



**TESTIMONY OF  
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BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW<sup>1</sup>  
BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES  
SELECT COMMITTEE TO INVESTIGATE THE  
JANUARY 6TH ATTACK ON THE UNITED STATES CAPITOL**

April 8, 2022

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<sup>1</sup> The Brennan Center for Justice at New York University School of Law is a nonpartisan public policy and law institute that works to strengthen the systems of democracy and justice so that they work for all Americans. I am the Vice President for Democracy and Director of the Brennan Center’s Democracy Program, which among other issues focuses on voting rights and election administration. I have authored numerous nationally recognized reports, studies, and articles on voting rights and elections. My work has been featured in academic journals and media outlets across the country. I have served as counsel in many voting rights lawsuits and have testified previously before Congress, and before several state legislatures, on a variety of issues relating to election administration. My testimony does not purport to convey the views, if any, of the New York University School of Law. I thank Lauren Miller, Counsel at the Brennan Center, for her substantial assistance in preparing this testimony.

Chairman Thompson and Members of the Select Committee:

Thank you for the opportunity to submit this testimony to discuss the disinformation about the 2020 presidential election that fueled the violent January 6, 2021 attack on the U.S. Capitol (the “insurrection”) and how that disinformation continues to threaten voting and elections in America.

On behalf of the Brennan Center for Justice, I thank this Committee for its investigation into one of the most shameful and alarming attacks on American democracy in our nation’s history. As you know, the insurrection’s motivating theory was that the 2020 presidential election was “stolen” from former President Donald Trump.<sup>2</sup> This “Big Lie” relies on disproven<sup>3</sup> and racially-charged allegations of widespread voter fraud,<sup>4</sup> ballot irregularities,<sup>5</sup> and conspiracies to otherwise “rig” the election.<sup>6</sup> The 2020 election is over, but the Big Lie continues to wreak havoc on our elections. My testimony will explain how the same disinformation about voter fraud and the 2020 election that drove the January 6 insurrection is fueling ongoing efforts to undermine voting rights and sabotage the electoral process across the country, as well as efforts to attack election officials and otherwise undermine impartial election administration.

Part I of my testimony walks through evidence of how the Big Lie is driving two anti-democratic trends in the states: the swift, aggressive push to restrict access to voting rights and the novel push to enable partisan actors to interfere in election administration. In the 12 months following the insurrection, 19 states passed 34 restrictive voting bills, or bills that make it more difficult to vote, according to the Brennan Center’s count.<sup>7</sup> This was a significant escalation over years past. At the same time, state lawmakers pressed a new species of legislation—election sabotage bills—which enable partisan actors to interfere with or manipulate elections by changing who runs elections, counts the votes, and how. At least 11 election sabotage laws

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<sup>2</sup> “Transcript of Trump’s Speech at Rally before US Capitol Riot,” Associated Press, January 13, 2021, <https://apnews.com/article/election-2020-joe-biden-donald-trump-capitol-siege-media-e79eb5164613d6718e9f4502eb471f27>; Brian Naylor, “Read Trump’s Jan. 6 Speech, a Key Part of Impeachment Trial,” National Public Radio, February 10, 2021, <https://www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial>; Lauren Leatherby et al., “How a Presidential Rally Turned into a Capitol Rampage,” *New York Times*, January 12, 2021, <https://www.nytimes.com/interactive/2021/01/12/us/capitol-mob-timeline.html>; and Southern Poverty Law Center, *The Road to Jan. 6: A Year of Extremist Mobilization*, <https://www.splcenter.org/news/2021/12/30/road-jan-6-year-extremist-mobilization>.

<sup>3</sup> Daniel Funke, “Fact Check: How We Know the 2020 Election Results Were Legitimate, Not ‘Rigged’ as Donald Trump Claims,” *USA Today*, January 6, 2022, <https://www.usatoday.com/story/news/factcheck/2022/01/06/fact-check-donald-trump-2020-election-results/9115875002/>; “Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees,” Cybersecurity and Infrastructure Security Agency, November 12, 2020, accessed April 8, 2022, <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election>; and Brennan Center for Justice, *It’s Official: The Election Was Secure*, 2020, <https://www.brennancenter.org/our-work/research-reports/its-official-election-was-secure>.

<sup>4</sup> Donald Trump, interview by Maria Bartiromo, *Sunday Morning Futures*, Fox News, November 29, 2020, <https://vimeo.com/485180163>.

<sup>5</sup> “Tweets of November 16, 2020,” American Presidency Project, UC Santa Barbara, November 16, 2020, accessed April 8, 2022, <https://www.presidency.ucsb.edu/documents/tweets-november-16-2020>.

<sup>6</sup> American Presidency Project, “Tweets.”

<sup>7</sup> Brennan Center for Justice, *Voting Laws Roundup: December 2021*, 2021, <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2021>.

passed in nine states in 2021.<sup>8</sup> This anti-democratic push continues today; as of the Brennan Center's January 14, 2022 count, state lawmakers had introduced, pre-filed, or carried over more than 250 restrictive voting bills<sup>9</sup> and 41 election sabotage bills.<sup>10</sup> These bills are much more closely connected to the push to overturn the 2020 election than many realize.

My testimony will establish, first, that many of these new restrictive voting and election sabotage bills stem directly from the false allegations made in lawsuits brought by former President Trump's campaign and his supporters in their bid to change the 2020 election results. Second, it will demonstrate that the state lawmakers leading this legislative charge are among the same individuals who rejected the 2020 election results. Almost all of them made public statements connecting their support for restrictive voting legislation to disinformation about the legitimacy of the 2020 election or widespread voter fraud. Already, the voting legislation that they succeeded in passing is creating tangible, negative effects on voters and disproportionately impacting voters of color.

Part II of my testimony will describe two ways in which the Big Lie is driving attacks on impartial election administration. First, false claims about voter fraud and the legitimacy of the 2020 election are triggering attacks on our nation's election administrators, leading an unprecedented number to contemplate quitting. A recent Brennan Center survey found that one in six election officials have experienced threats because of their job, and nearly one in three know of at least one colleague who has left their position due to safety concerns, increased threats, or intimidation.<sup>11</sup> Second, my testimony lays out how the Big Lie is politicizing election administration in other ways. Among other things, 2022 candidates for election administration positions are embracing election denial in their pitch to voters and donors. Races that feature election denial have seen massive increases in contributions, particularly from out-of-state donors. These trends pose a serious risk to impartial election administration in America.

In short, there is ample evidence that the disinformation that fueled the January 6 insurrection continues to undermine our election system. With 2022 primaries in progress, and the 2024 presidential election around the corner, the dangers to American democracy loom large.

This Committee's work is critical to repairing the breach in the fabric of our nation caused by the January 6 insurrection. It is critical to ensuring that the perpetrators of the violent insurrection are held accountable, and its victims receive justice. It also is critical to ensuring that this reprehensible history does not repeat itself. And it is critical to ensuring that the Big Lie that fueled the insurrection does not continue to grow and further damage our democracy.

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<sup>8</sup> Will Wilder, Derek Tisler, and Wendy R. Weiser, *The Election Sabotage Scheme and How Congress Can Stop It*, 2021, Brennan Center for Justice, 3–6, <https://www.brennancenter.org/our-work/research-reports/election-sabotage-scheme-and-how-congress-can-stop-it>.

<sup>9</sup> Brennan Center for Justice, *Voting Laws Roundup: February 2022*, 2022, <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-february-2022>.

<sup>10</sup> Brennan Center, *Voting Laws Roundup: February 2022*.

<sup>11</sup> Brennan Center for Justice, *Local Election Officials Survey (March 2022)*, 2022, 6, 19, <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-march-2022>.

## **I. The Same Election Denial Claims and Rhetoric That Fueled the Insurrection Are Driving Damaging Vote Suppression and Election Sabotage Efforts**

Since the 2020 election, the country has witnessed two aggressive, anti-democratic developments in state legislatures. First, efforts to suppress voting have soared. In 2021 alone, at least 19 states passed 34 restrictive voting laws, or laws that make it more difficult to vote<sup>12</sup>—the largest number that the Brennan Center has seen in any year since it first began tracking voting legislation in 2011.<sup>13</sup> Indeed, between 2011 and 2021, at least 33 states passed 97 restrictive voting bills, and more than a third of those laws passed last year alone.<sup>14</sup> This legislative push was nationwide; overall, legislators introduced more than 400 restrictive voting bills in 49 states in 2021.<sup>15</sup> This trend continues in 2022. As of the Brennan Center’s January 14, 2022 count, state lawmakers had introduced, pre-filed, or carried over more than 250 restrictive voting bills.<sup>16</sup> The provisions in these bills range from curtailing access to mail voting and enacting new or stricter voter ID requirements, to imposing new barriers for voters and limiting or eliminating same-day voter registration.<sup>17</sup> These numbers continue to grow.

Second, states have seen a dramatic spike in legislation that would enable partisan actors to meddle in election administration and vote counting processes—otherwise known as “election sabotage” bills. The Brennan Center identified at least 11 election sabotage laws passed in nine states in 2021,<sup>18</sup> including laws in two states that allow partisan actors to remove election officials from their positions and replace them close to an election,<sup>19</sup> laws in six states that create criminal penalties for election officials who take certain steps to make it easier for individuals to vote,<sup>20</sup> and laws in three states that empower partisan poll watchers to interfere in the vote counting process.<sup>21</sup> Our January 14, 2022 count found that legislators in at least 13 states already

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<sup>12</sup> Brennan Center, *Voting Laws Roundup: December 2021*.

<sup>13</sup> Brennan Center, *Voting Laws Roundup: December 2021*.

<sup>14</sup> Brennan Center, *Voting Laws Roundup: December 2021*; Brennan Center for Justice, *Voting Laws Roundup 2020*, 2020, <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2020-0>; Brennan Center for Justice, *Voting Laws Roundup 2019*, 2019, <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2019>; Brennan Center for Justice, *Voting Laws Roundup 2018*, 2018, <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2018>; Brennan Center for Justice, *Voting Laws Roundup 2017*, 2017, <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2017>; Brennan Center for Justice, *Voting Laws Roundup 2016*, 2016, <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2016>; Brennan Center for Justice, *Voting Laws Roundup 2015*, 2015, <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2015>; Brennan Center for Justice, *Voting Laws Roundup 2014*, 2014, <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2014>; Brennan Center for Justice, *Voting Laws Roundup 2013*, 2013, <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2013>; Brennan Center for Justice, *Election 2012: Voting Laws Roundup*, 2012, <https://www.brennancenter.org/our-work/research-reports/election-2012-voting-laws-roundup>; and Wendy R. Weiser and Nhu-Y Ngo, *Voting Rights in 2011: A Legislative Round-Up*, 2011, <https://www.brennancenter.org/our-work/research-reports/voting-rights-2011-legislative-round>.

<sup>15</sup> Brennan Center, *Voting Laws Roundup: December 2021*.

<sup>16</sup> Brennan Center, *Voting Laws Roundup: February 2022*.

<sup>17</sup> Brennan Center, *Voting Laws Roundup: December 2021*; and Brennan Center, *Voting Laws Roundup: February 2022*.

<sup>18</sup> Wilder, Tisler, and Weiser, *Election Sabotage Scheme*, 3–6.

<sup>19</sup> Wilder, Tisler, and Weiser, *Election Sabotage Scheme*, 3.

<sup>20</sup> Wilder, Tisler, and Weiser, *Election Sabotage Scheme*, 5.

<sup>21</sup> Wilder, Tisler, and Weiser, *Election Sabotage Scheme*, 5.

had pre-filed and introduced an unprecedented 41 such bills that would threaten the people and processes that make elections work.<sup>22</sup> These provisions range from allowing any citizen to initiate or conduct biased election audits; to imposing new criminal or civil penalties on election officials for making unintentional errors; to allowing partisan actors to remove election officials from office.<sup>23</sup> These numbers also continue to grow.

The Brennan Center has been chronicling and studying these negative developments. Specifically, two recent analyses demonstrate that the same false allegations of a stolen election that drove the insurrection are driving these ongoing efforts to undermine voting rights and sabotage electoral processes. One analysis examined the text of restrictive voting and election sabotage legislation to show that it closely maps onto the same allegations made in lawsuits brought by former President Trump and his supporters in the wake of the 2020 election—all of which were unsuccessful. The second analysis reviewed the rhetoric of those legislators leading restrictive voting and election sabotage efforts to establish that these bills rest upon the same debunked rhetoric of widespread voter fraud that fueled the insurrection.

#### **A. There Is Strong Evidence That the False Claims That Fueled the Insurrection Are Fueling Vote Suppression and Election Sabotage Legislation**

For more than a decade, the Brennan Center has tracked and reported on new laws that make it more difficult for individuals to vote.<sup>24</sup> From the outset, baseless claims of voter fraud fueled this legislative movement.<sup>25</sup> Following the 2020 election, former President Trump and his supporters used this same rhetoric to conjure up claims of a “stolen” election and launch a full-scale effort to overturn the presidential election results in key states, including through a flurry of unsuccessful lawsuits discussed in section i below. In the wake of that failed effort, election denial proponents began rapidly introducing and passing state bills that restrict access to voting and make it easier for partisan actors to meddle in election administration. Our research demonstrates that this unprecedented legislative push was driven in significant part by claims that the 2020 election was stolen, as reflected by the similarity between the false claims made in lawsuits and the new legislative provisions, as well as by the public statements made by legislative sponsors concerning the legitimacy of the 2020 election and widespread voter fraud.

It is well established that voter fraud, while pernicious, is vanishingly rare in U.S. elections.<sup>26</sup> Courts universally rejected lawsuits seeking to overturn the 2020 election result based upon false theories of fraud.<sup>27</sup> Election officials and experts of all political persuasions

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<sup>22</sup> Brennan Center, *Voting Laws Roundup: February 2022*.

<sup>23</sup> Brennan Center, *Voting Laws Roundup: February 2022*.

<sup>24</sup> Brennan Center, *Voting Laws Roundup: February 2022*.

<sup>25</sup> Brennan Center for Justice, *Debunking the Voter Fraud Myth*, 2017, <https://www.brennancenter.org/our-work/research-reports/debunking-voter-fraud-myth>; Brennan Center, *Refuting the Myth of Voter Fraud*; and “The Myth of Voter Fraud,” Brennan Center for Justice, accessed April 8, 2022, <https://www.brennancenter.org/issues/ensure-every-american-can-vote/vote-suppression/myth-voter-fraud>.

<sup>26</sup> Brennan Center, *Refuting the Myth of Voter Fraud*.

<sup>27</sup> Rosalind S. Helderman and Elise Viebeck, “‘The Last Wall’: How Dozens of Judges across the Political Spectrum Rejected Trump’s Efforts to Overturn the Election,” *Washington Post*, December 12, 2020, <https://www.washingtonpost.com/politics/judges-trump-election-lawsuits/2020/12/12/e3a57224-3a72-11eb-98c4->

overwhelmingly agree that the 2020 election was one of the most secure in modern history.<sup>28</sup> Nevertheless, false claims about widespread voter fraud and the legitimacy of the 2020 election continue to drive legislation and policy efforts in the states.

***i. Comparison of False Legal Claims about the 2020 Election and State Legislation Introduced and Passed in 2021***

In the days before and after the 2020 election, former President Trump’s campaign and his supporters filed a blizzard of unsuccessful lawsuits in an attempt to alter the election’s outcome.<sup>29</sup> These lawsuits made a variety of allegations that the election was rife with fraud and irregularities. A recent Brennan Center analysis demonstrates that the false allegations contained in these suits map directly onto many provisions in the wave of new restrictive voting and election sabotage measures passed in 2022.

The analysis focuses on those lawsuits that raised false claims of fraud and attempted to disrupt or overturn the election, which were filed in 17 states.<sup>30</sup> Although courts rejected these suits,<sup>31</sup> in 2021 legislators in 16 of the 17 states where suits were filed introduced bills to restrict access to voting.<sup>32</sup> The majority of lawsuits filed before or immediately after the 2020 election centered on allegations that the mail voting process was not secure, despite well-settled evidence to the contrary.<sup>33</sup> Not surprisingly, the most common theme of new restrictive voting legislation last year was, in turn, an effort to restrict mail voting.<sup>34</sup>

In fact, the connections between the 2020 litigation claims and the 2021 restrictive voting bills were much more specific than that. In 15 of the 16 states with both litigation and legislation, at least one provision in a new restrictive voting bill can be directly traced to a specific false claim made in a 2020 election lawsuit in that state.<sup>35</sup> The similarities remain just as strong when looking only at the most extreme category of lawsuits: those filed after Election Day seeking to overturn the results or block certification of an election. These lawsuits, filed in at least 12 states,

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<sup>28</sup> Cybersecurity and Infrastructure Security Agency, “Joint Statement”; and Brennan Center, *It’s Official: The Election Was Secure*.

<sup>29</sup> “Voting Rights Litigation Tracker 2020,” Brennan Center for Justice, July 28, 2020, accessed April 8, 2022, <https://www.brennancenter.org/our-work/court-cases/voting-rights-litigation-tracker-2020>.

<sup>30</sup> Katie Friel and Will Wilder, *Finding the Same Misinformation in Anti-Voter Lawsuits and Anti-Voter Legislation*, Brennan Center for Justice (forthcoming), <https://www.brennancenter.org/our-work/research-reports/finding-same-misinformation-anti-voter-lawsuits-and-anti-voter>. The Brennan Center’s analysis focused exclusively on those 2020 election lawsuits that relied on false claims about voter fraud and sought to disrupt or overturn the election. The analysis included lawsuits filed before the election that relied on false fraud claims and sought to enjoin certain methods of voting or have certain categories of votes cast out. It also included lawsuits filed after the election that used false claims of fraud to seek to invalidate certain categories of votes or overturn the election entirely. The analysis excluded cases filed by *pro se* litigants that made vague allegations of fraud that were not specific to any state or jurisdiction.

<sup>31</sup> Helderman and Viebeck, “The Last Wall.”

<sup>32</sup> Friel and Wilder, *Finding the Same Misinformation*.

<sup>33</sup> Wendy R. Weiser, “The False Narrative of Vote-by-Mail Fraud,” Brennan Center for Justice, April 10, 2020, <https://www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud>.

<sup>34</sup> Friel and Wilder, *Finding the Same Misinformation*.

<sup>35</sup> Friel and Wilder, *Finding the Same Misinformation*.

relied heavily upon spurious claims of fraud that courts ultimately rejected.<sup>36</sup> Yet in 11 of these 12 states, a provision contained in a 2021 restrictive voting bill directly mirrors false claims made in those suits.<sup>37</sup>

In Arizona, for example, one 2020 lawsuit contested the results of the presidential election based in part upon an unproven claim that out-of-state voters cast ballots in Arizona.<sup>38</sup> The case was dismissed, but in 2021 Arizona legislators introduced a bill to expand voter roll purges in an effort to remove hypothetical out-of-state voters from the voter rolls.<sup>39</sup> Similarly, multiple cases in Wisconsin challenged election officials' decision to accept absentee ballots without a photo ID during the pandemic based upon the state's exemption to the voter ID requirement for individuals who are "indefinitely confined."<sup>40</sup> In 2021, legislators introduced two bills to repeal the exemption.<sup>41</sup>

In some states, the connections between 2020 litigation claims and 2021 legislative efforts were especially pronounced. In Georgia, for instance, litigation pushed four spurious claims to cast doubt upon the election results: (i) poll watchers were deliberately blocked from observing ballot processing, creating doubt in the accuracy of the counting process; (ii) the state's use of drop boxes increased the risk of fraud; (iii) absentee ballots generally threaten election integrity and lead to fraud; and (iv) private foundations used grant funding to gain undue influence over election officials.<sup>42</sup> These claims were unsuccessful, and yet the Georgia legislature reinforced them by signing into law Senate Bill 202, which: (i) expands legal rights of poll watchers to observe elections without constraints by election administrators; (ii) limits the availability of drop boxes; (iii) significantly restricts access to mail voting by imposing stricter identification requirements for absentee voters and narrows the window to apply for absentee ballots; and (iv) prohibits local election administrators from accepting funding from private sources.<sup>43</sup>

Pennsylvania illustrates the connection between baseless lawsuits challenging the integrity of the 2020 election and 2021 election sabotage provisions. Many of the legal challenges in Pennsylvania falsely claimed that the state's certification of the 2020 election was somehow invalid.<sup>44</sup> Although unfounded, these claims did influence Pennsylvania legislators, who introduced at least five resolutions in 2021 directly aimed at invalidating the results of the 2020 election.<sup>45</sup> Legal challenges in the state also made allegations of fraud as to the state's "notice and cure" practice, by which election officials notify voters if there is an issue with their

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<sup>36</sup> Friel and Wilder, *Finding the Same Misinformation*.

<sup>37</sup> Friel and Wilder, *Finding the Same Misinformation*.

<sup>38</sup> Friel and Wilder, *Finding the Same Misinformation*; and Pet. For Elec. Cont., *Stevenson v. Ducey*, No. CV2020-096490 (Ariz. Super. Ct. 2020).

<sup>39</sup> Friel and Wilder, *Finding the Same Misinformation*; and H.B. 2358, 55<sup>th</sup> Leg., Reg. Sess. (Ariz. 2021).

<sup>40</sup> Friel and Wilder, *Finding the Same Misinformation*; and Pls.' Compl., *Feehan v. Wis. Elections Commission*, 2020 WL 7630410 (E.D. Wis. 2020).

<sup>41</sup> Friel and Wilder, *Finding the Same Misinformation*. S.B. 204, 2021 Leg., Reg. Sess. (Wis. 2021). One of the two bills (Wis. S.B. 204) was passed by the legislature but subsequently vetoed by the governor.

<sup>42</sup> Friel and Wilder, *Finding the Same Misinformation*.

<sup>43</sup> Friel and Wilder, *Finding the Same Misinformation*; and S.B. 202, 156<sup>th</sup> Gen. Assemb., Reg. Sess. (Ga. 2021).

<sup>44</sup> Friel and Wilder, *Finding the Same Misinformation*.

<sup>45</sup> Friel and Wilder, *Finding the Same Misinformation*.

mail-in ballot and provide the voter with an opportunity to fix the mistake.<sup>46</sup> While those claims were rejected, legislators subsequently introduced a bill to prohibit election officials from providing any opportunity for voters to cure their mail ballots.<sup>47</sup>

**ii. *Analysis of Public Statements by Proponents of Restrictive Voting and Election Sabotage Legislation***

A second recent Brennan Center analysis examined public statements made by sponsors and key proponents of restrictive voting and election sabotage legislation in the states and found that those sponsors justified their legislation using the same discredited claims of a widespread fraud and a stolen election that fueled the insurrection. The analysis focused on two sets of public rhetoric: (i) statements made by the chief sponsors and co-sponsors of the 13 most restrictive new laws passed in 2021; and (ii) statements concerning all 25 such bills introduced in Georgia and all 31 introduced in Pennsylvania in 2021, as these two states saw some of the most aggressive restrictive voting and election sabotage bills.<sup>48</sup> In total, the analysis uncovered relevant statements for 58 bills<sup>49</sup> made in legislative proceedings, at campaign events, to reporters, and on social media, with striking results.

We found, first, that the vast majority of the 58 bills were sponsored by legislators who publicly questioned the validity of the 2020 election, including the chief sponsors of 10 of the 13 most restrictive new state laws.<sup>50</sup> For example, Arkansas Representative Mark Lowery, who served as the chief sponsor of legislation enhancing voter ID requirements,<sup>51</sup> notably stated that he “believe[s] Donald Trump was elected president” in 2020 and signed a letter asking for audits of the 2020 election in every state and decertification of any result declared “prematurely and inaccurately.”<sup>52</sup>

Similarly, sponsors of 20 of the 25 restrictive bills introduced in Georgia last year questioned the election’s outcome, mostly by suggesting that the surge in absentee ballots in 2020 led to fraud.<sup>53</sup> Representative Barry Fleming, Chair of the Georgia House Special Committee on Elections formed in the wake of the 2020 election, suggested in an op-ed that unreliable mail ballots changed the outcome of certain races in 2020.<sup>54</sup> He argued that

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<sup>46</sup> Friel and Wilder, *Finding the Same Misinformation*.

<sup>47</sup> Friel and Wilder, *Finding the Same Misinformation*.

<sup>48</sup> Andrew Garber, *Election Denial Rhetoric from Sponsors of State Voter Suppression Legislation*, Brennan Center for Justice (forthcoming), <https://www.brennancenter.org/our-work/research-reports/election-denial-rhetoric-sponsors-state-voter-suppression-legislation>. The analysis excluded legislation with more minor voting restrictions and mixed legislation that included both provisions that restricted voting access and expanded it.

<sup>49</sup> Garber, *Election Denial Rhetoric*. In total, the analysis reviewed 68 bills (one of which is a Georgia bill that was counted both in the list of the most restrictive new laws and in the list of restrictive voting bills in Georgia). Fifty-eight of these 68 bills contained relevant public statements from their sponsors.

<sup>50</sup> Garber, *Election Denial Rhetoric*.

<sup>51</sup> H.B. 1112, 93d Gen. Assemb., Reg. Sess. (Ark. 2021).

<sup>52</sup> Garber, *Election Denial Rhetoric*.

<sup>53</sup> Garber, *Election Denial Rhetoric*.

<sup>54</sup> Garber, *Election Denial Rhetoric*; and Barry Fleming, “Guest Column: Republican Party Wins on Election Day, and Future Is Bright,” *Augusta Chronicle*, November 15, 2020, <https://www.augustachronicle.com/story/opinion/columns/guest/2020/11/15/guest-column-republican-party-wins-on-election-day-and-future-is-bright/43155971/>.



“Democrats [were] relying on the always-suspect absentee balloting process to inch ahead in Georgia and other close states” and proceeded to compare mail ballots to “the shady part of town down near the docks you do not want to wander into because the chance of being shanghaied is significant.”<sup>55</sup> He added: “Expect the Georgia Legislature to address that in our next session in January [2021].”<sup>56</sup> Representative Fleming later shepherded Senate Bill 202—an omnibus vote suppression and election sabotage package—through the House and served as the lead sponsor on two other restrictive bills.<sup>57</sup>

And in Pennsylvania, sponsors of 25 of the 31 restrictive bills introduced in 2021 questioned the 2020 election’s integrity.<sup>58</sup> Representative Russ Diamond, for instance, wrote a Facebook post alleging that there were “troubling discrepancies between the numbers of total votes counted and total numbers of voters who voted in the 2020 General Election.”<sup>59</sup> He also believed that officials counted 200,000 extra votes and considered certifying Pennsylvania’s election results to have been “absolutely premature, unconfirmed, and in error.”<sup>60</sup> Representative Diamond subsequently sponsored five bills to restrict voting access in 2021 and served as the lead sponsor on four.<sup>61</sup>

Second, sponsors of many vote suppression and election sabotage bills introduced last year expressly connected those bills to false claims about the 2020 election. Sponsors of six of the 13 most restrictive bills made connections between voter fraud and the bill at hand.<sup>62</sup> For example, when introducing Senate Bill 1111, which would have limited the types of addresses at which voters register to vote and otherwise enhances ID requirements,<sup>63</sup> Texas Senator Paul Bettencourt maintained that the “November 2020 election demonstrated the lack of transparency and lack of integrity within the election process.”<sup>64</sup> Along with six other “election integrity” bills that he filed, Senator Bettencourt posited that Senate Bill 1111 would help “to make sure the problems we faced in 2020 will not happen again.”<sup>65</sup> In Pennsylvania, Senator Doug Mastriano—who was present on Capitol grounds on January 6, held hearings in which Rudy Giuliani spread false claims of voter fraud, attempted to lead a partisan audit of the 2020 election, and reportedly claimed that he saw “better elections in Afghanistan”<sup>66</sup>—went on to co-author a memorandum in support of Senate Bill 515, which would repeal no-excuse mail voting.<sup>67</sup> The memo echoed his earlier rhetoric by claiming that the bill would “once again restore confidence in our democracy and shine a light into the shadow of doubt that has been cast over Americans’ most democratic process.”<sup>68</sup> Likewise in Georgia, sponsors of nine of the

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<sup>55</sup> Fleming, “Guest Column: Republican Party Wins.”

<sup>56</sup> Fleming, “Guest Column: Republican Party Wins.”

<sup>57</sup> Garber, *Election Denial Rhetoric*; and S.B. 202, 156th Gen. Assemb., Reg. Sess. (Ga. 2021).

<sup>58</sup> Garber, *Election Denial Rhetoric*.

<sup>59</sup> Garber, *Election Denial Rhetoric*.

<sup>60</sup> Garber, *Election Denial Rhetoric*.

<sup>61</sup> Garber, *Election Denial Rhetoric*.

<sup>62</sup> Garber, *Election Denial Rhetoric*.

<sup>63</sup> Garber, *Election Denial Rhetoric*; and S.B. 1111, 87<sup>th</sup> Leg., Reg. Sess. (Tex. 2021).

<sup>64</sup> Garber, *Election Denial Rhetoric*.

<sup>65</sup> Garber, *Election Denial Rhetoric*.

<sup>66</sup> Garber, *Election Denial Rhetoric*.

<sup>67</sup> Garber, *Election Denial Rhetoric*.

<sup>68</sup> Garber, *Election Denial Rhetoric*.

state’s 25 restrictive bills argued that the provisions in those bills were intended to address purported 2020 election fraud.<sup>69</sup>

Finally, and not surprisingly, our analysis found that sponsors of every piece of introduced and enacted legislation publicly justified their legislation as measures to address voter fraud and election integrity—often in language mirroring that used by proponents of conspiracy theories relating to the 2020 election.<sup>70</sup> This language included, for example, trying to “restore or confirm confidence in the election process” or creating “an election where legal votes count, and illegal votes do not.”<sup>71</sup>

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In short, the connections uncovered by the Brennan Center’s research demonstrate that the same election denial that drove litigation and rhetoric to overturn the 2020 election result played a critical role in driving restrictive voting and election sabotage efforts in 2021.

## **B. Restrictive Voting Legislation Fueled by Disinformation about the 2020 Election and Voter Fraud Is Harming Voters, and Disproportionately Voters of Color**

The spike in restrictive voting legislation in 2021 already is harming voters, with a disproportionate amount of this harm falling on voters of color. First, existing research has found measurable, negative turnout effects for many of the types of provisions passed in 2021.<sup>72</sup> For example, multiple social science studies have found that measures that create stricter voter ID requirements or limit polling place access markedly depress voter turnout, with larger effects for voters of color.<sup>73</sup> Other studies have found that reducing early in-person voting opportunities can reduce turnout,<sup>74</sup> as do earlier registration deadlines<sup>75</sup> and policies leading to long lines on Election Day.<sup>76</sup> Where empirical studies have not found a negative turnout impact, that does not mean harm is not occurring, but rather that it cannot be measured by existing empirical tools—or that large amounts of resources have been invested to overcome these barriers and maintain turnout levels.

Second, as new laws begin to take effect, there is mounting evidence that they already are disenfranchising voters. In Texas, for example, Senate Bill 1 creates a more stringent voter ID requirement pursuant to which voters must provide their driver’s license number or partial social

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<sup>69</sup> Garber, *Election Denial Rhetoric*.

<sup>70</sup> Garber, *Election Denial Rhetoric*.

<sup>71</sup> Garber, *Election Denial Rhetoric*.

<sup>72</sup> See, e.g., Brennan Center for Justice, *The Impact of Voter Suppression on Communities of Color*, 2022, <https://www.brennancenter.org/our-work/research-reports/impact-voter-suppression-communities-color>.

<sup>73</sup> Brennan Center, *Impact of Voter Suppression on Communities of Color*.

<sup>74</sup> Hannah L. Walker, Michael C. Herron, and Daniel A. Smith, “Early Voting Changes and Voter Turnout: North Carolina in the 2016 General Election,” *Political Behavior* 41 (2019); and Ethan Kaplan and Haishan Yuan, “Early Voting Laws, Voter Turnout, and Partisan Vote Composition: Evidence from Ohio,” *American Economic Journal: Applied Economics* 12(1) (2020).

<sup>75</sup> Greg Vonnahme, “Registration Deadlines and Turnout in Context,” *Political Behavior* 34 (2012).

<sup>76</sup> Stephen Pettigrew, “The Downstream Consequences of Long Waits: How Lines at the Precinct Depress Future Turnout,” *Electoral Studies* 71 (2021).

security number that matches the county’s own files.<sup>77</sup> Already, the new law led to the rejection of thousands of mail-in ballots in the March 2022 primary election.<sup>78</sup> In Texas’s largest counties, rejection rates ranged from between six and almost 22 percent—significantly higher than the state’s one percent rejection rate in the 2020 election cycle.<sup>79</sup> Similarly, after the passage of mail voting restrictions in Georgia Senate Bill 202, voters in the state’s 2021 local elections were 45 times more likely to have their mail ballot applications rejected—and ultimately not vote as a result—than in 2020.<sup>80</sup> These examples represent just a small slice of the surge in new restrictive voting legislation.

Further, these new laws target and fall most harshly on voters of color. There is a growing body of social science research proving that restrictive voting laws disproportionately impact voters of color.<sup>81</sup> There also is mounting evidence that the laws passed this year are especially like to have, and already are having, that effect.

For example, new laws making mail voting more difficult target and already are harming voters of color. Black voters—who make up about a third of the electorate in Georgia—comprised half of all late ballot application rejections in the state during 2021 local elections.<sup>82</sup> In Florida, an analysis of drop box usage amongst different groups revealed that the state’s new restrictions on this voting method will impose greater burdens on Black voters than on other groups.<sup>83</sup> And in Arizona, the state’s shorter window for voters to add missing signatures to mail ballots will especially harm Navajo voters, many of whom would have to travel hundreds of miles to an election office to add their signature.<sup>84</sup>

There also is significant evidence that laws restricting voters from receiving help when voting or registering to vote disproportionately impact voters of color.<sup>85</sup> Black and Latino voters are more likely to depend upon the help of third-party organizations to register and vote in Florida.<sup>86</sup> As a result, the state’s new limits on these organizations will create a disproportionate impact on them as compared to white voters.<sup>87</sup> Similarly, many Native American voters in Montana rely upon paid ballot collectors, as they often have infrequent mail service and limited

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<sup>77</sup> S.B. 1., 87<sup>th</sup> Leg., 1<sup>st</sup> Spec. Sess. (Tex. 2021)

<sup>78</sup> Kevin Morris, Coryn Grange, and Zoe Merriman, *The Impact of Restrictive Voting Legislation*, Brennan Center for Justice, 2022, <https://www.brennancenter.org/our-work/research-reports/impact-restrictive-voting-legislation>.

<sup>79</sup> Morris, Grange, and Merriman, *Restrictive Voting Legislation*.

<sup>80</sup> Ryan Little and Ari Berman, “We Uncovered How Many Georgians Were Disenfranchised by GOP Voting Restrictions. It’s Staggering.” *Mother Jones*, January 28, 2022, <https://www.motherjones.com/politics/2022/01/gop-voting-law-disenfranchised-georgia-voters/>.

<sup>81</sup> Brennan Center, *Impact of Voter Suppression on Communities of Color*.

<sup>82</sup> Morris, Grange, and Merriman, *Restrictive Voting Legislation*.

<sup>83</sup> Morris, Grange, and Merriman, *Restrictive Voting Legislation*; and S.B. 90, 2021 Leg., Reg. Sess. (Fla. 2021).

<sup>84</sup> Morris, Grange, and Merriman, *Restrictive Voting Legislation*; S.B. 1003, 55<sup>th</sup> Leg., Reg. Sess. (Ariz. 2021); and Navajo Nation, Office of the President and Vice President, “Navajo Nation Leaders Urge Arizona Governor to Veto Voter Suppression Bill,” news release, April 30, 2021, <https://www.navajo-nsn.gov/News%20Releases/OPVP/2021/Apr/FOR%20IMMEDIATE%20RELEASE%20-%20Navajo%20Nation%20leaders%20urge%20Arizona%20Governor%20to%20veto%20voter%20suppression%20bill.pdf>.

<sup>85</sup> Morris, Grange, and Merriman, *Restrictive Voting Legislation*.

<sup>86</sup> Morris, Grange, and Merriman, *Restrictive Voting Legislation*.

<sup>87</sup> Morris, Grange, and Merriman, *Restrictive Voting Legislation*; and Fla. S.B. 90.

access to locations at which they can submit their ballot.<sup>88</sup> A new state law bans the use of paid ballot collectors, creating a more burdensome voting process for many Native Americans, especially those with disabilities or who may lack access to transportation.<sup>89</sup>

Further, new voter identification laws will disproportionately harm voters of color. For example, although Black registered voters account for only 30 percent of Georgia’s registered voters, they comprise more than half of those registrants without a qualifying state ID number or driver’s license under Senate Bill 202.<sup>90</sup> This is consistent with existing research that shows the racial turnout gap grows when states enact strict voter ID laws.<sup>91</sup>

These disparate impacts are not coincidental. There is a growing body of evidence that the push to restrict access to voting in the states is inextricable from race. Social science studies over the past decade have linked restrictive voting legislation to increases in political participation or population growth by voters of color.<sup>92</sup> Forthcoming Brennan Center research provides evidence that the disinformation fueling restrictive voting legislation is perceived as race-based and that racial resentment is one of the most significant factors driving efforts to make voting more difficult.

## **II. The Same Election Denial That Drove the Insurrection Threatens Impartial Election Administrators**

In addition to these ongoing threats to voting rights and electoral processes, disinformation about the 2020 election and voter fraud also is driving a wave of attacks on impartial election administrators. This risks triggering an election official retention crisis as experienced and capable officials leave or are forced out of their positions. Election denial also is politicizing—and nationalizing—the races by which these election officials are chosen, raising fears about who will replace the officials from both parties<sup>93</sup> who worked tirelessly to hold the line against election sabotage during the 2020 election.

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<sup>88</sup> Morris, Grange, and Merriman, *Restrictive Voting Legislation*.

<sup>89</sup> Morris, Grange, and Merriman, *Restrictive Voting Legislation*; and H.B. 530, 2021 Leg., Reg. Sess. (Mont. 2021).

<sup>90</sup> Morris, Grange, and Merriman, *Restrictive Voting Legislation*.

<sup>91</sup> Brennan Center, *Impact of Voter Suppression on Communities of Color*.

<sup>92</sup> Brennan Center, *Impact of Voter Suppression on Communities of Color*; Daniel R. Biggers and Michael J. Hanmer, “Understanding the Adoption of Voter Identification Laws in the American States,” *American Politics Research* 45 (2017); Keith G. Bentele and Erin E. O’Brien, “Jim Crow 2.0? Why States Consider and Adopt Restrictive Voter Access Policies,” *Perspectives on Politics* 11 (2013); and Angela Behrens, Christopher Uggen, and Jeff Manza, “Ballot Manipulation and the ‘Menace of Negro Domination’: Racial Threat and Felon Disenfranchisement in the United States, 1850-2002,” *American Journal of Sociology* 109 (2003).

<sup>93</sup> The 2020 Democracy Fund/Reed College Survey of Local Election Officials found that 44 percent of local election officials surveyed identified as Republican, compared to 33 percent who identified as Democrat and 22 percent who described themselves as Independent (among the 72 percent of respondents who shared their party identification). Paul Gronke et al., “Pursuing Diversity and Representation Among Local Election Officials,” *Democracy Fund*, May 20, 2021, <https://democracyfund.org/idea/pursuing-diversity-and-representation-among-local-election-officials/>.

## A. **Disinformation about the 2020 Election and Voter Fraud Is Driving Attacks on Election Officials and Pushing Them out of Their Positions**

Election officials are facing unprecedented levels of threats and harassment. These attacks, which range from vigilante threats and intimidation to overt political interference and threats of prosecution, are forcing impartial, experienced election workers across the country to question their personal safety. Many of these attacks stem from the same election denial that fueled both the insurrection and the surge in restrictive voter and election sabotage legislation discussed above.

### *i. Vigilante Threats and Harassment*

In the wake of the 2020 election, threats and harassment against state and local election officials have skyrocketed.<sup>94</sup> A recent survey of local election officials conducted by the Brennan Center reveals that one in six local election officials have experienced threats, ranging from racist and gendered harassment to death threats that named the election official's spouse and children.<sup>95</sup> More than three in four local election officials said that threats have increased in recent years, and nearly one in three know of at least one election worker who has left their job at least in part because of fears for their safety.<sup>96</sup> These findings reaffirm previous research conducted by the Brennan Center, which detailed patterns of harassment and interference directed at all levels of state and local election administration following the 2020 election.<sup>97</sup>

Many of these attacks are traceable to the same stolen election allegations that fueled the insurrection. The violent threats against election workers have often explicitly invoked the baseless narratives of widespread election fraud and a stolen election. One email threatening to bomb polling places in Georgia declared that “no one at these places will be spared unless and until Trump is guaranteed to be POTUS again.”<sup>98</sup> In another case, a 63-year-old city clerk—who now carries a handgun out of fear for her safety—recalls a man who harassed her on the street and yelled “why did you allow Trump to lose? Why did you cheat?”<sup>99</sup> Election officials themselves have attributed increasing threats against them to disinformation; nearly two in three respondents in the Brennan Center's survey of local election officials believe that false information is making their job more dangerous.<sup>100</sup>

Threats and harassment driven by election denial have continued at a dangerous pace into 2022. A recent POLITICO review across major social media platforms revealed a “flood” of

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<sup>94</sup> Brennan Center for Justice and Bipartisan Policy Center, *Election Officials Under Attack*, 2021, <https://www.brennancenter.org/our-work/policy-solutions/election-officials-under-attack>, 3–5.

<sup>95</sup> Brennan Center, *Local Election Officials Survey*, 6; Linda So and Jason Szep, “Exclusive—Two Election Workers Break Silence after Enduring Trump Backers’ Threats,” Reuters, December 10, 2021, <https://www.reuters.com/article/us-usa-election-threats-georgia-exclusiv-idCAKBN2IP0VZ>; and James Verini, “He Wanted to Count Every Vote in Philadelphia. His Party Had Other Ideas,” *New York Times Magazine*, December 16, 2021, <https://www.nytimes.com/2020/12/16/magazine/trump-election-philadelphia-republican.html>.

<sup>96</sup> Brennan Center, *Local Election Officials Survey*, 5, 19.

<sup>97</sup> Brennan Center and Bipartisan Policy Center, *Election Officials Under Attack*.

<sup>98</sup> Linda So, “Trump-Inspired Death Threats Are Terrorizing Election Workers,” Reuters, June 11, 2021, <https://www.reuters.com/investigates/special-report/usa-trump-georgia-threats/>.

<sup>99</sup> Kyung Lah and Kim Berryman, “This Grandmother Has Overseen Dozens of Elections in Her City. And after 2020, She Carries a Gun,” CNN, January 21, 2022, <https://www.cnn.com/2022/01/21/politics/michigan-wisconsin-election-worker-intimidation/index.html>.

<sup>100</sup> Brennan Center, *Local Election Officials Survey*, 12.

recent posts promoting 2020 stolen election theories, including posts that used violent imagery and explicitly discussed attacking election officials.<sup>101</sup> In February, the Department of Homeland Security issued an advisory warning that election fraud disinformation could motivate violent attacks on democratic institutions, including election workers, in the months preceding the 2022 midterm elections.<sup>102</sup> As 2022 elections approach, these threats continue to directly impact the lives of election officials.

## *ii. Political Interference and Threats of Prosecution*

The aftermath of the 2020 election also sparked a barrage of political attacks against election officials. These attacks included the widely reported efforts by former President Trump and his supporters to overturn the election outcome in key swing states. Most notably, the former President attempted to pressure Georgia Secretary of State Brad Raffensperger, a Republican, to “find 11,780 votes” and illegitimately declare him the state’s winner.<sup>103</sup> In Michigan, he publicly pressured local and state officials to revoke their votes to certify the election for President Biden.<sup>104</sup> These initial efforts to pressure election officials and sow distrust in the electoral system stem from the same false allegations of a stolen election that drove the insurrection.<sup>105</sup>

Even after the 2020 election result was definitively resolved, political meddling persisted in the form of unsubstantiated audits and recounts. In Maricopa County, Arizona Republican Party leaders organized a sham “audit” of the County’s election results in an effort to discredit them.<sup>106</sup> To this day, Republican leaders in Arizona continue to claim—without evidence—that election administrators mishandled thousands of ballots.<sup>107</sup> The Arizona audit sparked copycat movements across the country, as the Wisconsin and Pennsylvania state legislatures ordered similar reviews of the 2020 vote.<sup>108</sup> As recently as September 2021, the Texas secretary of

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<sup>101</sup> Mark Scott and Rebecca Kern, “The Online World Still Can’t Quit the ‘Big Lie,’” *POLITICO*, January 6, 2022, <https://www.politico.com/news/2022/01/06/social-media-donald-trump-jan-6-526562>.

<sup>102</sup> “Summary of Terrorism Threat to the U.S. Homeland,” Department of Homeland Security, last modified February 7, 2022, accessed April 8, 2022, <https://www.dhs.gov/ntas/advisory/national-terrorism-advisory-system-bulletin-february-07-2022>.

<sup>103</sup> Amy Gardner and Paulina Firozi, “Here’s the Full Transcript and Audio of the Call Between Trump and Raffensperger,” *Washington Post*, January 5, 2021, [https://www.washingtonpost.com/politics/trump-raffensperger-call-transcript-georgia-vote/2021/01/03/2768e0cc-4ddd-11eb-83e3-322644d82356\\_story.html](https://www.washingtonpost.com/politics/trump-raffensperger-call-transcript-georgia-vote/2021/01/03/2768e0cc-4ddd-11eb-83e3-322644d82356_story.html).

<sup>104</sup> Maggie Haberman et al., “Trump Targets Michigan in His Ploy to Subvert the Election,” *New York Times*, November 19, 2020, <https://www.nytimes.com/2020/11/19/us/politics/trump-michigan-election.html>.

<sup>105</sup> See Brennan Center and Bipartisan Policy Center, *Election Officials Under Attack*, 16–17; and Ann Gerhart, “Election Results Under Attack: Here Are the Facts,” *Washington Post*, March 11, 2021, <https://www.washingtonpost.com/elections/interactive/2020/election-integrity/>.

<sup>106</sup> Elizabeth Howard and Gowri Ramachandran, “Partisan Arizona Election ‘Audit’ Was Flawed From the Start,” Brennan Center for Justice, September 27, 2021, <https://www.brennancenter.org/our-work/analysis-opinion/partisan-arizona-election-audit-was-flawed-start>.

<sup>107</sup> Howard Fischer Capitol Media Services, “Another Senate Subpoena Issued for Arizona 2020 Election Documents,” *Arizona Daily Star*, March 21, 2022, [https://tucson.com/news/state-and-regional/govt-and-politics/another-senate-subpoena-issued-for-arizona-2020-election-documents/article\\_dcc76aaa-a96d-11ec-a17a-b7f87b1c1504.html](https://tucson.com/news/state-and-regional/govt-and-politics/another-senate-subpoena-issued-for-arizona-2020-election-documents/article_dcc76aaa-a96d-11ec-a17a-b7f87b1c1504.html).

<sup>108</sup> Michael Wines, “Arizona’s Criticized Election Review Nears End, but Copycats Are Just Getting Started,” *New York Times*, September 23, 2021, <https://www.nytimes.com/2021/09/23/us/arizona-election-review.html>; Laurel White, “Wisconsin’s GOP-Backed Election Investigation Expanded over the Holidays,” Wisconsin Public Radio, January 3, 2022, <https://www.wpr.org/wisconsins-gop-backed-election-investigation-expanded-over-holidays>; and Sam Dunklau, “Pa. Senate Election ‘Audit’ Contract Doesn’t Say If the Public Will See the Results,” *WITF*,

state’s office announced a “comprehensive forensic audit” of the 2020 results in four major counties.<sup>109</sup> And in Nevada, the state’s Republican Party compelled Republican Secretary of State Barbara Cegavske to review nearly 123,000 ballots based upon unfounded allegations of voter fraud.<sup>110</sup> Secretary Cegavske’s review, which consumed 125 hours of her staff’s time, found no evidence of fraud.<sup>111</sup>

More disturbingly, election officials increasingly face threats in the form of criminal prosecution. Just recently, election officials in Wisconsin were threatened with jail time as part of a months-long, spurious review of the 2020 presidential election.<sup>112</sup> Michael Gableman, a former state Supreme Court justice leading the review for Republican legislators, issued the threat after the chairwoman of the state Elections Commission and several other officials refused to sit for secret, closed-door interviews with him and instead requested to sit for the interviews before a legislative committee.<sup>113</sup> As discussed in Part I above, other states such as Texas and Arizona are passing laws that would impose criminal penalties on election officials for routine activities and unintentional mistakes.<sup>114</sup>

Like the upsurge in vigilante attacks, the wave of political attacks following the 2020 election finds its roots in the same election denial that drove the insurrection. Unfortunately, political attacks against election officials show no sign of abating.<sup>115</sup> State legislators across the country continue to propose bills that allow for criminal penalties against, or the removal of, experienced election officials.<sup>116</sup> In fact, when the Brennan Center asked local election officials to compare how worried they were about political interference in the 2020 election with how worried they are about political interference in future elections, nearly three times as many said they are very worried about the future.<sup>117</sup> In other words, election officials themselves believe that the political attacks against them will get worse.

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December 7, 2021, <https://www.witf.org/2021/12/07/pa-senate-election-probe-contract-doesnt-say-if-the-public-will-see-the-results-among-other-things/>.

<sup>109</sup> Reid J. Epstein, “Texas, Under Pressure From Trump, Announces a ‘Full Forensic Audit’ of the 2020 Election In Four Counties,” *New York Times*, September 23, 2021, <https://www.nytimes.com/2021/09/23/us/politics/texas-trump-election-audit.html>.

<sup>110</sup> Jacob Solis, “2020 Election Fraud Conspiracy Theories Remain Central to Many Republican Campaigns,” *Nevada Independent*, October 17, 2021, <https://thenevadaindependent.com/article/2020-election-fraud-conspiracy-theories-remain-central-to-many-republican-campaigns>.

<sup>111</sup> Barbara K. Cegavske, Secretary of State, and Mark A. Wlaschin, Deputy Secretary for Elections, “Re: Elections Integrity Violation Reports,” (via email, Nevada Office of the Secretary of State: April 21, 2021), <https://www.nvsos.gov/sos/home/showpublisheddocument?id=9428>.

<sup>112</sup> Patrick Marley, “Wisconsin Republicans Seek to Jail More Officials as Part of Their Review of the 2020 Presidential Election,” *Milwaukee Journal Sentinel*, February 18, 2022, <https://www.jsonline.com/story/news/politics/2022/02/18/wisconsin-republicans-michael-gableman-seeks-jail-officials-2020-presidential-election-review/6853176001/>.

<sup>113</sup> Marley, “Wisconsin Republicans Seek to Jail More Officials.”

<sup>114</sup> S.B. 1, 87<sup>th</sup> Leg., 1<sup>st</sup> Spec. Sess. (Tex. 2021); and H.B. 2905, 55<sup>th</sup> Leg., Reg. Sess. (Ariz. 2021).

<sup>115</sup> Grace Gordon, et al., *The Dangers of Partisan Incentives for Election Officials*, Bipartisan Policy Center and Election Reformers Network, 2022, <https://bipartisanpolicy.org/report/the-dangers-of-partisan-incentives-for-election-officials/>.

<sup>116</sup> NH H.B. 1567, 2022 Leg., Reg. Sess. (N.H. 2022); and S.F. 413, 89<sup>th</sup> Gen. Assemb., Reg. Sess. (Iowa 2021).

<sup>117</sup> Brennan Center, *Local Election Officials Survey*, 9.

### iii. *Growing Election Official Retention Crisis*

These disinformation-driven attacks threaten to create a retention crisis among election officials. According to the Brennan Center’s survey, three in five local election officials are concerned that threats and harassment will make it more difficult to retain or recruit election workers going forward.<sup>118</sup> Disinformation also exacerbates the already-heavy strain on election workers, who must spend significant time correcting misleading and false information.<sup>119</sup> Due to these challenging circumstances, dozens of local election officials in Michigan, Pennsylvania, and Wisconsin already have left their positions.<sup>120</sup> In Nevada, by 2024 more than a third of the state’s 17 top county election officials will be new to the job.<sup>121</sup> And nationwide, one in five elected officials surveyed plan to leave their position before 2024.<sup>122</sup> These officials overwhelmingly cited stress and the belief that politicians are attacking “a system that they know is fair and honest” as their top reasons for leaving.<sup>123</sup>

#### **B. Disinformation about the 2020 Election and Voter Fraud Is Distorting Statewide Campaigns to Oversee Elections**

The vast majority of the thousands of state and local election officials in America are elected. This year, elections from town clerk and supervisor to state secretary of state and governor will decide who will administer and certify the elections during the next presidential cycle in 2024.<sup>124</sup> Twenty-seven states will hold elections for secretary of state—the official who typically serves as a state’s chief election officer.<sup>125</sup> These races are being run in the context of a disinformation campaign intended to cast doubt on election results, and a significant number of election official candidates in these races are invoking claims that the 2020 election was invalid.<sup>126</sup>

For example, many candidates embrace disinformation about the 2020 election and voter fraud in their pitch to voters and donors, including—at the highest level—secretaries of state and gubernatorial candidates. The States United Democracy Center found that 21 secretary of state

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<sup>118</sup> Brennan Center, *Local Election Officials Survey*, 19.

<sup>119</sup> Brennan Center and Bipartisan Policy Center, *Election Officials Under Attack*, 10.

<sup>120</sup> Sean Golonka, “Election Official Departures Rising Amid Burnout, Angry Voters, New Requirements,” *Nevada Independent*, January 23, 2020, <https://thenevadaindependent.com/article/election-official-departures-rising-amid-burnout-angry-voters-new-requirements>.

<sup>121</sup> Golonka, “Election Official Departures.”

<sup>122</sup> Brennan Center, *Local Election Officials Survey*, 18.

<sup>123</sup> Brennan Center, *Local Election Officials Survey*, 18.

<sup>124</sup> Local officials, like county clerks, are typically responsible for designing ballots, running polling places, employing poll workers, and overseeing ballot counts. Secretaries of state are often a state’s chief election official, overseeing procedures for voter registration and voting, as well as certifying results. Governors can also be involved in election administration through appointments, emergency declaration powers, and sometimes certification of results. Ian Vandewalker and Lawrence Norden, *Financing of Races for Offices that Oversee Elections: January 2022*, Brennan Center for Justice, 2022, <https://www.brennancenter.org/our-work/research-reports/financing-races-offices-oversee-elections-january-2022>.

<sup>125</sup> Louis Jacobson, *Secretary of State Races: More Important Than Ever in 2022, and More Complicated, Too*, Sabato’s Crystal Ball – UVA Center for Politics, December 1, 2021, <https://centerforpolitics.org/crystalball/articles/secretary-of-state-races-more-important-than-ever-in-2022-and-more-complicated-too/>.

<sup>126</sup> Lawrence Norden and Derek Tisler, “Addressing Insider Threats in Elections,” Brennan Center for Justice, December 8, 2021, <https://www.brennancenter.org/our-work/analysis-opinion/addressing-insider-threats-elections>.



candidates disputed the results of the 2020 election, including at least one candidate in 18 of the 27 states holding secretary of state contests this year.<sup>127</sup> Similarly, 24 of the 36 gubernatorial contests this year have seen campaigns take part in this disinformation.<sup>128</sup>

This disinformation has, in turn, increased the prominence of these races, illustrated by trends in the financing of contests for secretary of state in key battleground states. Compared to recent election cycles, campaigns are raising more money, from more donors, with greater reliance upon out-of-state donations.

Across the states with the closest margins in the 2020 presidential contest that are holding secretary of state elections this year (Arizona, Georgia, Michigan, Minnesota, Nevada, and Wisconsin), the amount of campaign contributions has climbed more than three times higher than at this point in the 2018 cycle and eight times higher than 2014, according to the Brennan Center’s analysis.<sup>129</sup>

Disinformation about the 2020 election and voter fraud is primarily responsible for this trend. Arizona, for example, has received national attention for claims about election irregularities, as is discussed above. One candidate, a leading fundraiser in the secretary of state race, has claimed that “Trump won” and called for “decertifying” the election.<sup>130</sup> Amidst this disinformation-driven dialogue, contributions to Arizona secretary of state candidates doubled since the last cycle and have reached levels more than eight times higher than at this point in the 2014 cycle.<sup>131</sup> Further, the number of donors giving in this year’s secretary of state election, 11,566, is higher than that of recent cycles by a factor of 10.<sup>132</sup> By comparison, only 1,235 people gave to all the Arizona secretary of state candidates combined in 2018.<sup>133</sup>

In Michigan, one leading candidate has claimed that Dominion voting machines used by the state changed votes and said that “Trump won Michigan.”<sup>134</sup> Another has said the “big lie” is leading to “an effort to try again in 2024 what those democracy deniers attempted to do in

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<sup>127</sup> “Secretary of State Races in 2022,” States United Democracy Center, last modified January 27, 2022, accessed April 8, 2022, [https://statesuniteddemocracy.org/wp-content/uploads/2022/02/sos\\_deniers.html](https://statesuniteddemocracy.org/wp-content/uploads/2022/02/sos_deniers.html).

<sup>128</sup> “Governor Races in 2022,” States United Democracy Center, last modified January 27, 2022, accessed April 8, 2022, [https://statesuniteddemocracy.org/wp-content/uploads/2022/02/gov\\_deniers.html](https://statesuniteddemocracy.org/wp-content/uploads/2022/02/gov_deniers.html).

<sup>129</sup> Ian Vandewalker, *Financing of Races for Offices that Oversee Elections: February 2022*, Brennan Center for Justice, 2022, <https://www.brennancenter.org/our-work/research-reports/financing-races-offices-oversee-elections-february-2022>. We include the Wisconsin secretary of state race even though that office does not administer elections because election denial is an issue there. The Wisconsin Elections Commission, like elections administrators in many states, has been attacked over the 2020 elections. There has been a push, including by several declared candidates for secretary of state or governor, to give the secretary of state greater power over elections. See Laurel White, “GOP Lawmaker Amy Loudenbeck Launches Secretary of State Campaign, Calls for Office to Take Control of Elections,” Wisconsin Public Radio, December 1, 2021, <https://www.wpr.org/gop-lawmaker-amy-loudenbeck-launches-secretary-state-campaign-calls-office-take-control-elections>.

<sup>130</sup> Vandewalker, *Financing of Races for Offices: February 2022*.

<sup>131</sup> Vandewalker, *Financing of Races for Offices: February 2022*.

<sup>132</sup> Vandewalker, *Financing of Races for Offices: February 2022*.

<sup>133</sup> Vandewalker, *Financing of Races for Offices: February 2022*.

<sup>134</sup> Jeremy Herb and Sara Murray, “Trump-Backed Michigan Secretary of State Candidate Spread False Election Claims and January 6 Conspiracy Theories,” CNN, November 16, 2021, <https://www.cnn.com/2021/11/16/politics/kristina-karamo-michigan-secretary-of-state-candidate/index.html>.

2020 but failed.”<sup>135</sup> Amid this rhetoric, contributions to Michigan secretary of state candidates are three times higher than at this point in the 2018 cycle.<sup>136</sup> Incumbent Jocelyn Benson (D), who administered the 2020 election in Michigan and opposes claims that the 2020 election was invalid, has raised \$1.5 million, from 4,890 donors.<sup>137</sup> Educator Kristina Karamo, Benson’s Republican opponent, has raised the second-largest amount: \$233,494 from 2,206 donors.<sup>138</sup> They each have more donors than those giving to all the secretary of state candidates combined in the last cycle, which was 1,478.<sup>139</sup>

Beyond the sheer amounts of money flowing into secretary of state races, these contests for bureaucratic state positions are taking on a more national profile as candidates attract unprecedented numbers of donors and funding from outside their own state.

In Arizona, the amount that donors from other states have contributed has soared to almost 10 times more than in the 2018 cycle and over 30 times more than in either the 2014 or 2010 cycle.<sup>140</sup> Republican State Representative Mark Finchem has received contributions from 4,983 people who live outside Arizona—two-thirds of his donors.<sup>141</sup> Another secretary of state candidate, Democratic State Representative Reginald Bolding, also counts a majority of his donors—54 percent of his 1,390 contributors—from other states.<sup>142</sup> In the 2018 cycle, by comparison, only 117 out-of-state donors made contributions throughout the entire secretary of state contest.<sup>143</sup>

Similarly, the Michigan secretary of state election also has seen a sudden increase in out-of-state funding. Donors living outside of Michigan have contributed \$474,977—three and a half times higher than the amount from the prior election, which also saw out-of-state funding levels higher than each of the two election cycles before.<sup>144</sup>

In light of these numbers, it is important to recognize the dangerous interplay between election denial, threats against election officials, and the nationalization of races for election official positions. As detailed above, disinformation-driven attacks against election officials are pushing experienced officials from both parties out of their positions. At the same time, the individuals who may replace them will in many instances emerge from nationalized, politically charged races that heavily feature disinformation about the 2020 election and voter fraud. Our

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<sup>135</sup> Vandewalker and Norden, *Financing of Races for Offices: January 2022*.

<sup>136</sup> Vandewalker, *Financing of Races for Offices: February 2022*.

<sup>137</sup> Vandewalker, *Financing of Races for Offices: February 2022*.

<sup>138</sup> Beth LeBlanc, “Benson Leads Karamo in Cash Haul for Michigan Secretary of State’s Race,” *Detroit News*, January 31, 2022, <https://www.detroitnews.com/story/news/politics/2022/01/31/jocelyn-benson-leads-kristina-karamo-cash-haul-michigan-secretary-state-race/9288506002/>; and Vandewalker, *Financing of Races for Offices: February 2022*.

<sup>139</sup> Vandewalker, *Financing of Races for Offices: February 2022*.

<sup>140</sup> Vandewalker, *Financing of Races for Offices: February 2022*.

<sup>141</sup> Vandewalker, *Financing of Races for Offices: February 2022*.

<sup>142</sup> Vandewalker, *Financing of Races for Offices: February 2022*.

<sup>143</sup> Vandewalker, *Financing of Races for Offices: February 2022*.

<sup>144</sup> Vandewalker, *Financing of Races for Offices: February 2022*.

research shows that local election officials themselves are worried about this very problem and the impact on their profession: over half of local election officials surveyed by the Brennan Center worry that their incoming colleagues might believe that “widespread voter fraud” contaminated the 2020 elections.<sup>145</sup>

Regardless of the outcome of these elections, relentless voter fraud lies and conspiracy theories have damaged voter confidence in election results, which is necessary for a functioning democracy. A majority of Americans believe U.S. democracy is “in crisis and at risk of failing.”<sup>146</sup> One candidate put it starkly: “If American democracy is to survive, political figures of both parties need to abandon stolen-election claims.”<sup>147</sup>

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My testimony has shown that the same allegations that fueled the insurrection are continuing to wreak havoc on our democracy. The attacks on our democracy, in turn, expose the uncomfortable truth that our country does not have sufficient guardrails in place to protect our elections from efforts to restrict voting, sabotage our electoral processes, and undermine impartial election administration. To ensure free and fair elections, we must bolster and strengthen those guardrails. Most critically, we need baseline national standards for voting access and election administration, protections against voting discrimination, protections for impartial election administrators, and other defenses against election sabotage.

Congress has broad authority under the Constitution to enact the necessary legislation, and it came close to doing so earlier this year. The Freedom to Vote: John R. Lewis Act, which narrowly failed to overcome a filibuster in March, would address many of these problems. Most importantly, it would establish national standards for the casting *and the counting* of ballots in federal elections and protect against harmful rollbacks of voting rights, partisan efforts to discard or otherwise manipulate election results, and attacks on election officials who are simply following well-recognized best practices. It also would directly insulate election officials from politicized efforts to remove them, increase safeguards against vigilante threats and harassment, curb the fraudulent “audits” that have been conducted in Arizona and elsewhere, and give voters a statutory right to sue if their voting rights are infringed, including by a failure to certify lawful election results. And it contains direct curbs on disinformation—including a clear prohibition on the dissemination of false information about elections designed to suppress the vote—as well as increased transparency for paid political communications over the Internet. Finally, it would revitalize the landmark Voting Rights Act’s protections against racial discrimination in voting that the Supreme Court has hobbled, among many other much-needed provisions.<sup>148</sup>

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<sup>145</sup> Brennan Center, *Local Election Officials Survey*, 14.

<sup>146</sup> Mallory Newall, Chris Jackson, and James Diamond, “Seven in Ten Americans Say the Country Is in Crisis, at Risk of Failing,” Ipsos, January 3, 2022, <https://www.ipsos.com/en-us/seven-ten-americans-say-country-crisis-risk-failing>.

<sup>147</sup> Vandewalker and Norden, *Financing of Races for Offices: January 2022*.

<sup>148</sup> See Wilder, Tisler, and Weiser, *The Election Sabotage Scheme*; Brennan Center for Justice, *The Freedom to Vote Act*, 2022, <https://www.brennancenter.org/our-work/research-reports/freedom-vote-act>; *Hearing on Protecting a Precious, Almost Sacred Right: The John R. Lewis Voting Rights Advancement Act, before the S. Comm. On Judiciary*, 117<sup>th</sup> Cong. (2021) (testimony of Wendy Weiser, Vice President for Democracy, Brennan Center for Justice), <https://www.brennancenter.org/our-work/research-reports/testimony-protecting-precious-almost-sacred->

The only way to neutralize the disinformation-driven threats to our democracy and to protect against potentially catastrophic results is through such federal legislation. We strongly urge Congress to revisit this critical bill and pass it into law.

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[right-john-r-lewis-voting](#); *Hearing on Oversight of the Voting Rights Act: Potential Legislative Reforms, before the H. Comm. on Judiciary, Subcomm. on the Constitution, Civil Rights, & Civil Liberties*, 117th Cong. (2021) (testimony of Wendy Weiser, Vice President for Democracy, Brennan Center for Justice), <https://docshouse.gov/meetings/JU/JU10/20210816/114010/HHRG-117-JU10-Wstate-WeiserW-20210816.pdf>; *Hearing on the Oversight of the Voting Rights Act: A Continuing Record of Discrimination, before the H. Comm. on Judiciary, Subcomm. on the Constitution, Civil Rights & Civil Liberties*, 117th Cong. (2021) (testimony of Wendy Weiser, Vice President for Democracy, Brennan Center for Justice), <https://docs.house.gov/meetings/JU/JU10/20210527/112700/HMTG-117-JU10-Wstate-WeiserW-20210527.pdf>; *Hearing on Voting in America: The Potential for Polling Place Quality and Restrictions on Opportunities to Vote to Interfere with Free and Fair Access to the Ballot*, 117th Cong. (2021) (testimony of Kevin Morris, Researcher, Brennan Center for Justice), <https://www.brennancenter.org/sites/default/files/2021-06/Morris%20-%20Written%20Testimony.pdf>; *Hearing on Voting in America: A National Perspective on the Right to Vote, Methods of Election, Jurisdictional Boundaries, and Redistricting, before the H. Comm. on House Administration, Subcomm. on Elections*, 117th Cong. (2021) (testimony of Michael Waldman, President, Brennan Center for Justice), <https://www.brennancenter.org/sites/default/files/2021-06/2021-06-22%20Waldman%20-%20Testimony.pdf>; and *Hearing on the Implication of Brnovich v. Democratic National Committee and Potential Legislative Responses, before the H. Comm. On Judiciary, Subcomm. on the Constitution, Civil Rights, & Civil Liberties*, 117th Cong. (2021) (testimony of Sean Morales-Doyle, Acting Director, Voting Rights and Elections Program, Brennan Center for Justice), <https://docs.house.gov/meetings/JU/JU10/20210716/113905/HHRG-117-JU10-Wstate-Morales-DoyleS-20210716.pdf>.