



NATIONAL TASK FORCE ON ELECTION CRISES

Lessons from the 2022 General Election: How to Prevent Election Crises,
and Emerging Issues for 2023, 2024, and Beyond

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Table of Contents

Executive Summary	3
Lessons from Election Administration and Operations in 2022	6
Lessons from the Voting Experience in 2022	8
Lessons from Canvassing and Certification Processes in 2022	10
Highlights of Emerging Issues to Watch in 2023 and 2024	12
Conclusion	19

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EXECUTIVE SUMMARY

Two years after the 2020 election and its aftermath sounded grave alarms about the stability of our elections, the 2022 cycle has offered hope that the risk of certain triggers for election crises in 2024 and beyond has diminished. Yet significant threats remain and have the potential to grow, requiring action and vigilance going forward.

There is no question that for many election experts, clenched teeth gave way to sighs of relief over the course of this fall's election season. For the most part, voting took place without significant disruption. While there were incidents of intimidation, especially targeting people of color, violent confrontations at polling places did not occur. There were no widespread cyber incidents or other disruptions.

In multiple states, voters rejected candidates who refused to acknowledge the results of the 2020 election and who would have played a key role in adjudicating future elections, such as a governor or secretary of state. Importantly, most losing candidates conceded their loss – bolstering a critical norm for the peaceful transfer of power.

Though threats to our elections do remain and are of serious concern, these positive outcomes have significantly reduced the risk of certain election crises in 2024 and beyond, and create an opportunity to further strengthen election systems to prevent future crises, not just prepare for them.

They show that proactive interventions – such as greater communication and transparency around the details of election administration – can yield positive results.

There have also been some encouraging developments on laws and policies governing elections. At the state level, lawmakers and the courts have rejected many proposed laws or policies that could have made it easier for politicians to subvert legitimate election outcomes. And Congress made a critical stride towards ensuring the peaceful transfer of power in presidential elections by passing badly needed reforms to the Electoral Count Act governing the casting and counting of electoral votes.

Yet this relative success was achieved at a price and despite many obstacles - some of which suggest darker possibilities for 2024 and beyond.

Election officials operated under unacceptable pressures of threats and harassment, as well as exacerbated resource constraints. Like many officials, they had to confront staffing shortages and increased expenses, including for items as basic and essential as paper. But unlike colleagues in most other fields, they also paid a literal *and* figurative price for the distrust and scrutiny growing out of the 2020 election cycle and its allegations of fraud and malfeasance; addressing those pressures meant unprecedented costs for recruiting staff and poll workers, extra trainings, information campaigns, physical security and other measures to combat skeptics and conspiracy theorists. Election workers were swamped with excessive and abusive information requests and threatened with potential prosecution for doing their jobs. They had to meet these challenges amid unprecedented threats of violence that, together with other factors, drove record numbers of their colleagues in election administration to resign.

Voters and election officials also had to navigate numerous changes to election and voting processes since the 2020 election, many of which made election administration and voting more difficult. Experts have not yet fully assessed the impact of legislation enacted in some states that added restrictions on voting by absentee ballot, early voting, and voting by dropbox, all of which could add stresses to the system that could feed into future crises.

It also took intense vigilance and strategic legal intervention to achieve a relatively smooth election season. For example, in Arizona, armed groups aggressively monitored dropbox locations and intimidated voters until a federal judge imposed sharp restrictions on their conduct.

The threat of political violence was one the most concerning aspects of the 2022 cycle and one that shows no signs of abating.

Additional factors also underscore that the risk of election crises in 2024 and beyond remains.

The 2024 presidential election may face more focused efforts to disrupt it than the 2022 midterms, given the higher stakes. Further, the larger scale of the 2024 election may also exacerbate some of the ongoing and emerging threats to free, fair and secure elections.

Across the country, scores of candidates who continue to question the legitimacy of the 2020 presidential election were elected to state posts. In certain states, these officials have won posts overseeing elections or attained overwhelming control of government statewide, creating the possibility of future aggressive actions that could disenfranchise voters in the name of combatting perceived fraud. And in Congress, candidates who minimized the violent assault on the Capitol and continue to question the legitimacy of President Biden's election, were reelected.

Although the overwhelming majority of candidates across the country conceded their losses, some local officials in Arizona and Pennsylvania balked at certifying lawful results. There were efforts to insist on hand counting ballots – a time consuming and potentially inaccurate method likely to delay results and possibly exacerbate conspiracy theories rather than resolve them – as the only legitimate means of determining a winner. In California, unfortunate but predictable delays in counting were used as a pretext to allege wrongdoing. These tactics and arguments could create significant instability in 2024 and beyond if pursued on a broader scale.

There is also a potential threat from the “constitutional sheriffs” movement that incorrectly asserts that sheriffs are the highest legal authority in their county and can assert their own interpretation of the Constitution, including in the realm of election law. Adherents of this movement could act destructively in future elections, or withhold critical law enforcement resources needed to ensure safe elections.

We must also be mindful of the dog that did not bark – this time. Malicious interference from foreign actors remains an ongoing risk, as does the serious challenge of potential cyber attacks or violence from foreign or domestic actors.

There is no shortage of recommendations of what can be done to strengthen our democracy, or of controversy regarding some of those proposals. There should be no dispute, however, on the need to prevent or prepare for election crises and to better respond to them if they do occur. Our elections must be safe and secure and accurately convey the will of the voters.

The National Task Force on Election Crises recommends the following actions to prevent and/or better prepare for future election crises:

Election Administration and Security

- ✓ *Sustain and expand crisis-tested voting options, including early voting and mail-in voting*
- ✓ *Ensure sufficient funding for election administration including equipment, supplies, security, personnel retention, and educating voters about election mechanics*
- ✓ *Better protect voters, election workers and officials from threats of violence and intimidation*
- ✓ *Community leaders and stakeholders should engage with law enforcement and local elected leaders throughout the voting period, to develop plans for protecting public safety and the right to vote in ways best suited to the needs of the community, including communities of color*
- ✓ *Continue efforts to prevent cyber or other attacks by foreign adversaries or domestic disrupters*
- ✓ *Recruit poll workers on an ongoing basis, reflecting the full diversity of communities*
- ✓ *Where possible, speed up processes for determining results, including legislation or other necessary measures to allow for expanded pre-canvassing of absentee ballots*
- ✓ *Review deadlines to request and return mail ballots for possible clarification or improvements to ensure they are consistent with postal delivery standards and local election rules, and will be counted*
- ✓ *Continue best practices of transparency and trust-building*
- ✓ *Require paper ballots that voters can review before submitting to ensure trust and facilitate appropriate audits*
- ✓ *Decline attempts to expand electronic ballot return, inappropriate hand-counting, and other insecure or inaccurate practices*

Legal Reforms

- ✓ *States should examine election emergency statutes and where appropriate make updates to provide more predictable and depoliticized means of election modification for emergency situations, and where necessary make additional changes to conform with the Electoral Count Reform Act*
- ✓ *States should improve statutory protections for election officials and their families*
- ✓ *Hold candidates and their attorneys accountable for knowingly pursuing bad-faith or frivolous legal challenges; continue to pursue accountability for those who committed criminal acts on and leading up to January 6th*

Social media platforms and news media

- ✓ *Downgrade or delete rather than simply label election-related disinformation, and speed up processes for labeling/removing posts*
- ✓ *Hand-pick or remove trending lists and up-next recommendations for election-related content*
- ✓ *Continued media transparency and responsibility in projections*
- ✓ *Invest in coverage of election issues in 2023 county and local races and beyond*

Civil society

- ✓ *Business, faith, labor, and cultural leaders must stay engaged in supporting free and fair elections, especially at the local and county levels*
- ✓ *Increase investments in work to prevent political violence, including through projects to research and defuse intense polarization that can lead to violence*
- ✓ *Increase investments to identify the best methods to inoculate against disinformation about voting options and the validity of election results*
- ✓ *Civil society must still prepare for the worst, closely follow potential threats, and be ready to speak out and act if an election crisis emerge*

Though some of these recommendations stem from the specific experience of the 2022 election as well as emerging issues, other recommendations (e.g. election funding) reflect responses to systemic vulnerabilities in our election systems. It should also be noted that many individual Task Force members and organizations endorse a wide range of additional actions to improve elections in the United States beyond those enumerated here, including to advance voting rights and nonpartisan election administration, as well as to improve election operations and election security. This list is scoped to constitute the consensus recommendations of Task Force members for the specific purpose of preventing and preparing for future election crises.

LESSONS FROM ELECTION ADMINISTRATION AND OPERATIONS IN 2022

The successful administration of elections relies on a great degree of coordination across a network of tens of thousands of state and local officials and volunteers prior to election day. Unprecedented levels of turnover and the possibility of shortages of crucial resources due to supply chain issues and weather emergencies stoked worries that the 2022 election could see major breakdowns in administration. Despite these concerns we saw a general continuity of knowledge, transfer of expertise, and effective planning that allowed for a successfully conducted election. Some outlying issues with supplies and technical processes point to areas of focus for the next cycle, but we should also be encouraged that these exceptions were generally minimal. More concerning is the level of threats directed at election workers, the uneven response, and the likelihood that this will remain an issue going forward.

Election administration was largely resilient to unprecedented turnover, hostile pressure campaigns, supply chain issues, and catastrophic weather. In advance of November, election offices around the country saw an unprecedented number of experienced workers [leaving their jobs](#) due, in no small part, to the rise in [harassment and threats](#) they have experienced since 2020. There were significant concerns that this turnover would severely deprive election administrators of needed experience and knowledge in the leadup to the 2022 election. There were also concerns that a [seeming effort to discredit](#) The Electronic Registration Information Center (ERIC),¹ combined with the decline of institutional expertise, could lead to significant issues in maintaining the accuracy of the voter rolls. Worst case scenarios did not materialize as essential expertise appears to have been efficiently transferred or retained in most instances. Moreover most states (32 plus DC) remain members of ERIC. There is ongoing cause for concern however; [in early 2023 Alabama's newly elected Secretary of State, Wes Allen, announced plans to withdraw from ERIC](#) after attacking it on the campaign trail as a “leftist” organization.

Even in those cases where very high demands were placed on election administrators, they typically rose to the occasion. Activists in some places attempted to overwhelm election workers with [records requests](#) or [challenges to voters'](#) registrations or ballots, yet these strategies did not result in administrative crises. In Michigan, for example, when [22,000 absentee ballots were challenged](#) at once, the director of elections quickly circulated guidance to local election officials outlining that the controlling statute does not allow the bulk submission of challenges.

[Paper supply chain issues](#), largely stemming from the COVID-19 pandemic and [catastrophic weather](#) in the Southeast, were also of significant concern to election administrators in the lead-up to the general

¹ [ERIC](#) is a nonprofit organization that helps member states maintain accurate voter rolls through data sharing. It is particularly important in identifying voters who have relocated across state borders and registered to vote in their new state.

election. Although there were exceptions, most jurisdictions were able to obtain essential supplies and some of the [counties](#) most affected by Hurricane Ian still managed to effectively handle high levels of turnout.

Nevertheless, the exceptions to this general resilience reveal an ongoing need for more planning and more consistent resources, as well as the potential toll of staff turnover. For example, in some Maricopa County polling locations [printed ballots could not be read by the tabulating machines](#) in the polling place. Although no voters were turned away due to these issues, they did contribute to unnecessary delays. In [Harris County \(TX\)](#), there were delays in polling place openings, ballot shortages, and machine malfunctions that county officials acknowledged as a result of a lack of sufficient full-time staff and resources. In Pinal County (AZ), 60,000 primary ballots inadvertently excluded candidates from municipal races, [a mistake caused by a programming error that went unnoticed by understaffed county officials](#).²

Election officials also faced unprecedented mass ballot challenges. While these challenges did not ultimately overwhelm election officials or affect final outcomes, they did [create serious burdens](#) on election officials.

More attention is needed to hire, retain and protect election officials. Along with local and state level organizations, [federal law enforcement has been tracking harassment of election officials and opening investigations](#) into the most serious threats. However, only a small fraction of reported contacts have thus far resulted in official investigations, [and threats continued to pour in during the runoff to Election Day and beyond](#). Election mis- and disinformation appeared to spark or intensify some attacks; for instance, [disinformation about election equipment made by Dominion and others](#) in turn prompted harassment or threats towards individuals operating or servicing the equipment. The election community, law enforcement, policy makers and others must work together to build strategies to prevent and mitigate this unacceptable level of threats.

Meanwhile, the hostile environment has harmed staffing and retention for election operations, and will require more stringent responses to ensure an ample workforce for the next election cycle and beyond. It is particularly important to develop and retain expertise among permanent election workers as they typically work towards the longer term goals associated with two- and four- year election cycles. A [survey from 2020](#) found that, at that time, the median election worker had twelve years of experience, with those from larger jurisdictions having slightly more than those from smaller ones. High levels of turnover since the survey was conducted suggest a significant depletion of experience-based knowledge, opening the door to possible errors and inefficiencies. A [2022 survey of local election workers](#) found that 1 in 3 knew one or more election workers who had left their job – at least in part due to security concerns – and 1 in 5 said they themselves were unlikely to keep serving through the 2024 presidential election. One prominent example of the challenge is in Cochise County, Arizona, where the elections director recently [resigned](#) following lawsuits and other harassment directed at her amid a bitter fight over unlawful efforts to force a full hand count of all election ballots.

These dynamics illustrate the need for sustained resources and the importance of continued vigilance in preparation for 2024. Election administrators cannot plan for every potential scenario, but some steps can be taken to best prepare for what may arise:

² Pinal County's difficulties also affected some voting in the general election. A recount in the state's Attorney General race uncovered over five hundred votes missing from the original tally; votes that shrunk the winning candidate's margin of victory [and fueled the losing candidate's ongoing challenge of the results](#).

- Improve and maintaining predictable funding streams to account for lengthy procurement cycles in updating and replacing voting equipment and continued supply chain challenges
- Ensure adequate funding to fully staff election administration offices, including responding to unprecedented new levels of public information requests and ensuring worker security
- Improve strategies by law enforcement, policy makers, and others to deter and mitigate threats to election workers
- States should continue to join and participate in ERIC and reaffirm its value as a resource to improve the accuracy of voter rolls
- Recruit and train more people to staff election offices as long-standing employees leave

LESSONS FROM THE VOTING EXPERIENCE IN 2022

Preparations for each election effectively begin the moment the previous one ends, but in the aftermath of 2020, it was clear that future elections would demand even more attention to check growing threats. Between the COVID-19 pandemic highlighting the importance of mail-in voting, threats and harassment aimed at election workers, and other Election Day challenges, particular care would be needed to ensure the security and smoothness of voting in the 2022 midterms. With election officials now turning their eyes to the next cycle, it is worth examining how voters and the election administration community responded to threats to voting in 2022 – new and old, internal and external – and what lessons can be learned for 2024 and beyond.

Voting turnout is surging across varied methods. According to [FiveThirtyEight](#), turnout for the 2022 election was among historic highs, despite falling short of the record set in 2018. The early voting and mail-in voting options that boomed with the onset of the COVID-19 pandemic remain robust and popular options. It is estimated that upwards of [45 million Americans cast early or absentee ballots this cycle](#), and overwhelmingly had their ballots processed and counted smoothly. In turn, the high number of absentee ballots lessened the strain on precincts and poll workers on Election Day— although [extended lines](#) and [wait times](#) continued to be an issue in some jurisdictions.

Voters were informed of and adapted to new voting regulations. A spate of new voting laws were ratified in several states shortly after the 2020 election, many of which instituted new requirements and restrictions on voters. Ground-level organizations such as [Mi Familia Vota and the Texas Civil Rights Project](#) were immediately engaged in keeping voters apprised of what changes had or had not gone into effect, and what would be necessary in order to ensure that they were registered and able to vote on time. Relatively high turnout suggests such efforts were successful.

Some voters did get an unpleasant surprise at the polls due to ballot challenges. [In Georgia, individual voters are able to file an unlimited number of challenges](#), with some contested voters not learning of their status until they attempt to vote. According to the Secretary of State’s office, [the vast majority of over 65,000 challenges were specious, but some affected voters were still required to cast provisional ballots in response to the challenge](#).

Voters were relatively resistant to disinformation and misinformation. Much as they did in 2020, conspiracies about election security were swirling around before, during, and after the elections, with multiple candidates and organizations preemptively vowing to reject unfavorable results. Even as many conspiracy-minded candidates were successful, these false narratives largely failed to take hold in the general population with respect to 2022 outcomes, and most voters accepted the results of races as they were reported. This may reflect unprecedented efforts by election officials and others at all levels to actively “prebunk” conspiracy theories. Government officials also reinforced the accurate vote reporting in

real time in the press and [on social media](#), pushing back on attempts by candidates and others to cast doubt on the validity of the reported tallies.

Elections were resilient to cyberattacks. A few jurisdictions, including the state of [Mississippi](#) and a county in [Illinois](#) were the targets of external cyberattacks, the latest in a line of such incidents dating back at least to the 2016 election. But while the attacks affected some official state websites, federal officials confirmed that [election infrastructure was not compromised](#), and ballot counting was not affected. This threat is likely to continue, especially given that the next cycle includes a presidential election. The Cybersecurity and Infrastructure Security Agency (CISA) within the Department of Homeland Security seeks to assist election officials in securing their operations, but continues to face efforts to discredit its work by election conspiracy adherents. Security efforts will also be pressed to keep pace with continuously improving technological capabilities of potential bad actors, foreign or domestic. The threat goes beyond election infrastructure itself; an attack on a state's power grid for example, [like the recent events in North Carolina](#) but this time for political reasons, could drastically impact public safety and confidence in elections.

Mistakes were minimal and overwhelmingly did not influence outcomes. Hiccups are largely inevitable in election administration, but this cycle those that occurred typically had little bearing on the overall process. Even so, there were problems that indicate the importance of continuing to refine the voting process; malfunctions in Arizona's Maricopa County, for instance, provided fodder for election conspiracy theories to take root and be exploited by unsuccessful candidates. And there were isolated errors that may have affected some local races.³ To the extent that similar errors can be minimized, it can also prevent additional avenues for such damaging propaganda.

Poll workers did their duty and executed their responsibilities. After the surge of harassment and threats faced by election workers after the 2020 election, there were well-founded concerns that we might see attacks on election integrity from election officials themselves in 2022; either by unbiased election workers acting under duress in response to threats aimed at themselves or their families, or as the result of [bad actors](#) deliberately stepping into these roles after experienced staffers retired or resigned. Fortunately, this type of internal subversion did not appear to take place in 2022, but the general risk remains and warrants vigilance.

Official, partisan poll watchers at staffed polling locations did not interfere substantially in the election. While there were scattered reports of aggressive poll watchers, such incidents never rose to the level of significant disruption, [with local election officials highlighting preemptive measures to check intentional subversion from progressing](#). Some concerns remain, though, that some of the aggressive recruiting efforts by disruptive actors may have been a dry run for the 2024 presidential elections. This is an area that will require particular attention and training going forward to address any threatening activity.

Aggressive monitoring of drop boxes was a concern. Of particular note is the effect of the propaganda movie *2000 Mules* and accompanying book, released last year. [Despite extensive debunking](#) in the mainstream media, claims in the film and book about the 2020 election being stolen primarily through the use of ballot stuffing at drop boxes has been taken as fact by some. [The film has since been directly cited as an inspiration by election conspiracists](#), several of whom have taken it upon themselves to [monitor drop boxes](#) in search of suspected fraud. Multiple voters expressed feelings of intimidation, especially in Arizona where [visibly armed groups could be seen near drop boxes](#). While there has been some success [pushing back against these groups in the courts](#), the continued prevalence of

³ One such problem involved the ranked-choice voting process in Alameda County, California. Anser Hassan, Error in Ballot Counting in Alameda County Changes Outcome in Oakland School Board Race, ABC news (Dec. 29, 2022); <https://abc7news.com/alameda-county-election-error-ranked-choice-voting-oakland-school-board/12629305/>

conspiracy theories make it likely that such behavior will reoccur in the future, and potentially require a more preemptive response from lawmakers and law enforcement. The controversy may also make it harder to find suitable sites willing to host a drop box.

As preparations get underway for 2024, it is imperative that the election community continue monitoring these threats, along with maintaining the flexibility to react to new challenges as they arise. [Previous Task Force communications](#) have outlined some of the steps that have been and will need to be taken including:

- Continue and improve investment in staff, resources and training to ensure smooth operations at election sites
- Sustain and expand crisis-tested voting options like early voting and mail-in voting, and fail-safe mechanisms like provisional balloting⁴
- Assess statutes addressing emergency voting where needed to improve resilience to crisis, and make adjustments or improvements as needed
- Maintain partnerships among local elected officials, law enforcement and election security groups, such as the [Committee on Safe and Secure Elections](#), to ensure safe access to drop boxes and the polls
- Increase investments to identify the best methods to inoculate against mis- and disinformation about voting options and the validity of election results, in order to increase participation and reduce the risk of confrontation

LESSONS FROM CANVASSING AND CERTIFICATION PROCESSES IN 2022

Canvassing and certifying the vote are key processes in elections in all states that ensure accurate accounting of the outcome and also provide the public with confidence in those outcomes. Since the 2020 election there have been significant concerns that election deniers may seek to undermine these processes in the future. Yet, in 2022 those established processes and norms were generally followed in nearly all jurisdictions around the country. Fears of excessive and unfounded challenges to results, that defeated candidates would not concede, or that states or counties would refuse to certify, largely failed to materialize.

The vast majority of losing candidates, including prominent election deniers, conceded. In Pennsylvania, Doug Mastriano [conceded](#) that he lost the gubernatorial election to Democrat Josh Shapiro, [after running a campaign full of conspiratorial rhetoric about both the 2020 and 2022 elections](#). While in his [concession letter](#), Mastriano did note “Pennsylvanians deserve to have faith in our elections,” which could be read as a negative comment on the election process in 2022, he did not offer any claims of fraud or fuel the fire of election conspiracies, as many anticipated he might. There were [similar concessions](#) from other prominent election deniers around the country, and perhaps because of this there have been [relatively few challenges to outcomes](#) put forward by candidates or third-party groups.

And yet a small number of defiant losing candidates refuse to concede. In Michigan, Kristina Karamo, the GOP nominee for Secretary of State, [did not concede defeat despite a resounding loss and the unanimous certification of the election results](#), but has not been actively challenging the results. This is not the case in Arizona, where the GOP nominees for Governor, Secretary of State, and Attorney General [all resisted conceding](#) and where two of the three continue to litigate the results. Defeated

⁴ Same-day registration may also provide an effective way to resolve some election-day registration problems provided there are appropriate guidelines and supporting technology to avoid problems and unnecessary provisional ballots.

gubernatorial candidate Kari Lake [continues to allege fraud](#) despite initial court rulings rejecting her claims. Attorney General candidate Abe Hamadeh [recently filed a new lawsuit](#) challenging his loss after an earlier case was rejected and after a recount confirmed the outcome of his race. His initial case centered on [technical issues with printed ballots](#) in a number of polling locations in Maricopa County that had already been found by the courts [not to have precluded anyone from voting](#), and was [rejected](#) in December.

Baseless challenges persist. Challenges to the vote counts have not been isolated to candidates and campaigns but have also come from independent groups and voters themselves. In Pennsylvania, for example, despite Mastriano's concession, his supporters and aligned groups have [filed more than 100 petitions](#) across several counties for hand recounts in the gubernatorial race that Mastriano conceded and lost by 15 points. Most of these petitions have been thrown out by the courts, some for failing to provide any evidence or error or fraud. Efforts like these not only undermine confidence in the election process, but also tie up critical local election workers as they try to meet certification deadlines.

Concerns over inaccuracies and slow processing resulting from hand counts failed to materialize. Prior to the election, there were also some jurisdictions that had [signaled an intent to hand count their general election ballots](#), based on conspiracy theories that vote tabulating machines were hacked or otherwise unreliable. In Nye County, Nevada, for example, the County Clerk announced intentions to hand count all ballots, only to eventually say that hand counting would be performed as a test and [run parallel to the tabulation machines](#). In Cochise County, Arizona, two members of the Board of Supervisors had sued to require a full hand count of ballots cast in person, but [eventually withdrew their request](#) out of concern it might interfere with the mandatory recount in the Attorney General's race. In limited instances, hand counting may be a useful alternative or adjunct to machine counting when done in accordance with professional standards, but insistence on hand counting as a superior and essential component of modern elections flies in the face of tested best practices. Demand for such hand counts is reportedly continuing however, fueled by election conspiracies and misinformation about the reliability of automated counts.

A feared wave of refusals to certify accurate and legitimate results did not materialize. There were fears that Republican controlled county boards might not certify election results where Democrats won or otherwise cast doubt on the results. A wave of such actions across the country could have undermined faith in the process and fueled further election conspiracies. Thankfully, this also largely failed to materialize. For example, in stark contrast to [2020](#), where Republican members of the Wayne County Board of Canvassers in Michigan briefly refused to certify the election results, the [2022 certification vote](#) in that county was unanimous despite the false claims made by members of the public at the meeting of the Board that the election results were incorrect.

In a small number of counties, however, those certification deadlines were skirted or even crossed. In [Mohave County](#), Arizona and [Luzerne County](#), Pennsylvania, local boards delayed certifying results based on unfounded claims of fraud and negligence. The Cochise County (AZ) Board of Supervisors voted not to certify the election results based on false claims that the county's voting machines were not properly certified. Ultimately a state judge ordered the board to certify the results in response to a lawsuit filed by Secretary of State and Governor-elect Hobbs.⁵ In New Mexico, Otero County officials refused to certify the primary vote until [ordered to do so](#) by the state's Supreme Court.

⁵ Hobbs filed the lawsuit in her capacity as Secretary of State and the votes in question would not have affected her victory in the race for governor. Nonetheless, the litigation raises the question of whether there should be recusal guidelines or requirements to prevent a state's top election official from leading litigation that could directly affect them as a candidate.

The exceptions to the generally smooth canvassing and certification in 2022 are an important reminder that the election community still has work to do in preparation for 2024. The most important steps that can be taken to ensure that candidates accept outcomes and that certifying bodies faithfully perform their duties is to promote transparent processes with the goal of instilling broad-based confidence in results and dispelling mis- and disinformation. As presented in previous Task Force communications, some steps that should be taken include:

- Ensure transparency in voting machine certification, testing, tabulation, and auditing
- Take steps, including preprocessing and any necessary investments in personnel or equipment, to speed accurate processing and tabulation of ballots
- Explain tabulation processes, including measures to test and secure equipment and detect breaches, and regularly publish audit reports
- Provide “pre-bunking” of unsubstantiated claims of fraud or maladministration
- Facilitate appropriate observation by authorized poll watchers

HIGHLIGHTS OF EMERGING ISSUES TO WATCH IN 2023 and 2024

The risk of some forms of election crisis in 2024 did decrease as a result of the 2022 elections, and the passage of Electoral Count Act reform in December 2022. However, many threats of election crisis remain, and whether they intensify or diminish in 2023 and 2024 will depend on many macro-level factors, ranging from the overall socio-political environment and the relative strength of election disinformation, to more narrow and specific possible developments, including a so-called “black swan⁶” event. The intensification or reduction of these threats will also hinge on the prevention and preparation efforts by elected leaders, civil society, and the media.

At the national level, there is a concerning level of political violence and election disinformation that could contribute to election crises in 2024 and beyond. Election security remains critical as well.

Heightened climate of violence. It is important to note that the approaching 2024 election cycle takes place amid a climate of heightened violence. Some experts trace the uptick in threats to the Trump Administration, including threats against members of both political parties.⁷ The 2020 elections saw violence that would have been unimaginable in preceding years, including the storming of the Capitol on January 6 and the plot to kidnap Michigan Governor Gretchen Whitmer. [The threat has not dissipated. New Mexico authorities recently arrested](#) a defeated Republican candidate who allegedly arranged to have others fire shots at the homes of four Democratic officials. Threats on members of Congress, state and local politicians, judges and others have skyrocketed.⁸ In addition to the horrific psychological toll, these threats exact a high monetary price as [targeted officials seek additional security measures](#), even at their own considerable expense. And these specific threats are just the focused, crystallizations of a roiling sea of violent discourse around politics that rages on social media and elsewhere – potentially

⁶ [A rare and unexpected event with extreme consequences.](#)

⁷ For instance, an Army veteran threatened to kill a Republican member of Congress in relation to claims about the 2016 election. Catie Edmondson and Mark Walker, One Menacing Call After Another: Threats Against Lawmakers Surge, The New York Times (Feb. 9, 2022).

<https://www.nytimes.com/2022/02/09/us/politics/politician-death-threats.html>

⁸ Vera Bergengruen, The United States of Political Violence, Time Magazine, (Nov. 4, 2022) <https://time.com/6227754/political-violence-us-states-midterms-2022/>

weaponizing what had been routine political debates. We recognize that political violence is not new in our history, particularly when directed at communities of color, and that there is no simple or immediate corrective for this distressing trend. Nevertheless, it is critical that violent actors are held accountable and deterred to the greatest extent possible, and that we vigorously pursue strategies to defuse the weaponization of political differences.

The continuing threat of election disinformation. Conspiracy theories abounded in the 2020 election, perhaps most notably the theory that the presidential election itself was stolen. In the midterms, many candidates espoused this and other conspiracy theories, [casting themselves as part of a larger movement](#) to sow doubt about elections as a whole — from administration to outcomes.⁹ In the weeks after the election, many outlets highlighted the losses of the most prominent election deniers as [evidence that denialism as a whole is a](#) losing strategy. Nevertheless, election denialism was not conclusively demonstrated to be a losing strategy overall. While many of the victorious denialist candidates were incumbents rather than newcomers, (roughly four out of five, [per the University of Virginia’s Center for Politics](#)) the majority of candidates who questioned the 2020 election results were victorious in their races, including five state attorneys general, one secretary of state and at least [112 incumbent members](#) of the U.S. House who voted not to certify the results of the 2020 election and have not affirmed the legitimacy of President Biden’s election.¹⁰ The perseverance of this conspiracy-minded narrative is cause for concern going forward, particularly in some states. For example, while proponents of free and fair elections can celebrate key wins in Arizona including the race for Governor, candidates who endorse election conspiracies had a strong showing in other state races. State Senator Wendy Rogers, a [longtime adherent](#) of Stop the Steal and [known associate](#) of white nationalist Nick Fuentes, was reelected. Rogers will now oversee the Senate Elections Committee, which decides what election-related bills the legislature will consider.¹¹

Election disinformation threats may become exacerbated as Twitter and perhaps other social media platforms back away from some of their previous efforts to regulate such content. It will be important to advocate with social media platforms for sustained efforts against election disinformation and to monitor incumbent and new conspiracy theory candidates who won in 2022 to be aware of content or calls to action that could obstruct free and fair elections in those jurisdictions, or become a model for obstruction elsewhere.

The risk of election interference and manipulation through litigation. In 2020 and since, myriad lawsuits have sought to invalidate or cast doubt upon the legitimacy of certain methods of voting (e.g., in dropboxes, by mail, or collected by third parties). These suits often come at the last minute before an election, or raise baseless challenges to the results after an election. While the courts have overwhelmingly rejected frivolous election lawsuits and provided an important backstop for our democracy, the profusion of these lawsuits still exacts a price. Such litigation can introduce confusion and

⁹ Sixty percent of Americans had candidates on their ballots this fall who have questioned the legitimacy of the 2020 presidential election: <https://projects.fivethirtyeight.com/republicans-trump-election-fraud/>

¹⁰ There have been previous votes not to certify certain electoral votes for previous presidential candidates, including by Democratic members, however the votes not to certify on January 6, 2021 marked the only time the losing presidential candidate has actively pushed for such a rejection and came after the violent assault on the U.S. Capitol.

¹¹ Other successful conspiracy theorist candidates in Arizona include but are not limited to: Senator Anthony Kern, who was present on the U.S. Capitol grounds during the January 6, 2021 attack on the Capitol; Senator David Farnsworth, an adherent of QAnon and strong supporter of the 2021 Cyber Ninjas so-called “audit”; and Representative Liz Harris, who led a “Grassroots Canvass Report” in 2020 which made false claims in an attempt to substantiate her rejection of the 2020 election results in Arizona, and has since rejected the results of the 2022 election in Arizona..

chaos into elections, fuel election conspiracies, and serve as a pretext for other election subversion efforts. While it is critical that the courts remain available to defend against election conspiracies or worse, it is important to explore whether frivolous or bad faith litigation can be deterred. One way of reducing frivolous or bad-faith litigation could be by holding those who bring such cases accountable, such as through sanctions and attorney discipline.

Ongoing election security risks. Although we were fortunate not to see extensive or successful security threats to the 2022 elections, ample grounds for concern and vigilance remain. The tense geopolitical environment – including strained relations with Russia, given its history of past interference attempts – make foreign interference a clear potential threat. The threat is not confined to Russia, as U.S. government intelligence agencies and private security firms assess that multiple countries engage in malign influence campaigns to sow distrust in the electoral process on an ongoing basis to advance their political aims, not confined to one electoral cycle.¹² Such interference could take the form of cyber attacks, deliberate disinformation campaigns or other disruption. The threat of a foreign terrorist attack within the U.S. persists,¹³ despite the lack of high-profile operations in recent years. Even if a major terrorist attack did not explicitly target election infrastructure, a successful attack could discourage voter participation, disrupt election administration, or lead to questions about the validity of results. There may also be heightened risks from non-state domestic actors, including insider threats. Given the extensive access given to outside actors during bad-faith audits of the 2020 election, potential disruptors may have more information to do damage in a future election. The persistence and evolving nature of these threats dictate that governments at all levels must continue robust information sharing, and to support state and local election officials and law enforcement in contingency planning against these threats. States should also ensure that election emergency statutes provide the necessary flexibility to safely and predictably administer free and fair elections in the face of these threats and others, including natural disasters.

The closely contested balance of power at the federal level means that control of the House or Senate will likely be in play in 2024 as well as control of the White House, raising the stakes of a greater number of races and creating greater incentives for manipulation. Some issues to watch:

It is unlikely that elected officials can successfully manipulate the outcome of the 2024 presidential election in battleground states— though they may still try, and do damage to democracy. While broad risks of violence and disinformation pervade our political climate, the outlook in some key, battleground states has improved with respect to the 2024 presidential election. In most of the states likely to have a close result in the 2024 presidential election, candidates espousing conspiracy theories or who sought to implement policies¹⁴ that could enable them to interfere with the outcome of

¹²National Intelligence Council. (2021). Foreign Threats to the 2020 US Federal Elections (ICA 2020-00078D). Retrieved from <https://www.dni.gov/files/ODNI/documents/assessments/ICA-declass-16MAR21.pdf>, Office of the Director of National Intelligence. (February 2022). Annual Threat Assessment of the U.S. Intelligence Community. Retrieved from <https://www.dni.gov/files/ODNI/documents/assessments/ATA-2022-Unclassified-Report.pdf>, Insikt Group, Malign influence during the 2022 US Midterm Elections, (Oct. 13, 2022) <https://go.recordedfuture.com/hubfs/reports/ta-2022-1013.pdf>

¹³ Department of Homeland Security, National Terrorism Advisory System Bulletin (Nov. 30, 2022) <https://www.dhs.gov/ntas/advisory/national-terrorism-advisory-system-bulletin-november-30-2022>

¹⁴ Policies that increase the risk of election crisis either directly or indirectly include but are not limited to asserting the power to nullify election results, requiring unprofessional reviews (“audits”) of election results based on conspiracy theories, seizing control of responsibilities from local election officials with intent to influence the outcome of the election, deliberately creating burdens to election administration that will diminish the accuracy of or trust in election results, or criminalizing routine aspects of election officials’ duties or innocent mistakes made by election officials.

elections were defeated in bids for governor, secretary of state, and attorney general.¹⁵ Although state legislators in these states may still attempt to enact such policies or diminish confidence in past or future elections, they are unlikely to be successful. However, even unsuccessful attempts to pass such laws will provide a platform for election disinformation, which could further negatively polarize extreme segments of the public and thereby contribute to an increased risk of vigilante actions against election officials or voters, and potentially providing the spark for other forms of election crisis.

Selected states that bear watching in the run-up to 2024. Florida, Texas and North Carolina are unlikely to be tipping point states in a presidential election, but nonetheless present some potentially volatile election scenarios. All three states have state legislative majorities or supermajorities that include a significant number of members who have questioned the legitimacy of the 2020 election. Two of them (Florida and Texas) also have leaders who have [accommodated election conspiracy theories](#) and taken aggressive policy actions in the lead-up to the 2022 election seemingly spurred by false claims about the 2020 election.¹⁶

Florida enacted extensive changes to its election laws in 2021 and 2022, seemingly in response, at least in part, to unsubstantiated claims or concerns about fraud. Of particular concern to some elections experts is the new agency centered on potential election crimes, such as voter fraud. The wide powers of Florida's Office of Election Crimes and Security is a potential¹⁷ tool of election interference in Florida in 2024, especially if utilized amidst the backdrop of new election conspiracy theories or other pretexts for action.

Florida, Texas, and to a lesser extent North Carolina have not recently been closely contested presidential election battleground states that would likely be the "tipping point"¹⁸ state in the 2024 presidential election, but all three states could hold closely contested House elections that in turn could play a pivotal role in deciding control of the overall U.S. House of Representatives. That potential influence could make those races appealing targets for election manipulation.

Although Wyoming and Indiana are not states of primary concern for the 2024 presidential election -- neither state is a swing state -- both have just elected Secretaries of State who may set concerning precedents through their policy initiatives. In Indiana, Diego Morales has called for halving Indiana's early voting period and creating an ["election task force" that would investigate claims of fraud](#). Morales was the only successful Secretary of State candidate from the slate of [America First](#), a [conservative coalition](#)

¹⁵ For purposes of this assessment, these states are Arizona, Georgia, Michigan, Pennsylvania, Wisconsin

¹⁶ Lawrence Mower, Gov. Ron DeSantis Signs Florida Voting Bill in Front of Trump Fan Club, Tampa Bay Tribune, (May 6, 2021)

<https://www.tampabay.com/news/florida-politics/2021/05/06/gov-ron-desantis-signs-florida-voting-bill-in-front-of-trump-fan-club/>; Benjamin Swasey, Florida lawmakers back the creation of an election crimes investigative office, NPR (Mar 10, 2022)

<https://www.npr.org/2022/03/10/1085660543/florida-lawmakers-back-the-creation-of-an-election-crimes-investigative-office>, Michael Hardy, Why Is Ken Paxton Sending a Task Force to Monitor Harris County's Elections?, Texas Monthly (Nov. 4, 2022) <https://www.texasmonthly.com/news-politics/paxton-task-force-to-monitor-harris-county-elections/>, and Texas Secretary of State's Office, *Re: Notice of Mobile Ballot Boxes from the 2020 General Election lacking proper chain-of-custody and request for corrective action*. (Oct. 18 2022),

<https://www.sos.state.tx.us/elections/fad/forms/10-18-2022-letter-to-harris-county-from-sos-fad.pdf>

¹⁷ The Task Force does not presume that election interference or manipulation in Florida or any other state is certain or even likely, but only notes that the notably wide powers of this office provides a tool that could be used in an election manipulation scenario. As highlighted in a previous section on page 4 ("Election administration was largely resilient..."), Florida's record of election administration in 2022 had positive aspects, including a number of localities, counties, and state government working effectively together to adapt to the aftermath of Hurricane Ian.

¹⁸ The tipping point state is the state that awards a president-elect the 270th Electoral College vote if the margins of victory for the president-elect are taken in order from the greatest margin to the smallest

founded by an [adherent of election conspiracy theories](#) and advocating aggressive restrictions on voting to combat supposed fraud. And in Wyoming, Chuck Gray has [questioned the legitimacy of the 2020 election](#) and [listed](#) election integrity as his “top priority” in his unopposed campaign, vowing to “expose voter fraud” and “stop cheaters from trying to steal our elections.”

Updates to the Electoral Count Act cut off specific paths for election subversion at the state and federal level, though some states may need to update their election codes. In December 2022, Congress passed the Electoral Count Reform Act to update the Electoral Count Act of 1887 and further clarify the process for casting and counting the presidential and vice presidential electoral votes.¹⁹ The updated law combats subversion at the state level by requiring that states appoint electors on Election Day in accordance with pre-existing law, by making clear which state executives are responsible for certifying election results to Congress, and providing an expedited path for dispute resolution in federal court. It also prevents interference at the federal level by clarifying the ministerial role of the vice president during the joint session of Congress, increasing the objection threshold to one-fifth of each chamber, and providing greater clarity to the counting process. Because the new law underscores that presidential voting cannot extend beyond Election Day except in the case of true emergencies as provided for in state law, it may be necessary or advantageous for states to review their related election statutes on emergencies and also make other adjustments in their election laws as needed to ensure they will work smoothly in concert with the revised federal law.²⁰

Two fringe constitutional theories – that of so-called constitutional sheriffs and the independent state legislature theory (ISLT) – could create additional risks or instability with respect to elections.

Constitutional sheriffs and their growing focus on election issues. Although sheriffs (typically the top law enforcement official in a county) generally have little or no established role in elections, a [growing movement](#) among sheriffs may have an increasing impact on elections in the years to come and could play a role in potential election crisis scenarios. Adherents of the fringe “constitutional sheriff” movement²¹ incorrectly believe that sheriffs are the absolute highest legal authority within their county, ultimately obligated only to follow their interpretation of the Constitution and not any other law or court ruling.²²

The movement has attracted significant support. According to unverified claims²³ by one of the primary organizations for the movement, the Constitutional Sheriffs and Peace Officers Association (CSPOA), over 10% of the approximately 3,000 sheriffs in the United States were dues-paying members of the CSPOA in 2021.²⁴

¹⁹ The overall legislation also included important updates to the Presidential Transition Act, which lays out the process and resources for the transition between administrations.

²⁰ For instance, some states may need to adjust deadlines or other aspects of certification to comply with the new federal law. Kate Hamilton, What the Electoral Count Reform Act Means for States, Jan. 12, 2023, <https://campaignlegal.org/update/what-electoral-count-reform-act-means-states>

²¹ While adherents claim the movement is descended from the role of sheriffs in 9th-century England, [it has been linked to](#) the far-right and anti-Semitic Christian Identity and Posse Comitatus movements of the 1970s and 1980s.

²² For additional information about the authorities of sheriffs and a comprehensive explanation of why the constitutional sheriffs’ theory regarding the Constitution and their purported powers is incorrect, see the Institute for Constitutional Advocacy and Protection - States United Democracy Center fact sheet on the constitutional sheriff movement, available here:

<https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2022/09/Constitutional-Sheriffs-Fact-Sheet.pdf>

²³ These claims by the CSPOA cannot be verified because CSPOA does not make its membership list available to the public.

²⁴ Kimberly Kindy, *Boosted by the pandemic, ‘constitutional sheriffs’ are a political force*, Washington Post (Nov. 2nd, 2021 6:00AM),

CSPOA [encouraged its members to investigate claims of fraud](#) in the 2020 election, citing claims made in the widely-debunked “2000 Mules” film and other disreputable sources. Both CSPOA and another constitutional sheriff organization, Protect America Now, are allied with True the Vote, and have made combatting alleged election fraud a priority. The membership is responding. Following 2020, sheriffs in multiple states across the country, including Wisconsin, Michigan, and Kansas, took it upon themselves to conduct [individual investigations into alleged voter fraud schemes](#) in their respective counties. In particular, one Michigan sheriff attempted to seize vote tabulators based on unfounded suspicions of someone tampering with those machines to miscount votes.²⁵

During the 2022 election, CSPOA, Protect America Now, and True the Vote teamed up to provide resources and training to sheriffs to “protect election integrity.”²⁶ Since the 2022 election, CSPOA has made baseless claims about the election results in Arizona in its “CSPOA Posse Intel” blog, and has raised the intensity of its rhetoric, claiming that “corruption is killing Americans’ rights to choose their representatives” and alleging that “controllers” are “pushing Americans toward civil war.”²⁷ When an association of law enforcement personnel is amplifying this language to its members and supporters, it creates the conditions for members and supporters to more readily embrace extreme and violent actions.

Law enforcement, including county sheriffs, play a critical role in ensuring that every eligible voter can exercise their right to vote and that our elections remain safe, free, and fair. Officers across the country are critical partners to the state and local officials who run our elections, undertaking legitimate and genuine efforts to protect polling places and ensure the safety of election workers. But overreach and abuses of authority by law enforcement can pose a serious threat to the integrity of our elections.

Given their expansive view of their own powers and seeming contacts with election conspiracy adherents, the constitutional sheriffs could pose such risks.²⁸

These sheriffs could attempt to insert themselves into election administration even when they have no authority to do so, or attempt to bar or hinder federal officials from entering a county to monitor polls or conduct other election-related business. Efforts beyond an individual sheriff’s authority to investigate false claims of fraud, or public awareness campaigns falsely portraying the risks of fraud, could further undermine the public’s trust in the system. They could even directly interfere with elections and potentially alter their results, such as by asserting an authority to pick up ballots from drop boxes, or via the illegal “arrest” or “indictment” of citizens or election officials that the sheriffs deem to be breaking the law.

Adherents of the constitutional sheriffs movement may also refuse to discharge their law enforcement responsibilities in ways that could harm elections, such as by not enforcing laws related to voter protection or not stopping armed private militias from patrolling precincts and intimidating voters (even if ordered to do so by the courts).

https://www.washingtonpost.com/politics/constitutional-sheriffs-elections-trump-pandemic/2021/11/01/4c14c764-368b-11ec-91dc-551d44733e2d_story.html

²⁵Peter Eisler and Nathan Layne, *Michigan sheriff sought to seize multiple voting machines, records show*, Reuters (Aug 30, 2022 4:41 EDT)

<https://www.reuters.com/legal/michigan-sheriff-sought-seize-multiple-voting-machines-records-show-2022-08-30/>

²⁶Alexandra Berzon and Nick Corasaniti, *2020 Election Deniers Seek Out Powerful Allies: County Sheriffs*, The New York Times (Jul. 25, 2022) <https://www.nytimes.com/2022/07/25/us/politics/election-sheriffs-voting-trump.html>

²⁷ Jack Mullen, *CSPOA Posse Intel: Rampant & Brazen Corruption Exposed in Arizona*, CSPOA.org (Nov. 30, 2022), <https://cspoa.org/news/rampant-brazen-corruption-exposed-in-arizona/>

²⁸ Sheriffs who are not adherents of the constitutional sheriff theory could also abuse their powers in the election context but the risk appears higher for constitutional sheriffs based on incidents that have raised concerns thus far.

Efforts should be made to guard against these risks. This includes proactive outreach to sheriffs and other law enforcement to make sure they understand the steps and methods of the voting and tabulation process, but also ensuring that other relevant authorities know the proper role and authorities of sheriffs with respect to elections and be prepared to push back on overreach.

The independent state legislature theory and the implications of a maximalist ruling for the risk of election crises. The specific contours of a decision in a pending U.S. Supreme Court case may create chaos and uncertainty in election administration that could in turn provoke election crises in 2024. The immediate issue in *Moore v. Harper* is whether a state supreme court's order striking down a state's congressional map and ordering the legislature to draw a new one violates the Constitution's elections clause.²⁹ However the ruling in this case could have enormous impact because it concerns the so-called independent state legislature theory (ISLT) that would affect all states. In its strongest version, this theory interprets the Constitution's Elections Clause as giving state legislatures "nearly unfettered authority to regulate federal elections, with little to no interference from state courts."³⁰ Many legal commentators do not expect the Supreme Court to adopt such a broad ruling in the case, based on the exchanges during oral argument in December and other factors.³¹ Furthermore, the North Carolina State Supreme Court [recently announced it will rehear the Moore gerrymandering case](#), raising the possibility that the case before the U.S. Supreme Court will become moot before a ruling on ISLT or the other issues presented.³² Yet, the potential impacts nonetheless bear discussion because they could be severe and even a narrower ruling in *Moore v. Harper* could be very problematic.

In the context of gerrymandering, a full adoption of the ISLT would give state legislatures exclusive power to redraw congressional districts for federal elections and "mean that the partisan gerrymandering of congressional districts by state legislatures would not be reviewable by the state courts—including the states' highest court—under their state constitutions."³³ Moreover if fully adopted by the Supreme Court, the independent state legislature theory would not be limited to gerrymandering but would apply to federal elections generally; it would remove power from state courts to review the legislature's actions regulating election administration, from governors to veto election regulations, and from independent commissions to exercise delegated election duties and functions. It would also render unenforceable all state constitutional provisions related to federal election administration. Importantly, federal courts would still be

²⁹ Amy Howe, *December argument session will feature divisive cases on election law, First Amendment*, SCOTUSblog (Oct. 18, 2022, 6:42 PM), <https://www.scotusblog.com/2022/10/december-argument-session-will-feature-divisive-cases-on-election-law-first-amendment/>.

³⁰ Amy Howe, *In high-stakes election case, justices will decide validity of "independent state legislature" theory*, SCOTUSblog (Dec. 6, 2022, 10:20 AM), <https://www.scotusblog.com/2022/12/in-high-stakes-election-case-justices-will-decide-validity-of-independent-state-legislature-theory/>.

³¹ Zach Montellaro and Josh Gerstein, *Supreme Court seems poised to reject robust reading of 'independent state legislature' theory*, POLITICO (Dec. 7, 2022, 10:02 AM), <https://www.politico.com/news/2022/12/07/supreme-court-independent-state-legislature-theory-00072713>, Kate Shaw, *Oral Argument in Moore v. Harper and the Perils of Finding "Compromise" on the Independent State Legislature Theory*, Just Security (Dec. 8, 2022), <https://www.justsecurity.org/84409/oral-argument-in-moore-v-harper-and-the-perils-of-finding-compromise-on-the-independent-state-legislature-theory/>.

³² Even in the event the current Supreme Court case is mooted, the ISLT is likely to surface in other election law cases.

³³ J. Michael Luttig, *There is Absolutely Nothing to Support the 'Independent State Legislature Theory'*, The Atlantic (Oct. 3, 2022), <https://www.theatlantic.com/ideas/archive/2022/10/moore-v-harper-independent-legislature-theory-supreme-court/671625/>.

able to review and potentially invalidate state legislatures' actions under federal laws and the U.S. Constitution. Yet some of these federal protections, including the Voting Rights Act of 1965, have been weakened by the Supreme Court in recent years.³⁴ With only limited oversight, state legislatures may be better able to pass laws that suppress votes and advantage political allies, such as by drawing district maps based on extreme partisan gerrymanders, eliminating early and absentee voting, and more.

If fully adopted by the Supreme Court, ISLT would also create “bifurcated bodies of policy—one for federal elections and another for state and local elections” by “[n]ullifying hundreds of laws, but only for purposes of federal elections.”³⁵ A “two-track system” for administering elections “would strain already overburdened election administrators”³⁶ and would make elections more difficult to navigate for voters. It could also create confusion,³⁷ if not chaos, that could undermine general confidence in election administration and election results.

Moreover, even a ruling that stops short of fully adopting the ISLT could have severe consequences – including creating the “two-track” set of rules for state and federal elections discussed above. And, a narrower holding would likely invite the federal courts to invalidate state constitutional provisions that are “too vague” or state court decisions that go “too far” in interpreting such provisions. Not only would this generate new litigation regarding the proper parameters of involvement in election law by state actors other than the legislature, it would also create new uncertainty about which state court decisions still applied to federal elections. While there is always litigation regarding uncertain or vague aspects of election administration, a ruling on this issue could lead to a dramatic increase in such cases. The ensuing delays and uncertainty could in turn feed disinformation and distrust regarding elections.

CONCLUSION

The 2022 elections have restored some of the faith in the resilience of our democratic processes that was so battered in the aftermath of the 2020 election. They do not give us cause for complacency, as risks of future election crises remain. But the 2022 cycle does show that fierce attention to election risks can mitigate many of the dangers, and it shines a path forward for much of the work we must do to help secure elections going forward.

Intensive preparation by election officials and others largely paid off; the mechanics of election administration ran fairly smoothly and voters largely were informed and able to vote.

But we should not assume election officials and their allies can replicate this performance on a larger scale during the 2024 election without more support. Many election offices have lost seasoned personnel – in part due to threats and harassment – and lack adequate resources to employ best practices across

³⁴ See, e.g., *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529 (2013); *Brnovich v. Democratic Nat'l Comm.*, 210 L. Ed. 2d 753, 141 S. Ct. 2321 (2021); *Cooper v. Harris*, 197 L. Ed. 2d 837, 137 S. Ct. 1455 (2017).

³⁵ *Hearing on the Independent State Legislature Theory and Its Potential to Disrupt Our Democracy, Before the H. Comm. on Administration*, 117th Cong. (2022) (testimony of Eliza Sweren-Becker, Voting Rights & Election Counsel at the Brennan Center for Justice at NYU School of Law), <https://docs.house.gov/meetings/HA/HA00/20220728/115042/HHRG-117-HA00-Wstate-Sweren-BeckerE-20220728.pdf>.

³⁶ *Id.*

³⁷ Helen White, *The Independent State Legislature Theory Should Horrify Supreme Court's Originalists*, Just Security (June 30, 2022), <https://www.justsecurity.org/81990/the-independent-state-legislature-theory-should-horrify-supreme-courts-originalists/>

the board. It is not enough to laud the election officials who with great effort deliver in the face of obstacles; we must have their backs, literally in some cases.

Election security is still a risk, be it in the form of physical or cyber attacks or sabotage. Foreign adversaries remain a concern in this regard, as does the risk of disruption from domestic actors.

Mis- and disinformation remain a daunting challenge. Although many election officials worked with responsible media outlets to tamp down this threat in the 2022 cycle, this is an ongoing risk that could grow in the future. Conspiracy theories and their adherents remain strong, particularly in regions where there are limited avenues for valid information sharing. Local “news deserts” are especially susceptible, [as research indicates that a reliance on national news outlets has a tendency to drive polarization without alternate outlets focused on a particular community](#). Whether spread maliciously or innocently, conspiracies circulate in a fast moving online environment that may be increasingly difficult to monitor and regulate.

This mis- and disinformation is all the more dangerous given the climate of violence and threats of violence. Armed demonstrations, hate crimes, and threats against sitting members of Congress have all increased [within the last five years](#), and studies indicate that as many as [one out of five Americans believe that political violence is justified in certain circumstances](#).

Congress took important action to prevent an election crisis by updating the Electoral Count Act, and thus far the courts have largely worked to defend democracy and defuse potential election crises. Yet the courts could yet become an avenue to endanger free and fair elections, in particular through aggressive adoption of the Independent State Legislature Theory or validation of the so-called constitutional sheriff movement.

Finally, it is intolerable that we acquiesce to a “new normal” where the possibility of election crises is a given. We remain clear-eyed about the threats that remain and what it will take to tackle them. Nevertheless, we must aspire to not just prepare for an election crisis but to prevent it, for the good of American democracy and the cause of democracy around the world.

The National Task Force on Election Crises is a diverse, cross-partisan group of more than 50 experts in election law, election administration, national security, cybersecurity, voting rights, civil rights, technology, media, public health, and emergency response. The Task Force's mission is to prevent and mitigate a range of election crises by calling for critical preventative reforms to our election systems. The only electoral outcomes the Task Force advocates for are free, fair, and safe elections in the United States.