



NATIONAL TASK FORCE ON ELECTION CRISES

UNDERMINING FREE & FAIR ELECTIONS:
AN UPDATE ON THE RISK OF ELECTION CRISES SINCE NOVEMBER 2020

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Undermining Free & Fair Elections: An Update on the Risk of Election Crises Since November 2020

The mission of the National Task Force on Election Crises is to prevent election crises whenever possible, and to prepare to respond to and mitigate crises when they do occur. That mission remains as critical today as it was during the 2020 presidential election. In fact, the Task Force considers the risk of crises threatening future elections in this country to be dangerously high.

The 2020 election was among the most challenging in modern history -- beset by a global pandemic, civil unrest, and unprecedented attacks on our democratic institutions. The country managed to make it through more than one crisis, conducting a secure election and ensuring a successful (if not entirely peaceful) transition of power. But there were -- and continue to be -- important lessons to be learned.

In January the Task Force released *Strengthening our Elections and Preventing Election Crises: Lessons and Recommendations from the 2020 General Election*. Since then the country has made some progress consistent with the Task Force's recommendations. But some lawmakers, particularly at the state level, have proposed (or even enacted) changes to election laws driven by a false belief among part of the electorate that the 2020 election was somehow stolen.

Any legislative activity premised on lies and conspiracy theories is deeply concerning. But recent efforts by highly partisan state legislatures to interfere in election administration in a way that may disrupt the conduct of elections or allow for manipulation of election outcomes pose a particularly acute risk of future crises. Combined with a failure to address critical weaknesses in our election systems and protect election workers, as well as a failure to address the root causes of the January 6th insurrection, these efforts are a threat to the very foundation of our democracy.

This report highlights some of the most concerning trends that have developed in recent months and the critical reforms that are needed to protect our elections in 2022 and after.

INTERFERENCE IN ELECTION ADMINISTRATION

Since November, we have seen some positive developments at the state level in the form of legislation intended to improve election administration and increase voter access, and to address some of the lessons learned from 2020. Kentucky, for example, stands out as an example of productive, bipartisan lawmaking. The state recently enacted legislation to increase voting options and election security (at least as compared to pre-pandemic elections), including an expansion of early voting, an online portal for requesting a mail-in ballot, and a gradual transition to voting systems that guarantee a paper ballot trail.¹

Likewise, a number of states have taken steps to address the specific challenges that arose as a result of the time it took certain jurisdictions to report election results in November. Louisiana, for example, recently enacted (on a bipartisan basis) a law that allows parishes to process absentee and early voting ballots three days before an

¹ Bruce Schreiner, *Kentucky Governor Signs Bipartisan Early Voting Measure*, Associated Press (April 7, 2021). The Task Force takes no position on many of the components of Kentucky's new law. Indeed, our members have different views on topics such as third-party ballot collection. But we agree that measures such as expanded early voting and reasonable efforts at election security are important, and that Kentucky stands out as an example of bipartisan cooperation.

election with approval from the secretary of state.² The Pennsylvania legislature also passed a bill that would have allowed election administrators to begin processing ballots five days before an election.³ While these are relatively modest amounts of time (e.g., North Carolina allows ballots to be processed the fifth Tuesday prior to Election Day and counted two weeks before Election Day⁴), they are a step in the right direction. Similarly, both Nevada and Vermont expanded mail-in voting (the latter on a bipartisan basis).⁵ And Indiana, Massachusetts, Maryland, New Jersey, Oklahoma, and Virginia joined Kentucky in extending early voting options, while several more states are considering doing so.⁶

But competing with these positive developments is a wave of legislation that would restrict voter access or create new openings for partisan disruption or manipulation of election administration and, potentially, election outcomes. Some of the bills in the latter category of legislation -- through which state legislatures might arrogate or otherwise alter the role that experienced state and local election officials have had in conducting elections -- pose an especially urgent threat of future election crises.

In particular, state legislators have proposed more than two hundred bills in 41 states that have the potential to allow those legislators to interfere with election administration in one way or another, and at least two dozen bills have already been passed into law.⁷ In Georgia, for example, the omnibus election bill that passed in March (S.B. 202) included a provision that replaced the secretary of state as the chair of the State Elections Board with one selected

² H.388, Act. No. 423 (La. 2021).

³ Although there was bipartisan support for expanded pre-processing, Governor Wolf vetoed the entire bill based on other objections. It is unclear whether or when another bill may be considered. Julian Routh, *Gov. Tom Wolf Vetoes GOP-Backed Voting Bill, Calling It 'Riddled With Unacceptable Barriers'*, Pittsburgh Post-Gazette (June 30, 2021); Marie Albiges and Jonathan Lai, *GOP Proposes Major Election Overhaul, Including Stricter Voter ID and In-Person Early Voting*, Spotlight PA (June 10, 2021).

⁴ N.C.G.S.A. §§ 163-230.1, 163-234.

⁵ David Charns, *Gov. Sisolak Signs Permanent Mail-In Voting System Into Law*, 8 News Now (June 2, 2021); Julia Harte, *From Vermont to Kentucky, Some Republicans Expand Voting Access in 2021*, Reuters (June 7, 2021).

⁶ Zach Montellaro, *The Pandemic Changed How We Vote. These States Are Making the Changes Permanent*, POLITICO (June 21, 2021).

Passed laws: H.B. 1479, 122nd Gen. Assemb., Reg. Sess. (Ind. 2021); H.B. 574, 2021 Gen. Assemb. (Ky. 2021); H. 73, 192nd Gen. Ct. (Mass. 2021); H.B. 745, 2021 Gen. Assemb. (Md. 2021); S.B. 2023, 219th Leg. (N.J. 2021); H.B. 2663, 58th Leg. (Okla. 2021); H.B. 1968, 2021 Gen. Assemb. (Va. 2021).

Proposed laws: H.J.R. 59, 2021 Gen. Assemb. (Conn. 2021); S.J.R 13, 2021 Gen. Assemb. (Conn. 2021); H.B. 286, 2021 Gen. Sess. (La. 2021); H. 805, 192nd Gen. Ct. (Mass. 2021); S. 28 192nd Gen. Ct. (Mass. 2021); S. 468, 192nd Gen. Ct. (Mass. 2021); H.B. 206, 2021 Gen. Assemb. (Md. 2021); S.B. 596, 2021 Gen. Assemb. (Md. 2021); H.P. 423, 130th Gen. Leg. (Me. 2021); H.P. 1172, 130th Gen. Leg. (Me. 2021); S.B. 300, 2021 Gen. Leg. (Mi. 2021); H.F. 9, 92nd Leg. (Minn. 2021); H.F. 1160, 92nd Leg. (Minn. 2021); S.F. 1831, 92nd Leg. (Minn. 2021); S. 518A, 2021-2022 Reg. Sess. (N.Y. 2021); S. 557, 2021-2022 Reg. Sess. (N.Y. 2021); S. 744, 2021-2022 Reg. Sess. (N.Y. 2021); S. 1485, 2021-2022 Reg. Sess. (N.Y. 2021); S. 4306A, 2021-2022 Reg. Sess. (N.Y. 2021); S. 4658, 2021-2022 Reg. Sess. (N.Y. 2021); S.B. 440, 58th Leg. (Okla. 2021); H. 5745, 2021 Gen. Assemb. (R.I. 2021); S. 247, 2021 Gen. Assemb. (R.I. 2021); H.B. 2149, 87th Leg. (Tex. 2021).

⁷ States United Democracy Center, Protect Democracy, and Law Forward, *Democracy Crisis Report Update: New Data and Trends Show the Warning Signs Have Intensified in the Last Two Months* (June 10, 2021).

by the state legislature. It further gave both the statewide board and county commissions new authority to replace local election officials under certain conditions.⁸

At the most extreme end, legislators in a few states have proposed laws that might allow them to directly overturn election results they disagree with in the future. For example, a bill in Arizona provides that “by majority vote at any time before the presidential inauguration [the legislature] may revoke the secretary of state’s issuance or certification of a presidential elector’s certificate of election.”⁹ Similarly, a bill in Missouri would allow the legislature to “retain its authority to name presidential electors in cases of fraud” or if a court or the executive branch interfere in election administration (leaving it to the legislature to make such determinations itself).¹⁰ While not all of these efforts to change election administration are as significant in scope or likely impact as others (and many are unlikely to become law), they are part of a concerning trend of legislative responses to the outcome of the 2020 election in some states.

Finally, also included among these bills are ill-conceived (at best) proposals to impose criminal and civil penalties on election administrators who make common, unintentional errors or deviate in any way from established policies and procedures. Troublingly, several states (Arizona, Arkansas, Indiana, Iowa, Kansas, and North Dakota) have already passed some version of such legislation into law.¹¹

By further opening the door to partisan manipulation of election administration, this wave of legislation threatens not only to undermine confidence in our elections, but to actually undermine the integrity of election outcomes.

THREATS OF VIOLENCE AGAINST ELECTION VOLUNTEERS & OFFICIALS

One of the most concerning trends coming out of the 2020 election was the volume and intensity of threats of violence against election officials, administrators, and volunteers (and, in some cases, their families). In fact, we are still learning just how grave the situation was -- and continues to be, as recent reporting makes clear the extent to which right-wing extremists in particular have “terrorized” election workers.¹² The result of these threats (and other pressures) has been an unusually large number of election officials resigning or retiring this past year.¹³ And yet, despite proposing hundreds of bills addressing other aspects of election law, few (if any) state legislatures have taken up this issue.

The Task Force renews its call for federal and state governments to strengthen laws specifically to protect election workers from this sort of intimidation and to more aggressively enforce existing laws.¹⁴

⁸ According to *The New York Times*, the law has already led to “Republicans... removing Democrats of color from local boards” in at least 10 instances. Nick Corasaniti and Reid J. Epstein, *How Republican States Are Expanding Their Power Over Elections*, *The New York Times* (June 20, 2021).

⁹ H.B. 2720, 55th Leg., Reg. Sess. (Ariz. 2021).

¹⁰ H.B. 1301, 101st Gen. Assemb., Reg. Sess. (Mo. 2021).

¹¹ States United Democracy Center, Protect Democracy, and Law Forward, *Democracy Crisis Report Update: New Data and Trends Show the Warning Signs Have Intensified in the Last Two Months* (June 10, 2021).

¹² Linda So, *Trump-Inspired Death Threats Are Terrorizing Election Workers*, *Reuters* (June 22, 2021).

¹³ Brennan Center for Justice and Bipartisan Policy Center, *Election Officials Under Attack* (June 16, 2021).

¹⁴ The Task Force welcomes the recent announcement by the U.S. Department of Justice that it is launching a task force to investigate and prosecute threats against poll workers and election officials. Jane C. Timm, *We*

PARTISAN ELECTION REVIEWS & INVESTIGATIONS

Notwithstanding the fact that the integrity of the election results in key battlegrounds states has been confirmed through a variety of professional audits and/or recounts (as well as a record number of unsuccessful legal challenges¹⁵), several state legislatures are now pursuing their own so-called “audits” and other investigations. These reviews are being promoted, and in some cases conducted, by the very same people who have continued to spread conspiracy theories and other falsehoods about the election since November. While these efforts are nominally framed as an effort to learn lessons from 2020 rather than attempts to overturn the results, the way they are being conducted is cause for serious concern. Thus, the problem is not that some state legislatures are calling for further reviews of the election -- rather, it's that they are pursuing partisan processes that lack transparency, professional standards, and adequate safeguards for the security of ballots and election data and equipment.

Arizona was the first state to head down this path, and the deeply troubling nature of the ongoing process there is well-documented.¹⁶ But a number of other states are beginning to follow suit, including Georgia and Wisconsin. And legislators and others from at least eleven states, including Pennsylvania and Michigan,¹⁷ have made trips to Arizona to observe and learn from the process.¹⁸

There is certainly room for good-faith bipartisan efforts to improve the process of auditing elections in the future in a way that actually increases public confidence. Likewise, the recent proliferation of unprofessional, partisan election reviews has highlighted the need for stronger rules around the custody and preservation of ballots, voting machines, and other election materials (whatever the content in which they are being reviewed). The Task Force urges state lawmakers to focus on such reforms rather than pursuing ill-conceived efforts that will serve only to undermine confidence in our elections.

INSUFFICIENT FUNDING & ELECTION INFRASTRUCTURE

As the Task Force noted in January, funding and infrastructure are crucial to ensuring that our elections are secure and resilient in the face of future crises. State and local governments must make steady investments in the people, processes, and equipment necessary to conduct elections. It is also critical that Congress provide adequate,

Have to Protect Them': DOJ Vows Investigations, Prosecutions of Threats to Election Workers, NBC News (June 25, 2021).

¹⁵ As we [explained](#) in January, there were a record number of lawsuits filed in key states after the election, and those lawsuits were almost universally rejected by state and federal courts as lacking sufficient evidence and/or cognizable legal theories. In fact, as of January, the lawsuits were rejected at a rate of 1 to 59 (with the one success affecting only a relatively small number of ballots in Pennsylvania for reasons having nothing to do with alleged fraud).

¹⁶ See, e.g., Trey Grayson and Barry C. Burden, *Report on the Cyber Ninjas Review of the 2020 Presidential and U.S. Senatorial Elections in Maricopa County, Arizona*, States United Democracy Center (June 22, 2021); Stephen Richer, *The Madness of the Maricopa County Election Audit*, National Review (May 27, 2021); Dan Zak, *The Mess in Maricopa*, Washington Post (May 21, 2021).

¹⁷ That said, the Task Force commends the Michigan Senate Oversight Committee for its effort to refute claims of widespread or systematic fraud in Michigan's prosecution of the 2020 election. See *Report on the November 2020 Election in Michigan* (June 2021).

¹⁸ Andrew Oxford, Ryan Randazzo, and Lacey Latch, *Arizona Audit of Maricopa County Ballots Has Attracted Out-of-State Visitors. Here's The List*, USA Today (June 15, 2021).

consistent funding for election administration to supplement state and local funding. At the same time, officials at all levels should use the lessons learned this past year to evaluate whether institutions like the U.S. Election Assistance Commission and the Cybersecurity and Infrastructure Security Agency, and related structures, can be improved to better prepare for and respond to future challenges.

WEAKNESSES IN FEDERAL LAW SPECIFIC TO PRESIDENTIAL ELECTIONS

In January, the Task Force recommended amending both the Electoral Count Act and the Presidential Transition Act. Both continue to be important opportunities for bipartisan reform. The Electoral Count Act in particular is a critical component of the reforms necessary to avoiding an electoral crisis in 2024, and should be a priority in Congress now, well before the 2024 political landscape begins to take form.

ACCOUNTABILITY FOR THE JANUARY 6TH INSURRECTION

The Task Force is deeply disappointed that in the face of a violent attack on our nation's capital, Congress has not undertaken a bipartisan effort to understand the root causes. This inability to come to agreement on a bipartisan Commission only reinforces the severity of the crisis our democracy is in and the growing need to enact critical reforms at the state and federal levels.

CONCLUSION

The need to strengthen our electoral system and guard against crises is even more urgent than it was several months ago. Since November 2020, attempts to subvert our electoral system have become increasingly brazen (even violent) as one democratic norm after another is challenged, and the risk that future elections will be undermined has therefore increased. The Task Force urges policymakers, legislators, and other stakeholders to heed the lessons we learned this past year and undertake much-needed reforms to secure the future of free and fair elections. The future of our democracy depends on it.