



Compilation of Election Rules Endangered by the 'Independent State Legislature Theory'

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There is a radical new legal theory being presented to the Supreme Court that says that, contrary to the practice in our country for the past 200 years, state legislatures should have virtually unfettered power to regulate federal elections. The theory — the so-called “independent state legislature theory” — derives from a misreading of the Constitution’s Elections Clause, which requires “the Legislature” of every state to set the “Times, Places and Manner” of congressional elections and then authorizes Congress to “make or alter” those regulations.

The proponents of this radical theory ask the Supreme Court to read this provision to grant state legislatures exclusive authority over federal elections, free from the usual checks by state constitutions, state courts, and possibly governors. According to their theory, state legislatures’ awesome power over federal elections cannot be checked by the state’s own constitutions, but also cannot be vested in state courts or delegated to election administrators or other executive officers.

This theory is utterly wrong. One of its fatal flaws: *this is not how election law works or has ever worked in any state in the union*. Every state regulates federal elections through an interdependent set of mandates and policies that have been adopted not only by statute, but also by the people in state constitutions and by ballot initiative, state and local election administrators and other executive officials implementing laws and exercising authorities delegated to them via statutes and constitutions, and state courts through judicial review and interpretation.

Specifically, the constitution of every state includes provisions that apply to federal elections. In every state, courts have the power to engage in judicial review of state laws regulating federal elections to determine if they comply with constitutional requirements, and in every state they have exercised that power. In every state, courts have the power to interpret state statutes regulating federal elections and they regularly do so. In every state, governors have the power to veto legislation affecting federal elections, and they frequently have exercised that power. In every

state, the election law delegates authority to state and local election officials to make certain decisions pertaining to federal elections, and in every state, they have exercised that authority to issue regulations, directives, and guidance applicable to federal elections.

If the Supreme Court accepts the radical independent state legislature theory, all of these sources of law will be called into question, throwing election law into disarray and wreaking havoc on election administration. This could literally affect hundreds upon hundreds of constitutional provisions, past court decisions, past gubernatorial vetoes, delegations of authority to election officials, and election regulations.

The Brennan Center researched state election law for all 50 states. Below, we identify and categorize hundreds of election rules from various sources of law, each of which applies to federal elections, and each of which could be affected by a ruling on the independent state legislature theory. While our analysis is comprehensive on the issues covered below, it is not exhaustive. The full scope of state election law — every constitutional provision, administrative regulation, state court decision, and other policies — spans an even wider array of subject matters too extensive to be covered here.

I. State Constitutional Provisions Expressly Regulating Elections

Every state's constitution regulates federal elections. Many extensively regulate the federal and state voting processes in detail. These constitutions, for example, establish the manner of voting — including in-person and mail voting — and voter registration deadlines and processes — including automatic or same-day voter registration. They also guide the congressional redistricting process, setting out deadlines, providing detailed map drawing criteria, and embracing judicial review. In addition to these highly specific rules, state constitutions also enshrine crucial rights that ensure fair elections and secret ballots. Below, we identify many of these constitutional provisions — both specific and broad — that apply to federal elections. We have identified more than 170 constitutional provisions across the states that could be affected by the independent state legislature theory. Most are in standalone constitutional sections; at times a state constitutional section contains more than one provision governing elections.

A. The manner of voting

All but two state constitutions (New Jersey and Rhode Island) regulate how voters cast their ballots, including guaranteeing the right to vote in free, fair, equal or open elections; guaranteeing the right to secrecy in voting; and ensuring that voters can vote by ballot.

i. “Free,” “fair,” “equal,” or “open” elections

Twenty-seven state constitutions guarantee free, fair, equal, and/or open elections.

Ariz. Const. art. II, § 21; Ark. Const. art. III, § 2; Cal. Const. art. II, § 3; Colo. Const. art. II, § 5; Del. Const. art. I, § 3; Ill. Const. art. III, § 3; Ind. Const. art. II, § 1; Ky. Const. § 6; Md. Const. Decl. of Rts. art. VII; Mass. Const. pt. 1, art. IX; Mo. Const. art. I, § 25; Mont. Const. art. II, § 13; Neb. Const. art. I, § 22; N.H. Const. pt. 1, art. XI; N.M. Const. art. II, § 8; N.C. Const. art. I, § 10; Okla. Const. art. III, § 5; Or. Const. art. II, § 1; Pa. Const. art. I, § 5; S.C. Const. art. I, § 5; S.D. Const. art. VII, § 1; Tenn. Const. art. I, § 5; Utah Const. art. I, § 17; Vt. Const. ch. I, art. VIII; Va. Const. art. I, § 6; Wash. Const. art. I § 19; Wyo. Const. art. I, § 27.

ii. Secret vote

Thirty state constitutions guarantee the right to cast a secret vote.

Ala. Const. art. VIII, § 177(c); Alaska Const. art. V, § 3; Ariz. Const. art. VII, § 1; Ark. Const. amend. L, § 2; Cal. Const. art. II, § 7; Colo. Const. art. VII, § 8; Conn. Const. art. VI, § 5; Fla. Const. art. VI, § 1; Ga. Const. art. II, § 1, ¶ I; Haw. Const. art. II, § 4; Idaho Const. art. VI, § 1; Ill. Const. art. III, § 4; Ky. Const. § 147; La. Const. art. XI, § 2; Me. Const. art. II, § 5; Mass. Const. amend. art. XXXVIII; *id.* art. LXI; Mich. Const. art. II, § 4; Mont. Const. art. IV, § 1; Neb. Const. art. VI, § 6; N.M. Const. art. VII, § 1(B); N.Y. Const. art. II, § 7; N.D. Const. art. II, § 1; Pa. Const. art. VII, § 4; S.C. Const. art. II, § 1; S.D. Const. art. VI, § 28; S.D. Const. art. VII, § 3; Utah Const. art. IV, § 8; Va. Const. art. II, § 3; Wash. Const. art. VI, § 6; Wis. Const. art. III, § 3; Wyo. Const. art. VI, § 11.

iii. How votes are cast

Twenty-four state constitutions regulate the manner that votes may be cast. Of those, 21 require that votes be cast by ballot, while 3 state constitutions (Arkansas, Kansas, and Virginia) require the use of ballots or machines. Although voting by ballot might seem commonplace today, many states used to require that voters publicly announce their votes.

Ark. Const. amend. L, § 2; Colo. Const. art. VII, § 8; Del. Const. art. V, § 1; Ga. Const. art. II, § 1, ¶ I; Idaho Const. art. VI, § 1; Ind. Const. art. II, § 13; Iowa Const. art. II, § 6; Kan. Const. art. IV, § 1; Ky. Const. § 147; La. Const. art. XI, § 2; Me. Const. art. II, § 1; Md. Const. art. I, § 1; Minn. Const. art. VII, § 5; Miss. Const. art. XII, § 240; Mo. Const. art. VIII, § 3; Nev. Const. art. II, § 5; N.M. Const. art. VII, § 5; N.C. Const. art. VI, § 5; Ohio Const. art. V, § 2; Tenn. Const. art. IV, § 4; Tex. Const.

art. VI, § 4; Va. Const. art. II, § 3; Wash. Const. art. VI, § 6; Wyo. Const. art. VI, § 11.

B. Congressional districting

i. Standards for map-drawing

Fourteen state constitutions establish standards or processes for drawing congressional districts.

Ariz. Const. art. IV, pt. 2, § 1(14); Cal. Const. art. XXI, § 2; Colo. Const. art. V, § 44.3; Fla. Const. art. III, § 20; Iowa Const. art. III, § 37; Me. Const. art. IX, § 24(1); Mo. Const. art. III, § 45; N.Y. Const. art. III, § 4; Ohio Const. art. XIX, § 3(B); Pa. Const. art. VII, § 9; Va. Const. art. II, § 6; Wash. Const. art. II, § 43(5); W. Va. Const. art. I, § 4; Wyo. Const. art. III, § 49.

ii. Map-drawing power

Thirteen state constitutions vest the power to draw congressional districts in the first instance in redistricting commissions. Maine and New York's commissions are advisory.

Alaska Const. art. VI, § 8; Ariz. Const. art. IV, pt. 2 § 1(3); Cal. Const. art. XXI, § 1; Colo. Const. art. V, § 44(2); Haw. Const. art. IV, §§ 2, 9; Idaho Const. art. III, § 2(2); Me. Const. art. IX, § 24(1); Mich. Const. art. IV, § 6; Mont. Const. art. V, § 14(2); N.J. Const. art. II, § 2, ¶ 1; N.Y. Const. art. III, § 5-b; Va. Const. art. II, § 6-A; Wash. Const. art. II, § 43.

C. Provisions guaranteeing absentee or mail voting

Sixteen state constitutions guarantee absentee or mail voting.

Ala. Const. art. VIII, § 177(c); Alaska Const. art. V, § 3; Del. Const. art. V, § 4A; Haw. Const. art. II, § 4; Kan. Const. art. V, § 1; La. Const. art. XI, § 2; Me. Const. art. II, § 4; Mich. Const. art. II, § 4; Mont. Const. art. IV, § 3; N.H. Const. pt. I, art. XI; N.J. Const. art. II, § I, ¶ 3(c); N.D. Const. art. II, § 1; Pa. Const. art. VII, § 14; R.I. Const. art. II, § 2; S.C. Const. art. II, § 10; S.D. Const. art. VII, § 3.

D. Provisions requiring voter registration

Twenty-four state constitutions require voter registration.

Ala. Const. art. VIII, § 177(a); Ariz. Const. art. VII, § 12; Ark. Const. amend. LI, § 3; Cal. Const. art. II, § 3; Del. Const. art. V, § 4; Fla. Const. art. VI, § 2; Haw. Const.

art. II, § 4; Ill. Const. art. III, § 4; Ind. Const. art. II, § 14(c); Ky. Const. § 147; Md. Const. art. I, § 2; Mich. Const. art. II, § 4; Miss. Const. art. XII, § 242; Nev. Const. art. II, § 6; N.Y. Const. art. II, § 5; N.C. Const. art. VI, § 3, cl. 1; R.I. Const. art. II, § 2; S.C. Const. art. II, § 8; S.D. Const. art. VII, § 3; Tex. Const. art. VI, §§ 2(a), 4; Va. Const. art. II, § 2; Wash. Const. art. VI, § 7; W. Va. Const. art. IV, § 12; Wyo. Const. art. VI, § 12.

In addition to the policies articulated above, state constitutions regulate elections in myriad other ways, including (inter alia) by regulating how winners are determined,¹ requiring or regulating primary elections,² determining the content of ballots,³ regulating the ballot counting process,⁴ or requiring proof of identity or eligibility.⁵

II. Direct Democracy

In states where they are empowered to do so, the people have adopted dozens of policies that regulate federal elections through direct democracy. The instances below reflect policymaking that occurred either without the involvement of the legislature (sometimes upon the referral of a constitutional convention), or by affirmatively overriding the legislature. These examples do not include dozens of additional ballot initiatives adopted after legislative referral of measures to the people.

In several states, the people through direct democracy adopted policies that are codified in statute, which the legislature subsequently either amended or adopted. We have designated those instances with †.

A. Redistricting

Five states have adopted policies through direct democracy that regulate congressional redistricting.

- **Arizona:** Ariz. Const. art. IV, pt. II, § 1: Proposition 106, a 2000 citizen-initiated constitutional amendment creating an independent redistricting commission.

¹ See, e.g., Ariz. Const. art. VII, § 7; Fla. Const. art. VI, § 1; Mont. Const. art. IV, § 5; N.M. Const. art. VII, § 5.

² See, e.g., Ariz. Const. art. VII, § 10, cl. 1; Cal. Const. art. II, § 5(a), (c); Haw. Const. art. II, §§ 4, 8; Miss. Const. art. XII, § 247.

³ See, e.g., Mich. Const. art. II, § 4(1)(c); Nev. Const. art. II, § 1A(1); Ohio Const. art. V, § 2a; Va. Const. art. II, § 3; Wyo. Const. art. VI, § 11.

⁴ See, e.g., La. Const. art. XI, § 2; Nev. Const. art. II, § 1A(10); S.C. Const. art. II, § 1; Va. Const. art. II, § 3.

⁵ See, e.g., Kan. Const. art. V, § 4; Miss. Const. art. XII, § 249A; Nev. Const. art. II, § 6; N.Y. Const. art. II, § 7.

- **California:** Cal. Const. art. XXI, §§ 1, 2, 3: Proposition 20, a 2010 citizen-initiated constitutional amendment creating an independent redistricting commission.
- **Florida:** Fla. Const. art. III, § 20: Amendment 6, a 2010 citizen-initiated constitutional amendment setting substantive standards for congressional districting.
- **Michigan:** Mich. Const. art. IV, § 6; *id.* art. V, § 2: Proposal 2, a 2018 citizen-initiated constitutional amendment creating an independent redistricting commission.
- **Utah:** Utah Code §§ 20a-20-101–20a-20-303†: Proposition 4, a 2018 initiated state statute creating an advisory redistricting commission.

B. Voter registration

In at least eight states, the people have modified their voter registration process applicable to federal elections.

- **California:** Cal. Elec. Code § 2123: Proposition 14, a 1930 citizen-initiated amendment to state statutes establishing permanent voter registration.
- **Maine:** Me. Rev. Stat. tit. 21–A § 122(4): Question 1, a 2011 veto referendum rejecting legislature’s repeal of same day registration.
- **Michigan:** Mich. Const. art. II, § 4: Proposal 3, a 2018 citizen-initiated constitutional amendment adopting automatic voter registration and same-day registration.
- **Nevada:** Nev. Rev. Stat. §§ 293.5732–293.5727†: Question 5, a 2018 indirect initiated state statute establishing automatic voter registration.
- **New Hampshire:** N.H. Const. pt. I, art. XI: Question 1, a 1984 constitutional convention referral providing accessibility to all voter registration places.
- **Ohio:** Ohio Const. art. V, § 1: Amendment 1, a 1977 initiated constitutional amendment requiring voters who have not voted in four years to re-register.
- **Oregon:** Or. Const. art. II, § 2: Measure 13, a 1986 initiated constitutional amendment requiring voters to be registered at least 20 days before election.
- **Rhode Island:** R.I. Const. art. II, § 1: 1973 convention referred constitutional amendment setting voter registration deadline 30 days before election.

C. Primaries

In at least five states, the people have modified policies related to primary elections, including federal primary elections.

- **Alaska:** Alaska Stat. § 15.25.010: Ballot measure 2, a 2020 indirect initiated statute adopting top-four primaries.

- **Colorado:** Colo. Rev. Stat. §§ 1-2-218.5, 1-4-801[†], 1-4-1201–1-4-1207[†]: Proposition 107, a 2016 citizen-initiated amendment to state statutes adopting presidential primaries in which unaffiliated voters can vote.
- **Hawaii:** Haw. Const. art. II, § 8: Amendment 6, a 1978 convention-referred constitutional amendment setting minimum duration between primary and general elections.
- **Florida:** Fla. Const. art. VI, §§ 1, 5: Amendment 11, a 1998 convention-referred constitutional amendment modifying ballot access for independent and minor party candidates and adopting open primaries for uncontested general elections.
- **Washington:** Wash. Rev. Code § 29A.52.112[†]: Initiative 872, a 2004 citizen initiative amendment to state statute adopting top-two primary.

D. Voting methods

In at least eight states, the people have adopted or modified voting methods applicable to federal elections.

- **Alaska:** Alaska Stat. § 15.15.350: Ballot measure 2, a 2020 indirect initiated statute adopting ranked choice voting for general elections.
- **Colorado:** Colo. Rev. Stat. § 1-5-409[†]: Measure 14, a 1912 citizen-initiated amendment banning straight ticket voting.
- **Maine:** Me. Rev. Stat. tit. 21-A §§ 1(27-C), 1(35-A), 601(2)(J), 723(1), 723-A(6)–(7): Question 1, a 2018 veto referendum rejecting legislature’s postponement and repeal of ranked choice voting; Me. Rev. Stat. tit. 21-A §§ 1(27–C), 1(35-A), 601(2)(J), 722(1), 723-A: Question 5, a 2016 citizen-initiative veto referendum adopting ranked choice voting.
- **Michigan:** Mich. Const. art. II, § 4: Proposal 3, a 2018 citizen-initiated constitutional amendment adopting no-excuse absentee voting and straight ticket voting.
- **Mississippi:** Miss. Const. § 249A: Initiative 27, a 2011 indirect initiated constitutional amendment requiring voter ID.
- **Ohio:** Ohio Const. art. V, § 2a: Amendment 2, a 1949 citizen-initiated constitutional amendment removing straight ticket voting options.
- **New Hampshire:** N.H. Const. pt. 1, art. XI: Question 2, a 1942 constitutional convention referral permitting absentee voting; N.H. Const. pt. 1, art. XI: Question 1, a 1956 constitutional convention referral permitting absentee voting in primaries.
- **Oregon:** Or. Stat. § 254.465[†]: Measure 60, a 1998 initiated state statute adopting all mail elections.

III. State Courts

A. State constitutional review

In every state in the country, state courts subject state election laws that apply to federal elections to scrutiny under the state's constitution. And in every state in the country, state courts issue decisions interpreting state election laws. We have identified hundreds of state court decisions relating to election laws that apply to federal elections. Below, we provide one illustrative example from each state's high court reviewing state election laws for compliance with the state constitution. This is just a sample of those decisions. We do not catalogue the numerous instances of state courts interpreting and construing state election law applicable to federal elections.

Cases in which the state supreme court concluded a state statute violated the state constitution are designated by *.

- **Alabama*:** *McCall v. Automatic Voting Mach. Corp.*, 180 So. 695 (Ala. 1938) (statute authorizing local rather than state election officials to select voting machines for their county violated state constitution's mandate that voting rules be "uniform" across the state).
- **Alaska*:** *State v. Arctic Vill. Council*, 495 P.3d 313 (Alaska 2021) (statute requiring absentee voters to obtain witness signatures when voting likely violated state constitution during the COVID-19 pandemic).
- **Arizona:** *Ariz. Minority Coal. for Fair Redistricting v. Ariz. Indep. Redistricting Comm'n*, 208 P.3d 676 (Ariz. 2009) (congressional districting plan did not violate state constitution).
- **Arkansas*:** *Martin v. Kohls*, 2014 Ark. 427, 444 S.W.3d 844 (voter ID statute violated state constitution).
- **California*:** *Patterson v. Padilla*, 451 P.3d 1171 (Cal. 2019) (statute requiring presidential primary candidates to disclose tax returns violated state constitution).
- **Colorado*:** *People ex rel. Salazar v. Davidson*, 79 P.3d 1221 (Colo. 2003) (congressional districting plan violated state constitution's ban on redistricting more than once per decade).
- **Connecticut:** *Fay v. Merrill*, 256 A.3d 622 (Conn. 2021) (statute identifying COVID-19 as a permissible reason for absentee voting did not violate state constitution).

- **Delaware***: *Albence v. Higgin*, No. 342, 2022, 2022 WL 5333790 (Del. Oct. 7, 2022) (statutes expanding absentee voting and establishing same-day voter registration violated state constitution).
- **Florida***: *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363 (Fla. 2015) (congressional districting plan violated state constitution’s prohibition on drawing districts “with the intent to favor or disfavor a political party”).
- **Georgia**: *Democratic Party of Ga., Inc. v. Perdue*, 707 S.E.2d 67 (Ga. 2011) (statute establishing voter ID requirement did not violate state constitution).
- **Hawaii**: *Burdick v. Takushi*, 776 P.2d 824 (Haw. 1989) (statute banning write-in ballots did not violate state constitution).
- **Idaho**: *Adams v. Lansdon*, 110 P. 280 (Idaho 1910) (statute requiring primary voters to vote for first and second choices if there are more than twice as many candidates as offices to be filled did not violate state constitution).
- **Illinois***: *Moran v. Bowley*, 179 N.E. 526 (Ill. 1932) (congressional redistricting plan violated state constitution’s guarantee of “free and equal” elections).
- **Indiana**: *League of Women Voters of Ind., Inc. v. Rokita*, 929 N.E.2d 758 (Ind. 2010) (statute establishing voter ID requirement did not violate state constitution).
- **Iowa**: *League of United Latin Am. Citizens of Iowa v. Pate*, 950 N.W.2d 204 (Iowa 2020) (statute establishing absentee voting procedure did not violate state constitution).
- **Kansas***: *State v. Beggs*, 271 P. 400 (Kan. 1928) (statute requiring voters to declare party affiliations before receiving ballots violated state constitution).
- **Kentucky***: *Perkins v. Lucas*, 246 S.W. 150 (Ky. 1922) (statute establishing voter registration regime violated violating state constitution’s guarantee of “free and equal” elections).
- **Louisiana**: *Peck v. City of New Orleans*, 5 So. 2d 508 (La. 1941) (statute authorizing use of voting machines, and requiring their use in New Orleans, did not violate state constitution).

- **Maine:** *All. for Retired Ams. v. Sec’y of State*, 240 A.3d 45 (Me. 2020) (statute setting absentee-ballot deadline did not violate state constitution).
- **Maryland*:** *Lamone v. Capozzi*, 912 A.2d 674 (Md. 2006) (statute establishing early voting violated state constitution).
- **Massachusetts:** *Chelsea Collaborative, Inc. v. Sec’y of the Commonwealth*, 100 N.E.3d 326 (Mass. 2018) (statute setting voter registration deadline did not violate state constitution).
- **Michigan*:** *Mich. State UAW Cmty. Action Program Council v. Austin*, 198 N.W.2d 385 (Mich. 1972) (statute requiring voter purges violated state constitution’s guarantee of right to vote).
- **Minnesota:** *DSCC v. Simon*, 950 N.W.2d 280 (Minn. 2020) (statute limiting the number of ballots that an individual may assist in marking did not violate state constitution).
- **Mississippi:** *Hoskins v. Howard*, 59 So. 2d 263 (Miss. 1952) (statute regulating political party affiliation did not violate state constitution).
- **Missouri*:** *Priorities USA v. State*, 591 S.W.3d 448 (Mo. 2020) (statute requiring voters who lack photo ID to submit an affidavit affirming their identity violated state constitution’s right to vote).
- **Montana:** *State ex rel. Fenner v. Keating*, 163 P. 1156 (Mont. 1917) (statute authorizing use of voting machines did not violate state constitution’s requirement that votes be cast by ballot).
- **Nebraska*:** *State ex rel. Stearns v. Corner*, 34 N.W. 499 (Neb. 1887) (statute limiting the days of voter registration violated state constitution).
- **Nevada*:** *State ex rel. Whitney v. Findley*, 19 P. 241 (Nev. 1888) (statute requiring voters to swear they are not members of Mormon Church violated state constitution).
- **New Hampshire*:** *Guare v. State*, 117 A.3d 731 (N.H. 2015) (statute amending a voter registration form violated state constitution).
- **New Jersey:** *Gangemi v. Berry*, 134 A.2d 1 (N.J. 1957) (statute establishing absentee voting did not violate state constitution).

- **New Mexico:** *Crum v. Duran*, 2017-NMSC-013, 390 P.3d 971 (statute requiring voters be affiliated with a major political party to vote in primary elections did not violate state constitution).
- **New York*:** *Harkenrider v. Hochul*, No. 60, 2022 WL 1236822 (N.Y. Apr. 27, 2022) (congressional districting plan violated state constitution's prohibition on partisan gerrymandering).
- **North Carolina:** *Libertarian Party of N.C. v. State*, 707 S.E.2d 199 (N.C. 2011) (statute governing recognition of political party did not violate state constitution).
- **North Dakota:** *State v. Flaherty*, 136 N.W. 76 (N.D. 1912) (statute requiring primary voters to register with a political party did not violate state constitution).
- **Ohio*:** *Adams v. DeWine*, 167 Ohio St.3d 499, 2022-Ohio-89, 195 N.E.3d 74 (2022) (congressional districting plan violated state constitution's prohibition on partisan gerrymandering).
- **Oklahoma:** *Maddox v. Hunt*, 1938 OK 495, 83 P.2d 553 (statute regulating ballot access did not violate state constitution).
- **Oregon:** *Libertarian Party of Or. v. Roberts*, 750 P.2d 1147 (Or. 1988) (statute regulating ballot access did not violate state constitution).
- **Pennsylvania*:** *Page v. Allen*, 58 Pa. 338 (1868) (statute establishing voter registration system violated state constitution).
- **Rhode Island:** *In re Voting Mach.*, 36 A. 716 (R.I. 1897) (statute authorizing use of voting machines did not violate state constitution's mandate that voting be by ballot).
- **South Carolina*:** *State ex rel. Edwards v. Abrams*, 240 S.E.2d 643 (S.C. 1978) (statute permitting a married couple to vote together violated state constitution's guarantee of secrecy in voting).
- **South Dakota:** *Morrow v. Wipf*, 115 N.W. 1121 (S.D. 1908) (statute regulating primary elections did not violate state constitution).
- **Tennessee:** *City of Memphis v. Hargett*, 414 S.W.3d 88 (Tenn. 2013) (statute establishing voter ID requirement did not violate state constitution).

- **Texas:** *Wood v. State ex rel. Lee*, 126 S.W.2d 4 (Tex. 1939) (statute authorizing use of voting machines did not violate state constitution’s mandate that elections be by ballot).
- **Utah:** *Ritchie v. Richards*, 47 P. 670 (Utah 1896) (statute requiring numbering of ballots did not violate state constitution’s right to a secret ballot).
- **Vermont:** *Trudell v. State*, 71 A.3d 1235 (Vt. 2013) (statute establishing filing date for independent congressional candidates did not violate state constitution).
- **Virginia:** *Moore v. Pullem*, 142 S.E. 415 (Va. 1928) (statute establishing absentee voting did not violate state constitution).
- **Washington:** *State ex rel. Empire Voting Mach. Co. v. Carroll*, 138 P. 306 (Wash. 1914) (statute permitting use of voting machines did not violate state constitution’s right to a secret ballot).
- **West Virginia:** *Simms v. Cty. Court of Kanahwa Cty.*, 61 S.E.2d 849 (W. Va. 1950) (statute regulating voter list maintenance did not violate state constitution).
- **Wisconsin:** *Milwaukee Branch of NAACP v. Walker*, 2014 WI 98, 357 Wis. 2d 469, 851 N.W.2d 262 (statute establishing voter ID requirement did not violate state constitution).
- **Wyoming:** *Slaymaker v. Phillips*, 42 P. 1049 (Wyo. 1895) (statute requiring ballot to be marked by election judge in order to be counted did not violate state constitution’s guarantee of the right to vote).

B. Jurisdiction over congressional districting

At least 17 states expressly authorize judicial review of congressional maps. (Five of these policies were adopted through legislatively referred initiatives to amend the state constitutions, in Colorado, Connecticut, Idaho, New Jersey, and Ohio.)

Ala. Code § 29-1-2.5; Alaska Const. art. VI, § 11; Cal. Const. art. XXI, § 3(b); Col. Const. art. V, § 44.5; Conn. Const. art. III, § 6; Haw. Const. art. IV, § 10; Idaho Const. art. III, § 2(5); Mass. Gen. Laws ch. 56, § 59; 2021 Mass. Acts. ch. 93, § 3; Me. Const. art. IX, § 24(3); Me. Rev. Stat. tit. 21-a, § 1206(3); Mich. Const. art. IV § 6(19); Mich. Comp. Laws § 3.71; N.J. Const. art. II, § 2, ¶ 7; N.Y. Unconsol. Law § 4221; N.C. Gen. Stat. § 1-267.1; Ohio Const. art. XIX, § 3(A); Or. Rev. Stat.

§ 188.125; Va. Code § 30-400; Wash. Const. art. II, § 43(10); Wash. Rev. Code § 44.05.130.

IV. STATUTORY DELEGATIONS OF POWER TO STATE AND LOCAL OFFICIALS

Every state legislature in the country delegates authority to state and local officials to create policies and procedures that govern elections, including federal elections. Many such delegations confer power over election administration broadly, while hundreds more delegate authority over specific subject areas. Below, we identify more than 650 of those statutory delegations, pursuant to which state and local officials have made thousands of detailed rules, regulations, and guidance necessary to administer elections. This is just a fraction of those statutory delegations. We do not catalogue the resulting rules, regulations, and guidance.

A. Power to create rules, standards, or policies for elections

At least 31 states grant the chief election official or entity broad power to make rules, regulations, standards, or policies that govern elections — including federal elections.

Alaska. Stat. § 15.15.010; Ariz. Rev. Stat. § 16-452; Ark. Code §§ 7-1-113(f), 7-4-101(f)(5); Cal. Gov. Code § 12172.5(d); Col. Rev. Stat. § 1-1-107; Conn. Gen. Stat. §§ 9-3(a), (b), 9-4; Del. Code tit. 15, § 210; Fla. Stat. § 97.012; Ga. Stat. § 21-2-31; Haw. Rev. Stat. § 11-2(e); 10 Ill. Comp. Stat. 5/1A-8; Iowa Code § 47.1; Ky. Rev. Stat. § 117.015 (1)(a), (b); Md. Code, Elec. Law § 2-102(b)(4); Mich. Comp. Laws § 168.31(1); Miss. Code § 23-15-211(2)(d); Mont. Code § 13-1-202; Neb. Rev. Stat. §§ 32-201, 32-202(4), (12); Nev. Rev. Stat. §§ 293.124, 293.247(1), (3), (4); N.M. Stat. § 1-2-1(B); N.C. Gen. Stat. § 163-22(a); Ohio Rev. Code § 3501.05; Okla. Stat. tit. 26, § 2-107; Or. Rev. Stat. § 246.150; R.I. Gen. Laws § 17-7-5(c); S.C. Code § 7-3-10(F); Tenn. Code §§ 2-11-201(c), 2-11-202; Va. Code § 24.2-103; Wash. Rev. Code § 29A.04.611; W. Va. Code § 3-1A-6(a); Wisc. Stat. § 5.05(1)(f).

B. Power to draw election precincts

In 49 states, local officials have express authority to draw and modify precinct boundaries. (In South Carolina — the sole outlier — the legislature retains the authority to draw these precincts.) While some state statutes outline general principles for drawing precinct lines, local officials retain substantial discretion. Pursuant to this authority, it is local election officials — not state legislatures — who draw those boundaries.

Ala. Code §§ 17-6-2, 17-6-6; Alaska Stat. §§ 15.10.020, 15.10.040, 15.10.050; Ariz. Rev. Stat. § 16-411; Ark. Code § 7-5-101; Cal. Elec. Code § 12220; Colo. Rev. Stat. § 1-5-101; Conn. Gen. Stat. § 9-169; Del. Code tit. 15 §§ 3190, 4102–4105; Fla. Stat.

§ 101.001; Ga. Stat. §§ 21-2-260(b), 21-2-261(a), 21-2-262(c), (d); Haw. Rev. Stat. § 11-92.1; Idaho Code § 34-301; 10 Ill. Comp. Stat. 5 / 11-1, 11-2, 11-3; Ind. Code § 3-11-1.5-3; Iowa Code §§ 49.3, 49.4, 49.7; Kan. Stat. § 25-26a02; Ky. Rev. Stat. §§ 116.037, 117.055; La. Stat. §§ 18:532, 18:532.1; Me. Stat. tit. 21-A, § 631; Md. Code, Elec. Law §§ 2-202(6), 2-303(a)(1)(i), (iii), 2-303(g); Mass. Gen. Laws ch. 54, §§ 2, 6, 7; Mich. Comp. Laws §§ 168.657, 168.658, 168.659, 168.660; Minn. Stat. §§ 204B.14, 204B.146(3), 204B.15; Miss. Code § 23-15-557; Mo. Stat. § 115.113(1); Mont. Code §§ 13-3-101, 13-3-102(1); Neb. Rev. Stat. § 32-903; Nev. Rev. Stat. §§ 293.205, 293.206, 293.210; N.H. Rev. Stat. § 658:10; N.J. Stat. § 19:4-14; N.M. Stat. §§ 1-3-4(A), § 1-3-5; N.Y. Elec. Law § 4-100(2); N.C. Gen. Stat. §§ 163-33(4), 163-128, 163-132.3; N.D. Cent. Code §§ 16.1-04-01, 16.1-07-15(1); Ohio Rev. Code §§ 3501.11(A), 3501.18(A); Okla. Stat. tit. 26, §§ 3-115, 3-118, 3-119; 14-115.4; Or. Rev. Stat. § 246.410; 25 Pa. Stat. § 2702; R.I. Gen. Laws §§ 17-11-1, 17-15-5; S.D. Codified Laws § 12-14-1; Tenn. Code §§ 2-3-102(b), 2-3-109; Tex. Elec. Code §§ 42.001, 42.0051, 42.009; Utah Code § 20A-5-303; Vt. Stat. tit. 17, § 2501(a); Va. Code §§ 24.2-307, 24.2-308, 24.2-309; Wash. Rev. Code § 29A.16.040; W. Va. Code § 3-1-5; Wis. Stat. § 5.25(2); Wyo. Stat. §§ 22-7-101, 22-7-102, 22-7-103.

C. Power to designate polling locations

In 49 states, local officials have explicit authority to establish polling place locations for all elections. In Michigan — the sole outlier — local officials exercise this same power pursuant to implied delegations of authority.

Ala. Code § 17-6-4; Alaska Stat. §§ 15.10.020, 15.20.064, 15.20.045; Ariz. Rev. Stat. §§ 16-246(C); 16-542(A); 16-581; Ark. Code §§ 7-1-113(a); 7-5-101; 7-5-311; 7-5-418; 7-7-202(d); Cal. Elec. Code § 12280; Colo. Rev. Stat. § 1-5-101; Conn. Gen. Stat. § 9-168; Del. Code tit. 15 §§ 3127, 4512(a), 4513; Fla. Stat. §§ 101.001, 101.657, 101.71; Ga. Stat. §§ 21-2-265(a), (c)–(e); 21-2-266(a)–(b); 21-2-382(a), 21-2-385(d)(1); Haw. Rev. Stat. § 11-92-1; Idaho Code §§ 34-302, 34-1006; 10 Ill. Comp. Stat. 5 / 11-4, 11-4.1, 19A-20; Ind. Code §§ 3-11-8-3, 3-11-8-3.1(a), 10-26.3; Iowa Code §§ 49.21, 53.11; Kan. Stat. §§ 25-2701, 25-1122(g); Ky. Rev. Stat. §§ 117.065, 117.066, 117.076(4); La. Stat. §§ 18:533, 18:534, 18:425.1, 18:1309, 18:1309.2(B); Me. Stat. tit. 21-A, §§ 631-A, 632; Md. Code, Elec. Law §§ 2-303(a)(1)(ii), 2-304(b), 10-101(a)(1), 10-102, 10-301.1; Mass. Gen. Laws ch. 54, §§ 24, 25B(f), (o); Minn. Stat. §§ 203B.081, 204B.16; Miss. Code § 23-15-557; Mo. Stat. §§ 115.115, 115.277; Mont. Code § 13-3-105(1), (3); Neb. Rev. Stat. § 32-904; Nev. Rev. Stat. §§ 293.2731, 293.2733, 293.3072(1), 293.3561(2), 293.3572, 293.3575, 293.437(1), (2); N.H. Rev. Stat. § 658:9; N.J. Stat. §§ 19:8-2, 19:15A-1(b)(1); N.M. Stat. §§ 1-3-2, 1-3-7(B), 1-3-7.1, 1-6-5.7(B), 1-6-5.8, 1-6-22; N.Y. Elec. Law §§ 4-104(1), (1)-(c), (8), 8-600(2); N.C. Gen. Stat. §§ 163-128, 163-130, 163-130.1, 163-130.2, 163-227.2, 163-227.6; N.D. Cent. Code §§ 16.1-04-02, 16.1-07-15(2)(c); Ohio Rev. Code §§ 3501.11(B), 3501.29(A)–(C); Okla. Stat. tit. 26, §§ 3-120, 14-115.4; Or. Rev. Stat. § 254.474; 25 Pa. Stat. § 2726; R.I. Gen. Laws §§ 17-11-1, 17-15-13, 17-19-3.2; S.C. Code §§ 7-7-10, 7-7-30–7-7-530, 7-13-25; S.D. Codified Laws §§ 12-14-1, 12-14-9; Tenn. Code §§ 2-3-101, 2-3-302, 2-3-

308, 2-6-102(a)(1); Tex. Elec. Code §§ 43.002, 43.003, 85.002, 85.062(d); Utah Code §§ 20A-3a-702, 20A-3a-703, 20A-5-403; Vt. Stat. tit. 17, §§ 2501, 2502(f); Va. Code §§ 24.2-309, 24.2-310, 24.2-310.1, 24.2-701.1B, 24.2.701.2.; Wash. Rev. Code § 29A.40.160(16); W. Va. Code §§ 3-1-23, 3-3-2a; Wis. Stat. § 5.25; Wyo. Stat. §§ 22-12-101, 22-9-125(a)(ii).

D. Power to determine the time of elections

In at least 27 states, local election officials — and in New Hampshire the voters themselves — can establish or modify voting hours on Election Day, the days and hours of early voting, and/or the dates of primary elections for all elections, including federal elections.

i. Polling hours on Election Day

In at least eight states, local election officials have express authority over polling place hours (or, in Oregon, which conducts elections by mail, the hours for dropping off ballots). New Hampshire authorizes voters in a polling place to end the time of voting in that particular polling place when certain conditions are met. In all nine of these states, the legislature leaves it to others to set the “time” of federal elections.

Ala. Code § 17-9-6; Idaho Code § 34-1101; Kan. Stat. § 25-106; N.H. Rev. Stat. §§ 659:3, 659:4, 659:6; Vt. Stat. tit. 17, § 2561; Or. Rev. Stat. § 254.470(1); Tenn. Code §§ 2-3-201, 2-3-306, 2-3-308(a)(2), (3); S.C. Code § 7-11-20(B)(1); Wash. Rev. Code § 29A.40.160(16).

ii. Polling hours during early voting

In at least 13 states, state or local officials have the power to determine the hours of early voting.

Ga. Code § 21-2-385(d)(1); Haw. Rev. Stat. § 11-109(b); 10 Ill. Comp. Stat. 5 / 19A-20(b); Iowa Code § 53.11; Mass. Gen. Laws ch. 54, § 25B(d); Nev. Rev. Stat. §§ 293.3568(3), 293.3576(5); N.M. Stat. § 1-6-5.7(B)(2); N.Y. Elec. Law § 8-600(4)(d); N.C. Gen. Stat. § 163-227.2(h); N.D. Cent. Code § 16.1-07-15(2)(a); Tenn. Code § 2-6-103(a)(1); Tex. Elec. Code §§ 85.005(a), 85.006(c), 85.064(b); Utah Code § 20A-3a-602(1).

iii. Early voting days

In at least 10 states, state or local officials have the power to determine the dates of early voting. For example, in Florida, the legislature guarantees seven days of early voting, but leaves it to “the discretion of the supervisor of elections” whether to offer an additional six days.

Fla. Stat. § 101.657(1)(d); Ga. Stat. § 21-2-385(d)(1); 10 Ill. Comp. Stat. 5 / 19A-20(b); Ind. Code § 3-11-10-26(h); Nev. Rev. Stat. § 293.3568(2); N.C. Gen. Stat. § 163-227.2(h); N.D. Cent. Code § 16.1-07-15(2)(a); Va. Code § 24.2-701.1(B); Tex. Elec. Code §§ 85.006(a), 85.064(d), 85.065(b); Utah Code § 20A-3a-601(3)(a).

iv. Date of primary election

In at least three states, the power to set the date of certain primary elections resides in state officials or political parties.

Ariz. Rev. Stat. § 16-241(B); R.I. Gen. Laws § 17-7-5(a)(7); S.C. Code § 7-11-20(B)(1).

E. Power over voter registration

i. Voter registration process

In at least 37 states, state and local officials are expressly granted discretion over the details of the voter registration process. For example, in Massachusetts the secretary of state exercises discretion over aspects of automatic voter registration, while the Arizona secretary of state exercises discretion over the electronic voter registration process. These are broad delegations, leaving these officials with substantial discretion in setting the details for these programs.

Ala. Code § 17-3-1; Alaska Stat. § 15.07.070(a); Ariz. Rev. Stat. § 16-112(B); Ark. Code § 7-4-101(f)(5); Cal. Elec. Code §§ 2105, 2402(b); Colo. Rev. Stat. § 1-2-217.7(7); Conn. Gen. Stat. § 9-23g(h); Del. Code tit. 15 §§ 302(4), 2051(f); Fla. Stat. § 98.035(1); Ga. Stat. §§ 21-2-216, 21-2-222(l); 10 Ill. Comp. Stat. 5/1A-16.1(a), 5/1A-16.5(a), 5/1A-16.7(c), (d), (p); Ind. Code § 3-6-4.1-14(a)(2)(A)(ii); Iowa Code §§ 47.8(1), 48A.21, 48A.25A(2); Kan. Stat. §§ 25-2309(s), 25-2352(g); La. Stat. §§ 18:18(A)(3); 18:114(I); Me. Rev. Stat. tit. 21-A, § 237(2); Md. Code, Elec. Law §§ 3-203(i), 3-204(i), 3-204.1(e); 3-305(e); 3-306(e); Minn. Stat. § 201.221, subd. 1; Mont. Code § 13-2-109(1); Neb. Rev. Stat. § 32-203(3); Nev. Rev. Stat. §§ 293.250(b)(1), (2); 293.5727(9); 293.5757(4), 293.5762(5); N.J. Stat. §§ 19:31-6.4a, 19:31-6.9, 19:31-6.11(d), 19:31-30; N.M. Stat. §§ 1-4-5.3(B), 1-4-5.8(B), 1-4-48(A); N.Y. Elec. Law §§ 5-802(4), 5-906; N.C. Gen. Stat. §§ 163-82.19(a); 163-82.26; Ohio Rev. Code §§ 3501.05(R), (U), 3503.08; Okla. Stat. tit. 26, §§ 4-109.3(F), 4-109.4(G); Or. Rev. Stat. § 247.017(6); 25 Pa. Cons. Stat. § 1201(4); 17 R.I. Gen. Laws §§ 17-9.1-7(h), 17-9.1-8(i), 17-9.1-9(c), 17-9.1-17(c); S.C. Code §§ 7-3-10(F), 7-5-155(e); S.D. Codified Laws §§ 12-4-5, 12-4-5.5, 12-4-9.2; Tenn. Code § 2-2-139(c), 2-2-207; Tex. Elec. Code §§ 13.040(e), 13.042(a), 20.009, 20.065(b), 20.066(c); Va. Code § 24.2-420.1(B); Wash. Rev. Code §§ 29A.04.611(15), (17)–(21), 29A.08.330(1), 29A.08.375; W. Va. Code §§ 3-2-3(c), 3-2-5(a)(3).

ii. Designation of voter registration agencies

In at least 18 states, the governor, secretary of state, or other executive official has the express power to determine which government agencies are best equipped to serve as voter registration agencies, and to designate those agencies as such. Voter registration for federal elections is provided by those agencies.

Alaska Stat. § 15.07.055; Ga. Stat. § 21-2-222(c); 10 Ill. Comp. Stat. 5/1A-16.2(g); Ky. Rev. Stat. § 116.048(1)(c), (d); La. Stat. § 18:116(A)(2); Me. Rev. Stat. tit. 21-A, § 233(1); Md. Code, Elec. Law § 3-204(a)(1); Mich. Comp. Laws § 168.509u(1); Nev. Rev. Stat. § 293.504(1)(e), (g); N.J. Stat. § 19:31-6.14; N.Y. Elec. Law § 5-900(14), (15); Okla. Stat. tit. 26, § 4-109.2(A); Or. Rev. Stat. § 247.208(1); 17 R.I. Gen. Laws § 17-9.1-8(b); Tex. Elec. Code § 20.001(e); Utah Code § 20a-2-300.5(1); Wash. Rev. Code §§ 29A.08.310(1), 29A.08.365(1); W. Va. Code § 3-2-13(c).

iii. Security of voter registration process and records

In at least 13 states, state or local officials have the express power to establish policies for protecting the security of the voter registration process or voter registration records.

Cal. Elec. Code § 2188.2(a); Del. Code tit. 15 § 2050A(j); Fla. Stat. § 98.035(5); Ga. Stat. § 21-2-225.1(d); Idaho Code § 34-409(6); Iowa Code § 47.7(2)(d); Kan. Stat. § 25-2304(a), (d); N.J. Stat. § 19:31-32(c), (d); Ohio Rev. Code § 3503.20(C); Okla. Stat. tit. 26, § 4-115.2(A); 25 Pa. Cons. Stat. § 1325(j); Tenn. Code § 2-2-140(a)(2); Va. Code § 24.2-410.2(A).

iv. Voter list maintenance

In at least 29 states, state election officials are entrusted with crafting policies and practices to maintain the voter registration list and/or conduct voter list maintenance.

Ga. Stat. §§ 21-2-236(d), 21-2-401(c); 10 Ill. Comp. Stat. 5/1A-45(f); Kan. Stat. § 25-2354(b); La. Stat. § 18:31(B); Md. Code, Elec. Law § 3-101(c); Mich. Comp. Laws § 168.509o(1); Minn. Stat. §§ 201.221, subd. 2; 201.022, subd. 2; Miss. Code § 23-15-165(4); Mo. Stat. § 115.158(4), (8); Mont. Code § 13-2-108 (1), (2); Neb. Rev. Stat. § 32-203(3); N.H. Rev. Stat. § 654:45(I), (V)(c); N.J. Stat. § 19:31-34; N.M. Stat. §§ 1-4-18.1(D), (E), 1-5-31(D); N.Y. Elec. Law § 5-614(2), (9), (12)(a); N.C. Gen. Stat. §§ 163-82.11(a), 163-82.12, 163-82-14; N.D. Cent. Code § 16.1-02-11; Ohio Rev. Code §§ 3501.05(Q), 3503.15(D), 3503.21(B); Or. Rev. Stat. § 247.275(3); 25 Pa. Cons. Stat. §§ 1201(4), 1222(a), (f); 17 R.I. Gen. Laws §§ 17-6-1.1, 17-9.1-27(a), (c); S.D. Codified Laws §§ 12-4-18, 12-4-39; Tenn. Code § 2-2-207; Tex. Elec. Code §§ 15.081(c), 18.061(a), (c), (e), 18.065(a), (i), 18.068(b), 18.0681(b); Utah Code § 20A-

2-109(1)(a)(ii)(B), 2(a); Va. Code § 24.2-404(D), (E); Wash. Rev. Code § 29A.04.611(1), (22), (23); W. Va. Code § 3-2-3(c); Wis. Stat. §§ 5.05(15), 6.35(2).

F. Power over absentee or mail voting processes

In at least 26 states, election officials are expressly empowered to create rules to implement the absentee, early, or mail-voting process. In some states, election officials are broadly empowered to choose whether to hold mail elections; in others, election officials are given more specific tasks, like choosing the locations of drop-boxes.

i. Broad authority over mail elections

In at least nine states, the chief election official has broad authority to establish the details of the mail voting process.

Alaska Stat. § 15.20.020; Colo. Rev. Stat. §§ 1-7.5-104, 1-7.5-105, 1-7.5-106, 1-7.5-107, 1-7.5-107.3, 1-7.5-115(4)(d); Md. Code, Elec. Law § 9-303; Minn. Stat. § 204B.45; Nev. Rev. Stat. § 293.269925; N.J. Stat. § 19:63-3(b)(1); N.Y. Elec. Law § 9-209; S.D. Codified Laws § 12-17b-17(4); W. Va. Code § 3-3-12(a).

ii. Holding elections by mail

In at least seven states, local or state officials have the discretion to hold elections by mail in small counties or precincts.

Ariz. Rev. Stat. § 16-248(H); Idaho Code § 34-308; Minn. Stat. § 204B.45; N.J. Stat. § 19:62-1; N.M. Stat. § 1-6-22.1; N.D. Cent. Code § 16.1-11.1-01; Neb. Rev. Stat. § 32-960.

iii. Drop boxes

In at least 19 states, local officials have express authority to determine whether to use drop boxes and/or the locations or number of drop boxes.

Cal. Elec. Code § 3025.5; Colo. Rev. Stat. § 1-7.5-107(4)(b)(I)(A); Fla. Stat. § 101.69(2)(a); Ga. Code § 21-2-382(c)(1); Haw. Rev. Stat. § 11-109(d); 10 Ill. Comp. Stat. 5 / 19-6; Ky. Rev. Stat. § 117.086(2); Me. Stat. tit. 21-A, § 752-B(3); Md. Code, Elec. Law § 2-304(b), (c); Mich. Comp. Laws § 168.761d; Minn. Stat. § 203B.082(2); Neb. Rev. Stat. § 32-960(2); Nev. Rev. Stat. § 293.269921(3); N.J. Stat. § 19:63-16.1; N.M. Stat. § 1-6-9(E); Utah Code § 20A-5-403.5(1); Vt. Stat. tit. 17, § 2543a; Va. Code § 24.2-707.1(A); Wash. Rev. Code § 29A.40.170.

G. Delegation of power over election security

i. Security of voting systems

In at least 45 states, state or local election officials have express authority to set security standards for voting systems, approve systems that meet these standards, and/or set audit procedures to test for security and accuracy during and after elections.

Alaska Stat. § 15.20.910; Ariz. Rev. Stat. § 16-442(A); Ark. Code §§ 7-1-113(f), 7-5-301, 7-5-606; Cal. Elec. Code §§ 15000, 19100; Colo. Rev. Stat. §§ 1-5-616, 1-5-608.5, 1-7-510–515, 1-7-509; Conn. Gen. Stat. §§ 9-241, 9-242a, 9-320f(m); Del. Code tit. 15 § 5523(a); Fla. Stat. §§ 101.015(1)–(5), 101.294, 101.5911; Ga. Code § 21-2-498(d); Haw. Rev. Stat. §§ 11-4, 16-1; Idaho Code § 34-2411; 10 Ill. Comp. Stat. 5/23-15.1; Ind. Code § 3-12-13-7; Iowa Code § 52.5(2), (4); Kan. Stat. §§ 25-3009(f), 25-4415; Ky. Rev. Stat. § 117.383(5), (8), (9); La. Stat. § 18:1353(B), (C)(1); Me. Rev. Stat. Tit. 21-a §§ 809(1), 813; Md. Code, Elec. Law §§ 9-102(b), (i), 11-309(f); Mass. Gen. Laws ch. 54, §§ 33I(a), (e), 37, 109A(j); Mich. Comp. Laws §§ 168.794a(3), 168.794c, 168.795(1)(m); Minn. Stat. § 206.57(1); Mo. Stat. § 115.225(1), (3); Mont. Code §§ 13-17-103(3), 13-17-107, 13-17-211, 13-17-503(6); Neb. Rev. Stat. § 32-1041(3); Nev. Rev. Stat. §§ 293.247(3)(f), (g), 293.394(1); N.H. Rev. Stat. § 656:42(I); N.J. Stat. §§ 19:15A-1(i), 19:31-35; N.M. Stat. § 1-14-13.3; N.Y. Elec. Law §§ 7-202(3), 9-209(9); N.C. Gen. Stat. §§ 163-165.7, 163-166.7(c)(1), 163-182.1(b), 163-182.2(b); N.D. Cent. Code §§ 16.1-06-15(1), 16.1-06-26(1); Ohio Rev. Code §§ 3505.331(B), 3506.05(H); Okla. St. tit. 26 §§ 3-130, 3-131; Or. Rev. Stat. § 254.532(6); 17 R.I. Gen. Laws §§ 17-6-1.4(d), 17-19-37.4(h); S.C. Code § 7-3-20(D)(19); S.D. Codified Laws § 12-17b-17(1), (3); Tenn. Code §§ 2-6-104(d), 2-20-103(a), 2-20-107; Tex. Elec. Code §§ 122.001(c), 122.032(b), 127.151(c), 127.302(b), 127.303, 127.351(d), 128.001(a), (c); Vt. Stat. tit. 17, § 2493(a); Va. Code § 24.2-671.2(B); Wash. Rev. Code §§ 29A.12.190, 29A.60.185; Wis. Stat. § 5.905(2)–(3); Wyo. Stat. § 22-11-103(c).

ii. Security of personal information

In at least 16 states, state election officials have the express authority to establish requirements and processes to protect the security and privacy of voters' personal information as they register to vote, request and return absentee ballots, and otherwise share information with election offices.

Ala. Code § 17-10-2(g)–(h); Ark. Code § 7-5-406(b)(1)(F); Cal. Elec. Code §§ 2188.2(a), 3017(b); Colo. Rev. Stat. § 1-8.3-104; Conn. Gen. Stat. § 9-153g; Del. Code tit. 15 §§ 304(i), 2050A(j); Fla. Stat. § 98.035(5); Miss. Code § 23-15-165(4)(c), (e); Mo. Stat. § 115.160(3); Mont. Code § 13-2-108; N.J. Stat. §§ 19:31-32(c), (d), 19:31-35; N.Y. Elect. Law §§ 3-103(1), 9-209(6)(d); N.C. Gen. Stat. § 163-166.7(c); Ohio Rev. Code § 3503.20(C); 17 R.I. Gen. Laws § 17-6-1.4(d); Tenn. Code § 2-2-140(a)(2).

iii. Security of ballots

In at least 13 states, state statutes expressly delegate to state or local election officials the power to set requirements to ensure the security of ballots as they are handled and transported between polling places, ballot drop boxes, and election offices, such as requiring two-person or bipartisan teams to retrieve ballots or requiring unmonitored ballots to be kept in secure storage.

Alaska Stat. §§ 15.15.060(a), (b)(2), 15.15.480; Cal. Elec. Code §§ 3025(b), 14422(c); Del. Code tit. 15 § 5522(b); Fla. Stat. § 101.015(4)(a); Md. Code, Elec. Law § 9-216(a); Minn. Stat. § 204B.45, subd. 3; Nev. Rev. Stat. §§ 293.247(3)(e), 293.3594(1); N.J. Stat. §§ 19:15A-1(g)(1), 19:63-16.1(c); N.C. Gen. Stat. §§ 163-166.5, 163-166.7(c), 163-166.10; Or. Rev. Stat. §§ 254.074(1)(b), 254.470(1); 17 R.I. Gen. Laws § 17-20-22.1(A); Utah Code § 20A-3a-404; Va. Code §§ 24.2-707.1(B), 24.2-802(A).

H. Delegation of emergency powers

In at least 30 states, legislatures have expressly delegated to various state actors, including secretaries of state and governors, the power to delay elections, move polling places, and/or alter election administration in the event of an emergency. Although not catalogued here, other states also delegate general emergency authority to governors, such as the power to suspend statutes, which courts have been interpreted in some cases apply to federal elections.

i. Power to change the time of elections

State and local officials in at least 11 states have the express power to change or extend the time of election in the event of emergencies.

Cal. Elec. Code § 13101(a); Fla. Stat. § 101.733(1), (2); Ga. Stat. § 21-2-50.1; Haw. Rev. Stat. § 11-92.3(a); Mo. Stat. § 115.024(3), (4); N.Y. Elec. Law § 3-108(1), (2), (5); N.C. Gen. Stat. § 163-182.12; S.D. Codified Laws § 12-2-4; Tex. Elec. Code § 41.0011; Utah Code § 20A-1-308(2); Va. Code § 24.2-603.1.

ii. Power to change the place of elections

State and local officials in at least 17 states have the express power to change polling locations in the event of emergencies.

Colo. Rev. Stat. § 1-5-108; Del. Code tit. 15, §§ 4513, 5306; Fla. Stat. §§ 101.71(3), 101.74; Ky. Rev. Stat. § 39A.100(k); Me. Rev. Stat. Tit. 21, § 631-A(3); Minn. Stat. § 204B.175; Mo. Stat. § 115.024; Mont. Code § 13-3-105(1), (3); N.J. Stat. § 19:8-3.1; N.Y. Elec. Law § 4-104(1), (1)-(c), (8); Ohio Rev. Code § 3501.18(A); 25 Pa. Stat. §§ 1582, 2726; 17 R.I. Gen. Laws § 17-11-1; Tenn. Code § 2-3-110; Utah Code

§§ 20A-1-308(2), 20A-5-605(5)(a); Va. Code §§ 24.2-310(D), 24.2-701.2(F); Vt. Stat. tit. 17, § 2502(f)(2)(A).

iii. General emergency powers

State officials in at least 10 states have general emergency powers that they may exercise over election processes.

Conn. Gen. Stat. § 9-174a; Ga. Code § 21-2-35; Ind. Code §§ 3-6-4.1-14(a)(2)(A)(i), 3-6-4.1-16; Iowa Code § 47.1(4); Minn. Stat. § 204B.181(1); Miss. Code § 23-15-227(6); N.C. Gen. Stat. § 163-27.1(a); Okla. Stat. tit. 26, § 22-101(B); W. Va. Code § 3-1A-6(e)(1); Wyo. Stat. § 22-2-121(f).

I. Delegation of power over voter ID procedures

In at least 12 states, the secretary of state or another election official has express authority to adopt procedures and requirements for the implementation of voter ID laws, for example which documents satisfy the ID requirement.

Ala. Code § 17-11-49(a); Alaska Stat. § 15.15.225(b); Ga. Code § 21-2-417.1(d), (h); Kan. Stat. §§ 25-1122(m), 25-2908(g); Ky. Rev. Stat. § 117.076(13); Miss. Code § 23-15-7(8); Mo. Stat. § 115.427(9); N.D. Cent. Code § 16.1-01-04.1(6); Okla. Stat. tit. 26, § 4-113(A); 17 R.I. Gen. Laws § 17-19-24.2(c); S.C. Code § 7-5-675; Wash. Rev. Code § 29A.08.210(14).