

A DEMOCRACY CRISIS IN THE MAKING



How State Legislatures are Politicizing, Criminalizing,
and Interfering with Election Administration

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EXECUTIVE SUMMARY

I. Executive summary

One year ago, we published *A Democracy Crisis in the Making: How State Legislatures are Politicizing, Criminalizing, and Interfering with Election Administration*. We warned that state legislatures were considering a range of bills that would increase the risk of election subversion—that is, the risk that the purported outcome of the election does not reflect the choice of the voters. State by state, legislatures had moved to seize power from professional, non-partisan election administrators and to needlessly expose the running of elections to partisan influence and disruption. As we explained in our initial Report, this trend increases the risk of a crisis in which the outcome of an election could be decided contrary to the will of the people.

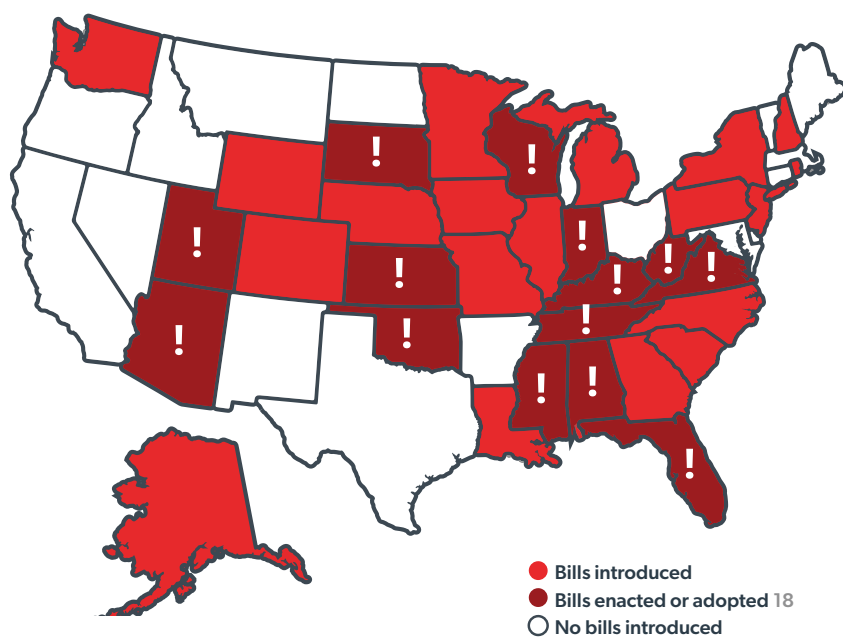
Since our first Report, this effort by state legislatures has not receded. In fact, it has accelerated. This year alone, lawmakers have introduced scores of new bills that increase the likelihood of election subversion, whether directly or indirectly. In some cases,

the potential subversion is quite direct—for example, bills that give the legislature the power to choose a victor contrary to the voters' will. In others, the impact is less direct but still dangerous. Some bills would introduce dysfunction and chaos into the election system and could lead to delay, uncertainty, and confusion, all of which could provide cover for subversion.

We issued our first Report less than four months after the January 6, 2021, attack on the U.S. Capitol, itself a violent attempt to subvert the voters' choice. In that Report, we identified 148 bills that had been filed that would allow state legislatures to politicize, criminalize, or interfere with elections. Today, at roughly the same point in the calendar year, legislatures in 33 states are considering 229 bills that do the same—175 introduced in this calendar year alone and 54 that rolled over from the last calendar year. A total of 50 bills have been enacted or adopted, 32 last year and 18 thus far this year. *See Chart 1.*

CHART 1

Bills introduced or under consideration as of April 8, 2022, that allow state legislatures to politicize, criminalize, or interfere with elections

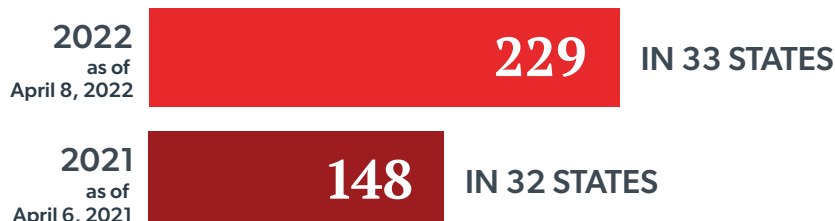


Bills enacted or adopted || Bills introduced

4	ALABAMA
6	ALASKA
31	ARIZONA
1	COLORADO
3	FLORIDA
4	GEORGIA
3	ILLINOIS
4	INDIANA
3	IOWA
8	KANSAS
2	KENTUCKY
3	LOUISIANA
10	MICHIGAN
12	MINNESOTA
10	MISSISSIPPI
12	MISSOURI
2	NEBRASKA
8	NEW HAMPSHIRE
2	NEW JERSEY
1	NEW YORK
4	NORTH CAROLINA
7	OKLAHOMA
13	PENNSYLVANIA
2	RHODE ISLAND
5	SOUTH CAROLINA
2	SOUTH DAKOTA
18	TENNESSEE
2	UTAH
3	VIRGINIA
4	WASHINGTON
3	WEST VIRGINIA
36	WISCONSIN*
1	WYOMING

*bills passed were vetoed

In the first quarter of 2022, significantly more bills have been introduced that would allow legislatures to politicize, criminalize, or interfere with elections than at this time in 2021.



Through the bills discussed in this Report, legislators have attempted to exercise insidious control over practically every step of the electoral process. This includes efforts to shift power to legislatures to directly choose and control election officials and to tie the hands of professional local election administrators. It includes subjecting elections to unprofessional and biased reviews, designed to sow doubt about the legitimacy of results. It includes imposing onerous and unrealistic burdens on election administration—such as a requirement to count all ballots by hand—that will introduce errors and delays, which could be used as a pretext for election subversion. In the most extreme examples, none of which has yet become law, legislators have proposed granting themselves the power to reverse election results altogether and to install their own preferred candidates instead.

In many cases, these legislative efforts are as poorly designed as they are misguided, which can make them more dangerous because they are more likely to lead to confusion and chaos. An Arizona bill, for example, requires election officials to document “voting irregularities”—and attaches a possible criminal penalty for failing to do so—without ever defining the term. In Wisconsin, the speaker of the state Assembly ordered an investigation of the 2020 election, run by a former state Supreme Court justice who has stated that he does not have “a comprehensive understanding or even any understanding of how elections work.” In Oklahoma, a bill imagines a 20-person “Election Integrity Committee” to review election results, with no requirement that any of the 20 people have experience in election administration or professional audits.

“In many cases, these legislative efforts are as poorly designed as they are misguided—which can make them more dangerous because they are more likely to lead to confusion and chaos.”

Broadly, we classify these legislative maneuvers into five categories:

- 1 Usurping control over election results.** A handful of states have considered bills that would give legislators direct or indirect control over election outcomes, allowing lawmakers to reject the choice of the voters. Although we do not expect any of these proposals to become law in 2022, the fact that they are even being introduced indicates that legislatures are considering the option to overturn future elections. This raises obvious alarms for democracy.
- 2 Requiring partisan or unprofessional “audits” or reviews.** Legislation of this type has surged in 2022. We found 44 bills introduced this year and another five held over from 2021 that propose unprofessional or biased reviews of election results. They call for procedures that are vague or subject to abuse and in some cases hand the power to call for audits to political parties or the legislature. These bills threaten to call election outcomes perpetually into doubt. They would tie up election administrators and likely would amount to state-sponsored vehicles for disinformation.
- 3 Seizing power over election responsibilities.** Legislatures have proposed shifting power from professional election administrators to partisan legislatures or legislatively appointed officials. These bills increase the danger of partisan election manipulation and raise the risk of an election crisis. We have found 38 bills introduced this year and another 13 held over from 2021 that fall into this category.
- 4 Creating unworkable burdens in election administration.** Legislatures have proposed or passed 93 bills this year and held over 21 from 2021 that increase the risk of subversion by intruding on the granular details of election administration. One particularly dangerous flavor of these bills, under consideration in six states, would require all ballots to be counted by hand, practically guaranteeing delays, higher rates of counting error, and increased risk of tampering by bad actors.
- 5 Imposing disproportionate criminal or other penalties.** Legislatures have proposed to subject election officials to criminal prosecution for poorly defined offenses and have created criminal liability for steps that election officials routinely take to help voters cast ballots. States are also escalating the enforcement of election laws, by creating entirely new law enforcement agencies. We found 54 of these bills introduced so far in 2022 and another 18 held over from 2021 which encourage distrust in elections and election officials and interfere with effective election administration.

See Chart 2.

Left unchecked, these legislative proposals threaten to paralyze the smooth functioning of elections. Election administrators could be left powerless to stop voter intimidation. Election rules could devolve into a confusing and contradictory tangle, subject to change at the whims of partisan lawmakers. Election results could be endlessly called into question and subjected to never-ending, destructive reviews conducted based on no responsible standard. At the extreme, election results could simply be tossed aside and the will of the people ignored.

CHART 2

State-by-state legislative interference by category

	1 USURPING CONTROL	2 UNPROFESSIONAL “AUDITS”	3 SEIZING RESPONSIBILITY	4 CREATING BURDENS	5 IMPOSING PENALTIES
ALABAMA		X	X	X	X
ALASKA		X	X	X	X
ARIZONA	X	X	X	X	X
COLORADO			X		X
FLORIDA			X	X	X
GEORGIA			X		X
ILLINOIS				X	X
INDIANA		X	X		
IOWA			X	X	
KANSAS		X	X	X	X
KENTUCKY			X		X
LOUISIANA		X	X		X
MICHIGAN		X	X	X	X
MINNESOTA		X	X	X	X
MISSISSIPPI		X	X	X	X
MISSOURI		X	X	X	X
NEBRASKA			X		X
NEW HAMPSHIRE		X	X	X	X
NEW JERSEY			X		
NEW YORK			X		
NORTH CAROLINA		X	X		X
OKLAHOMA		X	X	X	X
PENNSYLVANIA	X	X	X	X	X
RHODE ISLAND			X	X	
SOUTH CAROLINA		X	X	X	X
SOUTH DAKOTA			X	X	
TENNESSEE		X	X	X	X
UTAH			X	X	
VIRGINIA			X	X	
WASHINGTON			X	X	
WEST VIRGINIA			X		X
WISCONSIN	X	X	X	X	X
WYOMING			X		

Chart 2: analyzes select bills in *A Democracy Crisis in the Making*



INTRODUCTION

II. Introduction

Before 2020, the suggestion that America’s elections might be systematically and intentionally subverted would have been dismissed as a fever dream.¹ Today, in the aftermath of a concerted effort to overturn the results of the 2020 presidential election—culminating in a deadly attack on the U.S. Capitol—the idea is no longer inconceivable. It is real. The future of democracy in America is on the line.

This Report highlights one way in which our democratic system is under assault. We focus on efforts by state legislatures to change laws in ways that would significantly undermine how this country runs its elections, opening the door to partisan interference or manipulation of the results or even outright rejection of the will of the voters. Although it is not unusual for states to adopt or make changes to election law each cycle, the measures that we describe in this Report represent a dangerous trend: efforts to increase the ability of partisan actors to subvert the will of the voters.

These efforts range from ongoing attempts to turn back the clock and “overturn” the 2020 election, to proposals that would allow legislatures to ignore voters’ choices in future elections, to more technical efforts to change the mechanics of election administration in ways that make the system more vulnerable to partisan interference, chaos, and disinformation—and ultimately subversion.

This trend is fueled by disinformation.² Over and over, the 2020 election has been affirmed as free, fair, secure, and accurate. It was deemed the “most secure in American history” by Trump administration cybersecurity officials.³ Nevertheless, state legislatures have been motivated to undermine elections in this country based on the false claims that the 2020 presidential election was stolen from Donald Trump by voter fraud, manipulated machines, or other means. Worse yet, some may be motivated by little more than a desire to ensure that their preferred candidate wins in the future, regardless of the voters’ will.

A year ago, we issued one of the first reports identifying this trend. We warned that these efforts threatened to dramatically disrupt the foundation of our democracy: that the voters elect the candidates of their choice. Professional and non-partisan election administration is key to maintaining this foundation. We cautioned: “Had these bills been in place in 2020, they would have significantly added to the turmoil that surrounded the election, and they would have raised the alarming prospect that the outcome of the presidential election could have been decided contrary to how the people voted.”

The wave of state legislative election-subversion proposals has not abated. Indeed, it has accelerated. In our first Report, issued in April 2021, we identified 148 bills that had been introduced that would allow state legislatures to politicize, criminalize, or interfere with elections.⁴ Thus far in 2022, 175 such bills have been introduced, with 18 having become law. (Another 54 such bills were held over from 2021).⁵

Election subversion can take many forms.⁶ Sometimes it is overt. In the last two years, some lawmakers have proposed that state legislatures should usurp the right to decide election outcomes.⁷ For example, Arizona lawmakers have introduced two bills that would directly give the legislature the authority to subvert the will of the voters.⁸

Other legislative efforts to promote election subversion are indirect. The indirect forms of subversion may be more dangerous: If subversion does occur, it is unlikely to involve a brazen attempt to overturn the clear will of the voters. Instead, it is far more likely to involve a relatively close election, followed by efforts to create confusion and doubt about the results. This could create a pretext for subversion, in which a state legislature or a state certifying authority picks a winner that does not reflect the actual choice of the voters, perhaps based on a claim that the will of the voters cannot be determined. For example, six states are considering bills that would require all ballots to be counted by hand. Hand counts may be feasible for smaller jurisdictions. For larger jurisdictions or for entire states, however, they would significantly increase errors and cause delays so substantial that it could interfere with certifying the winner. Bills that impose unworkable requirements for election administration substantially increase the likelihood of a crisis, which would create an opportunity for bad actors to subvert the will of the voters.

“Although it is not unusual for states to adopt or make changes to election law each cycle, the measures that we describe in this Report represent a dangerous trend: efforts to increase the ability of partisan actors to subvert the will of the voters.”

Unfortunately, the trend we document in this 2022 edition of the Report is only one part of an overarching anti-democratic movement. America faces a rising tide of political violence and disinformation.⁹ Numerous candidates for political office this year embrace authoritarian or anti-democratic rhetoric. Some are explicitly campaigning on election subversion platforms and conspiracy theories about elections.¹⁰ It is beyond the scope of this Report to detail these aspects of the anti-democracy agenda, but it is important to note that the election subversion trend we chronicle is intimately entwined with them.

Note regarding methodology

Each year, state legislators introduce thousands of bills related to elections. One organization, Voting Rights Lab, currently tracks almost 2,500 election-related bills under consideration by legislatures this year, and that number is likely to rise.¹¹ To create this Report, we relied on the Voting Rights Lab database and supplemented it with other legislative proposals that we discovered via independent research. We included legislation introduced between December 15, 2021, when our last update stopped, and April 8, 2022. We also included legislation from our 2021 Reports that was still active this year. The States United Democracy Center, Protect Democracy, and Law Forward worked together to analyze each proposal to determine whether it would—if adopted—materially increase the risk of election subversion, and to filter out those that we concluded did not meet that criterion.¹² A complete list of the bills that fall within the scope of this Report is included as an Appendix.

This is our second edition in our series on this trend. In our initial Report in April 2021, we described four legislative trends that we feared would increase the risk of election manipulation or subversion.¹³ In this second edition, we largely adhere to that original categorization, with some modifications to account for new trends and to provide additional clarity and precision, reflecting what we have learned after more than a year of researching and chronicling these legislative proposals. Most notably, we have added a category to specifically identify the proliferation of bills that would authorize or require partisan or unprofessional post-election “audits” or reviews of the 2020 election and/or future elections.

With that in mind, the five major types of legislative trends that we analyze in this Report are: (1) usurping control over election results; (2) requiring partisan or unprofessional election “audits” or reviews; (3) seizing power over election responsibilities; (4) creating unworkable burdens in election administration; and (5) imposing disproportionate criminal or other penalties.

Each of these categories is discussed in more detail—with illustrative examples—later in the Report.¹⁴

1 Usurping control over election results. In a handful of states, legislators have introduced measures that would give the legislature final authority over the certification of election results. If these measures were to be enacted—which does not appear imminent—legislatures would have the power to reject the will of the voters if they don’t like the results of the election. This category also includes legislation that would give the legislature indirect control over certification. For example, if state law designates the state board of elections as the ultimate certifying authority, legislation that effectively gives the legislature control over the state board would qualify for this category.

2 Requiring partisan or unprofessional election “audits” or reviews. A wave of new bills would authorize or require partisan or unprofessional post-election “audits” of the 2020 election and/or future elections, modeled on the partisan election review conducted in Maricopa County, Arizona. To be clear, professional post-election audits—when conducted by experts, according to clear procedures set out in advance of the election, and designed to ensure an accurate count without interfering with timely certification of the results—are a critical part of ensuring election security and integrity, protecting the rights of voters, and increasing transparency and public confidence in the results.¹⁵ But the bills described in this Report lack standardized procedures, lack basic safeguards to protect the security of voting equipment and cast ballots, or fail to require that reviews be conducted by non-partisan election administration experts. They could be used to illegitimately delay certification of results, opening the door to conspiracy theories and subversion.

3 Seizing power over election responsibilities. Legislators have proposed or passed measures that would insert the legislature directly into some aspect of election administration, often by removing particular election administration authorities from executive branch officials and placing them under the control of the legislature. Although setting the rules for elections in advance and conducting oversight after an election are necessary and routine legislative functions, it is traditionally the role of the state executive branch to appoint election officials, issue more granular regulations, and administer elections according to the rules set by the legislature. Among other benefits, this traditional allocation of power allows election administrators to respond to changing circumstances and exigencies. Altering this balance of

power increases the risk of partisan election manipulation. For example, the legislature might give itself the authority to appoint or remove the official who counts and certifies the results. Furthermore, legislation that restricts the ability of state and local election administrators to respond flexibly to exigent circumstances could lead to confusion, which might delay the certification of the election or otherwise provide a pretext for sowing doubt about the results.

4 Creating unworkable burdens in election administration. New bills would impinge on the authority of local officials to efficiently conduct elections in ways that could result in election crises. Again, it is appropriate for legislatures to set the rules for an election in advance. But we are seeing a wave of legislation that interferes with the most basic routines and procedures of local election administrators—such as voter roll maintenance, testing election equipment, and tabulating ballots—in ways that impose new, unworkable burdens on them. In a similar vein, this category includes bills that would limit the ability of election officials to address funding shortfalls by accepting nonprofit or other funding to support voter outreach and election administration. It also includes bills that would constrain election officials from being able to respond to partisan poll watchers who harass or intimidate election officials or voters. The common theme of the legislation in this category is that it increases the risk of chaos and delay, opening a window for specious claims of fraud or irregularities that could serve as a pretext for election subversion.

5 Imposing disproportionate criminal or other penalties. Legislators have proposed and passed bills that expose local election officials to the threat of criminal or other liability for a wide range of routine activities. True interference with voting and elections is already illegal, and rightfully so: Nobody is allowed to commit voter fraud, threaten or bribe voters, undermine the security of voting machines, or destroy ballots, for example. But these new bills create vague, subjective categories of misconduct that would leave election officials vulnerable to litigation and prosecution by partisan actors. Such laws could intimidate election officials and poll workers, many of whom are volunteers or part-time employees, from helping voters and responding to election-day emergencies. We also include in this category bills that dramatically escalate or hyper-criminalize enforcement of voting laws—for example, by creating new enforcement agencies—and bills that criminalize actions that election officials currently routinely take to help voters vote. Of course, states should enforce laws that prohibit voter fraud and other election-related offenses. But many of the proposals are disproportionate to the scope of the problem and are motivated by election lies and conspiracy theories. Ultimately, we are concerned that all of the bills in this category could be weaponized by partisan actors to sow doubt about the legitimacy of the results of an election and that the threat of prosecution could have a chilling effect on officials’ willingness to serve the public and help voters.

In addition to the legislative categories described above, this Report also includes a discussion of some of the non-legislative trends that could increase the risk of election subversion. These include insider threats, that is, misconduct by election officials; partisan or anomalous actions by law enforcement; and threats or pressure on election administrators and courts by those in positions of power.

OUR OVERALL FINDINGS

- When we issued our first Report in 2021, less than 150 days after the January 6 attack on the U.S. Capitol, we identified 148 bills that had been filed that would allow state legislatures to politicize, criminalize, or interfere with elections.
- When 2021 drew to a close, we had identified 262 bills introduced in 41 states that would interfere with election administration—and 32 of these bills had become law across 17 states.¹⁶
- As of April 8, 2022, all told, legislatures from 33 states are considering 229 bills that do the same—175 from this calendar year and 54 of them rolled over from the last calendar year.¹⁷ As of April 25, 2022, 18 more bills have been enacted or adopted in 14 states, and six have been vetoed, all in Wisconsin.
- Two states are at the vanguard of this trend in 2022: Arizona and Wisconsin. (Texas’ state legislature, which proposed the highest number of election subversion bills last year, does not convene in even-numbered years).
- The bulk of the proposals that raise concerns this year involve legislatures creating unworkable burdens in election administration. These bills make it more difficult to effectively and safely administer elections and ultimately make it easier to spread confusion and disinformation that can be used as a pretext for subversion. Ninety-three bills introduced in 2022 (plus another 21 held over from 2021) met our criteria for creating unworkable burdens in election administration that increase the risk of election sabotage.
- Legislation related to biased or unprofessional “audits” saw the greatest surge. In 2021, the hunger for gratuitous 2020 election reviews was just emerging. This year, 49 proposals advance so-called “audit” schemes that could undermine effective and accurate vote counts and certification.
- In addition, we identified 51 proposals under consideration from 2022 that fall into the category of seizing power over election responsibilities. Seven bills propose usurping control over election results. Seventy-two bills would impose disproportionate criminal or other penalties on routine election activities.”¹⁸



HOW LEGISLATURES ARE POISED TO SUBVERT DEMOCRACY

III. How legislatures are poised to subvert democracy

Usurping control over election results

AT A
GLANCE

- Following the 2020 election, multiple lawmakers called for state legislatures to convene to reject the voters' choice of Joe Biden and instead to send their hand-picked representatives to the Electoral College to cast votes for Donald Trump. Building on these calls, some states considered legislation in 2021 that would authorize exactly this type of direct legislative control of election results.
- Thankfully, in 2022, most states have not introduced—and none have enacted—bills to advance this type of direct subversion of voters' will. Just two new bills were introduced—in Arizona—that would give the legislature this type of control to subvert elections.
- However, bills were introduced or are pending in Arizona, Wisconsin, and Pennsylvania to “decertify” the 2020 election results, even though such a move would not remove President Biden from office or directly affect the 2024 election.
- While we do not expect any of these proposals to become law, the fact that some state legislatures are even considering seizing control to displace the will of the voters is a red flag for our democracy.

Our initial *A Democracy Crisis in the Making Report* was sparked in part by a number of bills introduced in 2021 that would have given legislators direct or indirect control over election outcomes. If passed, these bills would have allowed them to reject the will of the voters and determine the outcome of the election. In the wake of the 2020 election, lawmakers in multiple states demanded that the legislatures come back into session to reconsider their states' Electoral College selections. These bills demonstrated that at least some legislators in multiple states remain willing to change the outcome of future elections in which their preferred candidates have not prevailed.¹⁹

Fortunately, this trend has not picked up steam, although the fact that the bills were even proposed is still cause for concern. Of the three bills in this category introduced in 2021, none passed into law—or, indeed, made any significant progress through the legislative process. So far this year, we have identified just two new bills—both filed in Arizona—that would give the legislature direct control over future election results.²⁰ Two more bills introduced this year purport to “decertify” the 2020 election results.²¹

Of the bills that explicitly give the legislature control over future election results, the first, Arizona HB 2476, would change the procedure for choosing the state's Electoral College electors.²² Instead of selecting all of the electors based on the state-wide popular vote, one elector would be awarded based on the popular vote in each of Arizona's congressional districts, and the selection of the remaining two electors would be placed directly in the hands of the state legislature, voting as a single body (that is, the House and Senate voting together). The second proposal, Arizona HB 2596, requires the legislature to come into session to review the results of all primary and general elections—essentially transforming the legislature into the state's final certification authority.²³ Under the bill, if the legislature rejects the election

results, a new election may be held. The measure also authorizes the legislature to audit any regular primary or general election.

In the same vein, allies of former President Trump who tried and failed to overturn the results of the 2020 election are now engaged in a campaign to “decertify” that outcome.²⁴ These efforts have no basis in the law or the Constitution and cannot provide a legal basis for removing President Biden from office.²⁵ While these bills do not directly alter future election processes, they are evidence of an ongoing effort among legislators to assert control over election results, softening the ground for future election subversion—“the clearest and most present danger to our democracy,” in the words of J. Michael Luttig, a leading conservative lawyer and former appellate judge appointed by President George H. W. Bush.²⁶

Two of these “decertification” bills have been introduced in 2022. In Arizona, the decertification bill, Arizona HCR 2033, is sponsored by Secretary of State candidate Mark Finchem, who has been endorsed by former President Trump.²⁷ In Wisconsin, a proposed joint resolution purports to “acknowledge that illegality took place in conducting the 2020 general election and reclaim Wisconsin's 10 fraudulent electoral ballots” cast for the Biden-Harris ticket.²⁸ To justify the effort, both proposed resolutions cite debunked assertions of fraudulent or illegal activities in the 2020 election. In addition, three decertification bills introduced in Pennsylvania in 2021 remain pending before that state's legislature.²⁹ At the time of this writing, no state legislature has come close to passing any of these decertification bills.

It is certainly encouraging that none of the proposals to directly insert the legislature into the vote-certification process has become law. But as the remainder of this Report shows legislators have identified—and enacted into law—new approaches to election subversion.

Requiring partisan or unprofessional election “audits” or reviews

AT A
GLANCE

- In three states, legislature-initiated reviews of the 2020 election are ongoing. These reviews are acting as what one observer called “disinformation blueprints” that sow doubt about an election that was thoroughly and expertly determined to be free, fair, and accurate.³⁰ Meanwhile, in a number of other states, efforts to conduct reviews of the 2020 election continue at local and county levels. In eight states in 2022, legislation has been proposed to require additional reviews of the 2020 results.
- In 2022, legislation relating to election reviews or audits surged. While some of the bills propose professional election audits, a large number propose unprofessional or biased reviews that are likely to improperly undermine confidence in accurate election results, and increase the risk of partisan interference in certifying results.
- Overall, in 2022 legislators have introduced 44 new bills in 20 states that promote unprofessional, biased, or destabilizing reviews or “audits.” (Another five held over from 2021). Some of their proposals seek to implement reviews of future elections using procedures that are vague or subject to abuse, or that could undermine election integrity. Others hand power to call for unprofessional “audits” or reviews to political parties, legislators, or any voter in the state.

In the wake of the 2020 presidential election, many state legislatures launched expansive (and expensive) efforts to reexamine the 2020 election results with the express aim of finding evidence that the election was stolen from former President Trump. They also have introduced legislation to institute new, amorphous or partisan review or “audit” schemes for future elections that could promote election subversion.

Professional audits are a valuable method for checking the accuracy of election results and promoting public confidence in our voting systems. A majority of states use some type of audit to uncover potential discrepancies in vote counts.³¹ This includes audits that require election districts to count a sample of cast ballots and compare those results with the machine tally, as well as the more recent, state-of-the-art risk-limiting audits, which use statistical modeling to determine how many ballots must be counted to be certain that an election outcome was correct.³²

Professional audits follow best practices for security and integrity such as those recently endorsed overwhelmingly by the bipartisan National Association of Secretaries of State: They use well-defined procedures established in advance; they employ proper chain-of-custody and security protocols; they include state and local election administrators in the process; they use objective experts; and they are transparent, among other appropriate protocols.³³

Unfortunately, the “audits” and reviews we outline in this Report do not follow these best practices.³⁴ In particular, the two election review trends described here—reexamining the 2020 election results and proposing partisan reviews for future elections—threaten the integrity of elections.

Many of the ongoing reexaminations of the 2020 election are unprofessional. They are conducted by unqualified personnel who are unaware of basic election procedures that ensure the proper counting of ballots and the security and integrity of ballots and voting machines (including federal laws regarding the preservation of election records).³⁵ They unjustifiably burden election administrators and divert valuable time and resources. Importantly, they also set the stage for subversion by creating a mechanism for perpetually calling into doubt the legitimacy of any election’s outcome. The bills discussed in this section that would authorize or require such “audits” in the future suffer from many of the same defects and therefore raise the same concerns about increasing the risk of election subversion.



“Professional audits are a valuable method for checking the accuracy of election results and promoting public confidence in our voting systems. Unfortunately, the “audits” and reviews we outline in this Report do not follow best practices.”

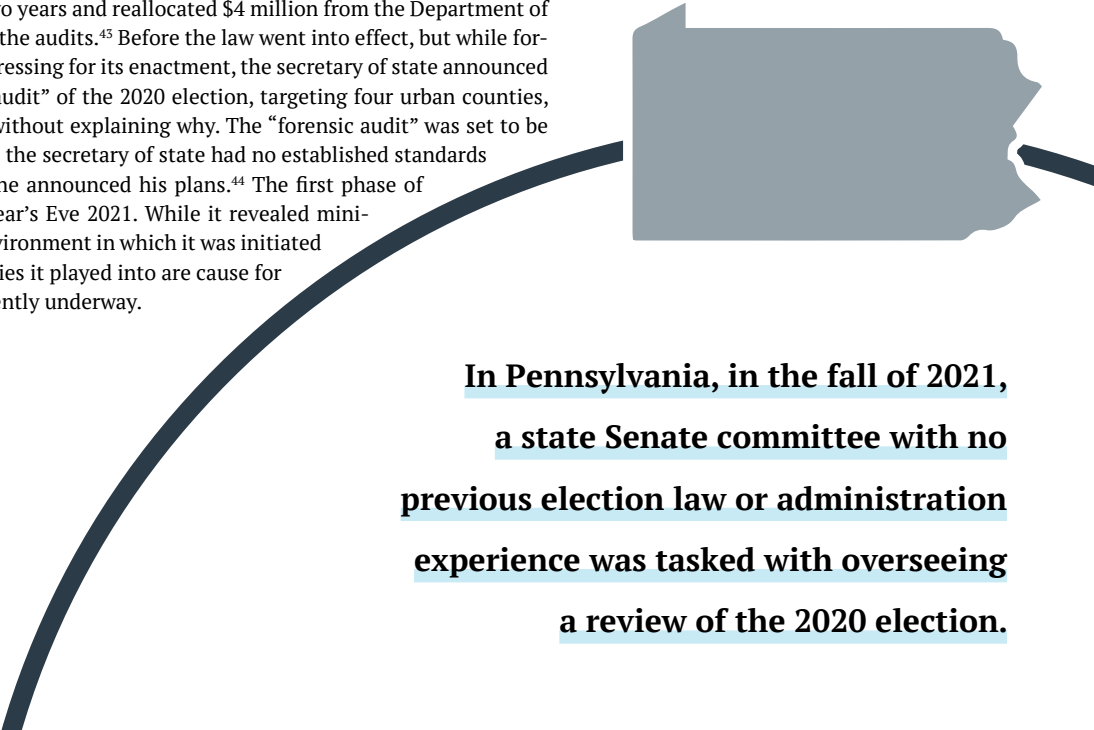
Partisan reviews of the 2020 election

In some states, legislatures have engaged in multiple expensive and often inaccurate “audits” of the 2020 election. Three states have ongoing legislature-initiated reexaminations of the 2020 election: Pennsylvania, Texas, and Wisconsin. In addition, multiple local or county-level efforts to reexamine the 2020 election persist, in places such as Lycoming County, Pennsylvania, and Otero County, New Mexico.³⁶ Other states like Arizona have completed their so-called “audits” of the 2020 election but still are grappling with the aftermath. Finally, in 2022, eight states continued this trend with legislation that would require retrospective full or partial reviews of the 2020 election that are partisan and unprofessional.³⁷

The false belief that the 2020 election was stolen from Donald Trump due to voter fraud, election machine manipulation, or other irregularities has been repeatedly debunked, yet it motivates the trend of unprofessional reviews often conducted by explicitly biased personnel.³⁸ These current efforts to “investigate” the 2020 election offer a preview of what could happen in future elections if the bills we discuss were enacted. While these “audits” often produce findings that reaffirm the 2020 election results, they are deeply problematic. These legislatively driven reviews of the 2020 election have served as vehicles for disinformation; they have undermined confidence in election results; they have cost large sums of taxpayer money; and they have taken up election administrators’ time and resources responding to overbroad document production requests.

In Pennsylvania, in the fall of 2021, a state Senate committee with no previous election law or administration experience was tasked with overseeing a review of the 2020 election. The committee issued a broad-ranging subpoena to the Pennsylvania Secretary of State demanding sensitive and critical information related to election equipment. It also insisted that the secretary turn over sensitive and private information about individual voters, including the voting history, names, addresses, birth dates, driver’s license numbers, and partial Social Security numbers of every registered Pennsylvania voter. Some of the data is protected by federal privacy laws. The committee did not indicate how it intended to process and analyze the extraordinary amount of personal data it had requested or how it would ensure the data’s security.³⁹ Observers warned that the lack of clear goals coupled with the extraordinary scope of data requested suggested the review was designed more for harassment than for conducting an accurate evaluation.⁴⁰ In November 2021, the committee announced it would pay more than a quarter of a million dollars to a recently formed company called Envoy Sage to assist it in conducting the review. That company had no experience in election administration and is run by a man who wrote an article in late 2020 comparing acts of the Democratic Party to the tactics of Nazis and the Khmer Rouge.⁴¹ Multiple parties have sued to stop the committee’s efforts and its efforts have stalled as the courts have considered the validity of the subpoena.⁴²

In Texas, the legislature passed a law in 2021 requiring the secretary of state to audit four randomly selected counties every two years and reallocated \$4 million from the Department of Criminal Justice’s budget to finance the audits.⁴³ Before the law went into effect, but while former President Trump was publicly pressing for its enactment, the secretary of state announced he was conducting a full “forensic audit” of the 2020 election, targeting four urban counties, Collin, Dallas, Harris, and Tarrant, without explaining why. The “forensic audit” was set to be conducted in a matter of weeks, and the secretary of state had no established standards or audit procedures in place when he announced his plans.⁴⁴ The first phase of that review was released on New Year’s Eve 2021. While it revealed minimal problems, the hyperpartisan environment in which it was initiated combined with the conspiracy theories it played into are cause for concern.⁴⁵ The second phase is currently underway.



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A dangerous ‘investigation’ in Wisconsin



In the summer of 2021, the speaker of the Wisconsin Assembly, Robin Vos, announced that he had hired Michael Gableman, a former justice of the Wisconsin Supreme Court, as special counsel to conduct an “investigation” of the 2020 election. Vos allocated \$676,000 for the task.⁴⁶

In the months that have followed, the Gableman-led “investigation” has become a case study in many of the dangers posed by unprofessional, partisan reviews of elections. It has failed to meet every metric for professional audits endorsed by Republican and Democratic election administrators. In the process, it has spread disinformation, undermined voter trust in election integrity, and fueled an environment where election officials are threatened and conspiracy theories flourish.⁴⁷

The Gableman “investigation” has not adopted transparent or comprehensive procedures, nor has it articulated its scope.⁴⁸ The investigating team has issued legislative subpoenas to the Wisconsin Election Commission and five Wisconsin cities, as well as other groups and individuals. Some recipients have questioned the validity of those subpoenas, arguing they exceed the legislature’s authority, and Gableman has retracted many of them after receiving pushback.⁴⁹ Gableman has said that he has issued hundreds of subpoenas, and one member of the Wisconsin Assembly published 86 of them.⁵⁰ The subpoenas have sought an extremely wide range of material—much of which was already produced in response to open records requests—posing a significant burden on subjects of the subpoenas. For example, in one subpoena, Gableman’s office targeted an immigrant and Latino civil rights organization based in Milwaukee. The subpoena asked the group to produce every communication it had engaged in regarding the 2020 election. When the group pushed back in litigation, Gable-

man withdrew the subpoena.⁵¹ Another batch of subpoenas focused on election equipment has asked for, among other things, copies of all of the election project files used by the two major election equipment vendors in Wisconsin in 2020 which contain highly sensitive data, and which would not normally be reviewed in a professional audit.⁵² The Wisconsin Elections Commission has stated publicly that based on his report, Gableman does not understand the technology used to run elections.⁵³

In addition, Gableman himself has engaged in partisan behavior and conduct that is not appropriate for an official who is investigating an election. He has publicly called for the 2020 election to be “decertified,” and before he began his role as special counsel he concluded that the election had been stolen.⁵⁴ Since he was appointed to his post, Gableman has also been criticized for engaging in overtly partisan activities, including attending Republican party conferences and flying to Mar-a-Lago to attend a party with former President Trump.⁵⁵

Gableman himself has advertised his lack of expertise in relevant election law and procedures. Shortly after he was hired, he indicated he knew very little about election law. “Most people, myself included, do not have a comprehensive understanding or even any understanding of how elections work,” Gableman told the city council of one of the cities he had subpoenaed.⁵⁶

Meanwhile, the Gableman investigation has also failed to act transparently, ignoring a core tenet of professional audits. His office recently revealed it had been deleting records contrary to state law.⁵⁷ And the state legislator who hired him was found in contempt of court for failing to disclose records related to the investigation.⁵⁸

“...the Gableman-led ‘investigation’ has become a case study in many of the dangers posed by unprofessional, partisan reviews of elections. ... In the process, it has spread disinformation, undermined voter trust in election integrity, and fueled an environment where election officials are threatened and conspiracy theories flourish.”

The states that have completed their 2020 election reviews are still dealing with the aftermath. For example, in 2021, the Arizona state senate hired an unqualified firm called Cyber Ninjas run by a biased CEO to conduct an “audit” of the election results from Maricopa County. Although the Cyber Ninjas’ activities unleashed a torrent of litigation and negative press coverage, the state senate has continued to press for more investigations, recently issuing a new subpoena to Maricopa County.⁵⁹ Arizona’s chaotic review of the 2020 election was a prime example of how unprofessional reviews create election integrity problems rather than resolving them, as we detailed in our 2021 Report. Meanwhile, the Arizona Attorney General’s office recently issued a report based on its review of the Cyber Ninjas’ findings, which concluded that the 2020 results were accurate but nevertheless set off a new wave of doubts when it also opined that there were “questions” about that election.⁶⁰

Audit-related legislative proposals

To date, 44 “audit” bills in 20 states have been introduced in the 2022 legislative cycle, with many laying the groundwork for future unprofessional or partisan “audits” or reviews of upcoming election cycles.

Poorly designed and implemented election reviews that stray from best practices can sow confusion and foster distrust of our democratic systems. While risk-limiting audits and professional pre- and post-election audits play a vital role in protecting and verifying the integrity of our election systems and voting procedures, many of the “audit” bills introduced this year lack the safeguards recommended by the National Association of Secretaries of State.⁶¹ Without those guardrails in place, the “audits” they would establish likely would become mechanisms for fomenting public distrust of election administrators and outcomes and spreading conspiracy theories about standard election procedures. Some proposals directly facilitate subversion by empowering baseless or frivolous reviews that could derail certification of election results. All told, these bills increase the risk of an election crisis and election subversion.

One set of bills we identified would allow citizens to directly initiate questionable review proceedings and thereby change or delay a state’s certification of election results, potentially enabling election subversion.⁶² For example, Missouri SB 695 allows any registered voter to request an election review that would include a recount of all votes and an examination of the voting equipment. The bill would also delay election certification while the recount and examination are pending, raising the specter that a single resident could hold up statewide election results.⁶³ Virginia SB 605 allows a “forensic audit” request to proceed if 1,000 residents sign a petition.⁶⁴ The results are then presented to a jury composed of randomly selected residents of the county, who have the power to declare the validity or invalidity of the election based on their analysis of the findings. There is no requirement that these jury members, who would be given the power to declare election results invalid, have experience in election administration or post-election professional audits.

Another cluster of bills would authorize legislatures or other partisan actors to institute unprofessional or improper “audits.” For example, Arizona HB 2596 would give the legislature itself the power to “audit” any election without providing specifics on how it would proceed or what criteria it would use.⁶⁵ The Arizo-

na legislature does not have the necessary technical expertise or qualified personnel to conduct any professional audit itself, which is why, before 2020, legislatures did not attempt to do so (in any state). This proposal was drafted on the heels of the legislature’s recent widely criticized partisan review conducted by the Cyber Ninjas firm.⁶⁶ As was extensively reported, the Cyber Ninjas firm was not qualified to conduct an official election audit and did not follow proper procedures, which resulted in ballots being destroyed and its results being widely debunked as misleading or false.⁶⁷ The firm ultimately collapsed and laid off all of its employees after it finished its work in Arizona.⁶⁸ As another example, Missouri HB 1483 would establish an “Election Integrity Committee” composed of members of the legislature that would randomly audit two precincts and conduct a comprehensive risk assessment—potentially using an outside entity—without requiring recommended pre-written, comprehensive audit standards to be followed.⁶⁹ Similarly, Oklahoma HB 3282 would create a joint legislative audit committee that would in turn appoint a 20-member “Election Integrity Committee” to randomly review election results, but with no requirement that any of these 20 individuals have experience in election administration or post-election, professional audits.⁷⁰

Many state bills would require a “forensic audit” of election results, a vague term that does not have an established or recognized meaning among election experts and official auditors.⁷¹ By inserting a standardless term into state statute about a highly technical election procedure, these bills can lead to review processes that lack discernable, replicable methodology and public transparency. They risk causing confusion in relation to states’ official post-election processes and therefore enable subversion.⁷² Minnesota HB 3235, SB 3141, and SB 4290 would allow the chair of either of the state’s two largest political parties to request a “forensic audit” conducted by an outside organization selected by the secretary of state in consultation with the requesting political party chair. These bills also fail to delineate the review criteria or procedures to be followed and risk unleashing partisan rather than professional reviews.⁷³ Tennessee HB 1883 and SB 1865 would require “forensic audits” of at least five counties and three voting machines but without specifying the criteria.⁷⁴ Wisconsin AB 1003 and SB 936 would enshrine into statute the false claim that certain jurisdictions—namely, jurisdictions that are more urban, more racially diverse, and more likely historically to vote for Democratic candidates—are more likely to commit voter fraud by singling out Madison and Milwaukee to have a disproportionate number of their electronic voting machines subject to a performance audit, compared with other jurisdictions in the state.⁷⁵

Another category of audit-related bills would create post-election reviews with timelines that likely are too tight to be feasible and which therefore could lead to an election crisis that could enable election subversion. For example, Illinois H 4748 mandates that on election night, every election authority audits a random sample of 10 percent of cast votes.⁷⁶ Then, within 72 hours after polls close, a contracted public accounting firm must produce an initial results report examining whether the 10 percent audit followed proper procedures, whether each voter’s choices were accurately summarized in the vote tally, and whether the central tabulation procedures, equipment, and software functioned properly and produced an accurate tally.

Seizing power over election responsibilities

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- In at least 12 states, legislators have proposed or passed 38 measures that would remove or sharply curtail powers now assigned to professional election administrators. These proposals would alter the balance of power between branches of state government in ways that would make it easier to undermine free and fair elections. (Thirteen bills from 2021 were also under consideration in five additional states this year).
- Georgia's SB 202, the earliest enacted legislation to fall into this category, demonstrates the unpredictable and still worrisome ways this trend is panning out.

In 2022, 17 state legislatures have considered bills that would shift some election administration responsibilities to the control of the legislatures. Historically, the role of a state legislature in running elections is circumscribed: While the specifics vary by state, typically legislatures establish broad rules, leaving the details of election administration to be implemented by professionals within the executive branch. This reflects the distinct roles of executive branch officials and legislators, stemming from both separation of powers principles and different core competencies; legislatures are not usually equipped with the technical expertise or capacity to administer elections.

However, since the 2020 election, legislatures have engaged in efforts to transfer power from professional election administrators within the executive branch to partisan legislatures. This happens directly, through legislatures exercising more control over elections themselves, as discussed in this section, and indirectly, through legislatures creating hyper-specific and often unworkable requirements for election administration officials to implement, as discussed in the next section.

Altering the balance of power between the legislative and executive branches increases the risk of partisan election manipulation. For example, when the legislature gives itself more power to appoint election officials, it gains control over election administration. Depending on the specific responsibilities of the appointed official, that might include counting and certification of votes.

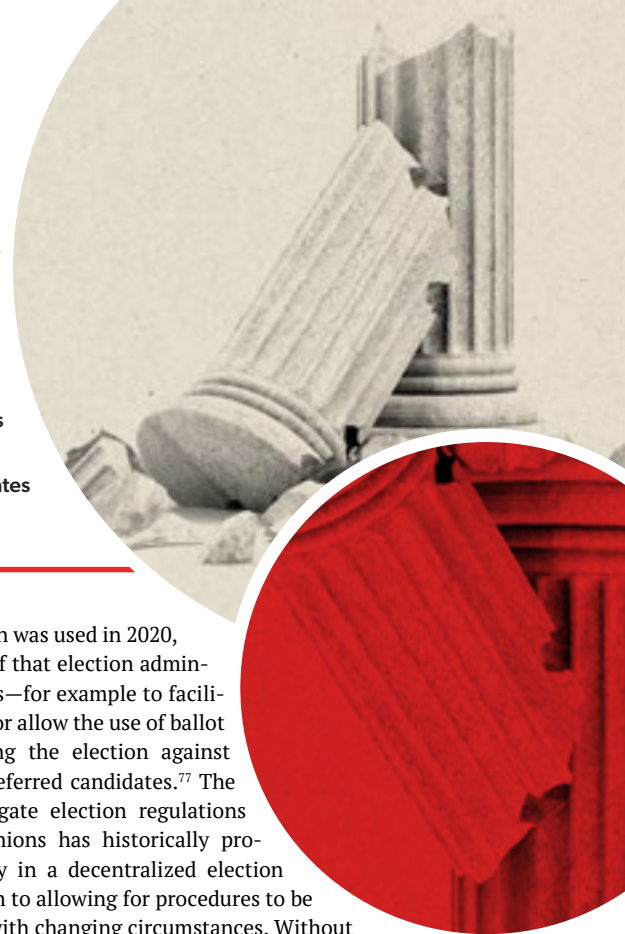
The traditional allocation of power also allows election administrators to respond to changing circumstances and exigencies, such as natural disasters, power outages, or, in 2020, the COVID-19 pandemic. Legislation that restricts the ability of state and local election administrators to respond flexibly to exigent circumstances could lead to confusion or chaos or otherwise threaten the smooth functioning of elections, which might delay the certification of the election or otherwise provide a pretext for subverting the results.

Since 2020, several trends have emerged in how legislatures are considering shifting power from executive branch officials to the legislative branch.

One set of proposals would strip executive branch officials of the discretion that they have historically had to interpret relevant election statutes and procedures or would give legislatures greater power over administrative rules and regulations for elections. This appears to be a reaction to legislators' unhappiness with

how that discretion was used in 2020, based on the belief that election administrators' decisions—for example to facilitate ballot curing or allow the use of ballot drop boxes—swung the election against the legislators' preferred candidates.⁷⁷ The ability to promulgate election regulations and advisory opinions has historically promoted consistency in a decentralized election system, in addition to allowing for procedures to be adjusted to cope with changing circumstances. Without that power, the risk of uncertainty, inconsistency and even an election crisis would increase.

In Kansas, Pennsylvania, and Wisconsin, multiple proposals would allow their legislatures to revoke any election rule or regulation they disagree with.⁷⁸ Arizona SB 1285 switches direct approval power over the state's Election Procedures Manual—which provides detailed instructions on how elections should be conducted to every voting jurisdiction in the state—from the secretary of state to the legislative council and attorney general.⁷⁹ Meanwhile, Louisiana's HB 359, Mississippi's SB 2574, and Wisconsin's SB 941 and AB 996 mandate new legislative involvement in how state election officials respond to federal election directives and guidance and/or how federal election funding reaches their offices, potentially setting up clashes between federal and state governments.⁸⁰ Finally, some legislative efforts to take control of election administration have extended to litigation as well. For example, Kansas SB 418 and Tennessee HB 2483 both require state legislators to be consulted or give their approval before election lawsuits can be resolved.⁸¹ These changes can contribute to election subversion if state legislators are able to substitute their perspectives for the legal and subject matter expertise of the state's top legal officers and election administrators. This could also lead to critical delays in resolving disputes about procedures for upcoming elections, which could lead to disenfranchisement or voter confusion.



SPOTLIGHT

One year under SB 202 and related legislation in Georgia



One of the earliest bills that captured national attention by increasing the risk of election subversion was Georgia’s SB 202, which was enacted in 2021.⁸² That legislation included many voter suppression provisions, some of which are currently being challenged by lawsuits.⁸³ It also contained elements that our first Report identified as increasing the risk of election subversion: It increased the power of the legislature to oversee elections, and it threatened the independence of election administrators statewide.

In the year since it was enacted, its impact continues to ripple throughout the state.

SB 202 was enacted in the aftermath of Secretary of State Brad Raffensperger’s public resistance to calls from President Trump and state legislators to “reverse” the 2020 presidential election results, although there was no legal mechanism for him to do so. The measure seemed crafted to retaliate against Raffensperger.⁸⁴ It stripped him of his role as chair of the State Elections Board, replacing him with the legislature’s selection, and then further empowered that Board (now under legislative control) to investigate and replace local election officials.

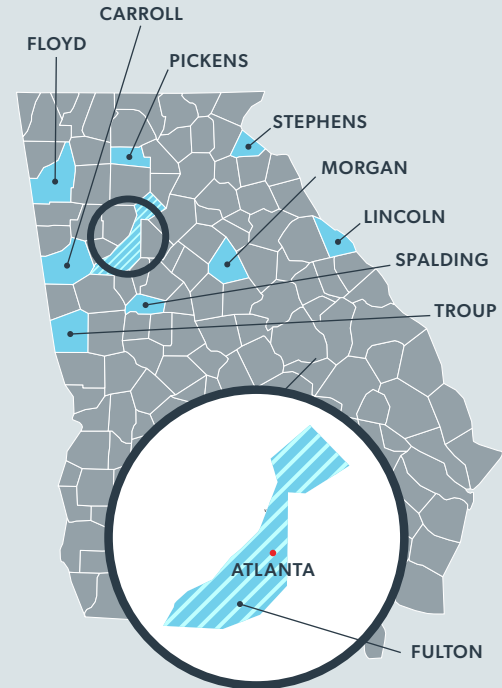
A year after removing Raffensperger as chair, the legislature thus far has created dysfunction by abdicating the very responsibility it bestowed on itself in SB 202 to appoint his replacement. Following Raffensperger’s removal in the spring of 2021, the Board’s vice chair stepped into the role on an interim basis. But because the governor failed to fill that role while the legislature was out of session and the General Assembly also failed to do so during its 2022 legislative session (which concluded on April 4), the elections board members have selected an acting chair.⁸⁵ The legislature is, of course, able to select a chair of the board when it reconvenes next year—who will now have time to prepare for the 2024 election.

Meanwhile, the State Elections Board has used its new authority to remove local election officials only in an area of Georgia that typically votes for Democrats and has a significant population of voters of color. Fulton County, which includes most of Atlanta, was the Board’s first investigative target. In summer 2021, State Senator Butch Miller and approximately two dozen other Republican state senators sent a letter to the Board requesting an investigation of that county’s election administrators.⁸⁶ The Board appointed a bipartisan investigation panel, which is expected to release its conclusions in May 2022.⁸⁷ Since the initial request for inquiry was submitted, the Georgia Republican Party has nominated Dr. Janice Johnston, who has incorrectly claimed that Fulton County used “falsified tally sheets” in the 2020 election, to the State Elections Board.⁸⁸ Once the panel completes its review, the board can remove existing election officials and appoint a temporary election superintendent if at least three members find sufficient deficiencies. This temporary appointee would then assume control over all of the county’s local election responsibilities, including certifying elections and making personnel decisions.

Separate from SB 202, last year, the Georgia legislature also enacted county-specific legislation that materially reshaped other counties’ election boards.⁸⁹ In eight rural counties, some with significant Black populations, the legislature restructured their election boards with a distinctly partisan tilt.⁹⁰ In Troup, Morgan, and Stephens counties, the legislature altered the way some or all election board members are appointed, shifting the board composition from being split between appointments made by the Democratic and Republican parties to instead being controlled entirely by county commissions, all of which are currently controlled by Republicans.⁹¹ The legislature also enacted a bill specific to Carroll County that added two new election board seats, with appointment power given to the board of commissioners.⁹² In Floyd, Lincoln, and Pickens counties, the state legislature abolished the existing election boards and then reconstituted them with new members, all of whom were Republican.⁹³ In Spalding County, the parties still choose two members each, but the fifth member is now chosen by local judges instead of the previous method of a coin flip.⁹⁴

Changes in county board compositions have brought swift changes to election rules in those counties. When the new Republican appointee joined the Spalding board,⁹⁵ he cast the deciding vote to end Sunday voting in the county, which disproportionately affects Black voters.⁹⁶ In Lincoln County, the new board considered consolidating its seven precincts into one voting center. This proposal was ultimately rejected after months of protests and petition drives objecting to the travel impact for voters living in remote areas.⁹⁷

Georgia counties that made changes in 2021



Fulton County

The State Elections Board has used its new authority to remove local election officials only in an area of Georgia that typically votes for Democrats and has a significant population of voters of color. Fulton County, which includes most of Atlanta, was the Board’s first investigative target.

Creating unworkable burdens in election administration

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- In 2022, state legislatures have introduced or considered 114 bills across 32 states that increase the risk of election subversion by adding new unworkable requirements to routine election administration functions. (Ninety-three bills were introduced this year alone). These requirements will make it more difficult to safely and effectively administer elections, and may cause chaos and delay or otherwise make it easier to sow doubt about election results.
- Many states have introduced bills requiring all ballots to be hand counted, which is not feasible and would dramatically increase the error rate and the risk of subversion.
- A particularly concerning trend in legislative micromanagement is bills forbidding local election officials from responding to partisan poll watchers who interfere with or intimidate voters or officials.
- The most common form of legislative interference with election administration is bills banning private funding of elections. Because election administration is chronically underfunded, these bills could severely limit the ability of state and local election officials to secure funding essential to the safe and secure administration of the election.

One of the most common categories of 2022 bills that raise the risk of election subversion are those that restrict the ability of local and state election officials to use their expertise to manage elections and otherwise make elections much more difficult to administer. It is generally appropriate for legislatures to set the rules for an election in advance, but a wave of legislation would impose new, often unworkable burdens on local election administrators in ways that would fundamentally alter basic, routine election procedures. This deep level of legislative interest in the minutiae of election administration is not necessarily informed by an understanding of how the new burdens will practically impact elections. These measures increase the risk of election subversion by increasing the likelihood that once-efficient basic election functions will become chaotic or suffer excessive delays, opening a window to specious claims of fraud or irregularities.

In the modern era, nonpartisan local control over elections has been a quintessential feature of American democracy. Local election officials, who are often nonpartisan experts, supervise staff and manage the nuts and bolts of elections. They are expected to be experts.⁹⁸ Specific training and responsibilities vary by state and type of election (local, county, or statewide), but election officials are typically provided with a framework for how to structure elections by the state legislature and then are responsible for executing safe and secure elections within it. The reliance by legislatures on local administrators is vital in a country as large and diverse as the United States. In the 2018 midterm elections, more than 600,000 poll workers and many more volunteers staffed and ran more than 200,000 polling locations.⁹⁹ Designing and implementing such a vast and complex operation requires tremendous dedication and expertise on a granular level.¹⁰⁰ In addition to the detailed, local knowledge required for running local polling places, tasks like voter roll maintenance require technical expertise and significant staff time, which dedicated election administration offices typically have and state legislators' offices typically do not.

Local control that vests discretion to implement the appropriate procedures allows appropriate and flexible responses to the myriad specific challenges a city or county may face. Local control is neither a hard and fast rule nor a foolproof system— incompetence or misconduct can occur at any level of government. Local expertise and operational control mitigates the risk that any single person or group of people could systematically affect the election results and increases the likelihood that decisions are being made by people with appropriate accountability.

Bills that are part of this trend take several forms. One involves states requiring that ballots be counted by hand in response to false conspiracy theories about ballot tabulating machines altering votes. An especially concerning trend is bills limiting local poll workers' and election administrators' ability to ensure a safe environment at in-person polling places for themselves and for voters to cast their ballots. Another common category of legislation is bills that would restrict states' and localities' ability to accept private funding to support election administration.

Yet another trend is legislatures imposing excessively detailed requirements for voter registration database management. While setting standards for how to maintain voter rolls is an appropriate task for a legislature, this level of hyper-specific requirements makes routine voter roll maintenance unworkable and raises the prospect that minor list maintenance errors could be used as a basis to question the eligibility of mass numbers of voters. For example, Rhode Island is considering a bill that would require realtors and property managers of residential properties to document buyers and tenants to local election officials.¹⁰¹ Wisconsin is considering two bills that would require the Wisconsin Election Commission to give *daily* access to the voter registration database to three separate executive branch departments, greatly increasing the opportunities for error, misuse, and the administrative burden on multiple agencies.¹⁰²

Many bills incorporate multiple elements of the trends above, imposing unworkable burdens on multiple aspects of election administration. In response to sweeping election administration bills introduced in Texas during the 2021 legislative session, local Texas election administrators warned that the rules amount to “micromanagement” that would hinder safe and effective election administration.¹⁰⁵ The former Republican Secretary of State for Kentucky observed: “The [Texas] bill also micro-manages local election administrators These inflexible rules hamper the ability of local election administrators to meet the needs of their voters.”¹⁰⁴

Bills exemplifying these trends are detailed below.

Ballot hand-counting requirements

A particularly dangerous type of overreach concerns legislation that requires all ballots to be counted by hand. At least six states—Arizona, Colorado, Missouri, New Hampshire, Washington, and West Virginia—are considering legislation that would require all ballots to be hand counted.¹⁰⁵ These bills seem to be driven by false conspiracy theories that voting machines and vote counting machines in 2020 were rigged to steal the election from Donald Trump.¹⁰⁶ There is no evidence of widespread voter fraud during the 2020 election, nor that any voting machine or tabulating machine contributed to any fraud.¹⁰⁷

Requiring hand-counting of ballots is deeply impractical—and because it would create chaos, delay, and dramatically increase errors, it would create opportunities for subversion. Hand-counting all ballots would inevitably introduce significant delays. Depending on the size of a jurisdiction, experts worry that it would require several weeks or more to complete an initial count, and it would also impose enormous personnel demands.¹⁰⁸ It would also be likely to inject untold, inadvertent human errors into the counting, creating uncertainty and confusion that could be exploited by bad actors.¹⁰⁹ And if the delay is substantial enough, it could even cause jurisdictions to miss critical deadlines for the counting of ballots and certification of the election, providing a window of opportunity for state legislators or other actors to try to overturn the will of the voters.

The requirement that an initial count be conducted by hand is far more concerning than current practice, where many states routinely conduct targeted hand-count audits before or after elections to confirm the accuracy of voting machines and vote tabulating machines.¹¹⁰ These and other targeted hand counts (including hand recounts) are common and appropriate when there is a very close vote count in a specific jurisdiction or when there is a reason to examine a particular set of ballots by hand.¹¹¹ In contrast, a law requiring that millions of ballots involving multiple races be hand counted statewide opens the door to chaos and claims of an invalid election.

Limiting election administrators’ ability to ensure safe in-person voting

Another trend involves limitations on local election officials’ ability to ensure that poll watchers and partisan observers do not interfere with election officials or voters, including by intimidation.¹¹² In addition to undermining the safety of election workers and voters, these bills could allow bad actors to feed conspiracy theories and create the kind of confusion, chaos, and delays that could be used as a pretext for subversion.

In general, observers and poll watchers, whether nonpartisan or affiliated with a political party, are common and appropriate at in-person polling places.¹¹³ They can ensure that election procedures are followed, report problems to voting rights hotlines, and improve confidence in elections.¹¹⁴ Typically, their conduct is restricted to ensure that they do not interfere with or intimidate voters or otherwise hinder election administrators as they do their jobs to ensure a safe and secure voting environment. Local election administrators are usually empowered to resolve problems at in-person voting locations—including by requiring observers to stop certain behaviors, restricting their movement, or ejecting misbehaving observers.¹¹⁵ The discretion to make on-the-ground decisions responsive to the specific issues at a given polling place has traditionally been vested with local election officials.

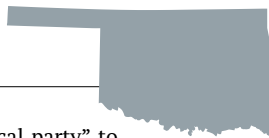
Indeed, in 2020, observers in multiple states were reported to have intimidated voters or disrupted poll workers. For example, the Texas Civil Rights Project has documented multiple incidents of voters in Texas reporting being intimidated by poll watchers who were coming too close during the voting process.¹¹⁶ In Detroit, Michigan, at least two poll challengers were removed from vote-counting facilities for causing “commotion” and/or violating COVID-19 safety precautions.¹¹⁷ The interruption eventually led the facility to briefly bar any further poll challengers from entering the facility.¹¹⁸

A trend that surged in 2021 that has continued into 2022 has been to propose and often pass laws that strip local election officials of their discretion to respond to observers who are disruptive and intimidating or interfering with voters.¹¹⁹ Some of these bills passed into law in 2021.¹²⁰ They not only increase the risk of voter intimidation, but they also escalate the risk of election subversion. Because they increase the chance that basic precinct-level election administration can be disrupted or delayed, these proposals create openings for partisan actors to claim irregularities and use that as a pretext to subvert the election.¹²¹

“At least six states are considering legislation that would require all ballots to be hand counted.”

SPOTLIGHT

Oklahoma HB 3680 and HB 3677



Oklahoma law permits “Any candidate or any recognized political party” to have a poll watcher “present at any place where an official count is being conducted.”¹²² The poll watcher must be credentialed in advance and swear an oath to observe all relevant laws and rules. This is typical of multiple states’ approaches.

Oklahoma HB 3680 and HB 3677, however, makes it a felony for “any person who illegally removes, obstructs the view, or otherwise restricts the free movement” of a poll watcher.¹²³ This legislation does not define what constitutes illegally removing a poll watcher, obstructing the view of a poll watcher, or otherwise restricting the free movement of a poll watcher. It therefore opens poll workers and election administrators to felony charges for routine management of the polling place. Poll watchers themselves are obligated to follow relevant laws and rules—including laws about where they may stand, how close they may stand, and not intimidating voters—but poll workers, who are likely to be better trained in those laws and rules, risk prosecution for giving routine instructions to poll watchers in the polling places.

Bans on alternative sources of funding

One widespread trend in 2022 is legislation banning state and local jurisdictions from accepting private funding to support election administration. State and local election administrators have long faced tight budgets for election administration, and election officials often rely on other sources of funding to supplement their budgets in order to ensure safe and secure elections.¹²⁴ During the 2020 election, election administrators faced a budget crisis when the COVID-19 pandemic required costly efforts to ensure voter and poll worker safety, such as procuring personal protective equipment for poll workers, installing plexiglass barriers, or buying additional sorting machines to process an unprecedented increase in mail in ballots.

During the 2020 election, more than 2,500 election departments in 49 states received close to a total of \$500 million in private grants, largely from a nonpartisan non-profit, the Center for Tech and Civic Life, which used funds donated by Mark Zuckerberg, the founder of Facebook.¹²⁵ Other private entities and individuals provided election funds as well, including the Center for Election Innovation and Research, whose grants were also funded by Zuckerberg and former Republican Governor of California Arnold Schwarzenegger.¹²⁶ Democratic and Republican jurisdictions, including in almost every state, all obtained grants.¹²⁷ According to the Center for Tech and Civic Life, every jurisdiction that sought a grant received one.¹²⁸ The funds were administered in a nonpartisan manner with no inappropriate strings attached. One analysis by a news outlet after the election confirmed that the funds did not affect which voters turned out for the election.¹²⁹

While the overall amount of money distributed by these private entities was significant, it was not enough to cover the cost of one of the most challenging and expensive elections in American history. The Brennan Center estimated the costs of adapting election procedures for the COVID-19 pandemic to be \$2-to-\$4 billion.¹³⁰ Overall, the need for private grants to fund public elections is a reflection of a failure of the federal and state governments to adequately fund election infrastructure.

However, these private grants, particularly those from the Center for Tech and Civic Life, became the center of false conspiracy theories that they were an attempt to skew the election in favor of Joe Biden.¹³¹ As a result, during the 2022 legislative cycle, at least 61 bills in 28 states—12 of which have already been adopted—would prohibit states or local jurisdictions from accepting private funds.¹³² One bill pending in Alaska even goes so far as to ban the state from accepting *federal* funding for elections.¹³³ Leaving Alaska’s example aside, banning private grants will have the effect of undermining effective election administration in these states and localities by depriving them of necessary funding. The states that banned private funds typically have not made a corresponding effort to ensure that there is sufficient public funding available for election administration. *See Chart 3.*

“State and local election administrators have long faced tight budgets for election administration, and election officials often rely on other sources of funding to supplement their budgets in order to ensure safe and secure elections.”

CHART 3

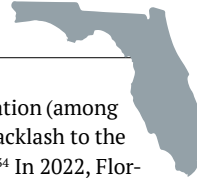
Limiting local resources to run elections

STATE	BILL NUMBER	STATUS
ALABAMA	HB 194, HB 41, HB 74	HB 194 enacted
ALASKA	HB 286, HB 368, SB 167	Pending
FLORIDA	HB 7061, SB 524	SB 524 enacted
GEORGIA	HB 1402, HB 1464	Pending
INDIANA	HB 1173, SB 134	SB 134 enacted
IOWA	HB 2526, SB 2343	Pending
KANSAS	SB 293	Pending
KENTUCKY	HB 153, HB 301	HB 301 enacted
LOUISIANA	HB 811	Pending
MICHIGAN	HB 5167, HB 5186, HB 5253, SB 284	Pending
MINNESOTA	HB 2732, HB 3505, SB 3333	Pending
MISSISSIPPI	HB 1126, HB 1365, SB 2296, SB 2413, SB 2473	HB 1365 enacted
MISSOURI	HB 1483, HB 2389, HB 2577, HB 2630, SB 1065, SB 668, SB 738, SB 695	Pending
NEBRASKA	LB 858	Pending
NEW JERSEY	SB 2274	Pending
NEW YORK	AN 4158	Pending
NORTH CAROLINA	HB 766, SB 731	Pending
OKLAHOMA	HB 3046	Enacted
PENNSYLVANIA	HB 1596, HB 2044	Pending
RHODE ISLAND	HB 7830	Pending
SOUTH CAROLINA	HB 3877	Pending
SOUTH DAKOTA	SB 122	Enacted
TENNESSEE	HB 1276, HB 966	Pending
UTAH	HB 313, SB 219	SB 219 enacted
VIRGINIA	HB 1101, SB 80	SB 80 enacted
WEST VIRGINIA	HB 4097	Enacted
WISCONSIN	A 1004, AJR 134, SB 207, SJR 101	WI SJR 101 adopted
WYOMING	SB 79	Failed

Chart 3: analyzes select bills in *A Democracy Crisis in the Making*

SPOTLIGHT

Florida SB 524



In May 2021, Florida's SB 90 banned private funding of election administration (among many other provisions) directly in response to conspiracy theories and backlash to the grants from the Center for Tech and Civic Life during the 2020 election.¹⁵⁴ In 2022, Florida legislators went one step further in an effort to restrict how local administrators can cover their costs. Florida SB 524, which was enacted into law on April 25, 2022, extended the ban to include any private donations to cover litigation expenses related to election administration.¹⁵⁵ This means that local jurisdictions that face frivolous lawsuits could not accept any grants to defray legal costs and could therefore be unable to mount effective defenses of their decisions. This prohibition could leave local election administrators vulnerable to harassing or baseless lawsuits that could undermine confidence in their election results.¹⁵⁶ As discussed in our next section, below, the addition of unworkable administrative burdens and elimination of the possibility of assistance with legal bills, puts election administrators in a bind.

Beyond simply banning private funds, in 2022, several states have gone one step further, proposing bills that would make accepting private funds a crime.¹⁵⁷ For example, Kentucky HB 301 would make it a felony to accept any private funding or in-kind contribution other than food and non-alcoholic beverages.

In April 2022, Zuckerberg announced that the nearly half-billion dollars that he donated was a one-time response to the emergency of the Covid-19 pandemic in 2020.¹⁵⁸ The Center for Tech and Civic Life has announced that it would continue to support local election administration through other initiatives, but at a smaller level.¹⁵⁹ Were wealthy individuals or partisan actors able to exert influence over election administration through private funding, that too would present a threat to the fair functioning of elections, but there is no evidence that has occurred in the case of philanthropic efforts associated with Zuckerberg, Schwarzenegger, or elsewhere. There is, however, incontrovertible evidence that philanthropic efforts narrowed—but did not close—a crucial gap in local jurisdictions' capacity to carry out an election during a pandemic. With election infrastructure chronically underfunded, how states and local jurisdictions obtain the resources they need to effectively operate elections—and whether they can receive grants from private sources—remains an active issue.

Imposing disproportionate criminal or other penalties

AT A
GLANCE

- In 2022 in at least 18 states, lawmakers have introduced 54 bills that would do one or more of the following: make election officials vulnerable to criminal prosecution or civil litigation for poorly defined offenses or mistakes; needlessly escalate enforcement or punishment for existing election law offenses; or criminalize actions that election officials routinely take to help voters or otherwise help elections run smoothly. (Another 18 such bills held over from 2021 for consideration this year).
- By increasing the risk of criminal and civil liability for election officials, these bills constrict their ability to do their jobs effectively.
- These bills also sow distrust in elections and election officials and help promote conspiracy theories about voter fraud and election management.

Dozens of bills introduced this year would impose new criminal or civil penalties on the election officials who administer elections. These officials are generally nonpartisan civil servants. These bills undermine the public trust in our elections and have the potential to disrupt free and fair elections. Of course, not every bill that creates criminal or civil liability for violations of election law lays the groundwork for election subversion—accountability for illegal behavior like voter intimidation or tampering with election equipment is proper.

The bills we include in our list are troubling in three specific ways.¹⁴⁰ The first group of bills imposes vague criminal or civil liability, ripe for abuse by ideological actors and conspiracy theorists. The second group dramatically and needlessly escalates the enforcement of election laws, for example by creating a new enforcement agency or by severely enhancing the penalties for infractions. And the third group of bills would create new criminal liability for actions that election officials routinely take to help voters vote.

We address each category in turn.

Vague and sweeping bills that would make election officials vulnerable to prosecution or litigation for poorly defined offenses or mistakes

Bills in this category threaten severe consequences—imprisonment, fines, and loss of employment—for poorly defined offenses. Their lack of clarity invites costly, time-consuming, and high-stakes criminal prosecutions and civil legal challenges involving state and local election officials. For example, Arizona SB 1574 would require election officials to document “voting irregularities” and report those irregularities to legislative leaders and the secretary of state.¹⁴¹ The bill does not define “voting irregularities.”¹⁴² Yet officials who fail to report them may face misdemeanor or criminal charges. In Minnesota, several proposals would make it a felony to threaten, coerce, or use “undue influence” to compel a person to register to vote or to apply for an absentee ballot.¹⁴³ These bills could easily create an environment where an election official who advertises the availability and ease of voter registration and absentee voting could be accused of violating the statute. Two Oklahoma bills, discussed above, would make it a felony for an election official to illegally remove a poll watcher, limit

their movements, or obstruct their view.¹⁴⁴ Such a broad and subjective prohibition opens the door for a poll watcher to intimidate staff and voters, safe in the knowledge that any official who asks the poll watcher to leave risks prosecution.

These and similar bills could paralyze election administration in communities across the country. Many election officials are regular community members working to administer elections on a volunteer or part-time basis. By creating a well-founded fear of new criminal or civil penalties for any misstep, these bills could dissuade people from continuing to serve as election officials.¹⁴⁵ Even for full-time government employees and officials who administer elections in larger communities, there will be negative consequences. The chilling effect on our municipalities could be significant. When officials believe they cannot perform the basic functions of administering elections without risking harsh legal penalties, our system will become paralyzed and unable to react to changing circumstances. Officials who fear that an attempt to solve a practical problem facing a voter or poll worker could lead to criminal prosecution and personal liability will be unable to function effectively.

Instead, these bills create an incentive for bad actors to race to court for rulings on trivial or amorphous issues, including what counts as a “voting irregularity.” Prosecutors will have new, powerful tools to prosecute the officials who oversaw elections in counties where a political opponent won. This is not a hypothetical concern. In Arizona, Republican Attorney General Mark Brnovich has urged a county prosecutor to investigate whether Democratic Secretary of State Katie Hobbs committed the misdemeanor of failing to perform a duty under election law, simply because she briefly shut down an election-related website so that its maps could be updated to reflect recent redistricting.¹⁴⁶ On the civil side, well-funded organizations will have the incentive and resources to sue election officials for a wide range of actions that could conceivably be interpreted as violating election laws. Lawsuits like these will disrupt time-sensitive processes that need to function for elections to reflect the will of the people. These delays could create further opportunities for election interference.

SPOTLIGHT

Arizona SB 1574



This bill proposed by Arizona Republican State Senator Kelly Townsend would require county election officials to “maintain a record of all voting irregularities that occur during early voting, emergency voting and election day voting.”¹⁴⁷ The bill tells clerks to “describe the irregularity” but provides no guidance on what counts as an irregularity. Within 30 days after election day, the county officer must provide the record of the irregularities to the President of the Senate and the Speaker of the House of Representatives, sending a copy to the secretary of state. Any official who fails to follow these instructions is guilty of a Class 2 misdemeanor punishable by up to four months in prison.¹⁴⁸

While reasonable people can and will disagree on what counts as a “voting irregularity,” the threat of criminal prosecution creates a dangerous potential for escalation. Is it “irregular” for a voter to forget her ID and become angry at being asked to go home and get it? Is it “irregular” for an election observer to challenge a voter? How about a surprising rush of voters at an unusual time? Or a voter accidentally spoiling his ballot and requesting a second one? Clerks might not think something needs to be reported, but if an election observer disagrees and reports the event to the authorities, the clerk could face prosecution. More likely, county officials will become bogged down in recording every possible perceived irregularity that takes place on or around election day, a time-consuming exercise nevertheless preferable to prosecution.

Raising the stakes of election law enforcement

Bills in this category raise the stakes around election law violations. Instead of creating new offenses, these bills signal an invigorated emphasis on enforcing existing election laws with no evidence that additional enforcement is necessary. For example, a Mississippi bill creates penalties for election law violations dramatically higher than they are now, multiplying fines and prison time by up to ten times for each infraction—a \$1000 fine becomes a \$10,000 fine for many of these offenses.¹⁴⁹ In Arizona and Florida, bills would create new law enforcement agencies for election laws.¹⁵⁰ The Florida bill was enacted in April 2022. A New Hampshire bill would empower any voter to sue to remove any local election official from office for failing to follow election laws.¹⁵¹

The unnecessary ratcheting up of election law enforcement has the potential to further undermine free and fair election administration. Escalating and inflating law enforcement’s role in election administration feeds directly into false election conspiracy theories that tell voters that fraud is rampant and that elections are not secure. Extensive research has documented that there was no significant voter fraud in 2020.¹⁵² In addition, election officials will be put in the untenable position of deciding how to resolve ambiguous election laws or how to handle in-person challengers at the polls, all while under the threat of criminal prosecution or civil liability. An official might be tempted to bow to the pressure of an observer or outside group threatening liability or prosecution, especially if the outsiders are well-connected. Under this kind of regime, some election officials *will* face prosecution or litigation under these statutes, putting pressure on municipalities’ already limited time and resources, and likely leading to more resignations and retirements.

“Escalating and inflating law enforcement’s role in election administration feeds directly into false election conspiracy theories that tell voters that fraud is rampant and that elections are not secure.”

SPOTLIGHT

Arizona SB 1027



This bill proposed by Arizona Republican state Senator Wendy Rogers would create the “Bureau of Elections,” a brand-new agency within the state government’s executive branch.¹⁵³ The purpose of the Bureau would be “to investigate allegations of fraud in any state, county, or local government election.” Any qualified voter would be able to submit a complaint to the Bureau. To conduct its investigations, the Bureau would be given subpoena power and the authority to hold hearings. If its investigation reveals a “substantial likelihood” of election fraud, the Bureau would publicly announce that finding and refer the matter to a prosecuting agency. The bill would appropriate \$5 million to establish the Bureau.

Arizona already has adequate infrastructure for investigating and prosecuting election fraud, and it does *not* have a serious problem of rampant election fraud. The Arizona Attorney General’s office has a special Election Integrity Unit, established in 2019, with a complaint form available to the public on its website.¹⁵⁴ And of course, as that website points out, individuals who see a crime in progress can always call their local police or sheriff. Nor is there any evidence that election fraud is happening on a grand scale that requires a multimillion-dollar new state agency. The state legislature-backed Cyber Ninjas review of election results in Maricopa County only affirmed that President Biden won that county.¹⁵⁵ Claims of voter fraud and lost votes have been thoroughly debunked.¹⁵⁶ The only conceivable purpose of this bill is to promote election conspiracy theories and intimidate election workers.

Criminalizing day-to-day election administration

Bills in many states would create new election law crimes targeting actions that clerks routinely take to help voters properly submit ballots and otherwise smoothly run elections. When a bill prohibits what is otherwise routine conduct or creates unnecessary hurdles for election officials to overcome, it will become more difficult for those officials to administer elections efficiently and effectively. For example, lawmakers in several states have introduced bills making it a crime for election officials to mail absentee ballot applications unless specifically requested by the voter.¹⁵⁷ An Arizona bill, AZ SB 1359, would require election officials who have access to electronic systems to change their passwords every two weeks or face a possible misdemeanor charge. Bills like these not only micromanage routine election administration, but the dramatic and unnecessary creation of criminal liability injects fear of prosecution into clerks’ everyday lives.

Local clerks are experts in election administration and their goal is to ensure that qualified voters cast valid ballots. Sometimes that means clerks helping a voter properly fill out paperwork or creating systems for efficient flow of a polling place. Criminalizing a clerk’s ability to problem-solve in the moment will have a chilling effect on clerks’ ability to adjust to changing circumstances or help a voter vote.

What’s more, some of the bills would prohibit actions that helped officials conduct elections smoothly and safely during the pandemic, like accepting private funds to make up budget shortfalls (as discussed in the previous section of this Report) and, as mentioned above, mailing absentee ballot applications to registered voters without waiting for a request. If those bills become law, in a future pandemic or other emergency, election officials might not have the resources or authority to conduct a safe election. And as with all the other bills in this section, as the work of election officials becomes increasingly risky, the regular people who serve as volunteer or part-time election clerks will become less willing to serve.

SPOTLIGHT

Wisconsin SB 935 and AB 1004



Wisconsin Republicans have proposed several bills that would have hindered absentee and early voting by criminalizing routine actions that election officials take.¹⁵⁸ Although the bills were ultimately vetoed by the state's Democratic governor, Tony Evers (who is up for reelection in 2022), they illustrate the kinds of disproportionate penalties legislators nationwide seek to impose on election officials.

Wisconsin SB 935, introduced by Republican State Senator Kathy Bernier, would have effectively ended the common-sense practice of ballot curing. (Another version of the bill was introduced in the Assembly as AB 1004). The bill required absentee ballot certificates to include 12 fields for the voter's name and address, and if any field was left blank, the clerk would be compelled to reject it. Thus, a voter who provided her zip code but not her municipality would not have her vote counted, and the clerk could not cure the ballot by filling in the municipality. Election officials would be required to post a notice of the defect in the voter's online voter information page and would be permitted to seek to contact the voter by other means—potentially useless remedies, depending on when the absentee ballot was counted. Clerks have been relying on their ability to cure minor, immaterial defects in absentee ballot certificates since at least 2016, when the Wisconsin Election Commission issued guidance endorsing the practice. Under this bill, anyone who takes such an action to ensure a valid vote is counted, would be guilty of a Class C misdemeanor, subject to a fine of up to \$500 and imprisonment of up to 30 days.¹⁵⁹

Subversion from beyond the statehouse

AT A
GLANCE

- There is an increasing trend of efforts to subvert elections by non-legislative means. While not the primary focus of this Report, these trends are related to legislative subversion efforts and deserve similar attention.
- One increasing trend is insider threats, or threats of subversion by election officials themselves. Some of these threats came to pass in the 2020 election, although they did not affect any outcomes.
- One trend is law enforcement intimidating election officials.
- Another trend is attempts to intimidate election bodies or state courts to reverse course on election decisions or decisions that protect voting rights.

One increasing trend is efforts by non-legislative actors or non-legislative means to subvert elections. These actions are not the primary subject of this Report and we do not attempt a systematic accounting here. However, several examples are worth highlighting because they go hand-in-hand with legislative election subversion efforts: they advance similar goals using similar techniques by those in positions of power but are implemented through different means, such as by executive actions, by election officials themselves, or by law enforcement officials.

Insider threats: misconduct by election officials

A particularly insidious trend is an increase in the risk of subversion from “insider threats”—that is, misconduct by officials in trusted election administration roles. Insider threats involve election personnel who engage in misconduct to ensure their preferred candidate wins or because they believe in false conspiracy theories themselves. Multiple instances of insider threats came to pass during and after the 2020 election, some of which only came to light later.¹⁶⁰ Thankfully, none of these insider threats affected election results in 2020.



SPOTLIGHT

Colorado county clerks actively undermining voting machine security to subvert the election



In the last year and a half, multiple county officials in Colorado actively undermined the integrity of voting machines in an effort to thwart election security and in support of false conspiracy theories that the election was rigged against Donald Trump. Mesa County Clerk Tina Peters, and her deputy Belinda Knisley, allegedly engaged in a scheme to unlawfully compromise the voting machines they were responsible for.¹⁶¹ Peters posted passwords to the Mesa County voting equipment on right-wing blogs following the 2020 election, and copies of the election machine software later appeared on screen at a conspiracy theory conference, which Peters attended.¹⁶² She also requested that members of the public attend a routine software update for the voting machines, and then allegedly instructed her deputy to give unauthorized access to the voting machines to a member of the public by creating a fake temporary employee badge for that person.¹⁶³ Peters and her deputy also allegedly disabled security cameras in the election office and unlawfully accessed the secure area where the voting machines were stored. Both Peters and Kinsley have been indicted for multiple crimes.¹⁶⁴

Authorities believe that Peters and Kinsley were attempting to copy confidential files from the voting machines to prove that the machines were tampered with, which is a prominent false conspiracy theory about how the election was stolen from Donald Trump.¹⁶⁵ As a result of Peters and Kinsley's actions, those election machines have been decertified and must be replaced before the next election, at significant cost to Colorado residents.

Peters is currently running for Secretary of State for Colorado, a position which is ultimately responsible for election administration for the entire state.

Similar instances of election officials compromising the integrity of voting machines and election networks occurred elsewhere in Colorado and in other states.¹⁶⁶ For example, the FBI and state authorities investigated whether Ohio's election security was breached when a private laptop was "plugged into the county network" in the office of the President of the Lake County Board of Supervisors.¹⁶⁷ Routine network traffic captured by that computer was then shared at an election conspiracy theory conference, the same one that Peters attended.¹⁶⁸ Law enforcement believes that no sensitive data was compromised.¹⁶⁹ As another example, state law enforcement in Michigan is investigating at least two instances of unauthorized personnel being allowed to access voting machines or attempting to copy voting machine data. One person has been indicted so far.¹⁷⁰

These examples demonstrate several related lessons. First, the risk of insider threats is significant. Peters in Colorado and others elsewhere were able to cause damage because they served in trusted roles. This type of subversion can happen in multiple ways. One is these individuals directly sabotaging the election—by preventing voters from voting, ballots from being counted, the vote from being certified, or interfering anywhere during the process. But a more common way is less direct: insiders can create chaos and delay and undermine confidence in elections, creating the opportunity for bad actors to claim that there are irregularities or that the election is invalid, and then prevent candidates that voters chose from being certified and acknowledged as the rightful winners.

Second, the threat appears to be growing in multiple, distinct ways. There has been a concerted effort by proponents of false election conspiracy theories to place like-minded individuals in election administration roles around the country, sometimes explicitly to engage in election subversion.¹⁷¹ This includes placing conspiracy theorists in seemingly minor and below-the-radar roles in key states around the country, including as poll workers, canvassing board members (who verify results), and election judges (who adjudicate disputed ballots), and in higher profile roles.¹⁷² This effort has been spearheaded by former Trump chief strategist Steve Bannon, among others, and discussed on his podcast as a "precinct-by-precinct" movement.¹⁷³ In

a distinct, but related, trend, proponents of election conspiracy theories are also running for statewide office, where they will have much more significant control and have fewer checks on their power. For example, Peters herself is currently running for Colorado secretary of state. A Republican candidate for secretary of state of Nevada, Jim Marchant, is a member of a group of officials running for chief election administrator roles explicitly promoting election conspiracy theories, known as the “coalition of America First secretary of state candidates.”¹⁷⁴

Third, a substantial portion of elections officials have left their roles since 2020 as a result of the increased harassment and threats, leading to both a loss of expertise and to many openings for proponents of election conspiracy theories to step into those roles.¹⁷⁵ If these openings at all levels are filled with conspiracy theorists, then not only will those new officials be well placed to engaged in insider threat subversion efforts, but some of the higher-profile efforts at subversion that occurred in 2020 might be successful because the officials who pushed back in 2020 will no longer be there to do so.

These threats demonstrate that while local, decentralized control is often less susceptible to election subversion, it is not immune to risk. To address this risk, there must be layers of supervision and oversight, and proper procedures to limit the ability of any one bad actor (whether within or outside of the system) to sabotage elections. It also speaks to the crucial importance of having professionals and volunteers at all levels who believe in reasonable election administration and who do not subscribe to conspiracy theories. In Colorado, the supervision of the secretary of state, who was committed to a free and fair election, was essential for detecting and appropriately responding to the Peters breach. Colorado has recently adopted layered election security protocols to limit county clerks from engaging in similar behavior in the future, such as improved electronic and physical security protocols for election machines.¹⁷⁶

Actions by law enforcement to undermine elections

One concerning non-legislative subversion effort involves a subset of law enforcement officials actively undermining elections. Law enforcement can and does play an important role in ensuring that bad actors are not able to harass or intimidate voters or election officials. However, there is also a long history of law enforcement engaging in voter suppression and voter intimidation in this country.¹⁷⁷ A recent variation of this problem involves some law enforcement officials threatening or intimidating election officials. This conduct is similar to legislative efforts to criminalize routine decisions and inadvertent errors by election officials, discussed above. However, in these examples, the risk comes not from new legislation, but from actions by law enforcement officials.

SPOTLIGHT

Racine County, Wisconsin, sheriff threatening prosecution of Wisconsin Election Commissioners



Eleven months after the 2020 election, the sheriff in Racine County, Wisconsin, alleged that five of the six members of the bipartisan Wisconsin Election Commission (WEC)—the state-wide body responsible for overseeing elections—committed felonies. He threatened them with prosecution and requested a statewide investigation.¹⁷⁸ His allegations stemmed from a 2020 decision by WEC determining that nursing home staff could assist nursing home residents in requesting and filling out absentee ballots in lieu of the typical process of two Special Voting Deputies and two election observers entering each resident’s room. WEC decided to suspend the use of those deputies when it became clear they would not be safe or permitted due to public health rules in the first year of the COVID-19 pandemic.¹⁷⁹ The Racine County Sheriff asserted this was a violation of state law and held a press conference announcing that he had discovered voter fraud and called for a statewide investigation by the attorney general. He later recommended that the county district attorney prosecute four of the five commissioners.¹⁸⁰ This in turn led to an effort by other officials to have the WEC commissioners removed from office.¹⁸¹

Investigating allegations of crimes is appropriate for a sheriff, including allegations of crimes by election officials. However, this investigation targeted what was an (at the time) uncontroversial and bipartisan decision by the WEC. The attorney general dismissed the sheriff’s efforts as a publicity stunt designed to intimidate the WEC and undermine faith in the election, and the district attorney ultimately decided not to bring any charges.¹⁸² (Multiple recounts and audits have found no widespread fraud in Wisconsin during the 2020 election.)¹⁸³

Like legislative efforts to criminalize routine election administration decisions, this effort too creates the risk of subversion by making it impossible for election administrators to do their jobs—and therefore creating chaos and uncertainty about an election and opening a window for partisan actors to claim an election is fraudulent and attempt to subvert the results.

Attempts to threaten election bodies and courts into changing decisions

One trend in which legislatures are involved—but which does not involve legislation—is threats aimed at local commissions, courts, and similar bodies in an effort to force them to reverse course on election administration decisions or voting rights protections.

SPOTLIGHT

Impeachment threat against Philadelphia city commissioners



In May 2021, a dispute about whether Philadelphia would count undated mail-in ballots embroiled it in a showdown with the state’s legislature. In the state’s spring primary elections, approximately 2 percent of the ballots received did not have dates hand-written by the voters, an amount that was not expected to change the outcome of the primaries.¹⁸⁴ A majority of the city commissioners initially voted to count those ballots, with one commissioner explaining that it was his obligation to protect the right to vote.¹⁸⁵ However, the Republican leadership in the state legislature wrote a letter threatening to impeach those commissioners if they did not change their votes.¹⁸⁶ The equivalent boards in the suburbs surrounding Philadelphia made the same decision to count undated ballots but did not face the threat of impeachment—only the Philadelphia City Commissioners did.¹⁸⁷ Facing that threat, the Philadelphia City Commissioners did change their vote and did not count those ballots.¹⁸⁸

The primary in Philadelphia is a particularly egregious example of this trend. The Republican-led legislature only threatened the election commissioners in a Democratic-stronghold city and not the commissioners in the nearby suburbs—making clear the politicized nature of the threat. More importantly, while impeachment is an important tool for accountability, using it to force a body to change a decision about election administration simply because the legislature does not like it creates multiple opportunities for subversion. Even if in this instance the total number of ballots not counted was not enough to change any outcomes, this sort of successful maneuvering in a low-stakes situation makes it more likely to recur in a higher-stakes scenario.

This type of conduct—pressuring a separate, independent body to change the outcome of an election administration decision that the legislature does not like—happens in other instances as well. Concerningly, some legislatures have taken similar actions with state courts around electoral decisions. According to the Brennan Center, in 2021 “at least 9 states enacted 12 bills” that limit state court’s ability to adjudicate election cases, such as a bill making it harder for Georgia judges to extend polling hours.¹⁸⁹

CONCLUSION

IV. Conclusion

The legislative measures we have described in this Report are solutions in search of a problem. They purport to fix a crisis that never existed. The 2020 election was free, fair, and accurate. Experienced election administrators oversaw a vote count that was smooth and secure—all the more remarkable under the challenges of a pandemic, and in light of what was already a flood of disinformation. These Americans, particularly those who stood up to reject pressure campaigns, deserve our gratitude. Their conduct was worthy of the best traditions of our democracy.

The bills detailed here, some of which have already been enacted as laws, would make such an accomplishment next to impossible in the future. They vary in scope: Some contemplate elections run by overzealous or meddling legislators; others would leave elections to local administrators but handcuff them in their ability to carry out their duties. Some would subject the counting of votes to chaos, error, and delay; others would leave the certified results open to endless reviews with no grounding in evidence, wasting resources and sowing distrust. What these bills have in common is that they would open the door to interference in elections by partisan actors, and make it easier for partisan actors to subvert the will of voters. In short, they could precipitate a crisis.

One year ago, we identified a wave of bills that would allow state legislatures to politicize, criminalize, or interfere with the administration of elections. That wave rolls on. Legislators have come up with ever more ways to exert political control over elections, including mandatory hand counts and special law-enforcement task forces. Taken separately, each of these bills would chip away at the system of free and fair elections that Americans have sustained, and worked to improve, for generations. Taken together, they could lead to an election in which the voters' choices are disregarded and the election sabotaged.

As we stressed in our first Report: We have a democracy crisis in the making. The threat in 2022 has only grown. But while we should not hesitate to be realistic about the peril facing our country, the situation is far from hopeless.¹⁹⁰ We write this Report to shed light on this anti-democratic trend in state legislatures precisely *because* there is hope. Many of the bills documented in this Report are not yet law, and there is still time to stand up against them. All of us who care about our democracy—regardless of political affiliation—must continue to use every tool we have to protect free and fair elections in this country, and to reject efforts to undermine them.

Notes

¹ Of course, voter suppression has been a feature of American democracy since the country's founding. To millions of people of color, the promise of a full participatory democracy has always had a mirage-like quality. To many, then, the growing subversion trend is simply the extension of a historical reality, even if it was not fully predicted.

² See Maggie Miller, *Former top officials warn democracy in 'jeopardy' without Congressional action on election security*, The Hill (Nov. 10, 2021), <https://thehill.com/policy/cybersecurity/581032-former-national-security-officials-urge-congress-to-take-steps-to-secure/>; see also infra note 10.

³ Cybersecurity & Infrastructure Security Agency, *Joint Statement from Elections Infrastructure Government Coordinating Council & The Election Infrastructure Sector Coordinating Executive Committees* (Nov. 12, 2021), <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election>

⁴ The States United Democracy Center, *Protect Democracy, & Law Forward, A Democracy Crisis in the Making: How State Legislatures are Politicizing, Criminalizing, and Interfering with Election Administration* (Apr. 22, 2021), <https://statesuniteddemocracy.org/wp-content/uploads/2021/04/FINAL-Democracy-Crisis-Report-April-21.pdf>.

⁵ The number of proposals introduced has grown in 2022 even though some of the state legislatures that helped propel the trend last year, for example Texas, are not in session.

⁶ The legislative subversion trend has received increasing attention in the last year. Both the Brennan Center for Justice and the Voting Rights Lab have identified and chronicled the trend. See Will Wilder et al., *The Election Sabotage Scheme and How Congress Can Stop It*, Brennan Center (Nov. 8, 2021), <https://www.brennancenter.org/our-work/research-reports/election-sabotage-scheme-and-how-congress-can-stop-it>; *Voting Laws Roundup: February 2022*, Brennan Center (Feb. 9, 2022) <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-february-2022>; *A Threat to Our Democracy: Election Subversion in the 2021 Legislative Session*, Voting Rights Lab (Sept. 29, 2021), <https://votingrightslab.org/a-threat-to-our-democracy-election-subversion-in-the-2021-legislative-session/>; *Election Subversion Threats: 2024 Battleground States*, Voting Rights Lab (Feb. 21, 2022), <https://votingrightslab.org/election-subversion-threats-2024-battleground-states/>. In addition, several legal scholars have also written about the issue. See Richard L. Hasen, *Identifying and Minimizing the Risk of Election Subversion and Stolen Elections in the Contemporary United States*, 135 *Harvard L. Rev. F.* 265 (2022), <https://harvardlawreview.org/2022/04/identifying-and-minimizing-the-risk-of-election-subversion-and-stolen-elections-in-the-contemporary-united-states/>; Miriam Seifter, *Counter-majoritarian Legislatures*, 121 *Colum. L. Rev.* 1733, 1733-1800 (2021), https://columbialawreview.org/wp-content/uploads/2021/10/Seifter-Countermajoritarian_Legislatures.pdf.

⁷ Indeed, for some this has become a part of some candidates' campaign platforms. See Lauren Rude, *GOP Governor Candidate Corman Unveils Voter Integrity Plan*, ABC27 (Apr. 22, 2022), <https://www.abc27.com/pennsylvania-governor-election-2022/gop-governor-candidate-corman-unveils-voter-integrity-plan/>; Shawn Johnson, *Republican lawmaker seeking to overturn 2020 election plans run for governor*, Wis. Pub. Radio (Feb. 10, 2022), <https://www.wpr.org/republican-lawmaker-seeking-overturn-2020-election-plans-run-governor>.

⁸ H.B. 2476, 55th Leg., Reg. Sess. (Ariz. 2022); H.B. 2596, 55th Leg., Reg. Sess. (Ariz. 2022).

⁹ Rachel Kleinfeld, *The Rise of Political Violence in the United*

States, *Journal of Democracy* (Oct. 2021), <https://www.journalofdemocracy.org/articles/the-rise-of-political-violence-in-the-united-states/>; Aaron Blake, *Nearly 4 in 10 Who Say Election Was Stolen From Trump Say Violence Might Be Needed to Save America*, Wash. Post (Nov. 1, 2021), <https://www.washingtonpost.com/politics/2021/11/01/4-10-who-say-election-was-stolen-trump-say-violence-might-be-needed-save-america/>; *Local Election Officials Survey (June 2021)*, Brennan Center (June 16, 2021), <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-june-2021>; *Local Election Officials Survey (March 2022)*, Brennan Center (Mar. 10, 2022), <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-march-2022>; Yochai Benkler et al., *Mail-In Voter Fraud: Anatomy of a Disinformation Campaign*, Berkman Klein Center (Oct. 1, 2020), <https://cyber.harvard.edu/publication/2020/Mail-in-Voter-Fraud-Disinformation-2020>; Zoe Poindexter, *Krebs Says Efforts to Undermine Elections Could Put U.S. in a "Death Spiral"*, CBS (Oct. 10, 2021), <https://www.cbsnews.com/news/chris-krebs-republicans-undermine-elections/>.

¹⁰ The States United Democracy Center, *Replacing the Refs* (Apr. 4, 2022), <https://statesuniteddemocracy.org/resources/replacingtherefs/>.

¹¹ Voting Rights Lab, *State Voting Rights Tracker* (last visited Apr. 8, 2022), <https://tracker.votingrightslab.org>. Voting Rights Lab tracks legislation dealing with a broad array of election issues including campaign finance and redistricting. Many of the bills it tracks deal with ministerial matters—they may slightly adjust timelines or change forms that have to be filled out. Some expand ballot access, and some limit ballot access. For an analysis of proposals that restrict the freedom to vote see *Voting Laws Roundup: February 2022*, supra note 6 (counting 250 bills in 27 states with provisions that restrict ballot access as of January 14). The National Conference of State Legislatures also is following more than 1,800 bills. See *State Elections Legislation Database*, Nat'l Conf. of State Legislatures, <https://www.ncsl.org/research/elections-and-campaigns/elections-legislation-database.aspx>.

¹² Our first set of bills for analysis was collected on March 24, 2022. A second sweep was made on April 8. We determined whether a bill should be included in this report based on its text as of March 24 (or April 8). It is possible that the measures have been amended or altered since then. On May 4, we checked all the legislation in this report to assess whether any had been enacted, vetoed, or failed. We then checked any enacted proposal to determine whether it still would fall within our criteria. In conducting our analysis we decided, for example, that a bill that restricted early, absentee, or mail-in voting would not be within the scope of this Report, unless it included other relevant provisions. Whatever one thinks about the underlying policy of such legislation, it is consistent with the legislature's power to set the basic, broad rules governing elections before Election Day and it does not make subversion—as that term is defined in this Report—more likely.

¹³ They were: legislative seizure of control over election results; legislative seizure of control over election responsibilities; legislative meddling in election minutiae; and legislative imposition of criminal or other penalties for election decisions. The detailed descriptions of each of these categories from the initial report are as follows:

Legislative seizure of control over election results.

In at least three states, in what appears to be a clear reaction to the 2020 election, legislators have introduced measures that would give the legislature final authority over the certification of election results. If these measures were to be enacted—which does not appear imminent—

legislatures would have the power to reject the will of the voters if they don't like the results of the election. In short, these proposals would dramatically increase the probability of an election crisis.

Legislative seizure of election responsibilities.

In at least 16 states, legislators have proposed or passed measures that would remove certain election administration authorities from the purview of the governor, the secretary of state, or other executive branch officers and place them under the control of the legislature. These proposals would alter the balance of power between branches of state government in significant ways. State legislatures' role in elections has typically been limited: legislators establish the rules for elections at a relatively high level of generality, while the executive branch often appoints election officials, issues more granular regulations, and administers or oversees elections according to those rules. Bills being introduced this year would strip the branch of government charged with executing the law of its powers and grant them instead to the legislature. In doing so, they would create a heightened potential for partisan election meddling, undermine public confidence in the electoral process, and make it more difficult to respond to emergency conditions.

Legislative meddling in election minutiae. In the key battleground states of Arizona, Texas, and Michigan, as well as several others, legislatures are attempting to inject themselves into the minutiae of election administration or to radically shift administrative responsibilities. In one state, everything from voter registration roll maintenance, to on-the-ground equipment checks, to vote tallies would be subjected to a new layer of legislative hyper-supervision. These micromanagement efforts raise the prospect of unmediated conflicts between traditional executive branch election administrators and the legislature. In addition, it is unclear whether legislatures, designed to pass laws, are institutionally capable of day-in, day-out election administration. And even in instances where the legislatures are not proposing to run elections themselves, we found several bills that if enacted would subject local election administrators to unworkable or burdensome supervisory schemes.

Legislative imposition of criminal or other penalties for election decisions.

A final cluster of proposals imposes new criminal or civil penalties on local election officials. These proposals—like one in Texas that would impose criminal sanctions on an election administrator who obstructs the view of a poll watcher in a manner that makes observation "ineffective" or one in Iowa that would impose \$10,000 fines for "technical infractions" of election law—may severely curtail the ability of administrators to run their polling places or to adapt to local circumstances.

¹⁴ We note that in the year since we released our initial Report, there have been other excellent analyses of some of the same legislative trends. See, e.g., *A Threat to Our Democracy: Election Subversion in the 2021 Legislative Session*, supra note 6; Wilder, supra note 6. We would be remiss if we failed to mention that the *State Voting Rights Tracker*, supra note 11 was an indispensable resource in creating this Report.

¹⁵ See Elizabeth Howard et al., *Partisan Election Review Efforts in Five States*, Brennan Center (July 8, 2021), <https://www.brennancenter.org/our-work/research-reports/partisan-election-review-efforts-five-states>.

¹⁶ The States United Democracy Center, *A Democracy Crisis in the Making Report Update: 2021 Year-End Numbers* (as of Dec. 15, 2021), <https://statesuniteddemocracy.org/resources/decupdate/>.

¹⁷ For this 2022 report, we have made some minor revisions to our criteria for whether a legislative proposal risks election subversion. In addition, this report includes legislation

that has been introduced this year and proposals from 2021 that are still under consideration in 2022. In some legislatures, all proposals introduced in one calendar year are rolled over to the next calendar year. In others, bills must be proposed afresh every calendar year. Throughout this report, we distinguish between legislation newly introduced in 2022 and holdover bills from 2021.

Several of these legislatures are already out of session for the remainder of this year, barring a special or emergency session. This means that 20 of the measures we catalog in this report are inactive as of April 8.

¹⁸ Of the 54 bills from 2021 that rolled over for consideration this year, six involved “audits,” 13 involved seizing power over election administration, 21 involved imposing unworkable burdens, and 18 involved disproportionate criminal or other penalties.

Many proposals from 2021 were amended or altered during the course of that year in ways that altered whether they could be considered part of the election subversion trend. To decide whether a 2021 bill should be included in this report we evaluated the text of the legislation as of March 24, 2022, when we collected and analyzed our first set of bills for this Report.

¹⁹ Greg Bluestein & James Salzer, *Kemp Tells Lawmakers They Can't Overturn Results of Georgia's Election*, Atlanta Journal-Constitution (Dec. 6, 2020), <https://www.ajc.com/politics/politics-blog/why-kemp-wont-call-an-illegal-special-session-to-overturn-georgias-election/6L6KT2NZEZCU7MYXADEBLO6S4/>; Andrew Oxford, *In Arizona, it is Seemingly Impossible for the Legislature to Alter the Election Outcome*, Ariz. Republic (Nov. 19, 2020), <https://www.azcentral.com/story/news/politics/elections/2020/11/19/why-arizona-legislature-cannot-alter-election-outcome/6347894002/>.

²⁰ H.B. 2476, 55th Leg., Reg. Sess. (Ariz. 2022); H.B. 2596, 55th Leg., Reg. Sess. (Ariz. 2022).

²¹ H.C.R. 2033, 55th Leg., Reg. Sess. (Ariz. 2022); A.J.R 120, 105th Leg., Reg. Sess. (Wis. 2022).

²² H.B. 2476, 55th Leg., Reg. Sess. (Ariz. 2022).

²³ H.B. 2596, 55th Leg., Reg. Sess. (Ariz. 2022). This bill also includes numerous provisions that appear to be motivated by conspiracy theories about the 2020 election, including a requirement that all ballots be marked with a hologram.

²⁴ Maggie Haberman et al., *Trump Allies Continue Legal Drive to Erase His Loss, Stoking Election Doubts*, N.Y. Times (Apr. 18, 2022), <https://www.nytimes.com/2022/04/18/us/politics/trump-allies-election-decertify.html>.

²⁵ Holmes Lybrand & Tara Subramaniam, *'A Constitutional Amendment and a Time Machine': Fact Checking Calls to Decertify the 2020 Election*, CNN (Sept. 28, 2021), <https://www.cnn.com/2021/09/28/politics/arizona-audit-finchem-decertify-fact-check/index.html> (quoting legal experts Adav Noti and Edward Foley).

²⁶ Haberman et al., *supra* note 24.

²⁷ H.C.R. 2033, 55th Leg., Reg. Sess. (Ariz. 2022); Mary Jo Pitzl, *Mark Finchem, Election Conspiracy Promoter, Gets Trump's Endorsement for Secretary of State*, Ariz. Republic (Sept. 13, 2021), <https://www.azcentral.com/story/news/politics/elections/2021/09/13/trump-endorsement-mark-finchem-arizona-secretary-state-election/8322839002>.

²⁸ A.J.R 120, 105th Leg., Reg. Sess. (Wis. 2022).

²⁹ S.R. 8, 206th Gen. Assemb., Reg. Sess. (Pa. 2021); S.R. 9, 206th Gen. Assemb., Reg. Sess. (Pa. 2021); H.R. 7, 206th Gen. Assemb., Reg. Sess. (Pa. 2021).

³⁰ Miles Parks, *Experts Call It a 'Clown Show' But Arizona 'Audit' Is a Disinformation Blueprint*, NPR (June 3, 2021), <https://www.npr.org/2021/06/03/1000954549/experts-call-it-a-clown-show-but-arizona-audit-is-a-disinformation-blueprint>.

³¹ Nat'l Conf. of State Legislatures, *Post-Election Audits* (Apr. 1, 2022), <https://www.ncsl.org/research/elections-and-campaigns/post-election-audits635926066.aspx>; *Audit Law Database*, Verified Voting, <https://verifiedvoting.org/audits/>.

³² Traditional audits require that election officials hand count a predetermined percentage of ballots (or all of the ballots from a particular set of precincts) to determine if the machine tally was off. In contrast, a risk limiting audit sets a confidence level in the accuracy of the election outcome and then requires auditors to hand count as many ballots as are required to meet that goal. For a further explanation of risk limiting audits, See Jennifer Morrell, *Knowing It's Right Part One: A Practical Guide to Risk Limiting Audits*, electionline (May 2019), <https://electionline.org/resources/rla-practical-guide/>.

³³ Nat'l Association of Secretaries of State, *NASS Task Force on Vote Verification: Post-election Audit Recommendations* (Aug. 2021), <https://www.nass.org/sites/default/files/Summer%202021/NASS%20Vote%20Verification%20Task%20Force%20Recommendations.pdf>; The Bipartisan Policy Center's Task Force on Elections also issued similar recommendations at the end of 2021. See Rachel Orey et al., *Bipartisan Principles for Election Audits*, Bipartisan Policy Center (Nov. 8, 2021), <https://bipartisanpolicy.org/report/bipartisan-principles-for-election-audits/>. The Brennan Center has summarized the hallmarks for constructive, professional audits as: “Transparency: public audit plans, processes, and records; Objectivity: auditors who are and appear to be independent and free of conflicts of interest; Pre-written, comprehensive procedures: standardized and consistently implemented processes designed to achieve accuracy; Competence: conducted by election administration experts; and Security: ballots and equipment remain in election official control.” See Howard et al., *supra* note 15.

³⁴ There are at least three relevant forms of audits in the election context: accuracy, performance, and financial. Accuracy audits deal with the precision of the vote tally. Performance audits gauge how well election officials follow established procedures. Financial audits evaluate the financial statements and controls used by election administrators. The audits discussed in this section involve all three. In general, professional performance and financial audits are conducted according to Generally Accepted Government Audit Standards. See U.S. Gov't Accountability Off., GAO-21-368G, *Government Auditing Standard 2018 Revision* (as of Apr. 2021), <https://www.gao.gov/assets/gao-21-368g.pdf> (known as the Yellow Book).

³⁵ U.S. Dep't of Just., *Federal Law Constrains on Post-Election 'Audits'* (July 28, 2021), <https://www.justice.gov/opa/press-release/file/1417796/download>.

³⁶ Mark Nance, *Lycoming County Commissioners Float Possible 2020 Election Audit*, Williamsport Sun-Gazette (Apr. 15, 2022), <https://www.sungazette.com/news/top-news/2022/04/lycoming-county-commissioners-float-possible-2020-election-audit/>; Nicole Maxwell, *State Auditor Finds Problems with Otero County's 2020 Election Audit Contract*, Alamogordo Daily News (Mar. 15, 2022), <https://www.alamogordodailynews.com/story/community/2022/03/15/state-auditor-finds-problems-otero-countys-audit-contract-echomail-trump-ballot-election/7035789001/>.

³⁷ H.B. 204, 2022 Leg., Reg. Sess. (Ala. 2022); H.B. 99, 124th Leg., Reg. Sess. (Fla. 2022); S.B. 2174, 89th Gen. Assemb., Reg. Sess. (Iowa 2022); H.B. 1473, 2022 Leg., Reg. Sess. (N.H. 2022); & H.B. 1484, 2022 Leg., Reg. Sess. (N.H. 2022); S.B. 1457, 58th Leg., Reg. Sess. (Okla. 2022); S.B. 1690, 58th Leg., Reg. Sess. (Okla. 2022); H.B. 4550, 124th Gen. Assemb., Reg. Sess. (S.C. 2022); H.J.R. 4551, 124th Gen. Assemb., Reg. Sess. (S.C. 2022); S.B. 1657, 112th Gen. Assemb., Reg. Sess. (Tenn. 2021); H.B. 1714, 112th Gen. Assemb., Reg. Sess. (Tenn. 2022); S.B. 1939, 112th Gen. Assemb., Reg. Sess. (Tenn. 2022); S.B.

605, 2022 Leg., Reg. Sess. (Va. 2022).

³⁸ See Andrew C. Eggers et al., *No evidence for systematic voter fraud: A guide to statistical claims about the 2020 election*, PNAS (Nov. 9, 2021), <https://www.pnas.org/doi/full/10.1073/pnas.2103619118>; Saranac Hale Spencer, *Nine Election Fraud Claims, None Credible*, FactCheck.org (Dec. 11, 2020), <https://www.factcheck.org/2020/12/nine-election-fraud-claims-none-credible/>; Daniel Funke, *Fact-checking false claims about the 2020 election*, PolitiFact (Nov. 19, 2020), <https://www.politifact.com/article/2020/nov/20/fact-checking-false-claims-about-2020-election/>; Christina A. Cassidy, *Far Too Little Vote Fraud to Tip Election to Trump, AP finds*, AP (Dec. 14, 2021), <https://apnews.com/article/voter-fraud-election-2020-joe-biden-donald-trump-7fcb6f134e528fee8237c7601d8b3328f>; Nick Corasanti et al., *The Times Called Officials in Every State: No Evidence of Voter Fraud*, N.Y. Times (Nov. 6, 2021), <https://www.nytimes.com/2021/11/10/us/politics/voting-fraud.html>; Doug Bock Clark et al., *Building the 'Big Lie': Inside the Creation of Trump's Stolen Election Myth*, ProPublica (Apr. 26, 2022), <https://www.propublica.org/article/big-lie-trump-stolen-election-inside-creation>.

³⁹ Petition for Review in the Nature of Complaint in Equity and Declaration for Judgment, *Pennsylvania v. Dush*, No. 322-MD-2021 (Pa. Commw. Ct. Sept. 23, 2021), <https://statesuniteddemocracy.org/wp-content/uploads/2022/01/Department-of-State-Petition-for-Review-filed-92321.pdf> (The States United Democracy Center represents the Pennsylvania Department of State in this litigation).

⁴⁰ Editorial Board, *As Pa. Republicans further the Big Lie, we're trapped in a factless debate that won't end* Editorial, The Phila. Inquirer (July 12, 2021), <https://www.inquirer.com/opinion/editorials/doug-mastriano-pennsylvania-election-audit-20210712.html>; Jonathan Lai & Andrew Seidman, *Experts fear Pa. senators' statements, unsupported by evidence, in 2020 election 'audit'*, Pittsburgh Post-Gazette (Oct. 6, 2021), <https://www.post-gazette.com/news/politics-state/2021/10/06/Experts-fear-Pa-senators-statements-unsupported-by-evidence-in-2020-election-audit-Kim-Ward/stories/202110060140>.

⁴¹ Steve Lahr, *Taming Thought Engineers*, American Greatness (Oct. 24, 2020), <https://amgreatness.com/2020/10/24/taming-thought-engineers/>.

⁴² The States United Democracy Center, *Private Voter Information in Pennsylvania*, <https://statesuniteddemocracy.org/legal/pavoter-legal/>.

⁴³ Cassandra Pollock, *Gov. Greg Abbott, GOP Leaders Allocate \$4 Million to Fund County-level Election Audits*, Tex. Tribune (Nov. 19, 2021), <https://www.texastribune.org/2021/11/19/abbott-emergency-funds-election-audits/>.

⁴⁴ Neelam Bohra, *Texas Secretary of State's Office Auditing Four Counties' 2020 Elections Months After an Official Called the Statewide Process "smooth and secure"*, Texas Tribune (Sept. 23, 2021), <https://www.texastribune.org/2021/09/23/texas-2020-election-audit/>; Alexa Ura, *Days After Disclosing Election "audits" in Four Texas Counties, Secretary of State's Office Gives Some Details of Their Scope*, Tex. Tribune (Sept. 28, 2021), <https://www.texastribune.org/2021/09/28/texas-audits-2020-elections/>. (The enacted audit legislation is not problematic in itself as it appears to require audits that follow best practices).

⁴⁵ Tex. Secretary of State, *Texas Secretary of State Releases Phase 1 Progress Report on Full Forensic Audit of 2020 General Election* (Dec. 31, 2021), <https://www.sos.state.tx.us/about/newsreleases/2021/123121.shtml>; Editorial Board, *Opinion: The Strange Silence Around Texas Election Audit*, Dall. Morning News (Jan. 9, 2022), <https://www.dallasnews.com/opinion/editorials/2022/01/09/the-strange-silence-around-texas-election-audit/>;

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- ⁴⁶ See Shawn Johnson, *Gableman, Vos Sign New Contract in Election Investigation as Judge Orders Release of Records*, Wis. Pub. Radio (Mar. 8, 2022), <https://www.wpr.org/gableman-vos-sign-new-contract-election-investigation-judge-orders-release-records>; Shawn Johnson, *As latest contract winds down, Vos keeps Gableman election investigation going*, Wis. Pub. Radio (Apr. 26, 2022), <https://www.wpr.org/latest-contract-winds-down-vos-keeps-gableman-election-investigation-going>.
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- ⁴⁸ See Patrick Marley & Molly Beck, *'Much To-Do About Nothing': Gableman Gets New Contract As Judge Releases Records Showing Little Evidence Of Investigation*, Milwaukee Journal Sentinel (Mar. 8, 2022), <https://www.jsonline.com/story/news/politics/2022/03/08/wisconsin-robin-vos-michael-gableman-sign-new-contract-gop-republican-review-2020-election/9423494002/>.
- ⁴⁹ See Henry Redman, *Fight over Gableman Subpoenas Continues, Possibly Further Extending Review*, Wis. Examiner (Mar. 18, 2022), <https://wisconsinexaminer.com/2022/03/18/fight-over-gableman-subpoenas-continues-possibly-further-extending-review/>; Molly Beck, *Michael Gableman Withdraws Election Investigation Subpoena to Immigrant Rights Group Voces de la Frontera*, Milwaukee Journal Sentinel (Feb. 17, 2022), <https://www.jsonline.com/story/news/politics/2022/02/16/michael-gableman-withdraws-subpoena-immigrant-rights-group-vores/6816480001/>; Alex Moe, *Gableman Retreats on 2020 Election Investigation Subpoenas to City Officials*, WisPolitics.com (Oct. 8, 2021), <https://www.wispolitics.com/2021/gableman-to-rescind-2020-election-investigation-subpoenas-to-city-officials/>.
- ⁵⁰ *Election records*, Office of State Representative Mark Spreitzer, <https://legis.wisconsin.gov/assembly/45/spreitzer/election-records/> (last visited Apr. 27, 2022).
- ⁵¹ Marly & Beck, *supra* note 48; Wis. State Assem. Comm. on Campaigns & Elections (105th Leg., Reg. Sess.), *Legislative Subpoena duces tecum to Voces de la Frontera, Inc.*, https://legis.wisconsin.gov/assembly/45/spreitzer/media/1871/subpoena-to-vdlf_cwl_cwl2_final_correcteda_modb.pdf. The organization, Voces de la Frontera Action, was represented in this litigation by attorneys from Law Forward, Inc. (one of the three organizational co-authors of this report). Law Forward and the States United Democracy Center also represent the city of Green Bay in other litigation related to the Gableman review.
- ⁵² See, e.g. Wis. State Assem. Comm. on Campaigns & Elections (105th Leg., Reg. Sess.), *Legislative Subpoena duces tecum to Election Systems & Software, LLC.*, https://legis.wisconsin.gov/assembly/45/spreitzer/media/1826/election-systems-and-software_esi-voter-data_ji_cwl2_cwl3_cwl4final.pdf.
- ⁵³ Wis. Elections Commission, *Special Counsel Report Inaccuracies*, https://www.wpr.org/sites/default/files/wec_20220304.pdf.
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- ⁶¹ NASS, *supra* note 33.
- ⁶² *Id.*
- ⁶³ S.B. 695, 101st Gen. Assem., 2nd Reg. Sess. (Mo. 2022).
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- ⁶⁸ Wines, *supra* note 66.
- ⁶⁹ H.B. 1483, 101st Gen. Assem., 2nd Reg. Sess. (Mo. 2022).
- ⁷⁰ H.B. 3282, 58th Leg., Reg. Sess. (Okla. 2022).
- ⁷¹ *Post-Election Audits*, *supra* note 31.
- ⁷² *Id.*
- ⁷³ H.F. 3235, 92nd Leg., Reg. Sess. (Minn. 2022); S.F. 3141, 92nd Leg., Reg. Sess. (Minn. 2022); S.B. 4290, 92nd Leg., Reg. Sess. (Minn. 2022).
- ⁷⁴ H.B. 1883, 112th Gen. Assem. (Tenn. 2022); S.B. 1865, 112th Gen. Assem. (Tenn. 2022).
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- ⁷⁸ H.C.R. 5014, 2021-22 Reg. Sess. (Kan. 2021); S.C.R. 1618, 2021-22 Reg. Sess. (Kan. 2022); A.B. 1006, 105th Leg., Reg. Sess. (Wis. 2022); S.B. 943, 105th Leg., Reg. Sess. (Wis. 2022); H.B. 1596, 205th Gen. Assem. (Pa. 2021). These raise concerns because if enacted they would enable the legislature to unilaterally undo efforts by professional election administrators to interpret ambiguities in the law or even to implement clear provisions of the law. Under these bills, on the eve of an election, a legislature could even revoke rules that have passed muster in the courts as proper exercises of the administrator's authority, throwing the legitimacy of an election into doubt.
- ⁷⁹ S.B. 1285, 55th Leg., Reg. Sess. (Ariz. 2022).
- ⁸⁰ H.B. 359, 2022 Reg. Sess. (La. 2022); S.B. 2574, 2022 Reg. Sess. (Miss. 2022); A.B. 996, 105th Leg., Reg. Sess. (Wis. 2022); S.B. 941, 105th Leg., Reg. Sess. (Wis. 2022).
- ⁸¹ S.B. 418, 2021-22 Reg. Sess. (Kan. 2022); H.B. 2483, 112th Gen. Assem., Reg. Sess. (Tenn. 2022).
- ⁸² For a general summary, see Stephen Fowler, *What Does Georgia's New Voting Law SB 202 Do?* GPB News (Mar. 27, 2021), <https://www.gpb.org/news/2021/03/27/what-does-georgias-new-voting-law-sb-202-do>; S.B. 202, 2021-22 Reg. Sess. (Ga. 2021).
- ⁸³ Office of Public Affairs, U.S. Dep't of Just., *Justice Department Files Lawsuit Against the State of Georgia to Stop Racially Discriminatory Provisions of New Voting Law* (June 25, 2021) <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-against-state-georgia-stop-racially-discriminatory>.
- ⁸⁴ Patricia Murphy, *OPINION: The Story Behind Brad Raffensperger's Demotion in Georgia's New Election Law*, Atlanta Journal-Constitution (Mar. 30, 2021), <https://www.ajc.com/politics/opinion-the-story-behind-brad-raffenspergers-demotion-in-georgias-new-election-law/LS376GR2LNAF7AWNFSHFHYCNWY/1/>.
- ⁸⁵ Ga. State Election Board, *Minutes - Webinar Meeting* (Mar. 16, 2022), https://sos.ga.gov/sites/default/files/forms/March_16%2C_2022%20Meeting_Minutes.pdf.
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- elections takeover, Atlanta Journal-Constitution (July 28, 2021), <https://www.ajc.com/news/atlanta-news/georgia-republicans-take-first-step-to-fulton-elections-takeover/MQ7CABNYFZBINMLPRCAFE7HAM/>.
- ⁸⁷ Ga. State Election Board, *supra* note 85.
- ⁸⁸ Mark Niesse, *Republicans Pick Fulton Elections Critic for State Election Board*, Atlanta Journal-Constitution (Jan. 18, 2022), <https://www.ajc.com/politics/republicans-pick-fulton-elections-critic-for-state-election-board/FW7BG37G7ZHQZIU364GGPVA5Y/>.
- ⁸⁹ James Oliphant & Nathan Layne, *Georgia Republicans Purge Black Democrats from County Election Boards*, Reuters (Dec. 9, 2021), <https://www.reuters.com/world/us/georgia-republicans-purge-black-democrats-county-election-boards-2021-12-09/>; Nick Corasaniti & Reid J. Epstein, *How Republican States Are Expanding Their Power Over Elections*, N.Y. Times (July 1, 2021), <https://www.nytimes.com/2021/06/19/us/politics/republican-states.html>.
- ⁹⁰ *Id.* Several of these counties have significant Black populations: Troup County (35% Black); Spalding County (34.6% Black); Lincoln County (27.6% Black); and Morgan County (20.5% Black). See America Counts Staff, *Georgia Among Top Five Population Gainers Last Decade, U.S. Census Bureau* (Aug. 25, 2021), <https://www.census.gov/library/stories/state-by-state/georgia-population-change-between-census-decade.html>. These bills have led to a number of Black Democratic county election board members being replaced by Republican members.
- ⁹¹ H.B. 684, 2021-22 Reg. Sess. (Ga. 2021); H.B. 162, 2021-22 Reg. Sess. (Ga. 2021); H.B. 801, 2021-22 Reg. Sess. (Ga. 2021); Oliphant & Layne, *supra* note 89.
- ⁹² H.B. 456, 2021-22 Reg. Sess. (Ga. 2021).
- ⁹³ H.B. 8, 2021 1st Spec. Sess. (Ga. 2021); H.B. 9, 2021 1st Spec. Sess. (Ga. 2021); S.B. 282, 2021-22 Reg. Sess. (Ga. 2021); S.B. 283, 2021-22 Reg. Sess. (Ga. 2021); H.B. 682, 2021-22 Reg. Sess. (Ga. 2021); H.B. 683, 2021-22 Reg. Sess. (Ga. 2021); Oliphant & Layne, *supra* note 89.
- ⁹⁴ H.B. 769, 2021-22 Reg. Sess. (Ga. 2021).
- ⁹⁵ Justin Glawe, *Georgia County Purges Democrats From Election Board and Cancels Sunday Voting*, The Guardian (Jan. 30, 2022), <https://www.theguardian.com/us-news/2022/jan/30/georgia-county-purges-democrats-from-election-board-and-cancels-sunday-voting>.
- ⁹⁶ *Id.*
- ⁹⁷ Mark Niesse, *Poll Closure Plan Defeated in Rural Georgia's Lincoln County*, Atlanta Journal-Constitution (Mar. 10, 2022), <https://www.ajc.com/politics/poll-closure-plan-defeated-in-rural-georgias-lincoln-county/Z14RREIKCFDQ3CPO455YVHCC4A/>.
- ⁹⁸ Karen L. Shanton, Cong. Rsch. Serv., R45549, *The State and Local Role in Election Administration: Duties and Structures 12-13* (Mar. 4, 2019), <https://fas.org/sgp/crs/misc/R45549.pdf>.
- ⁹⁹ U.S. Election Assistance Commission, *Election Administration and Voting Survey: 2018 Comprehensive Report A Report to the 116th Congress* (June 2019), https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf.
- ¹⁰⁰ While the chief election official was once a mainly clerical position, it has morphed in recent decades to include numerous tasks to ensure accuracy and security throughout the process. The typical requirements and expected skills for election administrators include knowledge of federal, state, and local election laws, logistics, budgeting, and asset management. Some states require a full certification in election management. Most states require that any and all election officials take an oath to remain nonpartisan and impartial while representing the state and office, to ensure that officials are seen as apolitical.
- ¹⁰¹ H.B. 7830, 2022 Gen. Assemb., Jan. Sess. (R.I. 2022).
- ¹⁰² A.B. 1005, 105th Leg., Reg. Sess. (Wis. 2022); S.B. 934, 105th Leg., Reg. Sess. (Wis. 2022).
- ¹⁰³ See Isabel Longoria, *Testifying Against Senate Bill 7*, Facebook (Mar. 27, 2021), <https://www.facebook.com/watch/?v=742078446670809> (Harris County elections administrator Isabel Longoria testifying at Senate Committee on State Affairs hearing on S.B. 7); Michelle Homer & Adam Bennett, *'I'm Bewildered' County Judge Lina Hidalgo Accuses Lt. Gov. Dan Patrick of Attacking His Own Constituents*, KHOU (Apr. 7, 2021), <https://www.khou.com/article/news/local/texas/county-judge-lina-hidalgo-responds-lt-gov-dan-patrick/285-f6137ebf-53f6-486e-80b5-f06daeb56e4> (Harris County Judge Lina Hidalgo commenting on S.B. 7).
- ¹⁰⁴ Trey Grayson, *Opinion: Bills Would Make Elections Less Secure, Less Accessible*, Austin American-Statesman (Apr. 11, 2021), <https://www.statesman.com/story/opinion/columns/your-voice/2021/04/11/bills-would-make-elections-less-secure-less-accessible/7132964002/>.
- ¹⁰⁵ See H.B. 2289, 55th Leg., Reg. Sess. (Ariz. 2022); H.B. 2596, 55th Leg., Reg. Sess. (Ariz. 2022); H.B. 2743 55th Leg., Reg. Sess. (Ariz. 2022); S.B. 1338, 55th Leg., Reg. Sess. (Ariz. 2022); S.B. 1348, 55th Leg., Reg. Sess. (Ariz. 2022); H.B. 1204, 73rd Gen. Assemb. (Colo. 2022); H.B. 2633, 101 Gen. Assemb., 2nd Reg. Sess. (Mo. 2022); H.B. 1064, 2022 Sess., (N.H. 2022); H.B. 1778, 67th Leg., Reg. Sess. (Wash. 2022); H.B. 2115, 67th Leg., Reg. Sess. (Wash. 2022); H.B. 3233, Reg. Sess. (W.V. 2021). See also S.B. 1608, 55th Leg., Reg. Sess. (Ariz. 2022) (requiring a hand count for counties with more than 500,000 persons, if two separate machine tabulations do not match).
- ¹⁰⁶ Rosalind S. Helderman et al., *How Trump Allies Are Pushing to Hand-Count Ballots Around the U.S.*, Wash. Post (Apr. 4 2022) <https://www.washingtonpost.com/politics/2022/04/04/trump-hand-counted-ballots-dominion-machines/>; Holly Ramer & Christina Cassidy, *Some GOP Want Ballots to Be Counted by Hand, Not Machines*, LA Times (Mar. 12, 2022), <https://www.latimes.com/world-nation/story/2022-03-12/gop-legislation-ballots-hand-count-machines>; Nick Castele, *Trump's Baseless 2020 Conspiracies Complicate Ohio Effort to Buy Voting Machines*, NPR (Mar. 3, 2021), <https://www.npr.org/2021/03/03/972960446/trumps-baseless-2020-conspiracies-complicate-ohio-effort-to-buy-voting-machines>.
- ¹⁰⁷ See *supra* note 38.
- ¹⁰⁸ Helderman, *supra* note 106; Ramer & Cassidy, *supra* note 106; Amber Phillips, *Why Hand-Counting Ballots is Such a Bad Idea*, Wash. Post (Apr. 8, 2022) <https://www.washingtonpost.com/politics/2022/04/08/hand-count-election-explained/>.
- ¹⁰⁹ Stephen N. Goggin et al., *Post-Election Auditing: Effects of Manual Counting Accuracy, Efficiency, and Auditor Satisfaction and Confidence*, 11 Election Law Journal: Rules, Politics, and Policy. 36-51 (Mar. 5, 2012). <http://doi.org/10.1089/elj.2010.0098>.
- ¹¹⁰ NASS, *supra* note 33.
- ¹¹¹ *Id.*
- ¹¹² See Eliza Sweren-Becker, *Who Watches the Poll Watchers?*, Brennan Center (Apr. 29, 2021), <https://www.brennancenter.org/our-work/research-reports/who-watches-poll-watchers>; see, e.g. H.B. 1360, 55th Leg., 2nd Reg. Sess. (Ariz. 2022); H. 1464, 2022 Gen. Assemb., Reg. Sess. (Ga. 2022); H.B. 4952, 2021-22 Leg. Sess., Reg. Sess. (Mich. 2021); S.B. 695, 101st Gen. Ass., 2nd Reg. Sess. (Mo. 2022); S.B. 1065, 101st Gen. Ass., 2nd Reg. Sess. (Mo. 2022); H.B. 3677, 58th Leg., 2nd Sess. (Okla. 2022); H.B. 3680, 58th Leg., 2nd Sess. (Okla. 2022).
- ¹¹³ The Carter Center & the Nat'l Conf. of State Legislatures, *A Guide to Election Observer Policies in the United States* (Oct. 2016), <https://www.cartercenter.org/resources/pdfs/peace/democracy/cc-us-election-observation.pdf>; Joseph Tanfani & Jarrett Renshaw, *Challengers, Observers and Electioneering: The History and Rules of U.S. Poll Watching*, Reuters (Oct. 7, 2020), <https://www.reuters.com/article/us-usa-election-poll-watchers-facts-expl/challengers-observers-and-electioneering-the-history-and-rules-of-us-poll-watching-idUSKBN26S1IH>.
- ¹¹⁴ *Id.*
- ¹¹⁵ *Id.*
- ¹¹⁶ Emily Eby & Joaquin Gonzalez, *Opening the Floodgates for Racial Intimidation, Disenfranchisement, and Violence by Expanding Poll Watcher Authority 7-9* (2021), <https://tcivilrights.org/wp-content/uploads/2021/05/TCRP-Poll-Watcher-Report.pdf>.
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- ¹¹⁹ See, e.g., Nick Corasaniti, *G.O.P. Seeks to Empower Poll Watchers, Raising Intimidation Worries*, N.Y. Times (May 1, 2021), <https://www.nytimes.com/2021/05/01/us/politics/republican-pollwatchers.html>; Fredreka Schouten, *Republican State Lawmakers Look to Empower Partisan Poll Watchers, Setting Off Alarms About Potential Voter Intimidation*, CNN (May 1, 2021), <https://www.cnn.com/2021/05/01/politics/republican-bills-empower-partisan-poll-watchers/index.html>.
- ¹²⁰ See S.B. 90, 2021 Reg. Sess. (Fla. 2021); S.B. 1, 87th Leg., Spec. Sess. 2, (Tex. 2021); S.B. 202, 2021-22 Reg. Sess. (Ga. 2021).
- ¹²¹ Indeed, the Trump Campaign brought several baseless lawsuits alleging that poll watchers were improperly prevented from observing, and that this was to conceal misconduct. See, e.g., Bill McCarthy, *Trump's Wrong Claim That Election Observers Were Barred in Pennsylvania*, Michigan, PolitiFact (Nov. 12, 2020), <https://www.politifact.com/factchecks/2020/nov/12/donald-trump/trumps-wrong-claim-election-observers-were-barred/>.
- ¹²² See Okla. Stat. § §26-7-130.
- ¹²³ H.B. 3680, 58th Leg., 2nd Sess. (Okla. 2022); H.B. 3677, 58th Leg., 2nd Sess. (Okla. 2022).
- ¹²⁴ See, e.g., Elizabeth Howard et al., *Defending Elections: Federal Funding Needs for State Election Security*, Brennan Center (July 18, 2019), <https://www.brennancenter.org/our-work/research-reports/defending-elections-federal-funding-needs-state-election-security> (documenting underfunding of election security needs in 2018).
- ¹²⁵ Center for Tech & Civic Life, *10 Facts About CTCL & the COVID-19 Grant Response* (Oct. 14, 2021), <https://www.techandcivillife.org/10-facts-about-ctcl-grants/>; see Kenneth P. Vogel, *Short of Money to Run Elections, Local Authorities Turn to Private Funds*, N.Y. Times (Sept. 26, 2020) <https://www.nytimes.com/2020/09/25/us/politics/elections-private-grants-zuckerberg.html>; Neil Vigdor, *Mark Zuckerberg Ends Election Grants*, N.Y. Times (Apr. 12, 2022), <https://www.nytimes.com/2022/04/12/us/politics/mark-zuckerberg-midterms-elections-grant.html>.
- ¹²⁶ Vogel, *supra* note 125.
- ¹²⁷ Geoff Hing et al., *How Private Money Helped Save the Election*, American Public Media Reports (Dec. 7, 2020), <https://www.apmreports.org/story/2020/12/07/private-grant-money-chan-zuckerburg-election>.
- ¹²⁸ *Id.*; Vogel, *supra* note 125.
- ¹²⁹ Hing, *supra* note 127.
- ¹³⁰ Lawrence Norden et al., *Estimated Costs of Covid-19 Election Resiliency Measures*, Brennan Center (Apr. 18, 2020), <https://www.brennancenter.org/our-work/research>

- [reports/estimated-costs-covid-19-election-resiliency-measure.](#)
- ¹³¹ Jessica Huseman, *Legislators Ban Private Grants for Elections Yet Leave Elections Underfunded*, Votebeat (Apr. 11, 2022), <https://www.votebeat.org/2022/4/11/23021197/private-election-grant-bans-ctd-2020-outside-funding>; Miles Parks, *Private Funding Saved the 2020 Election. Now, some GOP-Led States Are Banning It*, NPR (Mar. 31, 2022), <https://www.npr.org/2022/03/31/1088252896/private-funding-saved-the-2020-election-now-some-gop-led-states-are-banning-it>.
- ¹³² This count includes bills held over from 2021.
- ¹³³ H.B. 368, 32nd Leg., Reg. Sess. (Alaska, 2022).
- ¹³⁴ S.B. 90, 2021 Reg. Sess. (Fla. 2021); Fred Lucas, *Florida Voting Law Signed by Desantis Stops Mark Zuckerberg, Others From Bankrolling Election Administration*, Fox News (May 7, 2021), <https://www.foxnews.com/politics/florida-voting-law-ron-desantis-mark-zuckerberg-election-administration>.
- ¹³⁵ S.B. 524, 2022 Reg. Sess. (Fla. 2022).
- ¹³⁶ Richard L. Hasen, *Research Note: Record Election Litigation Rates in the 2020 Election: An Aberration or a Sign of Things to Come?* Election Law Journal: Rules, Politics, and Policy 00, 0 (published online Feb. 15, 2022), <https://www.liebertpub.com/doi/pdf/10.1089/elj.2021.0050>.
- ¹³⁷ See, e.g., H.B. 301, 2022 Reg. Sess. (Ky. 2022); H.B. 3046, 58th Leg., Reg. Sess. (Okla. 2022).
- ¹³⁸ Vigdor, *supra* note 125.
- ¹³⁹ *Id.*
- ¹⁴⁰ In our original Report, we also included bills that criminalized certain actions by people other than election officials. Such bills are deeply troubling. But we now believe they are better categorized as voter suppression, rather than attempts to subvert the legitimacy of the electoral process itself, which is the focus of this report.
- ¹⁴¹ S.B. 1574, 55th Leg., Reg. Sess. (Ariz. 2022).
- ¹⁴² *Id.*
- ¹⁴³ H.F. 2732, 92nd Leg., Reg. Sess. (Minn. 2022); S.F. 2896, 92nd Leg., Reg. Sess. (Minn. 2022).
- ¹⁴⁴ H.R. 3677, 58th Leg., Reg. Sess. (Okla. 2022); H.R. 3680, 58th Leg., Reg. Sess. (Okla. 2022).
- ¹⁴⁵ A recent survey of local election officials by the Brennan Center for Justice shows that these public servants are feeling tremendous pressure from the politicization of their work. One in five local election officials are likely to leave their positions before 2024. *Local Election Officials Survey*, *supra* note 9.
- ¹⁴⁶ See Howard Fischer, *Brnovich asks Cochise County prosecutor to investigate Hobbs*, tucson.com (Apr. 28, 2022), https://tucson.com/news/state-and-regional/govt-and-politics/brnovich-asks-cochise-county-prosecutor-to-investigate-hobbs/article_38e69aa0-afbc-11ec-b717-e3caf9768d.html. Similarly, in Racine, Wisconsin, the local sheriff recommended charges against state election officials based on their decision during the pandemic to send ballots instead of special voting deputies to nursing homes. Molly Beck & Patrick Marley, *Racine County Sheriff Seeks Charges for 5 Wisconsin Elections Commissioners*, Milwaukee Journal Sentinel (Nov. 3, 2021), <https://www.jsonline.com/story/news/politics/elections/2021/11/03/racine-sheriff-seeks-charges-wisconsin-elections-commissioners/6272910001/>. These maneuvers will be discussed in detail in the final section of this report, but they illustrate the risks that accompany the overcriminalization of election law.
- ¹⁴⁷ S.B. 1574, 55th Leg., Reg. Sess. (Ariz. 2022).
- ¹⁴⁸ Ariz. Stat. § 13-707.
- ¹⁴⁹ H.B. 1225, 2022 Reg. Sess. (Miss. 2022).
- ¹⁵⁰ S.B. 1027, 55th Leg., Reg. Sess. (Ariz. 2022); H.B. 7061, Reg. Sess. (Fla. 2022); S.B. 524, Reg. Sess. (Fla. 2022).
- ¹⁵¹ H.B. 1567, 167th Gen. Court, Reg. Sess. (N.H. 2022).
- ¹⁵² See *supra* note 38.
- ¹⁵³ S.B. 1027, 55th Leg., Reg. Sess. (Ariz. 2022).
- ¹⁵⁴ Ariz. Office of the Attorney General, *Election Integrity Unit*, <https://www.azag.gov/criminal/eiu>.
- ¹⁵⁵ David Schwartz & Nathan Layne, *'Truth is truth': Trump Dealt Blow as Republican-Led Arizona Audit Reaffirms Biden Win*, Reuters (Sept. 27, 2021), <https://www.reuters.com/world/us/arizona-republicans-release-findings-widely-panned-election-audit-2021-09-24/>.
- ¹⁵⁶ Daniel Funke, *Fact Check: No Evidence 'lost votes' or 'ghost votes' Affected Arizona's Election Outcome*, USA Today (Sept. 15, 2021), <https://www.usatoday.com/story/news/factcheck/2021/09/15/fact-check-arizona-voter-fraud-not-proven-viral-canvassing-report/8262315002/>.
- ¹⁵⁷ See H.B. 1204, 73rd Gen. Assemb., Reg. Sess. (Colo. 2022); H.B. 1455, 101st Gen. Assemb., 2nd Reg. Sess. (Mo. 2022); H.B. 646, 2022 Reg. Sess. (Miss. 2022); H.B. 4293, 85th Leg., Reg. Sess. (W. Va. 2022). This Report takes no position on the availability of vote by mail or the many elements of vote by mail systems because vote by mail does not increase or decrease the risk of election subversion. Restrictions or expansions of vote by mail are the type of policy choices routinely made by legislatures and are therefore not included in this Report. However, specific bills that affect vote by mail and also increase the risk of election subversion—such as the bills discussed here that create criminal liability associated with administering vote by mail programs—are included.
- ¹⁵⁸ A.B. 1004, 105th Leg., Reg. Sess. (Wis. 2022); S.B. 935, 105th Leg., Reg. Sess. (Wis. 2022).
- ¹⁵⁹ See Wis. Stat. § 939.51(3)(c).
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Appendix

1 Bills usurping control over election results

2 Bills requiring partisan or unprofessional election "audits" or reviews

3 Bills seizing power over election responsibilities

4 Bills creating unworkable burdens in election administration

5 Bills imposing disproportionate criminal or other penalties

State	Bill Number	Date Introduced	Author	Summary Status as of May 4	1	2	3	4	5
Alabama	H 194	2/1/2022	Allen (R)	Enacted				x	x
Alabama	H 204	2/2/2022	Hanes (R)	Pending		x			
Alabama	H 41	1/11/2022	Allen (R)	Pending				x	x
Alabama	H 74	1/11/2022	A. Baker (R)	Pending			x	x	
Alaska	H 196	4/28/2021	Vance (R)	Pending			x		
Alaska	H 286	1/18/2022	Rules Cmt	Pending				x	
Alaska	H 368	2/22/2022	Kurka (R)	Pending		x		x	
Alaska	H 95	2/18/2021	N/A	Pending					x
Alaska	S 167	1/18/2022	Rules Cmt	Pending				x	
Alaska	S 39	1/19/2021	Shower (R)	Pending			x		
Arizona	H 2080	1/10/2022	Finchem (R)	Pending				x	
Arizona	H 2237	1/12/2022	Hoffman (R)	Pending					x
Arizona	H 2242	1/12/2022	Hoffman (R)	Pending					x
Arizona	H 2244	1/12/2022	Finchem (R)	Pending				x	
Arizona	H 2289	1/13/2022	Fillmore (R)	Pending			x	x	
Arizona	H 2378	1/13/2022	Bolick (R)	Pending				x	
Arizona	H 2379	1/13/2022	Bolick (R)	Pending			x		
Arizona	H 2476	1/13/2022	Carroll (R)	Pending	x				
Arizona	H 2491	1/13/2022	Hoffman (R)	Pending					x
Arizona	H 2492	1/13/2022	Hoffman (R)	Enacted					x
Arizona	H 2596	1/21/2022	Fillmore (R)	Pending	x	x	x	x	
Arizona	H 2703	2/3/2022	Bolick (R)	Pending		x			
Arizona	H 2743	2/7/2022	Fillmore (R)	Pending			x	x	
Arizona	H 2777	2/7/2022	Finchem (R)	Pending		x			
Arizona	HCR 2033	2/7/2022	Finchem (R)	Pending	x				
Arizona	S 1012	1/10/2022	Townsend (R)	Pending			x		
Arizona	S 1027	1/10/2022	Rogers (R)	Pending					x
Arizona	S 1056	1/10/2022	Townsend (R)	Pending				x	x
Arizona	S 1259	1/19/2022	Mesnard (R)	Pending			x		
Arizona	S 1285	1/20/2022	Ugenti-Rita (R)	Pending			x		
Arizona	S 1338	1/24/2022	Rogers (R)	Pending				x	
Arizona	S 1348	1/24/2022	Rogers (R)	Pending				x	
Arizona	S 1357	1/24/2022	Townsend (R)	Pending				x	
Arizona	S 1359	1/24/2022	Townsend (R)	Pending					x
Arizona	S 1360	1/24/2022	Townsend (R)	Pending				x	
Arizona	S 1570	1/28/2022	Townsend (R)	Pending				x	
Arizona	S 1574	1/28/2022	Townsend (R)	Pending				x	x
Arizona	S 1577	1/28/2022	Townsend (R)	Failed					x
Arizona	S 1603	1/31/2022	Townsend (R)	Pending		x			
Arizona	S 1608	1/31/2022	Townsend (R)	Pending				x	
Arizona	S 1629	1/31/2022	Borrelli (R)	Pending		x			x
Colorado	H 1204	2/7/2022	Hanks (R)	Pending				x	x
Florida	H 7061	2/4/2022	Public Integrity & Elections Cmt	Pending				x	x
Florida	H 99	1/11/2022	Sabatini (R)	Pending		x			
Florida	S 524	1/11/2022	Hutson (R)	Enacted				x	x

State	Bill Number	Date Introduced	Author	Summary Status as of May 4	1	2	3	4	5
Georgia	H 1359	2/14/2022	A. Powell (R)	Pending				x	
Georgia	H 1392	2/17/2022	Gunter (R)	Pending					x
Georgia	H 1402	2/17/2022	Barr (R)	Pending				x	
Georgia	H 1464	2/28/2022	Burchett (R)	Pending				x	x
Illinois	H 4487	1/12/2022	Wilhour (R)	Pending					x
Illinois	H 4748	1/24/2022	B. Hernandez (D)	Pending		x			
Illinois	S 3059	1/5/2022	Bailey (R)	Pending					x
Indiana	H 1173	1/6/2022	Wesco (R)	Pending				x	
Indiana	H 1317	1/11/2022	A. Morrison (R)	Pending			x		
Indiana	S 134	1/4/2022	Brown (R)	Enacted				x	
Indiana	S 329	1/10/2022	Houchin (R)	Failed			x		
Iowa	H 2174	2/1/22	Salmon (R)	Pending		x			
Iowa	H 2526	2/23/22	State Government Cmt	Pending				x	
Iowa	S 2343	2/17/2022	State Government Cmt	Pending				x	
Kansas	HCR 5014	2/24/2021	Appropriations Cmt	Adopted			x		
Kansas	H 2319	2/10/2021	C. Esau (R)	Pending			x		
Kansas	S 293	3/11/2021	Federal and State Affairs Cmt	Pending				x	x
Kansas	S 307	3/25/2021	Federal and State Affairs Cmt	Pending				x	
Kansas	S 390	1/25/2022	Hilderbrand (R)	Pending				x	x
Kansas	S 418	1/27/2022	Federal and State Affairs Cmt	Pending			x		
Kansas	S 438	2/4/2022	Judiciary Cmt	Pending		x			
Kansas	SCR 1618	1/27/2022	Judiciary Cmt	Pending			x		
Kentucky	H 153	1/4/2022	Tate (R)	Pending				x	
Kentucky	H 301	1/13/2022	Flannery (R)	Enacted				x	x
Louisiana	H 359	3/14/2022	Beaullieu (R)	Pending			x		
Louisiana	H 811	3/14/2022	Miguez (R)	Pending				x	
Louisiana	S 226	3/14/2022	Cloud (R)	Pending					x
Michigan	H 4511	3/16/2021	Hornberger (R)	Pending					x
Michigan	H 4952	6/1/2021	Maddock (R)	Pending					x
Michigan	H 4963	6/3/2021	Carra (R)	Pending					x
Michigan	H 5091	6/22/2021	Carra (R)	Pending		x			
Michigan	H 5167	6/29/2021	Kahle (R)	Pending				x	
Michigan	H 5186	7/1/2021	Hoitenga (R)	Pending				x	
Michigan	H 5253	8/17/2021	Lightner (R)	Pending				x	
Michigan	S 284	3/24/2021	Lauwers (R)	Pending				x	
Michigan	S 289	3/24/2021	Nesbitt (R)	Pending			x		
Michigan	S 297	3/24/2021	McBroom (R)	Pending				x	
Minnesota	H 2732	1/31/2022	Daudt (R)	Pending				x	x
Minnesota	H 3235	2/10/2022	Gruenhagen (R)	Pending		x			
Minnesota	H 3505	2/17/2022	Heinrich (R)	Pending				x	
Minnesota	H 4469	3/21/2022	Nash (R)	Pending				x	
Minnesota	S 2896	2/4/2022	Benson (R)	Pending			x		x
Minnesota	S 3141	2/11/2022	Anderson (R)	Pending		x			
Minnesota	S 3333	2/21/2022	Koran (R)	Pending				x	
Minnesota	S 3398	2/23/2022	Ruud (R)	Pending			x	x	
Minnesota	S 3420	2/23/2022	Jasinski (R)	Pending			x		x
Minnesota	S 3469	2/23/2022	Kiffmeyer (R)	Pending				x	
Minnesota	S 3663	3/1/2022	Koran (R)	Pending			x		x

State	Bill Number	Date Introduced	Author	Summary Status as of May 4	1	2	3	4	5
Minnesota	S 4290	3/24/2022	Westrom (R)	Pending		x			
Mississippi	H 1126	1/17/2022	Eubanks (R)	Pending				x	x
Mississippi	H 1225	1/17/2022	Owen (R)	Pending					x
Mississippi	H 1365	1/17/2022	Gunn (R)	Enacted				x	
Mississippi	H 34	1/4/2022	Ladner (R)	Failed			x		
Mississippi	H 646	1/17/2022	Hobgood-Wilkes (R)	Failed					x
Mississippi	S 2296	1/17/2022	McDaniel (R)	Failed				x	x
Mississippi	S 2413	1/17/2022	Tate (R)	Failed				x	
Mississippi	S 2473	1/17/2022	Hill (D)	Failed				x	
Mississippi	S 2574	1/17/2022	J. Fillingane (R)	Failed			x		x
Mississippi	S 2610	1/17/2022	Tate (R)	Failed		x			
Missouri	H 1455	1/5/2022	Billington (R)	Pending					x
Missouri	H 1483	1/5/2022	A. Kelley (R)	Pending		x	x	x	
Missouri	H 2081	1/5/2022	Stacy (R)	Pending					x
Missouri	H 2389	1/11/2022	Cook (R)	Pending				x	
Missouri	H 2531	1/24/2022	A. Kelley (R)	Pending			x	x	
Missouri	H 2577	1/26/2022	J. Simmons (R)	Pending				x	x
Missouri	H 2630	2/1/2022	Schroer (R)	Pending				x	
Missouri	H 2633	2/1/2022	Boggs (R)	Pending				x	
Missouri	S 1065	1/18/2022	D. Hoskins (R)	Pending		x		x	x
Missouri	S 668	1/5/2022	Burlison (R)	Pending				x	
Missouri	S 695	1/5/2022	Brattin (R)	Pending		x		x	x
Missouri	S 738	1/5/2022	Eigel (R)	Pending				x	
Nebraska	L 849	1/6/2022	Bostar (NP)	Pending					x
Nebraska	L 858	1/6/2022	Clements (NP)	Pending				x	
New Hampshire	CACR 16	1/5/2022	Abramson (R)	Pending			x		x
New Hampshire	CACR 30	3/22/2022	Abramson (R)	Pending				x	x
New Hampshire	H 1064	1/5/2022	Alliegro (R)	Pending				x	
New Hampshire	H 1324	1/5/2022	Abramson (R)	Failed			x		
New Hampshire	H 1359	1/5/2022	Rhodes (R)	Failed					x
New Hampshire	H 1473	1/5/2022	Abrami (R)	Pending		x			
New Hampshire	H 1484	1/5/2022	Baxter (R)	Pending		x			
New Hampshire	H 1567	1/5/2022	Alliegro (R)	Pending					x
New Jersey	A 3388	3/7/2022	Wirths (R)	Pending				x	
New Jersey	S 2274	3/10/2022	Oroho (R)	Pending				x	
New York	A 4158	2/1/2021	Lavine (D)	Pending				x	
North Carolina	H 606	4/21/2021	McNeill (R)	Pending			x		
North Carolina	H 715	4/29/2021	C. Smith (R)	Pending					x
North Carolina	H 766	5/4/2021	J. Johnson (R)	Pending				x	x
North Carolina	S 731	8/3/2021	D. Davis (D)	Pending				x	
Oklahoma	H 3046	2/7/2022	Lepak (R)	Enacted				x	x
Oklahoma	H 3282	2/7/2022	Humphrey (R)	Pending		x	x		
Oklahoma	H 3677	2/7/2022	S. Roberts (R)	Pending				x	x
Oklahoma	H 3680	2/7/2022	S. Roberts (R)	Pending				x	x
Oklahoma	S 1457	2/7/2022	Standridge (R)	Pending		x			
Oklahoma	S 1690	2/7/2022	Dahm (R)	Pending		x			
Oklahoma	S 523	2/1/2021	Paxton (R)	Pending			x		
Pennsylvania	H 1482	3/29/2022	Cutler (R)	Pending		x			

State	Bill Number	Date Introduced	Author	Summary Status as of May 4	1	2	3	4	5
Pennsylvania	H 1502	6/1/2021	Moul (R)	Pending				x	
Pennsylvania	H 1596	6/10/2021	Wheeland (R)	Pending		x		x	
Pennsylvania	H 1800	3/29/2022	Grove (R)	Pending			x	x	x
Pennsylvania	H 2044	11/3/2021	Nelson (R)	Pending				x	
Pennsylvania	H 33	6/22/2021	Day (R)	Pending					x
Pennsylvania	HR 7	1/21/2021	Diamond (R)	Pending	x				
Pennsylvania	S 640	5/6/2021	Brooks (R)	Pending		x			
Pennsylvania	S 819	8/11/2021	Mastriano (R)	Pending			x		
Pennsylvania	S 821	8/11/2021	Mastriano (R)	Pending			x		
Pennsylvania	SB 106	1/22/2021	Argall (R)	Pending		x			
Pennsylvania	SR 8	1/20/2021	Dush (R)	Pending	x				
Pennsylvania	SR 9	1/20/2021	Dush (R)	Pending	x				
Rhode Island	H 7214	1/26/2022	Place (R)	Pending		x			
Rhode Island	H 7830	3/4/2022	Morgan (R)	Pending				x	
South Carolina	H 3877	2/11/2021	G.R. Smith (R)	Pending				x	
South Carolina	H 4255	4/22/2021	S. Long (R)	Pending				x	x
South Carolina	H 4550	1/11/2022	Jones (R)	Pending		x			
South Carolina	H 4551	1/11/2022	S. Long (R)	Pending		x			
South Carolina	S 499	1/28/2021	Campsen (R)	Pending			x		
South Dakota	H 1329	2/2/2022	Howard (R)	Pending		x			
South Dakota	S 122	1/26/2022	Crabtree (R)	Enacted				x	
Tennessee	H 1276	2/11/2021	Griffey (R)	Pending				x	
Tennessee	H 1560	2/24/2021	Mitchell (D)	Pending			x		
Tennessee	H 1714	1/12/2022	Warner (R)	Failed		x			
Tennessee	H 1883	1/20/2022	Rudd (R)	Pending		x			
Tennessee	H 2011	1/26/2022	Casada (R)	Failed					x
Tennessee	H 2074	1/27/2022	Griffey (R)	Failed				x	
Tennessee	H 2112	1/28/2022	Warner (R)	Pending		x			
Tennessee	H 2483	2/1/2022	Zachary (R)	Enacted			x		x
Tennessee	H 2585	2/2/2022	Moon (R)	Enacted		x			
Tennessee	H 966	2/10/2021	Carringer (R)	Pending				x	
Tennessee	S 1657	11/15/2021	Bowling (R)	Pending		x			
Tennessee	S 1865	1/20/2022	Jackson (R)	Pending		x			
Tennessee	S 1939	1/25/2022	Bowling (R)	Pending		x			
Tennessee	S 2267	2/1/2022	Niceley (R)	Failed			x		x
Tennessee	S 2359	2/1/2022	Bowling (R)	Pending				x	
Tennessee	S 2487	2/2/2022	Briggs (R)	Pending			x		
Tennessee	S 2675	2/2/2022	J. Johnson (R)	Enacted		x			
Tennessee	S 2877	2/3/2022	Bailey (R)	Pending					x
Utah	H 313	2/2/2022	Hawkins (R)	Enacted		x		x	
Utah	S 219	2/16/2022	Grover (R)	Enacted				x	
Virginia	H 1101	1/12/2022	LaRock (R)	Failed				x	
Virginia	S 605	1/12/2022	Chase (R)	Failed		x			
Virginia	S 80	1/12/2022	Stanley (R)	Enacted				x	
Washington	H 1778	1/10/2022	Klippert (R)	Failed		x		x	
Washington	H 1884	1/11/2022	Klippert (R)	Failed		x			
Washington	H 2115	2/2/2022	Kraft (R)	Failed		x		x	
Washington	S 5679	1/10/2022	Wagoner (R)	Failed				x	

State	Bill Number	Date Introduced	Author	Summary Status as of May 4	1	2	3	4	5
West Virginia	H 3233	1/12/2022	Pritt (R)	Failed				x	
West Virginia	H 4097	1/17/2022	Holstein (R)	Enacted				x	
West Virginia	H 4293	1/20/2022	Maynard (R)	Failed					x
Wisconsin	A 1000	2/16/2022	Petersen (R)	Pending			x		x
Wisconsin	A 1001	2/16/2022	Sortwell (R)	Pending				x	
Wisconsin	A 1003	2/16/2022	Macco (R)	Pending		x	x	x	x
Wisconsin	A 1004	2/16/2022	Macco (R)	Pending				x	x
Wisconsin	A 1005	2/16/2022	Dittrich (R)	Pending				x	
Wisconsin	A 1006	2/16/2022	Spiros (R)	Pending			x		
Wisconsin	A 1046	2/17/2022	Behnke (R)	Pending				x	
Wisconsin	AJR 111	1/18/2022	Kuglitsch (R)	Pending			x		
Wisconsin	A 194	3/23/2021	R. Brooks (R)	Pending				x	
Wisconsin	A 198	3/25/2021	Sanfelippo (R)	Pending					x
Wisconsin	A 201	3/25/2021	Gundrum (R)	Pending					x
Wisconsin	A 310	5/4/2021	Tauchen (R)	Pending					x
Wisconsin	A 398	6/14/2021	Brandtjen (R)	Pending					x
Wisconsin	A 433	7/1/2021	Behnke (R)	Pending			x		
Wisconsin	A 761	12/7/2021	Ramthun (R)	Pending					x
Wisconsin	A 981	2/15/2022	Ramthun (R)	Pending				x	
Wisconsin	A 983	2/15/2022	Ramthun (R)	Pending		x			
Wisconsin	A 996	2/16/2022	Vos (R)	Pending			x	x	
Wisconsin	AJR 120	1/25/2022	Ramthun (R)	Pending	x	x			
Wisconsin	AJR 134	2/16/2022	August (R)	Pending				x	
Wisconsin	S 1077	3/9/2022	Bernier (R)	Pending				x	
Wisconsin	S 207	3/16/2021	Stroebele (R)	Pending				x	
Wisconsin	S 213	3/16/2021	Stroebele (R)	Vetoed				x	
Wisconsin	S 214	3/16/2021	Stafsholt (R)	Pending					x
Wisconsin	S 393	6/10/2021	Jacque (R)	Pending					x
Wisconsin	S 432	6/24/2021	Wimberger (R)	Pending			x		
Wisconsin	S 730	11/30/2021	Jacque (R)	Pending					x
Wisconsin	S 934	2/3/2022	Bernier (R)	Pending				x	
Wisconsin	S 935	2/3/2022	Bernier (R)	Vetoed				x	x
Wisconsin	S 936	2/3/2022	Bernier (R)	Vetoed		x	x	x	
Wisconsin	S 941	2/3/2022	LaMahieu (R)	Vetoed			x	x	
Wisconsin	S 942	2/3/2022	Stroebele (R)	Vetoed			x	x	x
Wisconsin	S 943	2/3/2022	Darling (R)	Vetoed			x		
Wisconsin	S 978	2/17/2022	Testin (R)	Failed				x	
Wisconsin	SJR 101	2/3/2022	Wimberger (R)	Adopted				x	
Wisconsin	SJR 84	1/3/2022	Marklein (R)	Adopted			x		
Wyoming	S 79	2/14/2022	Steinmetz (R)	Failed				x	



States United Democracy Center

The States United Democracy Center is a nonpartisan organization advancing free, fair, and secure elections. We focus on connecting state officials, law enforcement leaders, and pro-democracy partners across America with the tools and expertise they need to safeguard our democracy.

For more information, visit statesuniteddemocracy.org

Protect Democracy

Protect Democracy is a nonpartisan, nonprofit with an urgent mission: to prevent our democracy from declining into a more authoritarian form of government.

For more information, visit protectdemocracy.org



Law Forward

Law Forward is a nonprofit law firm focused on protecting and advancing democracy in Wisconsin. We use impact litigation, the administrative process, and public education to protect Wisconsin's fundamental democratic principles, and revive Wisconsin's traditional commitment to clean and open government.

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