

Testimony of David J. Becker

Executive Director and Founder, Center for Election Innovation & Research
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Madame Chair and members of the Committee, thank you for the opportunity to speak with you today. My name is David Becker, and I am the Executive Director and Founder of the Center for Election Innovation & Research, a nonpartisan nonprofit that works with election officials and others, from both parties, all over the country, to ensure elections are secure and accessible. I have nearly 25 years of experience working in elections, working as a voting rights lawyer in both the Clinton and W. Bush Departments of Justice, and leading the elections team at the Pew Charitable Trusts. Though I've generally been an optimist about our election system, and the men and women of integrity, from both parties, who oversee it, I come here before you today as concerned as I've never been before about the ongoing threats to American democracy.

First the good news. In every state in the union, including Arizona, we saw the most secure, verified, and transparent election in American history. Almost 95 percent of all ballots were cast on auditable paper, up from less than 80 percent in 2016, including all ballots in every swing state. There were more legitimate audits of those ballots than ever before, in states like Arizona, Michigan, and most notably in Georgia, where they counted every presidential ballot three times, including once entirely by hand, each confirming the results. We saw more pre-election litigation clarifying the rules than ever before, with each side winning some cases and losing others. And there was more post-election litigation confirming the results, unanimously. That's why the Attorney General, the FBI, and the Department of Homeland Security in the last administration along with election officials across the country and the political spectrum all confirmed that the election was secure and verified. This was largely due to the heroic efforts of election officials around the country, of both parties, who managed record turnout, while severely underfunded, during a global pandemic.

But the bad news is that tens of millions of Americans, sincerely disappointed that their candidate lost, have been targeted in a scam to keep them angry, divided, and donating. They have been fed a constant diet of lies telling them that millions of their fellow citizens, half of them members of their own party, engaged in a massive conspiracy to deliver the election to the current president, and that none of the millions of conspirators are talking. This sickness is leading to laws in the states that make elections less secure, leading to threats against public servants who run elections. And it's led to the effort recently concluded by the Cyber Ninjas in Maricopa County, Arizona.

The Ninjas' effort was flawed from the start. Their CEO was biased, spreading lies about the election months before they got the contract. Despite having no experience in elections, the Ninjas raised millions of dollars from outside sources to fund their efforts, and resisted any attempts at transparency with regard to their windfall. The Arizona Senate and their contractors had to be taken to court to get basic documents about the process, and the backroom discussions that drove it.

Meanwhile, the Ninjas seized ballots from the election officials who are required by law to maintain them, and in so doing, likely violated federal law, and broke the chain of custody of these ballots. One of the great ironies is that even if the Ninjas had discovered an actual election problem, they had so tainted the evidence that it would almost certainly have been found inadmissible in any legal proceeding to address the problem.

The Ninjas' conclusions suffered from the same fatal flaws that afflicted the entire process. They made wild claims about voters who had allegedly moved based upon an incompetent methodology and an incomplete commercial database, that has been thoroughly discredited for years. Experienced auditors, including the losing Republican candidate for Pima County Recorder, confirmed that the Ninjas and their allies got nearly half of their numbers flat-out wrong, including failing to account for one-third of the hand-counted ballots.

And despite the fact that Arizona was the best hope for those that sought to deny the election, the Ninjas effort confirmed nothing, nor was it ever designed to. It merely demonstrated that even in a state with the smallest margin of victory among the swing states, highly-biased and motivated individuals, bolstered by millions of dollars from unclear sources, and nearly eight months to work, could not manufacture enough fake fraud to overturn the will of Arizona voters.

Before they even started, the election had already been verified and confirmed, consistent with Arizona law. Voter lists were confirmed and maintained accurately thanks to, among other things, Arizona's membership in the Electronic Registration Information Center, the gold standard of voter list maintenance that thirty states utilize. Audits conducted immediately after the election, pursuant to laws written by the Republican-led Arizona legislature, signed by Republican governors, and enforced by both Republican and Democratic election officials, compared the paper ballots to the machine counts and confirmed the outcome. Maricopa County even went above and beyond, bringing in federally-accredited labs, with specific election expertise, which again confirmed the technology worked accurately. The Ninjas' effort was a waste of taxpayer resources, and the time and energy of public officials.

Nevertheless, the Ninjas' effort has been used to fan the flames of disinformation and election denial, with massive fundraising and false statements led by the losing presidential candidate and those that surround him. It has contributed to threats against election officials and other public servants, including their families. These threats are so pervasive that my organization recently formed the Election Official Legal Defense Network, under the leadership of co-chairs Bob Bauer, former White House Counsel in the Obama administration, and Ben Ginsberg, former counsel to the W. Bush and Romney presidential campaigns, to provide volunteer pro bono legal assistance to election officials suffering threats.

Finally, efforts like the Ninjas' not only delegitimize elections, undermining the cornerstone of our democracy, but also attack the legitimacy of those validly elected to govern us, between elections, including the very lawmakers who are calling for these efforts. Members of the Arizona Senate were on the same ballots they questioned, including eleven of the sixteen Republican members of that body. Perhaps unintentionally, by falsely accusing voters and election officials of malfeasance, they cast doubt on their own elections, and legitimacy to govern.

And this sickness is spreading, fueled by fundraising opportunities and potential grift. Lawmakers in Pennsylvania, Texas, and Wisconsin have pushed similarly flawed efforts, now beginning eleven months after the election. In each of these states, as throughout the nation, there is still zero evidence of

significant fraud, even after nearly a year of looking for it. In each of these states, the elections were audited pursuant to the laws passed by their Republican-majority legislatures. In Pennsylvania and Wisconsin, the margin of victory for the winner of the 2020 presidential contest was approximately equal to or greater than the margin in 2016, and of course, President Trump won Texas both times.

And these efforts continue to have a disastrous effect on our democracy. Election officials in all of these states are being threatened, and we're at risk of losing a generation of professional expertise in election administration due to the ongoing threats. Laws are being passed that actually make elections less secure, and inject more chaos into the casting, counting, and certification of results. Perhaps most troubling, validly elected democratic leaders are finding their elections delegitimized, and their ability to govern questioned. Ironically, many of the same lawmakers in these states are calling into question their own elections, just as members of the Arizona Senate have done.

Let's be clear. Real post-election audits, conducted transparently by professional election administrators, under laws established prior to an election, are a very good thing. We had more strong audits than ever before in 2020, including in Arizona. If states want to pass laws requiring statistically robust audits immediately after an election, before they know whether they're politically happy with the results, I will be there working with them and helping them. I have already done so with both Republicans and Democrats in states like Georgia and Michigan.

But that's not what happened in Arizona, and not what's happening in other states where this sickness has spread. The legislatures in those states did not see any problems with their existing audit laws pre-election. It was only after they became unhappy with the results and the losing candidate refused to concede that they fueled his election denial with these efforts, many months after the elections in these states had been verified, audited, and certified.

This isn't only a concern related to the health of our democracy, it's also a national security issue. For decades, our adversaries in Beijing, Moscow, and elsewhere have tried to delegitimize democracy as a form of government, claiming that only a central authoritarian government could serve its citizens. Now domestic actors are delegitimizing democracy more effectively than any foreign adversary could hope for. As we see more chaos and uncertainty introduced into the post-election process, and more election denial coming from the losers, those adversaries are celebrating, despite the reality that the 2020 election was the most secure election in our nation's history, and 2022 will be even more secure.