

# APPENDIX

## Table of Contents

<b>Noncitizen Voting: The Missing Millions .....</b>	<b>1</b>
<b>Analysis: The Effects of Requiring Documentary Proof of Citizenship to Register to Vote .....</b>	<b>23</b>
<b>Multiple Threats Converge to Heighten Disinformation Risks to 2024 Elections</b>	<b>30</b>
<b>The Election Deniers' Playbook for 2024 .....</b>	<b>38</b>
<b>Securing the 2024 Election .....</b>	<b>52</b>
<b>Fact Sheet: The Freedom to Vote Act .....</b>	<b>84</b>
<b>Fact Sheet: The John R. Lewis Voting Rights Advancement Act .....</b>	<b>87</b>

BRENNAN  

---

CENTER  

---

FOR JUSTICE  

---

TWENTY  
YEARS

NONCITIZEN VOTING:  
THE MISSING MILLIONS

Christopher Famighetti, Douglas Keith and Myrna Pérez

## ABOUT THE BRENNAN CENTER FOR JUSTICE

The Brennan Center for Justice at NYU School of Law is a nonpartisan law and policy institute that seeks to improve our systems of democracy and justice. We work to hold our political institutions and laws accountable to the twin American ideals of democracy and equal justice for all. The Center’s work ranges from voting rights to campaign finance reform, from ending mass incarceration to preserving Constitutional protection in the fight against terrorism. Part think tank, part advocacy group, part cutting-edge communications hub, we start with rigorous research. We craft innovative policies. And we fight for them — in Congress and the states, the courts, and in the court of public opinion.

## ABOUT THE BRENNAN CENTER’S DEMOCRACY PROGRAM

The Brennan Center’s Democracy Program works to repair the broken systems of American democracy. We encourage broad citizen participation by promoting voting and campaign finance reform. We work to secure fair courts and to advance a First Amendment jurisprudence that puts the rights of citizens — not special interests — at the center of our democracy. We collaborate with grassroots groups, advocacy organizations, and government officials to eliminate the obstacles to an effective democracy.

## ABOUT THE BRENNAN CENTER’S PUBLICATIONS

**Red cover** | Research reports offer in-depth empirical findings.

**Blue cover** | Policy proposals offer innovative, concrete reform solutions.

**White cover** | White papers offer a compelling analysis of a pressing legal or policy issue.

## ABOUT THE AUTHORS

**Christopher Famighetti** is a Policy and Research Analyst for the Democracy Program at the Brennan Center for Justice, researching the impact of laws and policies on access to the polls, with a particular focus on demographic disparities, long lines and voting technology. He also contributes research on campaign fundraising and spending for the Center's Money in Politics program. Prior to joining the Brennan Center, Mr. Famighetti worked to support labor, community, and political campaigns as a strategic researcher and organizer. He has a B.A. from Bard College in Languages and Literature, has a M.S. in Urban Policy from the New School, and has served as Adjunct Sociology Faculty at Montclair State University.

**Douglas Keith** is the Katz Fellow in the Brennan Center's Democracy Program. He co-authored the Brennan Center's reports *Secret Spending in the States* (2016), and *Five to Four* (2016) as well as pieces in *The Atlantic*, and *TIME*. Prior to joining the Brennan Center, he worked on voting rights litigation as a Ford Foundation Public Interest Law Fellow at Advancement Project, trained poll workers for the New York City Board of Elections, and organized election reform advocates in New York. He has also observed and analyzed democratic systems in North and West Africa, Central Asia and Eastern Europe. He received his J.D. from New York University School of Law.

**Myrna Pérez** is Deputy Director of the Democracy Program at the Brennan Center for Justice, where she leads the Voting Rights and Elections project. She has authored several nationally recognized reports and articles related to voting rights, including *Election Integrity: A Pro-Voter Agenda* (January 2016), *Election Day Long Lines: Resource Allocation* (September 2014), and *If Section 5 Fails: New Voting Implications* (June 2013). Her work has been featured in media outlets across the country, including the *New York Times*, *Wall Street Journal*, MSNBC, Christian Science Monitor, and HuffPost. Prior to joining the Center, Ms. Pérez was the Civil Rights Fellow at Relman & Dane, a civil rights law firm in Washington, D.C. Ms. Pérez graduated from Columbia Law School in 2003, where she was a Lowenstein Public Interest Fellow. Following law school, Ms. Pérez clerked for the Honorable Anita B. Brody of the United States District Court for the Eastern District of Pennsylvania and for the Honorable Julio M. Fuentes of the United States Court of Appeals for the Third Circuit. Ms. Pérez earned her undergraduate degree in Political Science from Yale University in 1996. She obtained a master's degree in public policy from Harvard University's Kennedy School of Government in 1998, where she was the recipient of the Robert F. Kennedy Award for Excellence in Public Service. Prior to law school, she was a Presidential Management Fellow, serving as a policy analyst for the United States Government Accounting Office where she covered a range of issues including housing and health care. She is an adjunct professor at Columbia Law School.

## ACKNOWLEDGEMENTS

The Brennan Center gratefully acknowledges The Bauman Foundation, Bohemian Foundation, Change Happens Foundation, Hannah LF Cooper, craigslist Charitable Fund, Democracy Alliance Partners, FJC - A Foundation of Philanthropic Funds, Ford Foundation, Peggy and Richard Greenfield, The Charles Evans Hughes Memorial Foundation, Audrey and Sydney Irmas Foundation, the Joyce Foundation, The JPB Foundation, The Karsten Family Foundation, Susheel Kirpalani, The Kohlberg Foundation, the John D. and Catherine T. MacArthur Foundation, The Mai Family Foundation, The Mertz Gilmore Foundation, Nancy Meyer and Marc Weiss, The John and Wendy Neu Foundation, Open Society Foundations, The Schmale Family, The Schooner Foundation, Solidarity Giving, the Bernard and Anne Spitzer Charitable Trust, David and Liz Ehrenfest Steinglass, Barbra Streisand, Vital Projects Fund, Wachtell, Lipton, Rosen & Katz, Wallace Global Fund, and Wendy C. Wolf for their generous support of our voting work.

The authors would like to thank the many Brennan Center colleagues who made this report possible. Brennan Center President Michael Waldman and Wendy Weiser, Director of the Brennan Center's Democracy Program, were indispensable sources of guidance, strategic thinking, and editorial advice. Brennan Center Vice President Vivien Watts contributed outreach support at key moments. Research and Program Associates Phoenix Rice-Johnson and Michael Pelle helped research and code for the report. Phoenix Rice-Johnson, Nathaniel Sobel, Dana Brandes-Simon, and Suprita Datta assisted in interviewing election officials. Beatriz Aldereguia assisted with outreach and Aaron Mundy provided research assistance. Jim Lyons, Raffe Jefferson, and Rebecca Autrey provided helpful editorial assistance. Ryan Witcombe's creativity and design skills brought this report to the finish line.

The authors would also like to thank the many local election administrators (and their schedulers) who took time away from their busy job of running elections to be interviewed for this report. Finally, the authors would like to thank the League of Women Voters of Florida and Miami-Dade County, as well as Chad Dunn, who provided assistance in connecting us to election officials.

## **TABLE OF CONTENTS**

<b>I.</b>	<b>INTRODUCTION AND FINDINGS</b>	<b>1</b>
<b>II.</b>	<b>METHODOLOGY</b>	<b>3</b>
<b>III.</b>	<b>HOW ELECTION ADMINISTRATORS DETECT AND PREVENT FRAUD</b>	<b>6</b>
<b>IV.</b>	<b>OVERBLOWN AND EXAGGERATED CLAIMS OF FRAUD UNDERMINE ELECTION ADMINISTRATION</b>	<b>8</b>
	<b>Conclusion</b>	<b>9</b>
	<b>Endotes</b>	<b>11</b>
	<b>Appendix</b>	<b>15</b>

## I. INTRODUCTION AND FINDINGS

In 2016, for the first time, presidential politics was roiled by claims of widespread illegal voting. In the weeks after the election, the claims continued. President-elect Trump insisted, “In addition to winning the Electoral College in a landslide, I won the popular vote if you deduct the millions of people who voted illegally.”<sup>1</sup> On that same day, four hours later, he added, “Serious voter fraud in Virginia, New Hampshire and California — so why isn’t the media reporting on this? Serious bias — big problem!”<sup>2</sup> After his inauguration, the claims escalated. “I will be asking for a major investigation into VOTER FRAUD,” he declared.<sup>3</sup>

As time passed, Trump’s claim grew more specific and more exaggerated. On Feb. 9th, he told a group of 10 senators that ineligible persons had voted in droves, and that they had been driven in buses by the thousands from Massachusetts to New Hampshire.<sup>4</sup> White House Press Secretary Sean Spicer defended and reiterated the claims of voting by noncitizens.<sup>5</sup> Senior policy advisor Stephen Miller toured the Sunday morning news interview shows to defend the claim.<sup>6</sup> The White House asserted that these claims required an investigation, to be led by Vice President Mike Pence.<sup>7</sup> In a March 22nd interview with TIME, the president said that he believes he will be proven right and that he is moving forward with the investigative committee.<sup>8</sup> In late April, Spicer told CNN that he expects news on the voter fraud investigation in the “next week or two,” and that Pence will still be “very involved.”<sup>9</sup>

Are the president’s claims plausible? The Brennan Center reached out systematically to those who would know best: the local officials who actually ran the election in 2016. These officials are in the best position to detect improper voting — by noncitizens or any other kind. To make sure we were speaking to the right individuals, this study relies on interviews with officials who ran the elections in jurisdictions (towns, cities, or counties) nationwide with the highest share of noncitizen residents, and those in states identified by Trump as the locus of supposed misconduct. We interviewed a total of 44 administrators representing 42 jurisdictions in 12 states, including officials in eight of the 10 jurisdictions with the largest populations of noncitizens nationally.<sup>10</sup>

Our nationwide study of noncitizen or fraudulent voting in 2016 from the perspective of local election officials found:

- In the jurisdictions we studied, very few noncitizens voted in the 2016 election. Across 42 jurisdictions, election officials who oversaw the tabulation of 23.5 million votes in the 2016 general election referred only an estimated 30 incidents of suspected noncitizen voting for further investigation or prosecution. In other words, improper noncitizen votes accounted for 0.0001 percent of the 2016 votes in those jurisdictions.
- Forty of the jurisdictions — all but two of the 42 we studied — reported no known incidents of noncitizen voting in 2016. All of the officials we spoke with said that the incidence of noncitizen voting in prior years was not significantly greater than in 2016.

- In the 10 counties with the largest populations of noncitizens in 2016, only one reported any instances of noncitizen voting, consisting of fewer than 10 votes, and New York City, home to two of the counties, declined to provide any information.
- In California, Virginia and New Hampshire — the states where Trump claimed the problem of noncitizen voting was especially acute — no official we spoke with identified an incident of noncitizen voting in 2016.

The absence of fraud reinforces a wide consensus among scholars, journalists and election administrators: voter fraud of any kind, including noncitizen voting, is rare.

Two features of this study stand out.

It is the first analysis to look at voting from the perspective of local officials in 2016 — the year that Trump claimed was marred by widespread illegal voting.

Why speak with local officials? In the United States, elections are administered within local jurisdictions — counties, cities, and townships. These bodies and their officials run elections, process registration applications, and directly deal with voters. To be sure, local elections officials may not be aware of every incident of ineligible voting, and the tools at their disposal are imperfect, but they remain well-positioned to account for what is happening in the area they oversee.

Second, this study casts a wider net than studies focusing on prosecutions or convictions. It identifies both those who voted improperly by mistake, and those who did so with malicious intent. We asked administrators both the number of incidents of noncitizen voting they referred for prosecution or further investigation, and the number of suspected incidents they encountered but did not refer in 2016. In all but two of 42 possible jurisdictions, the answers to both questions were zero. Some who claim widespread misconduct insist that, because prosecution is hard, there is likely a much wider pool of people who were caught voting improperly, but who simply were not prosecuted. This study finds that both the number of people referred for prosecution and the number of people merely suspected of improper voting are very small.



## II. METHODOLOGY

Three Brennan Center researchers spoke to election officials in 42 jurisdictions. The researchers sought to quantify every credible instance of noncitizen voting seen by those officials, even if those instances did not result in a conviction. In addition, the researchers sought to assess whether fraud, more generally, was widespread. We spoke to local election officials as opposed to state-level administrators or prosecutors because in the United States, elections are run within counties, cities, and townships.

### Interview Protocols

The Brennan Center conducted in-depth interviews with more than 40 election officials. We interviewed all but two of the jurisdictions by phone; the remaining two jurisdictions provided answers via e-mail. We standardized the interview process by asking the primary questions in the same wording and order. During each interview, we queried election officials on a standard set of questions regarding the scope of their professional experience in election administration, prevalence of noncitizen voting, and prevalence of fraud generally. We asked the officials to quantify three scenarios involving noncitizen voting: (1) the number of cases of noncitizen voting referred for prosecution or further investigation in 2016; (2) the number of cases of noncitizen voting referred for prosecution or further investigation over their careers; (3) the number of cases of noncitizen voting officials encountered in 2016, but did not refer. In addition, we asked for any explanations the administrator had for why noncitizen voting occurred at whatever rate described. During the interview, where appropriate, we asked follow up questions, to focus responses and gather contextual data. After all the interviews were conducted, we sought confirmation in writing from the administrators that the information captured from the interviews was accurate, and to promote standardization of the responses collected.

In addition to questions about noncitizen voting, we asked about voter fraud more generally. The responses to these questions were not specific enough to warrant additional findings, though officials were nearly unanimous in reporting that there was no widespread voter fraud in their jurisdictions. One official, however, reported that as many as 700 persons may have improperly voted in both political parties' primaries in early 2016. We do not have enough information to substantiate those numbers. No official reported significant numbers of persons voting twice in the same election, or voting under another person's name.

### Selection of Jurisdictions

We selected the jurisdictions included in this analysis according to two criteria. For the first criterion, we selected a nationwide set of jurisdictions with large adult noncitizen populations.<sup>11</sup> We started with a list of the 44 counties with more than 100,000 adult noncitizens. We reached out to these counties via phone and email to schedule interviews. Based on this outreach, we were able to conduct interviews with election officials from 27 of the 44 counties, including eight of the 10 counties with the largest populations of noncitizens in the country.<sup>12</sup> The New York City Board of Elections, home to the two remaining counties with the 10 largest noncitizen populations, declined to participate in this research.

For the second criterion, we focused on the three states — California, New Hampshire and Virginia<sup>13</sup> — that Trump expressly singled out as having widespread noncitizens voting in 2016. For these states, we selected a geographically and demographically diverse set of five jurisdictions: (1) at least two jurisdictions with large numbers of adult noncitizens, (2) at least two other jurisdictions with a high percentage of adult noncitizens and (3) at least one rural<sup>14</sup> or sparsely populated jurisdiction with a comparatively high percentage of adult noncitizens.<sup>15</sup> The jurisdictions interviewed can be found in the appendix.

### **Accounting for Limitations**

This study faced two potential methodological concerns: (1) the problem of selection bias, in other words, the concern that the jurisdictions willing to be interviewed differed too much from jurisdictions that refused to participate, and (2) the problem of response bias, in other words, that the numerical responses given to us by the officials were inaccurate.

We made efforts to detect any evidence of either of these problems. Regarding selection bias, we examined any known partisan affiliation of the responders, and discovered that few, if any, ran for their position under a partisan banner. Forty of our 44 interviewees were either appointed to their positions or won their seats in non-partisan contests. Most have longstanding careers in election administration. We also reviewed the literature of noncitizen voting and fraud to see if any credible reports of recent systemic fraud would be captured if we had more responses from jurisdictions that have more than 100,000 noncitizens. We acknowledge that the refusal of the New York City Board of Elections to provide the requested information is noteworthy, but we nevertheless believe there are enough jurisdictions involved to be comfortable that the results we obtained are consistent with prior studies finding noncitizen voting to be rare.

Relatedly, we attempted to detect response bias by comparing our findings to those of other recent studies that use a variety of other methodologies. We reviewed comprehensive analyses of referrals, investigations, and prosecutions for election-related offenses covering each of the states in which we spoke with administrators.<sup>16</sup> We were prepared to ask the election officials to explain any discrepancies if other sources were meaningfully out of sync with their estimates, but as it happens, in all but one instance, there was no cause to do so.

For example, three Secretaries of State have recently made very public allegations of noncitizens voting, albeit on a much smaller scale than what Trump has said. On Feb. 27th, Ohio Secretary of State Jon Husted (R) claimed to have identified 82 noncitizens that had voted in at least one past election, but he did not indicate how many elections he examined or specify that any of that fraud happened in 2016.<sup>17</sup> On April 19th, Nevada's Secretary of State Barbara Cegavske (R) reported that a statewide audit found that three noncitizens had voted in the 2016 election.<sup>18</sup> On April 21st, the North Carolina State Board of Elections, comprised of three Republicans and two Democrats, reported 41 noncitizens cast ballots in November.<sup>19</sup> Even if true,<sup>20</sup> those numbers reaffirm that noncitizen voting is extraordinarily rare because the incidents of noncitizen voting alleged in Ohio, Nevada, and North Carolina amount to,

at most, .0015, .0003, and .0009 percent of ballots in those states respectively in 2016.<sup>21</sup> The Brennan Center did note that the Nevada Secretary of State's analysis identified three more possible instances of noncitizen voting in Clark County than Clark County Registrar of Voters, Joe Gloria, reported during our initial interview.<sup>22</sup> Gloria determined that until his office receives more information from the Secretary of State about this investigation, he did not believe he had enough information to warrant revision of his original responses.

### III. HOW ELECTION ADMINISTRATORS DETECT AND PREVENT FRAUD

How would local election officials actually know if improper voting were taking place? Practices vary, but all but two interviewees reported to us that they rely on certain common safeguards against fraud to help detect and deter fraud.<sup>23</sup> Often these measures detect misconduct as well as prevent it. For example, election administrators reported that:

- They operate hotlines, or have a process for members of the public to challenge the eligibility of voters, or otherwise have a mechanism for poll workers or other citizens to report concerns of noncitizens voting.
- Some are notified when persons registered decline to serve on juries because they are noncitizens.
- Some register persons at naturalization ceremonies and then run a check to see if the newly-naturalized citizens are already registered.<sup>24</sup>
- A few have to do research to prepare documentations for United States Citizenship and Immigration Services (USCIS) or an individual certifying that a person seeking naturalization has not registered or voted before.

While no administrator reported that noncitizen voting was common, four of the 44 administrators raised concerns that the safeguards described were insufficient for preventing or identifying the registration of ineligible people. One expressed that the tools he had likely understated how many noncitizens were on the rolls. But many also noted that while noncitizens might be registered, it is often accidental, and ineligible people who end up on the rolls likely do not vote.

How is it possible for a noncitizen to register or vote by mistake? A noncitizen might get on the rolls when lawfully applying for a driver's license. This may happen as a result of an applicant not understanding the forms they are completing, or, as one official noted, because applicants presume that a DMV employee would not ask them to register if the applicant were not entitled to do so. But all who raised this particular issue noted that often it was the result of a mistake, not the intention to influence an election outcome. Lynn Ledford, Voter Registration and Elections Director in Gwinnett County, Georgia, articulated a sentiment shared by others:

“Sometimes a voter won't understand that they're completing a voter registration application,” she said. “They will come and self-report and explain their accident. Then we give them a confirmation in writing that they have been removed and take them off the rolls.”

One election administrator noted that a noncitizen may get registered because someone else, for example a person paid to sign up people to register to vote, misinformed the noncitizen as to the rules. While a crime may have been committed in this kind of circumstance, the noncitizen did not intend to improperly influence an election outcome.

There are numerous deterrents for fraudulent participation in elections, including:

- **Severe Penalties:** Federal law, and the law of every state in the country, imposes penalties for fraudulent voting.<sup>25</sup> For example, under federal law, a noncitizen who votes illegally can receive a prison term of up to five years if citizenship status was intentionally misrepresented, and fined up to \$250,000.<sup>26</sup> There are also immigration-related consequences: an ineligible noncitizen can be deported for casting a single vote. In fact, being registered to vote can be the basis for denying citizenship.<sup>27</sup>
- **High Risk of Detection:** Because there are records of who votes, detection is very easy. Voting records can be and are reviewed or compared to lists of ineligible voters to identify anyone ineligible by election administrators,<sup>28</sup> political parties,<sup>29</sup> and activists.<sup>30</sup> As noted by Tammy Patrick, Fellow at the Bipartisan Policy Center and former Federal Compliance Officer at the Maricopa County Elections Department in Arizona: “Voter apathy is an issue for citizens in this country. To think that someone who is here trying to stay under the radar would put their name on an official list and get out to vote in elections and expose themselves, with so much at risk, doesn’t make sense.” Detection threats do not just come from people interested in elections. USCIS can require naturalization applicants to produce proof that they have never registered or voted, including a “voting record from the relevant board of elections commission.”<sup>31</sup> Indeed, several election administrators we interviewed reported being called upon to produce this documentation for noncitizens going through the naturalization process.
- **Low Reward:** A noncitizen who votes illegally will add one vote to the mix. Given the facts that there is a record of the vote, and the noncitizen would have had to provide a signature at some point, adding a single illegal vote to the mix is a very inefficient and illogical way to steal an election.<sup>32</sup>

Some officials noted that there are reasons apart from election fraud that account for the claims of improper voting. In some cases, claims of illegal voting are motivated by political operatives seeking advantage in a heated contest. In another case, an administrator noted that an ex-husband seeking to harass his ex-wife and her boyfriend made an allegation of electoral wrong-doing. In some cases, what appears to be evidence of illegal voting is actually an improper attempt by an eligible citizen to get out of jury service. Several interviewees described how eligible Americans sometimes check a box on a jury service form claiming not to be citizens because they do not want to serve on the jury. “One way for people to get out of jury duty is they can say they’re a noncitizen and fill out a card saying they’re not a citizen,” explained Jacquelyn Callanen, Elections Administrator in Bexar County, Texas. Other times, noted one administrator, a citizen will forget to check the “citizen” box when filling out a driver’s license form and that will trigger a process which could end in a citizen’s registration being canceled, and also artificially inflate the number of alleged noncitizens who are on the registration rolls.

#### **IV. OVERBLOWN AND EXAGGERATED CLAIMS OF FRAUD UNDERMINE ELECTION ADMINISTRATION**

False claims of voter fraud undermine the very processes they claim to want to protect. In response to the president's claims, Vermont Secretary of State Jim Condos explained that "unsubstantiated voter fraud claims undermine our democracy and disparage the hundreds of thousands of hard-working election officials across our great nation."<sup>33</sup> Secretaries of State from across the country joined in voicing concerns about the harm false claims do to the public's faith in democracy.<sup>34</sup>

Most election officials we spoke with for this report echoed these concerns. Several explained that these false allegations make the difficult job of running elections even more difficult, for example, by undermining the public's faith in their local officials' ability to run an election, by making eligible voters reluctant to register for fear of committing a crime, and by making it difficult to retain employees that, come election season, are working long hours for weeks at a time with no days off, all while hearing allegations that they are not doing their jobs effectively.

## Conclusion

Studies have consistently shown that our elections are not infected by widespread fraud, and some types of fraud, like in-person impersonation and noncitizen voting, have been found time and again to be very rare. This survey finds that election administrators have reached the same conclusion as academics and researchers based on year-round experiences administering elections. In particular, it finds that voting by noncitizens is incredibly rare.

While voting by ineligible people is rare, voter roll errors do occur. These errors include the registration of ineligible people, and the non-registration of eligible people. Inaccurate rolls cause confusion, expense, and disenfranchisement (a problem identified by Trump, but one that is distinct from illegal voting). They also create security risks because they are more vulnerable than clean rolls to bad actors trying to exploit out-of-date entries. Most relevant to this study, inaccurate voter rolls provide fodder for persons who claim there is widespread fraud in our election systems.

Common-sense steps could safeguard integrity while assuring that all eligible citizens can vote. Automatic voter registration, for example, would clean up voter rolls.<sup>35</sup> In addition, other steps include securing the aging voting machines that are beginning to malfunction across the country.<sup>36</sup>

The country can and should take steps to improve the ways we administer elections, but those decisions should be based on facts and evidence as to what kinds of problems are actually plaguing our elections.





## Endnotes

- 1 Donald Trump, Twitter post, November 27, 2016, 3:30 p.m., <http://twitter.com/realDonaldTrump>.
- 2 Donald Trump, Twitter post, November 27, 2016, 7:31 p.m., <http://twitter.com/realDonaldTrump>.
- 3 Donald Trump, Twitter post, January 25, 2017, 7:10 a.m., <http://twitter.com/realDonaldTrump>; Donald Trump, Twitter post, January 25, 2017, 7:13 a.m., <http://twitter.com/realDonaldTrump>.
- 4 Eli Stokols, “Trump brings up vote fraud again, this time in meeting with senators,” *Politico*, February 10, 2017, <http://www.politico.com/story/2017/02/trump-voter-fraud-senators-meeting-234909>.
- 5 Danny Vinik, “Spicer makes misleading voter fraud claim to defend Trump’s false voter fraud claim,” *Politico*, January 24, 2017, <http://www.politico.com/blogs/donald-trump-administration/2017/01/spicer-trump-voter-fraud-claim-234121>.
- 6 Glenn Kessler, “Stephen Miller’s bushels of Pinocchios for false voter-fraud claims,” *Washington Post*, February 12, 2017, [https://www.washingtonpost.com/news/fact-checker/wp/2017/02/12/stephen-millers-bushels-of-pinocchios-for-false-voter-fraud-claims/?utm\\_term=.7f239e2266d8](https://www.washingtonpost.com/news/fact-checker/wp/2017/02/12/stephen-millers-bushels-of-pinocchios-for-false-voter-fraud-claims/?utm_term=.7f239e2266d8).
- 7 Callum Borchers, “Trump walks back false voter fraud claim in interview with Bill O’Reilly,” *Washington Post*, February 5, 2017, [https://www.washingtonpost.com/news/the-fix/wp/2017/02/05/trump-walks-back-false-voter-fraud-claim-in-interview-with-bill-oreilly/?utm\\_term=.4436b4b1f7f1](https://www.washingtonpost.com/news/the-fix/wp/2017/02/05/trump-walks-back-false-voter-fraud-claim-in-interview-with-bill-oreilly/?utm_term=.4436b4b1f7f1).
- 8 “Read President Trump’s Interview With TIME on Truth and Falsehoods,” by Michael Scherer, *TIME*, March 23, 2017, <http://time.com/4710456/donald-trump-time-interview-truth-falsehood/>.
- 9 Elizabeth Landers, “Trump was going to investigate voter fraud. What happened?,” *CNN*, April 21, 2017, <http://www.cnn.com/2017/04/21/politics/donald-trump-voter-fraud-mike-pence/>.
- 10 We did not receive data from two of the ten counties with the largest noncitizen populations, Kings County, New York and Queens County, New York. Despite persistent outreach over the course of three months, the New York City Board of Elections did not provide the necessary information prior to this report’s publication.
- 11 All census data used in this analysis is based on the 2011-2015 American Community Survey 5 Year Estimates. The number of adult noncitizens in election jurisdictions is based on computations from the following American Community Survey table: *Sex by Age by Nativity and Citizenship Status. (B05003)*. The adult noncitizen population was computed by summing values for all noncitizens, both male and female, over the age of 18. All computations of the percentage of adult noncitizens in election jurisdictions are relative to the total population. In the case of California and Virginia, election jurisdictions are counties or county equivalents. In New Hampshire, as a general matter, election jurisdictions are county subdivisions.
- 12 States include: Arizona, California, Florida, Georgia, Illinois, Maryland, Nevada, New York, Texas, Virginia and Washington. A list of specific counties consulted for this analysis is on file with the Brennan Center. One jurisdiction had a new administrator who was not in office during 2016, so we also interviewed a former administrator to ensure that our responses reflected relevant past and current experiences.
- 13 In California, there was overlap between the state specific set of jurisdictions and the national set of jurisdictions, given the large number of noncitizens that reside there. Among the 44 counties with the largest populations of noncitizens, 13 are located in California. For this reason, California counties account for a disproportionate share of the registered voters in this analysis. Further, in the case of Virginia, one Virginia County is included among the 44 counties that we identified as having the largest populations of noncitizens.
- 14 We identified “rural” election jurisdictions by consulting data for population density contained in the following table from the 2010 U.S. Decennial Census: *Population, Housing Units, Area, and Density: 2010. 2010 Census Summary File 1. (GCT-PHI)*. For each state, we identified rural jurisdictions by identifying those jurisdictions with (1) a low population density relative to other jurisdictions in the state, and (2) a comparatively high percentage of adult noncitizens relative to other jurisdictions in the state.

- 15 In California and Virginia, our outreach solicited responses and interviews in more than five jurisdictions. For this reason, our state specific analyses in California and Virginia include more than the baseline of five jurisdictions. New Hampshire meets our minimum baseline for the state specific set of election jurisdictions.
- 16 In California, where 23 million voters participated in the November elections, the Secretary of State received 948 election-related complaints in all of 2016. The Secretary of State determined that only 73 of those involved potential wrongdoing by a voter and were worthy of further investigation. Those 73 included 56 allegations of double voting, 16 allegations of fraudulent voter registration, and 1 incident of fraudulent voting. Laurel Rosenhall, *Valid voter fraud complaints in California? Dozens, not millions*, Calmatters, 2017, <https://calmatters.org/articles/valid-voter-fraud-complaints-in-california-dozens-not-millions/>. Nevada's Secretary of State compared lists of voters with persons who indicated to the DMV that they were not citizens and found that three noncitizens may have voted in 2016. State of Nevada Secretary of State, "Secretary Cegavske Releases Details Regarding Ongoing Elections Investigation," news release, April 19, 2017, <http://nvsos.gov/sos/Home/Components/News/News/2229/309?backlist=%2fsos>. In Virginia, a review of nearly all prosecutions for election-related offenses between 2005 and 2015 found 91 total convictions, 85 of which were limited to single incidents in two counties. Bill Bartel, "Virginia voter registration records have loopholes but no evidence of widespread fraud," *The Virginian-Pilot*, February 18, 2017, [http://pilotonline.com/news/government/local/virginia-voter-registration-records-have-loopholes-but-no-evidence-of/article\\_6ad3e1d5-3ef6-56ce-b0d9-7052bf3c3d36.html](http://pilotonline.com/news/government/local/virginia-voter-registration-records-have-loopholes-but-no-evidence-of/article_6ad3e1d5-3ef6-56ce-b0d9-7052bf3c3d36.html). In 2007, 2009, and 2011, New Hampshire's Attorney General published the results of post-election investigations into 352 voters that completed a sworn affidavit to prove their eligibility when registering to vote on Election Day. The investigations found that all of those voters were eligible. See New Hampshire Attorney General, *2010 General Election Voter Fraud Report/Investigation*, 2011, <http://sos.nh.gov/WorkArea/DownloadAsset.aspx?id=12499>; New Hampshire Attorney General, *2008 General Election Voter Fraud Report/Investigation*, 2009, <http://sos.nh.gov/WorkArea/DownloadAsset.aspx?id=12498>; New Hampshire Attorney General, *2006 General Election Voter Fraud Report/Investigation*, 2007, <http://sos.nh.gov/WorkArea/DownloadAsset.aspx?id=12497>. A News21 study of prosecutions by state attorneys general in five states – including Arizona, Georgia and Texas where we interviewed administrators – found just 38 successful prosecutions for any kind of election fraud between 2012 and 2016. Those cases included at least 13 cases that did not involve misconduct by a voter, and another 13 cases of double voting in Arizona. That study did not, however, include local prosecutions. Sami Edge and Sean Holstege, "Voter fraud is not a persistent problem," *News21*, August 20, 2016, <https://votingwars.news21.com/voter-fraud-is-not-a-persistent-problem/>. In sworn testimony, an official from the Texas Attorney General's office reported that the Attorney General had received 320 allegations of voter fraud between 2002 and 2012, three of which related to noncitizen voting and resulted in prosecutions. Transcript of Dep. of Major Forrest Mitchell at 193-194, *Veasey v. Perry*, 71 F. Supp. 3d 627 (S.D. Tex. 2014) (No. 721-14). Less comprehensive studies are available in Maryland and New York. Brian E. Frosh, Attorney General of Maryland, wrote to Reps. Elijah E. Cummings, Robert A. Brady and James E. Clyburn, noting that the Maryland State Board of Elections uncovered just two instances of voter fraud after the 2012 general election. Brian E. Frosh, Attorney General of Maryland, to Reps. Elijah E. Cummings, Robert A. Brady and James E. Clyburn, March 6, 2017, [http://www.marylandattorneygeneral.gov/News%20Documents/Voter\\_Fraud.pdf](http://www.marylandattorneygeneral.gov/News%20Documents/Voter_Fraud.pdf). Eric T. Schneiderman, Attorney General of New York, wrote to Reps. Elijah E. Cummings, Robert A. Brady and James E. Clyburn, reporting that his office received just two unsubstantiated allegations of voter fraud in 2016. Eric T. Schneiderman, Attorney General of New York, to Reps. Elijah E. Cummings, Robert A. Brady and James E. Clyburn, Feb. 22, 2017, [https://www.scribd.com/document/340046673/2017-02-22-Ltr-to-Cummings-Brady-Clyburn-Re-Voter-Fraud#from\\_embed](https://www.scribd.com/document/340046673/2017-02-22-Ltr-to-Cummings-Brady-Clyburn-Re-Voter-Fraud#from_embed). Finally, in 2012, News21 undertook a nationwide investigation in which they requested records of prosecutions for voter fraud in every state since 2000. News21 did not receive responses or records from every part of every state, but across the 12 states we spoke with, over the course of a decade, that investigation uncovered 28 prosecutions for voting by a noncitizen, at least 10 of which were dismissed by the time of News21's investigation. News21, *Election Fraud in America*, August 12, 2012, <http://votingrights.news21.com/interactive/election-fraud-database/>.
- 17 State of Ohio Secretary of State, "Husted: Investigation Uncovers Non-Citizens Who Registered to Vote & Illegally Cast Ballots," news release, February 27, 2017, [https://www.sos.state.oh.us/sos/mediaCenter/2017/2017-02-27.aspx?utm\\_source=Press+Release+February+27&utm\\_campaign=I+Want+to+Vote+survey+launch+PR&utm\\_medium=em](https://www.sos.state.oh.us/sos/mediaCenter/2017/2017-02-27.aspx?utm_source=Press+Release+February+27&utm_campaign=I+Want+to+Vote+survey+launch+PR&utm_medium=em).
- 18 State of Nevada Secretary of State, "Secretary Cegavske Releases Details Regarding Ongoing Elections Investigation," news release, April 19, 2017, <http://nvsos.gov/sos/Home/Components/News/News/2229/309?backlist=%2fsos>.
- 19 North Carolina State Board of Elections, *Post-Election Audit Report*, 2017, <https://s3.amazonaws.com/dl.ncsbe.gov/>

sboe/Post-Election%20Audit%20Report\_2016%20General%20Election/Post-Election\_Audit\_Report.pdf. For the partisan makeup of the board, see North Carolina State Board of Elections, “About Us,” accessed April 26, 2017, <https://www.ncsbe.gov/about-us>.

- 20 There is cause to subject these allegations to rigorous examination. Ohio and Nevada identified alleged noncitizens by comparing lists of registered voters to individuals who had, at some time in the past, indicated they were noncitizens when visiting the state driver licensing office. Obviously, a person’s citizenship status can change in between license renewals. North Carolina identified its preliminary list of alleged noncitizens by comparing drivers’ license data, voting records, and the U.S. Department of Homeland Security’s Systematic Alien Verification for Entitlements (SAVE) database and concluded that that drivers’ license data and SAVE data were unreliable for determining citizenship status. North Carolina later sent letters to targeted persons to obtain more information, but at this time it remains to be seen how much this later effort remedied the original infirmity. See North Carolina State Board of Elections, *Post-Election Audit Report*, Appendix 1, 2017, [https://s3.amazonaws.com/dl.ncsbe.gov/sboe/Post-Election%20Audit%20Report\\_2016%20General%20Election/Post-Election\\_Audit\\_Report.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/sboe/Post-Election%20Audit%20Report_2016%20General%20Election/Post-Election_Audit_Report.pdf).
- 21 5,607,641 people voted in Ohio in November 2016. State of Ohio Secretary of State, “Voter Turnout in General Elections,” <https://www.sos.state.oh.us/sos/elections/Research/electResultsMain/HistoricalElectionComparisons/Voter%20Turnout%20in%20General%20Elections.aspx>. 1,125,429 voted in Nevada. State of Nevada Secretary of State, “Voter Turnout Statistics,” <http://silverstateelection.com/vote-turnout/>. 4,769,640 voted in North Carolina. North Carolina State Board of Elections, “General Election Voter Turnout,” <https://www.ncsbe.gov/voter-turnout>.
- 22 See State of Nevada Secretary of State, “Secretary Cegavske Releases Details Regarding Ongoing Elections Investigation,” news release, April 19, 2017, <http://nvsos.gov/sos/Home/Components/News/News/2229/309?backlist=%2fsos> (alleging that three noncitizens voted in Clark County).
- 23 For example, all jurisdictions (or the state elections office) compare identifying information in the registration application, specifically a driver license number or the last four digits of a social security card, against motor vehicles databases or the social security database, to ensure that a person with those identifying numbers exists. This practice is called for by federal law. See 52 U.S.C. § 21083(a)(5). There are other requirements, for example, requiring persons to sign under penalty of perjury that they are who they say they are. 52 U.S.C. § 20508(b)(2)(C).
- 24 Susan Bucher, Supervisor of Elections in Palm Beach County, Florida noted that her office goes to naturalization ceremonies every week to register new citizens. Supervisor Bucher explained that, “after doing that we go back to check and see if they’re already registered to vote so we don’t have duplicate records and we’ve never found anyone who has a duplicate record. We’ve registered more than around 55,000 and not a single one had registered prior.”
- 25 See, e.g., 18 U.S.C. § 611 (making it unlawful for any alien to vote for candidates for federal offices and imposing penalties of up to one year in prison); Fla. Stat. § 104.16 (“Any elector who knowingly votes or attempts to vote a fraudulent ballot, or any person who knowingly solicits, or attempts, to vote a fraudulent ballot, is guilty of a felony of the third degree”). Several local jurisdictions, including the city of Chicago and seven Maryland municipalities, allow noncitizens to vote in particular elections. See 105 Ill. Comp. Stat. 5/34-2.1(d)(ii) (2017); Arelis R. Hernández, “Hyattsville will allow non-U.S. citizens to vote in city elections,” *Washington Post*, December 7, 2016, [https://www.washingtonpost.com/local/md-politics/hyattsville-will-allow-non-us-citizens-to-vote-in-city-elections/2016/12/07/63bc87ae-bc8c-11e6-ac85-094a21c44abc\\_story.html?utm\\_term=.aad9ad43944d](https://www.washingtonpost.com/local/md-politics/hyattsville-will-allow-non-us-citizens-to-vote-in-city-elections/2016/12/07/63bc87ae-bc8c-11e6-ac85-094a21c44abc_story.html?utm_term=.aad9ad43944d).
- 26 A violation of 18 U.S.C. § 1015(f) is a felony punishable by up to 5 years in prison and a \$250,000 fine. See 18 U.S.C. § 3559(a)(5); 18 U.S.C. § 3571(b)(3). States also have their own harsh penalties. In a recent high-profile example, a noncitizen in Texas who voted was sentenced to eight years in prison. Claire Z. Cardona, “Grand Prairie woman illegally voted for the man responsible for prosecuting her,” *Dallas News*, February 10, 2017, <http://www.dallasnews.com/news/tarrant-county/2017/02/08/grand-prairie-woman-found-guilty-illegal-voting>. This was considerably longer than the “affluenza” teen who killed 4 people while driving drunk. Sean Lester, “While North Texas ‘affluenza’ teen went free, similar East Texas case led to 20 years in prison,” *Dallas News*, February 15, 2016, <http://www.dallasnews.com/news/crime/2016/02/15/while-north-texas-affluenza-teen-went-free-similar-east-texas-case-led-to-20-years-in-prison>.
- 27 U.S. Citizenship and Immigration Services, *Policy Manual*, Vol. 12, Part F, Chapter 5 (Washington, DC, 2017),

<https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartF-Chapter5.html>.

- 28 See, e.g., State of Ohio Secretary of State, “Husted: Investigation Uncovers Non-Citizens Who Registered to Vote & Illegally Cast Ballots,” news release, February 27, 2017, [https://www.sos.state.oh.us/sos/mediaCenter/2017/2017-02-27.aspx?utm\\_source=Press+Release+February+27&utm\\_campaign=I+Want+to+Vote+survey+launch+PR&utm\\_medium=em](https://www.sos.state.oh.us/sos/mediaCenter/2017/2017-02-27.aspx?utm_source=Press+Release+February+27&utm_campaign=I+Want+to+Vote+survey+launch+PR&utm_medium=em). Officials in Florida, Colorado, Michigan, and Iowa have conducted similar investigations. See Florida Department of State, “Secretary of State Ken Detzner Files Lawsuit Against U.S. Department of Homeland Security, Seeks Access to Database of Non-Citizens to Ensure Accuracy of Florida Voter Rolls,” press release, June 11, 2012, <http://dos.myflorida.com/communications/press-releases/2012/secretary-of-state-ken-detzner-files-lawsuit-against-us-department-of-homeland-security-seeks-access-to-database-of-non-citizens-to-ensure-accuracy-of-florida-voter-rolls/>; State of Colorado Department of State, “1 in 8 voters who received letters trending as non-citizens,” news release, August 30, 2012, <https://www.sos.state.co.us/pubs/newsRoom/pressReleases/2012/PR20120830Trending.html>; State of Michigan Department of State, “Johnson asks AG to investigate voting by non-U.S. citizens,” news release, December 5, 2013, <http://www.michigan.gov/sos/0,4670,7-127--317582--rss,00.html>; State of Iowa Secretary of State, *DCI Voter Fraud Investigations Report*, 2014, <http://publications.iowa.gov/16874/1/DCI%20Voter%20Fraud%20Report%205-8-14.pdf>.
- 29 Political parties may not have access to lists of noncitizens, but review lists of voters to identify those ineligible for other reasons, particularly when the margin of victory in a contest is small. See, e.g., Colin Campbell, “McCroxy campaign expands ballot complaints to 52 counties,” *News & Observer*, November 17, 2016, <http://www.newsobserver.com/news/politics-government/election/article115492333.html>.
- 30 See, e.g., Public Interest Legal Foundation, *Alien Invasion in Virginia*, 2016, [https://publicinterestlegal.org/files/Report\\_Alien-Invasion-in-Virginia.pdf](https://publicinterestlegal.org/files/Report_Alien-Invasion-in-Virginia.pdf); Public Interest Legal Foundation, *Aliens & Felons*, 2016, <https://publicinterestlegal.org/files/Philadelphia-Litigation-Report.pdf>. Despite using unreliable methodology, these reports, authored by an organization that promotes the myth of widespread voter fraud, identified few noncitizens on the rolls.
- 31 U.S. Citizenship and Immigration Services, *Policy Manual*, Vol. 12, Part F, Chapter 5 (Washington, DC, 2017), <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartF-Chapter5.html>.
- 32 See, e.g., Justin Levitt, *The Truth About Voter Fraud*, Brennan Center for Justice, 2007, 7, <http://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf>; Lorraine C. Minnite, *Myth of Voter Fraud* (New York: Cornell University Press, 2010), 5, 77-85.
- 33 State of Vermont Office of the Secretary of State, “Secretary of State Jim Condos’ Statement on Voter Fraud Claims by President Trump,” news release, January 25, 2017, <https://www.sec.state.vt.us/media/824085/voter-fraud-claims-response-press-release.pdf>.
- 34 Brennan Center Staff, “In Their Own Words: Officials Refuting False Claims of Voter Fraud,” *Brennan Center for Justice*, accessed April 26, 2017, <https://www.brennancenter.org/quotes-on-voter-fraud>; see also, National Association of Secretaries of State, “Statement from National Association of Secretaries of State on Election Integrity,” news release, October 18, 2016, <http://www.nass.org/index.php/news-releases-and-statements/release-nass-statement-election-integrity-oct16>.
- 35 See Brennan Center for Justice, *Automatic and Permanent Voter Registration: How it Works*, 2015, [https://www.brennancenter.org/sites/default/files/publications/Automatic\\_Permanent\\_Voter\\_Registration\\_How\\_It\\_Works.pdf](https://www.brennancenter.org/sites/default/files/publications/Automatic_Permanent_Voter_Registration_How_It_Works.pdf). Automatic voter registration automatically registers to vote any eligible voter that provided all of the information necessary to register to vote to another government agency, unless a person declines to be registered.
- 36 See Lawrence Norden and Christopher Famighetti, *America’s Voting Machines at Risk*, Brennan Center for Justice, 2015, [https://www.brennancenter.org/sites/default/files/publications/Americas\\_Voting\\_Machines\\_At\\_Risk.pdf](https://www.brennancenter.org/sites/default/files/publications/Americas_Voting_Machines_At_Risk.pdf).

## Appendix: Jurisdictions Interviewed

Accomack County, Virginia  
Bexar County, Texas  
Cook County, Illinois  
City of Alexandria, Virginia  
City of Concord, New Hampshire  
City of Dover, New Hampshire  
City of Fairfax, Virginia  
City of Manassas, Virginia  
City of Manassas Park, Virginia  
City of Somersworth, New Hampshire  
Clark County, Nevada  
Colusa County, California  
Contra Costa County, California  
Dallas County, Texas  
El Paso County, Texas  
Fairfax County, Virginia  
Fresno County, California  
Gwinnett County, Georgia  
Harris County, Texas  
Imperial County, California  
Kern County, California  
King County, Washington  
Los Angeles, California  
Loudoun County, Virginia  
Maricopa County, Arizona  
Miami-Dade County, Florida  
Montgomery County, Virginia  
Orange County, California  
Orange County, Florida  
Palm Beach County, Florida  
Prince George's County, Maryland  
Riverside County, California  
Sacramento County, California  
San Bernardino County, California  
San Diego County, California  
San Mateo County, California  
Santa Clara County, California  
Town of Hanover, New Hampshire  
Town of Hebron, New Hampshire  
Town of Stewartstown, New Hampshire  
Travis County, Texas  
Westchester County, New York

## STAY CONNECTED TO THE BRENNAN CENTER

Visit our website at [www.brennancenter.org](http://www.brennancenter.org).  
Sign up for our electronic newsletters at [www.brennancenter.org/signup](http://www.brennancenter.org/signup).

**Latest News** | Up-to-the-minute info on our work, publications, events, and more.

**Justice Update** | Snapshot of our justice work and latest developments in the field.

**Money in Politics** | Latest state and national developments and original analysis.

**Redistricting Round-Up** | Analysis of current legal battles and legislative efforts.

**Fair Courts** | Comprehensive news roundup spotlighting judges and the courts.

**Liberty & National Security** | Updates on privacy, government oversight, and accountability.

**Twitter** | [www.twitter.com/BrennanCenter](http://www.twitter.com/BrennanCenter)  
**Facebook** | [www.facebook.com/BrennanCenter](http://www.facebook.com/BrennanCenter)  
**Instagram** | [www.instagram.com/brennancenter](http://www.instagram.com/brennancenter)

### NEW AND FORTHCOMING BRENNAN CENTER PUBLICATIONS

*Election Integrity: A Pro-Voter Agenda*  
Myrna Pérez

*The Justice Department's Voter Fraud Scandal: Lessons*  
Adam Gitlin and Wendy R. Weiser

*Florida: An Outlier in Denying Voting Rights*  
Erika Wood

*Democracy & Justice: Collected Writings, vol. X*  
Brennan Center for Justice

*The Fight to Vote*  
Michael Waldman

*Crime Trends: 1990-2016*  
Matthew Friedman, Ames Grawert, and James Cullen

*Countering Violent Extremism*  
Faiza Patel and Meghan Koushik

*Judicial Selection for the 21st Century*  
John Kowal

For more information, please visit [www.brennancenter.org](http://www.brennancenter.org)

BRENNAN  
CENTER  
FOR JUSTICE  
TWENTY  
YEARS

*at New York University School of Law*

120 Broadway  
Suite 1750  
New York, NY 10271  
646-292-8310  
[www.brennancenter.org](http://www.brennancenter.org)

BRENNAN  
CENTER  
FOR JUSTICE  
TWENTY  
YEARS

ANALYSIS: THE EFFECTS OF REQUIRING DOCUMENTARY PROOF  
OF CITIZENSHIP TO REGISTER TO VOTE

*Ian Vandewalker*



This document amasses the available evidence on the effects that documentary proof of citizenship laws have on citizens' ability to register to vote, including a new Brennan Center analysis of data from Kansas reported here for the first time. To date, only two states have implemented documentary requirements: Arizona and Kansas. (Although Alabama and Georgia passed similar laws, they have never been put into practice.). Their experiences, buttressed by national surveys and other evidence, show that these requirements can have a significant and negative impact on Americans' access to voting. In sum, the evidence shows:

- In Kansas, tens of thousands of attempted registrations have already been blocked — between eight and fourteen percent of new registrants — in the first years of the requirement. Almost all of these registrants were eligible citizens.
- Tens of thousands were prevented from registering in Arizona, as well, including an estimated 17,000 citizens in Maricopa County alone.
- Surveys show that millions of American citizens — between five and seven percent — don't have the most common types of document used to prove citizenship: a passport or birth certificate.
- A look at the concrete reality of obtaining citizenship documents shows how hard it can be for some. Low-income citizens may be completely prevented from complying — and therefore voting — by the costs and steps involved.

## The Kansas Experience

States with laws demanding documentary proof of citizenship to register offer a kind of natural experiment to test the policy's real-world effects. Several studies have examined Kansas since it implemented its law in 2013. The effects have been stark: All the studies agree that tens of thousands of registrations have been blocked at least temporarily, and the portion of new registrants kept off the rolls is in the range of eight to fourteen percent.

These analyses likely underestimate the effects of a documentary proof of citizenship requirement. That's because the Kansas rule has been [weakened by the courts](#), which have required the state to accept applications without documentary proof of citizenship if submitted through the Department of Motor Vehicles or using the federal registration form. In addition, Kansas has completed some applications submitted without documentary proof of citizenship by checking state databases for evidence of citizenship, such as birth certificate records.

Even so, it's clear that, for tens of thousands of Kansans, the documentary requirement was a major obstacle to voting. Although most of the blocked registrations were eventually made effective, the delay kept voters from participating in at least one election in many instances.

The overwhelming evidence is that almost all of the blocked registration applications were submitted by eligible citizens. In lawsuits challenging the requirement, Kansas has presented evidence of less than 30 noncitizens registering to vote or being blocked by the law. At one point, a Kansas official claimed that 80 noncitizens have attempted to register since 2013, but that number is contested by parties to the suit.

*Expert: 14 percent of all new registrants between 2013 and 2015 blocked*

Nationally recognized voting expert Michael McDonald, Ph.D., examined attempted registrations in Kansas from 2013 to 2015 in connection with a lawsuit challenging the documentary proof requirement for certain voters. He found that [more than 14 percent of new registrants — 35,000 people — were blocked by the documentary requirement](#). This group was disproportionately young and unaffiliated with a political party. By the end of 2015, about 8,900 of the blocked applicants were able to register (about one-quarter of the total), but the rest remained unable to vote due to the proof of citizenship rule. McDonald also concluded that the "practice of requiring documentary proof of citizenship has both an immediate and a long-term harm on voter

participation,” since obstacles to voting may have long-lasting power to discourage potential voters.

*Federal court: 8 percent of motor voter registrants from 2013 to 2016 blocked*

A [federal district court](#) that heard a challenge to the Kansas law noted that “the sheer number” of people blocked “evidences the difficulty of complying with the law as it is currently enforced.” The court found that more than 18,000 people who tried to register at the state’s motor vehicle offices were prevented from registering between 2013 and 2016 “as a direct result” of the state’s documentary proof of citizenship requirement. That amounted to eight percent of the people who tried to register to vote in the three years after the law was implemented. This total is smaller than McDonald’s analysis because the court examined only “motor voters”—those who register to vote while applying for or renewing a driver’s license.

*Brennan Center: 12 percent of new registrants in 2016 blocked*

The Brennan Center conducted an analysis using a similar methodology as McDonald’s and reached a similar result: 12 percent of the Kansans who attempted to register in 2016 were blocked by the law, at least temporarily. That amounted to 28,000 blocked registrations. Most of these voters managed to register by the beginning of 2017, but the available data don’t reveal how many were still blocked on Election Day in November. The full analysis of how we reached these results is attached as an appendix to this document.

The Brennan Center analysis does indicate that many people were prevented from voting in the primary elections in Kansas in August of 2016. Data collected just eight days after the primary elections shows that more than 20,000 attempted registrations were blocked at that time. These people had all attempted to register at some point between the 2013 implementation of the citizenship document requirement and the 2016 registration deadline for the August primaries. Since it is improbable that so many people filled out registration forms in eight days, it is

likely that the great majority of these registrants were not able to vote in the primary elections.

*Other analyses: tens of thousands of registrants between 2013 and 2014 blocked*

Older analyses by Kansas news outlets also lend support to these recent studies, showing that tens of thousands of attempted registrations were caught up in the law’s enforcement. The League of Women Voters of Kansas found in August of 2015 that [more than 30,000 applications](#) were held up because of the documentary requirement.

Large tallies from immediately before the elections in 2014 offer evidence that many Kansans were unable to vote because of the documentary proof law. News reports found that between [21,000](#) and [22,000](#) people who had attempted to register were still blocked from voting by the documentary requirement just days before the election that November. Similarly, in the days before the primary elections in July of 2014, almost [24,000](#) people were blocked because they had not shown citizenship documents. The number of people prevented from registering has varied over time because of new attempted registrations, blocked registrants being allowed to register once the state establishes their citizenship, and the state’s practice of purging applications from its file if citizenship is not established within 90 days. Whatever the exact number, these press reports buttress the other studies’ conclusions that tens of thousands of people were blocked from registering by the documentary requirement in Kansas.

A 2017 [report](#) from the Kansas Advisory Committee to the U.S. Commission on Civil Rights examined the difficulty of compliance with the Kansas law and its potential to prevent people from voting. The committee conducted a study of the impact of voting requirements implemented in Kansas in 2013, including the documentary proof of citizenship requirement as well as a requirement to show photo ID to vote. The committee’s report found that Kansans were “struggling to comply” and that “as many as two percent of registered voters may not have their votes counted.”

## The Arizona Experience

Arizona implemented a proof-of-citizenship-to-register law in 2005, offering an additional chance to measure the impact. The evidence shows that Arizona's law acts as a [significant obstacle](#) to registration, as measured by the tens of thousands whose attempts to register have been rejected.

According to press reports immediately before the November election in 2005, [more than 10,000 people](#) in Maricopa County alone were blocked. The county, home to Phoenix, is by far Arizona's most populous county. A Maricopa official said that "most probably are U.S. citizens whose married names differ from their birth certificates or who have lost documentation." An official in Pima County, which includes Tucson, appeared to agree, saying: "The biggest bloc of people who are impacted are the legitimate citizens." Across the state's three most populous counties, [one in three applicants was rejected](#) due to the documentary requirement in the first five months of the law. In the law's second year, [16 percent](#) of attempted registrations in Maricopa County were rejected for lack of citizenship documents.

Two-and-a-half years after Arizona's law was implemented, it had blocked at least [31,550 applicants](#) from registering, according to a federal district court. (The court also noted that it wasn't clear how many of those people lacked citizenship documents, or how many were eligible to vote.) Approximately 30 percent of these were able to register by September of 2007, meaning about 20,000 Arizonans may have been prevented from voting in the 2006 elections. By 2008, the number of rejected applications reportedly had reached [38,000](#).

A 2017 [report](#) by the newly-elected Maricopa County Recorder, Adrian Fontes, noted that, during 2016 and before, the recorder's office set aside voter registration forms that did not include proof of citizenship in boxes. Some voters were sent a form letter informing them that their application was rejected for lacking citizenship documents, while officials searched Motor Vehicle Department records for evidence of citizenship for other voters. The boxes

of registration forms that had been set aside for lack of citizenship documents contained approximately 100,000 forms received in Maricopa County. Fontes's preliminary analysis indicates that around [17,000 of the rejected forms were filled out by citizens](#). As in Kansas, although the exact number is not known, the document requirement kept a large number of citizens from registering despite being eligible to vote.

## Millions of Americans Lack Documents to Prove Citizenship

The experience in Arizona and Kansas shows that documentary proof of citizenship laws create a significant obstacle to voter registration. There is no reason to believe those states are unique. In fact, national studies show that between five and seven percent of Americans don't have any documents to prove their citizenship. Birth certificates are frequently lost or destroyed. The most recent State Department [statistics](#) indicate that 59 percent of Americans don't have passports. For people without the required documents, a law like those in Arizona and Kansas can mean a complete loss of the ability to vote.

- A [nationwide survey](#) by the Brennan Center in November 2006 found that seven percent of the citizen voting age population, or 13 million people, did not possess documents that would prove their citizenship. The rate is twice as high among citizens earning less than \$25,000 per year. Women who changed their name upon getting married are especially likely to lack the relevant documents: A third of voting-age women don't have proof of citizenship that reflects their current name.
- A [study](#) by the Center on Budget and Policy Priorities in September 2006 reached substantially the same conclusion: Almost six percent of adults born in the United States don't have access to a passport or birth certificate — around 11 million people. The study found that certain groups are especially likely to lack the documents: low-income citizens, the elderly, African Americans, and citizens from rural communities.

- There is also evidence that, even when the consequences are as dire as losing access to health care, many Americans are simply unable to comply with a requirement to show documentary proof of citizenship. Several studies of a requirement that Medicaid recipients show documentary proof of citizenship, first implemented in 2006, found that large numbers of citizens would lose coverage for lack of documents. [Scholars at George Washington University](#) reached a “conservative” estimate that more than five percent of adult Medicaid recipients would lose coverage due to the rule, but predicted that “ultimately the effects will be far greater.” Several states [reported](#) large [declines](#) in Medicaid enrollment after the rule took effect, even as participation in other programs like food stamps rose, and administrators complained that it was [American citizens who bore the brunt](#).

## Documents to Prove Citizenship Can Be Hard to Obtain

The millions of Americans without documentary proof of citizenship can face substantial obstacles to obtaining acceptable documents. These hurdles can be particularly difficult to overcome for low-income citizens.

Some elderly people, especially African Americans born in an era of official discrimination and Native Americans born on reservations, were not born in a hospital, and their [births were never officially recorded](#). For these citizens, there is no birth certificate to obtain. Birth certificates can be required to obtain other forms of identification or citizenship proof, compounding the difficulty of obtaining proof of citizenship.

The financial [cost of obtaining documents](#) can be prohibitive for some. Official fees can be as high as \$30 for birth certificates. A first-time application for a passport card costs \$55, plus the cost of photos. A replacement naturalization certificate costs \$555. Besides the fees, applicants for passports and birth certificates are typically required to show documents

to prove citizenship or identity. Therefore, there may be additional costs for those without these documents.

Finally, it takes time to obtain citizenship documents. The U.S. Department of State estimates processing time of four to six weeks for passports. Many states say it takes several weeks to comply with birth certificate requests. In New York, a mailed request takes [10 to 12 weeks](#) to fulfill; in Georgia, [8 to 10 weeks](#). In-person requests are typically processed much faster, but a trip to the relevant agency — potentially in another state for people who have moved since they were born — can be impossible for those who have difficulty securing time off from work or lack access to transportation. Requests can be expedited for an additional fee, an option that’s useless for those who have trouble paying the base rate. For the many people who try to register to vote in the final weeks before an election, this delay can mean completely losing the chance to vote.

## Requiring Citizenship Documents Hinders Voter Registration Drives

Document requirements also stymie voter registration drives, which [add hundreds of thousands of citizens to the voter rolls](#) every election cycle. These efforts are conducted both by political campaigns and non-partisan groups like the League of Women Voters, and they can be especially effective in underserved communities. Prospective voters approached in public can usually register with the information that people typically have with them. But under a documentary requirement like the one in Kansas, they would have to be carrying their birth certificate or passport to complete the process — which is highly unlikely. And those who do carry citizenship documentation would still need to find a means of copying those documents to submit a complete registration.

Registration efforts in Kansas have suffered since the state implemented its law. The Kansas Advisory Committee to the U.S. Commission on Civil Rights [found](#) that community groups are “struggling to comply.” One local League of Women Voters chapter

went from registering over 300 voters in a year to under 40 in the year after the Kansas law went into effect. In certain counties, the group has halted its registration operations altogether. Voter-registration groups now have to rely on potential voters to take the initiative to supply the necessary documents to election officials, an extra step that may discourage some voters.

\* \* \*

Everyone agrees [election integrity](#) is important, and the rules must be enforced. At the same time, protections against noncitizens registering to vote should be proportionate to the threat. It is extremely rare for noncitizens to attempt to register, and when they do it is typically because of “[mistaken understandings of the eligibility requirements](#)” rather than intent to commit fraud.

Requirements to show documentary proof of citizenship, on the other hand, have the potential to ensnare millions of eligible voters nationwide. As a federal judge weighing the Kansas law [wrote](#), “even if instances of noncitizens voting cause indirect voter disenfranchisement by diluting the votes of citizens, such instances pale in comparison to the number of qualified citizens who have been disenfranchised by this law.”

Policymakers should consider the available evidence on the effects of document requirements. The analyses collected here show that such rules create major obstacles to registering for a significant number of citizens. Demanding citizenship documents results in eligible voters’ registrations being delayed, sometimes until after they’ve missed an election, and some citizens will never be able to afford to comply. Any potential added protections from a document requirement should be weighed carefully against the costs for eligible voters.



## Appendix: Brennan Center Methodology for Analyzing Kansas 2016 Data

The Brennan Center’s analysis of the effects of the Kansas documentary proof of citizenship law in 2016 is based on voter registration data collected from the state. We obtained the voter file, or list of registered voters in the state, as of January of 2017.

Kansas places voter registration applicants whose registration is incomplete on a “suspense list.” Reasons for being placed on suspense include failing to provide an address or signature, or failing to show documentary proof of citizenship. The people on the suspense list are not registered and cannot vote. If they provide the missing information, their registrations will be completed and they will be added to the voter file.

We obtained six suspense lists covering the period between February of 2016 and January of 2017. Each suspense list is a snapshot of all the applicants who were in suspense at the time the list was generated. Using the unique registrant identification number Kansas assigns to each individual, we were able to create a single cumulative suspense list covering the entire 11-month period we studied.

We filtered this list to remove records of people who were put on the suspense list for reasons other than failure to provide documentary proof of citizenship. We eliminated individuals who were less than 18 years old when they attempted to register. We eliminated records without an actual Kansas address, using geocoding. And we eliminated records marked as “UOCAVA.” This is an acronym for the Uniformed and Overseas Civilian Absentee Voting Act, a federal law that provides for voting by members of the military and citizens living abroad. Kansas appears to list UOCAVA voters on the suspense list because they can’t vote in person, only by mail.

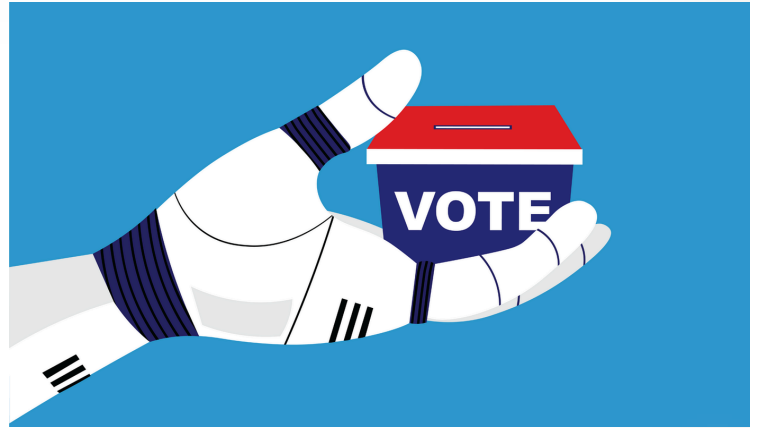
The suspense list and voter file include the date the person first attempted to register. We focused on registrations attempted in 2016 to supplement Michael McDonald’s study, which only included data through 2015.

The filtered cumulative suspense list showed that 28,332 people who had tried to register since the beginning of 2016 were in suspense due to the documentary proof of citizenship rule. The voter file showed that 206,824 people successfully registered to vote in 2016. That means 12 percent of the 235,156 people who attempted to register in 2016 were blocked by the document requirement.

Since one of the suspense lists we obtained was generated on August 10, 2016, and a primary election was held in Kansas on August 2, 2016, we used the August 10 list to estimate how many people were blocked from being able to vote in the primary. We filtered the list for people under 18, UOCAVA voters, and blank addresses, although we did not perform geocoding on this list. The filtered suspense list contained 21,244 people who had attempted to register between the beginning of 2013 and the deadline to register for the primary, July 12, 2016.

ANALYSIS

# Multiple Threats Converge to Heighten Disinformation Risks to 2024 Elections



Getty

Both the private sector and government must take steps to help stem the tide of false election narratives.



Lawrence  
Norden



Mekela  
Panditharatne

David Harris

February 20, 2024



**Defend Our Elections**

Election Security

*This piece was originally published in **Just Security**.*

In early December 2020, Ruby Freeman received **an email**: “We are coming for you and your family. Ms. Ruby, the safest place for you right now is in prison. Or you will swing from trees.”

Freeman had been a temporary poll worker in Fulton County, Georgia, in the 2020 election. Her daughter, Shaye Moss, was with her at the State Farm Arena in Atlanta, counting ballots as a county employee on the night of the election. Footage of the pair engaging in routine vote-counting procedures went viral after Rudy Giuliani and his legal team began to falsely claim it showed them conducting election fraud. As the lies about what happened that night in Atlanta spread on social media, Freeman and Moss were thrown into a firestorm. Racist, violent language arrived via letters, texts, phone calls, emails, social media messages, and even in person at each of their front doors.

Freeman and Moss' lives were forever changed. "I miss my old neighborhood because I was me," Freeman said as she **testified** in a subsequent defamation trial against Giuliani about the damage to her reputation. "I could introduce myself. Now I just don't have a name."

The two women are among thousands of **election workers** who have faced threats, intimidation, and abuse as a result of the election lies that have gained traction in recent years. More broadly, the spread of false election information has eroded cornerstones of American democracy, contributing to **flagging confidence in American elections, disenfranchisement of voters, and massive turnover among election workers.**

As destructive as these false election narratives have been, there is good reason to believe the problem may be markedly worse in 2024. Five factors are poised to degrade the election information environment even further compared with 2020: 1) right-wing legal and political attacks have successfully deterred key institutions, organizations, and government agencies from addressing falsehoods about the election process; 2) domestic actors appear increasingly robust and coordinated in their broader efforts to undermine confidence in American elections, too; 3) social media companies have drastically reduced efforts to moderate false election content and amplify accurate information; (4) a convergence of recent geopolitical crises seem set to galvanize renewed interest from foreign adversaries such as Russia, China, and Iran to interfere in U.S. elections; and (5) recent advances in artificial intelligence mean adversaries of American democracy have access to tools that can boost voter suppression efforts and pollute the information environment on a scale and level of sophistication never seen before in a federal election cycle, though AI may also help address these threats.

It doesn't have to be quite this bad. Governments, election officials, the media, tech companies, and civil society organizations can take steps to stem the tide of false election narratives.

### **Right-Wing Efforts to Degrade Defenses Against Disinformation**

At the center of the problem is a years-long political and legal effort to dismantle the human and institutional networks that have documented and pushed back on election disinformation in prior election cycles. A pivotal episode in this push began in 2022, when the attorneys general of Missouri and Louisiana, along with a number of private plaintiffs, sued numerous Biden administration agencies and officials with the aim of stifling cross-sector collaboration to address online falsehoods. The lawsuit alleged that the White House, agencies, and officials coordinated "with social media giants," and certain nonprofits and academic institutions, to censor and suppress speech related to, among other things "election integrity." That case, now styled **Murthy v. Missouri**, is currently before the Supreme Court.

The lawsuit has caused serious confusion within federal agencies about how to communicate with social media platforms about foreign and domestic threats to U.S. elections. An extraordinary ruling by the Fifth Circuit Court of Appeals last fall upheld much of a lower court order that restricted the Biden



administration's communication with social media companies. While the Supreme Court has stayed the order for the moment — and an array of **legal scholars** and **practitioners** have panned the flawed judgments of the lower courts — many government offices tasked with combatting foreign disinformation campaigns appear deeply skittish and unsure whether or how to continue their past work. In November, the *Washington Post* reported that federal agencies have “stopped warning some social networks about foreign disinformation campaigns on their platforms, reversing a years-long approach to preventing Russia and other [nation-state] actors from interfering in American politics” with less than a year to go before Election Day.

The lawsuit also has had a **chilling effect** on researchers, some of whom may fear being wrongly perceived as exerting improper influence on behalf of the government. The district court judge who heard the case **initially enjoined** federal officials from working with some of those third-party researchers, though that portion of the injunction was later reversed.

For researchers, election officials, and civil servants, a parallel investigation by Republican members of the U.S. House has had a perhaps even greater chilling effect. Over the past year, Ohio Representative Jim Jordan's Select Subcommittee on the Weaponization of the Federal Government has made such individuals and organizations the target of **voluminous information requests and subpoenas**. (Congress enjoys **relatively broad** — though not unconstrained — authority to issue subpoenas to private parties in aid of its legislative functions, according to Supreme Court precedent.) The committee has subpoenaed government agencies, for example, to investigate messages between tech companies and the administration, accusing the Biden administration government of silencing right-wing voices. A committee **report** published last year spuriously labels communication between disinformation researchers and social media platforms the “newly emerging censorship-industrial complex.”

Alex Stamos, former director of one of the leading election-disinformation tracking operations, the Stanford Internet Observatory, **noted** that “since this investigation has cost the university now approaching seven [figure] legal fees, it's been pretty successful, I think, in discouraging us from making it worthwhile for us to do a study in 2024.” At the same time, the State Department's Global Engagement Center, tasked with combatting foreign propaganda, has also been **targeted** by Jordan's committee, which called for its defunding. The *New York Times* has **noted** that a right-wing advocacy group, helmed by former Trump advisor during his term in office Stephen Miller, has filed a class-action lawsuit “that echoes many of the committee's accusations and focuses on some of the same defendants,” including researchers at Stanford, the University of Washington, the Atlantic Council, and the German Marshall Fund.

This menacing atmosphere affects local election offices too. For example, one election official in Florida recently **said** he can no longer speak to constituents about his work with the Elections Infrastructure Information Sharing & Analysis Center (**EI-ISAC**) — an information-sharing network for election officials that sometimes addresses falsehoods about the voting process — or even use the word “misinformation” out of fear of backlash.

### **Social Media Companies Retreat from Content Moderation**

Amid such intimidation of those seeking to fight false election information, major social media companies have dramatically cut back on staff resources devoted to addressing these issues. Teams responsible for “trust and safety,” “integrity,” “content moderation,” “AI ethics,” and “responsible innovation” were **ravaged** by a series of layoffs beginning in late 2022. Despite their often-fractious relationship, in June

2023, Mark Zuckerberg praised Elon Musk's efforts to "**make Twitter a lot leaner**," after Musk **cut roughly 80** percent of the company's staff. Some companies are choosing to partially or entirely outsource this type of work, which has led to startups offering trust and safety **as a service** to the same companies that made these deep cuts — often without significant access to or influence over core product design choices that exacerbate the spread of election disinformation and other troubling content. While cuts to civic responsibility teams seem to have had the short-term impact of reducing corporate costs, two former Facebook integrity workers argue that the long-term effects will be "**unbearably high**," both for the companies themselves and for society at large, by intensifying the volume of toxic content on the platforms and making platforms less useful and rewarding for users. Unfortunately, even if the companies eventually rebuild these teams, it is unlikely to happen in time for elections in 2024.

The fracturing of the social media environment poses additional challenges. As Twitter **sheds users** by the month and Facebook **loses relevance** for younger users, a proliferation of new platforms in the past few years seeks to fill the gaps. TikTok is the most notable success story in terms of attracting users, but the growth of numerous other platforms — including Parler, Gab, Truth Social, Mastodon, Bluesky, Substack, Telegram, Threads, and Signal — is evidence that fragmentation is real. That fragmentation can have benefits: some of these new platforms are attempting to be **interoperable** with one another, which, as with email, could give people more options for how to engage online and in the longer term disrupt the entrenched behemoths of the sector. But it also makes it even more difficult for researchers to track online disinformation campaigns. And of course, some of these platforms may be deliberately providing a haven for purveyors of **disinformation** and **hate speech**.

Encrypted one-to-one or group messaging platforms like WhatsApp, Telegram, iMessage, and Signal are perhaps the most challenging forums to address when it comes to election disinformation. Because some or all of the content on these platforms is encrypted — that is, it is protected against unauthorized access — the companies that operate them have limited visibility into disinformation campaigns spreading in their own backyards. One tool available to encrypted messaging platforms — acting in response to prohibited content reported by users — is likely underutilized. Given the platforms' lack of transparency, though, external researchers have a poor understanding of the frequency or effectiveness of enforcement efforts. For example, while Meta releases quarterly **Community Standards Enforcement Reports** that include details from its Facebook and Instagram platforms, WhatsApp (also owned by Meta) is conspicuously absent from those reports. Telegram was the subject of a **recent exposé** describing how the platform has a long history of allowing violent extremist groups to persist on its platform, despite having the ability to remove these groups.

With the incredible power of personalization and conversation afforded by AI systems, it is not hard to imagine how chatbots could be surreptitiously deployed on encrypted platforms to conduct mass influence operations designed to sway election outcomes or undermine trust in legitimate outcomes. Similar types of covert persuasion campaigns have been taking place in **Brazil since 2018** — and have also had **notable impacts on Latino and Indian** communities in the United States in particular. Among those populations, WhatsApp is particularly popular — albeit without the large-scale personalization made possible by generative AI tools.

### **New Threats of Foreign Interference**

Meanwhile, the threat of foreign influence campaigns has only grown since the 2020 election. With the continuation of Russia's war on Ukraine, growing tensions in the Middle East amid the war between Israel

and Hamas, and increased friction between the United States and China, foreign powers have considerable interests in the outcome of the 2024 election. **The Department of Homeland Security, the National Intelligence Council, and major tech companies** have warned since 2022 that Russia, Iran, and China are all likely to launch interference efforts in 2024, with Russia as the “most committed and capable threat” to American elections, according to Microsoft.

These campaigns have already begun. In November, Meta found that thousands of Facebook accounts based in China were **impersonating Americans** and posting about polarizing political topics. Meta’s most recent **adversarial threat report** noted that the company had already identified and removed multiple foreign networks of fake accounts originating in China and Russia, and highlighted that similar networks pose an ongoing threat to the information environment. Chris Krebs, the former head of the U.S. government’s Cybersecurity and Infrastructure Security Agency (CISA), has **warned** that foreign cybersecurity threats will be “very, very active” this election cycle.

### **Stronger Domestic Networks of Election Deniers**

At the same time, the domestic networks used to spread false information and undermine confidence in American elections have, if anything, strengthened. A conglomeration of right-wing organizations called the Election Integrity Network, led by election denier and Trump lawyer Cleta Mitchell, **encourages** people to “research” their local election offices to identify supposedly unsavory influences, hunt for voter fraud by signing up as poll watchers, and perform amateur voter roll list maintenance. The group **claims** more than 20 right-wing organizations as partners, ranging from small policy organizations to more well-known entities like the Heritage Foundation.

A large number of changes in election procedures in recent years also risk breeding more election falsehoods. Since the 2020 presidential election, several laws — in **Texas, Florida, Georgia, South Dakota**, and elsewhere — have expanded poll observer powers by offering watchers more latitude or instituting vaguely defined criminal prohibitions targeted against officials who do not give watchers ample observation access. While poll watchers play an important transparency function in elections, prominent election deniers have **encouraged some watchers** to wrongheadedly perceive their mission as undermining confidence in election integrity and confirming a baseless belief that widespread election fraud occurs in American elections. In the 2020 election, for instance, unreliable poll watcher “testimony” provided fodder **for numerous** meritless legal challenges to election results that were universally rejected by courts or otherwise failed.

### **AI Will Amplify Threats**

Whether foreign or domestic, adversaries of American democracy also now have easy access to tools that can further pollute the information environment related to the 2024 election with far fewer resources than in the past. Candidates and activists have already used AI to create numerous digital fakes — from deepfakes spread by Ron DeSantis’s presidential campaign depicting Trump embracing Dr. Anthony Fauci, a respected former top health official derided by some Republicans, to a Republican National Committee video showing a series of dystopian calamities playing out in another Biden presidential term. In another case, a **likely deepfake** — digitally created content that appears authentic — of a Chicago mayoral candidate glibly discussing police brutality circulated on the eve of the city’s primary election earlier this year.

Beyond the spread of deepfakes to influence vote choices, AI **can be exploited** to spoof election websites, impersonate election officials, manufacture crises at polling centers, and cultivate the impression that more people believe false narratives about the election process than actually do. Malevolent actors can use tools underlying generative AI chatbots to automate conversations with voters that are designed to deceive, and they can do so at scale. Conversely, candidates who wish to avoid accountability for their documented actions could also exploit widespread cynicism and distrust in content authenticity spawned by the proliferation of generative AI to possibly get away with smearing such documentation as fake.

AI could also be used to fuel disinformation by powering frivolous voter challenges and purges premised on election denial in 2024. In the 2022 midterm elections, coteries of activists combed through voter registration records and other miscellaneous data sources to **bolster baseless claims** of contests marred by widespread fraud. On the basis of partial and incomplete evidence, numerous activists lodged **systematic challenges** to tens of thousands of voters' eligibility and promoted the results to seed doubt about the integrity of U.S. elections. One group in Georgia challenged the eligibility of **37,000 voters in a county with about 562,000 registered voters**, forcing the county to validate the status of thousands of voters in the months before the election. In some cases, activists were **mobilized by** well-funded and coordinated national organizations spearheaded by the Election Integrity Network. That network is now testing a **flawed AI tool** — EagleAI — to match data more swiftly and allow users to fill out voter challenge forms with only a few clicks. EagleAI is riddled with **deficiencies**, relying on sources that may not be accurate or up-to-date for the purpose of determining voter eligibility.

Yet, the product is not only being offered to activists to make challenges. EagleAI is also being marketed to county election officials to flag voters for voter purges. At least one county in Georgia recently **approved use** of EagleAI to help maintain its voter rolls. These tactics — worsened by AI — threaten to disenfranchise voters and operate as a force multiplier for false information about the election process. As Georgia's elections director **recently put it**, "EagleAI draws inaccurate conclusions and then presents them as if they are evidence of wrongdoing."

### Steps to a Better Information Environment

The new challenges to the information environment for elections require a multifaceted response from media, election officials, tech companies, the courts, and policymakers. This is a moment in which almost anyone can pitch in to defeat the election lies that have been so destructive in recent years, and provide Americans with accurate information about voting and elections. The following outlines some of the steps that should be taken now, for this election season, by U.S. elections officials, social media platforms, AI companies, and the news media (which are of course critical to **ensuring** the public has accurate information), and measures that federal and state governments should take in the longer term.

#### *Elections officials should:*

Double down on **cybersecurity best practices**, such as transitioning to .gov domains to lessen the potential influence of websites spoofed through AI or other methods, because the .gov domain is **administered by CISA** and made available only to "U.S.-based government organizations and publicly controlled entities," unlike other top-level domains such as .com that anyone can register for a fee. Conduct affirmative, well-timed **voter-education campaigns** that address common false narratives about the election process.

Be prepared to nimbly adapt to novel scenarios by expanding their network of civil society partners and messengers to disseminate accurate information in the event of unexpected developments in the election process.

Familiarize themselves with **resources** that will allow them to prepare for the **increased security threats** from AI.

*Social media platforms should:*

Reverse the **backsliding** on disinformation and election security. Given the recent cuts, it's hard to see them taking this step absent substantial public and political pressure, but they should bolster their trust and safety, integrity, and election teams, so that the teams can better handle the onslaught of election-related threats coming this year in the United States and abroad.

Maintain meaningful account-verification systems, particularly for government officials and news organizations.

Address deepfakes and crack down on coordinated bots and AI-generated websites peddling phony "news."

Ensure that moderation teams dedicated to non-English languages are adequately staffed and that content that would be flagged in English is also flagged in other languages. There is **substantial evidence** that major social media companies have failed language minorities in the United States, particularly when it comes to curbing misinformation and providing accurate election information. Major companies **such as Meta** typically devote fewer resources to monitoring American elections content in minority languages and rules-violating content that is addressed in English is sometimes left up, or left up longer, in **languages such as Spanish**.

*AI companies should:*

Make good urgently on commitments that they have **publicly agreed to** since a July **White House meeting**, which include deploying "mechanisms that enable users to understand if audio or visual content is AI-generated." Adobe, Google, and OpenAI seem to be the companies **taking this commitment most seriously**, but they can't succeed without the whole ecosystem getting on board. First, all generative AI companies should urgently add difficult-to-remove watermarks to their AI-generated content, something that has already been implemented by Google Deepmind in their **SynthID product**.

Coalesce, with the tech industry, around the **Coalition for Content Provenance and Authenticity's** (C2PA) open standard for embedding content-provenance information in both authentic and synthetic content. Hundreds of major companies have already signed onto this standard, including Microsoft, Intel, Sony, and Qualcomm, but critically and conspicuously absent are Apple, ByteDance, and X, which have only said they're considering it but haven't explained the delay. Without these keystone players joining the coalition, the effort is meaningless.

Transparently announce commitments to election security, similar to the list of pledges shared recently by **OpenAI**, including announcing (but not yet releasing) a "classifier" that the company says has the potential to identify what images were produced by its generative AI systems, and adoption of the C2PA standard. All AI companies — and social media platforms, for that matter, should make similar pledges, either because they already publicly signed onto these efforts at the White House, or because they may be mandated to do so soon anyway under European laws such as the **EU AI Act** and Digital Services Act, which currently has limited requirements. **News reports** indicate that several social media and tech companies (not including X) may announce an agreement at this weekend's Munich Security Conference detailing commitments to reducing election-related risks from AI. The devil will be in the details, as well as

in their actual execution of those commitments. (During the Munich event after original publication on *Just Security*, X did join in **making that commitment**, in what appears to be a good step by these companies.) Further fine-tune models and limit interfaces to bar the impersonation of candidates and officials and the spread of content that risks vote suppression, and ensure that third-party developers using their tools and services abide by the same rules. OpenAI's **recent suspension** of the third-party developer of the Dean Phillips presidential campaign bot is a good example of this.

Halt development and distribution of “open source” AI systems in generative AI companies like Meta and Stability AI — systems that currently allow operators to fairly easily disable all of their safety mechanisms — until they can address the ability of users to utilize their systems for **purposes that are inappropriate**, including to spread election lies and conspiracy theories with deepfakes, chatbots, and other AI tools.

*News media and journalists should:*

Cultivate authoritative sources on elections, including election officials, so that when sensational stories take hold, they can quickly verify or rebut information circulating in their communities.

Publish pre-election stories on any confusing or new topics — the idea of “pre-bunking” or getting ahead of potential targets of disinformation, for example. That should include providing voters with accurate context and perspective related to commonplace glitches or delays.

Make an extra effort to reach new voters and new citizens, who may be less familiar with American elections. While **many journalists acted** on this advice in 2020 and 2022, even more of this outreach, as well as real-time debunking, will be necessary this year.

*Federal and state policymakers should:*

Pass laws that will make it more difficult for bad actors to disrupt American elections through the spread of disinformation, with **measures** that would:

Protect voters against the spread of malicious falsehoods about the time, place, and manner of elections.

Ensure election offices have adequate funds to regularly communicate with and educate voters.

Invest in critical physical and cyber safeguards for the protection of election workers and infrastructure.

At the state level, some of these reforms have **passed** in recent years, but not at nearly the pace they should have. In Congress, action to reform and strengthen democracy has gotten caught up in increased **polarization** and **dysfunction**. In the past, major events — such as hanging chads and disputed vote counts in the 2000 election or Russian cyberattacks on U.S. election infrastructure in the 2016 election — led the federal government to embrace major election-related reform. The events of January 6, 2021, have so far not resulted in similarly substantial changes designed to mitigate the harm caused by a poisonous information environment.

Before additional damage is done to the institution of elections, both the private sector and government must work harder and more seriously to ensure critical steps are taken to help safeguard American democracy from these falsehoods.

**RELATED ISSUES:**



**Defend Our Elections**

Election Security



RESOURCE

# The Election Deniers' Playbook for 2024

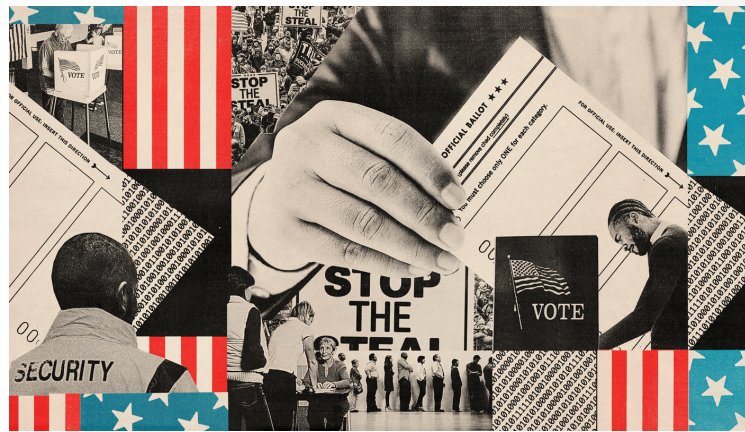
The attempts to undermine safe and secure elections are evolving.



Lauren Miller



Wendy R. Weiser



Lincoln Agnew

PUBLISHED: May 3, 2023



**Defend Our Elections**

Election Integrity

Election denial poses an ongoing threat to U.S. democracy. Despite its widespread rejection in the 2022 midterms, efforts to undermine electoral systems have proliferated and expanded beyond Donald Trump's charge that the 2020 presidential election was stolen.

This analysis examines the role that election denial played during the midterms and makes an early assessment of how it will continue to evolve ahead of the 2024 election. It does so by outlining 14 tactics deployed by election deniers throughout the 2022 election cycle: (1) election deniers' bids for office, (2) election deniers' refusal to concede, (3) counties' refusal to certify election results, (4) efforts to discredit voting machines, (5) efforts to tamper with sensitive voting data and equipment, (6) massive public records requests, (7) efforts to recruit election deniers to serve as poll watchers and workers, (8) threats against election officials and workers, (9) voter intimidation, (10) mass challenges, (11) election police forces, (12) anti-voter lawsuits, (13) anti-voter legislation, and (14) disinformation.

For each tactic, the analysis walks through what happened during the midterm election cycle as well as new trends that have emerged in 2023. Its findings suggest that a number of these tactics will continue to play a significant role in the next election cycle — including conspiracy-driven attacks on election infrastructure, threats to election officials and workers, election police forces and other government-sponsored initiatives to target voter fraud, increasingly brazen measures to restrict access to voting, and disinformation-fueled efforts to undermine election results. It concludes with an overview of steps that states can take to safeguard our elections in time for 2024.

## **Tactic 1: Win control of election administration**

*Pushing false narratives of widespread election fraud, election deniers will continue to run for local and state offices that oversee elections.*

Nearly **300 election deniers** ran for state and congressional offices in 2022. These candidates, led by notable election deniers, including Kari Lake and Mark Finchem of Arizona, Kristina Karamo of Michigan, and Doug Mastriano of Pennsylvania, promoted a variety of **false narratives** ranging from **allegations** of rampant ballot stuffing at drop boxes to claims that electronic voting machines are **inherently susceptible** to fraud.

Voters repudiated many of these candidates. In six battleground states — Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin — voters uniformly **rejected** election deniers who ran for statewide offices that oversee elections. In fact, election deniers in secretary of state contests **underperformed** compared to other non-election denier statewide candidates who lost their races. In states like Nevada, for example, thousands of voters supported the Republican Senate candidate and new governor but rejected the election-denying candidate for secretary of state. According to **States United Action**, the “election denier penalty” for those candidates amounted to 2.3 to 3.7 percentage points less of the vote than expected. In other words, voters in those states, regardless of party, did not want election deniers running elections. Public polling confirmed that democracy weighed heavily on voters, with **44 percent** reporting that concern over the “future of democracy” ranked as their primary concern in the midterms.

Nevertheless, many other election-denying candidates won their races. In Alabama, Indiana, South Dakota, and Wyoming, election deniers now **control** statewide offices that oversee elections. In battleground states such as Nevada, they secured victories in **local election offices** in key jurisdictions, including **Nye** and **Storey** counties. And at the **congressional level**, after the midterms, the House now has at least 180 members who questioned or denied the 2020 election results, while the Senate has 17 such individuals.

These victories suggest that election deniers will continue running for office. A January 2023 internal **report** issued by the Republican National Committee warns of a “continuing onslaught of Democrat election manipulation,” including “unregulated drop boxes” and “vote collection vans.” The report proposes building a large new organization to counter this fabricated threat, signaling that election-denying candidates will have a more coordinated and sophisticated election denial campaign at their disposal in 2024.

## **Tactic 2: Refuse to concede electoral defeat**



*Election deniers will likely continue to protest their losses and file groundless lawsuits in an effort to raise their national profiles.*

Most of the election-denying candidates who lost in 2022 **conceded defeat**. For example, although Wisconsin gubernatorial candidate Tim Michels repeatedly **questioned** the 2020 presidential election results during his campaign, he admitted defeat in a frank concession **speech** hours before the Associated Press even called his race. Many others who ran on election denial rhetoric **followed suit** (albeit **reluctantly**) in the days after the election.

The following prominent election deniers, however, refused to concede:

Nevada secretary of state candidate and vocal election denier **Jim Marchant** did not contest his election's outcome, but to this day, he has made no official concession statement.

Michigan secretary of state nominee Kristina Karamo claimed her election was "**unlawful**" but stopped short of requesting a recount or filing a lawsuit. Of course, Karamo had already filed a pre-Election Day **lawsuit** that sought to disqualify tens of thousands of absentee ballots cast by Detroit voters.

In Arizona, attorney general candidate Abe Hamadeh has filed not one, but **two suits** challenging his defeat after a recount confirmed his loss to Democrat Kris Mayes.

Arizona secretary of state candidate Mark Finchem filed a suit **challenging** his loss despite losing by over 120,000 votes. The trial court judge **issued sanctions** against both Finchem and his lawyer, finding the suit "groundless and not brought in good faith." Finchem has since **called** the sanctions "payback" from a "liberal judge" and vowed to appeal.

Arizona gubernatorial candidate Kari Lake serves as the most visible example. After losing her election by a narrow margin, she **pressed on** with a highly publicized lawsuit to overturn the results. The Arizona Supreme Court recently **rejected** six of Lake's claims, which argued that problems with the ballot printers on Election Day stemmed from intentional misconduct. The court remanded Lake's last remaining claim to the trial court, where she will face the heavy burden of proving that Maricopa County's signature-matching process for early mail-in ballots not only violated state law but also altered the outcome of the election in a substantive way.

While Finchem's court losses will provide some deterrent effect, Karamo and Lake appear to have benefited from their refusal to concede. Karamo, once relatively unknown, **became** the chair of the Michigan Republican Party in 2023. Lake has floated **running** for Senate. Hamadeh's lawsuits have also kept him in the news, as have reports that Jennifer Wright, the former head of Arizona's Election Integrity Unit, **joined** his legal team. As these former candidates continue to deny the results and drive election denial discourse as prominent GOP figures, refusals to concede will remain a threat to watch for in 2024.

### **Tactic 3: Refuse to certify results**

*With election deniers on the ballot and newly in charge of local election offices, more local officials may refuse to certify elections in 2024.*

Local election officials have a nondiscretionary duty to certify elections. But even though certification should function as a ministerial act, the following counties refused to certify or delayed certification processes in 2022:

Otero County, New Mexico: In the months leading up to New Mexico's June 7 primary, former professor and attorney **David Clements** traveled across the state to persuade local leaders not to certify election results. Otero County's canvassing board followed Clements's advice and voted to not certify its primary results, citing unsupported concerns about Dominion voting machines. The board eventually **relented** and certified the results in a 2–1 vote, but only after the New Mexico Supreme Court **ordered** the canvassing board to fulfill its "nondiscretionary duties."

Esmeralda County, Nevada: Just days after the vote to not certify in Otero County, local officials in Esmeralda County, Nevada, voted to **delay** certifying its primary results in response to one resident's unspecified complaints of voter fraud; they chose to delay so county officials could recount the county's 317 ballots by hand. Officials eventually certified the results just hours before the state's certification deadline on June 24, but not before they and several aides spent more than seven hours conducting a **hand recount**.

Berks, Fayette, and Lancaster counties, Pennsylvania: Berks, Fayette, and Lancaster counties **refused** to properly certify election results by excluding certain ballots from their totals following the state's May 17 primary. The three counties rejected mail-in ballots that were received before the state's 8 p.m. deadline on Election Day but were missing a date on the outside envelope. In an **opinion** issued several months after the primary, a state court ordered the counties to include those "undated mail-in ballots" in their certifications of the returns. They **complied** within several days of the court's order.

Luzerne County, Pennsylvania: During the general election, the board of elections in Luzerne County, Pennsylvania, **deadlocked** over whether to certify its election results. The dispute centered on Republican board members' claims that paper shortages on Election Day resulted in widespread voter disenfranchisement. A candidate filed suit shortly after the board missed the certification deadline, but the lawsuit was short-lived. The board ultimately certified the results after county officials **contacted** 125 election officials from the county's 187 precincts, none of whom reported any voters turned away due to paper shortages.

Cochise County, Arizona: Most notably, the board of supervisors in Cochise County, Arizona, **voted against** certifying the county's returns, citing concerns about whether voting machines had been properly certified. In an **interview** with the *New York Times*, one of the supervisors later conceded that their refusal to certify served purely as a protest against the election in nearby Maricopa County, where several Republican candidates made false claims that ballot-printing errors resulted in widespread voter disenfranchisement. The dispute ended after a state court judge **ordered** the board to certify the results without delay, explaining that the board had no discretion to refuse to certify under Arizona law. In a 2–1 vote, the board certified the results just 90 minutes after the court order.

Mohave County, Arizona: Mohave County's board of supervisors also voted to **delay** certification as a protest against the election in Maricopa County, acknowledging that it was "purely a political statement." The board **eventually voted** to certify the results a week later, although two board members noted that they did so "under duress."

Efforts to refuse to certify and delay election results picked up steam in 2022 but ultimately failed — in large part due to swift, decisive court intervention. They may also prove politically unpopular; in Cochise County, residents are **circulating petitions** to recall the dissenting supervisor who refused to certify the election results after the state court's order. In North Carolina, a watchdog group's complaint prompted the state board of elections to remove two members of the Surry County Board of Elections who (unsuccessfully) sought to block certification. Nevertheless, **few** of the local officials who voted against certification have faced consequences. With election deniers newly in charge of **local election offices**, and a likely slate of election-denying candidates on the ballot in 2024, certification disputes may continue.

## Tactic 4: Discredit voting machines

*Election deniers continue to claim that voting machines are susceptible to fraud and should be replaced by hand-counts.*

Election deniers targeted voting machines throughout the midterms. Rooted in conspiracy theories that Dominion voting machines were rigged to alter the 2020 election results, attacks **focused** on barring the use of machines to record and count votes and shifting to hand-counts of paper ballots.

Vocal conspiracy theorists organized and disseminated the disinformation behind these attacks. MyPillow CEO Mark Lindell **claimed** that hackers could access voting machines through the internet and tamper with them to steal elections. Nevada secretary of state candidate Jim Marchant similarly **argued** that “electronic voting machines are so vulnerable and so uncertifiable, I don’t see how we can trust them.” **Funding** from groups tied to Lindell and former Overstock chief executive Patrick Byrne boosted the movement to eliminate machines, as did Marchant’s organizing efforts; he established a **coalition** of like-minded secretary of state candidates dedicated to, among other things, banning voting machines in favor of exclusively hand-counting paper ballots.

The hand-count movement in particular **gained traction** throughout 2022. While useful in limited instances, such as postelection audits, requiring the hand-counting of all ballots creates opportunities for significant **delays and errors**. Historically, only a **handful** of localities — mostly small jurisdictions in New England and Wisconsin — have counted ballots by hand rather than with electronic tabulators. But in 2022, at least six states considered legislation to require hand-counts. Localities, including a dozen New Hampshire towns and **Washoe County**, Nevada, floated similar proposals. Before the April primary, Arizona candidates Mark Finchem and Kari Lake filed a joint **lawsuit** arguing that Arizona’s voting machines were inherently inaccurate and insecure such that all ballots in the state must be counted by hand (the suit **failed**, and the court recently issued sanctions against the candidates’ attorneys).

Ultimately, the hand-count movement culminated in two notable showdowns. First, Cochise County, Arizona, made an **unsuccessful attempt** to conduct a hand-count of all the county’s returns before the general election. In rejecting the county’s plan, an Arizona judge **made clear** that the county had violated both Arizona law and the state’s election rules, which require counties to conduct manual audits in small, incremental batches. Cochise County later launched a second attempt to conduct a hand-count but **withdrew** the complaint after the election.

Second, after Marchant **personally lobbied** officials in Nye County, Nevada, to adopt a hand-count, County Clerk Mark Kampf took up Marchant’s call and insisted on conducting a hand-count of all the county’s ballots in the general election. Although the Nevada Supreme Court ultimately allowed the count to go forward, it did so in part based on Kampf’s decision to **scale back** his plan to a “parallel” hand-count that would serve as a “test” and not impact the official returns. Notably, Kampf himself **conceded** at the time that the hand-count had a “very, very high” error rate.

As of the publication of this resource, none of the statewide hand-count bills have passed. And in the most prominent pushes for hand-counts in 2022, one court disallowed the practice under Arizona law, while the other effort saw its main proponent concede that the practice was inherently flawed. The \$787.5 million **settlement** in Dominion’s defamation **lawsuit** against Fox News may also make attacks on voter machines a less viable strategy.

But after ballot-printing machines in Maricopa County, Arizona, experienced technical problems on Election Day, former President Trump, Lake, and others **quickly capitalized** on the situation to spread allegations of widespread election fraud. Already in 2023, four states have introduced at least **five bills** that would ban the use of voting machines to conduct initial ballot counts in any election.

Beyond state legislation, election deniers continue to advocate for hand-counts at the county level. As recently as January 2023, a pressure campaign centered on voting machine conspiracy theories forced officials in Lycoming County, Pennsylvania, to conduct a **hand-count** of 60,000 ballots from Election Day 2020. Shasta County, California, **recently ended** its contract with Dominion after similar pressure, buoyed by Lindell's public **support** and promises of financial and legal aid. As prominent election deniers like Lindell **continue** to argue that machines are susceptible to fraud, it appears that hand-counts and related efforts to eliminate voting machines will remain a threat worth watching ahead of 2024.

## **Tactic 5: Tamper with sensitive voting data and equipment**

*Election deniers may continue their attempts to gain illegal access to voting equipment and data.*

Throughout 2022, officials continued to uncover **incidents** across the country in which election deniers tried to illegally access equipment and data in an effort to “investigate” the 2020 presidential election results.

Some of these cases involved “insider threats” — incidents in which election officials with connections to conspiracy theorists **gave access to** or otherwise enabled such tampering. Mesa County Clerk and Recorder Tina Peters, for example, will **go to trial** on criminal charges related to her alleged role in facilitating a security breach of the county's Dominion voting machines. The Georgia Bureau of Investigation continues to investigate **Coffee County**, where a forensic firm hired by Trump lawyer Sidney Powell worked with county officials to copy voting software and data. The same firm attempted to infiltrate election systems in other **battleground states**, including Michigan and Nevada. Ongoing investigations into these schemes suggest that they are interconnected; many of the people leading them have **ties to** and received funding from prominent election deniers like Mike Lindell and Patrick Byrne.

Ahead of the 2022 elections, states like Michigan and Colorado worked diligently to decommission any equipment that may have been corrupted. Many election officials also **stepped up** their preparedness and security measures to prevent and catch tampering. Although reports of potential **breaches** persisted in the midterms, states did not see the same level of widespread collusion between election officials and conspiracy theorists as in 2020.

As the multiyear investigations into the Michigan and Coffee County breaches demonstrate, collusive efforts between election officials and conspiracy theorists are difficult to track and unravel. For this reason, insider threats remain a seemingly rare but alarming threat ahead of 2024. Election officials and experts continue to advocate for greater **protections and resources** to safeguard election infrastructure, **including** but not limited to detailed standards to regulate who can access election infrastructure, funding for security measures like keycard access to facilities that hold voting systems, and state-mandated training for all election officials.

## **Tactic 6: Massive public records requests**

*Election deniers may repeat their attempt to overburden local election offices with an abusive volume of records requests and other forms of public access.*

Records requests related to the 2020 election soared during the midterms. Election officials generally attribute the surge to prominent election deniers such as Mike Lindell, who urged people to request records at his “Moment of Truth **Summit**” in August 2022. Following the summit, election offices in **nearly two dozen states** and counties received overwhelming numbers of identical public records requests.

In North Carolina, for example, hundreds of requests arrived at state and local offices in a single day, while in Massachusetts, requesters used **templates** distributed by Terpsichore Maras-Lindeman, a podcaster who promotes election-related conspiracy theories. The clerk and recorder in El Paso County, Colorado, **received** as many as 20 requests a week before the election, up from about one a month before the 2020 election. Officials **reported** that they were “shrill” in tone and full of conspiracy theories about the 2020 election. Many sought nonexistent documents.

When used properly, state laws that allow access to public records requests can play an important role in increasing government transparency and holding officials accountable. But the 2020 requests effectively weaponized those laws to **burden** and intimidate officials rather than seek information. State law often requires officials to respond to each request, and even those requests that **do not require** a response still receive careful consideration and review. The sheer number of these demands forced election offices to **divert** valuable, already limited resources that would otherwise have been devoted to the midterm elections while also imposing significant financial burdens.

Although attempts to flood election offices with records requests undoubtedly strained administrative resources, officials largely managed to avoid administrative crises. While it remains to be seen whether these tactics will continue into 2024, election officials continue to advocate for greater election administration resources and staff on the assumption that they will.

## **Tactic 7: Recruit election deniers to serve as poll workers and watchers**

*Efforts to install potentially disruptive individuals as poll workers and watchers will likely continue in 2024.*

Throughout 2022, Cleta Mitchell led the Conservative Partnership Institute’s so-called “Election Integrity **Network**” — a coalition of conservative leaders, organizations, public officials, and citizen volunteers aimed at gaining control over election administration in battleground states. A critical part of this effort included recruiting and training election deniers as poll watchers and workers. In **summits** held across the country, network speakers outlined **combative** strategies for people in these positions to challenge voters and question routine election processes.

During the primaries, these strategies garnered significant **media attention** and appeared to filter down to the **local level**. Republican Party officials **instructed** aspiring poll workers and poll watchers in Michigan to call 911 and contact sheriffs for any election-related complaints at polling locations. A gubernatorial candidate **encouraged** poll workers to unplug election equipment if they saw “something [they] don’t like happening.” One North Carolina **elections director** who faced disruptive election-denying poll watchers called May’s primary “one of the worst elections I’ve ever worked.” But come November, the threat failed to

materialize. Aside from a few rogue **instances** of misconduct, the general election saw no significant disruptions from poll workers or watchers at the polls.

Several factors may explain why the threat of rogue poll watchers and workers never came to fruition. First, local election officials have **credited** coordination between election officials and law enforcement as an effective method of preventing and defusing any disruptions on Election Day. Others have highlighted state and local **efforts** to educate the public on how ballot-counting procedures work, including on social media and in public information sessions. On an optimistic note, some officials **observed** that once election skeptics volunteered as poll workers and watchers, received training, and saw the system in action, their viewpoints changed.

While preventative measures may have worked in 2022, the Republican National Committee's internal report — which **purportedly recommends** intensive new training models for poll workers and watchers — suggests that 2022's efforts may have served as a dry run for a broader 2024 strategy. In an April **presentation** to GOP donors, Mitchell continued to emphasize the importance of “watch[ing]” officials throughout the next election cycle (along with voter suppression tactics, such as limiting voting on college campuses and voting by mail). In the more emotionally charged context of a presidential election, abuses may become more common.

A new wave of election deniers holding state party chair positions also may spur renewed recruiting efforts. State parties can play a significant role in nominating poll workers and watchers in many states. Already in 2023, several prominent election deniers who lost their elections in 2022 (including Karamo in Michigan, Mike Brown in Kansas, and Dorothy Moon in Idaho) have run for and **won** the GOP party chair position in their states.

## **Tactic 8: Threaten election officials and workers**

*Election denial rhetoric continues to fuel threats of violence and other forms of retribution against those who administer elections.*

The 2022 election cycle saw a heightened climate of violence against election officials and workers. Just before the general election, the FBI **warned** that unusual levels of violent threats against election officials and workers persisted in seven states, all of which saw efforts to question the presidential election results in 2020. In Colorado, for example, **dozens** of election deniers observing a primary recount in El Paso County pounded on windows, yelled at election workers, and recorded them with cell phones. And in the weeks following the general election, social media threats **forced** one top election official in Maricopa County to be moved to an undisclosed location over safety concerns. These attacks — which often involved racist and gendered **harassment** — ultimately drove dozens of officials in Michigan, Nevada, Pennsylvania, and Wisconsin to **leave their positions** before the midterms.

Threats against election officials and workers also came in the form of politically motivated criminal penalties just for doing their jobs. Since the 2020 election, 26 states have enacted, expanded, or increased the severity of an **estimated** 120 election-related criminal penalties for people involved in the election process. In 2022, for example, **laws passed** in Alabama, Kentucky, Missouri, and Oklahoma responded to **conspiracy theories** about private funding for election administration by imposing criminal or civil penalties if an election official receives or spends private funding for an election-related activity. These penalties

heighten an already fraught landscape for election officials, some of whom are still **facing** criminal investigations for actions they took to address the spread of Covid-19 during the 2020 election.

Threats against election officials and workers have continued into 2023. Already this year, New Mexico authorities arrested and **charged** a defeated Republican candidate who allegedly paid others to shoot at the homes of four public servants, including two local election officials. In Arizona, Cochise County's longtime elections director, Lisa Marra, **resigned**, citing the emotionally and physically threatening work environment and the public disparagement she faced as she spoke out against the hand-count movement and calls to refuse to certify in Cochise County. The county has since replaced Marra with Bob Bartelsmeyer, who has repeatedly **posted** false claims of widespread election fraud. As Colorado Secretary of State Jena Griswold **warned**, the "extreme rhetoric is not stopping."

These attacks have consequences. A Brennan Center **survey** of local election officials found that 45 percent of those surveyed feared for the safety of their colleagues. This fear has contributed to an exodus among election officials; the survey responses suggest that by the time the 2024 elections take place, we will have **lost** approximately 1.5 election officials per day since the November 2020 election.

## **Tactic 9: Intimidate voters**

*In a climate of election denial discourse, conspiracy theories, and reduced firearms regulations, voter intimidation remains a significant threat.*

Election officials reported a modest but noticeable **increase** in voter intimidation throughout the 2022 election cycle. For example:

Leading up to Election Day, pro-Trump **canvassers** around the country knocked on voters' doors in an attempt to verify their voter registrations, resulting in faulty information that would later resurface in mass challenges, discussed below.

Inspired by the film *2000 Mules* and its claims of rampant ballot stuffing at drop boxes, **multiple groups** recruited and trained volunteers to monitor drop boxes ahead of the election. Melody Jennings, leader of Clean Elections USA, galvanized volunteers by **lauding** the film and warning of "mules" at Maricopa County drop boxes on Steve Bannon's radio show and on Trump-owned social media platform Truth Social. Armed individuals affiliated with Clean Elections USA subsequently intimidated Maricopa County voters at drop boxes during early voting, compelling a federal judge to issue an **emergency order** prohibiting their behavior.

Polling places saw occasional instances of intimidation. Most notably, in **Beaumont**, Texas, poll workers interrogated Black voters about their addresses, followed them around the polling location, and stood as close as two feet behind them while they cast their ballots.

Several explanations exist as to why voter intimidation and violence did not escalate further. For one, election officials and law enforcement engaged in a **coordinated** training and de-escalation effort to prevent disruptions on Election Day. These preventative measures took place against the backdrop of the swift Maricopa County ruling as well as the public **prosecutions** of those who participated in the January 6 insurrection, creating a credible risk that intimidation and violence would result in the full enforcement of the law. Civil society groups similarly organized de-escalation efforts across the country. Trump's absence on mainstream social media sites like Twitter also may have played a mitigating role.



Facebook and Instagram have since **reinstated** Trump's accounts. Escalating election denial rhetoric, **dismantled** firearm regulations, and ongoing efforts to **disempower** election officials from addressing misconduct may significantly increase the risk of voter intimidation in 2024.

## **Tactic 10: File mass voter challenges**

*Election deniers may continue to file mass challenges in an effort to burden election offices and intimidate voters.*

Armed with information pulled from **amateur data matching**, activists motivated by false claims of widespread voter fraud **flooded** election offices with mass challenges to disqualify voters or remove them from the rolls across Florida, Georgia, Iowa, Michigan, and Texas. In Georgia, the state legislature invited mass challenges by passing **S.B. 202**; after the law made clear that individuals could challenge an “unlimited” number of voters in their county, groups and individuals in at least eight counties challenged an estimated **92,000 voter registrations**. In Gwinnett County alone, the group VoterGA worked with local residents to challenge at least **37,000 voters** (over 6 percent of the county's active voters). In Michigan, Election Integrity Fund and Force attempted to challenge over **22,000 ballots** from voters who had requested absentee ballots for the state's August primary.

Several election denier-backed groups **facilitated and funded** the challenges. For example, the Conservative Partnership Institute distributed an instruction manual that walks through how local groups can vet voter rolls. The America Project, launched by prominent election deniers Michael Flynn and Patrick Byrne, **funded** VoterGA's efforts in Gwinnett County. Former Sen. Kelly Loeffler similarly funded Greater Georgia — an organization that sponsored a training session on filing challenges in the name of protecting “election integrity.”

Fortunately, local officials largely rejected these challenges. In Georgia, local election officials threw out most of the challenges to voter registrations, though they **upheld** at least several thousand. In Michigan, the secretary of state's office **rejected** the 22,000-ballot challenge from Election Integrity Fund and Force in its entirety. This outcome suggests that challengers may have placed too much faith in local boards aligning with their efforts. Instead, boards appeared to heed **warnings** that mass challenges violated state and federal law. But this caution may not hold in those jurisdictions where partisan actors **can populate** local boards with activist election deniers.

Although the challenges did not formally succeed, they nonetheless may have confused or intimidated the many voters who faced challenges to their eligibility such that they refrained from voting altogether. They also placed an immense burden on local election offices, which struggled to review the challenges while also performing their other election duties. For example, VoterGA's challenges forced Gwinnett County's election board to **divert** 5 to 10 of its staffers, six days a week, to sort through the 37,500 challenges.

It remains to be seen whether mass challenges will continue in 2024. The prognosis may depend in part on the landscape in Georgia; there, legislators are considering yet another **bill** to make it even easier to disqualify voters through mass challenges, while a pending **lawsuit** against True the Vote argues that the group's mass challenges in 2022 amounted to voter intimidation and coercion under the Voting Rights Act.



## Tactic 11: Create election police forces

*States continue to create and deploy election police forces in an effort to deter eligible voters from participating in elections.*

Promises to crack down on supposedly widespread voter fraud played a central role in political campaigns and discourse throughout the midterms. Most tellingly, just five days before Florida's 2022 primary, Gov. Ron DeSantis **announced** that the state's new Office of Election Crimes and Security had arrested 20 people with past felony convictions for allegedly voting while **ineligible** in the 2020 election. Already, several judges have **questioned** whether those prosecuting the charges have the authority to do so. And jurisdictional problems aside, the arrests rely on **weak** evidence that has made local prosecutors reluctant to pursue charges.

The timing of the arrests, coupled with Governor DeSantis's **efforts** to drum up publicity around them, suggests that the state intended the new unit and these prosecutions to **deter** eligible people with felony convictions from voting in the midterm elections. Already, a **report** by the Marshall Project found that the prosecutions in Florida discouraged people with prior convictions from voting across the country. And there is good reason to believe that Florida's election crime force will disproportionately target and intimidate Black voters: thus far, the **vast majority** of individuals arrested by the office are Black.

**Virginia** and **Ohio** joined Florida in creating similar units to investigate election fraud in 2022, while Georgia **expanded** the power of its bureau of investigation to pursue election violations. Texas Attorney General Ken Paxton added a new **General Election Integrity Team** to the state's **existing** election integrity unit, although a recent Texas Court of Criminal Appeals **ruling** has called his prosecuting authority into question. While none of these units have secured significant convictions thus far, they have provided powerful political fodder to state officials, who **promoted** their efforts to root out fraud on the campaign trail.

Election police forces show **no signs** of slowing down. In Florida, state legislators **circumvented** reluctant local prosecutors by passing a **bill** that expands statewide prosecutors' authority to pursue voter fraud charges. In Texas, legislators recently **proposed** allowing the secretary of state to appoint "election marshals" to investigate violations of election law. Even as election police forces secure few actual convictions, this momentum suggests that they will continue to serve as a significant campaign and intimidation tool throughout the 2024 election cycle.

## Tactic 12: Use the courts to suppress votes

*Election saboteurs and election deniers will likely continue to file lawsuits to limit the freedom to vote.*

According to **Democracy Docket**, an estimated 93 lawsuits aimed to make it more difficult for individuals to vote in 2022. Rooted in conspiracy theories that mail voting resulted in widespread voter fraud in the 2020 election, the majority of these cases attacked access to **mail voting** and **drop boxes** in battleground states like Arizona, Pennsylvania, and Wisconsin.

Compared to 2020, an increasing number of anti-voter suits also attacked election administration processes. The suits argued, for example, that voting machines **facilitated** widespread fraud and that state laws **compelled** localities to hire specific numbers of Republican poll workers, despite a national poll worker shortage.

These lawsuits saw mixed success in the midterms. While courts rejected the vast majority of claims plainly rooted in conspiracy theories, some anti-voter suits succeeded. In Delaware, for example, a state court **struck down** the state's mail voting statute less than two months before the general election. Further, the timing of these cases exacerbates their danger. Most were filed immediately before Election Day, sowing **confusion** about how and when people could vote.

Anti-voter lawsuits largely failed to change the outcome of elections in 2022. But without negative consequences for those who seek to use the courts to disenfranchise voters, even a low success rate will provide an ongoing incentive to file anti-voter lawsuits. Unprecedented fundraising for election litigation — major political parties raised **\$154 million** in the 2021–2022 cycle — further signals that election-related lawsuits, including anti-voter disputes, will carry on into 2024.

### **Tactic 13: Pass anti-voter legislation**

*Legislators continue to introduce measures aimed at reducing voter participation and interfering with election processes.*

In 2022, lawmakers in 39 states **considered** at least 408 restrictive voting bills. Ultimately, eight states **enacted** 11 restrictive voting laws, 5 of which were in place for the midterms (MS H.B. 1510, MO H.B. 1878, NH S.B. 418, OK H.B. 3364, SC S.B. 108). The restrictive voting laws passed in 2022 generally made mail voting and voter registration **more difficult**, especially for voters of color and other demographic groups who participate at lower rates. For example, Ohio **H.B. 458** imposes strict photo ID requirements for voting and, among other things, eliminates a day of early voting, prohibits prepaid postage, and shortens the deadline to apply for and return mail ballots. **Early studies** suggest that these new restrictions have negatively impacted targeted voters and contributed to a growing racial turnout gap.

Lawmakers in at least 27 states also **introduced** 151 election interference bills — legislation that enables partisan actors to meddle in elections or target those who make elections work. At least seven states **passed** 12 of these bills, 11 of which were in place for the midterms (AL H.B. 194, AZ H.B. 2237, AZ H.B. 2492, FL S.B. 524, GA H.B. 1368, GA H.B. 1432, GA S.B. 441, KY H.B. 301, MO H.B. 1878, OK H.B. 3046, OK S.B. 523). The election interference laws passed in 2022 include laws **imposing** new criminal or civil penalties on election officials, redirecting authority to political actors to prosecute election-related crimes, and increasing partisan influence over election administration structures. For example, 2 **laws** passed in Georgia create a risk of interference in elections and election results by allowing partisan actors to replace current election superintendents and create new county boards of elections in Miller and Montgomery counties.

State legislatures have picked up speed in 2023. Already, lawmakers in 32 states have pre-filed or introduced **150 restrictive voting bills**, many of which would limit mail voting or impose new voter identification requirements. Legislators have also pre-filed or introduced 27 election interference bills in 2023, including proposals that would impose new criminal penalties on election officials for doing their jobs and enable political actors to prompt, initiate, or conduct audits of elections. While it remains to be seen whether the rapid pace of introduction will translate into an increase in passed legislation, these bills suggest that lawmakers will continue to follow the same playbook ahead of 2024.

### **Tactic 14: Spread disinformation**

*Election deniers continue to spread false claims about elections.*

Election deniers deployed four core, or “sticky,” **false narratives** during the 2022 election cycle: conspiracy theories depicting voting machines as vehicles for widespread voter fraud, false claims that mail voting and drop boxes are insecure, baseless accusations of votes cast by noncitizens or with the names of dead people, and false claims of fraud in vote counting. They often **latched** on to breaking news events to spread disinformation tied to these four false narratives, such as the **printing issue** that affected some Maricopa County voting machines on Election Day or the **technical glitch** that briefly impacted electronic poll books in Detroit.

Communities receptive to these false narratives clustered around notable “**spreaders**” who fueled viral rumors as they traveled online, such as Mayra Flores in Texas, Mark Finchem in Arizona, and Doug Mastriano in Pennsylvania. And as Election Day drew closer, online discussions of such fraud significantly **increased**. Although many election officials worked successfully to “**pre-bunk**” false information during the midterms, disinformation remained a powerful force, particularly in “**news deserts**” that lack local newspapers and digital news sites.

Disinformation is here to stay. Recent attacks on the Election Registration Information Center (**ERIC**) reveal a new iteration of election disinformation that threatens to undermine even widely respected, bipartisan institutions aimed at *preventing* voter fraud.

Created in 2012, the data-sharing system has served as an important, if little-known, tool for helping states keep voter rolls up to date by identifying voters who may have died or moved out of state. In January 2022, a far-right website with a **history** of spreading election disinformation published the first of several blog posts about the system, falsely implying that “left-wing activists” created the program as part of a conspiracy to influence elections. Just seven days later, Louisiana became the first state to **withdraw** from the program. Suddenly, election officials who previously lauded the group as a “**godsend**” and “one of the **best** fraud-fighting tools that we have” reversed course.

Alabama announced its **exit** in late 2022, **trailed** by recent announcements from Florida, Iowa, Missouri, Ohio, and West Virginia in March 2023. The exodus may continue; Trump has since **urged** all Republican governors to sever their ties with the group. One of ERIC’s developers has **pointed out** the underlying irony: “States that leave ERIC will see more dead voters and voters who have moved away on their lists, and reduce their ability to detect double-voting. As a result, they will likely see longer voting lines, more undeliverable mail, and take longer to count ballots.”

• • •

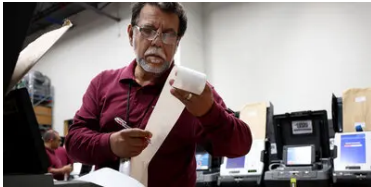
Election denial remains a real and growing threat that could seriously undermine our electoral system if left unchecked. In many ways, the stakes will be higher in 2024 — a presidential election year that will include the same candidate who served as a lightning rod for violence in 2020. This year has already seen more frequent and forward-looking attempts to undermine elections than at this point in the 2022 cycle, when election deniers continued to focus primarily on the 2020 presidential election.

Fortunately, there is still time to prepare for and prevent election denial efforts ahead of 2024. Ideally, Congress should strengthen our democratic guardrails by enacting **baseline standards** that safeguard

voting and the administration of federal elections. In the absence of congressional action, states can and should strengthen their laws to protect against the spread of false information, strengthen their laws to safeguard election administration and voting rights, counter election subversion, and prevent intimidation and violence against election personnel and voters.

A thorough state legislative agenda to promote election security and protect against election subversion **should include**, among other things, legislation that gives election officials more flexibility to count mail ballots faster (and thereby avoid the mistrust that comes with reporting delays), establishes restrictions to protect election systems from tampering and unauthorized access, and expands physical security and privacy protections for election officials and workers. This agenda should also ensure that adequate legal mechanisms exist to thwart efforts to subvert elections, including measures to clarify that certification is a ministerial and nondiscretionary duty, mechanisms for moving certification forward in the face of obstruction, and provisions empowering state courts to swiftly resolve election disputes. And it should prioritize adequately protecting voting rights and establishing clear standards for guaranteeing a clear and accurate count.

Forthcoming Brennan Center work will outline these and other state-level reforms in greater detail.



ANALYSIS

## Poll of Election Officials Finds Concerns About Safety, Political Interference

The vast majority of local election officials have taken new precautions to secure the 2024 election.

**Ruby Edlin, Lawrence Norden**  
May 1, 2024



ANALYSIS

## Spinning Hypotheticals, Justices Forget the Grim Facts of Trump's Alleged Crimes

Two centuries of U.S. constitutional history make clear that Donald Trump is liable to criminal prosecution.

**Samuel Breidbart** April 27, 2024

## Noncitizen Voting Is Already Illegal — and Vanishingly Rare

April 17, 2024 Michael Waldman

## Noncitizens Are Not Voting in Federal or State Elections — Here's Why

April 12, 2024 Sean Morales-Doyle

## California Advances Legislation to Protect Voters and Workers Against Intimidation

April 11, 2024 Kendall Karson

## Stop the Stall

April 9, 2024 Michael Waldman

## Frivolous Lawsuit Targets Maryland's Voter Rolls and Voting Systems

April 9, 2024 Jasleen Singh, Kendall Karson

[MORE NEWS & ANALYSIS](#) ▶

# Securing the 2024 Election

Recommendations for Federal, State,  
and Local Officials

By **Derek Tisler and Lawrence Norden** PUBLISHED APRIL 27, 2023

# Table of Contents

---

<b>Introduction</b> .....	<b>3</b>
<b>I. Combat Election Falsehoods</b> .....	<b>6</b>
Curb Deceptive Practices .....	<b>6</b>
Speed the Counting of Mail Ballots .....	<b>7</b>
Build Resilience to False Election Claims .....	<b>8</b>
<b>II. Protect Election Workers</b> .....	<b>11</b>
Increase Federal Support to Election Officials .....	<b>11</b>
Provide Funding for Physical Security .....	<b>12</b>
Protect Personally Identifiable Information .....	<b>13</b>
Update Laws on Threatening and Doxing Election Workers .....	<b>14</b>
<b>III. Defend Against Insider Threats</b> .....	<b>16</b>
Set Access Restrictions .....	<b>16</b>
Improve Training and Guidance .....	<b>17</b>
Establish Authority to Remediate Risks .....	<b>18</b>
Use Voting Machines for Initial Ballot Counts and Pair with Robust Postelection Audits .....	<b>19</b>
Make It More Difficult to Refuse to Certify Elections .....	<b>20</b>
<b>IV. Ensure Technical Resilience</b> .....	<b>21</b>
Fund the Replacement of Outdated Infrastructure .....	<b>21</b>
Plan for Things That Can Go Wrong .....	<b>22</b>
Conduct Robust Postelection Audits .....	<b>23</b>
Increase Support for Under-resourced Local Election Offices .....	<b>23</b>
<b>Conclusion</b> .....	<b>25</b>
<b>Endnotes</b> .....	<b>26</b>

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

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

## **STAY CONNECTED TO THE BRENNAN CENTER**

Visit our website at  
**[www.brennancenter.org](http://www.brennancenter.org)**

---

© 2023. This paper is covered by the [Creative Commons Attribution-NonCommercial-NoDerivs](https://creativecommons.org/licenses/by-nc-nd/4.0/) license. It may be reproduced in its entirety as long as the Brennan Center for Justice at NYU School of Law is credited, a link to the Brennan Center’s web pages is provided, and no charge is imposed. The paper may not be reproduced in part or in altered form, or if a fee is charged, without the Brennan Center’s permission. Please let the Brennan Center know if you reprint.

# Introduction

---

**W**hat are the gravest threats to the security and integrity of U.S. elections? Over the past decade, the answer to that question has evolved. In addition to foreign cyberattacks and influence campaigns, dangers such as intimidation of election workers and conspiracy theorists assuming election administration positions now put U.S. democracy at risk. In the lead-up to the next presidential election, the United States must adjust to this changed landscape and ensure that the democratic process is protected when the nation goes to the polls.

In 2016, Russian cyberattacks on election infrastructure highlighted the need to strengthen the resilience of U.S. election systems. As a result, the Department of Homeland Security (DHS) designated election systems as critical infrastructure,<sup>1</sup> and federal, state, and local officials worked together to reinforce them against cyberattacks. New threats, largely stemming from amplified efforts to fuel distrust in U.S. elections via the spread of election falsehoods, must be met with the same urgency.

The deliberate spread of election falsehoods — including denial of the 2020 presidential election results — culminated in the attack on the U.S. Capitol in 2021 that President Donald Trump instigated in an attempt to overturn a free and fair election. It has also led to serious challenges to the integrity of future elections, including partisan interference in election processes, intimidation and violence against election workers, and the risk of insider attacks in which the very government workers tasked with administering U.S. elections directly endanger election security. Since the 2020 election, advances in artificial intelligence (AI) have made it possible to produce vast volumes of text peppered with falsehoods; generate convincing deceptive images, video, and audio; and distort public figures' words and actions at a previously unseen scale. These threats are likely to grow ahead of 2024. Powerful politicians, including presidential candidates, and national pundits continue to encourage disruption of the election process and cast doubt on results.

Abroad, U.S. elections have become a battlefield in the conflict over the global order. Heightened stakes in Ukraine and other flash points have increased the motives for powerful countries to interfere in future contests. The Office of the Director of National Intelligence recently warned that the Russian government “views U.S. elections as opportunities for malign influence as part of its larger foreign policy strategy,” and the Kremlin continues to look for ways to undermine American democracy.<sup>2</sup>

Not only have foreign and domestic threats to American elections evolved and metastasized but they also fuel one another. In 2020, election falsehoods were mostly spread by domestic political actors, who used tactics similar to those that Russia exercised four years earlier, while Russian agents amplified these lies.<sup>3</sup> After the election,

Iranian operatives drew on the anger some Americans felt about the outcome to incite violence against election officials.<sup>4</sup> Even if foreign cyberattacks are not technically successful, they can still exacerbate domestic distrust of elections.<sup>5</sup> In fact, foreign actors do not even need to attempt a cyberattack to cast doubt on election security, as Iranian operatives demonstrated in 2020 with a video that created the illusion that someone had hacked a state voter registration system.<sup>6</sup>

Taken together, these trends have rendered U.S. election systems increasingly vulnerable. Over the next 18 months, policymakers must address four overlapping threats to election security: the spread of false information to undermine election results and prevent citizens from voting; harassment, intimidation, and physical violence against election workers and officials; insider attacks; and cyberattacks against election infrastructure.

These challenges require a whole-of-government response. At the federal level, DHS — in particular, its Cybersecurity and Infrastructure Security Agency (CISA), which defends and secures the nation's critical infrastructure — along with the Election Assistance Commission (EAC), the FBI, and other federal agencies should direct more resources to combat these threats. Additionally, the Department of Justice (DOJ), via its task force on election threats, should bolster its relationships with and provide further guidance to local law enforcement and election officials.

State legislatures should make it easier for officials to combat election lies, protect election workers, prevent insider attacks, and guard against cyber threats. New laws should give election officials more flexibility to count ballots faster, expand protections for elections workers, and outline restrictions to safeguard election systems from tampering and unauthorized access.

Finally, state and local election officials should expand their efforts to protect elections, including preempting misinformation with official web pages that disprove rumors about election systems; adopting measures to prevent, detect, and respond to insider threats; and creating contingency and communications plans in the event of a cyberattack.

The time is now to defend the election process against future threats. American democracy depends on it.

TABLE 1

**Key Recommendations for the Federal Government, State Legislatures, and State and Local Election Officials**

THREATS	FEDERAL GOVERNMENT	STATE LEGISLATURES	STATE AND LOCAL ELECTION OFFICIALS
<p><b>Spread of false information</b></p>	<ul style="list-style-type: none"> <li>▪ CISA should share best practices for strengthening societal resilience to the spread of false election information — including falsehoods generated by AI — and promote the dissemination of accurate information from election officials, including through public-private partnerships.</li> <li>▪ CISA should escalate efforts to help local officials adopt and transition to .gov domains for election websites.</li> <li>▪ The EAC, working with CISA, should build public awareness and confidence in voting system security.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Mandate that local election offices use .gov domains.</li> <li>▪ Prohibit the spread of materially false information concerning the time, place, or manner of voting with the intent to prevent voters from exercising their right to vote.</li> <li>▪ Allow earlier processing and counting of mail ballots.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Dedicate resources to anticipate and refute false election information through public outreach.</li> </ul>
<p><b>Harassment and threats of physical violence</b></p>	<ul style="list-style-type: none"> <li>▪ CISA should increase resources to protect election workers and sites, including by establishing regional election leads and increasing the number of protective security advisers (PSAs).</li> <li>▪ DHS should continue to require states to spend a portion of homeland security grants on election security, as it did in 2023.</li> <li>▪ DOJ’s election threats task force should expand coordination with local election officials and law enforcement and reduce barriers for reporting threats.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Fund physical security protections and training.</li> <li>▪ Allow election workers to protect personally identifiable information.</li> <li>▪ Prohibit intimidation and doxing of election workers and ensure that all workers receive protection throughout the entire election process.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Direct federal grant funding to physical security needs.</li> <li>▪ Improve election workers’ access to address confidentiality programs.</li> <li>▪ Provide training on protecting personal information.</li> </ul>

*Continued on next page*



Continued from previous page

THREATS	FEDERAL GOVERNMENT	STATE LEGISLATURES	STATE AND LOCAL ELECTION OFFICIALS
<p><b>Insider threats</b></p>	<ul style="list-style-type: none"> <li>▪ CISA should expand its insider threat services by creating additional best practice checklists, developing self-assessment tools, and training PSAs on these materials.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Limit access to critical election infrastructure to officials and others needed to ensure that those systems function.</li> <li>▪ Establish authority to prohibit individuals who violate election laws from administering elections and to decommission jeopardized equipment.</li> <li>▪ Require election officials to use voting machines for initial ballot counts in all but the smallest jurisdictions, followed by bipartisan hand-count audits.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Develop regulations, protocols, and training to prevent, detect, and respond to insider attacks.</li> </ul>
<p><b>Cyberattacks</b></p>	<ul style="list-style-type: none"> <li>▪ DHS should ensure that a portion of State and Local Cybersecurity Grant Program funding is set aside for election security.</li> <li>▪ CISA should increase resources to protect election systems, including by establishing regional election leads and hiring additional cybersecurity advisers (CSAs).</li> <li>▪ DHS, DOJ, CISA, and the EAC should educate election officials on federal grant opportunities and help direct funding to the areas of greatest need.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Fund the replacement of outdated election systems.</li> <li>▪ Mandate robust postelection audits.</li> <li>▪ Launch cyber navigator programs to help local jurisdictions defend against cyberattacks.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Adopt backup systems that allow voting to continue in the event of technical failures or resource shortages.</li> <li>▪ Develop and promote resources to improve the implementation of contingency plans.</li> </ul>

# I. Combat Election Falsehoods

---

**A**fter the 2020 election, then President Trump and other prominent politicians and public figures conducted a sustained campaign to attack the bedrock of democracy by promoting false election claims, which were then amplified by foreign adversaries looking to damage confidence in American elections.<sup>7</sup>

These deceptions contributed to plunging levels of trust in elections, extraordinary threats against election officials, and a flood of election worker exits.<sup>8</sup> Lies propagated by President Trump and other high-profile election deniers precipitated an insurrection attempt at the U.S. Capitol on January 6, 2021. Looking forward, advances in AI technology could be weaponized to produce deceptive social media posts, messages, images, and videos on a more massive scale and with a greater level of ostensible credibility in the 2024 election. Falsehoods about the election process intended to trick people out of voting — unfortunately a long-standing feature of the U.S. election landscape — compound the dangers of election denialism.

While the pall on democracy cast by election lies may seem like an intractable problem, all levels of government can take proactive steps to curtail the harm. Among other efforts, federal and state governments can work together to encourage local election offices to use .gov domains so the public can easily distinguish official election websites from spoofed ones. State legislatures can pass laws to reduce the spread of false claims about the election process that threaten to suppress the vote, and they can accelerate mail ballot counts to limit rumors from spreading in the uncertain period before election results are certified. And federal agencies, election officials, and civic groups can build the public's resilience by taking action to anticipate and rebut common false narratives about elections.

## Curb Deceptive Practices

Lies about how, when, and where to vote — often targeted particularly at Black and Latino voters — have long been used to trick Americans out of voting, especially in the final days leading up to an election.<sup>9</sup> These falsehoods have historically circulated through flyers, phone calls, and other means; in recent years, social media and methods of digital deception, such as the hacking and spoofing of official election websites and accounts, have greatly expanded their reach. These methods are bound to become more sophisticated over time.

**>> With federal and state assistance, election offices should transition their websites to .gov domains.**

Election websites give voters essential information on voter registration, mail ballot requests and processing, residency

and ID requirements, polling site locations and hours, and other election issues. Fake election websites intended to deceive and disenfranchise voters use broadly available .com or .org domains that appear to represent local election offices.<sup>10</sup> During the 2020 election, the FBI identified dozens of duplicitous websites mimicking federal and state election domains.<sup>11</sup> The FBI and CISA have specifically warned that foreign adversaries use spoofed websites as a tool to spread and amplify false claims about elections.<sup>12</sup>

To guard against spoofing and interference, federal and state governments should work together to ensure that election offices adopt .gov domains — which only verified U.S.-based government entities can use — for their websites. When users see .gov in a website URL, they can be sure that they are visiting a trusted government source.<sup>13</sup> Adopting .gov domains would allow users to differentiate more easily between real and fake election office websites. Only one in four election websites currently uses a .gov domain.<sup>14</sup>

CISA, which administers .gov domains, should stress the government domain's national security importance in its messaging to election offices. It should also conduct more outreach to election officials through the Elections Infrastructure Information Sharing and Analysis Center (EI-ISAC), an organization that shares election-related cyber defense resources among election officials and cybersecurity professionals.

States should require local election offices to use .gov domains, either by statute or, where authorized, by regulation or directive (as Ohio Secretary of State Frank LaRose did in 2019).<sup>15</sup> Doing so would facilitate the transition for election officials who do not control their own websites and are dependent on their counties or municipalities for IT support. Registration for .gov domains is now free for election offices verified by CISA.<sup>16</sup> And states and localities can use federal funds from DHS's newly launched State and Local Cybersecurity Grant Program (SLCGP) for other costs associated with transitioning to new domains. In creating the grant program, Congress explicitly referred to “the delivery of safe, recognizable, and trustworthy online services . . . including through the use of the .gov internet domain.”<sup>17</sup>

**>> State legislatures should pass laws to curb the spread of materially false information intended to disenfranchise voters.**

States should pass laws to prohibit individuals from disseminating materially false information regarding the time, place, or manner of an election or the qualifications

for voter eligibility with knowledge that the information is false and with intent to prevent or deter a voter from exercising their right to vote. Such laws should cover the immediate window before an election — such as within 90 days of Election Day — and be narrowly tailored to address deliberate lying about voter eligibility or voting locations, methods, and times with the intent to disenfranchise voters.

States should also create a private right of action that allows affected voters and other aggrieved parties to sue individuals who violate this prohibition for preventive relief against ongoing efforts to deliberately spread election falsehoods. The laws should further authorize state attorneys general to bring civil enforcement actions against violators to prevent the continuing spread of false election information. To help provide more immediate relief, state laws should allow members of the public to report violations to the state attorney general and should require the attorney general to take reasonable steps to correct the materially false information if the office receives a credible report that an individual or entity has violated the law. The corrective actions should include, where appropriate, written and electronic communications, public statements, and the use of emergency alert systems that reach those exposed to deceptive claims.<sup>18</sup>

Some states have passed or are considering bills that would target deceptive election practices. Kansas, Minnesota, and Virginia already bar the knowing spread of materially false election information about the time, place, and

manner of elections that is intended to block votes.<sup>19</sup> Mississippi, Minnesota, and New York have considered bills for the 2023 legislative session that would further hinder specious election claims, and Michigan legislators have plans to introduce a bill with similar provisions.<sup>20</sup>

## Speed the Counting of Mail Ballots

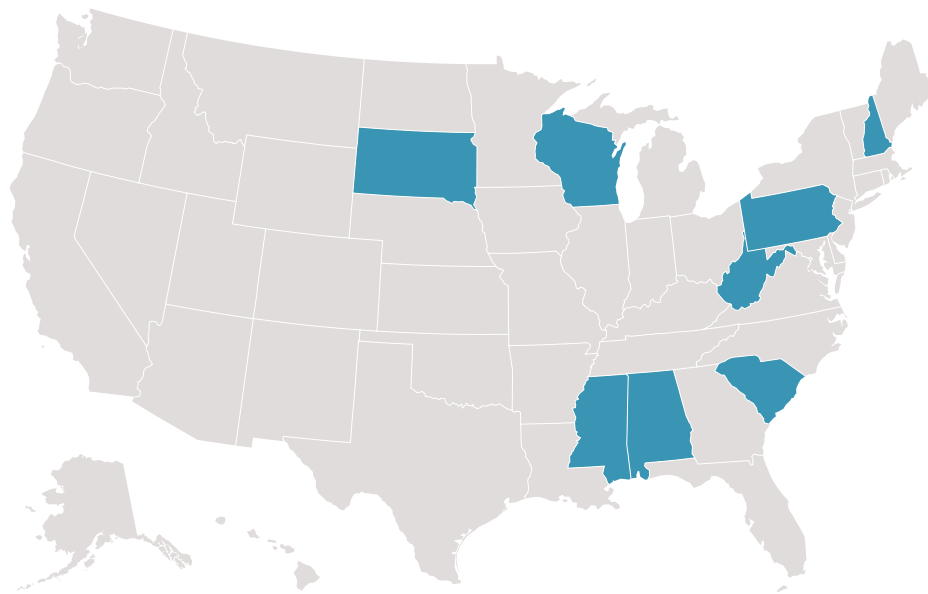
When the demand for accurate information on an election topic outpaces the supply — as can happen when the public needs to wait for ballots to be counted to learn the outcome of an election — false narratives can seep in and fill the resulting information vacuum. After many states expanded mail voting access in 2020 due to the Covid-19 pandemic, then President Trump and other prominent election deniers exploited an underinformed public by attacking the mail voting process and sowing election lies in the fertile ground of uncertainty.<sup>21</sup> With Republicans urging voters not to vote by mail, mail ballots skewed Democratic; as a result, the slow count of mail ballots superficially seemed to change the direction of race outcomes — an especially strong focal point of election conspiracies.

### >> State legislatures should allow and expand preprocessing of mail ballots.

This lengthy delay in result reporting and consequent cycle of mistrust is not inevitable. Ahead of Election Day,

FIGURE 1

### States That Do Not Allow Any Preprocessing of Mail Ballots Before Election Day



Source: National Conference of State Legislatures.

most states allow election officials to preprocess mail ballots by verifying voters' identities, opening ballot envelopes, and scanning ballots into tabulators so that absentee ballot results can be obtained as soon as polls close. But some states — Alabama, Mississippi, New Hampshire, South Carolina, South Dakota, West Virginia, and the key battlegrounds of Pennsylvania and Wisconsin — do not allow any preprocessing of mail ballots before Election Day (see figure 1).<sup>22</sup> Those states should act to allow and encourage election officials to preprocess mail ballots ahead of Election Day.<sup>23</sup> And even states that allow some preprocessing before Election Day should increase the time period permitted. For example, while the Michigan legislature last year authorized election officials to preprocess mail ballots two days ahead of Election Day for some elections, the secretary of state and many election officials argued that a period of seven days is needed.<sup>24</sup>

For the 2023 legislative session, West Virginia and New Hampshire are each considering bills with provisions that would make it faster to count mail ballots.<sup>25</sup> The Maryland legislature, meanwhile, has passed a bill that will require mail ballot preprocessing to start ahead of Election Day.<sup>26</sup>

## Build Resilience to False Election Claims

In the battle to stave off election disinformation, falsehoods have a particular edge: they swiftly emerge and proliferate, and there is inevitably a lag before officials can correct misperceptions. But recent studies offer insights into how to better combat election misinformation by building greater resilience ahead of time and, where possible, anticipating and preempting false narratives that will likely recur across different election contexts.

Indeed, election deniers rely on core deceptions that surface repeatedly.<sup>27</sup> Across major social media platforms during the 2022 midterms, these persistent tropes included stories assailing the integrity of mail ballots and voting machines, lies exploiting confusion about the vote counting timeline, and baseless accusations of noncitizens using names of the deceased to cast fraudulent ballots.<sup>28</sup> Additionally, when glitches occur on Election Day — typically innocuous mistakes that are quickly resolved — election deniers immediately spin stories that trade on these timeworn fabrications.<sup>29</sup>

The recurrent nature of deceptive election tropes means that election officials, public leaders, and civic organizations can prepare for the false claims that election deniers may make by educating voters to identify misinformation, providing facts to refute persistent falsehoods, and guiding the public toward reliable sources of information.

### >> CISA and state and local election officials should develop and promote rumor control resources.

CISA's rumor control web page resource, Election Security Rumor vs. Reality, offers a good example of how officials can refute recurring election falsehoods by providing factual information geared toward the general public in a centralized location.<sup>30</sup> Many states — including Connecticut, Kentucky, and Ohio — have launched similar efforts, managing their own rumor control pages, hiring dedicated staff to organize and share factual information with voters, and publishing explainers that highlight the many steps election officials take to keep elections secure and accurate.<sup>31</sup>

Public officials at all levels must do more to expand these initiatives: CISA should augment its existing rumor control program by updating resources and ensuring broad dissemination, including to civil society organizations best equipped to amplify accurate information to groups targeted by disinformation campaigns. More states and local jurisdictions should also launch their own efforts with these same goals.

### >> The EAC should undertake a broad communications effort to build public awareness and confidence in voting system security.

As previously discussed, spurious claims about the integrity of the nation's voting machines will likely be a core false narrative in the lead-up to the 2024 election. The EAC plays a crucial role in bolstering voting system security through its development and maintenance of the Voluntary Voting System Guidelines (VVSG), a national voting system testing and certification program that independently verifies voting system compliance with security, accessibility, and usability best practices.<sup>32</sup> As the EAC implements the latest version of the VVSG, adopted in 2021, the agency has produced essential guidance and resources to help election officials explain these new standards to voters and counter anticipated disinformation about the legal and practical implications of this transition.<sup>33</sup>

While the existing guidance and resources are an excellent step, the EAC should also work closely with CISA to proactively rebut election falsehoods by launching a broad communications and outreach effort to raise public awareness of the VVSG, how these standards protect election security, and what additional steps states can and will take to protect voting systems. As an independent, bipartisan federal agency with voting system expertise, the EAC is uniquely well-suited to push back on disinformation and build stronger public confidence in these systems.

In addition to creating templates and resources for election officials to adopt, the EAC should do more to reach the communities where deceptive rumors are likely to gain traction. Such efforts should include strengthening

connections with government agencies, nonprofits, community organizations, and other entities that are positioned to reach various segments of the American public and preparing tailored resources and information that these groups can convey to their audiences.

### >> States should conduct targeted voter education and outreach efforts to preempt false election information.

As part of outreach efforts to curb election falsehoods, election officials and government agencies should educate voters about the timeline for counting votes and certifying election results. They should also explain existing security safeguards that preserve the integrity of voting, the vote-by-mail process, and vote counting machines. In past election cycles, various election offices have created videos to clarify how mail ballots are processed and counted, posted Election Day infographics to social media to explain the expected timeline for election results, and invited the public to participate in supervised tests of voting machines.<sup>34</sup> State legislatures should devote adequate funding to election offices for voter education and outreach efforts that help mitigate the spread of false election claims.

### >> CISA should encourage public-private partnerships and share best practices with a wider network to build societal and institutional resilience to online disinformation.

Disinformation campaigns are likely to become increasingly sophisticated, persuasive, and widespread with continuing advances in AI and other emerging technologies. Beyond trying to get ahead of specific false claims, steps must be taken to build resilience to disinformation by improving digital and information literacy and increasing public understanding of election security. There is near universal agreement among election officials about how important this work is: in a 2023 Brennan Center for Justice Survey of local election officials, 85 percent stated that they believe it is beneficial for CISA to dispel falsehoods about elections by promoting accurate information about election administration and technology.<sup>35</sup> Building resilience to election disinformation also helps protect against foreign adversaries that seek to exploit election denialism to their own advantages. CISA and the executive branch as a whole must expand their roles in guarding against election falsehoods.

CISA should implement many of the suggestions that its Cybersecurity Advisory Committee (CSAC), an independent body that provides strategic recommendations to the agency's director, called for in its 2022 report "Protecting Critical Infrastructure from Misinformation and Disinformation."<sup>36</sup> In particular, CISA should

- build societal resilience to mis- and disinformation through broad public awareness campaigns, heightened information literacy, and civics education;

- convene government agencies, social media platforms, traditional media, researchers, businesses, faith and community organizations, and election officials to plan for expected threats during the 2024 election cycle;<sup>37</sup> and
- promote information from firsthand sources of facts, such as election officials and .gov election office websites.

Over the last few years, CISA has created or facilitated the creation of numerous publications intended to build societal resistance to disinformation and assist state and local jurisdictions to prepare for, identify, and combat disinformation. One example is its Tactics of Disinformation series, which provides real-world examples of disinformation campaigns by foreign governments as well as actions that state and local governments can take to limit the effects of similar campaigns. CISA has also encouraged parallel efforts through a working group led by state and local election officials alongside representatives from federal agencies, law enforcement, and election security industry partners. The group has supplied multilingual and accessible media resources to help election officials prepare for and respond effectively to falsehoods "that may impact the ability to conduct elections."<sup>38</sup>

CISA must continue to grow this work. The agency and the working group should expand the reach of their public-private partnerships, remaining closely connected and responsive to the current needs of stakeholders at the local and state levels. CISA and the working group should also continue to expand the existing mis-, dis-, and malinformation resource library with updated, multilingual, and multimedia resources and information on best practices to help election officials boost digital literacy around existing election security safeguards, improve access to accurate election information in their communities, and combat election falsehoods.<sup>39</sup> The agency should also provide election offices with resources to address the proliferation of rumors due to rapidly advancing generative AI capabilities.

Finally, CISA should expand its efforts to include broader networks to prepare for and build resilience to false election narratives ahead of the 2024 election. Specifically, CISA should enlist

- governmental associations such as the EAC, the National Association of Counties, the National Conference of State Legislatures, the National Governors Association, the National League of Cities, and the U.S. Conference of Mayors;
- chambers of commerce and other business associations; and

- community-based organizations, “especially organizations in specifically targeted communities, including veterans, faith communities, the Black and Latino communities, [and] immigrant communities,” as CSAC recommends.<sup>40</sup>

These networks will help build institutional resilience to disinformation campaigns and bolster the dissemination of accurate election information to all voters.



## II. Protect Election Workers

---

The people who run U.S. elections have become a target for those seeking to undermine American democracy.<sup>41</sup> The 2023 Brennan Center survey found that nearly one in three local election officials had faced harassment, abuse, or threats, and almost half were concerned about their colleagues' safety in future elections.<sup>42</sup> During the 2022 midterms, an election official in Arizona was forced into hiding for fear of his safety. And in 2023, authorities arrested a losing candidate in New Mexico in connection with shootings at the homes of elected officials whom he had previously approached with false allegations of election fraud.<sup>43</sup>

This disturbing trend is taking a toll on election officials, and many have left their jobs as a result. Indeed, 12 percent of election officials who responded to the survey began their positions after the 2020 election, and 11 percent say they are unlikely to continue to serve in the 2024 presidential election.<sup>44</sup> The loss of institutional knowledge that accompanies this turnover can lead to more administrative mistakes, which in turn fuel further conspiracy theories, distrust in the electoral process, and threats — or worse — against election workers.

The vicious cycle must be stopped. Although the United States avoided widespread violence in 2022, the 2024 election will bring more division and heightened tensions. More sophisticated and easily accessible AI tools could result in a rise of deepfakes — manipulated images, video, and audio used to misrepresent election officials and exacerbate threats against them. Now is the time to take action to protect election workers — and, ultimately, the electoral process.

Among other things, the federal government and the states must equip election officials with the resources they need to protect themselves and their staffs by providing additional funding opportunities and better communication as to how to access such funds. State lawmakers must also protect election workers proactively through greater privacy safeguards and updated laws that guarantee adequate protections not just at the polling place but in other locations where they are increasingly threatened, including at ballot tabulation centers and at home. Finally, federal, state, and local law enforcement must work together with election officials to ensure accountability for those who carry out attacks on democracy.

### Increase Federal Support to Election Officials

The Russian cyberattacks in 2016 were met with a massive, coordinated federal response. DHS began by designating election systems as critical infrastructure.

CISA followed by augmenting agency capabilities and establishing consistent, regular communication and information sharing with election officials. U.S. election infrastructure has faced unprecedented pressures and skepticism in the years since, but the system has been resilient in large part because of these federal efforts.

As threats have expanded from infrastructure to election workers, however, the federal government has failed to respond with the same level of investment or coordination. And election officials have noticed: in the Brennan Center's survey, nearly three in four election officials said that the federal government is either doing nothing to support them or not doing enough.<sup>45</sup> These agencies and departments must be proactive to protect election workers and demonstrate to the people running elections that the federal government has their back.

#### >> CISA should increase physical security guidance and resources for election workers and utilize regional election leads to coordinate outreach to election officials.

Amid heightened international and domestic conflict and ahead of a likely contentious presidential race in 2024, CISA must expand its work with local election offices over the next 18 months, and it must be given the resources it needs to do so. In the Brennan Center's Survey, only 31 percent of local election officials said that they were aware of CISA's physical security assessments, and just 20 percent of those who were aware availed themselves of this free service.<sup>46</sup>

CISA should increase the number of protective security advisers (PSAs) — experts in critical infrastructure who are trusted partners of government officials — available to assist local election offices with physical security assessments (and, as discussed in the next section of this report, offer insider threat guidance). The agency should also establish regional election leads to coordinate PSA outreach to election officials.

CISA should also release an election security strategic plan ahead of 2024, as it did before the 2020 election.<sup>47</sup> Such a plan is an opportunity to highlight physical security guidance and outreach along with other election

security priorities. Releasing and publicly promoting a strategic plan will help public officials and civil society understand what the most pressing challenges are, where to deploy resources, and what gaps need to be filled in the run-up to the presidential election.

### **>> DOJ should expand engagement with local election officials and law enforcement and reduce barriers to reporting threats.**

In 2021, DOJ announced an election threats task force “to address the rise in threats against election workers, administrators, officials, and others associated with the electoral process.”<sup>48</sup> In the years since, the task force has made only limited progress. Some critics point to the limited number of prosecutions since the task force launched: as of August 2022, DOJ had only charged eight cases out of more than a thousand reported threats, and only one had led to a conviction.<sup>49</sup> But frustration has also stemmed from a lack of information sharing between the federal effort and local officials — including both election officials, who are unsure how to report threats or whom to report them to, and local law enforcement, who receive incident reports from election officials but lack the resources and national context available at the federal level. The Brennan Center’s survey found that 83 percent of local election officials have a specific point of contact with local law enforcement compared to just 5 percent who have a point of contact with federal law enforcement, and that election officials who faced threats were seven times more likely to report those threats to local law enforcement than they were to federal law enforcement.<sup>50</sup>

DOJ can take several steps to improve coordination and information sharing with these groups. First, the election threats task force should develop stronger partnerships, both formal and informal, with law enforcement at the local and state levels. DOJ could expand the task force through an enhanced collaborative model or by forming an advisory board of representatives from local and state law enforcement.

DOJ should also hire a senior adviser who has existing relationships with election officials to support and expand the department’s outreach capacity. When CISA made a similar hire following the 2017 designation of election systems as critical infrastructure, the agency greatly improved both trust and collaboration with state and local election offices.<sup>51</sup> The Brennan Center’s survey suggests that a DOJ hire could have the same impact — 89 percent of election officials said that hiring a staff member with experience and connections in the election community would increase their willingness to work with and trust DOJ.<sup>52</sup> The department has recently taken what may be a positive step in this direction, posting for a new “election community liaison position,” but it remains to be seen who will be hired for this position and whether their previous work will garner the election community’s trust.<sup>53</sup>

Finally, DOJ should reduce barriers for election officials to report threats or harassment. Enabling individuals making reports on the FBI’s website to simultaneously upload supporting materials, including pictures, audio recordings, and screenshots of threatening messages, is one way to do so. DOJ representatives should also encourage greater reporting in public messaging with election officials by highlighting how reports — even those that do not result in charges being filed — are used in investigations, tracked, and included in systems for future investigative work.

## **Provide Funding for Physical Security**

When conspiracy-driven protesters showed up to election offices in the aftermath of the 2020 election, they brought more than signs, megaphones, and cameras. Many carried guns. Armed individuals showed up in front of vote counting locations in Arizona, Michigan, Nevada, and Pennsylvania.<sup>54</sup> Guns also feature prominently in the threats that election officials receive: in Oregon, an election official looked down from her office to see the words “Vote don’t work. Next time bullets.” painted in large white letters in the parking lot below.<sup>55</sup>

State and local election officials need funding to bolster physical security at their offices and, when necessary, their homes. The needed security improvements — which include door locks, bulletproof doors and windows, panic alarm systems, key card access controls, exterior and parking lot lighting, security gates and fencing, communications systems, personal security training, and personal information protection services — would come at a significant cost: as much as \$300 million nationally.<sup>56</sup> While some election offices have been able to upgrade their security, many more under-resourced offices have been unable to address even the most basic physical security vulnerabilities. Among the 54 local election officials interviewed by the Brennan Center who had received a CISA physical security assessment, insufficient funding was by far the number one reason cited for not implementing all the recommended improvements.<sup>57</sup>

### **>> DHS, DOJ, CISA, and the EAC should promote federal grant opportunities and help direct available funding to the areas of greatest need.**

Existing federal grant programs can provide funding for physical security. DHS recently announced that state recipients of Homeland Security Grant Program (HSGP) funding will be required to spend at least 3 percent of received grants on election security needs in 2023 and to consult with their chief state election officials on how the funds should be used.<sup>58</sup> This change will result in around



\$30 million in new funding for election security, including physical security improvements to protect election workers. DOJ also announced in 2022 that funds from the Edward Byrne Memorial Justice Assistance Grant (JAG) program could be used to protect election workers. However, to date, very little of this funding has made its way to election offices.<sup>59</sup>

Federal agencies and departments should increase outreach to state and local election officials to spread awareness of all federal funding opportunities that can be used to improve election workers' safety and security. CISA is particularly well-suited to coordinate and conduct this outreach, because of the relationships and trust the agency has built in the election community and its cyber and physical security expertise. CISA should develop a comprehensive communications plan for new regional election leads with the goal of proactively promoting federal funding opportunities and offering guidance on the most effective uses for available funding. Through EI-ISAC, CISA should also raise awareness of the new HSGP election security requirement, as well as SLCGP funding opportunities. And it should continue outreach and briefings on spending requirements with election officials and state administrative agencies that plan grant spending.

In addition, DOJ should urge state administrative agencies that plan JAG grant spending to prioritize election security needs and promote funding availability. The EAC can also play a role in educating election officials about the full suite of federal resources available to them.

### >> State and local officials should make more funding available for physical security needs.

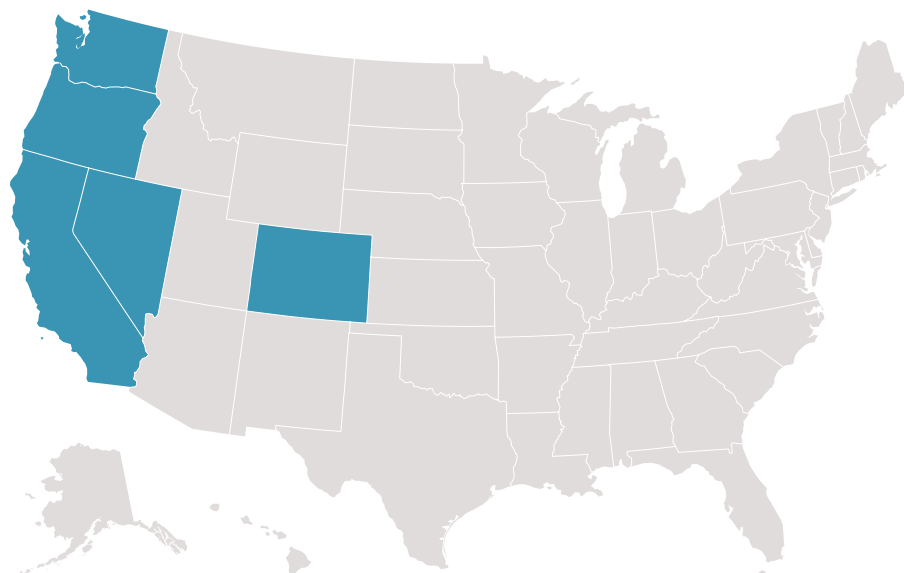
Federal grant funding alone will not be enough to address the physical security challenge. Yet despite the threats facing election officials and the rapid turnover of elections staff, few states have dedicated new funding to help election officials better protect themselves, their staffs, and their voters. State and local officials must direct funding toward augmenting the security of election offices, polling places, and counting facilities.

## Protect Personally Identifiable Information

Threats to election officials and workers have not been contained to their offices; election officials have also been harassed and intimidated at their homes. Their parents, children, and other loved ones have been targeted as well.<sup>60</sup> Following the 2020 election, dozens of armed individuals stood outside Michigan Secretary of State Jocelyn Benson's home "shouting obscenities and chanting into bullhorns" as she was decorating her house for Christmas with her four-year-old child.<sup>61</sup> An election official in Milwaukee received a letter at her home calling her "a traitorous c\*\*\*," prompting her to leave the state with her children for 10 days.<sup>62</sup> Many more officials have had their home addresses and phone numbers shared on the internet.<sup>63</sup>

FIGURE 2

### States That Have Passed Laws Since 2020 to Help Election Workers Protect Personal Information



Source: Cal. S.B. 1131 (2022); Colo. H.B. 22-1273 (2022); Nev. A.B. 321 (2022); Or. H.B. 4144 (2022); and Wash. S.B. 5628 (2022).

While election officials hold public-facing positions and must be accessible to their communities, this cannot mean that they forfeit all personal safety and security or the safety of their loved ones. Election workers need reasonable protections to keep their personal information private and help them feel safer in their jobs. In the wake of Congress's recent failure to act on proposed protections, states must lead the way.<sup>64</sup>

### >> State legislatures should pass laws that allow election workers to protect their personal information.

In 2022, several states passed laws that make it easier for election officials to keep their home addresses private (see figure 2). Oregon enacted legislation that allows election officials to have their addresses exempted from disclosure by county clerks as public records.<sup>65</sup> Colorado passed a bill allowing election officials at the state, county, and local levels to file a request with a government entity to remove personal information from online records.<sup>66</sup> California and Washington opened their address confidentiality programs to election workers who are targeted with threats or harassment.<sup>67</sup> Nevada allowed election officials to request a court order requiring their personal information to be kept confidential.<sup>68</sup> All states should implement similar protections.

Address confidentiality programs, which many states have already established, present an existing solution. These programs can offer substitute addresses to qualifying election workers who fear for their safety or the safety of their families, mitigating the risk that hostile individuals will target their homes or use their personal information to threaten them. State legislatures should pass laws that specifically permit election workers to qualify for these programs.

### >> State officials should make address confidentiality programs more accessible to election workers.

In some states, election workers who have faced threats or fear for their safety may already be eligible for existing address confidentiality programs, even without legislative changes. In these cases, the official who oversees the address confidentiality program — often the secretary of state or attorney general — should conduct outreach and issue guidance to make it easier for election workers to avail themselves of such programs' benefits. These officials should take the following steps:

- Clarify that election workers do not have to move from their current residence to qualify for the program's benefits, as guidance for some address confidentiality programs currently asserts. Although these requirements may make sense for certain applicants who are survivors of domestic violence or stalking, they create unnecessary

hurdles when the risk of harm does not stem from a single identifiable person. Election workers can still benefit from having their addresses less visible in public sources even if they remain at their current addresses.

- Train local election officials on how to assist workers in their offices with applications for address confidentiality programs.
- Assure that election workers need only assert in good faith that they meet the qualification standards for the program, such as being a target of ongoing threats or having a reasonable fear for safety, as applicable to the state's statute.

### >> State legislatures should fund training and services to help election workers better protect their personal information online.

While laws extending personal information protection to election workers are much needed, they are not sufficient. States should supplement these protections with funding for personal information protection and online safety training. Such training could cover how election workers can avoid revealing their and their families' personal information or location, including turning off location tags in social media posts, asking websites to remove personal information, and avoiding posts that might inadvertently reveal locations of schools and homes. Grant funding could also pay for services from outside providers that help scrub personally identifying information for officials, conduct monthly checks to prevent information from becoming public again, and offer tailored guidance on how to protect personal information in the future.

## Update Laws on Threatening and Doxing Election Workers

Although some states have advanced bills that would add new criminal penalties for threatening election workers, federal and state laws already on the books would cover most violent threats. Yet perpetrators have largely avoided accountability because too often these laws have not been enforced or incidents have not been fully investigated under the statutes. Federal, state, and local law enforcement must take these threats against election officials seriously and improve systems for reporting and investigating improper conduct.

State legislatures can encourage a more robust response by making sure that these existing laws reflect changing election systems and clarifying that intimidating an election worker because of their job is not protected speech.

**>> State legislatures should ensure that laws that prohibit threatening election workers apply to all election workers throughout the entire election process.**

As voting options have expanded in recent decades, election workers now serve in a broader variety of roles and interact with the public during a longer period — not just at polling places on Election Day but also at election offices, early voting locations, ballot drop boxes, and canvassing facilities. And individuals who seek to disrupt elections do so not just through intimidation at polling places but more generally with threats against those who administer elections wherever they are, before, during, and after Election Day.

States should ensure that existing laws prohibiting threats, harassment, and intimidation apply to all election workers performing election administration responsibilities, regardless of where the incident occurs. New Mexico recently expanded a law that previously only covered intimidation of poll workers, voters, and poll watchers to also include the secretary of state, county or municipal clerks, and any employees of these offices.<sup>69</sup> A bill in Virginia would amend a law that currently only covers threats at polling places to cover all threats against election workers intended to prevent them from administering elections.<sup>70</sup>

**>> State legislatures should pass laws that prohibit doxing election workers.**

States should also update or pass laws to prohibit doxing of election workers — the publication of an election worker’s personal information with the intent to threaten their safety or with knowledge that the information will be used to facilitate threats against them. Colorado passed a bill in 2022 making it illegal for someone to intentionally share personal information about an election official or their immediate family on the internet if the sharing of

that information creates an immediate and serious threat to their safety and the person sharing the information knows or should know about that danger.<sup>71</sup> Maryland is considering a bill with similar language.<sup>72</sup> A bill introduced in Oklahoma would add election officials to an existing anti-doxing statute that already covers state government officials.<sup>73</sup>

Such bills help to establish accountability for threats in which an election worker’s personal address, telephone number, or other information is shared alongside direct calls for violence, putting their and their families’ safety at risk.

**>> State legislatures should provide state attorneys general and election workers with tools to bring civil actions against those making illegal threats.**

Civil actions are a potential pathway to enforce prohibitions on threatening or intimidating election workers. State attorneys general and affected election workers themselves should be allowed to seek civil relief against someone making illegal threats, including by seeking a restraining order to prevent ongoing harm.

The federal Voting Rights Act offers a model for this kind of law. It prohibits individuals from intimidating or threatening any person for “voting or attempting to vote” or “for urging or aiding any person to vote or attempt to vote.”<sup>74</sup> If an individual violates this prohibition, or if there is reason to believe that someone is going to violate this provision, federal law authorizes the U.S. attorney general and other covered persons to sue in court for a temporary or permanent injunction, restraining order, or other equitable relief to prevent ongoing harm.

States should enact similar provisions to protect election workers. In doing so, state legislatures should expressly state that the law prohibits intimidation or threats against all election workers performing election administration duties.

### III. Defend Against Insider Threats

---

**A**lmost one-third of Americans still believe the false narrative that Joe Biden won the 2020 presidential election due to fraud.<sup>75</sup> Unsurprisingly, some of the more than 8,000 local election officials — along with tens of thousands of public- and private-sector employees who support their work — also buy into this conspiracy theory. Even on a very small scale, the endorsement of election misinformation by individuals charged with administering elections is a particularly dangerous threat to democracy.

Throughout and since the 2020 election, election officials and workers who support election falsehoods have attempted to use their access to voting systems or positions of power in a manner that undermines election security. These insider threats include sharing access to critical election systems with election deniers, spreading false information about the security of elections and election equipment, attempting to replace voting systems with less accurate and less secure methods for counting ballots, and refusing to perform mandated responsibilities, such as certifying election results.

In 2022, election deniers running for office in battleground secretary of state contests were roundly rejected. But in other states, election deniers won those races.<sup>76</sup> And across the country, many more won contests or were appointed at the local level, where ballots are counted and election operations are run.<sup>77</sup> As election deniers continue to influence or replace election workers, the risk of insider threats will grow.

Accordingly, officials at all levels of government must blunt efforts to improperly access or misuse critical election infrastructure. They must also implement policies that make it more difficult for a rogue election administrator or worker to disrupt processes in a way that confuses or delays certification of accurate election results.

#### Set Access Restrictions

Since 2020, there have been at least 17 reported incidents in which election deniers have gained or attempted to gain access to voting systems, often in coordination with an election official or worker.<sup>78</sup>

In one such occurrence, a county clerk in Colorado with connections to prominent election conspiracy theorists gave unauthorized individuals access to the county's voting system, allowing them to copy the hard drives of the voting equipment.<sup>79</sup> The information obtained was later shared online, resulting in a state investigation, which found that the county clerk had given an unauthorized person a key card and turned off video surveillance of the voting machines.<sup>80</sup>

To prepare for similar future attempts, states must have protocols in place not only to prevent unauthorized access to critical election systems but also to detect and respond to such access if these preventive measures fail.

#### >> State legislatures should pass laws to limit access to election infrastructure and ensure that election offices can catch any unauthorized actions.

State legislators should set broad, baseline requirements for election system access in state law, including rules for monitoring and storing voting machines, which have been the most frequent target of election deniers. Following the breach in Colorado, the state legislature passed a law requiring election offices to keep all voting systems in a location monitored by 24/7 video surveillance and secured by a key card access system that logs the name, date, and time of each entrance.<sup>81</sup>

When determining the baseline requirements to set in statute, state legislatures must avoid standards that are so rigid that they cannot be updated as technology and security concerns evolve. Rather than dictating specific technology or security systems, legislation should focus on the outcome of such protections — for example, by requiring local election offices to have a system that can keep unauthorized individuals out of voting system storage and automatically produce a log of all entrances rather than mandating a particular system that would accomplish this task.

To ensure conformance with the latest cyber and physical security best practices, state legislatures should direct the chief state election official to issue and regularly update more detailed regulations and guidance on voting system access. States can also include this direction within a broader mandate that the chief election official produce a complete, enforceable election procedures manual. Legislators in Nevada have introduced a bill that would require the secretary of state to produce such a guide.<sup>82</sup>

#### >> State legislatures should prohibit tampering with or facilitating unauthorized access to voting equipment.

State legislators should pass laws that prohibit anyone from tampering with voting equipment, accessing such

equipment without authorization, or facilitating access for an individual who is not an authorized election worker or voting system vendor. Lawmakers in Kansas and Minnesota introduced bills with such provisions in 2023, and Colorado passed a similar prohibition in 2022.<sup>83</sup> These bills also contain specific prohibitions on publicly sharing passwords for voting systems and imaging hard drives of voting equipment.

Such laws should include exceptions to allow for legitimate security research. For instance, a chief state election official should be able to approve one-time access to an outside researcher on request by a local election official. State law should specify exemption conditions that protect the security of equipment, such as requiring the researcher to complete a background check. When the chief state election official approves a request, the law should require the office to publish the approval, along with the reason for granting access and any conditions tied to it.

### >> State and local election officials should develop detailed standards to regulate who can access election infrastructure and how that access can occur.

State and local election officials should exercise their regulatory and guidance authority to set standards that will help prevent, detect, and respond to insider threats. The specifics of these standards may vary depending on the systems in use and the size and structure of election offices throughout the state. The following is a list of standards that states have set to safeguard election systems:

- Requiring election offices to keep all voting system components and ballots in a secure location with access controls, alarm systems, and procedures to log every entry.<sup>84</sup>
- Monitoring voting equipment storage areas with video surveillance.<sup>85</sup>
- Requiring all election workers and voting system vendors to complete background checks before allowing access to voting systems.<sup>86</sup>
- Requiring two employees to be present whenever voting equipment is accessed or transported, and at least one election worker to be present with voting system vendors while the vendor is on-site.<sup>87</sup>
- Requiring that election offices create an individual user account for each person who is authorized to access election systems and prohibiting users from sharing account or password information.<sup>88</sup>
- Limiting election system access privileges to election officials and workers whose responsibilities require access

to these systems, only permitting access to the extent necessary for the performance of these job functions, and capping the number of user accounts that jurisdictions can offer access privileges to without state approval.<sup>89</sup>

- Requiring all users with access to election systems to sign an acceptable use policy agreement provided by the state.<sup>90</sup>
- Disabling election system access accounts immediately for users who are no longer employed by the election office or who are no longer in roles that require access to that system.<sup>91</sup>

In developing access restrictions, election officials must balance security with appropriate flexibility to make sure that limited authorization does not slow operations or prevent election offices from responding to emergencies or other issues that necessitate a rapid response.

To ensure accountability when handling sensitive systems and materials, state and local election officials should also add requirements for bipartisan or two-person teams to perform vital election administration responsibilities where possible.

### >> State and local legislatures should fund infrastructure to prevent insider threats.

A 2022 Brennan Center analysis found that upgrades to protect against insider threats could cost up to \$316 million nationwide.<sup>92</sup> State and local legislators should provide funding for election officials to purchase the systems and equipment necessary to comply with any new state requirements and more generally to safeguard against insider threat risks.<sup>93</sup> In Colorado, when the state legislature passed its recent bill to protect against insider threats, it established a \$1 million grant fund to assist counties in complying with the new security requirements, including to purchase key card access systems and video surveillance.<sup>94</sup> Other states should follow that lead.

States should also look to federal grants to help fund these improvements, including DHS's HSGP and SLCGP.

## Improve Training and Guidance

As local election offices across the country experience turnover, some states, including Colorado and Nevada, have considered or passed bills to expand training and certification requirements for election officials.<sup>95</sup>

Comprehensive training does more than just ensure that election officials are aware of and prepared to implement all protocols needed to keep election infrastructure secure; it also facilitates relationships and information sharing between newer and more experienced election officials.



### >> **State legislatures should mandate regular, comprehensive training for all election officials.**

State law should require, at a minimum, all local election officials to attend biennial training on election administration procedures. New local election officials should be required to attend training before administering any state or federal election, if possible. Municipal clerks in Minnesota who have taken office less than six months before an election must complete two hours of emergency training from their home county auditor or secretary of state before administering the election.<sup>96</sup> State legislatures could also designate — or allow the chief state election official to designate — additional individuals who must attend training, including state election office employees and other local election workers who have access to critical election systems.

State lawmakers can also prevent election officials who do not complete training requirements from accessing critical election systems or from performing certain responsibilities. A recent law in Colorado established the role of “designated election official” — the official or employee in each county who oversees access to election systems — and prohibits individuals from performing this role unless they have been certified as having completed training requirements.<sup>97</sup>

State legislators should provide funding to reimburse local election officials for the cost of attending training.

### >> **CISA should develop additional insider threat best practices and self-assessment tools and train protective security advisers to offer insider threat mitigation guidance.**

In 2022, CISA released an “Election Infrastructure Insider Threat Mitigation Guide,” which advised election officials on how to respond to the rising risk of insider threats by adopting standard operating procedures, access controls, zero-trust security, and chain-of-custody measures.<sup>98</sup> Ahead of the 2024 presidential election, CISA should expand its insider threat services by creating additional best practice checklists, using them to develop self-assessment tools for officials, and training PSAs on these materials and practices so that they can offer insider threat guidance to election officials around the country. In developing these additional resources, CISA should consult with other federal partners, including the Federal Emergency Management Agency (FEMA), the Office of the Director of National Intelligence, and the National Insider Threat Task Force, each of which has its own expertise on this topic.<sup>99</sup>

Ideally, PSAs would provide hands-on guidance and scenario-based training on how to

- establish a formal insider threat program, including an organizational structure and confidential processes that are easy to understand and use;<sup>100</sup>

- identify and protect critical assets;
- recognize suspicious behavior and other threat indicators; and
- take appropriate actions to mitigate potential insider threats.<sup>101</sup>

Finally, CISA should utilize the local and state election official networks of the EI-ISAC, the National Association of Secretaries of State, the National Association of State Election Directors, and the Election Center (the National Association of Election Officials) to ensure that its resources on insider threats are reaching as wide an audience as possible.

### >> **DOJ should reissue guidance to remind election officials of requirements to preserve election records.**

After public officials in Arizona and other states turned election records, materials, and equipment over to unqualified outside parties in 2021, DOJ issued guidance to election officials on their duty under federal law to safeguard and preserve federal records.<sup>102</sup> Ahead of the 2024 election, DOJ should issue a reminder of this duty and reiterate that the obligation to preserve records remains on election officials, even if they turn those materials and records over to a third party. Releasing and publicizing this guidance can support election officials looking to resist political interference and deter those who may be susceptible to outside pressure.

## **Establish Authority to Remediate Risks**

State legislators must ensure that, if an insider threat does impact election systems, state officials can respond quickly and effectively to remediate any potential security risks that may affect an election.

### >> **State legislatures should establish clear authority to prohibit individuals who violate election laws from administering elections and to decommission equipment when a breach occurs.**

State legislators should authorize state election officials to prevent any individual who has shown a serious or patterned failure to comply with security requirements found in state law from administering elections or from performing certain responsibilities such as accessing the voter registration system. The Colorado secretary of state successfully sued the county clerk who permitted unauthorized access to voting systems to prevent her from overseeing elections in 2022.<sup>103</sup> Similarly, the

Michigan secretary of state directed a township clerk to refrain from overseeing an election after the clerk refused to allow routine and required maintenance on voting equipment.<sup>104</sup>

CISA has noted that if critical systems have been compromised, “the safest practice is to decommission and replace those systems.”<sup>105</sup> That being the case, state legislatures should also authorize state election officials to investigate any system or equipment breach and to decommission and order the removal and replacement of specific equipment if necessary. Since 2020, officials in Arizona, Colorado, Georgia, Michigan, and Pennsylvania have all acted to decommission election systems that were tampered with or accessed without proper authorization (see figure 3).<sup>106</sup>

While these remedies are necessary to address ongoing threats to election security, state legislatures must carefully define the authority to prevent abuse by future officials.

## Use Voting Machines for Initial Ballot Counts and Pair with Robust Postelection Audits

Spurred by false information about the security and reliability of electronic voting machines, election deniers across the country have pushed election officials to abandon secure and proven technology for counting ballots and

instead count all ballots solely by hand. Hand-counting procedures play an important role in verifying election outcomes through postelection audits that election officials conduct in addition to voting system tabulation. But such audits hand-count only a few races on a random sample of ballots after results produced by voting systems have already been collected and reported.

Counting every race on every ballot by hand to determine the initial vote count in anywhere but the smallest jurisdictions is impractical and often inaccurate. When election workers need to count every race on a large number of ballots, hand-counting consistently produces more errors than machine tabulation.<sup>107</sup> When a Nevada county attempted to conduct a hand-count during the 2022 election, the county clerk estimated that there was a 25 percent error rate among the election volunteers counting ballots in the first day.<sup>108</sup> Full hand-counts are also much slower than machine counts, leading to significant delays in producing election results, conducting necessary audits or recounts, resolving any election disputes, and finalizing election results.

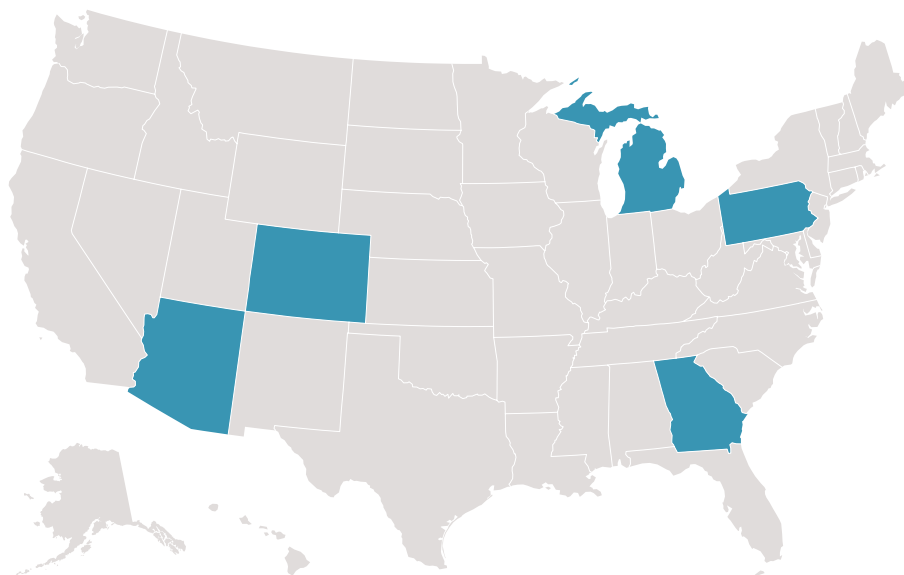
Left unchecked, hand-counting could lead to serious accuracy concerns, disinformation, and uncertainty in the days and weeks after Election Day.

**>> State legislatures should require election officials to use machines for initial ballot counts in all but the smallest jurisdictions.**

State legislators should require election officials to use voting tabulation systems for initial counts, with limited exceptions for very small jurisdictions. States should pair

FIGURE 3

### States Where Officials Have Decommissioned Election Equipment Following a Physical Breach



Source: Brennan Center.

voting system counts with robust postelection audits, in which officials hand-count small samples of ballots to verify machine-tallied results.

Small jurisdictions with few registered voters may be able to produce a final count that is comparably accurate to what tabulation equipment would produce in a similar time frame. But these jurisdictions are very much the exception — most places that hand-count ballots today are small towns with fewer than 1,000 voters. Just 0.6 percent of all registered voters live in such jurisdictions.<sup>109</sup>

## Make It More Difficult to Refuse to Certify Elections

Insider threat risks extend beyond access to systems. Election officials can also jeopardize election security and integrity by abusing their authority to oversee crucial steps in the election process, including the certification of election results.

**>> State legislatures should create a mandatory duty to certify election results and a legal remedy to address refusals to do so.**

Fortunately, in states where rogue officials have refused to certify election results, state leadership has been able to step in and quickly address the issue. In New Mexico, the secretary of state immediately sued and obtained a court order against a county that refused to certify primary election results in 2022, forcing the county to reverse course.<sup>110</sup> All states must ensure that they can act with similar speed if an issue arises in their own elections. Even if these abuses are unlikely to change election outcomes, delays in addressing the matter lend support to false election narratives and cast more doubt on election results.

Ahead of 2024, state legislatures should streamline processes in their statutory frameworks for election results certification to address refusals to certify elections. In particular, legislators should ensure that state law establishes

- a mandatory, nondiscretionary duty to certify election results by a stated deadline;
- a cause of action that a state official or candidate can bring in court against an official who refuses to certify election results without sufficient cause; and
- a remedy that allows a court to compel the official to certify results within a short time span.





an election to confirm that voting machines are working as intended.

### >> State legislatures should require voting systems with paper records and fund the transition to and upkeep of this equipment.

Since 2016, states have made significant progress in adopting paper ballots. In 2020, an estimated 93 percent of all votes cast in the presidential election had a paper record — up from 82 percent four years earlier.<sup>116</sup>

Many states that use paperless voting systems are aiming to replace these systems in the coming years. Since 2020, Indiana, Mississippi, Tennessee, and Texas have all either passed laws requiring voting systems to produce a paper record of every vote or moved up the deadline for doing so.<sup>117</sup> But these transitions will only be realized if election officials have the resources needed to purchase new equipment that complies with these laws. New Jersey serves as a cautionary tale: state law has required paper voting systems for more than a decade, but counties remain out of compliance with the law in part due to inadequate funding for upgrades.<sup>118</sup>

In the 2024 election, 100 percent of all votes can and should be cast on paper.

Still, even paper-based voting systems risk becoming less secure and less reliable as the equipment ages and maintenance becomes more difficult and costly. State legislators must provide sufficient funding to upgrade equipment and outfit election systems with the latest security protections.

### >> Congress should provide steady funding to help election officials upgrade and maintain election infrastructure.

Election offices need reliable and meaningful federal funding for substantial technological investments and for the upkeep that those systems will require in years to come. After providing \$805 million in election security funding leading up to the 2020 election, Congress has since provided just \$150 million in irregular bouts of funding.<sup>119</sup> States need more and consistent funding to upgrade voting machines and registration systems, hire additional cybersecurity support, and implement thorough postelection audits.<sup>120</sup>

## Plan for Things That Can Go Wrong

Online voter registration has made it easier for eligible voters to add their names to the voter rolls and for election officials to keep voter rolls up-to-date.<sup>121</sup> Electronic pollbooks have expedited check-in processes and shortened lines at polling places.<sup>122</sup> And electronic tabulators have led to more accurate and timely vote counts.<sup>123</sup> Election offi-

cial can and should use all of this technology in the election process, but increased technological dependence requires careful planning to guarantee election resilience.

### >> State and local election officials should improve measures to recover from technical failures and resource shortages.

Election officials must ensure that they have measures in place to prevent and recover from cyberattacks, technical failures, and resource shortages so that no error or mishap will prevent a voter from casting their ballot or having their vote counted.<sup>124</sup> Election offices should conduct comprehensive reviews of their election processes and develop contingency plans for any potential technical failure on Election Day. Should an issue arise, officials should ensure that they have enough backup materials to keep polling places operational for the two to three busiest hours of the day, buying time until the issue can be resolved.

States should adopt the following resilience measures:

- Requiring polling places to have a paper backup list of voters or a voter list on a nonnetworked alternative device in case of electronic pollbook failure.
- Requiring polling places to have an adequate supply of provisional ballots and envelopes in case of errors in the registration database.
- Requiring polling places to have emergency paper ballots that can be hand-marked and cast into a scanner or stored to be centrally counted later in case of ballot marking device or direct recording electronic voting machine failure.

Many states have codified expanded voting options that became popular during the pandemic.<sup>125</sup> As states continue to make voting more accessible to more voters, election officials should ensure that existing resilience measures are still adequate. If a state uses vote centers and networked electronic pollbooks for early or Election Day voting, a nonnetworked alternative device may be better equipped than a paper backup to hold a larger voter list and more easily update inoperative electronic pollbooks once they are working again. If a state offers active same-day voting registration or adopts early voting yet has insufficient time to reallocate ballots to Election Day poll sites, jurisdictions may need to print more than enough ballots for all registered voters heading into the voting period.

### >> State and local election officials should develop resources to help implement contingency plans and communicate these measures to the public.

Resilience measures are effective only if the relevant workers know how to implement them when needed.

State and local election officials should incorporate contingency plans into poll worker training and create short, easy-to-locate, and easy-to-follow guides for poll workers to turn to if needed on Election Day. Election officials should also consider how to communicate backup measures to voters and reassure them that their votes will still be counted. Officials should prepare explainer videos, signs, and other materials in advance for contingency plans that are regularly relied on, such as the use of emergency auxiliary bins on scanners.

## Conduct Robust Postelection Audits

The security benefits of paper ballots are fully realized only when election officials routinely review the independent paper record to confirm that the voting system determined the correct outcome. Most states now require election officials to conduct postelection audits, which typically involve hand-counting a portion of the paper records and comparing them to the electronic counts produced by voting machines after scanning the same ballots.<sup>126</sup> The most common form of postelection audit is a traditional audit, in which election officials count a fixed percentage of all ballots cast in each election. States that use traditional postelection audits could improve their procedures to better assure voters that their ballots have been counted correctly.

### >> States should adopt and implement risk-limiting audits.

A risk-limiting audit (RLA) operates similarly to a traditional postelection audit, in that both require election workers to hand-count a sample of ballots and compare the results to the machine count. But a traditional postelection audit provides confirmation that individual voting machines are accurately tabulating votes, whereas an RLA relies on statistical principles to determine the random sample of ballots that needs to be counted and provides evidence that election outcomes are accurate, including for statewide races.

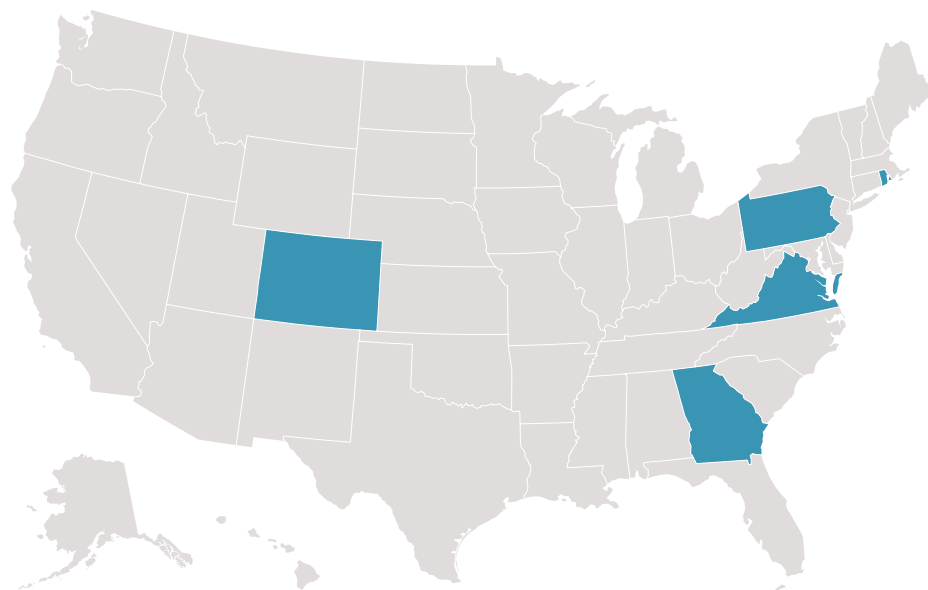
States should require RLAs after every election, following an appropriate transition period for election officials to learn proper procedures and ensure that they have the systems in place to carry out the process. Five states currently require RLAs (see figure 5). Where RLAs are not obligatory, state and local election officials should consider piloting RLAs as state law permits, in addition to any required postelection audits.

## Increase Support for Under-resourced Local Election Offices

In the decentralized U.S. election system, “target rich, resource poor” local jurisdictions with limited capacity to address cybersecurity issues present one of the most

FIGURE 5

### States That Require Risk-Limiting Audits



Source: Data from Verified Voting, as of April 7, 2023.

concerning vulnerabilities.<sup>127</sup> These election offices have little or no dedicated cybersecurity expertise and are often dependent on other offices in their county or municipality for IT support. In fact, nearly half of all election offices operate with one or fewer full-time employees, and nearly a third operate with no full-time staff at all.<sup>128</sup> Yet election officials who serve these offices are given the monumental task of being frontline national security figures. They need help.

**>> State legislatures should provide funding to launch cyber navigator programs.**

States should hire cyber navigators — trained cybersecurity and election administration professionals who work closely with local election officials to assess the security of their systems, identify potential vulnerabilities, and develop tailored strategies to mitigate risk. Several states, including Florida, Illinois, Iowa, Massachusetts, Michigan, Minnesota, and Ohio, have deployed cyber navigator programs already.<sup>129</sup> Other states should follow suit.

**>> DHS, CISA, and FEMA should elevate cybersecurity funding opportunities**

**for election security and prioritize outreach to election officials.**

Existing federal grant programs can improve the cybersecurity capacity of local election offices; the new SLCGP alone will provide \$1 billion for cybersecurity needs over the next four years.<sup>130</sup> As with HSGP grants, DHS should require states to spend a portion of SLCGP funding on election cybersecurity needs and consult with chief state election officials on election security priorities. CISA and FEMA should also promote federal funding opportunities to state and local officials, raise awareness of the HSGP minimum spending requirement, and encourage spending on election security needs.

Finally, CISA should direct PSAs and cybersecurity advisers (CSAs) — trained cybersecurity experts who can assist state and local officials — to prioritize outreach to under-resourced local election offices and use regional election leads to coordinate outreach with these officials. In the Brennan Center’s 2023 survey, only 29 percent of local election officials said that they were aware of CISA’s cybersecurity vulnerability scan, and just 20 percent of those who were aware availed themselves of this free service.<sup>131</sup>

## Conclusion

---

**T**he evolving threats to American democracy over the last decade have resulted in massive changes to the way elections are seen as well as the way they are administered. Although the last few years in particular have witnessed successful efforts to make the system more resilient, more needs to be done.

For the most part, the American public did its part in 2022, soundly rejecting election deniers who sought influence over elections in crucial battleground states like Arizona, Georgia, Michigan, Nevada, and Pennsylvania. Elected leaders and public officials at the federal, state, and local levels must act with similar urgency ahead of 2024.

Substantial work needs to be done to protect the

people, systems, and infrastructure necessary for voters to cast their ballots and have their votes counted. But there is still time. Past success in strengthening U.S. infrastructure against cyberattacks and the renewed call by voters to defend democracy should give every American the hope and expectation that their leaders will rise to the challenge.

# Endnotes

- 1 DHS, "Statement by Secretary Jeh Johnson on the Designation of Election Infrastructure as a Critical Infrastructure Subsector," January 6, 2017, <https://www.dhs.gov/news/2017/01/06/statement-secretary-johnson-designation-election-infrastructure-critical>.
- 2 Office of the Director of National Intelligence, *Annual Threat Assessment of the U.S. Intelligence Community*, February 6, 2023, 15, <https://www.dni.gov/files/ODNI/documents/assessments/ATA-2023-Unclassified-Report.pdf>.
- 3 Isabelle Niu, Kassie Bracken, and Alexandra Eaton, "Russia Created an Election Disinformation Playbook. Here's How Americans Evolved It," *New York Times*, October 25, 2020, <https://www.nytimes.com/2020/10/25/video/russia-us-election-disinformation.html>; and National Intelligence Council, *Foreign Threats to the 2020 US Federal Elections*, March 10, 2021, <https://www.dni.gov/files/ODNI/documents/assessments/ICA-declass-16MAR21.pdf>.
- 4 Ellen Nakashima, Amy Gardner, and Aaron C. Davis, "FBI Links Iran to Online Hit List Targeting Top Officials Who've Refuted Trump's Election Fraud Claims," *Washington Post*, December 22, 2020, [https://www.washingtonpost.com/national-security/iran-election-fraud-violence/2020/12/22/4a28e9ba-44a8-11eb-a277-49a6d1f9dff1\\_story.html](https://www.washingtonpost.com/national-security/iran-election-fraud-violence/2020/12/22/4a28e9ba-44a8-11eb-a277-49a6d1f9dff1_story.html).
- 5 Matt Vasilogambros, "Russian Cyberattack Could Capitalize on Election Doubts," *Pew Charitable Trusts*, April 22, 2022, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/04/22/russian-cyberattack-could-capitalize-on-election-doubts>.
- 6 Sophia Tulip, "Iranian 'Hacking' Video Fabricated to Push Election Disinfo," Associated Press, November 7, 2022, <https://apnews.com/article/fact-check-2020-election-fake-hacking-video-034512361997>.
- 7 National Intelligence Council, *Foreign Threats to the 2020 US Federal Elections*.
- 8 Jennifer Agiesta, "CNN Poll: Americans' Confidence in Elections Has Faded Since January 6," *CNN*, July 21, 2022, <https://www.cnn.com/2022/07/21/politics/cnn-poll-elections/index.html>; and Brennan Center for Justice and Benenson Strategy Group, "Local Election Officials Survey," March 10, 2022, <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-march-2022>.
- 9 Ian Vandewalker, *Digital Disinformation and Vote Suppression*, Brennan Center for Justice, September 2, 2020, <https://www.brennancenter.org/our-work/research-reports/digital-disinformation-and-vote-suppression>; and Common Cause and Lawyers' Committee for Civil Rights Under Law, *Deceptive Election Practices and Voter Intimidation: The Need for Voter Protection*, July 2012, 4, <https://lawyerscommittee.org/wp-content/uploads/2015/07/DeceptivePracticesReportJuly2012FINAL.pdf.pdf>.
- 10 Maya Kornberg, Mekela Panditharatne, and Ruby Edlin, "3 Lessons on Misinformation in the Midterms Spread on Social Media," Brennan Center for Justice, January 5, 2023, <https://www.brennancenter.org/our-work/research-reports/3-lessons-misinformation-midterms-spread-social-media>; and William T. Adler, "Only 1 in 4 Election Websites Uses the .gov Domain. That's a Problem — and an Opportunity," Center for Democracy and Technology, October 19, 2022, <https://cdt.org/insights/only-1-in-4-election-websites-uses-the-gov-domain-thats-a-problem-and-an-opportunity>.
- 11 Jana Winter, "DHS Warns of Fake Election Websites Potentially Tied to Criminals, Foreign Actors," *Yahoo News*, August 21, 2020, <https://www.yahoo.com/video/exclusive-dhs-warns-of-fake-election-websites-potentially-tied-to-criminals-foreign-actors-221029900.html>.
- 12 FBI and CISA, "Foreign Actors Likely to Use Information Manipulation Tactics for 2022 Midterm Elections," public service announcement, October 6, 2022, [https://www.cisa.gov/sites/default/files/publications/PSA-information-activities\\_508.pdf](https://www.cisa.gov/sites/default/files/publications/PSA-information-activities_508.pdf).
- 13 CISA, "Sign Up for a .gov Domain: Information for Election Officials," accessed March 31, 2023, [https://www.cisa.gov/sites/default/files/publications/DOTGOV\\_Domain\\_Fact-Sheet\\_508\\_0.pdf](https://www.cisa.gov/sites/default/files/publications/DOTGOV_Domain_Fact-Sheet_508_0.pdf).
- 14 Adler, "Only 1 in 4 Election Websites Uses the .gov Domain."
- 15 Frank LaRose (Ohio secretary of state) to Ohio State county boards of elections, June 11, 2019, <https://www.ohiosos.gov/globalassets/elections/directives/2019/dir2019-08.pdf>.
- 16 CISA, "Registration," accessed March 31, 2023, <https://get.gov/registration>.
- 17 DHS, "The Department of Homeland Security Notice of Funding Opportunity Fiscal Year 2022 State and Local Cybersecurity Grant Program," September 16, 2022, <https://www.fema.gov/fact-sheet/department-homeland-security-notice-funding-opportunity-fiscal-year-2022-state-and-local>; and Infrastructure Investment and Jobs Act, Pub. L. 117-58, 135 Stat. 429 (2021), <https://www.congress.gov/bill/117th-congress/house-bill/3684/text>.
- 18 Common Cause and Lawyers' Committee for Civil Rights Under Law, *Deceptive Election Practices and Voter Intimidation*.
- 19 Kan. Admin. Regs. § 25-2415 (2012), [https://www.ksrevisor.org/statutes/chapters/ch25/025\\_024\\_0015.html](https://www.ksrevisor.org/statutes/chapters/ch25/025_024_0015.html); Minn. R. 204C.035 (2022), <https://www.revisor.mn.gov/statutes/cite/204C.035>; and 313 Va. Admin. Code § 24.2-1005.1 (2007), <https://law.lis.virginia.gov/vacode/title24.2/chapter10/section24.2-1005.1>.
- 20 Miss. H.B. 678 (2023), <http://billstatus.ls.state.ms.us/2023/pdf/history/HB/HB0678.xml#codesections>; Minn. H.F. 3 (2023), <https://www.revisor.mn.gov/bills/bill.php?f=HF3&b=house&=2023&ssn=0>; N.Y. S.B. 263 (2023), <https://www.nysenate.gov/legislation/bills/2023/S263>; and Anna Gustafson, "Benson, Dem Lawmakers Announce Plans to Protect Election Officials in Wake of Threats," *Michigan Advance*, January 18, 2023, <https://michiganadvance.com/2023/01/18/benson-dem-lawmakers-announce-plans-to-protect-election-officials-in-wake-of-threats>.
- 21 Mekela Panditharatne et al., *Information Gaps and Misinformation in the 2022 Elections*, Brennan Center for Justice and First Draft News, August 2, 2022, <https://www.brennancenter.org/our-work/research-reports/information-gaps-and-misinformation-2022-elections>.
- 22 National Conference of State Legislatures, "Table 16: When Absentee/Mail Ballot Processing and Counting Can Begin," last updated January 18, 2023, <https://www.ncsl.org/elections-and-campaigns/table-16-when-absentee-mail-ballot-processing-and-counting-can-begin#toggleContent-12088>.
- 23 National Conference of State Legislatures, "Table 16: When Absentee/Mail Ballot Processing and Counting Can Begin"; Mich. H.B. 4491 (2022), [http://www.legislature.mi.gov/\(S\(b3osed3e3ezcmoorv3o44fw2\)\)/mileg.aspx?page=GetObject&objectname=2021-HB-4491](http://www.legislature.mi.gov/(S(b3osed3e3ezcmoorv3o44fw2))/mileg.aspx?page=GetObject&objectname=2021-HB-4491); and Karina Elwood, "Maryland Judge Allows Early Mail-Vote Counting to Avoid Result Delays," *Washington Post*, September 23, 2022, <https://www.washingtonpost.com/dc-md-va/2022/09/23/maryland-mail-voting-judge-decision>.
- 24 Clara Hendrickson, "Whitmer Signs Election Law Changes Including Ballot Preprocessing," *Detroit Free Press*, October 7, 2022, <https://www.freep.com/story/news/politics/elections/2022/10/07/whitmer-signs-ballot-preprocessing-bill/69534507007>.
- 25 W. Va. S.B. 156 (2023), [http://www.wvlegislature.gov/Bill\\_Text\\_HTML/2023\\_SESSIONS/RS/bills/sb156%20intr.pdf](http://www.wvlegislature.gov/Bill_Text_HTML/2023_SESSIONS/RS/bills/sb156%20intr.pdf); and N.H. H.B. 484 (2023), [https://www.gencourt.state.nh.us/bill\\_status/billinfo.aspx?id=360&inflect=2](https://www.gencourt.state.nh.us/bill_status/billinfo.aspx?id=360&inflect=2).
- 26 Md. H.B. 0535, <https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/hb0535?ys=2023RS>; and Md. S.B. 0379,



<https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/SB0379?ys=2023RS>.

- 27 Renée DiResta, "Arizona's 'Tricky Voting Machines' Sounds Suspiciously Familiar," *Atlantic*, November 12, 2022, <https://www.theatlantic.com/ideas/archive/2022/11/arizona-election-voting-machines-fraud-conspiracy-tv-tropes/672100>.
- 28 Kornberg, Panditharatne, and Edlin, "3 Lessons on Misinformation."
- 29 Panditharatne et al., *Information Gaps*.
- 30 CISA, "Election Security Rumor vs. Reality," accessed March 31, 2023, <https://www.cisa.gov/rumorcontrol>.
- 31 Cecilia Kang, "Help Wanted: State Misinformation Sheriff," *New York Times*, May 31, 2022, <https://www.nytimes.com/2022/05/31/technology/misinformation-sheriff-election-midterms.html>; Office of the Kentucky Secretary of State, "Rumor Control," last updated November 5, 2021, <https://sos.ky.gov/elections/Pages/Rumor-Control.aspx>; and Ohio Secretary of State, "Sec LaRose: The Life of an Absentee Ballot," YouTube, October 23, 2020, <https://www.youtube.com/watch?v=n4Vz3r8QC6k&t=2s>.
- 32 Election Assistance Commission, "Voluntary Voting System Guidelines," accessed March 30, 2023, <https://www.eac.gov/voting-equipment/voluntary-voting-system-guidelines>.
- 33 Election Assistance Commission, "Voluntary Voting System Guidelines (VVSG) Deprecation," accessed March 30, 2023, <https://www.eac.gov/election-officials/voluntary-voting-system-guidelines-vvsg-deprecation#Resources>.
- 34 Ohio Secretary of State, "Sec LaRose: The Life of an Absentee Ballot"; Michigan Department of State (@MichSoS), "In election administration, accuracy and security are more important than speed. Every valid vote will be counted," Twitter, November 8, 2022, <https://twitter.com/MichSoS/status/1590143800860889088?s=20&t=KbcknsdKCZhEArhpdMm5Pg>; and Adriana De Alba and Ariel Plascencia, "Tarrant, Dallas Counties to Let the Public Test Its Voting Machines in a Push to Boost Confidence in Elections," WFAA (ABC 8 Dallas), September 22, 2022, <https://www.wfaa.com/article/news/politics/tarrant-county-letting-public-test-voting-machines-in-push-to-boost-confidence-elections/287-781010ab-b7a4-40dc-92a5-266d0b451507>.
- 35 Brennan Center for Justice and Benenson Strategy Group, "Local Election Officials Survey — April 2023," April 25, 2023, <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-april-2023>.
- 36 CSAC, "Report to the CISA Director: Protecting Critical Infrastructure from Misinformation and Disinformation" June 22, 2022, [https://www.cisa.gov/sites/default/files/publications/June%202022%20CSAC%20Recommendations%20%E2%80%93%20MDM\\_0.pdf](https://www.cisa.gov/sites/default/files/publications/June%202022%20CSAC%20Recommendations%20%E2%80%93%20MDM_0.pdf).
- 37 CSAC, "Report to the CISA Director."
- 38 See CISA, "Rumor Control Page Start-Up Guide," accessed March 30, 2023, [https://www.cisa.gov/sites/default/files/publications/rumor-control-startup-guide\\_508.pdf](https://www.cisa.gov/sites/default/files/publications/rumor-control-startup-guide_508.pdf); and CISA, "Mis-, Dis-, and Malinformation: Planning and Incident Response Guide for Election Officials," accessed March 31, 2023, [https://www.cisa.gov/sites/default/files/publications/mdm-incident-response-guide\\_508.pdf](https://www.cisa.gov/sites/default/files/publications/mdm-incident-response-guide_508.pdf).
- 39 CISA, "MDM Resource Library," accessed March 30, 2023, <https://www.cisa.gov/mdm-resource-library>.
- 40 CSAC, "Report to the CISA Director," 4.
- 41 Brennan Center for Justice and Bipartisan Policy Center, *Election Officials Under Attack*, June 16, 2021, <https://www.brennancenter.org/our-work/policy-solutions/election-officials-under-attack>.
- 42 Brennan Center for Justice and Benenson Strategy Group, "Local Election Officials Survey — April 2023."
- 43 Kate Sullivan and Kyung Lah, "Maricopa County Election Officials Moved to Undisclosed Location on Election Day Due

- to Threats," CNN, November 22, 2022, <https://www.cnn.com/2022/11/21/politics/maricopa-bill-gates-threat-undisclosed-location/index.html>; and Remy Tumin and Mike Ives, "Republican Ex-candidate Arrested in Shootings Targeting New Mexico Democrats," *New York Times*, January 16, 2023, <https://www.nytimes.com/2023/01/16/us/albuquerque-democrat-officials-shootings-arrest.html>.
- 44 Brennan Center for Justice and Benenson Strategy Group, "Local Election Officials Survey — April 2023."
- 45 Brennan Center for Justice and Benenson Strategy Group, "Local Election Officials Survey — April 2023."
- 46 Brennan Center for Justice and Benenson Strategy Group, "Local Election Officials Survey — April 2023."
- 47 CISA, "#Protect2020 Strategic Plan," February 2020, [https://www.cisa.gov/sites/default/files/publications/ESI\\_Strategic\\_Plan\\_FINAL\\_2-7-20\\_508.pdf](https://www.cisa.gov/sites/default/files/publications/ESI_Strategic_Plan_FINAL_2-7-20_508.pdf).
- 48 DOJ, "Justice Department Launches Task Force to Combat Threats Against Election Workers," July 29, 2021, <https://www.justice.gov/opa/blog/justice-department-launches-task-force-combat-threats-against-election-workers-0>.
- 49 Kate Holland et al., "Facing Threats of Violence, Election Officials Are Growing Frustrated with DOJ Task Force," ABC News, November 2, 2022, <https://abcnews.go.com/US/facing-threats-violence-election-officials-growing-frustrated-doj/story?id=92495137>.
- 50 Brennan Center for Justice and Benenson Strategy Group, "Local Election Officials Survey — April 2023."
- 51 Lawrence Norden et al., "How Federal Departments and Agencies Can Help Secure America's Elections," Brennan Center for Justice, April 21, 2022, <https://www.brennancenter.org/our-work/research-reports/how-federal-departments-and-agencies-can-help-secure-americas-elections>.
- 52 Brennan Center for Justice and Benenson Strategy Group, "Local Election Officials Survey — April 2023."
- 53 DOJ, "Trial Attorney (Election Community Liaison)," job posting, USAJOBS, March 9, 2023, <https://www.usajobs.gov/job/711699000>.
- 54 Tim Sullivan and Adam Geller, "Increasingly Normal: Guns Seen Outside Vote-Counting Centers," Associated Press, November 7, 2020, <https://apnews.com/article/protests-vote-count-safety-concerns-653dc8f0787c9258524078548d518992>.
- 55 Matt Vasilogambros, "States Want to Boost Protections for Threatened Local Election Officials," Pew Charitable Trusts, March 9, 2022, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/03/09/states-want-to-boost-protections-for-threatened-local-election-officials>.
- 56 Derek Tisler and Lawrence Norden, "Estimated Costs for Protecting Election Workers from Threats of Physical Violence," Brennan Center for Justice, May 3, 2022, <https://www.brennancenter.org/our-work/research-reports/estimated-costs-protecting-election-workers-threats-physical-violence>.
- 57 Brennan Center for Justice and Benenson Strategy Group, "Local Election Officials Survey — April 2023."
- 58 DHS, "DHS Announces \$2 Billion in Preparedness Grants," press release, February 27, 2023, <https://www.dhs.gov/news/2023/02/27/dhs-announces-2-billion-preparedness-grants>.
- 59 Sean Lyngaas, "'Our Security Here Is a Joke': Election Workers Lament Lack of Federal Spending on Security Ahead of Crucial Midterms," CNN, October 27, 2022, <https://www.cnn.com/2022/10/27/politics/election-security-federal-funding-violent-threats/index.html>.
- 60 Linda So and Jason Szep, "U.S. Election Workers Get Little Help from Law Enforcement as Terror Threats Mount," Reuters, September 8, 2021, <https://www.reuters.com/investigates/special-report/usa-election-threats-law-enforcement>.

- 61** Office of the Secretary of State Jocelyn Benson, “Statement from Secretary of State Jocelyn Benson Concerning Threats Against Her and Her Family,” December 6, 2020, <https://www.michigan.gov/sos/0,4670,7-127-93094-546741--,00.html>.
- 62** Adam Brewster, “Key Local Election Officials in Battleground States Still Face Threats over a Year After 2020 Election,” CBS News, January 4, 2022, <https://www.cbsnews.com/news/election-officials-threats-2020-election>.
- 63** Brennan Center and Bipartisan Policy Center, *Election Officials Under Attack*.
- 64** Enhanced Election Security and Protection Act, S. 4574, 117th Cong. (2022), <https://www.congress.gov/bill/117th-congress/senate-bill/4574/text>.
- 65** Or. H.B. 4144 (2022), <https://olis.oregonlegislature.gov/liz/2022R1/Measures/Overview/HB4144>.
- 66** Colo. H.B. 22-1273 (2022), [https://leg.colorado.gov/sites/default/files/2022a\\_1273\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2022a_1273_signed.pdf).
- 67** Cal. S.B. 1131 (2022), [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=20212022OSB1131](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=20212022OSB1131); and Wash. S.B. 5628 (2022), <https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/Senate/5628-S.SL.pdf?q=20230323184416>.
- 68** Nev. A.B. 321 (2021), <https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/7842/Text>.
- 69** N.M. S.B. 43 (2023), <https://nmlegis.gov/Sessions/23%20Regular/bills/senate/SB0043.pdf>.
- 70** Va. S.B. 907 (2023), <https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+SB907S1+pdf>.
- 71** Colo. H.B. 22-1273 (2022).
- 72** Md. H.B. 0951 (2023), <https://mgaleg.maryland.gov/mgaweb/legislation/details/HB0951?ys=2023RS>.
- 73** Okla. S.B. 481 (2023), <http://www.oklegislature.gov/BillInfo.aspx?Bill=sb481&Session=2300>.
- 74** 52 U.S.C. § 10307(b).
- 75** Mark Murray, “Poll: 61% of Republicans Still Believe Biden Didn’t Win Fair and Square in 2020,” NBC News, September 27, 2022, <https://www.nbcnews.com/meet-the-press/meetthepressblog/poll-61-republicans-still-believe-biden-didnt-win-fair-square-2020-rcna49630>.
- 76** Lawrence Norden and Marina Pino, “Election Deniers Running for Secretary of State Were This Election’s Biggest Losers,” Brennan Center for Justice, November 11, 2022, <https://www.brennancenter.org/our-work/analysis-opinion/election-deniers-running-secretary-state-were-elections-biggest-losers>; and Adrian Blanco, Daniel Wolfe, and Amy Gardner, “Tracking Which 2020 Election Deniers Are Winning, Losing in the Midterms,” *Washington Post*, December 18, 2022, <https://www.washingtonpost.com/politics/interactive/2022/election-deniers-midterms>.
- 77** Nicholas Riccardi, “‘Election Denial Is Alive and Well’: Despite Statewide Losses, Conspiracists Win Some Local Offices,” *Los Angeles Times*, November 19, 2022, <https://www.latimes.com/world-nation/story/2022-11-19/election-conspiracists-claim-some-races-for-local-offices>.
- 78** Nathan Layne and Peter Eisler, “Michigan Widens Probe into Voting System Breaches by Trump Allies,” Reuters, June 7, 2022, <https://www.reuters.com/world/us/exclusive-michigan-widens-probe-into-voting-system-breaches-by-trump-allies-2022-06-06>.
- 79** Bente Birkeland, “After Data Is Posted on Conspiracy Site, Colorado County’s Voting Machines Are Banned,” NPR, August 12, 2021, <https://www.npr.org/2021/08/12/1027225157/after-data-is-posted-on-conspiracy-website-colo-countys-voting-machines-are-bann>.
- 80** Emma Brown, “An Elections Supervisor Embraced Conspiracy Theories. Officials Say She Has Become an Insider Threat,”
- Washington Post*, September 26, 2021, [https://www.washingtonpost.com/investigations/an-elections-supervisor-embraced-conspiracy-theories-officials-say-she-has-become-an-insider-threat/2021/09/26/ee60812e-1a17-11ec-a99a-5fea2b2da34b\\_story.html](https://www.washingtonpost.com/investigations/an-elections-supervisor-embraced-conspiracy-theories-officials-say-she-has-become-an-insider-threat/2021/09/26/ee60812e-1a17-11ec-a99a-5fea2b2da34b_story.html).
- 81** Colo. S.B. 22-153, § 13 (2022), [https://leg.colorado.gov/sites/default/files/documents/2022A/bills/sl/2022a\\_sl\\_322.pdf](https://leg.colorado.gov/sites/default/files/documents/2022A/bills/sl/2022a_sl_322.pdf).
- 82** Nev. S.B. 54, § 2 (2023), <https://www.leg.state.nv.us/App/NELIS/REL/82nd2023/Bill/9608/Overview>.
- 83** Kans. H.B. 2086 (2023), [http://www.kslegislature.org/li/b2023\\_24/measures/hb2086/](http://www.kslegislature.org/li/b2023_24/measures/hb2086/); Minn. H.F. 635 (2023), <https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF0635&ssn=0&y=2023>; and Colo. S.B. 153 (2022), <https://leg.colorado.gov/bills/sb22-153>.
- 84** See, e.g., Ariz. Elec. Code Ch. 4, § III(A) (2019), [https://azsos.gov/sites/default/files/2019\\_ELECTIONS\\_PROCEDURES\\_MANUAL\\_APPROVED.pdf#page=109](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf#page=109); Ga. Comp. R. and Regs. 183-1-12-.04(3) (2023), <https://rules.sos.state.ga.us/gac/183-1-12>; N.M. Code R. § 1.10.34.8(A) (2023), <https://www.srca.nm.gov/parts/title01/01.010.0034.html>; and Ohio Election Official Manual, Ch. 2, § 1.07 (2019), [https://www.ohiosos.gov/globalassets/elections/directives/2019/dir2019-11\\_eom.pdf#%5B%7B%22num%22%3A260%2C%22gen%22%3A0%7D%2C%7B%22name%22%3A%22XYZ%22%7D%2C70%2C680%2C0%5D](https://www.ohiosos.gov/globalassets/elections/directives/2019/dir2019-11_eom.pdf#%5B%7B%22num%22%3A260%2C%22gen%22%3A0%7D%2C%7B%22name%22%3A%22XYZ%22%7D%2C70%2C680%2C0%5D).
- 85** See, e.g., N.M. Code R. § 1.10.34.8(B) (2023).
- 86** See, e.g., Colo. Code Regs. § 11.1.1 (2022), [https://www.sos.state.co.us/pubs/rule\\_making/CurrentRules/8CCR1505-1/Rule11.pdf](https://www.sos.state.co.us/pubs/rule_making/CurrentRules/8CCR1505-1/Rule11.pdf).
- 87** See, e.g., Ariz. Elec. Code Ch. 4, §§ III(A)(7), III(B) (2019); and Colo. Code Regs. §§ 20.5.4, 20.8.2(e) (2022), [https://www.sos.state.co.us/pubs/rule\\_making/CurrentRules/8CCR1505-1/Rule20.pdf](https://www.sos.state.co.us/pubs/rule_making/CurrentRules/8CCR1505-1/Rule20.pdf).
- 88** See, e.g., Colo. Code Regs. § 20.9.1 (2022); N.M. Code R. § 1.10.35.11(A) (2023), <https://www.srca.nm.gov/parts/title01/01.010.0035.pdf>; and Ohio Election Official Manual, Ch. 2, § 1.07 (2019).
- 89** See, e.g., Colo. Code Regs. § 20.9.1 (2022); and Ohio Election Official Manual, Ch. 2, § 1.07 (2019).
- 90** See, e.g., Colo. Code Regs. § 20.9.1(b)(2) (2022).
- 91** See, e.g., Colo. Code Regs. § 20.9.1(a)(4) (2022); and N.M. Code R. § 1.10.35.11(B) (2023).
- 92** Lawrence Norden, Derek Tisler, and Turquoise Baker, “Estimated Costs for Protecting Election Infrastructure Against Insider Threats,” Brennan Center for Justice, March 7, 2022, <https://www.brennancenter.org/our-work/research-reports/estimated-costs-protecting-election-infrastructure-against-insider>.
- 93** Norden, Tisler, and Baker, “Estimated Costs for Protecting Election Infrastructure.”
- 94** Colo. S.B. 22-153 (2022).
- 95** Colo. S.B. 22-153 (2022); and Nev. S.B. 54, § 2 (2023).
- 96** Minn. R. 8240.2700(9), <https://www.revisor.mn.gov/rules/8240.2700>.
- 97** Colo. S.B. 22-153 (2022).
- 98** CISA, “Election Infrastructure Insider Threat Mitigation Guide,” June 2022, [https://www.cisa.gov/sites/default/files/publications/election\\_insider\\_threat\\_mitigation\\_guide\\_508\\_0.pdf](https://www.cisa.gov/sites/default/files/publications/election_insider_threat_mitigation_guide_508_0.pdf).
- 99** Federal Emergency Management Agency, “IS-915: Protecting Critical Infrastructure Against Insider Threats Course,” last updated July 10, 2013, <https://training.fema.gov/is/courseoverview.aspx?code=IS-915&lang=en>; National Counterintelligence and Security Center, “Establish an Insider Threat Program,” Office of the Director of National Intelligence, accessed March 31, 2023, <https://www.dni.gov/index.php/safeguarding-science/insider-risk>; and National Counterintelligence and Security Center, “National Insider Threat Task Force (NITTF) Mission,” Counterintelligence and Security Center, accessed March 31, 2023, <https://www.dni.gov/index.php/ncsc-how-we-work/ncsc-nittf>.



- 100** CISA, “Human Resources’ Role in Preventing Insider Threats,” accessed March 31, 2023, [https://www.cisa.gov/sites/default/files/publications/HRs%20Role%20in%20Preventing%20Insider%20Threats%20Fact%20Sheet\\_508.pdf](https://www.cisa.gov/sites/default/files/publications/HRs%20Role%20in%20Preventing%20Insider%20Threats%20Fact%20Sheet_508.pdf).
- 101** DHS, “Insider Threat Mitigation Program,” fact sheet, accessed March 31, 2023, <https://www.cisa.gov/sites/default/files/publications/fact-sheet-insider-threat-mitigation-program-092018-508.pdf>; and CISA, *Insider Threat Mitigation Guide*, November 2020, [https://www.cisa.gov/sites/default/files/publications/Insider%20Threat%20Mitigation%20Guide\\_Final\\_508.pdf](https://www.cisa.gov/sites/default/files/publications/Insider%20Threat%20Mitigation%20Guide_Final_508.pdf).
- 102** DOJ, *Federal Law Constraints on Post-Election “Audits,”* July 28, 2021, <https://www.justice.gov/opa/press-release/file/1417796/download>.
- 103** Ernest Luning, “Tina Peters Barred from Overseeing This Year’s Primary and General Elections in Mesa County,” *Colorado Politics*, May 10, 2022, [https://www.coloradopolitics.com/elections/2022/tina-peters-barred-from-overseeing-this-years-primary-and-general-elections-in-mesa-county/article\\_1e42b2e8-d0b8-11ec-94ab-2fe94e87ecc4.html](https://www.coloradopolitics.com/elections/2022/tina-peters-barred-from-overseeing-this-years-primary-and-general-elections-in-mesa-county/article_1e42b2e8-d0b8-11ec-94ab-2fe94e87ecc4.html).
- 104** Jonathan Brater (Michigan director of elections) to Stephanie Scott (Adams Township clerk), October 25, 2021, <https://content.govdelivery.com/attachments/MISOS/2021/10/25/file/attachments/1976229/Letters%20to%20Adams%20Township%20Clerk.pdf>.
- 105** Rosalind S. Helderman, “Arizona Secretary of State Says Maricopa County Should Replace Election Equipment Because GOP-Backed Recount Compromised Its Security,” *Washington Post*, May 20, 2021, [https://www.washingtonpost.com/politics/arizona-audit-voting-equipment/2021/05/20/a8370368-b9a4-11eb-a5fe-bb49dc89a248\\_story.html](https://www.washingtonpost.com/politics/arizona-audit-voting-equipment/2021/05/20/a8370368-b9a4-11eb-a5fe-bb49dc89a248_story.html).
- 106** Lawrence Norden, “Brennan Center Letter to State Associations of Election Officials on Addressing Voting Equipment Breaches,” Brennan Center for Justice, August 12, 2022, <https://www.brennancenter.org/our-work/research-reports/brennan-center-letter-state-associations-election-officials-addressing>; and Nicole Garcia, “Maricopa Count Tests New Voting Machines Following Election Audit,” *Fox 10 (Phoenix)*, October 18, 2021, <https://www.fox10phoenix.com/news/maricopa-county-tests-new-voting-machines-following-election-audit>.
- 107** Rachel Orey, Christopher Thomas, and Grace Gordon, “How Ballot Tabulators Improve Elections,” Bipartisan Policy Center, April 25, 2022, <https://bipartisanpolicy.org/explainer/how-ballot-tabulators-improve-elections>; and Alice Clapman and Ben Goldstein, “Hand-Counting Votes: A Proven Bad Idea,” Brennan Center for Justice, November 23, 2022, <https://www.brennancenter.org/our-work/analysis-opinion/hand-counting-votes-proven-bad-idea>.
- 108** Brett Forrest, “Nye County Clerk Tempers Hand Count Expectations, Calls It a ‘Test,’” *NBC 3 News (Las Vegas)*, November 12, 2022, <https://news3lv.com/news/local/nye-county-clerk-tempers-hand-count-expectations-calls-it-a-test>.
- 109** Verified Voting, “Election Officials Need a Helping Hand, Not Hand Count Legislation,” April 7, 2022, <https://verifiedvoting.org/blog/hand-counts-4-7-22>.
- 110** Alexandra Ulmer, “New Mexico Top Court Orders County to Certify Primary Results,” *Reuters*, June 15, 2022, <https://www.reuters.com/world/us/new-mexico-sues-county-over-refusal-certify-june-primary-results-2022-06-15>.
- 111** Lawrence Norden and Derek Tisler, “The 2020 Election May Be the Most Secure in U.S. History,” *Foreign Affairs*, October 15, 2020, <https://www.foreignaffairs.com/articles/united-states/2020-10-15/2020-election-may-be-most-secure-us-history>.
- 112** CISA, “Joint Statement from Elections Infrastructure Government Coordinating Council and the Election Infrastructure Sector Coordinating Executive Committees,” press release, November 12, 2020, [elections-infrastructure-government-coordinating-council-election](https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election).
- 113** Turquoise Baker et al., “Voting Machines at Risk in 2022,” Brennan Center for Justice, March 1, 2022, <https://www.brennancenter.org/our-work/research-reports/voting-machines-risk-2022>.
- 114** Pam Fessler, “Report: America’s Aging Voting Machines Could Present Election Problems,” *NPR*, September 15, 2015, <https://www.npr.org/sections/itsallpolitics/2015/09/15/440255752/report-americas-aging-voting-machines-could-present-election-problems>.
- 115** Ines Kagubare, “Cyber Command Chief: Election Interference Is Not Going Away,” *Hill*, March 3, 2023, <https://thehill.com/policy/cybersecurity/3888331-chinese-cyberspace-threats-are-growing>; and A. J. Vicens, “Foreign Disinformation Efforts to Interfere in US Midterms Mostly Fizzle, but Remain Concerning, Researchers Say,” *CyberScoop*, December 19, 2022, <https://www.cyberscoop.com/2022-midterm-election-interference-nation-state>.
- 116** Derek Tisler and Turquoise Baker, “Paper Ballots Helped Secure the 2020 Election — What Will 2022 Look Like?,” Brennan Center for Justice, May 10, 2022, <https://www.brennancenter.org/our-work/analysis-opinion/paper-ballots-helped-secure-2020-election-what-will-2022-look>.
- 117** Ind. H.B. 1116 (2022), <https://iga.in.gov/legislative/2022/bills/house/1116>; Miss. S.B. 2879 (2022), <http://billstatus.ls.state.ms.us/2022/pdf/history/SB/SB2879.xml>; Tenn. S.B. 2558 (2022), <https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB2558&GA=112>; and Tex. S.B. 598 (2021), <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=87R&Bill=SB598>.
- 118** Nikita Biryukov, “Bill Would Revive Stalled Rule Requiring State’s Voting Machines Leave Paper Trail,” *New Jersey Monitor*, February 16, 2022, <https://newjerseymonitor.com/briefs/bill-would-revive-stalled-rule-requiring-states-voting-machines-leave-paper-trail>.
- 119** U.S. Election Assistance Commission, “Election Security Grant,” accessed March 31, 2023, <https://www.eac.gov/payments-and-grants/election-security-funds>.
- 120** Lawrence Norden and Edgardo Cortés, “What Does Election Security Cost?,” Brennan Center for Justice, August 15, 2019, <https://www.brennancenter.org/our-work/analysis-opinion/what-does-election-security-cost>.
- 121** Brennan Center for Justice, *The Case for Voter Registration Modernization*, January 2, 2013, <https://www.brennancenter.org/sites/default/files/publications/Case%20Voter%20Registration%20Modernization.pdf>.
- 122** Emma Jones, “Smart Use of Electronic Poll Books Can Reduce Long Lines on Election Day,” *Bipartisan Policy Center*, July 1, 2020, <https://bipartisanpolicy.org/blog/smart-use-of-electronic-poll-books-can-reduce-long-lines-on-election-day>.
- 123** Orey, Thomas, and Gordon, “How Ballot Tabulators Improve Elections.”
- 124** Edgardo Cortés et al., *Preparing for Cyberattacks and Technical Problems During the Pandemic: A Guide for Election Officials*, Brennan Center for Justice, June 5, 2020, <https://www.brennancenter.org/our-work/research-reports/preparing-cyberattacks-and-technical-problems-during-pandemic-guide>.
- 125** Elise Viebeck, “States Across the Country Are Dropping Barriers to Voting, Widening a Stark Geographic Divide in Ballot Access,” *Washington Post*, June 23, 2021, [https://www.washingtonpost.com/politics/voting-rights-expansion-states/2021/06/22/1699a6b0-cf87-11eb-8014-2f3926ca24d9\\_story.html](https://www.washingtonpost.com/politics/voting-rights-expansion-states/2021/06/22/1699a6b0-cf87-11eb-8014-2f3926ca24d9_story.html); and Zach Montellaro, “The Pandemic Changed How We Vote. These States Are Making the Changes Permanent,” *Politico*, June 22, 2021, <https://www.politico.com/news/2021/06/22/pandemic-voting-changes-495411>.

**126** National Conference of State Legislatures, *Post-Election Audits*, last updated September 22, 2022, <https://www.ncsl.org/elections-and-campaigns/post-election-audits>.

**127** CISA, "CISA Establishes Ransomware Vulnerability Warning Pilot Program," press release, March 13, 2023, <https://www.cisa.gov/news-events/news/cisa-establishes-ransomware-vulnerability-warning-pilot-program>.

**128** Paul Gronke and Paul Manson, "The State of Election Administration in 2022," Democracy Fund, November 2, 2022, <https://democracyfund.org/idea/the-state-of-election-administration-in-2022>.

**129** Matt Vasilogambros, "Facing Foreign Election Foes, States Hire 'Cyber Navigators,'" Pew Charitable Trusts, August 25, 2021, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/08/25/facing-foreign-election-foes-states-hire-cyber-navigators>.

**130** "State and Local Cybersecurity Grant Program," last updated November 3, 2022, <https://www.fema.gov/grants/preparedness/state-local-cybersecurity-grant-program>.

**131** Brennan Center for Justice and Benenson Strategy Group, "Local Election Officials Survey — April 2023."

## **ABOUT THE AUTHORS**

► **Derek Tisler** is counsel in the Brennan Center’s Elections and Government Program. His work focuses on issues related to election administration, security, and disinformation. He is a coauthor of several recent Brennan Center reports, including *Election Officials Under Attack* (2021), *Ensuring Safe Elections* (2020), and *A Roadmap to the Official Count in an Unprecedented Election* (2020). His work has been featured in media outlets across the country, including *Foreign Affairs*, *FiveThirtyEight*, and the *Hill*. Tisler has received a BA in economics from Michigan State University and his JD from the University of Chicago Law School.

► **Lawrence Norden** is senior director of the Brennan Center’s Elections and Government Program. He has authored several nationally recognized reports and articles related to election administration and voting technology, including *Securing Elections from Foreign Interference* (2017), *America’s Voting Machines at Risk* (2015), *How to Fix Long Lines* (2013), *Better Design, Better Elections* (2012), and *Voting Law Changes in 2012* (2011). His work has been featured in media outlets across the country, including the *New York Times*, the *Wall Street Journal*, CNN, Fox News, MSNBC, and NPR. He has testified before Congress and several state legislatures on numerous occasions. He received his JD from NYU School of Law.

## **ABOUT THE BRENNAN CENTER’S DEMOCRACY PROGRAM**

The Brennan Center’s Democracy Program encourages broad citizen participation by promoting voting and campaign finance reform. We work to secure fair courts and to advance a First Amendment jurisprudence that puts the rights of citizens — not special interests — at the center of our democracy. We collaborate with grassroots groups, advocacy organizations, and government officials to eliminate the obstacles to an effective democracy.

## **ACKNOWLEDGMENTS**

The Brennan Center gratefully acknowledges The William and Flora Hewlett Foundation, Carnegie Corporation of New York, Change Happens Foundation, FJC - A Foundation of Philanthropic Funds, Leon Levy Foundation, Zegar Family Foundation, Craig Newmark Philanthropies, Scarlet Feather Fund, and Jerome L. Greene Foundation for their generous support of our work. This is an independent Brennan Center publication; the opinions expressed are those of the authors and do not necessarily reflect the views of our supporters.

The authors would like to thank the many colleagues who contributed to this report. They would especially like to thank Mekela Panditharatne and Julia Fishman, who contributed crucial research, drafting, and editing support, as well as Kathy Boockvar, Alice Clapman, Lisa Danetz, Veronica Degraffenreid, Liz Howard, Lauren Miller, Sean Morales-Doyle, Marina Pino, and Gowri Ramachandran, who provided invaluable knowledge, insights, and guidance that informed this report’s recommendations, and Ruby Edlin, who assisted with editing and fact-checking.

**BRENNAN  
CENTER**  

---

**FOR JUSTICE**

Brennan Center for Justice at New York University School of Law  
120 Broadway // 17th Floor // New York, NY 10271  
[www.brennancenter.org](http://www.brennancenter.org)

**FACT SHEET**

# The Freedom to Vote Act

The pro-democracy bill would protect our elections from voter suppression, election denial, gerrymandering, and dark money.

UPDATED JULY 17, 2023

**T**he Freedom to Vote Act is historic pro-voter legislation to strengthen our democracy, promote racial justice and equity for all Americans, and block anti-voter efforts in the states.

In the 2022 midterms, American democracy [rallied](#). But despite the widespread rejection of election denial at the polls, efforts to [undermine](#) electoral systems and push anti-voter policies continue to proliferate. These and other attacks on democracy have often primarily targeted communities of color.

Congress has the legal and constitutional power to strengthen our democracy by passing the Freedom to Vote Act. This landmark legislation sets baseline national standards to protect the freedom to vote, counter election denial, end partisan gerrymandering, and help curb big money in politics. It builds off [momentum](#) in states across the country to put in place pro-voter policies.

Together with the John Lewis Voting Rights Advancement Act, which would restore and update the full protections of the landmark Voting Rights Act of 1965, the Freedom to Vote Act would be the most comprehensive pro-democracy law enacted in decades. Congress came

[achingly close](#) to passing this package in 2022. Our democracy can't wait.

## Key Provisions of the Freedom to Vote Act

---

### Expanding Access to the Ballot

The Freedom to Vote Act creates baseline national standards for voting access, preempting many of the most onerous restrictions that have been passed or proposed recently in the states and expanding opportunities for all Americans to cast their ballots.

**Early voting:** The bill requires all 50 states to offer early voting periods for at least two weeks prior to Election Day, including on nights and weekends, for at least 10 hours per day (except for jurisdictions with fewer than 3,000 voters, which would only be required to offer early voting during the election office's regular business hours

and for at least 8 hours on one Saturday and one Sunday during the early vote period). Each state would also be required to ensure that, when possible, early voting polling places are within walking distance of public transportation, accessible to rural voters, and located on college campuses.

**Mail voting:** The bill creates a national standard permitting no-excuse vote by mail for every eligible voter. States would be required to permit voters to apply for absentee ballots online and prohibited from imposing onerous requirements like requiring mail ballots to be notarized. Apart from returning ballots by mail, the bill would allow voters to return mail ballots in person to a polling place or to a drop box. The bill also includes safeguards to ensure fair resolution of discrepancies between a voter's signature on a mail ballot and their signature on file with election authorities. Any mail ballot postmarked on Election Day that arrives within seven days would need to be counted, and ballots could not be discarded for minor errors, like failing to use an outer [security envelope](#).

**Protections for individuals with disabilities:** The bill addresses some of the biggest challenges to voting access that Americans with disabilities face. The bill would require each state to ensure that individuals with disabilities have the same access to absentee ballots and applications as other voters, as well as making them electronically accessible to voters with disabilities, among other safeguards.

**Voter validation:** The bill promotes a national standard for states that have an identification requirement for in-person voting, allowing for the use of a wide range of forms of identification (including electronic copies) and alternative options for voter validation. States that do not impose an identification requirement would not be required to have one.

### Modernizing Voter Registration

The Freedom to Vote Act modernizes our voter registration system and solves the vast majority of registration problems that routinely keep millions of Americans from voting.

**Automatic voter registration:** The bill makes automatic voter registration (AVR), which 22 states and the District of Columbia have already adopted, the national standard. Under AVR, eligible voters are automatically registered to vote when they provide information to a participating government agency, unless they opt out. The bill requires AVR to be offered at state departments of motor vehicles and provides funding for that purpose and for expanding it to other agencies. It also establishes privacy and security protections, including protections for persons inadvertently registered.

**Same-day voter registration:** The bill requires states to offer same-day voter registration (SDR), which 22 states and the District of Columbia have already adopted. SDR permits eligible voters to register to vote and cast a ballot in federal elections on the same day.

**Online voter registration:** The Freedom to Vote Act requires states to allow voters to register to vote online, as 42 states and the District of Columbia already do.

**Protections against unlawful voter purges:** The bill provides safeguards to prevent unlawful, faulty, error-prone methods for purging voter rolls while allowing states to accurately maintain their voter registration lists. Further, states would be required to notify within 48 hours any individual removed from the list of eligible voters of their removal, the reasons for their removal, and how they can contest the removal.

### Stopping Anti-Voter Efforts

The Freedom to Vote Act would directly respond to overt voter suppression that blocks Americans' access to the ballot.

**Cracking down on deceptive and intimidating practices:** The bill would prohibit the dissemination of false and misleading information designed to deter eligible voters from casting a ballot. It would also establish federal criminal penalties for deceiving voters and allow the attorney general to share accurate information about elections if state officials fail to do so. Finally, it would increase existing penalties for voter intimidation.

**Voting rights restoration:** The bill restores federal voting rights to formerly incarcerated citizens upon their release, establishing a bright-line standard to replace the confusing patchwork of state laws and removing the vestiges of restrictions born out of Jim Crow.

**Countering long lines and related discriminatory practices:** The bill creates protections for individuals subjected to excessive lines on Election Day — most often Black and Latino voters — by requiring states to ensure that lines last no longer than 30 minutes and restricting states from prohibiting donations of food or water to voters waiting in line.

**Private right of action:** The bill creates a cause of action that allows voters to sue when their constitutional right to vote is infringed upon.

### Preventing Election Denial Tactics

Voter suppression and extreme gerrymandering are themselves forms of election sabotage, but the Freedom to Vote Act also includes new specific protections to counter

tactics that arose after 2020, from attacks on election officials to partisan election “reviews.”

**Restrictions on the politicized removal of election officials and related safeguards:** The bill would increase protections for local election administrators and help prevent them from being removed for partisan or political reasons. The bill allows officials administering federal elections to bring a lawsuit challenging their removal if they were replaced for reasons other than gross negligence, neglect of duty, or malfeasance in office. It also increases other federal protections against intimidation of election workers.

**Enhanced protections for ballots and records:** The bill would protect against partisan, postelection attempts to tamper with results by expanding the penalties for destroying or altering ballots and other election records and expanding the categories of what records must be preserved after federal elections. These provisions are intended to protect against the postelection mishandling of ballots and other records (such as what is alleged to have taken place in the partisan review of [Maricopa County’s election results](#)).

**Remedy for failure to certify results:** The bill’s cause of action for infringement of the right to vote would allow an individual to bring a lawsuit challenging not only the violation of their right to cast a ballot but also their right to have that ballot counted and certified. This would allow voters to sue in the event of an unreasonable failure to certify election results or other efforts to set aside a valid election outcome.

### **Ensuring Fair Maps**

The Freedom to Vote Act provides critical safeguards to end extreme partisan gerrymandering in congressional redistricting.

**Banning partisan gerrymandering and establishing clear, neutral standards:** The bill would require strong, uniform rules for congressional redistricting, including a ban on partisan gerrymandering and strengthened protections for communities of color.

**Procedural safeguards:** The bill will also ensure greater transparency in the redistricting process and add enhanced judicial remedies to ensure that discriminatory or gerrymandered maps can quickly be challenged in court and fixed.

### **Countering Big Money in Politics**

The Freedom to Vote Act would take crucial steps toward overhauling our nation’s campaign finance system.

**Shoring up campaign transparency:** The bill would curb “dark money” from undisclosed sources in federal elections by requiring any entity that spends more than \$10,000 in an election to disclose all major donors. It would also extend campaign transparency requirements to internet ads, require ads to clearly identify their sponsors, and require the major online platforms that sell them to create searchable databases of past advertisements to maximize transparency and minimize disinformation.

**Ensuring that super PACs are truly independent:** The bill also tightens rules intended to keep super PACs and other outside groups independent of candidates.

**Fixing campaign finance enforcement:** The bill helps ensure that the Federal Election Commission will investigate potential violations of the law without being stymied by partisan gridlock.

**Small donor matching:** The bill establishes a voluntary small donor matching system for elections to the House of Representatives for states that choose to opt in. The program would be paid for exclusively through a new state Election Assistance and Innovation Fund, which does not rely on taxpayer dollars. (States choosing not to opt in to the matching system could use funds for other election improvements.)

### **Promoting Secure Elections**

The Freedom to Vote Act includes much-needed improvements to election security and measures to prevent subversion of the electoral process.

**Requiring postelection audits:** The bill requires states to conduct transparent postelection audits that adhere to clearly defined rules and procedures.

**Requiring paper records and other election infrastructure improvements:** The bill requires states to replace old, paperless electronic voting machines with voting systems that provide voter-verified paper records and provides grants for states to purchase more secure voting systems.



**FACT SHEET**

# The John R. Lewis Voting Rights Advancement Act

The bill would strengthen legal protections against discriminatory voting policies and practices, restoring the Voting Rights Act.

**The John R. Lewis Voting Rights Advancement Act** (H.R. 14, S. 4) would modernize and revitalize the Voting Rights Act of 1965. The Supreme Court has hampered the law by gutting its preclearance provisions in *Shelby County v. Holder* (2013) and by making it harder to sue to stop discriminatory practices in *Brnovich v. DNC* (2021). The John Lewis Act would strengthen the law, moving us closer to ending discrimination in voting and guaranteeing equal access to the ballot.

## Key Provisions

---

### Preclearance

**Geographic coverage:** The John Lewis Act creates a new framework to determine which states and localities will be subject to preclearance. Under the requirement, jurisdictions with a history of voting discrimination must get approval from the Department of Justice or a federal court in Washington, DC, before changing their voting laws or practices to ensure that the changes are not discriminatory. In *Shelby County*, the Supreme Court struck down the Voting Rights Act's preclearance formula, saying it was outdated. The bill updates the formula to ensure that state and local coverage is based on recent evidence of discrimination.

**Practice-based coverage:** The John Lewis Act makes some types of voting changes subject to preclearance nation-

wide, if certain conditions are met, because those changes are so often discriminatory. The following practices would be covered:

- Creating at-large districts in places with sufficiently large minority populations.
- Changing jurisdiction boundaries to remove minorities from the jurisdiction in places with sufficiently large minority populations.
- Changing the boundaries of a district where a minority group is sufficiently large and has had a large population increase.
- Imposing stricter requirements for documentation or proof of identity to vote.
- Reducing the availability of or altering multilingual voting materials.
- Reducing, consolidating, or relocating polling places, early and Election Day voting opportunities, or absentee voting opportunities in places with sufficiently large minority populations.
- Making it easier to remove voters from the rolls in places with sufficiently large minority populations.



**Bailout:** The Voting Rights Act currently allows jurisdictions to easily bail out, or be released from preclearance coverage, if they successfully file an action in federal court showing they meet certain conditions. The John Lewis Act adds an even faster process that does not require a lawsuit. States that have not engaged in discrimination for a specified period of time and have satisfied certain objective criteria would qualify for automatic bailout.

### **Vote Dilution and Vote Denial**

Section 2 of the Voting Rights Act allows voters to sue to block voting laws and practices that are intentionally discriminatory or will yield discriminatory results. The recent *Brnovich* decision makes it harder to win those lawsuits. The John Lewis Act would strengthen protections against discrimination and codify prior standards for Section 2 cases.

**Vote dilution:** A voter may bring a federal action for vote dilution when practices such as gerrymandered districts make it harder for candidates preferred by minority voters to win.

The John Lewis Act would codify the nine Senate Factors enumerated in the 1982 Senate report accompanying Voting Rights Act amendments, which were adopted by

the Supreme Court in *Thornburg v. Gingles* (1986) and have long been used by federal courts to evaluate vote dilution cases. These factors include, e.g., the history of official discrimination, the extent of racially polarized voting, and the extent to which minority candidates have won elections in the jurisdiction.

**Vote denial:** A voter may bring a federal action for vote denial when restrictions result in minority voters having more difficulty casting a ballot than nonminority voters.

The John Lewis Act looks to whether a rule puts greater burdens in front of minority voters by applying the considerations drawn from the Senate Factors. Claims of “voter fraud” are not enough to justify a discriminatory rule. Instead, a state will have to provide evidence that fraud is occurring and that the law or practice will stop it. A voting rule that intends to benefit a political party still violates Section 2 if it also intends to cause vote dilution or vote denial for minority voters.

### **Retrogression**

The John Lewis Act creates a new cause of action for voters to sue states or localities that implement a voting rule that is more discriminatory against minorities than the rule it replaces.