil Rights. I am a 1984 graduate of the Vanderbilt University School of Law and received a B.S. from the Massachusetts Institute of Technology in 1981.

³ 52 U.S.C. § 21083 (a)(4).

⁴ 52 U.S.C. § 20507 (a)(4) and (b).

⁵ 52 U.S.C. § 21083 (a)(1)(A)(iv).

HAVA directs states, for example, to coordinate with the Social Security Administration in order to verify the accuracy of registration information provided by applicants.⁶

There are many other tools and databases available, however, that states should also use to ensure the accuracy of their voter rolls. In 2021, the Heritage Foundation published a *Fact Sheet*—attached as Exhibit 1—that outlined the best practices for states to follow in order to verify and maintain the accuracy of their voter registration lists.⁷

As this publication explains, states should conduct frequent comparisons between their statewide voter list and the databases maintained by their departments of motor vehicles, vital records, corrections, and public welfare and assistance to find information relevant to registration such as address changes, deaths, citizenship status, and other factors affecting eligibility to vote. States should also be using the U.S. Postal Service’s “National Change of Address” system on a regular basis to find voters who have moved to ensure that they are not registered to vote in more than one state.⁸

States should also be using their county tax records to ensure that, as required by state law, individuals are registering to vote at an actual residence, and not at locations where they do not really live, such as industrial or commercial properties. States should be utilizing commercial databases as well such as credit agency records to verify registration information and find other pertinent information such as address changes by registered voters.

It should be noted that no state automatically removes a registered voter based solely on information received through these types of database comparisons. Rather, election officials use that information to conduct a follow-up individual investigation to see whether that voter is no longer eligible to vote in their particular state or jurisdiction. That is exactly the way it should be.

Moreover, getting up-to-date information on address changes by registered voters from other state, federal, and commercial databases in our highly mobile society can help ensure that voters are registered in the correct location and will not lose their ability to vote because of an old registration that they failed to update or a change in eligibility that would cause them to violate the law if they remain registered. Moreover, on those rare occasions that a voter is removed in error, that individual will not lose his or her ability to vote. The HAVA mandates that states provide a provisional ballot to any voter who “declares that such individual is a registered voter in the jurisdiction” and “eligible to vote,” even if that individual’s name is not on the registration list. Election officials are also required to investigate the circumstances, and if they mistakenly removed the registered voter from the rolls, they must count that vote.⁹ This is a federal failsafe provision that works very effectively.

⁶ Id. at (a)(5)(B)(ii).

⁷ “The Facts About Election Integrity and the Need for States to Fix Their Election Systems,” The Heritage Foundation, Fact Sheet No. 196 (Feb. 1, 2021), https://www.heritage.org/sites/default/files/2021-02/FS_196_0.pdf.

⁸ See <https://postalpro.usps.com/mailing-and-shipping-services/NCOALink>.

⁹ 52 U.S.C. § 21082(a).

The criteria outlined in the Heritage *Fact Sheet* for maintaining accurate voter rolls were incorporated into the *Election Integrity Scorecard* that the Foundation launched in 2021.¹⁰ The *Scorecard* compares these best practice recommendations to the election laws and regulations of every state and the District of Columbia. The *Scorecard* not only reviews the voter roll maintenance procedures of states and the District, but also reviews many other factors such as their management of absentee ballots and the transparency of the entire voter registration and election process to outside observers, which is an essential element of fair and honest elections.

A perfect score under the best practices recommended by the Heritage Foundation in the *Scorecard* is 100. No state in the country has achieved that score. As of the end of March 2023, the top ten states are:

- Tennessee (84)
- Georgia (83)
- Alabama (82) and Missouri (82)
- South Carolina (79)
- Arkansas (78), Florida (78), and Louisiana (78)
- Ohio (76) and Texas (76)

And as of that date, the ten states with the least effective rules for protecting the sanctity of voters' ballots are:

- Nebraska (47)
- New York (46)
- Massachusetts (45)
- New Jersey (42) and Washington (42)
- Vermont (39)
- Oregon (38)
- California (30)
- Nevada (28)
- Hawaii (26).

An important caveat to keep in mind, as the introduction to the *Scorecard* explains, is that “even the best laws are not worth much if responsible officials do not enforce them rigorously. It is up to the citizens of each state to make sure that their elected and appointed public officials do just that.”¹¹ That is the reason that the *Scorecard* includes a rating on whether “Residents of the state have standing to sue election officials who do not abide by state election laws” in the same way that citizens are able to sue under the Voting Rights Act to stop discriminatory voting practices.

Additionally, while these are the current rankings and scores for these states, the *Scorecard* is updated monthly as state legislatures amend their relevant laws or implement new requirements

¹⁰ <https://www.heritage.org/electionScorecard/>.

¹¹ <https://www.heritage.org/electionscorecard/>.

and as chief election officials or state election boards amend or issue new election administration regulations and procedures.

Federal Cooperation and Alien Voting

Under both state and federal laws, the maintenance of voter registration records is almost entirely a state responsibility. It is, however, an area where federal cooperation is required. That includes giving state election officials access to Social Security Administration records as required by the HAVA, as well as other relevant federal databases such as the alien records contained in the U.S. Department of Homeland Security's databases.

Since citizenship is a requirement for voting in all federal¹² and state elections (with the exception of local elections in some states), states should be given unfettered access to these DHS databases, something that DHS has made very difficult according to numerous state election officials with whom I have discussed this particular issue.

The NVRA currently requires all U.S. attorneys to notify the chief state election official of the state of a federal criminal defendant's residence when that defendant is convicted in federal court. The U.S. attorney is directed to provide whatever information state officials need "for determining the effect that a conviction may have on an offender's qualification to vote."¹³ The NVRA should be amended to require the clerks of all federal district courts and all U.S. attorneys in all federal districts to provide relevant information about voter ineligibility gained from jury selection to state election officials.

Federal courts obtain their lists of potential jurors from state voter registration rolls and, in some states, from the department of motor vehicles. Potential jurors who have been summoned for federal jury service must fill out a "jury qualification questionnaire" under oath. That includes providing current address information and certifying that the individual is a U.S. citizen and has "never been convicted of a felony (unless civil rights have been legally restored)."¹⁴ Such information is potentially relevant to a registered voter's eligibility, and all federal courts should be required to transmit that information back to state election officials who maintain state voter rolls.

Congress should further amend the NVRA, which has been misinterpreted by courts,¹⁵ to make it clear that the NVRA does not prohibit states from requiring voting registration applicants to provide proof that they are U.S. citizens. The federal government itself requires such proof in order to be employed in this country, and the right to work and earn a living to support one's family is just as important as the right to vote.

As the U.S. Citizenship and Immigration Services explains in the use of the federal I-9, "Employment

¹² See e.g., 18 U.S.C. §§ 1015(f), 911, and 611.

¹³ 52 U.S.C. § 20507(g).

¹⁴ <https://www.uscourts.gov/services-forms/jury-service/national-ejuror-program>.

¹⁵ *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013).

Eligibility Verification” form, all potential employees “must attest to their employment authorization” and present “acceptable documents as evidence of identity and employment authorization” as either a citizen or a legally admitted alien with a work authorization.¹⁶ Barring states from requiring the same proof as to citizenship when it comes to voting makes no sense and deprives states of information essential to determining voter eligibility.

The move by some local jurisdictions, such as the District of Columbia and New York City, to allow aliens to vote in local elections is fundamentally unfair to citizens, effectively disenfranchising them by diluting their votes, something we passed the Voting Rights Act in 1965 to prevent.¹⁷ Moreover, by allowing any adult who has resided in the nation’s capital for 30 days to vote, there is nothing to prevent illegal aliens or employees of foreign embassies from voting in local elections, including diplomats from foreign governments that are openly hostile to the United States, as well as reporters and journalists at propaganda organs of such governments such as *Pravda* and *The People’s Daily*. Such a distortion of our democratic process is a recipe for foreign interference in our elections—and our governance—and should not be allowed.

Voter Identification Requirements

One of the important best practices contained in the Heritage *Scorecard* is requiring a photo identification (“ID”) for both in-person and absentee voting, including providing a free photo ID to any eligible voter who cannot afford one, a benefit provided by every state that has implemented a voter ID requirement. While a majority of states has implemented some form of voter ID requirement to increase the security of the voting process, the rest should follow suit.¹⁸

Congress itself imposed a voter ID requirement in 2002 in the HAVA. That requirement mandates that all individuals registering to vote by mail for the first time in a federal election in a particular state provide “a current and valid photo identification” or “a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.”¹⁹ Congress made it clear, though, that this ID requirement is a “minimum” requirement and “nothing in this title shall be construed to prevent a State from establishing...requirements that are more strict.”²⁰

Turnout data and other evidence show very clearly that claims that voter ID requirements prevent eligible individuals from voting are simply untrue. As outlined in a recently published Heritage study—attached as Exhibit 2—the latest data from the 2022 election demonstrate that commonsense reforms of the sort passed by states such as Georgia, Florida, and Texas, to, among other things, extend their voter ID requirements for in-person voting to absentee ballots do not

¹⁶ <https://www.uscis.gov/i-9>.

¹⁷ Zack Smith and Hans von Spakovsky, “Forget Open Borders. This Crazy Law Opens Voting Booths to Aliens, The Daily Signal (March 16, 2023).

¹⁸ “Voter ID Laws,” National Conference of State Legislatures (March 9, 2023), <https://www.ncsl.org/elections-and-campaigns/voter-id>.

¹⁹ 52 U.S.C. § 21083(b)(2)(A).

²⁰ 52 U.S.C. § 21084.

“suppress” votes.²¹ This is just the most recent evidence that reinforces other long-term analyses of this issue. As summarized succinctly in a 2019 study, based on turnout data from all 50 states from 2008 to 2018, by the National Bureau of Economic Research, voter ID “laws have no significant negative effect on registration or turnout, overall or for any subgroup defined by age, gender, race, or party affiliation.”²²

Although harshly criticized for implementing its voter ID requirement, Georgia had turnout of its voting eligible population (“VEP”) in 2022 that was six percentage points *above* the national turnout rate (54.1 percent vs. 46.6 percent), according to the U.S. Election Project.²³ In fact, Georgia had a higher VEP turnout than Delaware, New York, and California, the home states of Pres. Joe Biden, Sen. Chuck Schumer (D), and Rep. Nancy Pelosi (D), all of whom unfairly criticized Georgia’s election reforms including its ID requirement.

Another recent study published in the *Proceedings of the National Academy of Sciences* concluded that voter ID laws today do not provide any political party’s candidates an advantage in winning elections, as some opponents have mistakenly claimed. Moreover, according to the study, such ID requirements seem to increase turnout since they “motivate and mobilize supporters of both parties.”²⁴

Voter ID requirements are also immensely popular with the public. A 2021 Rasmussen poll shows that 74 percent of whites, 69 percent of blacks, and 82 percent of other minorities say that voters “should be required to show photo identification before being allowed to vote.”²⁵ And Gallup found similar results in 2022 with 80 percent of whites and 74 percent of “people of color” supporting voter ID.²⁶

Voter ID is a basic security measure no different than similar requirements for entering federal buildings, traveling on airplanes, cashing a check, buying alcohol or cigarettes, applying for many types of government benefits, obtaining a marriage license, buying certain prescription drugs, being treated by a doctor or hospital, or being hired by an employer.

Every state should implement voter ID for both in-person and absentee voting.

Election Audits

²¹ Hans A. von Spakovsky, “The Latest Election Data Show – Once Again – That ‘Voter Suppress’ Claim is Just Propaganda,” The Heritage Foundation, Backgrounder No. 3761 (April 19, 2023), https://www.heritage.org/sites/default/files/2023-04/BG3761_0.pdf.

²² Enrico Cantoni and Vincent Pons, “Strict ID Laws Don’t Stop Voters: Evidence from a U.S. Nationwide Panel, 2008-2018,” National Bureau of Economic Research, Working Paper No. 25522 (Feb. 2019, revise May 2021).

²³ Heritage Backgrounder No. 3761, p. 7-8.

²⁴ Jeffrey J. Harden and Alejandra Campos, “Who Benefits From Voter Identification Laws?” *Proceedings of National Academy of Sciences*, Vol. 120, No. 7 (Feb. 6, 2023), p. 1.

²⁵ “75% Support Voter ID Laws,” Rasmussen Reports (March 17, 2021).

²⁶ Nicole Willcoxon and Lydia Saad, “Eight in 10 Americans Favor Early Voting, Photo ID Laws,” Gallup (Oct 14, 2022).

Some states are finally beginning to implement another requirement that should be a standard practice in all states: election audits. In-depth financial and accounting audits are a standard practice (and legal requirement) for publicly traded companies and most privately held businesses, for nonprofits from schools to churches to other charities, and for financial institutions.

Yet audits of election agencies and election procedures and systems following public elections are almost nonexistent except for very limited audits in limited instances. The very concept of comprehensive audits has been met with unfair criticism and unjustified opposition by some election officials. But for the same reasons that auditing is ubiquitous in the business world at large, audits should also be a customary requirement in the election world.

In a report last year, The Heritage Foundation published a Legal Memorandum—attached as Exhibit 3—outlining the best practices and standards for conducting comprehensive election audits.²⁷ Such an audit should confirm that:

- The election was administered honestly, accurately, and fairly, and in full compliance with all applicable laws and regulations;
- Only eligible U.S. citizens participated in the election, and only individuals duly registered under state law were allowed to vote;
- No fraud, errors, or omissions occurred and, if they did occur, they have been identified and steps have been taken to rectify them;
- All election and voting equipment and computers functioned properly and as designed to correctly tabulate and report the results without any unauthorized interference or tampering; and
- All results have been verified and reconciled, i.e., the number of ballots cast match the number of voters who participated in the election, all ballots are accounted for, and reports from election officials reflect the corrected numbers.

Implementing such an auditing requirement would not only help guarantee the honesty and effectiveness of the election process, but it would help assure the public, candidates, political parties, and the media that they can be confident in the security and integrity of our elections.

Conclusion

As I said at the beginning of this testimony, we should provide both access and security in the election process. We want to ensure that every eligible citizen is able to vote and that those votes

²⁷ Hans A. von Spakovsky, “Best Practices and Standards for Election Audits,” The Heritage Foundation, Legal Memorandum No. 304 (June 15, 2022), <https://www.heritage.org/sites/default/files/2022-06/LM304.pdf>.

are not diluted, voided, or stolen due to errors, mistakes, fraud, or other problems in the election system. Commonsense measures like voter ID, election audits, clean voter rolls, secure absentee ballot management, and transparency in the registration, voting, and tabulating process will not only provide us with fair and honest elections, but also guarantee public confidence in their outcomes.

That is essential in convincing the public that they can and should turn out to exercise the franchise and actively and meaningfully participate in the governance of our nation.

EXHIBIT 1

The Facts About Election Integrity and the Need for States to Fix Their Election Systems

THE ISSUE

The U.S. Supreme Court said in 2008 in *Crawford v. Marion County Election Board* that the “flagrant examples of [voter] fraud [that] have been documented throughout this Nation’s history by respected historians and journalists...demonstrate that not only is the risk of voter fraud real but that it could affect the outcome of a close election.” As The Heritage Foundation’s Election Fraud Database shows, election fraud does occur in American elections.

Errors, omissions, and mistakes by election officials and careless, shoddy election practices and procedures or lack of training can cause and have caused problems for voters and candidates. While there is no accurate information on the extent of these problems, the number of instances in which such issues have occurred and are occurring demonstrates clearly the vulnerabilities in our current patchwork system across the states.

In addition, the rules governing the conduct of elections, which are constitutionally entrusted to the various state legislatures, should not be changed shortly before an election, confusing voters, candidates, and election officials, and should not be changed by those with no constitutional authority to do so. Such behavior is anti-democratic and can lead to the manipulation of election rules to favor certain candidates or political parties. Examples are collusive lawsuits by partisans or state and local election officials who unilaterally alter or ignore the rules the legislature has adopted to govern elections.

Private interest groups of whatever partisan affiliation should not be allowed to provide funds to local election authorities to defray

the cost of elections and, in exchange for the local election authority’s accepting these funds, dictate, direct, and interfere in the conduct of the election or provide unequal opportunities to vote.

The public must have trust in the outcome of our elections. That goal is elusive in large part because of the vulnerabilities that currently exist.

The following recommendations of best practices have been developed by Heritage Foundation experts based on long experience in the area of election integrity. These recommendations are intended principally for state legislatures, which under our federal system have the primary responsibility for administering elections.

WHAT STATES SHOULD DO

Voter Registration

- **VERIFY THE ACCURACY OF VOTER REGISTRATION LISTS.** Computerized statewide voter registration lists should be designed to be interoperable so that they can communicate seamlessly with other state record databases to allow frequent exchanges and comparisons of information. For example, when an individual changes the residence address on his driver’s license, that information should be sent to state election officials so that the voter registration address of the individual is also changed to his or her new department of motor vehicles (DMV) residence address.
 1. There should be monthly comparisons of the statewide voter registration list with the databases maintained by DMV; the state corrections department (for felons whose ability to vote has been taken away); state vital records; and state

welfare and public assistance agencies to find information relevant to registration such as address changes, deaths, citizenship status, or other factors affecting eligibility.

2. The residence address on all new voter registration forms should be compared with county tax records to ensure that the address is actually a residence and not a commercial or industrial address or a vacant or undeveloped lot in a residential area.
3. When a new registration is received, the entire voter registration list should be checked against the information available from county tax records to verify how many individuals are registered at that residence address in order to find any anomalies. For example, if the county tax records show that the registered address is a single-family home but the registration list shows that 30 individuals are registered at that address, this should raise a red flag, as this could be an indication of fraud or out-of-date registrations. Such anomalies must be investigated by election officials in a timely fashion.
4. Similarly, registrations of individuals registered at the same address but with only slight differences in their names should be checked to ensure that they are not multiple registrations by the same individual. For example, many voter registration systems are not adequately designed to detect that John S. Smith registered at 100 Main Street is the same individual as John Samson Smith who is also registered at 100 Main Street. Voter registration system software should bring such anomalies to the attention of election officials for investigation.
5. List maintenance programs need to be required and funded for ongoing and continuous and comprehensive accuracy updates every year. Reports of activity should be provided to the state legislature's committees of oversight each year detailing the extent and timing of list maintenance programs, both in each county and statewide. Line item funding for list maintenance in budgets should be considered to ensure activity each year in maintaining the accuracy of the voter rolls.
6. At least quarterly, states should use the U.S. Postal Service's National Change of Address (NCOA) system to find voters who have moved and ensure that they are not registered in more than one state. Only about 60 percent of citizens inform the post office or election officials when they move to a new residence. Accordingly, the NCOA system should be supplemented with top-level commercial data that provide notice of a residential move and the best new address of the residence. State officials should supplement data from state vital statistics agencies on deceased registrants with information from the Social Security Death Index, the Social Security Administration's Master Death File, or independent audits of the voter registration file by commercial groups that identify deceased individuals as part of their businesses.
7. States should enter into cooperative agreements with all other states to compare their voter lists to find individuals who are registered in more than one state.
8. State election officials should be authorized and given funds to access and contract with commercial data companies, particularly credit agencies, to verify and audit information in their voter registration lists from citizenship status to residence. The information found in such commercial databases is often much more current and up-to-date than the information in government databases.
9. State legislatures should require localities to provide information from new registrants to the previous locality of registration to allow the prior jurisdiction to start list maintenance procedures. The

voter registration form should require registrants to identify their previous address of registration and authorize the locality to send notice of registration to the prior local election office.

10. Voter registration lists should be transparent; freely available (except for confidential information such as Social Security numbers or driver's license numbers) to candidates, political parties, nonprofit organizations, and the public; and readily accessible.
 11. Notice that the DMV receives from another state that an individual has received a driver's license from that other state should by state law be sufficient written notice that the registered voter has changed his residence to the other state and to cancel the individual's voter registration.
 12. The voter registration lists provided through electronic poll books to individual polling locations should include photographs of the registered voter from the voter's driver's license, voter ID card, or any other photograph of the voter available in any state records.
 13. If a state has online voter registration, such registration should be allowed only for individuals for whom there is already an existing state record such as a driver's license that contains all of the information required to register to vote, including a signature.
 14. In states that take away the ability of a convicted felon to vote, state law should condition requests from federal courts for a state's voter registration or DMV list to use for federal juries on an agreement by the federal courts to notify state election officials if an individual is convicted of a felony in the federal court.
- **VERIFY CITIZENSHIP OF VOTERS.** Only lawful citizens can vote in federal elections. States should therefore require proof of citizenship

to register to vote, as well as verify the citizenship of registered voters with the records of the Department of Homeland Security, including access to the E-Verify System.

1. State agencies, such as the DMV, should be prohibited from offering any individual the opportunity to register to vote who uses any foreign identification or other document that indicates the individual is not a U.S. citizen.
2. When election officials discover that a registered voter is not a U.S. citizen, they should be required by state law to remove that individual from the voter registration roll immediately and send notification to the local district attorney, the state attorney general, the FBI, and the U.S. Department of Justice.
3. State agencies should be required to implement protocols that ensure that no alien who is eligible for a public program such as public assistance or a driver's license is offered the opportunity to register to vote.
4. State court clerks and jury commissioners should be required to notify election officials and state law enforcement when an individual who is called for jury duty from the voter registration list is excused because the individual is not a U.S. citizen, is deceased, or has moved out of state.
5. State law should condition requests from federal courts for a state's voter registration or DMV list to use for federal juries on an agreement by the federal courts to notify state election officials if an individual is excused from jury duty because he is not a U.S. citizen, is deceased, or has moved out of state.

In-Person and Absentee Voting

- **REQUIRE VOTER ID.** A voter should be required to validate his or her identity with government-issued photo ID to vote both in-person or by absentee ballot (as states such as Alabama and Kansas require).

Government-issued IDs should be free for those who cannot afford one.

1. As part of that effort, every driver's license or state photo ID issued should note prominently whether the individual is a citizen or noncitizen.
 2. Acceptable IDs would include driver's licenses; state non-driver's ID cards; U.S. passports; U.S. military IDs; tribal government IDs; and IDs issued by state colleges and universities (but only if they prominently display whether the student is a citizen).
 3. There should be no affidavit or other exceptions of any kind to the ID requirement.
 4. For individuals who are too disabled to go to a state office on their own to obtain a state ID, states should provide appropriate transportation from their residence to the state ID office and back to their residence or provide a mobile van as Alabama has done to travel to the home of permanently disabled individuals to provide them with an ID.
 5. All states using electronic poll books should have the photograph of the voter taken from available state records such as the DMV next to the name and registration information of the voter.
- **LIMIT ABSENTEE BALLOTS.** Absentee ballots should be reserved to those individuals who are too disabled to vote in person or who will be out of town on Election Day and all Early Voting Days.
 1. All absentee ballots should require notarization or the signature of a witness, as well as the printed name, address, and telephone number of the witness, so that the witness can be contacted if questions arise over the authenticity of the ballot.
 2. No individual should be allowed to witness more than one absentee ballot of a voter who is not related to that individual. A person should be allowed to witness the

absentee ballots of up to five immediate family members.

3. The signatures of voters on absentee ballots should be compared to the signatures of the voters on their registration files. If signature comparison software is utilized, it should be set for a 95 percent effective rate.
4. No completed absentee ballot received from a voter should be removed from its envelope until the verification process—a verification process that is subject to observation by designated observers of the candidates and/or the major political parties—has been completed.
5. All voters wanting to vote with absentee ballots should be required to fill out a signed request, with no electronic signature accepted, and provide a copy of a photo ID. That signature should be authenticated by comparison with the signature of the voter in the voter's registration file.
6. There should be no permanent absentee ballot lists and no automatic mailing to all voters of absentee ballots or absentee ballot request forms.
7. The deadline for the receipt of all absentee ballots should be the closing of polls on Election Day to obviate any disputes about the timing of absentee ballots and problems with the U.S. Postal Service's failure to postmark an envelope. The deadline for a request for an absentee ballot should be based on U.S. Postal Service delivery standards for that state.
8. If a state insists on accepting absentee ballots that are postmarked by Election Day, voters should not be sent pre-stamped, pre-postmarked envelopes for the return of their ballots. Since the U.S. Postal Service is unlikely to re-stamp the envelopes, this risks absentee ballots not being mailed until after Election Day when early results are already being reported. This could lead to attempts to manipulate election results.

9. To avoid the same absentee ballot being counted more than once, all absentee ballots should have an embedded bar code or microchip. The code would not identify which voter is receiving the absentee ballot since that would compromise ballot secrecy. Instead, the purpose of the code would be to trigger software within the computer scanners to note that a specific ballot is being counted and cannot be counted again. This would prevent individuals from being able to run the same ballot through a scanner multiple times to pad votes for particular candidates. It would also prevent others from photocopying the standard absentee paper ballot and sending in fraudulent votes.
 10. Require a bar code on all envelopes containing blank absentee ballots that are sent to voters who have requested an absentee ballot. Require a similar code on the envelopes being sent to voters that they are instructed to use to send their completed ballots back to election officials. This would allow ballot envelopes to be tracked through the mail.
 11. The use of drop boxes should be severely limited. If authorized, states should require that drop boxes be located in secure settings where they are under 24-hour security, under video surveillance, and located in government buildings. The video surveillance should be available to designated representatives of the candidates and major political parties.
 12. A special procedure should be implemented to investigate the validity of the registration of any registered voter whose requested absentee ballot is returned as undeliverable by the U.S. Postal Service.
 13. County election offices should scan and provide absentee mail or early ballot information to state election authorities on the request, transmittal, and return of all absentee or mail ballots within 24 hours of request, transmittal, or return receipt of absentee mail ballots or early vote. The request for absentee mail ballot, transmittal, or return receipt of absentee mail or early ballot information from locality or county election offices should be uploaded or transmitted to state election databases electronically and made public to political campaigns or the public for review.
 14. Voter registration systems at the local and state levels should be upgraded to allow for real-time reporting of absentee mail ballot requests, transmittal and receipt of ballots, or the check-in of early voters.
 15. Election jurisdictions should provide bipartisan teams of election officials to assist individuals who are seeking to cast an absentee ballot from a hospital, nursing home, or other such facility.
- **PREVENT VOTE TRAFFICKING.** Vote-trafficking (also called vote harvesting) by third parties should be banned. This would ensure that candidates, campaign staffers, party activists, and political consultants are prohibited from picking up and potentially mishandling or changing absentee ballots and pressuring or coercing vulnerable voters in their homes.
 1. Only a voter, a member of his or her immediate family, or a designated caregiver should be allowed to deliver an absentee ballot personally. Any individual delivering such a ballot should have a completed form that is sent to the voter with the voter's absentee ballot. That form should identify the name, address, telephone number, and relationship of the individual delivering the ballot; be signed by both the voter and the deliverer; and then be given to election officials along with the completed absentee ballot.
 - **ALLOW ELECTION OBSERVERS COMPLETE ACCESS TO THE ELECTION PROCESS.** Political parties, candidates, and third-party

organizations should all be allowed to have observers in every aspect of the election process because transparency is essential to a fair and secure system. The only limitation on such observers is that they cannot interfere with the voting and counting process. However, a representative of the election office should be present to answer the questions of the observers. They should be legally allowed to be in a position—exactly like election officials—to observe everything going on other than the actual voting by individuals. Election officials should be prohibited from stationing observers so far away that they cannot observe the process, including such procedures as the opening of absentee ballots and the verification process.

1. Observers (except for purposes of recording the actual votes cast by individuals) should be allowed to have cameras and recording devices wherever they are stationed.
2. Election officials should welcome observation, and cameras should be stationed in all polling locations and ballot counting and election-processing facilities so that the public can watch elections and the canvassing and tabulation of ballots as these events are happening live through the Internet.
3. State law should provide that election officials who prevent legally qualified observers from viewing the election process are disciplined, including by suspension, termination, and/or civil fines.
4. For this and many other reasons, all polling places should be run either by a politically neutral polling official or jointly by at least two officials representing the two major political parties.
5. States should allow any registered voter to be an observer in any polling or other election location in the state and not limit observers solely to the specific county or township where they are registered to vote.

- **PROVIDE VOTING ASSISTANCE.** Any individuals providing assistance to a voter in a voting booth because the voter is illiterate, disabled, or otherwise requires assistance should be required to complete a form, to be filed with poll election officials, providing their name, address, contact information, and the reason they are providing assistance. They should also be required to provide a photo ID.

Counting Votes

- **PROHIBIT EARLY VOTE COUNTING.** To avoid premature release of election results, the counting of ballots, including absentee and early votes, should not begin until the polls close at the end of Election Day. However, if a state insists on beginning the count before Election Day, it should ban the release of results until the evening of Election Day, subject to criminal penalties.
 1. The counting of ballots should continue without pause until all votes have been tabulated. If extreme circumstances occur that require suspension of the vote count, election officials should notify the public of the suspension and the exact time it will resume.
 2. No electronic voting machines placed in polling locations should be connected to the Internet, and the computers used in government election departments to tabulate results should be stand-alone computers that are not connected to the Internet or a government-wide network that could allow hackers to interfere with the vote count.

Election Litigation

- **PROVIDE STATE LEGISLATURES WITH LEGAL STANDING.** State legislatures must ensure that they have legal standing—either through a specific state law or through a constitutional amendment if that is required—to sue other state officials such as governors or secretaries of state who make

or attempt to make unauthorized changes in state election laws. For example, if a secretary of state extends the deadline set by state law for the receipt of absentee ballots, legislatures should have legal standing to contest that unilateral change that overrides state law. They should be classified as a necessary party in any lawsuit. And voters should be provided by state law with the ability to file a writ of mandamus against any state or local official who fails to abide by or enforce a state election law requirement.

WHAT STATES SHOULD *NOT* DO

- **NO SAME-DAY REGISTRATION.** Registration should be required before Election Day to give election officials sufficient time to verify the accuracy of the registration information contained on a registration form and to confirm the eligibility of the individual seeking to cast a vote in the upcoming election.
- **NO AUTOMATIC VOTER REGISTRATION.** States should comply with the National Voter Registration Act and provide registration opportunities at state agencies. However, all individuals should be asked at the time of the state agency transaction, such as the application for a driver's license, whether they want to register to vote. No one should be automatically registered without their consent or knowledge, since this can lead to multiple registrations by the same individual as well as the registration of ineligible individuals such as noncitizens.
- **NO PRIVATE FUNDING OF ELECTION OFFICIALS AND GOVERNMENT AGENCIES.** States should prohibit election officials from receiving private funding from outside organizations or individuals. This prohibition prevents potential conflicts of interest. Such funding may influence the outcome of elections and violate principles of equal protection since it may lead to unequal opportunities to vote in different areas of a state.

EXHIBIT 2

The Latest Election Data Show—Once Again—That “Voter Suppression” Claim Is Just Propaganda

Hans A. von Spakovsky

KEY TAKEAWAYS

Studies and turnout data show that commonsense election reforms that bolster the security and integrity of the electoral process do not “suppress” votes.

In fact, such reforms enhance public confidence in elections and can help to increase turnout while protecting the sanctity of voters’ ballots.

Florida, Georgia, and Texas—states that passed election reforms—performed better in the 2022 election than did many other states without such reforms.

The latest data from the 2022 election demonstrate once again that the claim that commonsense election reforms of the sort passed by states such as Georgia, Florida, and Texas would “suppress” the turnout of the states’ voters is false. The data are just the most recent evidence that reinforces other long-term analyses of this issue.

For example, in 2019, the National Bureau of Economic Research released a report examining the effect of voter identification (ID) laws based on 10 years of turnout data from 2008 to 2018 in all 50 states.¹ The report concluded that voter ID “laws have no significant negative effect on registration or turnout, overall or for any subgroup defined by age, gender, race, or party affiliation.”²

In 2023, another study on voter ID laws was published in the *Proceedings of the National Academy*

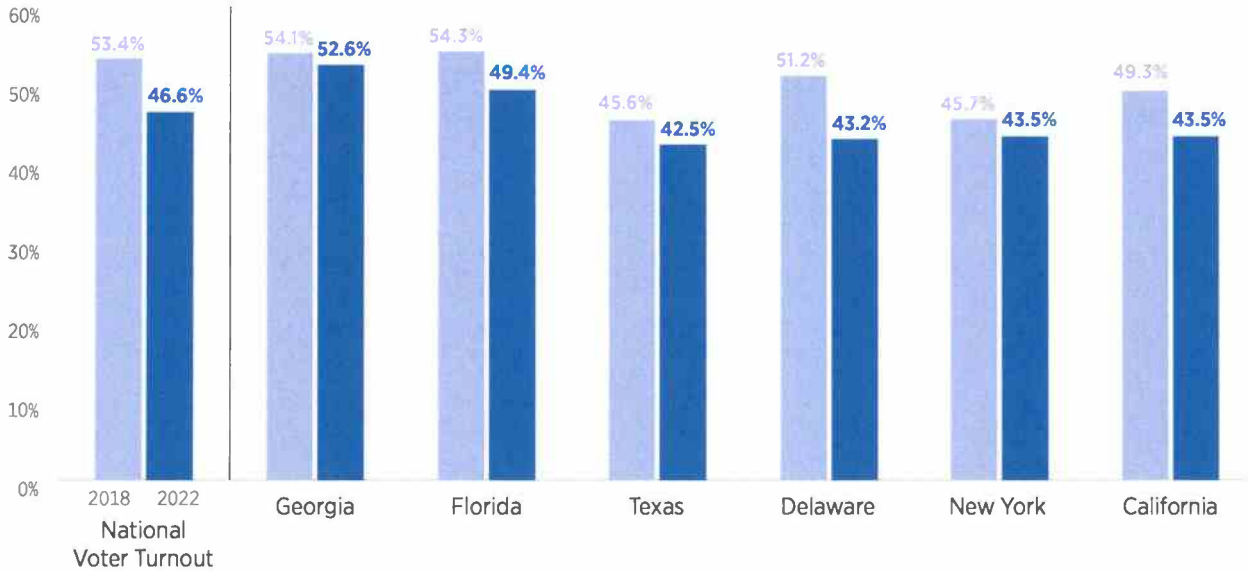
This paper, in its entirety, can be found at <http://report.heritage.org/bg3761>

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CHART 1

Ranking of States by Voting-Eligible Population Turnout



SOURCE: US Elections Project, "Voting Statistics," <https://www.electproject.org/election-data/voter-turnout-data> (accessed April 11, 2023).

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of Sciences. This study concentrated on the claim made by opponents of such laws that ID requirements help Republican Party candidates and hurt Democrat Party candidates because of the supposedly "disproportionate burden they place on historically disadvantaged groups such as the poor and people of color."³

The authors examined the political "parties' electoral fortunes in races at the state level (state legislatures and governorships) and federal level (United States Congress and president) during 2003 to 2020."⁴ In other words, they examined whether ID requirements helped or hurt the candidates of the two major political parties in state and federal elections. They found that when ID laws were first implemented, they "produced a Democratic advantage, which weakened to near zero after 2012."⁵ In fact, such ID requirements seem to increase turnout since they "motivate and mobilize supporters of both parties."⁶

The U.S. Census Bureau's election survey of voter turnout in the 2020 presidential election is also worth noting because it clearly demonstrated that there has been no wave of "voter suppression" keeping American voters

from registering and voting.⁷ Instead, the Census Bureau reported that the turnout in the 2020 election at 66.8 percent was the “highest voter turnout of the 21st century,” just short of the record turnout of 67.7 percent of voting-age citizens in the 1992 election. This was higher than the 63.6 percent citizen population turnout in President Barack Obama’s first election as reported by the Census Bureau.⁸

The Census survey shows that there was higher turnout among all races in 2020 when compared to the 2016 election. Black citizens turned out at 62.6 percent, compared to only 59.4 percent in 2016. Asian American citizens turned out at 59.7 percent in 2020, an almost 11 percentage point increase from 2016 when 49 percent turned out to vote.⁹ Hispanic citizens voted at a rate of 53.7 percent compared to 47.6 percent in 2016.¹⁰

It is important to keep in mind that turnout increases or decreases from one election to another, depending on the interest of the electorate in particular candidates or referenda as well as many other factors such as the state of the economy, the amount of political expenditures that may highlight particular candidates and support get-out-the-vote campaigns, or other issues that may be in the news at a particular time. Additionally, given the large number of aliens in the country today, data based on the citizen or voting eligible population can provide a more accurate assessment of turnout than is provided by data based on voting-age population.

Georgia

Election Reforms. Georgia currently ranks second in the nation in terms of having the best laws and practices designed to secure its elections with a score of 83 out of a possible 100 in The Heritage Foundation’s Election Integrity Scorecard.¹¹ The Scorecard compares the election laws and regulations of each state that affect the integrity of the election process to a set of “best practices” recommendations developed by The Heritage Foundation’s election experts.¹²

One of Georgia’s first major election reforms, requiring a government-issued photo ID,¹³ was effective in local elections in 2007 and for the first time in a presidential election in 2008. As outlined in a prior Heritage Foundation *Issue Brief*, not only did voter turnout not go down, but the turnout of all voters, including black and Hispanic voters, went up dramatically in that election compared to the 2004 presidential election with similar increases in the 2010 congressional election.¹⁴

Georgia voters can satisfy the state’s voter ID requirements for in-person voting by providing any of the following: a Georgia license (even one that

is expired); a state or federal government photo ID; a student ID from a Georgia public college or university; an employee ID card for any position in local, state, or federal government; a U.S. passport; a military ID; or a tribal photo ID.¹⁵ If you find yourself in the exceedingly rare position of not possessing any of these, any county registrar's office or Department of Driver Services office will provide a photo voter ID card free of charge.

For absentee ballots, voters can (1) submit a photocopy of one of those forms of photo ID; (2) provide the serial number of their driver's license or free voter ID card; or (3) submit a photocopy of a current utility bill, bank statement, paycheck, government check, or other government document with the voter's name and address on it.¹⁶

According to the US Elections Project, the turnout of the voting-eligible population (VEP) nationally in 2008 was 1.5 percentage points higher than the turnout in the 2004 presidential election. Yet the VEP turnout in Georgia, with its new in-person ID requirement in place for the first time in a presidential election, was 6.1 percentage points higher in 2008 than it was in 2004.¹⁷ New York and California, which have no ID requirements, had increases of only 1.1 and 2.1 percentage points, respectively, and Georgia had a higher turnout (62.5 percent) than either New York (59.6 percent) or California (61.7 percent).¹⁸

Similarly, the turnout of the VEP nationally went up slightly in the 2010 congressional election compared to 2006 by 0.5 percentage points. Yet VEP turnout in Georgia in 2010, again with the ID requirement in place for the first time in a congressional election, was 5.5 percentage points higher than the turnout in 2004—far above the national increase.¹⁹

2022 Election. In 2021, the Georgia legislature implemented another round of election reforms in SB 202, which included extending the ID requirement for in-person voting to absentee ballots.²⁰ The bill was harshly criticized by, among others, gubernatorial candidate Stacy Abrams, who claimed the “burdensome ID” and other requirements in the new law would “suppress” the turnout of “eligible voters.”²¹ President Joe Biden called SB 202 the new “Jim Crow” and claimed that its “rigid” ID “restrictions on casting absentee ballots” would “effectively deny the right to vote to countless voters.”²²

The President even made the historically outrageous claim in a speech in Atlanta that anyone in favor of election reforms such as the ID requirements implemented in Georgia are in the same camp as former Alabama Governor George Wallace; the infamous former Commissioner of Public Safety in Birmingham, Bull Connor; and the President of the Confederacy, Jefferson Davis. Biden repeated the myth that such reforms suppress votes.²³

TABLE 1

States with Voter Integrity Laws See Improved Voter Turnout

State	VOTE TURNOUT RANK		
	2018	2022	Change
Georgia	18 th	13 th	+5
Florida	16 th	18 th	-2
Texas	42 th	40 th	+2
Delaware	26 th	38 th	-12
California	30 th	35 th	-5
New York	41 st	36 th	+5

SOURCE: US Elections Project, "Voting Statistics," <https://www.electproject.org/election-data/voter-turnout-data> (accessed April 11, 2023).

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Clearly the American public does not agree. Polling consistently shows that a majority of all voters support ID requirements no matter what their race, ethnicity, or party affiliation might be.

It is hard to equate support for such reforms with being a supporter of George Wallace, Bull Connor, or Jefferson Davis when a 2021 Rasmussen poll shows that 74 percent of whites, 69 percent of blacks, and 82 percent of other minorities say that voters "should be required to show photo identification before being allowed to vote."²⁴ Gallup found similar results in 2022 with 80 percent of whites and 74 percent of "people of color" supporting voter ID.²⁵

Another poll by the Honest Elections Project found that support for voter ID has actually gone up since the organization first started polling this issue with 81 percent of voters supporting such a requirement, including 77 percent of black voters, 78 percent of Hispanic voters, and 81 percent of lower-income voters—and that support includes applying an ID requirement to absentee ballots. According to the Honest Elections Project poll, 77 percent of respondents said it would be "easy" to comply with the type of absentee ballot ID requirement that Georgia, Florida, and Texas have implemented.²⁶

The 2022 congressional election in Georgia was conducted with all of the reforms in place that the legislature passed in 2021 and that Biden and Abrams criticized. Courts rejected numerous legal challenges, including

one by the U.S. Department of Justice, because none of the challengers provided any evidence that justified issuing an injunction against the law's implementation.

A voter survey conducted by the University of Georgia's Survey Research Center found that all of the criticisms of these reforms were completely unfounded.²⁷ When asked about their overall voting experience in the 2022 election, 72.6 percent of black Georgians said their experience was "excellent," and another 23.6 percent said it was "good." The percentage of black voters who said they had a "poor" experience voting was 0.0 percent—a remarkable number that one does not often see in polls and surveys. By comparison, 72.7 percent of white voters had an "excellent" experience, 23.3 percent had a "good" experience, and 0.9 percent had a "poor" experience. The differences in the experiences of white and black voters were statistically insignificant; it is clear from the survey that almost no voters had any problems voting with the new ID and other changes in place.

The survey also asked voters another crucial question about comparing their voting experience in 2022 to their voting experience in 2020 before the election reforms were implemented. The responses to that question once again show that the criticisms of SB 202 were unwarranted. Of black voters, 19.1 percent said their experience in 2022 was actually "easier" than in 2020, and another 72.5 percent said there was "no difference" for a total of 91.6 percent. White voters had similar responses: 13.3 percent said their experience was "easier," and 80.1 percent said there was "no difference" for a total of 93.4 percent—again, a statistically insignificant difference other than a larger percentage of black voters than white voters saying their voting experience was easier after the reforms were implemented.²⁸

One other relevant issue is wait times at polling places. Stacy Abrams claimed that voters in Georgia "stood in lines for hours because of voter suppression tactics,"²⁹ and general complaints about long lines have been voiced for years by some activists.

While there is no doubt that long lines do occasionally occur in our elections, usually due to unexpectedly high turnout, they are not the norm. In 2015, the Caltech/MIT Voting Technology Project released a report on the 2008 and 2012 presidential elections.³⁰ It found that 36.8 percent of voters in 2008 and 37.3 percent of voters in 2012 had no wait time at all. Another 27.6 percent and 31.8 percent, respectively, waited less than 10 minutes. Of the remaining voters, 19 percent waited between 10 and 30 minutes in 2008; 18.4 percent waited for the same amount of time in 2012; and 10.3 percent and 8.6 percent, respectively, waited between 31 minutes and an hour to vote in those two elections. All of this averaged out to a minimum waiting

time for voters in 2008 of a little under 17 minutes compared to less than 14 minutes in 2012.³¹

What happened with respect to wait times in Georgia in 2022 with the new reforms in place? The University of Georgia survey found that 32.2 percent of black voters had no waiting time whatsoever, 36.5 percent waited less than 10 minutes, and another 27.3 percent waited between 10 and 30 minutes. Thus, 96 percent of black voters voted within 30 minutes of arriving at their polling places, and close to 70 percent voted within 10 minutes. In other words, black voters in Georgia in 2022 were better off in this regard than voters in either the 2008 or 2012 elections as reported in the CalTech/MIT study, which showed that in 2008 and 2012, only 83.4 percent and 87.5 percent, respectively, of voters nationally were able to cast their ballots within 30 minutes. That is the acceptable benchmark according to President Obama's Presidential Commission on Election Administration.³²

White voters in Georgia had an almost identical experience in 2022, according to the University of Georgia survey: 41.1 percent reported no wait time; 36.3 percent reported a wait time of less than 10 minutes, and 17.8 percent reported wait times of 10 minutes to 30 minutes. Similar to black voters, 95.2 of white voters voted within 30 minutes of arriving at their polling places, and a little over 77 percent voted within 10 minutes. Clearly, the claim that the Georgia election reforms would cause long lines at polling places, especially for black voters, turned out to be completely wrong.

The reported turnout in Georgia in the 2022 election also does not support the predictions that Biden, Abrams, and others made about the state's 2021 election reform bill. Nationally, according to the US Elections Project, VEP turnout went down from 50 percent in the 2018 midterm election to 46.6 percent in 2022, a decline of 3.4 percentage points.

In Georgia, the VEP turnout in 2018 was 54.1 percent (4.1 percentage points *above* the national turnout rate), and in 2022, it was 52.6 percent (6 percentage points *above* the national turnout rate and the 13th highest turnout rate in the country). Thus, while the nation as a whole saw a decline of 3.4 percentage points in turnout from 2018 to 2022, the decline in Georgia was only 1.5 percentage points with the new reforms in place, and even with this slight decline, Georgia's turnout rate was well above the national average.

By way of comparison, New York has a score of 46 in the Heritage Election Integrity Scorecard and is currently ranked 43rd in the nation, making it one of the worst states in terms of insecure elections.³³ Unlike Georgia, New York has no voter ID requirement for either in-person or absentee balloting, yet the state had lower VEP turnout than Georgia in both the 2018 and 2022 elections at 45.7 percent and 43.5 percent, respectively. Its decline

of 2.2 percentage points was larger than Georgia's slight decline. In addition, Georgia had the 13th highest turnout, in 2022, and New York ranked 36th.

It is therefore quite ironic that New York's senior Senator, Charles Schumer (D), the majority leader of the U.S. Senate, called Georgia's reforms "voter suppression" and said they "smack of Jim Crow rearing its ugly head once again."³⁴ The data clearly show time and time again that those who claim that commonsense measures like voter ID will prevent voters from being able to cast ballots are spreading a lie.³⁵

California also has no ID requirement, received an embarrassing score of only 30 out of a possible 100 points in the Heritage Election Integrity Scorecard, and is currently ranked 49th out of 51 (although not a state, the District of Columbia is included in the Scorecard because it has three Electoral College votes),³⁶ making it the worst state in the nation in terms of election integrity except for Nevada (50th)³⁷ and Hawaii (51st).³⁸ Representative Nancy Pelosi (D-CA) has unfairly criticized the election reform efforts of states like Florida, Georgia, and Texas as an effort to "undermine our democracy" and "undermine the voting power."³⁹

Yet her home state had a *lower* VEP turnout than Georgia's in 2018 (49.3 percent) and a far lower VEP turnout in 2022 (43.5 percent), more than 9 percentage points lower than Georgia's in 2022. The turnout decline of 5.8 percentage points from 2018 to 2022 in California was far larger than Georgia's decline. Its disappointing turnout was so low that it ranked 35th in the nation. Perhaps what is "undermining democracy" in Pelosi's home state of California is its refusal to implement the most basic security measures to protect the integrity of the election process and help to ensure public confidence in the honesty of its elections.

Georgia's turnout also beat the turnout in President Biden's home state, which has no effective ID requirement.⁴⁰ Delaware has a score of 52 and is currently ranked 32nd in the country in the Heritage Election Integrity Scorecard.⁴¹ Yet according to the US Elections Project, Delaware's VEP turnout declined from 51.2 percent in 2018 to 43.2 percent in 2022. Its turnout was thus lower than Georgia's in both elections, and its decline of 8 percentage points was far larger than Georgia's decline of only 1.5 percentage points. Delaware's turnout made it 38th in the nation, putting it behind even California and New York. Biden's "Jim Crow 2.0" speech might have been more appropriate given in Dover, Delaware, instead of Atlanta, Georgia.

Georgia saw a record number of votes cast in the 2022 election. According to the Georgia Secretary of State, 3,964,926 individuals cast votes in the election out of 6.9 million registered voters. This was more than the 3,949,905 individuals who voted in the 2018 midterm congressional election

out of 6.4 million registered voters.⁴² Not only did the number of votes cast increase after the 2021 election reforms became effective, but half a million new voters registered in the state.

Florida

Florida is currently tied for sixth place in the Heritage Election Integrity Scorecard and has a score of 78.⁴³ In 2022, the Florida legislature passed an election reform bill, SB 524, to improve the security of the state's election process.⁴⁴ SB 524 was a comprehensive bill that made many changes, such as banning private funding of election offices by political donors and strengthening the voter ID requirements for absentee ballots. The same type of false voter suppression claims were made about Florida's new law that were made about Georgia's recent election integrity law, with the head of the League of Women Voters of Florida calling it "undemocratic, unconstitutional, and un-American."⁴⁵

Florida provides a comprehensive list of acceptable forms of voter ID for in-person voting that include a Florida driver's license, a non-driver photo ID card issued by the Florida Department of Highway Safety and Motor Vehicles, a U.S. passport, debit or credit card with photo, military identification, student ID, retirement center ID, neighborhood association card, military ID, veteran health identification card, public assistance card, concealed carry permit, or government employee ID card.⁴⁶ Voters who request an absentee ballot must include either the serial number of their Florida driver's licenses or state ID cards or the last four digits of their Social Security numbers.⁴⁷

Yet in the 2022 election with the new provisions in place, when the national VEP turnout was 46.6 percent, VEP turnout in Florida was 49.4 percent, according to the US Elections Project, or 2.8 percentage points *above* the national turnout rate. Florida's VEP turnout rate was the 18th highest in the nation according to the US Elections Project—higher than the turnout rates for California, New York, and Delaware.

Texas

Texas is currently ranked ninth in the Heritage Election Integrity Scorecard and has a score of 76.⁴⁸ In 2021, the state legislature passed a comprehensive election reform bill, SB 1, that is similar to those passed in Florida and Georgia, including, among other reforms, extending the state's voter ID requirement to absentee ballots.⁴⁹ President Biden called it "wrong

and un-American” and “an assault on democracy,” and Texas State Senator Borris Miles (D) repeated Biden’s historically insulting reference when he claimed the Texas bill was “Jim Crow 2.0.”⁵⁰

Texas accepts multiple forms of voter ID including a Texas driver’s license, a Texas personal ID card issued by the Department of Public Safety, a Texas handgun license, a citizenship certificate, a military ID, a U.S. passport, or the free Texas election ID certificate that is also issued by the Department of Public Safety.⁵¹ Even if you do not have any of these readily accessible forms of identification, you can still vote in Texas by filling out a form in which you declare that a “reasonable impediment” prevented you from obtaining a photo ID and you present a birth certificate, utility bill, bank statement, government check, paycheck, or other government document that has your name and address.

To use absentee ballots, just as in Florida and Georgia, voters must provide the serial numbers of their Texas driver’s licenses, personal ID cards, or election ID certificates. Alternatively, they can provide the last four digits of their Social Security numbers. Voters who do not have Social Security numbers will still be able to vote by simply affirming that they do not have any of these ID documents.⁵²

In 2018, before these latest reforms were in place, the VEP turnout in Texas, according to the US Elections Project, was 45.6 percent, or 4.4 percentage points below the national turnout rate. In 2022, the VEP turnout in Texas was 42.5 percent, a decrease of 3.1 percentage points, which was smaller than the national decrease of 3.4 percentage points.

Texas, with its new provisions in place, went from being ranked 42nd in the nation in terms of VEP turnout in 2018 to being ranked 40th in 2022. Texas thus slightly improved its turnout relative to other states. In other words, during the 2022 election, there was only a 0.7 percentage point difference between turnout in President Biden’s home state of Delaware (ranked 38th in the nation at 43.2 percent) and Texas, the state he criticized (ranked 40th at 42.5 percent).

When two states like Delaware and Texas have such similar turnouts, it is an unfair and unjustified criticism to claim that one of them is imposing Jim Crow 2.0 while the other gets no criticism whatsoever of its election rules. This is particularly true when Texas improved its standing in comparison to other states in terms of its electoral turnout from 2018 to 2022, while states like Delaware and California lost ground in comparison to other states. Delaware dropped from 26th to 38th place, and California dropped from 30th to 35th place.

Conclusion

As numerous studies and turnout data from states that have improved the security of their election process through commonsense reforms have shown, making integrity a primary goal of the laws and regulations governing the election process does not “suppress” votes. In fact, it seems to increase voter confidence in elections, which in turn can help to increase turnout. As the Supreme Court said in 2008 when it found Indiana’s voter ID law to be constitutional and not to be a burden on voters, maintaining “public confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process.”⁵³

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EXHIBIT 3

Best Practices and Standards for Election Audits

Hans A. von Spakovsky

KEY TAKEAWAYS

Conducting comprehensive election audits should be a routine practice in every state just as such audits are a routine practice in the business world.

Generally Accepted Election Standards and Generally Accepted Election Auditing Principles must be developed for election administration investigation and analysis.

Such audits would determine whether the election was administered honestly, accurately, and fairly in compliance with all applicable laws and regulations.

In-depth financial and accounting audits are a standard practice (and legal requirement) for all publicly traded companies and most privately held businesses, for nonprofits from schools to churches to other charities, and for financial institutions themselves. Audits are a way of life in America for entities and enterprises, large and small.

Yet audits of election agencies and election procedures and systems are almost nonexistent in our public elections except for very limited audits in limited instances. The very concept of comprehensive election audits has been met with criticism and unjustified opposition by some election officials—and even the current U.S. Department of Justice.¹ For the same reasons that auditing is a ubiquitous requirement in the business world at large, so should audits be a customary requirement in the election world.

This paper, in its entirety, can be found at <http://report.heritage.org/lm304>

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All federal, state, and local elections should be thoroughly audited after every election, and auditors should adopt standards and follow best practices that provide all stakeholders—candidates, election and other government officials, political parties, the media, and voters—with confirmation and confidence that:

- The election was administered honestly, accurately, and fairly in full compliance with all applicable laws and regulations;
- Only eligible U.S. citizens participated in the election and only individuals duly registered under state law were allowed to vote;
- No fraud, errors, or omissions occurred and, if they did occur, they have been identified and steps have been taken to rectify them;
- All election and voting equipment and computers functioned properly as designed to correctly tabulate and report the results without any unauthorized interference or tampering; and
- All results have been verified and reconciled, i.e., the number of ballots cast match the number of voters who participated in the election, all ballots are accounted for, and reports from election officials reflect the correct numbers.

Auditing Standards for Elections

Business audits are conducted according to Generally Accepted Auditing Standards (GAAS) that are “systematic guidelines used by auditors when conducting audits on companies’ financial records.” They “ensure the accuracy, consistency, and verifiability of auditors’ actions and reports.”² GAAS were created by the Auditing Standards Board of the American Institute of Certified Public Accountants.³

GAAS Standards. There are 10 standards for business audits that, with only slight modification, could provide a guideline for establishing the standards for election audits. Under GAAS for business audits, the auditor must:

1. Have adequate technical training and proficiency;
2. Maintain his or her independence in all aspects of the audit;

3. Exercise due professional care and judgment;
4. Adequately plan the work and properly supervise all subordinates;
5. Obtain a sufficient understanding of the entity and its environment (including its internal controls) to assess the risk of material misstatement of financial statements due to error or fraud and design the nature, timing, and extent of further audit procedures;
6. Obtain sufficient audit evidence to afford a reasonable basis for an opinion about the financial statements being audited;
7. State in the audit report whether it was conducted in accordance with generally accepted accounting principles;
8. Report on those circumstances in which such principles were not followed;
9. State in the auditing report whether the information disclosures in the financial statement are not reasonably adequate; and
10. Express an opinion in the auditing report over the financial statements, taken as a whole, or explain why an opinion cannot be given.⁴

No such GAAS-type standards have been created for post-election audits.

GAES Standards. However, using GAAS as a baseline, the Generally Accepted Election Standards (GAES) for election auditors could be that such auditors must:

1. Have adequate technical training and proficiency to be familiar with all aspects of the voter registration and election process in the state;
2. Maintain their independence in all aspects of the audit;
3. Exercise due professional care and judgment;
4. Adequately plan the work and properly supervise all subordinates and individuals who are members of the auditing team;

5. Have a sufficient understanding of the election office being audited and its environment (including its internal controls and procedures) to assess the risk of material problems in its administration due to error or fraud and design the nature, timing, and extent of further audit procedures needed to investigate such problems;
6. Obtain sufficient audit evidence to afford a reasonable basis for an opinion about the accuracy of the election process;
7. State in the audit report whether the audit and the election were conducted in accordance with all state and federal legal requirements and auditing procedures established by the state;
8. Report on those circumstances in which such requirements were not followed;
9. State in the auditing report whether the information disclosures in the audit are not reasonably adequate to provide an opinion on the accuracy of the election or any aspects of the auditing review; and
10. Express an opinion in the auditing report over the voter registration, voting, tabulation, and reporting system as a whole, or explain why an opinion cannot be given.

The Extent of an Audit

There is also general confusion and disagreement regarding what should be done in a post-election audit. The U.S. Election Assistance Commission (EAC), the federal agency created by the Help America Vote Act in 2002 to “serve as a national clearinghouse and resource” for information on the administration of elections,⁵ says that post-election audits “are conducted to ensure that election voting tabulators are operating accurately and complying with regulations.”⁶ The EAC has provided grants in the past to states to conduct audits.⁷

However, all that amounts to is a hand recount of ballots and a check of the accuracy of voting machines scanners and tabulators to ensure that the total number of ballots in the hand recount matches the machine count from Election Day. Of course, as the expression goes, “garbage in, garbage out.” If ballots cast by ineligible voters or fraudsters are fed into a scanner or tabulator, a properly functioning machine would still count that ballot,

even though a proper audit would reveal that the ballot should never have been fed into the machine in the first place.

A post-election tabulation audit or recount that merely determines whether a scanner or tabulator accurately counted the ballots that were fed into it is not the only type of audit that should be conducted, although such checks are “the most prevalent...and just about the only audits called for by statute” under state election laws.⁸ As the CalTech/MIT Voting Technology Project points out, such vote tabulation audits “have been occurring in the United States ever since California mandated post-election audits in the 1960s.”⁹

According to the National Conference of State Legislatures, 32 states and the District of Columbia mandate such limited post-election audits, which “require that a fixed percent of ballots, voting districts, or voting machines be audited” by hand counting the ballots.¹⁰ A risk-limiting audit has the same goal but uses “statistics to determine the number of ballots to be reviewed based on how close the race was.”¹¹ The assumption is that if the hand count matches the machine count in whatever percentage of precincts are audited, then all of the votes were correctly tabulated. Risk-limited audits based on statistics are no substitute for the type of actual audit that jurisdictions should employ for all elections.

There are some jurisdictions where “ballot images, rather than the ballots themselves, are used for auditing.” These images are created when the paper ballots are scanned at the polling place. Instead of hand counting the actual ballots, this allows “the use of independent software, not connected to the voting system, to retabulate” the votes cast in the election.¹²

The problem with such a limited audit is demonstrated by a simple example based on proven cases of fraud listed in the Heritage Election Fraud Database, such as individuals who illegally register and vote in two different states.¹³ If 1,000 votes are cast in a local election and the winning candidate wins the election with 501 votes to his opponent’s 449 votes, a hand recount may confirm that the voting scanners and equipment correctly tabulated the 1,000 votes cast in that race—but it will not confirm whether the 1,000 votes were cast by *eligible* voters.

Only an audit that includes checking the procedures used by election officials prior to the election to verify the accuracy of the voter registration list itself to find voters who should not be registered because they actually reside in another state will prevent that from occurring. In such a close election—and we constantly have close elections in this country—only a small number of voters engaging in such illegal behavior could make a difference in the outcome of the election.

Forensic and Other Audits

The term “forensic audit” has also been used frequently since the 2020 presidential election as a means of verifying or refuting the issues raised in connection with that election, but again, that is a relatively new term in the election area. It seems to have different meanings to different election officials, academics, citizens, and other interested parties. It has been defined as “the use of statistical methods to determine whether the results of an election accurately reflect the intentions of the electors,” but:

[it] may also—or instead—focus on suggesting why election returns are as they are, pointing out anomalies, revealing possible fraudulent manipulations or intimidations, explaining outcomes as due to routine strategic behavior or identifying areas that should be investigated further using more richly informed hands-on methods.¹⁴

Other types of election audits that are now being discussed are simply examinations of only certain parts of our voter registration and voting system. They include:

- **Equipment audits** that ensure voting and tabulation equipment and software conforms to the voluntary performance standards established by the U.S. Election Assistance Commission¹⁵ and the mandatory standards established by some states;¹⁶
- **Process or procedure audits** that verify whether administrative procedures were followed such as the procedure for a registered voter to check in at a polling place before being given a ballot; and
- **Legal compliance audits** that examine whether applicable federal and state election laws were complied with by election officials and election staff in polling places and other voting and tabulation centers.

However, none of these audits conducted in isolation provides the type of complete information needed to confirm that the entire voter registration, voting, tabulation, and reporting system worked as it was designed and intended: providing a transparent, fully observable process that complies with applicable law in which only eligible citizens have the ability to register, vote in the election, and have their votes correctly tabulated and reported without their ballots being voided or negated by fraud, errors, or other problems.

The type of audit that is needed in the election arena is one that combines *all* of the different types of partial audits into a complete analysis of the entire registration and voting system. As pointed out by the CalTech Voting Technology Project, “it is important for states and localities to engage in *comprehensive* programs of auditing and quality assurance for *every* aspect of election management.”¹⁷

What Should Be Reviewed and Audited

Election audits should accomplish two objectives:

The first is to ensure that the election was properly conducted, that election technologies performed as expected, and that the correct winners were declared. The second is to convince the public of the first thing. *Convincing the public* that the election was properly conducted and that the correct winners were declared is a core activity of establishing legitimacy in a democracy.¹⁸

Convincing the public that the election was properly conducted is especially important given that polling shows that faith in the election system is at a dangerous low point. Only 20 percent of Americans are “very confident” in the integrity of our elections, while another 39 percent are “somewhat confident.” This means that less than half of the public has confidence in the integrity of the election process.¹⁹

These two objectives cannot be achieved with partial, piecemeal, or limited audits. Instead, accomplishing those objectives requires a *comprehensive* election audit that investigates and reviews all of the procedures and actions applied and taken in the election.

Mechanical Failure: New Hampshire. It seems obvious that an audit report that finds errors and mistakes should not simply be ignored; state law should mandate that it be used by election officials to correct those problems to ensure they do not happen in future elections. A good example of that is the audit that was conducted in Wyndham, New Hampshire, in 2021 after a hand recount of the election for the Rockingham County District state representative seat showed a discrepancy of 499 votes from the machine tabulation on Election Day.²⁰

The audit found that the discrepancy was caused by a folding machine leased by the town to fold absentee ballots for insertion into envelopes being sent to voters. Instead of folding the ballots along the lines between the names of candidates as it was supposed to, it folded many of the ballots through the candidates’ names. The computer scanners that were reading

the completed ballots when they were sent back by the voters mistakenly read the folds “as marked ovals” or votes for that candidate.²¹

Folds through the candidates’ names were also sometime interpreted as an “overvote” when the scanner detected the filled in oval next to the name of another candidate on the same ballot in the same race, voiding the vote in that race entirely. The actual ballot count did not change the outcome of the election, but without the audit, election officials in Wyndham would have had no idea that their voting equipment was malfunctioning. Unless it was corrected, that malfunction could have made the difference in a future election. It was only because of the audit that the problem was discovered.

Intentional Misconduct. State law should mandate that an audit report that finds intentional misconduct must be referred to the appropriate local, state, or federal law enforcement agency to investigate and prosecute any such misconduct that violates election laws, such as findings that voters were registered in more than one state and voted illegally in both states. State law should further require that local election officials provide law enforcement with all voter and election files relevant to such intentional misconduct.

Comprehensive Audits. As noted, the seventh GAAS for business auditors is that they state whether the audit was conducted in accordance with “generally accepted accounting principles” for the review of financial statements. The equivalent of such “accounting principles” for the review of election procedures in a comprehensive election audit, Generally Accepted Election Auditing Principles, could include investigating, reviewing, and determining whether:

1. Election officials complied with all state and federal laws and regulations governing the registration and election process.
2. Voter registration list maintenance actions were taken *prior* to the election to ensure only eligible individuals were registered to vote, including verifying that registrants were:
 - a. Citizens;
 - b. Legal residents of the precinct where they voted, living in an actual residence, and not registered and voting in another location in the state or any other state;
 - c. Not deceased;

- d. The minimum age required to vote;
 - e. Not disqualified due to criminal convictions or other disqualifications;
 - f. Qualified under all other state law requirements for legal registration; and
 - g. Were removed from the registration list prior to the election if they were not eligible.
3. The data sources used for voter registration list maintenance actions were sufficient to provide confirmation that those on the voter registration list were eligible to vote, that any problems uncovered were resolved, and that ineligible individuals were removed from the list and did not cast votes in the elections.
4. Hand recounts of ballots agreed with the machine counts made on Election Day.
5. The number of total ballots cast equals the number of individuals that registration records show cast ballots in the election.
6. The number of ballots cast in each precinct equals the number of individuals who registration records show as having cast ballots in that precinct.
7. The ballot totals from the precincts match the results published by the election office and any anomalies have been investigated.
8. The processing of absentee ballots was done in strict accordance with all applicable state laws and regulations, including any requirements for identification documentation, witness signatures or notarization, voter signature comparison, and receipt of completed absentee ballots prior to the state law deadline.
9. The chain of custody rules and regulations for all ballots, voting equipment, and drop boxes were followed by election officials and documented to confirm compliance.

10. The voting equipment and tabulation/vote counting machines and systems were subjected to logic and accuracy testing prior to Election Day and the start of any early voting period, as well as immediately after the election, and were not connected to the Internet at any time during the voting or tabulation period.
11. No unauthorized or unapproved software was added to any voting equipment prior to, or after, the election and there is full and complete documentation of all authorized changes made, including identification and contact information for the individuals making those changes.
12. Computer system logs show no malware, unexplained changes, or other problems in the voting and tabulation equipment and all such equipment and software was certified for use in the state under applicable certification processes. There are independent laboratories²² accredited by the U.S. Election Assistance Commission that provide inspection and assessment services of voting equipment that has been certified under the voluntary federal voting system standards established by the EAC that could be used by audit teams, as well as a Quality Monitoring Program established by the EAC to cover certified voting equipment.²³
13. Observers authorized by state law were given full and meaningful access to observe in-person voting in polling locations on Election Day and during early voting, the processing of absentee ballots, the operation of all tabulation systems and other voting equipment, and the fulfillment of all legal requirements such as signature-matching on absentee ballots, as well as the processing of voter registration and absentee ballot applications prior to Election Day.
14. All complaints by voters, observers, and election officials were investigated, documented, and properly resolved and disciplinary action was taken against any election officials engaging in misbehavior or unlawful actions.
15. All disputed, challenged, rejected, and cured ballots were investigated, documented, and properly resolved in compliance with applicable state law.
16. All provisional ballots cast by voters were investigated, documented, and properly resolved in compliance with both federal law²⁴ and

applicable state law and legal requirements were not waived by election officials to circumvent the state's voter registration deadline.

17. All contracts with third-party vendors are made available to the public and were reviewed to verify their compliance with state law and equal treatment of all voters.

18. A financial audit²⁵ confirms that all election office appropriations, grants, and disbursements were properly spent on activities related to registration, voting, and administration in the year prior to the date of the general election.²⁶

Who Should Be Audited

Clearly, the best course of action would be for every county election jurisdiction (or townships in states like New Hampshire, where elections are conducted by towns) to be audited after every election. However, such a procedure may be impossible in some larger states due to the cost, lack of resources, and lack of experienced personnel.

One potential solution to this problem would be to audit every election jurisdiction in a state on a random, rotating basis that is not announced until *after* the election. That rotation system should ensure that every election jurisdiction is audited at least once every five years and that no election jurisdiction believes that just because it was audited, it will not be audited again for five years. A rotating audit system based on a three-year cycle would, of course, be better, but again that will depend on the size of the state, the number of election jurisdictions, and the resources and personnel available to conduct such audits.

When it comes to voter registrations and ballots cast in an election, auditors could choose to audit a statistically significant random sample of registration and ballots cast in each precinct within an election jurisdiction or they might opt to audit all registrations and ballots cast within a randomly selected number of precincts within an election jurisdiction.

Who Should Conduct Audits

Corporate audits are conducted by independent, outside experts to avoid having corporate personnel cover up mistakes, errors, intentional misconduct, and other problems. Individuals within the corporations being audited obviously have a non-waivable conflict of interest that prevents them from serving as independent auditors.

The same rule should apply to election audits because the same conflict of interest exists. Local election officials who may be embarrassed or lose their jobs if mistakes and problems are detected that were caused by their mismanagement of the voter registration and voting system, as well as the equipment they chose to use, should *not* be the individuals conducting an audit of how they or the equipment they selected performed in the election.

The problem is that while there are numerous accounting firms that are qualified to conduct business audits, there are currently almost no experienced entities with the requisite knowledge of election law and experience in election administration to competently conduct a comprehensive election audit. Creating a mandatory system for conducting election audits nationwide will likely give rise to a new market for skilled, experienced, and independent election auditors.

Until that happens, audits should be conducted by teams consisting of local election officials from *different* jurisdictions than the one being audited. State election officials, state auditors or inspectors general, and experienced outside experts should be utilized, and those efforts should be coordinated by the secretary of state or a state election board with final authority over elections in the state.²⁷

Designated state legislators on a bipartisan basis could also be part of such teams—but only as observers—to be able to report back to their legislatures about the conduct and findings of the audit. A representative of the U.S. Election Assistance Commission could also be allowed in as an observer. Permitting bipartisan groups of legislators or EAC officials to serve as observers need not be a mandatory requirement, but it might be helpful.

Local election officials in the jurisdiction being audited should, of course, participate in the audit, but only to the extent needed to explain their procedures to the members of the audit team, provide any information, materials, or background needed, and answer any questions. They should have no participation in the analysis or preparation of the audit team's report.

Any state law that is passed to implement the auditing process should include a provision requiring that local election officials cooperate with, and provide all records sought by, the auditing team. The chief election official or agency of the state, whether it is a secretary of state or a state election board, should have the authority to impose administrative fines on an election official who refuses to comply with this requirement—as well as the power to terminate such election official for cause. States should also consider criminal penalties for election officials who willfully refuse to cooperate with an audit.

Third-Party Cooperation. This cooperation mandate should also apply to all third-party contractors that provide equipment or services to election officials, and all contracts entered into with such contractors should include a

provision requiring such cooperation—with the imposition of liquidated damages for each day that a contractor refuses to provide information or documentation sought by the audit team. Such a provision might have prevented the problem that arose when Maricopa County election officials and the county’s voting equipment supplier, Dominion Voting Systems, refused to cooperate with the audit implemented by the state senate in Arizona after the 2020 election.

As state Arizona Senate President Karen Fann said at the time, “the non-compliance by the County and Dominion continues to delay the results and breeds distrust.”²⁸ States need to implement audit enforcement provisions to prevent such misbehavior, including a requirement that any voting equipment and software company seeking to have its products certified for use in a state agree, as part of that certification process, to cooperate fully with any audits or lose their accreditation in the state.

Observers. Every aspect of an audit—just like every aspect of the election process—should allow observers from the political parties and candidates to monitor the auditors and the entire auditing process. Transparency is fundamental to achieving the second objective of an audit—convincing the public that the election was fairly, effectively, and honestly conducted.

Legal Issues

One issue that should not deter the implementation of comprehensive auditing standards and procedures by state governments is a threat by the U.S. Department of Justice—which has no jurisdiction over such issues despite its erroneous claims to the contrary.

Department of Justice (DOJ) Threats. On May 5, 2021, Pamela S. Karlan, the Principal Deputy Assistant Attorney General of the Civil Rights Division of the Justice Department (a political appointee), sent a letter to Arizona Senator Fann warning her that the audit being conducted of the 2020 election in Maricopa County potentially violated the federal law requiring preservation of election records or could be considered “intimidation” of voters under Section 11(b) of the Voting Rights Act, the latter being a criminal offense.²⁹ This was followed by a “guidance” document published on July 28, 2021, that made the same false assertions.³⁰

As the Public Interest Legal Foundation (PILF),³¹ which is staffed with former Justice Department lawyers, correctly concluded in a published response, the DOJ’s letter and guidance overstated the Justice Department’s power and understated the state’s authority over its election. They were written, in PILF’s views, by “an ideological extremist with a long history of partisan enforcement of civil rights laws as well as rank scholarly dishonesty.”³²

According to PILF, the Justice Department's position rested "on tenuous legal grounds" and was designed to deter Arizona from auditing the election rather than "provide a sober description of federal power"³³ simply because the political appointees within the Biden Justice Department did not want any questions raised about the legitimacy of the 2020 election.

Conducting an audit that examines existing election records does not violate the federal law requiring preservation of such records, contrary to the assertions of the Justice Department, which "exaggerated the reach of" the statute.³⁴ Audits do not destroy records, they simply examine and review the existing records.

Audits and the Voting Rights Act. Furthermore, contrary to the DOJ's claims, Section 11(b) of the Voting Rights Act is also not implicated by an audit.³⁵ Section 11(b) prohibits directly intimidating or threatening an individual for "voting or attempting to vote." It requires "real, objective intimidation, not imaginary or attenuated intimidation."³⁶ When an audit is conducted *after* the election, it is an "absurd and implausible interpretation of Section 11(b)" to claim that conducting an audit or a recount could possibly "intimidate" or "threaten" voters who have already voted.

Prior to the issuance of this dishonest guidance, the Justice Department had *never* asserted that it had any authority of any kind over, or had ever investigated, the recount, recanvass, or audit of a prior election. State officials should disregard this guidance and recognize it for what it is: the partisan abuse of the Justice Department's law enforcement authority under federal voting rights laws for political purposes.

Conclusion

Conducting audits of U.S. elections should be a routine practice, the same way they are a routine practice in the business community and other fields of our society. Such audits are necessary to ensure the proper conduct of the entire election system, from the registration of eligible voters to the casting of ballots to the tabulation and reporting of the election results. Such a requirement should be imposed and enforced by state law and state officials to guarantee not only the honesty and effectiveness of the election process, but to assure the public, candidates, political parties, and the media that they can be confident in the security and integrity of our elections.

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Endnotes

1. *Federal Law Constraints on Post-Election "Audits,"* U.S. DEP'T. OF JUST., (July 28, 2021), <https://www.justice.gov/opa/press-release/file/1417796/download>.
2. Alicia Tuovila, *Generally Accepted Auditing Standards (GAAS)*, INVESTOPEDIA (Nov. 11, 2020), [https://www.investopedia.com/terms/g/gaas.asp#:~:text=Generally%20accepted%20auditing%20standards%20\(GAAS\)%20are%20a%20set%20of%20systematic,of%20auditors'%20actions%20and%20reports](https://www.investopedia.com/terms/g/gaas.asp#:~:text=Generally%20accepted%20auditing%20standards%20(GAAS)%20are%20a%20set%20of%20systematic,of%20auditors'%20actions%20and%20reports).
3. *ASB Auditing Standards Board*, AICPA, <https://us.aicpa.org/research/standards/auditattest/asp>.
4. Tuovila, *Generally Accepted Auditing Standards*, *supra* note 2.
5. 52 U.S.C. § 20922.
6. *Post-Election Audits*, U.S. ELECTION ASSISTANCE COMM'N (Oct. 23, 2020), at 1.
7. *See EAC Logic and Accuracy and Post-Election Audit Grants*, U.S. ELECTION ASSISTANCE COMM'N, <https://www.eac.gov/election-officials/post-election-audits-recounts>.
8. Amanda Zoch, *The What, Why and How of Election Audits*, NAT'L CONF. OF STATE LEGISLATURES (Aug. 5, 2021), <https://www.ncsl.org/research/elections-and-campaigns/the-what-why-and-how-of-election-audits-magazine2021.aspx>.
9. *Election Auditing: Key Issue and Perspectives*, Summary Report, CALTECH/MIT VOTING TECH. PROJECT (Dec. 7–8, 2018), p. vi.
10. Zoch, *The What, Why and How of Election Audits*, *supra* note 8.
11. *Id.*
12. *Post-Election Audits*, U.S. Election Assistance Comm'n, *supra* note 6, at 6.
13. *Election Fraud Database*, THE HERITAGE FOUNDATION (2022), <https://www.heritage.org/voterfraud>.
14. Walter R. Mebane, Jr., *Election Forensics Beyond Audits*, Summary Report, CALTECH/MIT VOTING TECH. PROJECT (Dec. 7–8, 2018), at 21.
15. *Voluntary Voting System Guidelines*, U.S. ELECTION ASSISTANCE COMM'N, <https://www.eac.gov/voting-equipment/voluntary-voting-system-guidelines>.
16. *See, e.g., General Information on Texas Voting System Certification Process*, TEX. SEC'Y OF STATE, <https://www.sos.state.tx.us/elections/laws/generalinfo.shtml>.
17. Summary Report, *supra* note 9, at v (emphasis added).
18. *Id.* at iv (emphasis in original).
19. Xander Landen, *Only 20 Percent of Americans Say They're "Very Confident" in U.S. Election Integrity: Poll*, NEWSWEEK (Jan. 6, 2022), <https://www.newsweek.com/only-20-percent-americans-say-theyre-very-confident-us-election-integrity-poll-1666411>.
20. Harri Hursti, Mark Lindeman, and Philip B. Stark, *New Hampshire SB 43 Forensic Audit*, DEP'T OF JUST. (July 2021), <https://www.doj.nh.gov/sb43/documents/20210713-sb43-forensic-audit-report.pdf>.
21. *Id.* at 3.
22. *See, e.g., Pro V&V*, <http://www.provandv.com/services/>; and SLI COMPLIANCE, <https://slicompliance.com/services/voting-system-certification-testing/electronic-voting-system-forensic-analysis-and-audit/>.
23. *Voluntary Voting Systems Guidelines*, *supra* note 15. The U.S. Election Assistance Commission has implemented the "Quality Monitoring Program" that is "designed to ensure that voting systems certified by EAC are the same systems sold by manufacturers" and includes "fielded voting system review, anomaly reporting, and manufacturing site visits." *See Quality Monitoring Program*, U.S. ELECTION ASSISTANCE COMM'N, <https://www.eac.gov/voting-equipment/quality-monitoring-program>. For an example of its work, *see EAC Approves Measure to Address Missouri Voting Machine Anomaly*, Press Release, U.S. ELECTION ASSISTANCE COMM'N (May 20, 2022), <https://www.eac.gov/news/2022/05/20/eac-approves-measure-address-missouri-voting-machine-anomaly>.
24. Section 302 of the Help America Vote Act of 2002, 52 U.S.C. § 21082.
25. The Inspector General of the U.S. Election Assistance Commission conducts audits of how states have used federal grants provided to them by the EAC through federal appropriations. Thus, some aspects of the financial spending of election officials and election agencies is already being audited. *See EAC Office of the Inspector General Announces Audits of HAVA Grant Funds in Eight States*, Press Release, U.S. ELECTION ASSISTANCE COMM'N (July 16, 2021), <https://www.eac.gov/news/2021/07/16/eac-office-inspector-general-announces-audits-hava-grant-funds-eight-states>.
26. For other suggestions on different types of post-election audits, *see Post-Election Audits: Verifying Election Integrity*, (June 22, 2012), https://election-integrity.info/Post_Election_Audits.pdf.
27. While there are many academics who write about election issues, there are very few who have actual experience in election administration and the knowledge needed to participate in a comprehensive audit. The author served on a county election board in Georgia for five years and a similar board in Virginia for three years. Both boards administered the voter registration and election process in the largest counties in each state.

28. Jen Fifield and Mary Jo Pitzl, *Maricopa County and Dominion Won't Comply with New Subpoenas Issued by Arizona Senate*, ARIZONA CENTRAL (Aug. 2, 2021), <https://www.azcentral.com/story/news/politics/elections/2021/08/02/maricopa-co-and-dominion-face-monday-deadline-ariz-senate-election-subpoenas/5434136001/>.
29. Pamela S. Carlin, Principal Deputy Assistant Attorney General, Letter to Karen Fann, May 5, 2021, <https://www.justice.gov/crt/case-document/file/1424586/download>. 52 U.S.C. § 2070 requires preservation of "all records and papers" relating to a federal election for 22 months after Election Day.
30. *Federal Law Constraints on Post-Election "Audits," supra* note 1.
31. The author is a member of the board of the Public Interest Legal Foundation. He served as Counsel to the Assistant Attorney General for Civil Rights at the U.S. Justice Department from 2002 to 2005.
32. *Response to United States Department of Justice July 28, 2021 Guidance*, PUB. INTEREST LEGAL FOUND. (Aug. 26, 2021), <https://publicinterestlegal.org/wp-content/uploads/2021/08/Letter-Dated-August-26-2021.pdf>.
33. *Id.*
34. *Id.*
35. 52 U.S.C. § 10307(b).
36. *Response to United States Department of Justice, supra* note 32.