

# How States Can Prevent Election Subversion in 2024 and Beyond

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# Introduction

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**N**ext year, the United States will hold its first presidential election since the 2020 race and attempted coup. Many risks remain. States can shore up their systems ahead of 2024, but time is short.

The facts are still hard to believe: Nearly three years ago, President Donald Trump lost his reelection bid in an election that his own administration called “the most secure in American history.”<sup>1</sup> He then denied that loss and tried to hold onto the presidency through fraud and incitement of violence. Shocking numbers of people joined him. Politicians and pundits amplified baseless theories that the election had been stolen. State and local officials refused to certify valid election results. Lawyers sought to overturn these results in court, and judges voted to do so. Federal lawmakers attempted to thwart Congress’s nominal role in counting and certifying electoral votes. Vigilantes harassed and threatened election workers and attacked the U.S. Capitol.<sup>2</sup> Thanks to heroic interventions by many officials and citizens, the attempted coup failed — narrowly.

Since then, the country has made progress toward insulating future elections from subversion attempts. Most notably, Congress passed the Electoral Count Reform and Presidential Transition Improvement Act of 2022 (ECRA), closing some loopholes and resolving ambiguities that the Trump campaign tried to exploit in 2020. Among other reforms, the ECRA clarifies that only a state’s governor or other predesignated executive official may submit official election results; bars state legislatures from changing the rules for appointing electors after Election Day; and makes it harder for federal legislators to overturn election results. Several states went further. Notably, Colorado, Michigan, Minnesota, and New York clarified their certification processes and took steps to combat disinformation and protect voters and poll workers from harassment and violence.

The 2022 midterms also indicated strong public support for democracy. Election deniers — that is, those who espouse false claims that the 2020 election was stolen or that U.S. elections are riddled with large-scale fraud — lost their bids for statewide offices that would have afforded them oversight of the 2024 election in battleground states.<sup>3</sup> Election denial was a losing message in much of the country.<sup>4</sup> And voter confidence in the midterm outcomes was higher and less politically polarized.<sup>5</sup>

Despite this progress, the United States remains at risk for election subversion (that is, the overturning of an election outcome through disruption or manipulation of the vote counting, canvassing, or certification processes, or

other acts of large-scale disenfranchisement).<sup>6</sup> Election denial is still rampant within federal, state, and local governmental bodies and among segments of the public. Although many of those who attacked the Capitol on January 6, 2021, have faced criminal consequences, so far the officials and politicians who incited them to violence have not. Election deniers won numerous congressional and state legislative seats, party chairs, and state and local election administrative positions.<sup>7</sup> Republican activists have recruited poll workers and observers in large numbers with the false and inflammatory message that U.S. elections are being stolen and must be “taken back.”<sup>8</sup>

While the ECRA included necessary reforms, Congress has failed to pass broader protections, including baseline national election standards.<sup>9</sup> This failure puts the onus on states. Each state has different vulnerabilities and different options for addressing them. Every state should start with these five measures:

- **Strengthen laws requiring timely certification based solely on verified vote totals**, with effective enforcement mechanisms.
- **Strengthen laws channeling election disputes through the state judiciary**, and set clear standards governing how these disputes are resolved.
- **Finalize a plan for putting out accurate information** about the election process and preempting disinformation, starting well before Election Day and backed by adequate state resources.
- **Bolster election administration** with training, written guidance, and investment in equipment, security, scenario planning, staffing, and supplies.
- **Enact stronger measures against intimidation of voters and election workers**, including gun restrictions and privacy protections for election officials.

In some states, legislatures will be in session again before the 2024 vote; in others, they could be called to a special session. Elsewhere, administrative officials could implement many of these measures. And state policymakers at every level should continue to push for these reforms after 2024, because election subversion will remain a risk.

# I. Protect the Certification Process

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**E**lection certification should be straightforward. Local bodies (such as county boards of elections or boards of supervisors) oversee the canvassing process. They count votes and certify results for state officials, who then combine and certify statewide results.<sup>10</sup> But in the past two national elections, local and state officials — often under pressure from outside groups — have abused this ministerial role by refusing to certify valid results.

In 2020, local officials in Wayne County, Michigan, and their state-level counterparts initially refused to certify results.<sup>11</sup> Trump and his supporters, including the state and national Republican parties, egged them on.<sup>12</sup> This tactic was part of a national plan to cast sufficient doubt about election results that Congress or the vice president could refuse to certify them or overturn them by counting the votes of fake electors supporting Trump instead of those of actual electors.<sup>13</sup> Ultimately, local officials in Michigan voted to certify (though they later tried unsuccessfully to rescind their votes). Most state-level officials did the same.<sup>14</sup> It was the first time in Michigan history that the state-level vote was not unanimous.<sup>15</sup>

Certification battles spread in 2022. Local boards refused to certify primary or general election results in Arizona, New Mexico, and Pennsylvania. Elsewhere, individual officials opposed certification but were outvoted.<sup>16</sup> Some of these officials admitted that they had no specific evidence of irregularities but were basing their decisions on “gut feelings” and vague doubt — for example, because they distrusted voting machines or because voters had not been required to present formal proof of identity.<sup>17</sup>

In all these cases, state officials and voter organizations were able to force certification through litigation.<sup>18</sup> Even so, these disputes delayed the certification process, narrowing the window for post-certification election contests to be resolved. They also lent legitimacy to conspiracy theories and encouraged similar lawless actions by others. And while court losses may discourage some officials from refusing to certify results, they are unlikely to deter the increasing number of open election deniers who have won office at the local level.<sup>19</sup>

State legislatures should take the following measures to protect the certification process. They should also ensure that their postelection certification deadlines mesh with the ECRA’s requirement that the governor or other designated executive authority issue the certificate of ascertainment (the official document that identifies a state’s appointed electors) by 36 days after Election Day.<sup>20</sup>

## >>Expressly clarify that certification is a ministerial duty.

To contain the risks posed by certification disputes, states should have clear laws providing that the local and state officials charged with certifying election results have a nondiscretionary duty to do so — that their role is ministerial. States generally already have laws describing certification in mandatory language, providing that officials *shall* certify election results within a specified time. As explained below, this language allows for judicial oversight and should have been sufficient to prevent officials from baselessly refusing to certify results in 2020 and 2022. But, as with the crisis that prompted the ECRA, recent state certification battles have demonstrated that states should more explicitly codify long-standing, previously uncontroversial assumptions about how these processes work.

Some states have taken such a step, clarifying unequivocally that local and state officials must certify results in all or nearly all cases, and that they must do so solely based on verified vote totals. After the certification delay in 2020, Michigan voters amended their state constitution to add this protection: “It shall be the ministerial, clerical, *nondiscretionary* duty of a board of canvassers, and of each individual member thereof, to certify election results based *solely* on: (1) certified statements of votes from counties; or (2) in the case of boards of county canvassers, statements of *returns* from the precincts and absent voter counting boards in the county and any corrected *returns*.”<sup>21</sup> For decades, Arizona law has similarly provided that “the secretary of state shall declare elected the person receiving the *highest number of votes* cast for each office.”<sup>22</sup> And, whereas Minnesota law previously directed the state canvassing board to declare the “result,” the legislature added a more explicit requirement in 2023 that the board “declare the candidates duly elected who received the highest number of votes for each federal office and for each state office voted on in more than one county.”<sup>23</sup> State legislators should incorporate such unmistakable language, which until recently might have seemed unnecessary, into

their laws governing certification at both the local and statewide levels.

In 2020, efforts to delay or prevent certification were part of a broader scheme to have fake electors vote for Trump in states where he had lost the popular vote. Republican activists submitted false Electoral College certificates declaring Trump the winner of the presidential election in Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin.<sup>24</sup> This scheme, though never legally permissible, is now expressly outlawed by the ECRA, which stipulates that only the governor or other executive officer provided by state law can submit the certificate of ascertainment identifying that state's electors. Nonetheless, states should consider enacting more general prohibitions against chicanery *like* the fake elector scheme, such as prohibitions on falsifying records to manipulate an election's outcome and on performing official duties without authorization.<sup>25</sup>

### **>>Sharply circumscribe grounds for delaying certification.**

States should ensure that certifying officials have narrow, if any, discretion related to their duties, even when administrative problems arise. Colorado amended its certification law in 2022 to provide that if the canvassing board or secretary of state identifies clerical errors in vote counting, the county clerk should correct them in consultation with the election judges. Colorado also requires officials to continue a canvass, even when legal nonconformities by reporting precincts arise, as long as the returns reported “are sufficiently explicit in showing how many votes were cast for each candidate . . . or ballot issue.”<sup>26</sup> Arizona similarly bars officials from rejecting precinct returns for technical errors “if [these returns] can be clearly understood,” and from refusing to certify based on “any defect or informality in making the returns of the election in any precinct, if the facts which the returns should disclose can be definitely ascertained.”<sup>27</sup> Any statutory grounds for delaying certification should be narrow and objective (such as potentially outcome-determinative missing returns or a large-scale cyberattack), leaving no room for abuse.

### **>>Expressly authorize the removal of officials who refuse to certify results and establish backup measures to move certification forward.**

State laws should clearly provide that refusing to perform an official duty is a ground for removal from office. Provisions to this effect helped push recalcitrant officials in Otero County, New Mexico, to certify results as they were legally bound to do,<sup>28</sup> and enabled the North Carolina Board of Elections to remove two Surry County election officials for violating their obligations by refusing to certify election results.<sup>29</sup>

Should officials refuse to certify results — even in defiance of a court order, as happened in Arizona and Nevada

in 2022 — states must have alternative mechanisms in place to enable certification. Colorado and Michigan laws require the state certifying entity to certify local results when local officials refuse to do so.<sup>30</sup> However, this approach could potentially encourage more local boards to performatively withhold certification, which would place a substantial and challenging last-minute burden on state officials. Michigan law mitigates this risk by requiring the county at issue to cover the costs of state intervention, and Colorado preemptively alleviates any potential burden on state officials by allowing the secretary of state to delegate this task to a registered elector.<sup>31</sup> States that adopt this measure must allocate adequate resources to allow state agencies to intervene when necessary, and they should also grant statewide officials the option to seek judicial intervention, as discussed below. Alternatively, states can expressly empower their courts to direct other officials to intervene and certify results.<sup>32</sup>

In many cases, denialist groups and individuals have aggressively pressured officials not to certify results.<sup>33</sup> As set forth below, states need stronger protections against the disinformation that fosters such public pressure, as well as stronger protections for election workers and officials against intimidation, harassment, and coercion. These recommendations would help reduce the risk of future certification crises.

### **>>Channel disputes through the courts, with safeguards.**

Courts play a vital role in preventing election subversion. Indeed, almost every state has established judicial processes for resolving counting and other postelection disputes.<sup>34</sup> Nevertheless, losing candidates have abused these processes, seeking to use litigation to obstruct certification or overturn valid results and bolster election denial.<sup>35</sup> In 2020, the Trump campaign and its supporters filed more than 60 cases disputing election results to undermine public trust in the election and to provide cover for the fake electors scheme.<sup>36</sup> Last year, election deniers seized on ballot-printing machine glitches in Maricopa County, Arizona, to make unsupported allegations of large-scale fraud and disenfranchisement that they claimed would swing outcomes.<sup>37</sup> States need accessible courts with the tools to quickly resolve disputes according to clear standards that hinder efforts to disturb election results and that afford meaningful remedies against bad faith election interference.

Given that some avowed election deniers have won local office in recent years,<sup>38</sup> states should establish mechanisms for moving certification forward when local obstruction occurs. Because state statutes already describe certification duties in mandatory terms, officials who violate these duties can be sued in a mandamus action — an action seeking a court order that a defendant

properly certify the results at issue. To strengthen this remedy and deter officials from unlawfully withholding certification, states can expressly provide that mandamus actions are available to enforce certification duties.<sup>39</sup>

After certification, states generally allow candidates to seek a recount within a certain margin of loss or contest results based on allegations of irregularity. In 2020, the Trump campaign sought to circumvent the courts in some states, with arguments that state legislatures could adjudicate contests in their place.<sup>40</sup> Denialists also have abused judicial contests, bringing them to bolster false claims or to overturn valid results.<sup>41</sup> States need to review their procedures to ensure they can dispose of future subversion efforts.

States must first ensure that their laws leave no doubt that courts, not legislatures, resolve presidential contests.<sup>42</sup> They must also review, and consider updating, judicial processes for resolving contests. To varying degrees, most state supreme courts have articulated some election contest standards to ensure that baseless lawsuits are rejected. Still, to better protect against abuses and to ensure that clear rules are in place before contests arise, state statutes should specify that contestants seeking to halt certification or overturn election results bear a burden of proving irregularities on a potentially outcome-determining scale.<sup>43</sup> Such statutes should also require a “clear and convincing evidence” or equivalent heightened standard of proof, not a lower “preponderance” standard.<sup>44</sup> Clear advance standards will reduce the risk that courts articulate new standards that favor partisan interests or are seen as doing so.

States must also have mechanisms in place for prompt relief, including emergency appellate relief. In many states, the state supreme court has the discretion to hear a mandamus petition without waiting for it to be adjudicated in a lower court, an important safeguard when officials violate clear legal duties. For contests, which often require fact-finding hearings, states should consider concentrating these cases in the jurisdiction containing the state capital, which is more likely to have the necessary capacity to resolve these disputes quickly, and also having these high-stakes cases assigned to a three-judge panel with a direct right of appeal to the state supreme court.<sup>45</sup> States must have in place laws and procedures requiring timely initial filing, adjudication, and appellate review. These laws should conform to ECRA requirements that contests be resolved in time for the certificate of ascertainment to be issued 36 days after Election Day, and that all election-related litigation be resolved by the time the electors meet 42 days postelection.<sup>46</sup>

To deter abuse, states should clearly authorize courts to award fees to prevailing mandamus petitioners and sanction plaintiffs and attorneys who bring contests without a good faith basis for claiming potentially outcome-determining irregularities. Such provisions — which help to undermine efforts by losing candidates to

use the courts as a platform for promoting election denial conspiracy theories<sup>47</sup> — are in place in some but not all states. In several recent Arizona cases, fee awards for baseless litigation have helped deter attorneys from taking abusive cases.<sup>48</sup>

### >>Prevent legislative interference.

In 2020, although Trump lost the popular vote in Georgia, Pennsylvania, and Michigan, his campaign and supporters pressed legislators in those states to interfere in the certification and Electoral College voting processes.<sup>49</sup> Since then, although no state legislature would openly claim the power to override election results outright, lawmakers have introduced legislation that would essentially allow them to do just that, including in battleground states such as Arizona, Missouri, and Nevada.<sup>50</sup> An Arizona bill introduced in 2021, for example, would have authorized the legislature to call a special session after an election, investigate “irregularities,” and, for any reason, “reject” the results.<sup>51</sup>

While such radical attempts have failed thus far, that elected lawmakers are openly making them is troubling. And state legislatures have passed other, less extreme yet still antidemocratic election laws. They have expanded their power over election procedures by passing bills that enable state interference in local election administration, reduce or remove administrative authority from the secretary of state, and intervene in the settlement of lawsuits challenging election laws’ validity.<sup>52</sup> After the 2020 election, Arizona legislators hired a company closely tied to election deniers to conduct a sham “audit,” at great taxpayer expense and using additional, undisclosed private funds.<sup>53</sup> Election-denying lawmakers have also filed litigation asking courts to intervene in the certification process and to empower legislators to choose presidential electors.<sup>54</sup> Unsurprisingly, in a recent Brennan Center survey of election officials, the majority were concerned about political interference in upcoming elections.<sup>55</sup>

Although the ECRA prevents state legislatures from changing the process for appointing electors after an election, it does not prevent them from enacting preelection legislation that allows interference in the canvassing and certification processes. Governors, of course, ought to veto such legislation, and state courts should block any laws that violate broad state constitutional guarantees.<sup>56</sup> But these safeguards are not foolproof; states need to do more.

In many states — including Arizona, Missouri, and Nevada, where lawmakers have introduced bills authorizing election interference — citizens can also pass ballot initiatives expressly targeting political interference in elections and codifying in their state constitutions what should already be a universally recognized American norm: that voters, not politicians, decide election outcomes.<sup>57</sup> In response to 2020, Michigan voters amended their constitution in 2022 to expressly foreclose legislative and other politicized interference. The new provision specifies that

“[t]he outcome of every election . . . shall be determined solely by the vote of electors casting ballots in the election”; that “the certification of any election results by the board of state canvassers shall be final subject only to (a) a post-certification recount of the votes cast in that election supervised by the board of state canvassers under procedures prescribed by law; or (b) a post-certification court

order”; and that “the board of state canvassers is the only body or entity . . . authorized to certify the results of an election for statewide or federal office and to determine which person is elected in such election.”<sup>58</sup>

Advocates should pursue these reforms in other ballot initiative states, particularly where legislators have attempted to interfere in the electoral process.

## II. Set Baseline Pro-Voter Standards for Accepting Ballots

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In 2020, Trump supporters tried to meddle in election results by having ballots from Democratic strongholds — particularly mail ballots — excluded from vote counts. In 2022, other election deniers continued this tactic.<sup>59</sup> States should ensure that rules for counting ballots clearly prevent such manipulation.

Through statutes, regulations, and state-level policy guidance, policymakers should also specifically authorize efforts by local officials to increase voter access and make it easier to vote. Doing so may mitigate the risk of litigation like *Trump v. Biden*, which sought to invalidate Wisconsin's election results because officials in Madison had organized a "Democracy in the Park" event, at which they collected absentee ballots in person;<sup>60</sup> or *Weidner v. Racine*, which challenged the use of mobile voting sites in Racine County, Wisconsin.<sup>61</sup>

The following measures would mitigate other efforts to interfere with elections.

### >>Limit the grounds on which ballots can be rejected to those that bear on voter eligibility.

States should specify a narrow set of grounds for disqualifying ballots and bar rejections on other grounds. In 2022, for example, the Minnesota legislature barred clerks from rejecting absentee ballots on the ground that they were mailed without being placed in a privacy sleeve.<sup>62</sup> Such a protection would have prevented the rejection of an estimated 20,000 to 30,000 otherwise valid Pennsylvania absentee ballots in 2020.<sup>63</sup>

In 2020, Trump supporters tried to use signature matching requirements to throw out legitimate ballots based on technical errors; they also tried to stop state officials from letting voters fix those errors.<sup>64</sup> States that have signature matching requirements for absentee ballots should consider protecting voters from ballot rejections for trivial signature discrepancies, as Nevada did in 2021 and Michigan did in 2023.<sup>65</sup> California has created similar protections by way of regulations.<sup>66</sup> States with signature matching requirements for absentee ballots should require multiple levels of concurrence before a ballot is rejected.<sup>67</sup>

### >>Build in procedural protections against improper ballot rejection.

For defects that remain grounds for rejecting a ballot, states should require election officials to give voters sufficient time to cure their ballots and ensure that their votes are counted.<sup>68</sup> Many states lack this basic statutory protection, including battleground states such as Pennsylvania and Wisconsin.<sup>69</sup> Michigan voters added this protection by constitutional amendment in 2022, and the legislature

reinforced it by statute in 2023; Maryland also added this protection by statute in 2023.<sup>70</sup>

Laws limiting rejection grounds and requiring cure periods could mitigate the high ballot rejection rates occurring in some states and reduce the risk of litigation targeted at changing election outcomes through selective ballot rejections.<sup>71</sup> In the absence of clear statutory law, state administrative officials can offer guidelines to minimize ballot rejections for technical errors, although these measures may be vulnerable to litigation. For example, before the 2022 midterms in Wisconsin, the Republican Party successfully sued to overturn election commission guidance instructing clerks to fill in missing address information on witness certification forms for mail ballots.<sup>72</sup>

To ensure adequate review of absentee ballots and opportunities for voters to correct defects, states should allow preprocessing of mail ballots and establish cure periods that extend for a limited period after Election Day. Michigan, for example, now allows curing for three days after the election.<sup>73</sup>

In some states, if the tabulator rejects a ballot for stray marks or other defects, a bipartisan team reviews that ballot and, if possible, duplicates it.<sup>74</sup> All states should implement these or similar protections to ensure that votes are properly counted.

### >>Set a cutoff date after Election Day for receiving and counting mail ballots postmarked on or before Election Day.

Mail ballot delays were a significant problem and a focus of election subversion efforts in 2020.<sup>75</sup> Many states — including Arizona, Georgia, Minnesota, Pennsylvania, and Wisconsin — either disqualify late-arriving ballots or do not clearly authorize officials to include them,<sup>76</sup> a policy that disenfranchises voters, particularly voters of color.<sup>77</sup> Republican candidates and their supporters challenged administrative measures in Minnesota, North Carolina, and Pennsylvania to allow late-arriving ballots because of the Covid-19 emergency; they succeeded in having those ballots thrown out in Minnesota.<sup>78</sup> The Freedom to Vote Act, which came close to passing in 2021, would require a grace period to count ballots mailed on or before Election Day.<sup>79</sup> Some states have this protection — Nevada, for example, allows four days.<sup>80</sup> Other states should too.



### III. Combat Disinformation

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**D**isinformation has long been used as a voter suppression tactic, one often aimed at dissuading communities of color from voting or misleading them about how to do so.<sup>81</sup> In recent years, election deniers both in and outside the United States have also spread disinformation to undermine public faith in elections.

Conspiracy theories that elections are rigged or stolen have led to harassment and threats against election officials and workers; dedicated and knowledgeable professionals are quitting as a result, as discussed in further detail below. Such theories have provoked disorderly and even violent efforts to disrupt the election process, most notoriously the attack on the U.S. Capitol on January 6, 2021.<sup>82</sup> Lawmakers have seized on election denial to justify voting restrictions and other election interference. More generally, election denial theories have fed public mistrust of government. False narratives that the “other side” is cheating may even be motivating people to support anti-democratic actions.<sup>83</sup>

To preserve the stability of the election system and prevent mass disenfranchisement, states must act to curb both voter deception and election denial.

#### >>Pass laws inhibiting and remedying voter deception.

The Deceptive Practices and Voter Intimidation Prevention Act, which has been repeatedly introduced in Congress since 2006 but never passed, is a model that states can look to for fighting voter deception.<sup>84</sup> This legislation would prohibit the knowing communication — with the intent to impede voting — of false and misleading information about the time, place, or manner of elections and the rules governing voter eligibility and voter registration. It would also help ensure that voters affected by deceptive or intimidating practices receive correct and timely information from a reliable source.

Some states criminalize deceptive information.<sup>85</sup> In 2023, Minnesota took a broader approach, combining a misdemeanor penalty for voter deception with civil remedies including injunctive relief and damages — a move long recommended by voting rights groups.<sup>86</sup> States should follow Minnesota’s lead in empowering targeted communities with civil remedies.

#### >>Provide early, accessible, and transparent information to the public to preempt core false narratives.

Election deniers rely on a core set of false narratives: that voting machines are vehicles for widespread fraud; that mail voting and drop boxes are insecure; that there is an epidemic of noncitizens voting; that large numbers of people vote illegally under the names of deceased regis-

trants; and that corrupt insiders regularly manipulate vote counting.<sup>87</sup> Because these narratives are predictable, election officials can preempt them. Officials can also counter these narratives and increase public trust in elections by educating voters about the measures in place to ensure accurate elections. These measures, which most people are unaware of, include voter roll updates; logic and accuracy tests for ballot tabulators (in which officials cast a known set of test ballots and confirm the expected results to verify that the machine is functioning properly); bipartisan and nonpartisan observers; ballot security; and post-election audits.<sup>88</sup> Officials may also need to explain procedures that are easily misconstrued, such as the duplication of defective ballots so that a tabulation machine can read them.<sup>89</sup>

Many jurisdictions offer models for effectively preempting disinformation. In 2020, the Ohio Secretary of State’s Office created a detailed video about how absentee ballots are printed, mailed, and counted.<sup>90</sup> In 2022, Texas election administrators invited members of the public to tour their offices and participate in supervised accuracy testing for voting machines.<sup>91</sup> Arizona’s Maricopa County publishes detailed documents explaining the election process, including how poll workers are trained, how voting systems are tested for accuracy, and how results are audited.<sup>92</sup> During the 2022 midterms, the Michigan Department of State explained by tweet why absentee ballots take longer to process and are often reported after Election Day.<sup>93</sup>

Following such examples, states can develop more transparent election processes and defuse mistrust and election denial. To make election information accessible, and to combat disinformation aimed at immigrant communities, officials should provide materials in a range of commonly spoken languages and work with trusted community partners to help disseminate them.<sup>94</sup> They should also work with trusted media in the run-up to elections to describe the voting process and the steps taken to ensure accuracy. More broadly, states should develop public education programs explaining the election process, along with materials to distribute through schools, municipal and county governments, state agencies, and the like.

#### >>Ensure prompt reporting of election results.

Rates of absentee voting skyrocketed during the Covid-19 pandemic and have remained high since.<sup>95</sup> While most

states allow these ballots to be preprocessed — that is, separated from their mailing envelopes, verified as being from an eligible voter, and scanned so that they can be included in Election Day vote totals — some states, including Pennsylvania and Wisconsin, do not.<sup>96</sup> Limits on preprocessing strain administrative resources by forcing officials to process mail ballots and administer in-person voting concurrently. These limits can also cause a so-called mirage effect, in which a candidate appears to be ahead on Election Day then falls behind as absentee ballots are counted.<sup>97</sup> That mirage effect has spurred election conspiracies that may contribute to harassment and threats against poll workers.<sup>98</sup> In 2023, the Michigan legislature fixed this problem, which had plagued its elections: the state now allows eight days of preprocessing.<sup>99</sup> The few remaining states that prohibit preprocessing should follow suit.

When results are nonetheless delayed (by mail delays, for example), states should have plans in place to educate the public about why vote totals might change in the hours and days after poll sites close. They should also have crisis communications plans to explain quickly, clearly, and accurately any Election Day glitches that otherwise might feed conspiracy theories. For election offices with fewer resources, standardized planning tools are available from the federal Cybersecurity and Infrastructure Security Agency (CISA).<sup>100</sup>

### **>>Hold attorneys accountable for disinformation and for efforts to subvert elections.**

Attorneys have played an outsized role in propagating election denial. In 2020, many lent their professional status to falsehoods about purported election irregularities. They encouraged state and U.S. legislators to interfere in certification processes, and they even participated in and helped orchestrate the fake electors scheme.<sup>101</sup>

As noted above, when attorneys spread falsehoods in legal proceedings, opposing parties can seek sanctions in

court. In imposing such sanctions, courts have noted the broad social harm these attorneys are inflicting, far beyond wasting judicial resources. As one Colorado federal judge stated in applying sanctions against attorneys who brought a class action claiming election fraud, the allegations made, “if accepted as true by large numbers of people, are the stuff of which violent insurrections are made.”<sup>102</sup>

The public has an additional mechanism for holding attorneys accountable: bar complaints. Attorneys swear an oath as a condition of their licensure; although the language varies by state, they generally vow to conduct themselves honestly and uprightly and support the laws and the U.S. and state constitutions. When they violate that oath by spreading demonstrable falsehoods to undermine elections (through litigation, public advocacy, or a combination of the two, and regardless of whether their conduct occurs in the state where they are licensed), citizens can file a complaint with the bar association of the state where they are licensed.

In Colorado, Trump attorney Jenna Ellis admitted to misconduct and in 2023 was publicly censured for perpetuating election denial after the 2020 election.<sup>103</sup> Also in 2023, rather than face disciplinary proceedings for similar misconduct, Georgia attorney L. Lin Wood relinquished his law license.<sup>104</sup> Rudy Giuliani’s license has been suspended in New York pending full proceedings, and like efforts are underway in California, Michigan, and Washington, DC, against him and other attorneys who promoted election denial.<sup>105</sup> A federal court recently confirmed that lawyers can be subjected to this state-based accountability mechanism even if they allegedly committed the relevant misconduct while employed by the federal government.<sup>106</sup> Advocates, election officials, and members of the public should continue to seek professional sanctions against attorneys who abuse their professional status by propagating election-related disinformation.

## IV. Protect Voters and Election Workers

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Since 2020, voters and election workers have faced increased harassment, threats, and violence fueled by election denial. Protesters and vigilantes, sometimes armed, have gathered at polling places, drop box sites, vote counting centers, and courts hearing election disputes.<sup>107</sup> In 2022, extremist sheriffs who claim independent authority to enforce the Constitution organized to “patrol” and surveil voting sites in search of fraud.<sup>108</sup>

Election officials and poll workers have been a particular target of intimidation. In 2020, Maricopa County election personnel had to be escorted to their cars by police in riot gear.<sup>109</sup> And election workers have received threats of gun violence.<sup>110</sup> In a recent Brennan Center survey, nearly one in three election officials reported having been harassed, abused, or threatened because of their job; more than one in five were concerned about being physically assaulted on the job in future elections; and nearly half expressed concern for the safety of other election officials and workers in future elections.<sup>111</sup> Just before the 2022 midterms, the FBI noted unusual levels of violent threats against election officials and workers in seven states, most of which Biden won narrowly in 2020.<sup>112</sup> And election denial myths about local election administration have national reach: officials are even facing threats from residents of other states.<sup>113</sup> These attacks — including death threats that name officials’ young children, racist and misogynistic harassment, and actual violence — have forced election officials across the country to hire personal security, flee their homes, and seek counseling for their children.<sup>114</sup> Many officials have resigned or decided not to seek another term.<sup>115</sup>

States must protect their voters and election personnel from violence and harassment. They should start with the following measures.

### >>Strengthen legal protections against voter intimidation.

Voter intimidation not only harms individuals and communities, but also corrodes democracy. Both state and private actors have long used intimidation as a tactic to suppress voting, particularly against communities they sought to marginalize politically. Until recently, a 1982 consent decree entered against the Republican National Committee served as an important check against such misconduct;<sup>116</sup> this consent decree, however, expired in 2018.

In the last few years, election deniers have used claims of fraud as justification for intimidating tactics like knocking on doors to question residents about their voting eligibility, carrying guns near polling sites and drop boxes, surveilling voters and collecting their personal information, and sending ominous mailings threatening prosecution.<sup>117</sup> Voters also sometimes face intimidation from

election workers. In 2022, a federal judge enjoined discriminatory tactics by officials in Jefferson County, Texas, based on evidence that election staff had shadowed, harassed, and refused to help Black voters.<sup>118</sup>

Federal law prohibits voter intimidation.<sup>119</sup> But because the U.S. Supreme Court has taken an increasingly restrictive approach to voting rights protections, states need to implement their own safeguards. As anti-intimidation legislation enacted in New York in 2022 exemplifies, such protections should

- apply to both state and private actors;
- broadly cover intimidation, deception, and obstruction;
- cover both actual and threatened wrongful action;
- authorize voters, voting rights groups, and attorneys general to file suit to enjoin or remedy violations; and
- provide for expedited consideration of lawsuits and a range of appropriate relief, including an extended voting opportunity, injunctive relief, remedial relief, damages, and legal fees.<sup>120</sup>

To avoid overcriminalization, states should preserve intent requirements for any criminal provisions.

Some states can also enact protections against voter intimidation through ballot initiatives. Michigan voters amended their constitution in 2022 to specifically prohibit “harassing, threatening, or intimidating conduct,” as well as any actions aimed at “denying, abridging, interfering with, or unreasonably burdening the fundamental right to vote.” This right is crafted to expressly allow for civil remedies against both private and state actors.<sup>121</sup> Similarly, Nevada voters wrote into their constitution the right “to vote without being intimidated, threatened or coerced.”<sup>122</sup> In many states, general jurisprudential doctrines allow for private individuals to bring suit to enforce constitutional rights and seek monetary and injunctive relief.<sup>123</sup> Still, advocates can avoid uncertainty by writing express enforceability into constitutions, as Michigan voters did.

### >>Ban guns and other deadly weapons from polling places and canvassing locations.

Guns have no place in voting locations or at sites where votes are canvassed or recounted. As the U.S. Supreme Court affirmed in 2022, courts for centuries have recognized polling sites as “sensitive places” where guns are inappropriate; indeed, the Georgia Supreme Court in 1874 called guns at polling sites “shocking to all sense of propriety” and “wholly useless and full of evil.”<sup>124</sup> Modern research confirms what 19th-century judges easily understood: the very presence of guns increases people’s anger, aggression, and potential for violence.<sup>125</sup>

Most people support firearm bans around polling sites.<sup>126</sup> Some states have concealed and open carry laws that already prohibit guns at places that often host voting, including schools and churches. Yet only a handful of states specifically ban firearms at polling places.<sup>127</sup> Some have enacted restrictions in recent years: in 2022, Washington and Colorado banned guns from polling places, vote counting centers, and other election offices;<sup>128</sup> Hawaii, Massachusetts, New Jersey, and New York are all considering similar legislation.<sup>129</sup> Other states should do so too.

In addition to these specific bans, states should consider broader protections against armed voter intimidation. For example, they could legislate a judicial presumption that openly carrying a firearm while interacting with or observing protected conduct is intimidating. They could also authorize courts, in granting relief against voter intimidation, to include prohibitions or limitations on firearms that extend beyond statutory perimeter limits.

### >>Protect election officials and poll workers from harassment and doxing.

Although state laws already prohibit threats against election personnel, these prohibitions are rarely enforced. To make them more effective, state attorneys general can set up task forces, as the U.S. attorney general did in 2021,<sup>130</sup> and as Arizona’s attorney general committed to doing in 2023.<sup>131</sup>

State lawmakers can also revise statutes to offer a broader set of protections, both criminal and civil. They have a clear model in a spate of 2022 legislation enacted in California, Colorado, Nevada, New Hampshire, Oregon, Vermont, and Washington,<sup>132</sup> as well as 2023 legislation in Nevada and Oklahoma.<sup>133</sup> These states have enacted a variety of important policies: making it easier for election officials and workers to keep their personal information confidential, including shielding it from public information requests; criminalizing the dissemination of an election official’s personal information online if that information foreseeably endangers the official or their

family; and creating meaningful civil as well as criminal liability for individuals who intimidate or harass officials or workers involved in any stage of the election process, not just at the polling place. If states add criminal penalties, they should limit these to conduct that is intentionally threatening or intimidating.<sup>134</sup> Civil remedies enable victims to seek relief directly rather than relying on the criminal justice system.

If provided with sufficient funds, election offices can also contract companies to scrub personal information from the internet. States must protect the personal information of targeted individuals, as private media platforms are not doing so adequately.<sup>135</sup>

### >>Bolster physical security and develop other safety measures for election workers and polling sites.

States must invest in physical security for poll workers and election administration offices, including sites where ballots and sensitive equipment are stored or used.<sup>136</sup> CISA provides free customized physical security assessments to election officials that can identify potential vulnerabilities and recommend improvements. States can also fund de-escalation training and create de-escalation protocols for election personnel. In 2022, Maine enacted this practice by statute,<sup>137</sup> and Maricopa County did so as an administrative response to threats.<sup>138</sup>

As another safety measure, states should develop appropriate partnerships between election officials and law enforcement and establish clear standards for when and how law enforcement can prevent or stop harassment or violence at polling sites.<sup>139</sup> Some state laws automatically allow officers to be present at polling places on their own initiative, while others leave such decisions to election officials.<sup>140</sup> These laws may need to be revised, with input from election officials and constituents on how best to protect polling places without an excessive law enforcement presence that might intimidate voters.

In states where local officials have some discretion over whether police are present at polling places, these judgment calls should be made in advance. In 2022, in response to a heightened threat level, Maricopa County officials developed a safety plan with the FBI and the Arizona Counter Terrorism Information Center in which county sheriff’s deputies were not present at polling places but were on standby to respond to calls from vote centers; they were also deployed to patrol in and around the county’s tabulation center.<sup>141</sup> The Committee for Safe and Secure Elections also provides resources to law enforcement and election officials, working “to better equip both to prevent and respond to threats and violence against voters and election workers.”<sup>142</sup>

## V. Prevent Abuse by Poll Watchers and Challengers

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**P**olitical parties and campaigns often station poll watchers or observers in places where votes are being cast or counted to watch for irregularities. In some states, observers also are permitted to challenge voters' eligibility or the validity of mail-in ballots, whereas in other states the "challenger" role is separate.

Election observation undoubtedly strengthens democracies.<sup>143</sup> State policies allowing observers at every stage of the election process — from equipment testing to vote counting — help maintain transparency and foster civic engagement, voter confidence, and election security.<sup>144</sup> But observers and challengers can also disrupt the voting or counting process, intimidate voters, and misunderstand or mischaracterize what they observe, offering inaccurate and potentially inflammatory accounts.<sup>145</sup> In one widely reported 2020 incident, observers crowded around poll workers at a Detroit, Michigan, counting center, refused to follow protocols, and loudly disrupted the vote count until law enforcement intervened.<sup>146</sup> Disruptive observers and challengers were reported elsewhere, and this trend continued in 2022.<sup>147</sup> Since then, many election deniers have become state Republican Party chairs and will now influence how observers and challengers are chosen.<sup>148</sup> Election deniers have also recruited and trained large numbers of poll watchers.<sup>149</sup> As a result, the risk of observer abuse will likely be even higher in future elections.

The following safeguards would help to strike the proper balance between maintaining transparency and election security and protecting voters and election personnel.

### >>Allow reasonable public access to observe election processes and set clear standards of conduct.

States should have policies in place to ensure that the number and placement of observers do not impede voting, ballot processing, or vote counting.<sup>150</sup> Many states place strict limits on the number of observers and challengers allowed at voting sites and require that they remain sufficiently distant to protect voter privacy and access.<sup>151</sup> These restrictions are important, and states should resist calls to loosen them.<sup>152</sup> States also should ensure that observers at counting centers are placed in such a way that they do not intimidate or impede poll workers or voters. Local officials should have explicit authority and discretion to limit observers if their numbers begin to crowd or obstruct workers or make it impossible to maintain proper distance. Clear limits or clearly outlined standards for local decisions in the event of violations will reduce — though not eliminate<sup>153</sup> — the risk that efforts to maintain order generate conflict and fuel conspiracy theories about election administration.

Policymakers also must lay out clear rules of conduct for observers and challengers, ideally communicated both in writing and in person at the vote casting or counting site, covering what they can bring into the polling site, where they should stand, whether they may challenge voters, and how their role is distinct from that of election staff. These rules should expressly prohibit touching equipment or election supplies; interfering with or disrupting orderly election administration; and intimidating, harassing, or discriminating against voters or poll workers. As noted above, states should ban weapons from these sites, including for observers. Several states have such standards in place, and the federal Election Assistance Commission also offers guidance and models.<sup>154</sup> Observers and challengers should be required to swear an oath to follow these rules; if they violate these standards, local officials on-site should have express authority to remove them.

### >>Limit voter challenges.

Most states allow private individuals to challenge the identity or eligibility of potential voters, either before or on Election Day.<sup>155</sup> Many of these statutes were enacted in the 19th century to disenfranchise Black voters.<sup>156</sup>

Since 2020, election deniers have brought meritless mass challenges based on flimsy and unreliable evidence, such as amateur matching between voter registration lists and the National Change of Address registry.<sup>157</sup> They have focused their efforts on battleground states and voters registered as Democrats.<sup>158</sup> In Georgia, antidemocratic activists challenged more than 364,000 voters in the lead-up to a 2020 Senate run-off election and 92,000 voters in the 2022 midterms.<sup>159</sup> While these challenges were mostly rejected, they swamped election offices and may have confused voters or caused improper removals from the rolls.<sup>160</sup>

Private challenges are neither a necessary nor even an efficient way to ensure that only eligible individuals vote; states have better tools available for maintaining accurate rolls, such as the Electronic Registration Information Center.<sup>161</sup> In some states, only election officials can bring such challenges; all states should ideally adopt this model.<sup>162</sup> Alternatively, states could allow private challenges prior to — but not on or near — Election Day.<sup>163</sup>

States that continue to allow private challenges in some form should

- require that challenges be made under oath, based on personal knowledge, and directed at a single individual per challenge;<sup>164</sup>
- require clear and convincing evidence or a similarly high standard to sustain a challenge;<sup>165</sup>
- if allowing Election Day challenges, limit the number of challengers that can be stationed in any particular polling place or site where absentee ballots are being received or counted,<sup>166</sup> ensure that their placement does not impede voting or compromise confidentiality, and require that they address challenges to an election official and not directly to the person trying to vote;<sup>167</sup>
- allow challenged voters to resolve issues by taking an oath where appropriate or, alternatively, to vote by provisional ballot;<sup>168</sup> and
- hold abusive challengers accountable.<sup>169</sup>

States also should clarify — ideally by statute, but otherwise by regulation or policy guidance — that challenges cannot be based on the National Change of Address registry, returned mail, or other unreliable bases, and that targeting voters for challenges based on protected characteristics such as race is illegal.<sup>170</sup> In addition to limiting the potential for abusive challenges, states should, as set out above, address the conspiracy theories and election skepticism that drive them, educating the public about the measures that states *already* take to remove ineligible voters from the rolls.

## VI. Depoliticize Election Administration and Election Law Enforcement

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**L**ocal election officials and poll workers are vital to the functioning of the election process. Local officials, including county clerks, election directors, and boards of supervisors, help to administer elections: they hire and supervise staff; order supplies; and implement policies for voting equipment maintenance, mail ballots, early and Election Day voting, and canvassing and certification of results. Poll workers check in and assist voters, troubleshoot issues with equipment, process ballots, and count votes.

As noted above, many election officials and staff have recently been harassed or threatened out of their jobs, resulting in a substantial loss of institutional knowledge and expertise.<sup>171</sup> More than one in five officials administering the 2024 election are expected to be new to their position since 2020.<sup>172</sup> Increased turnover has also left gaps that election deniers have been rushing to fill. Conspiracy theorists have won or retained local office on promises to alter election procedures, such as by eliminating machine tabulators.<sup>173</sup> They have also recruited new poll workers and trained them to closely coordinate with — and take direction from — Republican Party officials and advisors and an “army” of partisan lawyers.<sup>174</sup> Indeed an organizer of one training with the so-called Election Integrity Network affiliated with former Trump staffers affirmed that the training’s goal was to teach future poll workers “how to take over and grab hold of and control the local apparatus in their local elections.”<sup>175</sup>

These changes endanger U.S. elections on multiple levels. The loss of professional election officials and poll workers makes it harder for polling places to handle the ordinary challenges of running an election, including long lines, ballot shortages, and equipment malfunctions. This loss of expertise is especially troubling because, at the same time, Congress and state legislatures are not sufficiently funding election administration to ensure resilience.

Increased turnover among poll workers and increasingly partisan mobilization efforts also risk bringing in bad actors. In fact, in recent years, election officials and poll workers in Colorado, Georgia, Michigan, North Carolina, and Pennsylvania have attempted to tamper with election equipment or abetted efforts by others to do so, often on the thin pretext of rooting out fraud.<sup>176</sup> That equipment had to be decertified and replaced. There have also been reported instances of poll workers intimidating voters.<sup>177</sup> Unless constrained, local officials may continue this conduct, and also may institute ill-advised procedures, such as hand counts in large jurisdictions.<sup>178</sup>

To guarantee that the officials and staff who administer elections are capable of handling election challenges,

motivated to run fair elections, and held to professional norms, states should take the following measures.

### >>Require training for all election officials and establish poll worker recruitment and eligibility standards.

Without accurate information and training on their legal duties and best practices for security, local election officials may be misled into sharing access to critical election systems with unauthorized outsiders. To reduce this risk and to increase professionalism generally, states should require officials to undergo officially sanctioned training on their duties and responsibilities.<sup>179</sup> Colorado, Nevada, and Washington do so, and New York is considering such a measure.<sup>180</sup> As an alternative, states could allow training by nationally recognized organizations such as the Election Center.<sup>181</sup>

Additionally, local officials should have final say over hiring election personnel. While some states allow political parties to nominate poll workers, officials should screen all applicants to ensure that they meet eligibility requirements, such as qualifying to vote in the county (with exceptions when not enough poll workers are available). Officials should not, however, turn away applicants solely based on their viewpoints or beliefs, so long as they affirm their commitment to following election laws.<sup>182</sup> Poll workers should be required to take an oath to perform their duties impartially and to follow applicable laws and instructions.<sup>183</sup>

### >>Develop standards of conduct for election workers and officials.

Most election workers are committed to facilitating fair and accurate elections. However, given the increased turnover in recent years and the combative approach some party leaders are taking in recruiting workers, written standards would help to inculcate professional norms and promote accountability. Such standards, communicated to the public, could also increase trust and counter disinformation. States should require election officials to adopt

standards of conduct for permanent and temporary election workers that set clear expectations for how workers should carry out their duties and what conduct might lead to discipline, termination, or legal consequences.<sup>184</sup> Standards of conduct should reference and build on state and federal laws that regulate election staff conduct and election worker oaths, which 42 states and the District of Columbia require, at least for temporary election personnel.<sup>185</sup> State legislatures should examine and update these statutory provisions to make it easier for election officials to explain legal requirements in clear language and to specify that election workers — even if appointed, nominated, or recommended by an outside party — are accountable solely to their official supervisors.

Election officials should also publicly adopt their own codes of ethics. Doing so is an opportunity to communicate their shared values to the public, helping to build credibility, accountability, and independence from partisan pressures. Election officials should look to national associations like the Election Center, as well as state election official associations, for independent and impartial model codes.<sup>186</sup>

Poll workers may sometimes disagree over election rules and procedures. States should spell out a chain of command for disputes — for example, individual poll workers report to a lead or managing individual, who liaises with a pre-designated contact at the local election office; the local office then reports to a designated contact within the office of the chief state election official or consults with local government counsel, such as the county or city attorney.<sup>187</sup> To minimize disruptions to the election process, state training curricula for poll workers can also offer guidance on resolving disputes on-site.<sup>188</sup>

### **>>Implement rules for training and other materials from nongovernmental organizations.**

Nonpartisan organizations and political parties play an important role in recruiting observers and sometimes poll workers, particularly in jurisdictions that require bipartisan teams of workers for certain tasks. In some instances, however, these groups have produced misleading or confusing guidance about the different rights, responsibilities, and roles of observers, poll workers, and election officials.<sup>189</sup>

States should discourage the production and distribution of misleading materials. In addition to encouraging organizations to use official materials rather than generating their own, states should provide templates for materials that highlight the relevant restrictions on observers, including paperwork that must be filled out in advance, distancing requirements, limits on the number of observers, and prohibitions on intimidating behavior, touching ballots or equipment, and taking photos or video in certain settings. States should also require that third parties make clear in their

communications and any materials they create that they are not a governmental entity.

### **>>Strengthen prosecutorial independence and develop clear guidelines for prosecuting election crimes.**

Over the last three years, policymakers in Alabama, Arizona, Florida, Georgia, Iowa, Kansas, Oklahoma, South Carolina, and Texas have created new election crime laws, targeting both voters and poll workers.<sup>190</sup> These new laws do not proscribe or deter conduct that undermines voting rights or the electoral process; instead, they criminalize honest mistakes by election officials and voters, along with ordinary conduct that makes it easier and safer for voters to cast their ballots. Such laws encourage aggressive policing tactics and function as voter suppression rather than election protection.

Many of these states also leveraged lies about voter fraud to create new law enforcement offices dedicated to investigating election crimes.<sup>191</sup> In Florida, just five days before the 2022 primary, Governor Ron DeSantis held a press conference announcing 20 “fraud” arrests. Flanked by more than a dozen uniformed police officers, he described these arrests as the state’s “opening salvo” against election fraud.<sup>192</sup> Yet publicly available information indicates that most (if not all) of those charged had no intent to commit fraud but simply made honest mistakes about their voting eligibility. Rather than rein these prosecutions in, Florida’s legislature expanded the authority of the statewide prosecutor to pursue them.<sup>193</sup>

Instead of criminalizing election activities and politicizing election law enforcement in ways calculated to intimidate voters and sow doubts about election integrity, states should adopt policies to ensure the opposite. They should not shift election law enforcement to more political — and less independent — government offices; they should depoliticize it by reducing opportunities for governors to direct or interfere in investigations.

Based on publicly accessible resources, no state appears to have a manual for prosecuting election crimes akin to the Department of Justice’s manual for the federal prosecution of election offenses or the attorney general’s memo regarding election year sensitivities.<sup>194</sup> State attorneys general should develop internal guidance that clearly spells out the bases for state prosecution of election crimes, limiting prosecution to incidents with clear evidence of fraudulent intent. This guidance should articulate policies regarding the timing of criminal investigations, prosecutions, and publicity to avoid affecting any election. Finally, it should affirm the norms of independence, neutrality, and nonpartisanship in prosecuting election crimes.



## VII. Increase Election Security

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In recent years, both foreign and domestic adversaries have attempted to compromise the security of U.S. elections. And new threats are emerging. States have made some progress in tightening election security, but much work remains to be done.

In recent years, foreign hackers have tried to infiltrate election systems, including voter databases and government websites used to communicate election information, at the very least to sow chaos, mistrust, and disruption.<sup>195</sup> The country also faces domestic threats. Election deniers have campaigned and won elections on misinformed platforms such as eliminating voting machines.<sup>196</sup> Party leaders and others have encouraged poll worker and poll observer recruits to take a combative approach to the job, coordinate closely with party officials, and intervene aggressively to “take over” and “control” the voting process.<sup>197</sup>

In several known instances, poll workers have shared access to critical election systems with private individuals who had no valid reason to seek such access.<sup>198</sup> Indeed, a radical movement of sheriffs — who falsely insist that the 2020 election was stolen and who claim independent and unlimited authority to interpret and enforce election laws and constitutional provisions — allegedly have obtained voting equipment and sensitive election information from clerks under the guise of an official investigation.<sup>199</sup> Some workers also may unwittingly grant access to unauthorized individuals, for example by falling for phishing schemes.<sup>200</sup>

To counter these threats, states must take the following measures to secure their voting equipment and systems, all of which require consistent and adequate funding.<sup>201</sup>

### >>Adopt cybersecurity best practices.

Election officials should adopt safeguards and procedures for election system use to prevent, detect, and recover from cyberattacks and technical failures.<sup>202</sup> Among other actions, officials should

- establish protocols for software updates and patches, including setting a 60-day preelection blackout window for all noncritical updates;
- ensure that tabulating equipment and election management systems are not connected to unsecured networks and that administrators use single-use removable media to transfer data to or from these systems;
- adopt multifactor authentication, appropriate password protocols, intrusion detection systems, and

protections against distributed denial-of-service attacks (that is, attempts to overload a system and disrupt its functioning by flooding it with requests from numerous sources); and

- maintain appropriate contingency plans for all critical systems, including emergency paper ballots and backups of voter registration databases.

Through federal funding, states have access to free products and services from the currently underutilized Elections Infrastructure Information Sharing and Analysis Center.<sup>203</sup>

### >>Require bipartisan election worker teams and other measures to mitigate insider threats.

States should prohibit poll workers from being near ballots without a bipartisan team present until the ballots are transferred to storage after final certification. This requirement should apply to the following activities: retrieving ballots from the post office or drop boxes, verifying signatures, opening mail ballot envelopes, separating mail ballots from their envelopes, preparing ballots for scanning, transporting ballots, and counting votes.<sup>204</sup> To prevent gamesmanship and ensure truly bipartisan teams, election officials should not assign any workers who have changed their party affiliation right before an election.<sup>205</sup> Where bipartisan teams are not feasible, states should at a minimum require peer oversight.

Officials should adopt and implement other protocols to prevent and detect insider attacks (that is, attacks by election workers, officials, or others with professional access to an election system), including

- standard operating procedures that clearly define roles and responsibilities;
- need-based access controls, such as key cards and unique log-ins with multifactor authentication, that ensure that officials can only access election systems when necessary for their job functions, and only to the extent necessary;
- chain of custody protocols that provide a rigorous record of all access and movement of critical equipment and materials, strengthened by technology such as video surveillance and key card access;<sup>206</sup> and

- express prohibitions on creating or disclosing copies of any voting system component’s storage without explicit legal authorization.<sup>207</sup>

### **>>Prevent, detect, and recover from voting system failures and establish clear authority to remediate security risks.**

Election officials should conduct logic and accuracy testing with public observation before the voting period starts to identify any potential issues that voting systems may have when marking and reading ballots. If systems do fail during the voting period, election officials should have contingency plans in place to allow voters to continue marking and casting ballots until issues are resolved. These plans should include supplying polling places with emergency paper ballots and ensuring that poll workers know how to use any auxiliary ballot storage bins on scanners.<sup>208</sup>

In the event that an insider attack does occur, states should ensure that election officials have clear authority to remediate ongoing security risks by prohibiting individuals who violate election laws from performing certain election responsibilities and decommissioning any equipment affected by a breach.

### **>>Use voting machines for initial ballot counts and pair with robust postelection audits.**

Over the past few years, election deniers have spread false fears that voting machines have been programmed to alter votes or are susceptible to manipulation over the internet. In 2022, though ultimately blocked by court orders, county officials in Arizona and Nevada tried to eliminate or sideline machines and move to routine hand counts.<sup>209</sup> Such

efforts to replace machine counting with hand counts undermine sound election administration. In all but the smallest jurisdictions, full hand counts are impractical: they take too long and are less accurate than machine tabulation, and they pose ballot security risks if explicit protocols are not followed.<sup>210</sup>

States should require election officials to use voting tabulation systems for initial ballot counts, allowing for limited exceptions for very small jurisdictions that can produce a final count that is comparably accurate to what tabulation equipment would produce in a similar time frame.<sup>211</sup> Eliminating any discretion in that decision will both protect against rogue official action and insulate officials from pressure by conspiracy theorists who insist on hand counts.

States should pair machine counts with robust post-election risk-limiting audits, in which officials hand count samples of ballots to verify machine-tallied results, as well as options for visual examination of any ballots for which the machine may not be able to interpret a voter’s light or stray markings. Audits improve both accuracy and public trust in elections.<sup>212</sup> Yet fewer than half of U.S. states use risk-limiting audits. In states that allow ballot initiatives, such as Arizona, advocates could build in constitutional protections against legislative interference in postelection audits, as Michigan voters did in 2022.<sup>213</sup> Among other safeguards against partisan manipulation, Michigan requires that audits be conducted publicly, solely under the secretary of state’s supervision, without any political party involvement, with transparent funding, and based on procedures and security protocols finalized and disclosed before the election.

## Conclusion

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**T**he 2020 election was not a one-off. Irresponsible politicians, local officials, and media figures, some of them in positions of power over election administration, continue to spread disinformation and to interfere in election administration. They may become more effective as they learn from past failures. With the federal government increasingly stymied by partisan divisions and structural barriers to action, state legislators, local administrative officials, and advocates must rise to the challenge of securing U.S. elections.

As outlined here, the field for action is immense — including laws protecting state certification processes, administrative policies to combat disinformation, protections against violence and intimidation toward voters and election officials alike, training mandates for incoming election workers, and bolstered election security. The needs and opportunities will, of course, vary by state. And legal

safeguards on paper, while essential, will only be as strong as the political will at all levels of state government to fund and enforce them. But lessons from specific threats in various parts of the country, and from the creative solutions that some states are finding to meet those threats, offer a way forward.

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