

# REPORT OF THE ABA TASK FORCE FOR AMERICAN DEMOCRACY

September 10, 2025

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*This report is dedicated to the life and legacy of our Vice Chair Bill Ide, who was President of the ABA from 1993-1994. Bill passed away on July 8, 2025, just after we finalized the first draft of this report. This ABA Task Force For American Democracy was his vision and the final capstone on his remarkable career.*



*We are honored to have known Bill and carry on the principles he championed.*

#### **DISCLAIMER**

The views expressed herein are those of the ABA Task Force For American Democracy. They have not been reviewed or approved by the ABA House of Delegates or the ABA Board of Governors. Accordingly, the views expressed herein should not be construed as representing the policy or position of the American Bar Association. Further, nothing herein should be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. These materials and any forms and agreements herein are intended for educational and informational purposes only.

## Introduction by American Bar Association Past President, Mary L. Smith



For 237 years, America's Constitution has guided our country and defined us as a Nation of laws. When our democracy is tested, we draw strength from the Constitution as the bedrock, making our country more equal and more just for all our citizens. American democracy requires our constant care, vigilance, and full participation to determine the very future of our Nation.

In the last several years, we have seen our democracy stretched to the breaking point. The World Justice Project (WJP) ranked the United States 26th out of 142 countries and jurisdictions overall in its 2024 Rule of Law Index. This ranking indicates a decline in the U.S. rule of law, particularly in areas like government accountability and justice system accessibility.

Given this disturbing trend, two years ago, as I began my term as president of the American Bar Association (ABA), I surveyed the landscape of challenging issues facing our nation to determine how best to prioritize the work of the ABA during my tenure. I kept coming back to the single most important issue facing our country today: threats to democracy and the rule of law.

It is incumbent upon America's 1.3 million lawyers to play a central role in strengthening our democratic institutions. Lawyers must lead in reinforcing the rule of law, reinvigorating norms of the judicial process, and protecting election integrity. It is also imperative to protect those professionals and volunteers who make our election systems work. Finally, an important objective is to remind our next generation of lawyers of the vital role they need to play in our democracy.

To lead this effort, I asked highly respected former President of the American Bar Association, Bill Ide, to help create the Task Force for American Democracy. Two of America's foremost attorneys and public leaders, former Secretary of Homeland Security, Jeh Charles Johnson, and former federal judge, J. Michael Luttig, agreed to lead the Task Force, consisting of 30 distinguished Americans including thought leaders, lawyers, former elected officials and business leaders, among others. Collectively, the Task Force represents a bipartisan group of recognized national leaders with expertise in American government, democracy, and the rule of law. At the same time, another extraordinary group of attorneys began work as the Advisory Committee to the Task Force, led by Chair Carl Smallwood and Vice Chair Lauren Rikleen.

During its first year, the Task Force focused its efforts on instilling trust in our election system and educating the public about elections and civics. Accordingly, the Task Force began its work to mobilize lawyers across the country to help ensure an enduring democracy. Working with Secretaries of State like Brad Raffensperger (Georgia) and Jocelyn Benson (Michigan), the Task Force hosted Listening Sessions across the country to ensure confidence in our elections and the rule of law. Following the Listening

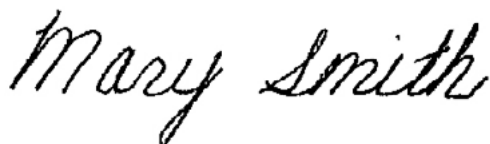
Sessions, the Task Force created Next Steps Committees in those communities to continue the work to educate the public and ensure fair elections. The Democracy Task Force had a wide-ranging impact through its reach across various media outlets, including cable TV. The Listening Sessions also reached thousands of people across several states, including Georgia, Michigan, and Pennsylvania, and helped to forge innovative coalitions of lawyers, election officials, NGOs, the media, and faith leaders to mobilize in their communities. Through these efforts, the Task Force created renewed energy among our citizens to bolster our democracy.

The current Report's recommendations on election reforms are the capstone of our first year of efforts, which focused on elections.

During the second year of the Task Force, our work has expanded from a focus on elections to supporting the rule of law more broadly. To further this objective, the Task Force is working closely with state, local, and affinity bar associations and coordinating with law schools. One example of our recent work and impact is the initiative for lawyers to reaffirm their oath of office on Law Day, May 1, 2025. This resulted in over 50 events around the country attended by over 10,000 people, including thousands of lawyers who reaffirmed their oaths to uphold the Constitution and the rule of law.

As indicated in the Report, an immense amount of work has gone into identifying the issues that are at the root of the challenges affecting our democracy, the way we engage with each other, and the rule of law. This massive, in-depth undertaking has engaged hundreds of people in the Task Force's activities. It has coordinated with dozens of outstanding NGOs engaged with these issues. Our mission to remind lawyers of our obligations to the Constitution and the rule of law and to protect democracy and elections is paramount at this critical time in our country's history.

I am eternally grateful to the Judge and the Secretary, Bill, our indefatigable volunteers and staff, each and every member of the Task Force and Advisory Committee, those who organized Listening Tour events, wrote white papers, coordinated volunteers, conducted research, and provided support in other meaningful ways. On a personal note, it was deeply gratifying to see people from diverse backgrounds come together with energy, warmth, intelligence, good humor, and passion to make a stand for our American way of life. We look forward to your thoughts and feedback as we set out on phase two of our work.



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**Mary Smith**  
**Past President**  
**American Bar Association**  
**September 2025**

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## I. Introduction

Our American democracy is under threat. Many believe the rule of law is under threat, and that we are, in fact, in the midst of a constitutional crisis. Even the current administration must confess that it is determined to push the bounds of legal and constitutional norms.

The American electorate voted for this not once, but twice. Why do so many of us want such an extreme, unorthodox brand of leadership?

Stoked by false, overheated, and deeply partisan rhetoric from political opportunists, media outlets, and social media, Americans have become disillusioned and distrustful toward institutions of our democracy. This attitude is reflected broadly in polls. A 2023 Pew Research poll indicates only 4% of Americans say the political system is working “extremely or very well,” 23% say it is working “somewhat well,” and 63% have “not too much or no confidence at all” in the future of the U.S. political system.<sup>1</sup> A May 2024 Pew Research poll indicates that only 2% of the American public believes that the federal government does the right thing

“just about always,” and only 21% believe the federal government does the right thing “most of the time.”<sup>2</sup> This is in stark contrast to a 1958 poll by Pew, indicating then that a full 75% of Americans trusted our federal government to do the right thing “almost always or most of the time.”<sup>3</sup> Of greater concern, a 2023 survey reveals that approximately 38% of Americans support authoritarianism as a response to the direction of democracy in the United States,<sup>4</sup> and less than one-third of Millennials consider it essential to live in a democracy.<sup>5</sup> Large segments of the American population are drowning in conspiracy theories.

Many of our political leaders, in turn, pander to these sentiments to obtain and maintain elective office. Legislators at the federal and state levels represent gerrymandered districts drawn by politicians themselves. This incentivizes office holders to take extreme positions to survive challenges from the extreme right or left in party primaries.

Most alarming, political violence is on the rise. A year ago, there were two assassination attempts on then-presidential candidate

1 PEW RSCH. CTR., AMERICANS’ DISMAL VIEWS OF THE NATION’S POLITICS 5 (2023), <https://www.pewresearch.org/politics/2023/09/19/americans-dismal-views-of-the-nations-politics>.

2 *Public Trust in Government: 1958-2024*, PEW RSCH. CTR. (June 24, 2024), <https://www.pewresearch.org/politics/2024/06/24/public-trust-in-government-1958-2024/>.

3 *Id.*

4 PUB. RELIGION RSCH. INST., THREATS TO AMERICAN DEMOCRACY AHEAD OF AN UNPRECEDENTED PRESIDENTIAL ELECTION 5 (2023), <https://www.prrri.org/wp-content/uploads/2023/10/PRRI-Oct-2023-AVS.pdf>.

5 *Reinventing American Democracy for the 21st Century*, AM. ACAD. OF ARTS & SCI., <https://www.amacad.org/news/reinventing-american-democracy-21st-century> (last visited Aug. 27, 2025).



Donald Trump. In April 2025, a man pleaded guilty to attempting to assassinate Supreme Court Justice Brett Kavanaugh. On June 14, 2025, a well-known Minnesota state legislator and her husband were murdered by an assassin with a political manifesto.

What are the solutions to address this crisis?

This nonpartisan ABA Task Force was assembled in August 2023 by then-ABA president Mary Smith to “consider and propose solutions for educating our citizens on the importance of an inclusive, strong and enduring democracy and help to provide bulwarks to bolster our democracy as conceived.” We were to deliver a final report with proposed solutions to the ABA at its annual meeting in August 2024. In light of the volatile 2024 election season, we postponed delivery of this report until now.

Twenty-three Task Force members have affirmatively signed on to this report.<sup>6</sup> This

assembled group of distinguished Americans includes a broad swath of progressives and conservatives, lawyers and non-lawyers, former judges, former government officials, retired corporate CEOs, law professors, historians, and commentators. Not every signatory agrees with each and every recommendation offered, but each signatory agrees that we are at a perilous moment in our nation’s history and that these recommendations must be part of the discussion of how we can better support and defend our democracy, the rule of law, and the Constitution.<sup>7</sup>

In developing this report and recommendations over the last two years, the Task Force found itself continually absorbed in one crisis after another, only to find out that our efforts to respond were OBE a week or a month later. Therefore, the Task Force has concluded that the most meaningful recommendations it can deliver are ones that address the

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6 These signatories are: J. Michael Luttig (former federal appellate judge); Jeh Charles Johnson (former Secretary of Homeland Security); R. William Ide III (former ABA President); Danielle Allen (political philosophy, ethics, and public policy professor); Kenneth Chenault (former corporate CEO); James W. Crawford III (U.S. Navy Vice Admiral (retired)); Maria Echaveste (not-for-profit CEO and former deputy White House Chief of Staff); Kenneth Frazier (former corporate CEO); Richard A. Gephardt (former House Majority Leader); Jerry H. Goldfeder (Director of Fordham Law School Voting Rights and Democracy Project); Thomas B. Griffith (former federal appellate judge); Richard Haass (President Emeritus of the Council on Foreign Relations and author of *The Bill of Obligations: The Ten Habits of Good Citizens*); Stephen Heintz (foundation CEO and former Chief of Staff to U.S. Senator); Sherrilyn A. Ifill (civil rights attorney and law professor); William Kristol (former Chief of Staff to the Vice President (1989-1993)); Eric P. Liu (not-for-profit CEO and former White House official); Marc H. Morial (former Mayor of New Orleans); Maureen O'Connor (former Ohio Supreme Court Chief Justice); Richard H. Pildes (Sudler Family Professor of Constitutional Law at NYU School of Law); Lewis F. Powell III (attorney and member of the Virginia Bar); Thomas Rogers (former Capitol Hill committee counsel); Mary Smith (former ABA President); and Larry D. Thompson (former Deputy Attorney General).

7 This report also includes the first-rate writing and research of: Christopher Adsit (Yale Law School '26); Charles Bachmann (Cardozo Law School '25); Matt Beattie-Callahan (Yale Law School '26); Connor Brashear (Yale Law School '25); Charlotte Cooper (Columbia Law School '25); Sara Graziano (Columbia Law School '26); Riler Holcombe (Yale Law School '26); Romina Lilollari (Yale Law School '25); Bryce Morales (Yale Law School '26); Megha Parwani (Yale Law School '26); Jacob Schwartz (Harvard Law School '25); Avery Wasson (University of Chicago Law School '26); and Hannah Weinstein (Harvard Law School '25).

factors *underlying* the current crises. The recommendations we advance below were developed over the course of two years and two U.S. presidents' administrations. Some of our recommendations are similar to those that have been advanced by the ABA over the years. They address the long-term systemic problems deeply rooted in our democracy; in other words, an alarming era in American political history, not any particular moment or crisis.

Overall, the Task Force believes our nation must re-dedicate itself to civics education to create a more informed and engaged electorate. The Task Force also believes that government at the state and national levels must take steps to bolster public confidence in the integrity of elections and reform the very manner in which our political leaders are elected. Put another way, politicians must become more closely accountable to the broad swath of people they purport to represent.

Finally, the Task Force believes that lawyers have been part of the problem and must be part of the solution. Lawyers have a special role to play in responding to the current crisis. There are over 1.3 million lawyers in the United States, spread across almost every county and town in the country. Virtually every lawyer in the United States has had three years of legal education. Every American lawyer must learn about the Constitution and our judicial system. Every American lawyer takes an oath to support and defend the Constitution. By that oath, every American lawyer is an "officer of the court" who undertakes a personal obligation to promote justice and uphold the law. Lawyers, therefore, have the unique skills to defend democracy, the Constitution, and the rule of law. Just as

doctors were on the frontlines of the Nation's response to the COVID-19 pandemic, lawyers must now answer the clarion call to defend American democracy and the rule of law.

Since this Task Force was stood up two years ago, we have been encouraged to find many others across this country who share our concerns and have been spurred to action. The Task Force has found itself at the coordinating center of activities of many state and local bar associations and NGOs, all dedicated to preserving and improving our democracy. Those activities are set forth in detail in Section II below.

Here is a summary of our recommendations:

## RE-INVIGORATE AMERICAN CIVICS EDUCATION

The Task Force believes our nation's lack of funding for and declining emphasis on civics instruction has contributed to a growing distrust in democratic institutions, especially among younger generations who believe our democracy does not deliver for them. Knowledge of basic civics among the American populace has declined in recent years. The federal government cannot and should not mandate any specific school curriculum or programming. However, it can and should invest in civics education in schools. The Task Force supports federal legislation to substantially increase federal funding for civics education in K-12 public schools. Bipartisan legislation offered in Congress in 2022, the Civics Secures Democracy Act,<sup>8</sup> exemplifies the Task Force's commitment to increased federal funding that maintains local autonomy. This legislation received endorsements from

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8 S. 4384, 117th Cong. (2022).



over 200 civic organizations and would have reversed decades of underinvestment in civics education. At the same time, states should adopt enhanced civics instructional requirements for all grade levels and introduce students to civics curriculum at earlier ages. The Task Force also calls on colleges and universities to offer advanced civics education.

### **CITIZEN REDISTRICTING COMMISSIONS**

Legislative redistricting is necessary and legitimate with a constantly shifting electorate, but the politicized nature of the process means that the dominant party often engages in gerrymandering to entrench and increase its hold on power. Put simply, this means the politicians get to pick their voters, not the other way around. The Task Force endorses the ABA's own prior recommendations for redistricting reform and supports efforts underway in various states to create independent citizen redistricting commissions. As of this writing, eighteen states—including Arizona, California, Colorado, and Michigan—have some form of redistricting commission, but they vary widely in structure and composition.

### **OPEN, NONPARTISAN PRIMARIES; RANKED-CHOICE VOTING; FUSION VOTING**

Partisan gridlock represents a major threat to our democracy. It is driven by elected representatives who take extreme political positions to appease their extreme and narrow political bases. The Task Force is convinced that the partisan primary system that currently exists across much of the country is a source of much extremism and congestion.

The Task Force believes states should consider whether one, two, or all three of the following voting reforms would promote democracy in their particular circumstances: (1) open, non-partisan primaries; (2) rank-choice voting; and (3) fusion voting. These measures reward the candidates with the broadest electoral appeal. Depending on the jurisdiction, these changes can be adopted through legislation or a ballot measure.

### **REDUCING PARTISAN INFLUENCE IN ELECTION ADMINISTRATION**

Across the country, election officials are selected through political processes, and the position of state or local election official is becoming even more politicized. The Task Force endorses state-level reform measures to depoliticize officials, offices, and commissions with responsibility for election administration. One model for state-level non-partisan election administration in the United States is Wisconsin's Government Accountability Board,<sup>9</sup> which consisted of retired judges who were not members of any political party or otherwise connected to partisan politics. The Task Force also recommends that professional certifications and ethical standards for election officials and workers be developed and promoted alongside a strong, enforceable code of professional responsibility for election officials.

### **INCREASE ELECTION WORKER SAFETY**

The Task Force endorses federal funding by the Department of Homeland Security to improve election security; state-level enhancements of the criminal penalties for

9 See J. MIJIN CHA & LIZ KENNEDY, DEMOS, MILLIONS TO THE POLLS – PRACTICAL POLICIES TO FULFILL THE FREEDOM TO VOTE FOR ALL AMERICANS 43 (2014).

interfering with election workers' official duties (see, e.g., Maine); state-level legislation that expands the legal protections for election workers beyond polling locations (see, e.g., Colorado and Virginia); and guidance to local law enforcement to improve investigations of criminal conduct directed at election workers.

### INCREASE ACCESS TO VOTING

The United States lags behind other democratic nations in overall voter participation. Over the years, there have been countless proposals for enhancing access to voting in U.S. elections. The Task Force endorses efforts to expand the pool of registered voters by adopting automatic voter registration; removing barriers to same-day voter registration; ensuring that voter registration lists are regularly maintained; and ensuring that individuals can easily check their voter registration status. The Task Force endorses federal legislation offered in 2024, the "Election Day Holiday Act."<sup>10</sup> Further, we encourage states to allow voters to use more than one form of identification document to vote, to standardize deadlines and procedures for early and mail-in voting, and to improve processes for curing ballot errors.

### IMPROVE THE CYBERSECURITY OF OUR DEMOCRATIC PROCESS

The cybersecurity of election infrastructure is essential to the integrity of election results.<sup>11</sup> Since the 2016 elections, Congress and other government entities have been proactive in guaranteeing defensible and resilient election

cybersecurity. But the threat landscape continues to evolve. As threats develop, the United States must adjust to safeguard the democratic process. The Task Force encourages efforts to continue to enhance the cyber resilience of state and federal election infrastructure. This includes transitioning nationwide to hand-marked paper ballot voting machines and affirming election results with post-election risk-limiting auditing. The Task Force also supports voting machines that produce paper trails to insulate votes from electronic tampering and facilitate post-election audits.

### REFINE THE ROLE OF THE PRESS AND SOCIAL MEDIA IN PROMOTING OUR DEMOCRACY

A free press plays an essential role in reinforcing election credibility and transparency. But today, the rise of alternative news sources and other forms of generative artificial intelligence has greatly complicated media coverage of our democracy in action, as disinformation and "deepfakes" made their mark on the 2024 elections. The Task Force encourages news outlets to continue to develop and employ responsible election-night reporting practices. Most urgently, we support efforts at the federal level to adopt laws like those in Wisconsin and Arizona that require disclosure of campaign material that includes AI-generated content. Bipartisan legislation pending in Congress as S. 1213, the "Protect Elections from Deceptive AI Act," would prohibit the intentional distribution of "materially deceptive" AI-generated

<sup>10</sup> H.R. 7329, 118<sup>th</sup> Cong. (2023-2024)

<sup>11</sup> See Alan Butler, *Election Cybersecurity Amid a Global Pandemic*, A.B.A.: HUM. RTS. MAG. (June 25, 2020), [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/voting-in-2020/election-cybersecurity-amid-a-global-pandemic](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-in-2020/election-cybersecurity-amid-a-global-pandemic).

audio or visual political content related to candidates running for office. The Task Force also encourages private industry to adopt policies that guard against the spread of deceptive AI associated with elections. Meanwhile, the Task Force concurs with the view that government regulators should *not* be empowered to designate content “fake news”—a constitutionally suspect authority with an enormous potential for misuse in a free society.

### ENHANCE THE OBLIGATIONS OF LAWYERS IN OUR DEMOCRACY

The Task Force recommends that the ABA and state and local bar associations continue efforts to address threats to democracy, the rule of law, and the independence and legitimacy of the courts. The Task Force recommends, among other things, that the various state-level oaths of admission for attorneys be amended to include a commitment to upholding democracy and the rule of law, and that the ABA, state and local bar associations, state supreme courts and other state-level regulatory bodies provide further guidance concerning the special obligations of lawyers to respect and promote the rule of law, our democracy, the courts and court orders.

### CURB FRIVOLOUS ELECTION-RELATED LAWSUITS

Frivolous election-related lawsuits are by their very nature high-profile, filed and litigated on an expedited basis, and often threaten to sidetrack an election. The Task Force recommends legislation at the federal and state levels to require election challenges to go before three-judge panels accompanied

by an expedited appellate pathway, similar to the three-judge panels that currently hear challenges under the Voting Rights Act. The Task Force also recommends that states explore changes in law that allow for special motions to dismiss, cost shifting, and potential sanctions if a party is found to have filed a frivolous election-related lawsuit, like anti-SLAPP laws that deter frivolous defamation suits currently on the books in most states.

### ENHANCE LAW SCHOOL TRAINING ON DEMOCRACY AND THE RULE OF LAW

The Task Force endorses the [June 18, 2024, letter](#) signed by over 100 law school deans, committing to a greater focus on the rule of law in law school courses and other offerings. We agree with the goal to train the next generation of lawyers to sustain our constitutional democracy and the rule of law.

### DISAGREE BETTER

Finally, Task Force member and former federal appellate Judge Thomas Griffith is a strong advocate for “Disagree Better,” an initiative launched by Utah Governor Spencer Cox in July 2023. The essence of Disagree Better is to encourage “disagreement with civility and kindness.” The Task Force applauds Disagree Better and recommends similar initiatives within legislatures, town councils, bar associations, colleges and universities, high schools, churches, community groups, and beyond.

In all, the Task Force embraces as its own the Society for the Rule of Law’s recently promulgated *Statement of Principles to Preserve, Protect, and Defend the Constitution, the Rule of Law, and American Democracy*. The

Task Force led efforts to have these principles adopted by the ABA House Delegates in August 2024 as official ABA policy. Specifically, those Principles include respecting the constitutional rights of all Americans, the results of elections, and the peaceful transfer of power, as well as honoring “America by preserving, protecting, and defending the Constitution of the United States, the rule of law, and America’s democracy.”<sup>12</sup>

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12 Soc’y for the Rule of L., *Statement of Principles to Preserve, Protect, and Defend the Constitution, the Rule of Law, and American Democracy*, <https://societyfortheruleoflaw.org/statement-of-principles/> (last visited Aug. 27, 2025).

## II. The Task Force's Work

Upon becoming ABA President on August 8, 2023, Mary Smith announced the creation of an ABA Task Force for American Democracy, to be co-chaired by former federal appellate Judge J. Michael Luttig and former Secretary of Homeland Security Jeh Charles Johnson. The Task Force led by Judge Luttig and Secretary Johnson is a bipartisan group of distinguished Americans consisting primarily, but not exclusively, of lawyers. The Task Force included practicing attorneys, retired federal and state judges, law professors, law school deans, election law experts, a former candidate for president, retired corporate CEOs, a retired three-star Navy admiral, commentators, scholars, historians, and leaders of public interest organizations. The members of this diverse and distinguished group all joined because of their common devotion to preserving the rule of law and our American democracy. Many Task Force members have been thought leaders in developing and advancing reforms to strengthen our democracy.

The Task Force was asked to “consider and propose solutions for educating our citizens on the importance of an inclusive, strong, and enduring democracy and help to provide bulwarks to bolster our democracy as conceived.” These recommended solutions are summarized in Section I above and set forth in detail in Section III below.

Beyond that, the Task Force took on an action-oriented, operational role to meet the urgency of the 2024 election. This involved taking

immediate steps to educate, motivate, and support the work of lawyers, public officials, and election officials around the country in the run-up to the 2024 election. As a result, the Task Force found itself at the coordinating center of the activities of many state and local bar associations and NGOs, all dedicated to preserving and improving our democracy. Given that defending the Constitution and the rule of law are common threads running through the work of all these organizations, the Task Force was ideally positioned to serve as a proverbial “hub” for their efforts. These activities are described below.

### LISTENING TOURS

At the outset, Task Force leaders recognized the need for community-focused listening tours in key battleground states around the country. Throughout 2024 and 2025, the Task Force held the following Listening Tour events:

- Georgia Listening Tour held at the Bar Center of the State Bar of Georgia (February 13, 2024).
- Michigan Listening Tour held at the Wayne State University Law School (March 15, 2024).
- Pennsylvania Listening Tour held at the National Constitution Center in Philadelphia, Pennsylvania (May 1, 2024).



- Wisconsin Listening Tour held at the Wisconsin State Bar Center (July 9, 2024).
- Connecticut Listening Tour held at the Legislative Office Building (September 4, 2024).
- Ohio Listening Tour held at the University of Cincinnati College of Law (September 18, 2024).
- Arizona Listening Tour held at the Sandra Day O'Connor College of Law at Arizona State University (January 29, 2025).

The goals of these Listening Tours were to:

- Form state-level networks by educating attendees about our elections and the importance of American democracy and the rule of law.
- Gain an understanding of the concerns of Listening Tour attendees about our elections and democracy, and to solicit their ideas for solving the issues we face.
- Assist attendees in forming “Next Steps Committees” of volunteer lawyers and other individuals willing to give talks and take action on supporting our elections, including by dispelling misinformation and disinformation and further educating members of their communities on democracy and the rule of law.

When the Task Force reached out to a state about holding a Listening Tour, the process typically began by recruiting leading lawyers, bar associations, and law schools in that state to form a nucleus of organizers. Those individuals and entities then helped the Task Force recruit local election officials, business, community, and faith leaders, educators, democracy-oriented NGOs, students, and

others to help set the agenda for the event, extend invitations, and arrange the logistics with help from Task Force staff. The events’ agendas generally followed the goals set forth above, but were unique to each state, given unique local issues. Where feasible, the Task Force arranged for the event to be recorded and livestreamed and for the press to be invited. The goal at the end of each Listening Tour stop was to help the state form a “Next Steps for Democracy Committee” with a network of subcommittees to actively promote our democracy and elections.

The Listening Tours were all well attended and well received. Each of the Listening Tour events included state election officials, and in Georgia, Michigan, and Pennsylvania, the state’s Secretary of State was able to join. Video recordings of the Listening Tours can be accessed [here](#). The Task Force also created a Listening Tour Toolkit that bar associations and groups of lawyers around the country can use to put on similar events in their communities in the future.

## NEXT STEPS COMMITTEES

As noted, a desired outcome of the Listening Tours was the establishment of a Next Steps Committee in each of the states visited. We established Next Steps Committees in Georgia, Michigan, Pennsylvania, Wisconsin, and Connecticut. Next Steps activities included setting up speakers’ bureaus of volunteer lawyers willing to give talks on democracy and the Rule of Law, elections and election law, the Constitution, as well as other related topics. In addition, Rapid Response teams of lawyers and other community leaders are formed to respond to misinformation and disinformation about our elections as they arise in their communities. Finally, Next

Steps Committees recruited lawyers to serve as poll workers around their state. To support the work of these Next Steps Committees, Task Force staff and volunteers created a host of speakers guides on a range of topics and collaborated with the Committees on the ways that lawyers could best dispel election misinformation as it arises in their communities.

## STRATEGIC COMMUNICATIONS

Two Task Force members and the Task Force's communications advisor, Steve Silverman, led the Task Force's strategic communications effort. In addition to members of the legal profession, we gave attention to national messaging that members of the Task Force delivered to the public to improve trust in our elections and highlight the role that democracy and the rule of law play in everyday American lives.

Meanwhile, members of the Task Force, including Judge Luttig and Secretary Johnson, spoke at various public events to promote the work of the Task Force. For example:

- On August 9 and 10, 2023, Judge Luttig and Secretary Johnson appeared on CNN and MSNBC to announce the formation of the Task Force.
- On November 2, 2023, Judge Luttig and Secretary Johnson both accepted the Public Service Award from the Aspen Institute at its annual dinner in New York City.
- On December 6, 2023, Judge Luttig and Secretary Johnson participated virtually in a session of the ABA President's speaker series to discuss the work of the Task Force.
- On February 9, 2024, Judge Luttig and Secretary Johnson spoke about the work of the Task Force at the annual meeting of the National Constitution Society hosted by Task Force member Jeffrey Rosen in Miami, Florida.
- On April 3, 2024, former appellate Judge and Task Force member Thomas Griffith and Secretary Johnson spoke at Yale Law School about the work of the Task Force. As he has in a number of other places, Judge Griffith highlighted the work of the initiative "Disagree Better."
- On April 16, 2024, Secretary Johnson spoke to a New York City Bar Association webinar about the role of lawyers in preserving our democracy.
- On April 26, 2024, Secretary Johnson delivered an address at the University of Chicago about "the Dangers to Democracy at Home and Abroad," during which he referenced the work of the Task Force.
- On April 30, 2024, then-ABA President Smith spoke at the Center for Strategic and International Studies (CSIS) Civics Summit: The Role of Business in Sustaining Democracy in Washington, D.C., on a panel entitled "Plenary Panel—Beyond Advocacy: The Evolving Role of Lawyers in Strengthening Civic Engagement" during which she discussed the work of the Task Force. Task Force member Richard Haass also spoke at this event.
- On May 3, 2024, then-President Smith, Judge Luttig, and Secretary Johnson spoke

at the annual meeting of the ABA Litigation Section about the work of the Task Force.

- On May 22, 2024, Judge Luttig and Secretary Johnson spoke about the work of the Task Force at a meeting of the Gephardt Institute for Civic and Community Engagement in Washington, D.C. (former Congressman Dick Gephardt is a Task Force member).
- On June 5, 2024, then-President Smith spoke at the U.S. News & World Report 2nd Annual State of Equity in America Summit in Washington, D.C., on a panel entitled “Election 2024: You Are Right to Vote and Your Right to Vote” in which she highlighted the work of the Task Force.
- On July 25, 2024, the Task Force and Troutman Pepper kicked off a three-part webinar series: A Lawyer’s Role in Protecting the Rule of Law, Civil Discourse, and Election Integrity: A 3-Part CLE Series. The first webinar, entitled “Session 1: American Democracy and the Rule of Law,” included President Smith, Judge Luttig, and Advisory Committee Vice Chair Lauren Rikleen.
- On August 2, 2024, then-President Smith, Judge Luttig, Secretary Johnson, and Vice Chair Bill Ide spoke on the Task Force’s work at the ABA summit on democracy held during its annual meeting in Chicago. The summit brought together legal professionals around the country to learn how to protect democracy and ensure trust in our election systems.
- On August 6, 2024, the Task Force and Troutman Pepper hosted the second in its three-part webinar series. This webinar,

entitled “Disagreeing Better,” included Task Force member Judge Thomas Griffith.

- On September 11, 2024, the Task Force and Troutman Pepper hosted the third in its three-part series of webinars entitled “Election 2024: Threats, Myths, and What We Can Do to Protect the Vote.”
- On September 16, 2024, Past President Smith,<sup>13</sup> Judge Luttig, and Advisory Committee member Jack Young spoke at a Constitution Day event at the University of Virginia in Charlottesville.
- On October 7, 2024, Judge Luttig spoke about the work of the Task Force at the Rotary Club of Atlanta’s American Democracy & the Presidential Election of 2024 event.
- On February 21, 2025, Past President Smith spoke at the New Hampshire Bar Association Midyear Meeting on a panel, “The Lawyer’s Role in Protecting the Rule of Law, Civil Discourse, and the Courts,” where she described the continuing work of the Task Force.
- On March 1, 2025, Past President Smith spoke on the work of the Task Force at the Virginia State Bar Association council meeting.
- On April 18, 2025, Past President Smith and Advisory Committee Member Judge Peter Reyes spoke on an American Bar Association Business Law Section Rule of Law Working Group webinar, “Understanding the Rule of Law: A Law Student’s Guide.”
- On April 24, 2025, Past President Smith spoke on the Task Force’s work at the

13 President Smith’s term as ABA President concluded on August 6, 2024.

meeting of the Rule of Law Working Group at the ABA Business Law Section Spring Meeting.

- On March 25 and May 25, 2025, Task Force member and NYU Professor of Law Rick Pildes participated in several Task Force webinars: the first focusing on defending the judiciary, and the second and third on providing guidance to lawyers on how they can get involved to promote the rule of law.

### LAW SCHOOL DEAN'S LETTER

Spearheaded by former Yale Law School Dean Heather Gerken and former Judge Thomas Griffith, over 120 law school deans signed a letter affirming their commitment to train the next generation of lawyers on their duty to support our constitutional democracy. The June 18, 2024, letter also affirmed the deans' commitment to train lawyers to further the public's understanding of the rule of law, our justice system, and how to disagree respectfully and engage across political and ideological divides. The letter can be accessed [here](#).

### ELECTION LAW SEMINARS HELD IN CONJUNCTION WITH THE KNIGHT FOUNDATION

The Task Force partnered with the Knight Foundation in the months leading up to the November 2024 election to host the Knight Election Law Forums, a virtual series aimed at equipping journalists with essential, nonpartisan, fact-based knowledge on election law to better inform their communities in the lead-up to the 2024 elections and beyond.

The initial forum featured a panel of national election law experts, David Becker,

Ben Ginsberg, and Bob Bauer, and included remarks from Yale Law Dean Heather Gerken and Task Force Co-Chair Judge Luttig. This opening session, moderated by former CNN anchor Poppy Harlow and NBC reporter Tracie Potts, attracted over 600 registrants. Following this initial forum, the Task Force co-sponsored with Knight a series of state election law webinars in the seven "swing states," attended by several hundred journalists, which were hosted at local law schools:

- **National Webinar:** The September 5th event was the first in a series of Knight Election Law Forums, a collaboration between Knight Foundation and the Task Force. This virtual series aims to equip journalists with essential, nonpartisan, fact-based knowledge on election law to better inform their communities in the lead-up to the 2024 elections and beyond. Speakers included David Becker, Heather Gerken, and Ben Ginsberg (September 5, 2024).
- **Nevada webinar:** The second webinar in the series focused on Nevada's specific election laws tailored for local journalists (September 11, 2025).
- **Georgia webinar:** The third webinar in the series focused on Georgia's specific election laws tailored for local journalists (September 18, 2025).
- **Arizona webinar:** The fourth webinar in the series focused on Arizona's specific election laws tailored for local journalists (September 23, 2025).
- **Michigan webinar:** The fifth webinar in the series focused on Michigan's specific

election laws tailored for local journalists (September 25, 2025).

- **Pennsylvania webinar:** The sixth webinar in the series focused on Pennsylvania’s specific election laws tailored for local journalists (October 4, 2025).
- **Wisconsin webinar:** The seventh webinar in the series focused on Wisconsin’s specific election laws tailored for local journalists (October 8, 2025).
- **North Carolina webinar:** The eighth webinar in the series focused on North Carolina’s specific election laws tailored for local journalists (October 14, 2025).
- **Myth-Busting from Top Experts:** The ninth and final webinar in the series, focusing on debunking common election law myths, featuring leading experts, including David Becker and Ben Ginsberg.

## COLLABORATIONS WITH DEMOCRACY NGOS

Task Force members interacted and coordinated with a host of NGOs also dedicated to supporting American democracy and rule of law efforts. Through these interactions, NGOs learned of the Task Force’s work and discussed where we and they might be able to collaborate. These NGOs range from groups organized around a particular vocation seeking to defend democracy (e.g., business leaders, retired military, prosecuting attorneys) to

groups with a particular focus (e.g., improving civility, improving civics knowledge, reducing misinformation).

Given that law and legal issues are a common thread that runs through the work of these diverse groups, the Task Force had the opportunity to serve as the proverbial “hub” of the wagon wheel for this work, with the spokes focused either on a given topic or on engaging a particular community. In all, the Task Force served as a convening platform for a wide array of democracy and rule of law-related activities.

## WORK OF THE ABA ADVISORY COMMISSION

The ABA Advisory Commission is a bipartisan, diverse group of thirty geographically dispersed lawyers from past and present ABA leadership and from other national, state, and local bar associations. Led by Chair Carl Smallwood and Vice Chair Lauren Rikleen, the Advisory Commission took on the mission to broaden the reach of the Task Force’s work. This included identifying bar associations throughout the country that were willing to implement a “Summit for Democracy and the Rule of Law.” The Advisory Commission aimed to reach lawyers in as many states as possible, as soon as possible. The first outreach took place in early February 2024 in a presentation to the National Conference of Bar Presidents, which included the leaders from state, local, and special focus bars from 53 states and territories, as well as past bar leaders from



these jurisdictions. The goal of the Advisory Commission was to inspire and mobilize the legal profession to use its convening powers and other skills to engage broader audiences to actively support and defend American democracy, the Constitution, and the rule of law. In particular, the goals of each Advisory Commission summit were to:

- Provide presentations to serve as a foundational briefing on why American democracy, the Constitution, and the rule of law are at risk.
- Set forth the compelling reasons why lawyers have the unique skills needed and should engage in a non-partisan way with their communities in the protection of all three.
- Develop tools to help lawyers shift the partisan language around these issues and reframe the conversation, so they understand that protecting American democracy, the Constitution, and the rule of law are neither political nor partisan.
- Help mandatory bar associations understand that the Supreme Court's decision in *Keller v. State Bar of California*, 496 U.S. 1 (1990) (holding that attorneys who are required to be members of a state bar association have a First Amendment right to refrain from subsidizing the association's political or ideological activities) should not necessarily be a bar to promoting the protection and preservation of democracy, the Constitution, and the rule of law.
- Provide talking points to assist bar associations and lawyers in sponsoring

events and programming with other stakeholders.

### DEMOCRACY SUMMIT AND THE "UNSUNG HEROES OF DEMOCRACY AWARDS"

As part of the ABA's annual meeting in Chicago, then-ABA President Mary Smith convened a Democracy Summit on August 2, 2024, featuring the Task Force and its work. It featured Task Force members in conversations and provided an overview of the Task Force's work to date.

Yale Law School Dean Heather Gerken suggested that the Task Force consider giving out awards to acknowledge and recognize the in-the-trenches, behind the scenes work of lawyers, election workers, everyday citizens, and non-profit organizations that stand up for American Democracy and the rule of law. The ABA Board of Governors approved these awards to recognize the efforts of individuals and organizations that (often in anonymity) do the right thing, despite their own peril, and to hold them out as role models to demonstrate that virtually anyone can play a role in protecting our democracy. These 22 awards were given out at the aforementioned Democracy Summit on August 2nd. The list of those organizations and individuals who received the awards is available [here](#).

### TASK FORCE HOSTED CLES

Recognizing that many lawyers are not knowledgeable on election law, the Task Force and Troutman Pepper organized a series of three virtual CLE sessions available free of charge to lawyers around the country. In



addition to covering election law, the sessions addressed the role lawyers can play to defend the constitution and the rule of law in their communities, included a session on how to “Disagree Better,” and addressed the role lawyers can play in returning civility and civil discussion to the public square. The speakers and agendas for these CLE sessions are available [here](#). The Task Force also referred to additional CLE and informational programming by ABA sections, committees, and other entities developed in coordination with the Advisory Committee.<sup>14</sup>

## WHITE PAPERS

As part of the Task Force’s efforts, a number of well-known and respected authorities generated working papers and background papers that informed the Task Force’s recommendations in Section III of this report:

1. *Political Reforms to Combat Extremism*, by Richard H. Pildes.
2. *Increasing Trust in Our Elections*, by Edward B. Foley *The State of Civics Education in the General Populace*, by Robert A. Kelly.
3. *Deepfakes and American Elections*, by N. David Bleisch.
4. *Addressing Baseless Election Related Lawsuits*, N. David Bleisch.
5. *Improving Participation in Democratic Processes*, by Robert A. Kelly.
6. *Why Democracy?* by Nisha Lee and Katherine Moss.
7. *How Does the First Amendment Right of Free Speech Intersect with Democracy?* by Jennifer Cook Purcell. *Democracy: the Rule of Law and Human Rights*, Nisha Lee and Katherine Moss.
8. *Reinvigorating American Democracy – A Youth Perspective*, by Katherine Moss and Nisha Lee.
9. *Improving Access to Voting*, by Jack Young & Jason Kaune.
10. *The State of Democracy Education in Law Schools*, Jacob Williams and Sydney Grell.
11. *Keeping the Administration of Our Elections from Becoming Politicized*, by Edward B. Foley.
12. *Decreasing the Political Polarization of the American Public*, by Edward B. Foley.
13. *Addressing Negative Partisanship with Mobile Voting*, by Jocelyn Bucaro.
14. *Reviving the American Tradition of Fusion Voting*, by Lee Drutman, Tabatha Abu El-Haj, and Beau Tremiere.

<sup>14</sup> E.g., in collaboration with the Advisory Committee, ABA Standing Committee on Election Law, and ABA Commission on Law and Aging, the Task Force produced a series of webinars tailored to help lawyers inform voters about the nuts and bolts of election law based on the ABA Election Administration Guidelines and Commentary, available at [Empowering Every Voter: Voter Education Webinar Series](#). Other programming can be found through the ABA CLE program on the Rule of Law in America.

15. *Proportional Representation*, by Ruth Greenwood, Drew Penrose, and Deborah Apau.
16. *What We Know About Ranked Choice Voting, Updated for 2025*, Eveline Dowling and Caroline Tolbert.

Each of these white papers and background papers is available on the Task Force's website [here](#).

## THE TASK FORCE DEMOCRACY DATABASE

Co-chair Judge Luttig and various Task Force members and advisors routinely sent the Task Force and staff links to articles, op-eds, and third-party studies concerning the issues the Task Force sought to address. This material served to inform the Task Force's work.

Reading each of these items, preparing a summary of how they relate to the Task Force's work, and putting it into a searchable database was a valuable but time-consuming process. Fortunately, upon hearing of the Task Force's desire to create such a database, Heather Gerken, Dean of Yale Law School, agreed to enlist six Yale Law students to undertake this work under the guidance of several Task Force volunteers. The Task Force expresses its gratitude for this work to Yale Law students Christopher Adsit, Matt Beattie-Callahan, Connor Brashear, Bryce Morales, Megha Parwani, and Romina Lilollari. Their work resulted in a searchable Democracy Database of summaries available on the Task Force's website [here](#).

## POST-2024 ELECTION STRATEGIC PIVOT

Following the November 2024 U.S. presidential election, the Task Force underwent a significant strategic realignment. The Task Force shifted its focus from pre-election concerns about electoral integrity and institutional checks and balances to a post-election emphasis on preventing democratic backsliding in the United States. This pivot reflects the evolving challenges facing American democratic institutions and the legal profession's unique role in safeguarding constitutional principles.

The Task Force's mandate from the ABA expired August 12, 2025, but our work will continue. Now an independent entity, the Task Force's new mandate will center on interconnected pillars designed to strengthen democratic resilience through legal profession leadership and community engagement. This approach recognizes that protecting democracy requires both institutional safeguards and grassroots civic participation, with attorneys serving as crucial intermediaries between legal institutions and the broader public.

### III. Our Recommendations

As originally constituted by the ABA, the Task Force was to “consider and propose solutions for educating our citizens on the importance of an inclusive, strong and enduring democracy and help to provide bulwarks to bolster our democracy as conceived,” to uphold the rule of law, and to deliver those recommendations in writing to the ABA at its annual meeting in Chicago in 2024. In particular, the Task Force was assigned to consider:

- Educating our citizenry on the importance of an inclusive, strong, and enduring democracy.
- Maximizing voter confidence and participation in our democratic process.
- Disincentivizing irresponsible and extremist rhetoric and positions among elected officials and candidates for elected office.
- Ensuring nonpartisan election administration.
- Ensuring the safety and integrity of state and local election officials and workers across the country.
- Encouraging the press and social media to contribute to the promotion of our democracy and avoid denigrating it.
- Educating on how the role of cyberspace and AI can play in either promoting or corrupting the American democratic process.
- Exposing anti-democratic vulnerabilities in the way candidates for federal office are elected in this country.
- Promoting potential changes in federal, state, and local laws to meet these ends.

Additionally, it is our view that lawyers in particular should have a responsibility to preserve and defend our democracy and that upholding the rule of law is essential to that aim. Thus, Past President Smith and the Task Force included within our mission the consideration of ways to:

- Inspire and mobilize America’s legal profession to actively support and defend American democracy.
- Encourage the ABA, state, and local bar associations to continue efforts to address threats to democracy, the rule of law, and the independence and legitimacy of the courts, and ensure that lawyers are educated about the importance of upholding these principles.
- Leverage the legal profession to educate the public on the reasons for and the importance of democracy and the rule of law.

In the pages that follow are our recommendations for reform. As stated above, the recommendations we advance below were developed over the course of two years and two U.S. presidents’ administrations;

they are intended to address the long-term systemic problems we see deeply rooted in our democracy. We intend to speak of an era in American history, not to any particular moment or crisis.

None of these proposals is original. They are well-developed reforms, many of which have already been adopted at the state level or are embodied in pending federal or state legislation. The ABA itself has for years advanced some of these same proposals. Some members of our own Task Force are themselves thought leaders in advancing many of these reforms.

## A. Reinvigorating American Civics Education

High-quality civics education is a prerequisite for a functioning democracy. Studies indicate that when citizens are informed about the structure of their government and the role they play in its maintenance, they are better able to make sense of contemporary public issues and are more willing to participate in civic life as a means of addressing those issues.<sup>15</sup> Likewise, students who receive robust civics instruction

are more likely to complete college, vote in elections, engage in policy discussions with their friends and family, volunteer in their communities, and develop valuable skills in public speaking, critical thinking, and problem solving.<sup>16</sup> An investment in civics education today would yield long-term results as the next generations inherit the responsibility to safeguard our democracy and the rule of law.

### PROBLEM STATEMENT

Since the nation's inception, leaders have recognized the importance of an educated citizenry for democracy. Thomas Jefferson and James Madison touted the virtues of civics education.<sup>17</sup> They wrote that civics education was essential for protecting the power and rights of citizens because it encouraged a level of civic engagement that would hold the government accountable to those under its rule.<sup>18</sup> Jefferson and Madison's perspective was popular, yet there was little to no formal schooling on civics during much of the country's early history. Until the early nineteenth century, most Americans learned civics at home, at work, or at church, rather than in school.<sup>19</sup>

This dynamic changed with the advent of state-funded public education in the 1830s.

15 REBECCA WINTHROP, BROOKINGS INST., *THE NEED FOR CIVIC EDUCATION IN 21ST-CENTURY SCHOOLS* 5 (2020), <https://www.brookings.edu/articles/the-need-for-civic-education-in-21st-century-schools>.

16 *14 Reasons Why Teaching Civics Is Important Right Now*, ICIVICS (Feb. 14, 2022), <https://vision.icivics.org/14-reasons-why-teaching-civics-is-important-right-now/>.

17 *History of Civics Education in the United States*, ACAD. 4 SOC. CIVICS, <https://new.academy4sc.org/research/history-of-civics-education-in-the-united-states/> (last visited June 6, 2025).

18 *Id.* (citing Jack Crittenden & Peter Levine, *Civic Education*, STAN. ENCYC. PHIL. (Edward N. Zalta ed., 2018), <https://plato.stanford.edu/archives/fall2018/entries/civic-education/>).

19 Glenn C. Altschuler & David Wippman, *We Have a Civics Education Crisis – and Deep Divisions on How to Solve It*, WASH. POST (May 31, 2023), <https://www.washingtonpost.com/made-by-history/2023/05/31/civics-education-history>.

Early reformers like Horace Mann endeavored to create schools that would produce model citizens by emphasizing civics and morality, “teaching the basic mechanisms of government, and imbuing students with loyalty to America and her ideals.”<sup>20</sup> Wary of the potential for the politicization of civics curriculum, Mann advanced a form of civics education that was apolitical. Civics was to be taught through the “study, memorization, and recitation of patriotic speeches and foundational texts.”<sup>21</sup> Civics education would not just reflect the personal political beliefs of individual instructors.

Mann’s vision of a neutral American civics education proved difficult to achieve in practice. Major political conflicts throughout the 20th century, including two World Wars and the Cold War, stirred strong nationalist and isolationist sentiments. Efforts to teach material deemed disloyal to America were met with backlash from elected officials who felt that schools had a responsibility to “promote an abiding love of American institutions” and protect “against the evils of communism.”<sup>22</sup> This goal was reflected in Congress’s 1947 Zeal for Democracy Program, which encouraged schools to define American democracy as opposed to totalitarianism but did so without

any critical examination of American democracy itself or its role in society.<sup>23</sup>

Further, reformers in the 1960s called for a reexamination of the dominant America-first account that glossed over the country’s painful relationship with slavery, anti-immigrant policies, and McCarthy-era censorship.<sup>24</sup> Many urged schools to transform the mainstream version of American history and government being taught in classrooms into a pluralist, multicultural civics curriculum that incorporated the narratives of those from marginalized and underrepresented backgrounds.<sup>25</sup> Such changes to American civics curricula were met with significant pushback. In 1992, for example, the Senate almost unanimously rejected an attempt to establish more inclusive national history standards and adopt curriculum guidelines developed by a coalition of civic organizations and educators.<sup>26</sup>

As the national debate regarding the contents of civics curriculum raged on, the country was also facing concerns about national security and America’s competitiveness in the global economy. The Soviet Union’s launch of the Sputnik space satellite in 1957 ignited fears among Americans that the country was falling behind compared to the rest of the world in the domains of science and technology.<sup>27</sup>

20 *History of Civics Education in the United States*, *supra* note 17 (quoting Crittenden & Levine, *supra* note 18).

21 Altschuler & Wippman, *supra* note 19.

22 *Id.*

23 *Id.* (citing Maureen Kudlik et al., *McCarthyism in Education*, ALL. FOR NETWORKING VISUAL CULTURE (Mar. 14, 2016), <https://scalar.usc.edu/works/constructing-a-culture/mccarthyism-in-education>).

24 *Id.*

25 *Id.*

26 *Id.*

27 EDUCATING FOR AM. DEMOCRACY, iCIVICS, EDUCATING FOR AMERICAN DEMOCRACY: EXCELLENCE IN HISTORY AND CIVICS FOR ALL LEARNERS 5 (2021), <https://www.educatingforamericandemocracy.org/wp-content/uploads/2021/02/Educating-for-American-Democracy-Report-Excellence-in-History-and-Civics-for-All-Learners.pdf>; Larry Abramson, *Sputnik*



These fears prompted American politicians to undertake a number of reform efforts to enhance science, technology, engineering, and math (STEM) education across the nation. In 2002, President George W. Bush signed the No Child Left Behind Act<sup>28</sup> into law, significantly increasing the role of the federal government in public education and mandating stricter standardized testing and reporting requirements for schools, especially in reading and STEM subjects.<sup>29</sup> The country's focus on reinvigorating STEM education persisted into the Obama Administration. In 2009, President Obama announced that the \$4.35 billion Race to the Top school grant program would prioritize funds for states committed to improving STEM education.<sup>30</sup> And, that same year, the administration launched the Educate to Innovate campaign, designed to improve student performance in STEM subjects by creating public-private partnerships “dedicated to motivating and

inspiring young people across America to excel in science and math.”<sup>31</sup>

Meanwhile, strategic investments in basic civics and history education have taken a backseat. For FY 2022, Congress granted the Department of Education just \$7.75 million to support civics education through competitive grants,<sup>32</sup> compared to \$546 million for competitive grants to support STEM education in 2020.<sup>33</sup> Recognizing the lack of resources available for civics instruction, Congress increased funding for K-12 civics and history education to \$23 million in FY 2023 through the end-of-year omnibus appropriations bill.<sup>34</sup> Despite requesting an additional increase to \$73 million,<sup>35</sup> the Department of Education's civics and history appropriation remained steady for FY 2024.<sup>36</sup>

In addition to calling for the outright elimination of the Department of Education, the current administration has proposed eliminating the civics education grant program entirely and consolidating it and

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*Left Legacy for U.S. Science Education*, NPR (Sept. 30, 2007), <https://www.npr.org/2007/09/30/14829195/sputnik-left-legacy-for-u-s-science-education>.

28 Pub. L. No. 107-110, 115 Stat. 1425 (2002) (codified as amended in scattered sections of 20 U.S.C.).

29 *Id.*; see also WINTHROP, *supra* note 15, at 3.

30 Press Release, White House, Off. of the Press Sec'y, President Obama Launches “Educate to Innovate” Campaign for Excellence in Science, Technology, Engineering & Math (Stem) Education (Nov. 23, 2009), <https://obamawhitehouse.archives.gov/the-press-office/president-obama-launches-educate-innovate-campaign-excellence-science-technology-en>.

31 *Id.*

32 COMM. FOR ECON. DEV., POLICY BACKGROUNDER: THE STATE OF CIVICS EDUCATION IN THE US 1 (2023), [https://www.ced.org/pdf/CED\\_Policy\\_Backgrounder\\_Civics\\_Education\\_FINAL.pdf](https://www.ced.org/pdf/CED_Policy_Backgrounder_Civics_Education_FINAL.pdf).

33 Sydney Ward, *Lack of Quality Civic Education in Public Schools in the United States*, BALLARD BRIEF (May 2022), <https://ballardbrief.byu.edu/issue-briefs/lack-of-quality-civic-education-in-public-schools-in-the-united-states>.

34 COMM. FOR ECON. DEV., *supra* note 32, at 1.

35 U.S. DEP'T OF EDUC., FISCAL YEAR 2024 BUDGET SUMMARY 24 (2024), <https://www.ed.gov/sites/ed/files/about/overview/budget/budget24/summary/24summary.pdf>.

36 NAT'L EDUC. ASS'N, *FY24 Appropriations Summary: Department of Education (ED)* (2024), <https://www.nea.org/sites/default/files/2024-03/fy24-appropriations-summary.pdf>.

several other funding streams into a block grant that states and locales would be able to spend at their complete discretion.<sup>37</sup> If Congress passes this proposed legislation, states should work to strike a fairer balance between funding for civics and history education—which is necessary for cultivating an engaged democratic populace—and funding for other vital subjects.

The disparity between federal investment in civics versus STEM education—about \$0.05 per pupil compared to \$0.50 per pupil—has had a troubling impact on civics learning, especially in school districts in states and locales with less money available to spend on civics.<sup>38</sup> The Council of Chief State School Officers estimates that 44% of school districts have reduced the amount of time spent on social studies since the early 2000s in order to prioritize math and science subjects that receive more federal funding.<sup>39</sup>

Given all this, it should come as no surprise that knowledge of basic civics and engagement among the American populace has declined to concerning levels in recent years. The Annenberg Public Policy Center's

2024 Constitution Day Civics Survey revealed that less than two-thirds of Americans could name all three branches of government, while a full 15% could not name a single branch.<sup>40</sup> A study from the U.S. Department of Education suggests that only 13% of eighth graders are proficient in U.S. history, while only 22% are proficient in civics.<sup>41</sup> Our nation's lack of funding for and emphasis on civics instruction has no doubt contributed to a growing distrust in democratic institutions, especially among younger Americans who believe that democracy cannot deliver results for them. Today, only 19% percent of young Americans trust the federal government to do the right thing most or all of the time, only 15% believe the country is heading in the right direction, and fewer than one-third approve of the President or either party in Congress.<sup>42</sup>

## PROPOSED SOLUTIONS

Democrats, Republicans, and independents have consistently recognized civics education as the best means through which to empower the next generation to participate in their communities as engaged citizens, to combat cynicism and polarization, and to encourage

37 U.S. DEP'T OF EDUC., FISCAL YEAR 2026 BUDGET SUMMARY 9-10, 16 (2025) <https://www.ed.gov/media/document/fiscal-year-2026-budget-summary-110043.pdf>.

38 Ward, *supra* note 33.

39 Shawn Healy, *Momentum Grows for Stronger Civic Education Across States*, A.B.A.: HUM. RTS. MAG. (Jan. 4, 2022), [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/the-state-of-civic-education-in-america/momentum-grows-for-stronger-civic-education-across-states](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-state-of-civic-education-in-america/momentum-grows-for-stronger-civic-education-across-states).

40 ANNENBERG PUB. POL'Y CTR., UNIV. OF PENN., *A Majority of Americans Can't Recall Most First Amendment Rights* (Sept. 12, 2024), <https://www.annenbergpublicpolicycenter.org/most-americans-cant-recall-most-first-amendment-rights/>.

41 Altschuler & Wippman, *supra* note 19; *Results from 2022 NAEP Civics Assessment at Grade 8*, NAT'L ASSESSMENT OF EDUC. PROGRESS, [https://www.nationsreportcard.gov/civics/supporting\\_files/civics\\_2022\\_infographic.pdf](https://www.nationsreportcard.gov/civics/supporting_files/civics_2022_infographic.pdf) (last visited July 21, 2025).

42 INST. OF POL., HARV. KENNEDY SCH., *Harvard Youth Poll* (Spring 2025), <https://iop.harvard.edu/youth-poll/50th-edition-spring-2025>.

respect for the rule of law.<sup>43</sup> We could not agree more. Improving civics education is critical for the future of American democracy and requires immediate action.

Solving America's civics education crisis requires support from lawmakers, educators, and community partners from across the political spectrum. There have been several potential reforms proposed at the federal, state, and local levels that community leaders could support. These reforms would, among other things, increase financial investment in K-12 civics education, modernize and standardize civics curricula in schools, provide training resources to civics educators, develop metrics for assessing students' comprehension and retention of civics concepts, and encourage the adoption of innovative civics-oriented extracurricular programs that promote participation in the democratic process outside of the classroom.

A number of legislative and policy solutions would improve civics education with respect to funding, curriculum, and pedagogy. Many of these solutions have already been implemented in individual states or school districts and could make a difference for the nation if adopted at scale. Below are a few of these model policy innovations:

At the federal level, Congress could pass legislation to substantially increase federal

funding for civics education in K-12 public schools. The federal government cannot and should not mandate any specific curriculum or programming. However, it can and should invest in civics education in schools. Greater funding would allow states and localities to adopt stronger civics education programs tailored to the needs of their communities and to accompany those programs with more support for civics educators.<sup>44</sup> In recent years, Congress has considered legislative proposals consistent with the Task Force's recommendation of federal investment with no specific curricular strings attached.

Most notably, the Civics Secures Democracy Act was bipartisan legislation introduced in the House of Representatives in 2021 by Representatives Rosa DeLauro (D-CT), Tom Cole (R-OK), and Earl Blumenauer (D-OR)<sup>45</sup> and in the Senate by Senators Chris Coons (D-DE) and John Cornyn (R-TX).<sup>46</sup> It received endorsements from over 200 civic organizations and would have reversed decades of underinvestment in civics education by authorizing \$1 billion annually over five years toward the advancement of high-quality civics and history education in elementary and secondary schools.<sup>47</sup> Specifically, the Act would have provided \$585 million in grants to states on the condition that they participate in National Assessments of Educational Progress (NAEP) tests in civics and history and release disaggregated performance data at least once

43 *Civics Secures Democracy Act: Investing in Civic Education to Preserve America's Civic Strength*, CIVXNow (2022), [https://www.civxnow.org/wp-content/uploads/2022/08/CSD\\_one\\_pager\\_house-1.pdf](https://www.civxnow.org/wp-content/uploads/2022/08/CSD_one_pager_house-1.pdf) (noting that out of 1,000 likely voters in a national sample, a majority of both Democrats and Republicans responded that civics education in grades K-12 "would have the *most* positive and meaningful impact on strengthening the American identity").

44 *Id.*

45 H.R. 1814, 117th Cong. (2022).

46 S. 4384, 117th Cong. (2022).

47 *Id.*; see also *Civics Secures Democracy Act*, *supra* note 43.

every two years for grades four, eight, and twelve.<sup>48</sup> To promote local autonomy in our federalist system, states would have been required to spend at least 95% of the funds on subgrants to school districts to help them improve elementary and secondary student achievement in civics and history.<sup>49</sup> The Act would have also provided \$200 million in competitive grants for qualified nonprofit organizations to help expand access to civics curricula and instructional models, especially in underserved communities.<sup>50</sup> Further, significant funding would have been provided to institutions of higher education and researchers who evaluate student knowledge of civics and history concepts, instructional practices, and educator professional development. Finally, the Act would have created a new fellowship program to diversify the American History and Civics Teaching Corps.<sup>51</sup>

Other legislation recently considered by Congress would have expanded existing funding channels to support civics programming and development. The Programming, Research, Education, and Preservation in Civics and Government Act,<sup>52</sup> first introduced in 2021, would have increased funding for civics instruction by adding the study of civics and government to the scope of the

National Endowment for the Humanities' (NEH) work.<sup>53</sup> According to the bill's sponsors, Representatives Dan Kildee (D-MI) and Ashley Hinson (R-IA), the legislation would have recognized the democratic imperative to fund civics and government education and allowed NEH funding to go towards professional development resources for civics and government teachers, research into civics curriculum improvements, and better educational materials such as online textbooks.<sup>54</sup> Similar proposed legislation, the Constitution Education Is Valuable In Community Schools Act of 2023 (or the "CIVICS Act of 2023"),<sup>55</sup> would have required that national activities supported by the American History and Civics Education program under the Elementary and Secondary Education Act of 1965 encompass the teaching of U.S. history and principles of the Constitution.<sup>56</sup> Further, the USA Civics Act of 2024 aimed to strengthen the Department of Education's competitive grant program for postsecondary civics instruction.<sup>57</sup>

Other legislative proposals have been geared toward eliminating political polarization that can delay progress with respect to civics education. When individuals are deeply divided along partisan lines, it is difficult for

48 *Civics Secures Democracy Act Overview 2022*, CivXNow, <https://civxnow.org/wp-content/uploads/2022/03/Civics-Secures-Democracy-Act-Overview-2022.pdf> (last visited July 11, 2025).

49 *See id.*

50 *Id.*

51 *Id.*

52 H.R. 1133, 118th Cong. (2023).

53 *Id.*; Press Release, Off. of Rep. Ashley Hinson, Hinson, Kildee Introduce Bipartisan Legislation to Expand Civics and Government Education (May 21, 2021), <https://hinson.house.gov/media/press-releases/hinson-kildee-introduce-bipartisan-legislation-expand-civics-and-government>.

54 *Id.*

55 S. 2775, 118th Cong. (2023).

56 *Id.*

57 H.R. 9058, 118th Cong. (2024).

them to find the common ground necessary to reach a consensus. The proposed Building Civic Bridges Act<sup>58</sup> would help heal polarized communities and pave the way for the development of effective policy solutions. In particular, this legislation would create an Office of Civic Bridgebuilding within AmeriCorps that would administer a competitive grant program to support civic learning in schools, nonprofits, and public institutions through civic bridgebuilding and community reconciliation.<sup>59</sup> To the extent that AmeriCorps persists despite drastic funding and program cuts during the current administration,<sup>60</sup> this initiative holds great promise. Training school administrators and community stakeholders could facilitate productive conversations between people from different backgrounds about the best ways to reform the civics curriculum of a given school district.

The Task Force also endorses a number of state-level reforms. If Washington will not act, states must take it upon themselves to invest in and reinvigorate their civics curricula.

Substantial variation exists between states' civics educational policies. Rather than provide a comprehensive analysis

of all existing policies, we highlight a few exemplary programs that individual states have implemented. We encourage widespread adoption of these initiatives and additional state-level experimentation geared towards strengthening civics curricula.

First, states should consider enhancing civics instructional requirements for all grade levels and introducing students to civics curricula at an earlier age. K-5 teachers report spending an average of only three hours per week on social studies instruction in most states, less than half the time they spend on math.<sup>61</sup> Several states have already taken steps to address the lack of early emphasis on civics education in their schools. For example, New Hampshire passed a law in 2023 entitled "More Time on Civics" that requires a semester of civics in middle school and instructional time for civics in grades K-5, in addition to the half-year instruction in civics and full-year instruction in history and government in high school that was already required for graduation.<sup>62</sup> Similarly, in 2021, Indiana passed a bill that requires public schools to offer a semester of civics to all middle school students.<sup>63</sup> Other states do not mandate an independent civics course, but instead integrate civics concepts into the curriculum of other classes. Idaho

58 S. 4196, 118th Cong. (2024).

59 Press Release, Off. of Rep. Andy Barr, Barr Introduces Legislation to Reduce Polarization and Support Community Bridgebuilding (Mar. 15, 2024), <https://barr.house.gov/press-releases?ID=EA5AC6D2-F666-452F-943F-3F5F79180641>.

60 Scott MacFarlane, *Trump Administration Cuts to AmeriCorps Causing "Damage and Chaos," Groups Say*, CBS NEWS (May 8, 2025), <https://www.cbsnews.com/news/ameri-corps-cuts-trump-administration-terminated-programs/>.

61 Sarah Schwartz, *Understanding the Sharp Drop in History and Civics NAEP Scores: 4 Things to Know*, EDUC. WK. (May 4, 2023), <https://www.edweek.org/teaching-learning/understanding-the-sharp-drop-in-history-and-civics-naep-scores-4-things-to-know/2023/05>.

62 CivXNow, *A Deeper Dive on New Hampshire's Policy Win* (Aug. 29, 2023), <https://civxnow.org/new-hampshire-policy/>.

63 Casey Smith, *Indiana Adopts New Civics Class for Middle Schoolers*, IND. CAP. CHRON. (June 29, 2022), <https://indianacapitalchronicle.com/briefs/indiana-adopts-new-civics-class-for-middle-schoolers/>.



provides an illustrative example. While a formal civics course is not offered until high school in the Gem State, civics-related topics, such as the electoral process and methods of public participation, are taught to students from grades K-12.<sup>64</sup> Even in those states in which civics is its own course, a single semester of civics instruction is insufficient to effectively educate students about the country's democratic system of government.

Another step states could take to support civics education in their schools is to offer funding and civics resources to local educational agencies and civics educators. Without support from state governments, many school districts may be unprepared to provide effective instruction in civics, government, and history. States have come up with a variety of ways to make sure that schools have the support they need to be successful. In New York and Ohio, for example, the state education departments provide models, toolkits, and rubrics for local education agencies to use as guidance when assigning and assessing students' civic capstone projects.<sup>65</sup> In Washington State, the state superintendent provides local education agencies with example civics assessments and grants for professional learning in civics, as well as other educational resources.<sup>66</sup> California, Massachusetts, and Tennessee all provide funding to local education agencies for

teacher development and to support student civic engagement.<sup>67</sup>

States without strong state-local partnerships need not reinvent the wheel when it comes to developing civics curricula to share with school districts. iCivics—a nonpartisan group founded by former Supreme Court Justice Sandra Day O'Connor—working in collaboration with a network of civics organizations, scholars, educators, practitioners, and students, has developed a blueprint of suggested civics educational strategies, a website of online examples, and a series of implementation recommendations, entitled the *Roadmap to Educating for American Democracy*, that every state and school district can use to meet its respective needs.<sup>68</sup> The *Roadmap* seeks to eliminate confusion regarding the proper substance of history and civics education and to guide national, state, tribal, and local leaders in assessing the adequacy of current practices.<sup>69</sup> Many states could benefit from incorporating the *Roadmap's* comprehensive guidance into their educational policies.

Before they can teach effectively, educators themselves should receive adequate training and instruction in civics topics. We agree with the recommendations of CivXNow, a cross-partisan coalition of over 335 organizations, which encourage states to strengthen pre-service teaching requirements for civics

64 Sarah Shapiro & Catherine Brown, *A Look at Civics Education in the United States*, AM. FED'N OF TCHRS. (2018), [https://www.aft.org/ae/summer2018/shapiro\\_brown](https://www.aft.org/ae/summer2018/shapiro_brown).

65 CHARLIE THOMPSON, LEARNING POL'Y INST., STATE SUPPORT FOR CIVIC ENGAGEMENT 2 (2023), <https://learningpolicyinstitute.org/product/state-support-civic-engagement-report>.

66 *Id.* at 12.

67 *Id.* at 2.

68 EDUCATING FOR AM. DEMOCRACY, *supra* note 27, at 2, 7; see also *About Us*, iCIVICS, <https://vision.icivics.org/about/> (last visited July 11, 2025).

69 *Id.*

educators.<sup>70</sup> As CivXNow urges, states should, at a minimum, require educators to take undergraduate courses in U.S. government and U.S. history, revise certification examinations to include more rigorous civics and U.S. history requirements, and include preservice methods coursework on the *Roadmap*'s core pedagogical principles.<sup>71</sup> California in particular has demonstrated a commitment to preparing educators to provide high-quality civics instruction by maintaining a budget for professional development for teachers, paid planning time, instructional materials, and personnel costs for service learning coordinators who can help students with the completion of civics-oriented projects.<sup>72</sup>

Finally, states could continue to create innovative programs that advance student learning both in and out of the classroom. In 2022, Utah dedicated \$1.5 million over three years to a civics pilot program that authorizes grants to local education agencies that provide teaching in constitutional literacy, media literacy, academic service learning, and experiential simulations of the policymaking process.<sup>73</sup> Colorado has seen immense success in its Judicially Speaking program, which uses interactive exercises and firsthand

experience with civics to teach students about a judge's decision-making process.<sup>74</sup> In 2021, Delaware launched a new policy that allows high school students one excused absence from school to participate in a civics-related event.<sup>75</sup> Last year, Alabama's legislature spent \$1.75 million to support a partnership between Troy University and the American Village Citizenship Trust to help equip high school students with knowledge of U.S. history and government and to offer teachers a "Civics Education Micro-credential."<sup>76</sup> Kentucky now gives high school students a choice on how to fulfill their civics graduation requirement: They may either take a 100-question test based on the U.S. Citizenship exam or complete a civic literacy course.<sup>77</sup> Also in 2024, New Mexico added an additional semester of social studies and civics to its high school graduation requirements, while Missouri devoted \$500,000 to professional development geared towards civics and patriotism.<sup>78</sup>

Colleges and universities should also offer advanced civics education, whether in individual courses, specific curricula, or spread across the curriculum. Every academic, professional, or vocational field of study offers opportunities to reflect on its impact on civil

<sup>70</sup> See *Coalition Members*, CivXNow, <https://civxnow.org/about/coalition/> (last visited July 11, 2025).

<sup>71</sup> These principles include "facilitating student inquiries through analysis and investigations; discussion and debates; literacy; use of experiential learning; classroom-based practices of constitutional democracy; project-based learning; and use of formative assessments for purposes of student reflection and instructional improvements." CivXNow, *CivXNow STATE POLICY MENU 7* (2024), [https://civxnow.org/wp-content/uploads/2024/11/CivxNow\\_State\\_Policy\\_Menu.pdf](https://civxnow.org/wp-content/uploads/2024/11/CivxNow_State_Policy_Menu.pdf).

<sup>72</sup> THOMPSON, *supra* note 65, at 2.

<sup>73</sup> See H.B. 273, 2022 Gen. Sess. (Utah 2022), 2022 Utah Laws 229.

<sup>74</sup> Lindsey Bailey, *Six States with Exemplary Civics Education Programs*, POPED BLOG (Aug. 18, 2021), <https://populationeducation.org/six-states-with-exemplary-civics-education-programs>.

<sup>75</sup> *Id.*

<sup>76</sup> *Continued Progress on Civics Policies Across States*, CivXNow (June 3, 2024), <https://civxnow.org/continued-progress/>.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

society.<sup>79</sup> Universities are important agents in American society and should provide means for America's youngest adults to engage deeply with civics education.

## B. Citizen Redistricting Commissions

Redistricting is the process of redrawing the geographic districts for federal and state legislators. In most states,<sup>80</sup> redistricting happens on a 10-year cycle following the decennial census.<sup>81</sup> Historically, districts have been drawn by the very state legislators who run them. Although redistricting is necessary to respond to population shifts, the politicized nature of the process means that the dominant party can gerrymander, manipulating district lines to increase its hold on power.<sup>82</sup> In recent days, political forces in some states have become even more aggressive, seeking to

redraw congressional districts mid-decade, for partisan political purposes, before the 2026 midterm elections.<sup>83</sup> Critics characterize this arrangement as politicians picking their voters, not the other way around.<sup>84</sup> The Task Force believes that redistricting should be taken out of the hands of legislators and committed to commissions composed of non-partisan citizens.

### PROBLEM STATEMENT

In most states, the power to redistrict is vested solely in the legislature. Internationally, the United States is an extreme outlier in this regard, as the only long-term democracy where redistricting is exclusively authorized to be effected by politicians.<sup>85</sup> While Congress has authority to regulate federal elections, it has not mandated specific procedures for congressional districting, and there are few impediments in federal law to prevent state

79 See, e.g., Ellen Condliffe Lagemann and Harry R. Lewis, *Renewing Civic Education*, HARV. MAG. (Sept. 4, 2023), <https://www.harvardmagazine.com/2012/02/renewing-civic-education>.

80 In this section, the term “state” refers to all jurisdictions in the United States that have elected representatives or congressional delegations, and the term “legislative districts” refers only to state legislative districts, not congressional districts.

81 See Sarah J. Eckman, CONG. RSCH. SERV., R45951, APPORTIONMENT AND REDISTRICTING PROCESS FOR THE U.S. HOUSE OF REPRESENTATIVES 1 (2021).

82 See *Kirkpatrick v. Preisler*, 394 U.S. 526, 528 (1969) (defining gerrymandering as “the deliberate and arbitrary distortion of district boundaries and populations for partisan or personal political purpose”).

83 See, e.g., Kayla Guo and Gabby Birenbaum, *Why the proposed Texas congressional map may not be a lock to net five new GOP seats*, The Texas Tribune (July 31, 2025).

84 See Julia Kirschenbaum & Michael Li, *Gerrymandering Explained*, BRENNAN CTR. FOR JUST. (Aug. 10, 2021), <https://www.brennancenter.org/our-work/research-reports/gerrymandering-explained> (last updated June 9, 2023) (“Rather than voters choosing their representatives, gerrymandering empowers politicians to choose their voters.”).

85 See Bernard Grofman & German Feierherd, *The U.S. Could be Free of Gerrymandering*, WASH. POST (Aug. 7, 2017), <https://www.washingtonpost.com/news/monkey-cage/wp/2017/08/07/the-supreme-court-will-soon-consider-gerrymandering-heres-how-changes-in-redistricting-could-reduce-it>.

legislatures from gerrymandering.<sup>86</sup> The only federal statutory protection is the Voting Rights Act, which explicitly prohibits racially discriminatory gerrymandering,<sup>87</sup> and the courts' interpretation of the constitutional requirement of the "one person, one vote" principle, which stipulates that all votes must be weighted approximately equally and therefore that all districts within a state or municipality must have equal populations.<sup>88</sup> The Supreme Court recently held that partisan gerrymandering is a non-justiciable political question, meaning that the Constitution

provides no inherent protection against even the most viciously partisan gerrymanders.<sup>89</sup>

Gerrymandering, especially partisan gerrymandering, violates an important principle of democratic rule by undercutting the fairness of representational democracy.<sup>90</sup> Inherently, gerrymandering favors incumbents.<sup>91</sup> Once a legislator is elected, she has little incentive to destroy the very system that got her there. Most significantly, gerrymandering contributes to political polarization by replacing inter-party competition with intraparty competition that tends to reward candidates with more extreme views.<sup>92</sup> In California, for instance,

86 See U.S. CONST. art. I, § 4, cl. 1; see also CONG. RSCH. SERV., R44798, CONGRESSIONAL REDISTRICTING LAW: BACKGROUND AND RECENT COURT RULINGS 2–4 (2017). Many states impose additional restrictions, such as contiguity, see, e.g., ALASKA CONST. art. VI, § 6, and maintaining communities of interest, see, e.g., N.Y. CONST. art. III, §4(c)(5).

87 See 52 U.S.C. § 10301 ("No . . . standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color . . ."). But in a recent opinion, the Supreme Court held that to prove unconstitutional racial gerrymandering, a plaintiff must show that race was the "predominant factor motivating the legislature[]" and judges should presume legislative good faith. See *Alexander v. South Carolina State Conference of the NAACP*, 602 U.S. 1, 2 (2024) (internal quotation marks omitted) (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)). The Court will return to the question of racial gerrymandering in its next term. Nina Totenberg, *Supreme Court Postpones Louisiana Redistricting Case to Next Term*, NPR (June 27, 2025), <https://www.npr.org/2025/06/27/nx-sl-5423776/supreme-court-louisiana-redistricting>.

88 See NAT'L CONF. OF STATE LEGISLATURES, REDISTRICTING LAW 23 (2019). Congressional districts must be strictly equal in size. See *Wesberry v. Sanders*, 376 U.S. 1, 7 (1964). Legislative districts are only bound to maintain "substantial equality" and are permitted greater variability between districts. See *Reynolds v. Sims*, 377 U.S. 533, 568–69 (1964).

89 See *Rucho v. Common Cause*, 139 S. Ct. 2484, 2506–07 (2019).

90 See BRUCE E. CAIN, *DEMOCRACY MORE OR LESS* 122 (2015).

91 See Michael Li, Peter Miller & Madison Buchholz, *How Gerrymandering Tilts the 2024 Race for the House*, BRENNAN CTR. FOR JUST. (Sept. 24, 2024), <https://www.brennancenter.org/our-work/research-reports/how-gerrymandering-tilts-2024-race-house> ("Democrats were able to take an existing gerrymandered map and tweak it to shore up incumbents....").

92 See Richard H. Pildes, *Political Reforms to Combat Extremism*, A.B.A. (May 6, 2024), [https://www.americanbar.org/groups/public\\_interest/election\\_law/american-democracy/our-work/political-reforms-combat-extremism/](https://www.americanbar.org/groups/public_interest/election_law/american-democracy/our-work/political-reforms-combat-extremism/) [hereinafter Pildes, *Political Reforms*] (discussing perspectives on the subjective effects of "safe" seats on the politics of incumbents). See also CASSANDRA HANDAN-NADER ET AL., STANFORD INST. FOR ECON. POL'Y RSCH., *POLARIZATION AND STATE LEGISLATIVE ELECTIONS* 3 (2022) ("[C]ontested general elections have weakly favored more-moderate candidates."); David G. Odel et al., *Does the Introduction of Independent Redistricting Reduce Congressional Partisanship*, 54 VILL. L. REV. 57, 82–84 (2009) (discussing empirical findings suggesting that

only a single congressional seat changed hands between the two major parties in more than 250 elections during the decade following the 2000 redistricting.<sup>93</sup> Studies reveal that representatives from safe seats work on less legislation than their peers,<sup>94</sup> and legislatures that are polarized pass fewer laws.<sup>95</sup> In all, politicians in safe, heavily gerrymandered districts must compete for the most ideologically extreme share of primary voters, and once elected, they have little incentive to reach across the aisle and engage in effective governance or represent responsible policy positions.

Politicized redistricting has deepened over time; in the 1970s, 33% of congressional districts were competitive, but by the 2010s, only 14% remained so.<sup>96</sup> Following the

redistricting based on the 2020 census, just 7% of Congress is elected from competitive districts.<sup>97</sup> Many states have lost almost all of their competitive congressional districts.<sup>98</sup> The incorporation of sophisticated mapping technology and big data enables extremely precise gerrymanders.<sup>99</sup>

Overall, politicized redistricting is an important driving force in the crisis of democracy in the United States; it is at the core of political dysfunction and polarization today. Americans are losing confidence that their elected representatives speak for them. Those representatives are less and less incentivized to govern effectively, thereby

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partisanship in the legislature declined in several states after the introduction of redistricting commissions). The opposite may also be true, as some data suggest representatives, regardless of party affiliation, change their voting patterns in response to changes in their electorate. See Daniel B. Jones & Randall Walsh, *How do Voters Matter? Evidence from US Congressional Redistricting*, 158 J. PUB. ECON. 25, 37 (2018).

93 See Adam Nagourney, *California Set to Send Many New Faces to Washington*, N.Y. TIMES (Feb. 13, 2012), <https://www.nytimes.com/2012/02/14/us/california-congressional-delegation-braces-for-change.html>.

94 See Aryanna Hyde & Edwin Santana, *Gerrymandering, Turnout, and Lazy Legislators*, MIT ELECTION DATA + SCI. LAB (Sept. 3, 2021), <https://electionlab.mit.edu/articles/gerrymandering-turnout-and-lazy-legislators> (finding that congresspeople from the independently drawn districts sponsored more bills than their peers from politician drawn districts).

95 See Jake Zuckerman, *2023 Could be Ohio's Slowest Lawmaking Year Since 1955 (At Least)*, CLEVELAND.COM (Nov. 10, 2023), <https://www.cleveland.com/open/2023/11/2023-could-be-ohios-slowest-lawmaking-year-since-1955-at-least.html>; Moira Warburton, *Why Congress is Becoming Less Productive*, REUTERS (Mar 12, 2024), <https://www.reuters.com/graphics/USA-CONGRESS/PRODUCTIVITY/egpbabmkwvq/>.

96 See Alan I. Abramowitz, *Redistricting and Competition in Congressional Elections*, CTR. FOR POL. (Feb. 24, 2022), <https://centerforpolitics.org/crystalball/redistricting-and-competition-in-congressional-elections/>.

97 See Richard H. Pildes, *Create More Competitive Districts to Limit Extremism*, REAL CLEAR POL. (April 19, 2021), [https://www.realclearpolitics.com/articles/2021/04/29/create\\_more\\_competitive\\_districts\\_to\\_limit\\_extremism\\_145672.html](https://www.realclearpolitics.com/articles/2021/04/29/create_more_competitive_districts_to_limit_extremism_145672.html).

98 See Michael Li & Gina Feliz, *The Competitive Districts that Will Decide Control of the House*, BRENNAN CTR. FOR JUST (Oct. 24, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/competitive-districts-will-decide-control-house>. In the 2024 election, only 27 of 435 districts were deemed competitive. *Id.*

99 See Micah Altman & Michael McDonald, *The Promise and Perils of Computers in Redistricting*, 5 DUKE J. CONST. L. & PUB. POL. 69, 77–79 (2010).



feeding the perception that democratic governance is ineffective.

Efforts are underway in various states to create independent, citizen redistricting commissions. As of 2021, eighteen states have some form of congressional redistricting commission, but they vary widely in structure and composition.<sup>100</sup> We endorse these efforts.

There are three kinds of redistricting commissions: primary, advisory, and backup commissions. Primary commissions have the power to enact legislative maps without any consultation or input from the legislative branch.<sup>101</sup> Fifteen states vest primary power for state legislative redistricting in some form of commission, and ten do the same for congressional districts.<sup>102</sup> Advisory commissions are empowered to propose maps to the legislature for approval.<sup>103</sup> In some states, the legislature is only permitted to vote up or down on the proposed map

without amending it,<sup>104</sup> which tends to give the commission more power, but in others, the commission is purely advisory.<sup>105</sup> Five states have advisory commissions for state legislative districts and four for congressional districts.<sup>106</sup> Backup commissions are only activated if the legislature fails to pass a redistricting plan by a specified deadline. Five states have such a commission for legislative redistricting, and three do so for congressional redistricting.<sup>107</sup>

Citizens, not sitting officeholders, have responsibility for redistricting in some capacity in nine states. Arizona, California, Colorado, and Michigan use independent citizen commissions composed solely of registered voters who are not involved in any way with organized politics beyond registered party membership.<sup>108</sup> The citizen commissioners are selected through methods that insulate the process from direct control by partisan public officials. Several of these

100 These statistics were last updated in December 2021. See *Redistricting Commissions: Congressional Plans*, NAT'L CONF. OF STATE LEGISLATURES (Dec. 10, 2021), <https://www.ncsl.org/redistricting-and-census/redistricting-commissions-congressional-plans>.

101 See RUTH GREENWOOD ET AL., CAMPAIGN LEGAL CTR., *DESIGNING INDEPENDENT REDISTRICTING COMMISSIONS* 11 (2018).

102 See *Redistricting Commissions: State Legislative Plans*, NAT'L CONF. OF STATE LEGISLATURES (Dec. 10, 2021), <https://www.ncsl.org/redistricting-and-census/redistricting-commissions-state-legislative-plans>; *Redistricting Commissions: Congressional Plans*, supra note 100. The legislature retains the power to redraw congressional districts in Arkansas, Missouri, Ohio, and Pennsylvania. See *id.* Alaska has only one at-large congressional district. See *id.*

103 See GREENWOOD ET AL., supra note 101, at 12.

104 See, e.g., N.Y. CONST. art. III, §4(b) (providing that the assembly must pass the redistricting plan passed by the commission in its entirety, and if it is rejected or vetoed by the governor, the commission gets an opportunity to propose another map).

105 See, e.g., VT. CONST. Ch. 2, § 73.

106 See *Redistricting Commissions: State Legislative Plans*, supra note 102; *Redistricting Commissions: Congressional Plans*, supra note 100.

107 See *Redistricting Commissions: State Legislative Plans*, supra note 102; *Redistricting Commissions: Congressional Plans*, supra note 100.

108 For the Arizona commission, see ARIZ. CONST. art. 4, pt. 2, § 1 (3)-(8). For the California commission, see CAL. CONST. art. XXI § 2(c) (discussing structure of the commission) and CAL. GOV'T CODE § 8252 (discussing particulars of the selection process). Colorado has separate commissions for congressional and state legislative districts, but they

states use elaborate procedures, including both merit-based and lottery procedures, to produce a qualified and impartial panel of commissioners.<sup>109</sup> Montana, Washington, Alaska, and Idaho employ semi-independent citizen commissions where the commissioners may not be public officeholders, but all or most of them are selected directly by politicians.<sup>110</sup> The Virginia redistricting commission is composed of sixteen members, of whom half are legislators, selected by the legislative caucuses and political parties, and half are non-officeholding citizens, selected through a collaborative process between the judiciary and the legislature.<sup>111</sup> Many states also prohibit commissioners from serving as representatives from the districts they have drawn for some period of time after the reapportionment.<sup>112</sup>

The partisan structure of redistricting commissions is also important. Commissions

can be either strictly partisan, as in New York and Virginia, or include partisans and independents, as in California and Arizona. Commissions with a partisan balance, particularly if they require a supermajority to enact a map, risk being deadlocked by partisan dynamics.<sup>113</sup> This is particularly true where a supermajority of the commission is required to enact a redistricting plan.<sup>114</sup>

Also important are the perspectives and purposes that guide state redistricting commissions. Broadly, there are two ways to achieve a so-called “fair” legislative district: (1) process-oriented, “partisan blind” redistricting, or (2) outcome-oriented redistricting.<sup>115</sup> States generally require redistricting commissions to consider specific factors, albeit with different priorities.<sup>116</sup> California, for instance, puts strong emphasis on objective factors like geographic integrity

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are the same in all particulars. See COLO. CONST. art. V, § 44.1 (congressional districts); *id.* at art. V, § 47 (legislative districts). For Michigan, see MICH. CONST. ART. IV, § 6.

109 Compare MICH. CONST. ART. IV, § 6(1)(b) (Secretary of State randomly selects a panel of potential commissioners that is weighted to represent the state’s geography and demography, and the final commission is also selected entirely at random, with only a limited number of strikes permitted by the legislature) with COLO. CONST. art. V, § 44.1(8) (requiring the selection committee to consider the abilities and qualifications of the applicants including “analytical skills, the ability to be impartial, and the ability to promote consensus on the commission” before final round of random selection) and CAL. GOV’T CODE § 8252(d) (requiring the selection committee to vet applicants in a similar manner before random selection).

110 See MONT. CONST. art. V, § 14; WASH. CONST. art. 2, § 43(3); ALASKA CONST. art. 6, § 8; IDAHO CONST. art. III, § 2(2).

111 See VA. CONST. art. II, § 6-A(b); VA. CODE § 30-394.

112 See, e.g., HAW. CONST. art IV, § 2 (prohibiting commissioners from running for election to congress or the legislature in the subsequent two election cycles); IDAHO CONST. art. III, § 2(5) (doing the same for a period of five years).

113 See GREENWOOD ET AL., *supra* note 101, at 26–27.

114 See David Tatsuo Imamura, *The Rise and Fall of Redistricting Commissions: Lessons from the 2020 Redistricting Cycle*, A.B.A.: HUM. RTS. MAG. (Oct. 24, 2022), <https://www.americanbar.org/groups/crsj/resources/human-rights/archive/rise-fall-redistricting-commissions-lessons-2020-redistricting-cycle/>.

115 See Richard Pildes, *Redistricting Reform and the 2018 Elections*, HARV. L. REV. BLOG (Oct. 26, 2018), <https://harvardlawreview.org/blog/2018/10/redistricting-reform-and-the-2018-elections/>.

116 See GREENWOOD ET AL., *supra* note 101, at 37–45.

of communities of interest.<sup>117</sup> Arizona has similar standards, but also suggests that the commission should try to create competitive districts where possible.<sup>118</sup> States like Colorado and Missouri put a much greater emphasis on competitiveness as a guiding value for the redistricting process.<sup>119</sup> Regardless of the specific approach employed, it is crucial that the redistricting commission be charged with some set of principles in order to provide standards for evaluating the fairness of the result.<sup>120</sup>

Most states also require that the commission open its work to the public in several ways. Traditional legislature-based redistricting is essentially a black box; except in the event of litigation, its internal processes are knowable only through the fruits of the process and any information that the political participants voluntarily disclose. Although there may be

debates on the floor of a state house, backroom deals shape outcomes. The commission model, even when the commission does not have the power to enact its own maps, significantly increases transparency by requiring things like open meetings and reports that detail how the districts were drawn.<sup>121</sup> If the legislature chooses to deviate significantly from an advisory commission's proposed districts, it is easy for the public to understand the intent and effect of the gerrymandering.

In all cases, the establishment of non-legislative redistricting commissions requires a state constitutional amendment.<sup>122</sup> As of 2021, five states, including all of the states with independent citizen commissions, had accomplished this through citizens' initiative procedures.<sup>123</sup> Notably, only eighteen states permit citizen-initiated constitutional amendments.<sup>124</sup> The self-interest of incumbent

117 See CAL. CONST. art. XXI § 2(d).

118 See ARIZ. CONST. art. 4, pt. 2, § 1(14).

119 The Colorado commission is directed to “solicit evidence relevant to competitiveness of elections in Colorado and shall assess such evidence in evaluating proposed maps.” COLO. CONST. art. V, § 44.3 (3)(b). The preamble to this section emphasizes the importance of competitiveness as a guiding principle: “competitive elections for members of the united states house of representatives provide voters with a meaningful choice among candidates, promote a healthy democracy, help ensure that constituents receive fair and effective representation, and contribute to the political well-being of key communities of interest and political subdivisions.” *Id.* at art. V, § 44(1)(d). In Missouri, the commission must draw districts have achieve both “partisan fairness,” meaning “that parties shall be able to translate their popular support into legislative representation with approximately equal efficiency,” and “Competitiveness,” meaning “that parties’ legislative representation shall be substantially and similarly responsive to shifts in the electorate’s preferences.” Mo. CONST. art III, § 3(b)(5).

120 See CAIN, *supra* note 90, at 129.

121 See, e.g., Mo. CONST. art III §§ 3(b)(5)(d)-(f) (commission required to hold three public meetings before disclosure of proposed map, publish all demographic data underlying maps, and hold a hearing to take comments from the public on proposed map).

122 See *Creation of Redistricting Commissions*, NAT’L CONF. OF STATE LEGISLATURES (Dec. 10, 2021), <https://www.ncsl.org/redistricting-and-census/creation-of-redistricting-commissions>.

123 See *id.*

124 See *Initiated Constitutional Amendment*, BALLOTPEDIA, [https://ballotpedia.org/Initiated\\_constitutional\\_amendment](https://ballotpedia.org/Initiated_constitutional_amendment) (last visited May 30, 2025). One issue that arises with respect to citizen’s initiatives is deceptive

legislators serves as an impediment to this reform in the states that require a supermajority or repeated legislative consent to amend the constitution.<sup>125</sup>

Polls reveal that most voters across the political spectrum disapprove of gerrymandering and support the creation of independent redistricting commissions to remove control of redistricting from politicians.<sup>126</sup>

## PROPOSED SOLUTIONS

The Task Force endorses the ABA's own prior recommendations for redistricting

reform. In 2008, the ABA House of Delegates formally adopted a resolution calling for all jurisdictions in the United States to institute independent commissions with authority to conduct congressional and state legislative redistricting.<sup>127</sup> Although it leaves the exact form of the commission and criteria for redistricting to the individual states, the report accompanying the ABA resolution suggested that commissions should be either non-partisan, composed of non-politicians, or bipartisan, composed of an equal number of politicians from both parties.<sup>128</sup> It also noted many of the same problems discussed *supra*

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ballot language. In 2024, Ohio voters rejected a ballot proposal that would have established a citizen-led redistricting commission. See Julie Carr Smyth, *Ohio Voters Reject Replacing Troubled Mapmaking System with Citizen-Led Redistricting Commission*, AP NEWS (Nov. 6, 2024), <https://apnews.com/article/election-2024-redistricting-ballot-measure-ohio-af8ae51957bfb3086250f6ed7e2b0646>. Proponents of the measure blamed misleading ballot language, which stating that the new commission would be “required to gerrymander,” for their loss. *Id.* (internal quotation marks omitted). The Ohio Republican Party Chairman Alex Triantafilou later stated, “Confusing Ohioans was not such a bad strategy.” Roger LaPointe, *Ohio GOP Chair: ‘Confusing Ohioans Was Not Such a Bad Strategy’*, FREMONT NEWS MESSENGER (Jan. 14, 2025), <https://www.thenews-messenger.com/story/news/local/2025/01/14/ohio-gop-chair-brags-confusing-ohioans-during-election/77669351007/> (internal quotation marks omitted).

125 See CAIN, *supra* note 90, at 122.

126 See REPRESENTUS, NATIONAL POLLING: VOTERS SEE GERRYMANDERING AS A MAJOR PROBLEM, WANT REFORM (Aug. 4, 2021), <https://represent.us/wp-content/uploads/2021/08/RepUS-Polling-Memo-080221.pdf>; Corey Goldstone, *Poll: 57% of Republicans Support Independent Redistricting Commissions*, CAMPAIGN LEGAL CTR. (Mar. 9, 2021), <https://campaignlegal.org/update/poll-57-republicans-support-independent-redistricting-commissions>. While one poll suggests that most voters don't feel strongly about gerrymandering, this finding may evince widespread unawareness rather than acceptance. See Bradley Jones, *With Legislative Redistricting at a Crucial Stage, Most Americans Don't Feel Strongly About It*, PEW RSCH. CTR. (Mar. 4, 2022), <https://www.pewresearch.org/short-reads/2022/03/04/with-legislative-redistricting-at-a-crucial-stage-most-americans-dont-feel-strongly-about-it/>.

127 See MICHAEL ASIMOW, A.B.A., REDISTRICTING BY INDEPENDENT COMMISSION (2008), [https://www.americanbar.org/groups/public\\_interest/election\\_law/policy/08m102a/](https://www.americanbar.org/groups/public_interest/election_law/policy/08m102a/). In 1991, the ABA adopted a resolution supporting “fair redistricting.” Although the resolution suggested reforms to make the process of legislative redistricting more open to the public, it stopped well short of recommending that redistricting be removed from state legislatures. See SEC. COMM. ON ELEC. L., A.B.A., REDISTRICTING (2008), [https://www.americanbar.org/groups/public\\_interest/election\\_law/policy/91m109/](https://www.americanbar.org/groups/public_interest/election_law/policy/91m109/).

128 See *id.*

and emphasized the value of the ABA endorsing the concept as a non-partisan entity.<sup>129</sup>

As discussed above, redistricting commissions exist on a spectrum from independent citizen commissions with full power to implement districting maps, down to politician commissions with the same power, all the way to backup commissions that only act during legislative breakdowns. However, commissions made up of citizens who are insulated from professional politics and selected without input from politicians are the most likely to create districts that give voters a real opportunity to choose their representatives and incentivize those representatives to take positions that have broad appeal among their constituents. In the same vein, the Task Force recommends that redistricting commissions be given authority to enact the maps they draw. Although some advisory commissions are respected by the legislature as a matter of course, in many other cases, the legislature ignores advisory maps and draws its own.<sup>130</sup> Commissions that have the power to execute their own maps are more likely to institute effective reforms.

The Task Force also recommends that all states instituting redistricting commissions

carefully consider the standards they must follow. One of the main problems with legislature-based redistricting, discussed above, is that there are few legal constraints on the outputs of the process. Stakeholders in all states will need to consider what values are most important and understand that tradeoffs will need to be made. Most states place a strong premium on keeping sub-state political entities like counties, cities, and towns within the same district, but this is in direct tension with the goal of promoting intraparty competition.<sup>131</sup> Likewise, some states require commissions to maintain the integrity of “communities of interest,”<sup>132</sup> but these kinds of areas can be difficult to define with precision, which might make such standards harder to enforce or challenge in court. Overall, the Task Force urges the ABA to build on its current policy, adopted in 2008, to support independent redistricting commissions by studying existing models and assisting states in identifying commission structures ideal for their situations.

The Task Force also recommends that lawyers themselves take steps to become involved in redistricting reform in their home states. Citizens have led successful redistricting

<sup>129</sup> See *id.*

<sup>130</sup> Compare GREENWOOD ET AL., *supra* note 101, at 12 (discussing the deference the Iowa legislature gives to maps drawn by the well-respected, non-partisan advisory commission) with *Utah*, ALL ABOUT REDISTRICTING (Aug. 14, 2023), <https://redistricting.ils.edu/state/utah> (state legislature explicitly rejected recommendation of independent commission to create a single district in Salt Lake City, instead splitting its voters among four otherwise republican districts).

<sup>131</sup> See Stephen Ansolabehere & Christopher T. Kenny, *Democracy Reform Primer Series: Redistricting Process Reform*, UNIV. OF CHI. CTR. FOR EFFECTIVE GOV'T (Feb. 20, 2024), <https://effectivegov.uchicago.edu/primers/redistricting-process-reform> (“Balancing so many criteria complicates the task of the map-drawer, and, ultimately, tradeoffs must be made.”).

<sup>132</sup> See Edward W. Plaut & Elizabeth Powers, *Crystalizing Community: “Communities of Interest” and the 2020 Michigan Independent Citizens Redistricting Commission*, 57 U. MICH. J. L. REFORM 611, 613 (2024).



reform movements,<sup>133</sup> but politicians and political party apparatuses across the country are strongly resistant to any reforms that hamper their ability to control redistricting. In the past, they have argued that redistricting commissions were unconstitutional, but the Supreme Court roundly rejected this argument.<sup>134</sup> They continue to frustrate even successful ballot measures<sup>135</sup> and, when faced with independent redistricting, attempt to influence the process covertly.<sup>136</sup> Advocates of legislature-based redistricting have offered a variety of spurious rationales, suggesting that redistricting reform is a covert partisan effort by the minority party to hijack state politics, a needlessly complex bureaucratic process that empowers unelected officials to subvert the will of the people, an imposition by outside forces and shadowy donors, and an affront

to minorities.<sup>137</sup> For the most part, however, these arguments are unsubstantiated and overlook the fundamental conflicts of interest and unfairness described above.

One last point: even if states resist creating truly independent commissions, they can nevertheless mitigate the partisanship of redistricting by enacting constitutional provisions that bar partisan or incumbency considerations when new lines are drawn. States as different as Florida and New York have done so.<sup>138</sup>

133 See, e.g., Nancy Wang, *How Michigan Voters Came Together to Flip Gerrymandering On Its Head*, CAMPAIGN LEGAL CTR. BLOG (Oct. 16, 2019), <https://campaignlegal.org/story/how-michigan-voters-came-together-flip-gerrymandering-its-head> (discussing central role of non-partisan, grassroots organization Voters Not Politicians in success of campaign for independent redistricting commission in Michigan).

134 See *Arizona State Legislature v. Arizona Indep. Redistricting Comm’n*, 576 U.S. 787, 787 (2015).

135 See, e.g., Smyth, *supra* note 124; Benjamin Wood, *Bill Changing Redistricting Initiative Sails Through Utah Senate Committee*, SALT LAKE TRIB. (Mar. 2, 2020), <https://www.sltrib.com/news/politics/2020/03/02/bill-changing>.

136 See, e.g., Olga Pierce & Jeff Larson, *How Democrats Fooled California’s Redistricting Commission*, PROPUBLICA (Dec. 21, 2011), <https://www.propublica.org/article/how-democrats-fooled-californias-redistricting-commission> (describing how Democratic party operatives tried to covertly influence districting by making presentations to the redistricting commission while posing as members of a non-partisan good-government group); Bente Birkeland, *Redistricting Was Supposed To Be Less Partisan In Colorado. Politics Are Getting In The Way Of That*, CPR NEWS (Aug. 26, 2021), <https://www.cpr.org/2021/08/26/redistricting-was-supposed-to-be-less-partisan-in-colorado-politics-are-getting-in-the-way-of-that/> (discussing allegations that politicians had improperly met privately with redistricting commissioners to attempt to influence the outcome of the process).

137 For representative examples of anti-reform rhetoric, see, e.g., Susan Tebben, *Ohio Senate President, Redistricting Reform Supporters, Trade Criticisms in Post-Primary Event*, OHIO. CAP. J. (Mar. 22, 2024), <https://ohiocapitaljournal.com/2024/03/22/ohio-senate-president-redistricting-reform-supporters-trade-criticisms-in-post-primary-event/>; Susan Myrnick, *‘Nonpartisan’ Redistricting Is Just a Fantasy*, CIVITAS INST. (Jan. 25, 2017), <https://www.nccivitas.org/2017/nonpartisan-redistricting-just-fantasy/>; Samuel Lair, *The False Promises of ‘Independent’ Redistricting Commissions*, REAL CLEAR POL’Y (Feb 22, 2022), [https://www.realclearpolicy.com/articles/2022/02/22/the\\_false\\_promises\\_of\\_independent\\_redistricting\\_commissions\\_817937.html](https://www.realclearpolicy.com/articles/2022/02/22/the_false_promises_of_independent_redistricting_commissions_817937.html).

138 See FLA. CONST. art. III, §§ 20–21; N.Y. CONST. art. III §§ 3–4.

## C. Open, Nonpartisan Primaries/Ranked Choice Voting/Fusion Voting

In a properly functioning democracy, elections result in leaders chosen who receive the highest number of votes and therefore have the greatest level of public support among all candidates. Ideally, to ensure effective governance, elected leaders would enjoy not only the greatest level of support from voters but majority support from the electorate. Majority support indicates that leaders are more likely to represent the aggregate preferences of their constituents, resulting in policies and decisions that are aligned with what most constituents want. In most states, the process of electing leaders begins with party primaries. It is there that voters get their first chance to select who will be eligible to be elected. But too often party primaries fail to adequately capture majority sentiment.

### PROBLEM STATEMENT

The way in which most states conduct primaries for both state and federal elections

incentivizes and rewards candidates who lack the support of the majority of the electorate. Because party primaries' generally low turnout means that hyper-partisans tend to dominate, candidates who are successful are those who have taken more extreme positions to win.<sup>139</sup> This relatively small yet highly motivated segment of voters is able to effectively nominate candidates to advance to the general election without necessarily taking into consideration whether such candidates appeal to the majority of the electorate. When these candidates prevail in the general election, most often with just a plurality of the vote, they may feel bound to govern in a highly partisan manner that appeals to their original, narrow base of support. This undermines the democratic principle of representative government.

In 2022, only 21.3% of all eligible voters in this country participated in primaries.<sup>140</sup> Primary turnout is often less than half of the turnout for general elections, which, in 2022, for example, was 46 percent.<sup>141</sup> In 2024, only approximately 10% of registered voters cast a ballot in the presidential primaries.<sup>142</sup> Such low primary turnout is consistent across states, including in states in which the dominant party's primary was outcome determinative

139 See PEW RSCH. CTR., *POLITICAL POLARIZATION IN THE AMERICAN PUBLIC* 76 (2014) (finding that approximately twice the number of voters who hold “consistently liberal” or “consistently conservative” views vote in primaries as compared to voters with “mixed” views); NICK TROIANO, *THE PRIMARY SOLUTION: RESCUING OUR DEMOCRACY FROM THE FRINGES* 79 (2024) (“Primary voters tend to be much more partisan than the electorate as a whole.”).

140 See JOSHUA FERRER & MICHAEL THORNING, *BIPARTISAN POL’Y CTR.*, *2022 PRIMARY TURNOUT: TRENDS AND LESSONS FOR BOOSTING PARTICIPATION* 7 (2023).

141 See HANNAH HARTIG ET AL., PEW RSCH. CTR., *REPUBLICAN GAINS IN 2022 MIDTERMS DRIVEN MOSTLY BY TURNOUT ADVANTAGE* 11 (2023).

142 Amy B Wang, Lenny Bronner & Patrick Svitek, *Ten Percent of the Voters Have Spoken: Biden, Trump Clinch Nominations*, WASH. POST (Mar. 13, 2024), <https://www.washingtonpost.com/politics/2024/03/13/few-voters-decide-trump-biden-nominations/>. Approximately 23% of registered voters cast a ballot in primary contests held through April 24, 2024. Press Release, *VOTE AT HOME* (Apr. 25, 2024), <https://voteathome.org/nearly-4-in-5-registered-voters-failed-to-cast-a-ballot-in-2024-primaries-highest-turnout-seen-in-vote-at-home-states/>.

for the general election.<sup>143</sup> The reasons for low primary voter turnout are many and varied: perceived lower stakes of primaries; greater costs of voting in the absence of a state or federal holiday; less social pressure to vote in primaries; rules regarding who should participate in primaries; greater willingness to defer to perceived experts or those who are passionate about certain issues implicated by primaries; and less media attention over a longer time leading up to primaries.<sup>144</sup> These factors compound to result in primary voters being more partisan and ideologically motivated than the typical voter.<sup>145</sup> Primary voters also tend to be “older, wealthier, and whiter, and they have higher levels of political knowledge.”<sup>146</sup>

Candidates respond to such skewed primary electorates. Attempting to appeal to a voter base that is more partisan and extreme

than the general electorate, candidates take more partisan and extreme stances while campaigning. Further downstream, moderate candidates, confident in their lack of chances of electoral success, are dissuaded from running in the first place.<sup>147</sup> Similarly, moderate incumbents increasingly choose not to seek reelection out of fear of being primaried.<sup>148</sup>

Not only are candidates incentivized by the current partisan primary system to take more extreme stances if they choose to run, but more and more ideologically extreme candidates are rewarded with electoral success in the current partisan primary system.<sup>149</sup> In large part, this is because the winning candidate in most states for most elections needs only to receive a plurality of votes.<sup>150</sup> Indeed, winning with a plurality, particularly in primaries in which “votes are often split between many

<sup>143</sup> See TROIANO, *supra* note 139, at 76 (citing voter turnout of just 19.5 percent in “states in which the dominant party’s primary was the only election of consequence for governor or Senate”).

<sup>144</sup> See Alan S. Gerber et al., *Why Don’t People Vote in U.S. Primary Elections? Assessing Theoretical Explanations for Reduced Participation*, 45 ELECTORAL STUDIES 119, 119 (2017).

<sup>145</sup> See PEW RSCH. CTR., POLITICAL POLARIZATION, *supra* note 139, at 76 (finding that approximately twice the number of voters who hold “consistently liberal” or “consistently conservative” views vote in primaries as compared to voters with “mixed” views); Troiano, *supra* note 139, at 79.

<sup>146</sup> See Pildes, *Political Reforms*, *supra* note 92. Although the recent New York City primary election demonstrated that under the right conditions, a younger demographic can be incentivized to participate. See Emma G. Fitzsimmons, Alex Lemonides & Irineo Cabrereros, *How Zohran Mamdani Brought New Voters to the Polls*, N.Y. TIMES (June 30, 2025), <https://www.nytimes.com/2025/06/29/nyregion/zohran-mamdani-voters-strategy.html>.

<sup>147</sup> See CHAPMAN RACKAWAY & JOSEPH ROMANCE, PRIMARY ELECTIONS AND AMERICAN POLITICS 167 (2022) (“Ideological moderates also see no point in entering contests that naturally push them out to the extremes. Moderate voices tend to opt against running in partisan races specifically because they know that they will not be competitive in primary elections that intrinsically favor extreme candidates and viewpoints.”); Danielle M. Thomsen, *Ideological Moderates Won’t Run*, 76 THE J. OF POL. 786 (2014).

<sup>148</sup> See Pildes, *Political Reforms*, *supra* note 92.

<sup>149</sup> See Drew Desilver, *The Polarization in Today’s Congress Has Roots that Go Back Decades*, PEW RSCH. CTR. (Mar. 10, 2022), <https://www.pewresearch.org/short-reads/2022/03/10/the-polarization-in-todays-congress-has-roots-that-go-back-decades/> (estimating that there were 160 moderates in Congress in the early 1970s, but only about two dozen today).

<sup>150</sup> See TROIANO, *supra* note 139, at 87.

candidates,” is a frequent occurrence.<sup>151</sup> The candidate who receives a plurality will be the one who most appeals to the skewed primary electorate, thus rewarding extremism.

The extremism incentivized and rewarded in the current partisan primary system is only compounded once elected candidates take office. Officials who are highly partisan tend to shape the policy preferences of their parties.<sup>152</sup> They emphasize and legislate around identity differences and cultural issues, which they believe reflect their mandate.<sup>153</sup> In other words, highly partisan officials refuse to search for common ground with those on the other side of the aisle because they have been politically disincentivized from doing so.

This refusal to compromise is not limited to extreme partisans; it has become accepted, whether willingly or not. The prevailing view among incumbents, even those who may be

ideologically moderate, is that primary voters will punish them for compromising with the other party.<sup>154</sup> Therefore, when incumbents fear a primary challenge, they are careful to avoid compromise on controversial issues about which their primary constituency cares.<sup>155</sup>

Furthermore, voters increasingly vote not for their party but against the other party.<sup>156</sup> Moreover, “sore loser laws,” which exist in all but three states for all non-presidential elections, block candidates who lose in the primary from running in the general election.<sup>157</sup> Primaries thus pose the only meaningful electoral challenge and accountability measure for many incumbents.<sup>158</sup> While only a fraction of Congress faces a meaningful primary challenge in any given election, primary challenges have become more common and are more likely to come from ideological extremes than they previously

151 See *Research and Data on RCV in Practice*, FAIRVOTE, <https://fairvote.org/resources/data-on-rcv/> [hereinafter FairVote, Research and Data on RCV] (last visited June 5, 2024); see TROIANO, *supra* note 139, at 87 (internal citations omitted) (describing how in 2022, out of thirty congressional primaries for open seats in safe districts, eleven of the districts were won by a candidate who received a plurality of the votes); Jason Harrow & Victor Shi, *The Magic of Majority Rule in Elections*, THE HILL (Aug. 16, 2019), <https://thehill.com/blogs/congress-blog/politics/457749-the-magic-of-majority-rule-in-elections/> (“Since 1992, 49 senators from 27 states have been elected with less than 50 percent support.”); Pildes, *Political Reforms*, *supra* note 92 (“[I]n open-seat primaries, about 36% of primaries are won with only a plurality of the vote.”).

152 See Pildes, *Political Reforms*, *supra* note 92.

153 See *id.* at 2–3.

154 See generally SARAH E. ANDERSON, ET AL., *REJECTING COMPROMISE: LEGISLATORS’ FEAR OF PRIMARY VOTERS* (2020); TROIANO, *supra* note 139, at 7.

155 See Elaine C. Kamarck & James Wallner, Brookings, *Anticipating Trouble: Congressional Primaries and Incumbent Behavior*, 156 R ST. POL’Y STUDY 1, 7 (2018); Pildes, *Political Reforms*, *supra* note 92.

156 See Pildes, *Political Reforms*, *supra* note 92; see PEW RSCH. CTR., *AS PARTISAN HOSTILITY GROWS, SIGNS OF FRUSTRATION WITH THE TWO-PARTY SYSTEM* 7 (2022) (describing how approximately three-quarters of Republicans and two-thirds of Democrats identify with their respective party out of dislike of the other party’s policies just as much as they do because of the positive impact of their party’s policies); *id.* at 15 (showing that the percentage of Republicans and Democrats who hold unfavorable views of the other party has more than doubled in the last two decades).

157 See TROIANO, *supra* note 139, at 88–89.

158 See Pildes, *Political Reforms*, *supra* note 92.

did.<sup>159</sup> Taken together, these factors have created a Congress that is more polarized now than at any time since the Civil War.<sup>160</sup>

The price of prioritizing identity politics over policy to protect against primaries is steep. Fear of primaries alone explains “about one-quarter of the drop in bipartisan bill [co-sponsorship] since the 1980s.”<sup>161</sup> Immigration, climate, education, healthcare, budgetary, and economic issues all pose challenges that the United States has failed to meaningfully address because of the polarization and gridlock caused by partisan primaries.<sup>162</sup>

In sum, voters who are unrepresentative of and ideologically extreme, compared to the general public, hold outsized influence in primaries. This skewed electorate incentivizes and rewards candidates to take more extreme positions and dissuades moderate candidates from even running. Once in office, out of well-founded fear of primary challenges from the ideologically extreme wings of their own party, elected officials act even more partisan and refrain from compromising with the other party. The result is legislative gridlock and ineffective governance, threatening the long-term health of democratic rule.

## PROPOSED SOLUTIONS

Reforming the partisan primary system is possible.<sup>163</sup> The Task Force believes states

should consider whether one, two, or all three of the following voting reforms would promote democracy in their particular circumstances: (1) open, non-partisan primaries; (2) rank-choice voting; and (3) fusion voting. Depending on the jurisdiction, these changes can be adopted through legislation or a ballot measure.

### 1. Open, non-partisan primaries in which all voters can participate

States should consider adopting open, nonpartisan primaries in which the entire electorate enjoys the right to vote. These are colloquially known as “open primaries” or “nonpartisan primaries,” but the central feature is that any registered voter can cast a ballot, whether or not they are affiliated with a party. Then, states could allow the top two or four candidates who receive the most primary votes to advance to the general election regardless of their party affiliation, ensuring that voters have meaningful options across the ideological spectrum. At present, four states—Alaska, California, Nebraska, and Washington—have eliminated traditional party primaries and adopted some form of open primary for all or some elections.<sup>164</sup>

Among the four states that have eliminated partisan primaries altogether, only Alaska employs an open, top-four primary system in which the four candidates with the most votes advance to the general election

<sup>159</sup> See Richard C. Barton, *Congress is Polarized. Fear of Being ‘Primaried’ is One Reason*, WASH. POST (June 10, 2022), <https://www.washingtonpost.com/politics/2022/06/10/primaries-gridlock-polarization-congress-schrader-extremists/>.

<sup>160</sup> See TROIANO, *supra* note 139, at 49.

<sup>161</sup> See Barton, *supra* note 160.

<sup>162</sup> See TROIANO, *supra* note 139, at 101.

<sup>163</sup> See *id.* at 56.

<sup>164</sup> See generally NAT’L CONF. OF STATE LEGISLATURES, *STATE PRIMARY ELECTION SYSTEMS* (2024).



regardless of their party affiliation.<sup>165</sup> Alaska adopted this system in 2020, and it was first put to the test in the 2022 midterm cycle.<sup>166</sup> Utilizing this system, the 2022 election results revealed a voter preference for moderation over extremism. That year, Senator Lisa Murkowski, a moderate Republican who had repeatedly won reelection as one of Alaska's senators since 2002,<sup>167</sup> fended off a challenge from a more extreme candidate to her right, a contender that likely would have prevailed in a traditional partisan primary.<sup>168</sup> Under Alaska's new, top-four system, however, Murkowski made it to the general election, in which her broad appeal to independents and some Democrats enabled her to win by a significant margin.<sup>169</sup>

In 2024, a Democrat won the Alaska primary, followed by three Republican candidates. After two Republican candidates dropped out, Republican Nick Begich managed to defeat

incumbent Democrat Mary Peltola 51.2% to 48.8%.<sup>170</sup> Alaska's general election is decided using a form of ranked-choice voting known as instant-runoff voting, in which the candidate who receives the fewest votes is eliminated and the votes that candidate received are reassigned to voters' second choice until a candidate receives majority support.<sup>171</sup> Thus, a candidate who does not initially receive majority support might ultimately win an election. Begich's election appears to reflect a strong consensus among Alaska voters.<sup>172</sup> If not for its open, nonpartisan system, there is reason to believe that Alaska might have elected a more extreme candidate.<sup>173</sup>

Alaska's open, top-four primary system thus appears to address some of the biggest problems associated with traditional partisan primaries. It created a field of candidates in the general election whose political views more closely mirrored those of the general

<sup>165</sup> See *id.*

<sup>166</sup> See Jeannette Lee & Jay Lee, *Alaska Primary Voters had More Choice in 2022*, SIGHTLINE INST. (NOV. 4, 2022), <https://www.sightline.org/2022/11/04/alaska-primary-voters-had-more-choice-in-2022/>; Ryan Williamson, R St., *Evaluating the Effects of the Top-Four System in Alaska*, 122 R. ST. SHORTS 1, 1 (2023).

<sup>167</sup> See About, U.S. SENATOR FOR ALASKA LISA MURKOWSKI, <https://www.murkowski.senate.gov/about-lisa> (last visited June 5, 2024).

<sup>168</sup> See Pildes, *Political Reforms*, *supra* note 92.

<sup>169</sup> See *id.*; Nathan Atkinson et al., *Beyond the Spoiler Effect: Can Ranked-Choice Voting Solve the Problem of Polarization*, 2024 U. ILL. L. REV. 1655, 1668–69 (2024) (“Murkowski therefore won the final round of the election with 136,330 votes to Tshibaka’s 117,534, a margin nearing twenty thousand votes.”).

<sup>170</sup> See *Alaska Election Results*, N.Y. TIMES (last updated Dec. 10, 2024), <https://www.nytimes.com/interactive/2024/11/05/us/elections/results-alaska.html>; *Alaska At-Large Congressional District Primary Election Results*, N.Y. TIMES (last updated Sept. 3, 2024), <https://www.nytimes.com/interactive/2024/08/20/us/elections/results-alaska-us-house-1-primary.html>.

<sup>171</sup> See Williamson, *supra* note 166, at 1.

<sup>172</sup> See Deb Otis, *Alaska Election Results Show Ranked Choice Voting Continues to Work Well for Voters*, FAIRVOTE (Dec. 11, 2024), <https://fairvote.org/alaska-election-results-show-ranked-choice-voting-continues-to-work-well-for-voters/>.

<sup>173</sup> See generally Iris Samuels, *In Alaska's U.S. House Race, GOP Support Is Split Between Two Trump-Aligned Candidates*, ANCHORAGE DAILY NEWS (July 7, 2024), <https://www.adn.com/politics/2024/07/07/in-alaskas-us-house-race-gop-support-is-split-between-two-trump-aligned-candidates/>.

electorate.<sup>174</sup> It incentivized more candidates to run for office.<sup>175</sup> It made races more competitive.<sup>176</sup> And it allowed more candidates who were not affiliated with either of the two major parties to run for office.<sup>177</sup> Furthermore, voters in Alaska across all demographics seemed to easily understand how ranked-choice voting works,<sup>178</sup> and there were few invalid ballots due to voter error.<sup>179</sup> Crucially, Alaska's top-four system made a majority of voters feel as if their vote mattered more than it did in previous elections.<sup>180</sup>

For more than a decade, the states of California and Washington have used an open, nonpartisan top-two primary system in which the two candidates with the most votes advance to the general election regardless of their party affiliation.<sup>181</sup> Unsurprisingly, the effect of adopting a top-two primary system has been most pronounced for newly elected members of Congress. While there are conflicting studies on this, one study has found “those elected in top-two primaries are

more than [eighteen] percentage points less extreme than closed primary legislators.”<sup>182</sup>

Meanwhile, until recently Louisiana employed a variant of an open, nonpartisan top-two primary: if a candidate receives an outright majority of the vote in the primary, that candidate is elected; otherwise, there is a runoff election.<sup>183</sup> Results suggest that senators from states that have eliminated partisan primaries for federal elections are regarded as some of the most influential in the Senate, each having shepherded several pieces of bipartisan legislation in recent years.<sup>184</sup>

A more traditional alternative to an open, nonpartisan primary system is an open, partisan primary system in which voters may privately choose in which party primary they vote without having to register that choice with the party. Currently, sixteen states employ open partisan primaries, another seven states have open primaries only for unaffiliated voters, and five more states allow voters to choose in which primary they vote, but must do so publicly or by registering

<sup>174</sup> See Lee & Lee, *supra* note 166.

<sup>175</sup> See *id.*; Williamson, *supra* note 6, at 3–4.

<sup>176</sup> See Williamson, *supra* note 6, at 3–4; see Lee & Lee, *supra* note 166 (“No statewide primary in 2022 had fewer than 10 candidates . . . meaning voters had more choice than before the election reforms took effect.”).

<sup>177</sup> See Lee & Lee, *supra* note 166.

<sup>178</sup> See TROIANO, *supra* note 139, at 186 (“[N]early 80% of Alaskans reported that ranking candidates in the general election was at least ‘somewhat simple.’ . . . These results were similar across demographics.”).

<sup>179</sup> See *id.* at 254 (“[D]uring Alaska’s first year with RCV, 99.9% of ballots were cast without a problem, while 99.7% of voters cast valid ballots in New York City’s rollout in 2021. These numbers only improve over time as voters gain familiarity.”).

<sup>180</sup> See MCKINLEY RSCH., ALASKA’S ELECTIONS REFORMS 3 (2023).

<sup>181</sup> Nat’l Conf. of State Legislatures, *supra* note 164; TROIANO, *supra* note 139, at 155–56.

<sup>182</sup> See Christian R. Grose, *Reducing Legislative Polarization: Top-Two and Open Primaries Are Associated with More Moderate Legislators*, 1 J. OF POL. INSTS. AND POL. ECO. 267, 273 (2020).

<sup>183</sup> Nat’l Conf. of State Legislatures, *supra* note 164.

<sup>184</sup> See *id.*

with the party.<sup>185</sup> In contrast, there are still seventeen states that hold closed or partially closed primaries, meaning that voters must be registered members of the party to vote unless a party elects to allow independent voters to participate.<sup>186</sup>

Switching from a closed to an open partisan primary system carries benefits. It appears to boost voter turnout.<sup>187</sup> It also seems to result in legislators being elected who “are [four] percentage points less extreme than legislators elected in closed primary systems” and who “are more ideologically moderate in their floor roll-call voting records.”<sup>188</sup> But the evidence on the moderating effect of making primaries open without disturbing their partisan nature is mixed.<sup>189</sup> Moreover, opening partisan primaries “while retaining the rule that the plurality winner is elected, still enables the will of the majority to be defeated.”<sup>190</sup>

Overall, compared to traditional and open, partisan primaries, an open, nonpartisan

primary system appears to increase voter turnout<sup>191</sup> and result in more moderate candidates being elected<sup>192</sup> who also “wind up being more innovative and willing to strike legislative compromise.”<sup>193</sup>

## 2. Ranked-choice voting

The Task Force also encourages states to consider whether their unique circumstances would benefit from employing some form of ranked choice voting in the general election to guarantee that those who are chosen to lead are backed by majority support and hold true democratic mandates to carry out the policies on which they were elected.

In ranked-choice voting, voters rank all the candidates on the general election ballot in the voters’ preferred order, and the ballots are then tabulated in a way that majority support is eventually awarded to a candidate.<sup>194</sup> Ranked-choice voting thus ensures that the candidate elected enjoys majority support<sup>195</sup> while avoiding the cost, effort, and lower turnout

<sup>185</sup> See *id.*

<sup>186</sup> See *id.*

<sup>187</sup> See FERRER & THORNING, *supra* note 140, at 5.

<sup>188</sup> See Grose, *supra* note 182, at 280–81.

<sup>189</sup> See Pildes, Political Reforms, *supra* note 92.

<sup>190</sup> Cf. Edward B. Foley, *Requiring Majority Winners for Congressional Elections*, 26 LEWIS & CLARK L. REV. 365, 379 (2022) (discussing eliminating sore loser laws and prohibitions on write-in candidates).

<sup>191</sup> See JOSHUA FERRER, MICHAEL THORNING & J.D. RACKEY, THE EFFECT OF OPEN PRIMARIES ON TURNOUT AND REPRESENTATION 20–21 (Oct. 2024); Seth J. Hill, *Sidestepping Primary Reform*, 10 POL. SCI. RSCH. & METHODS 391, 398 (2022) (estimating that nonpartisan, top-two primaries result in 6.1 percent greater voter turnout).

<sup>192</sup> See Grose, *supra* note 182, at 278 (finding that “the top-two primary is associated with legislators who are [at least] 7 percentage points more moderate than those legislators from closed systems”).

<sup>193</sup> See Arnold Schwarzenegger & Ro Khanna, *Don’t Listen to the Establishment Critics. California’s Open Primary Works.*, THE WASH. POST (June 18, 2018), <https://www.washingtonpost.com/news/posteverything/wp/2018/06/18/dont-listen-to-the-establishment-critics-californias-open-primary-works/>; accord Grose, *supra* note 182, at 271.

<sup>194</sup> See generally Atkinson et al., *supra* note 169, 1659–67 (discussing the various kinds of ranked-choice voting).

<sup>195</sup> See TROIANO, *supra* note 139, at 158.

associated with holding runoff elections.<sup>196</sup> Moreover, by incentivizing candidates to appeal to voters beyond their party's base to win second-choice or even third-choice votes, ranked-choice voting encourages civil discourse and increases campaign civility.<sup>197</sup>

Sixty-three jurisdictions across twenty-four states, including the entirety of Maine and Alaska, as well as New York City, San Francisco, Minneapolis, and Cambridge, Massachusetts, currently use a form of ranked choice voting.<sup>198</sup> Ranked-choice voting is also used by military and overseas voters in federal runoff elections in six states.<sup>199</sup> Voters in cities that use ranked-choice voting overwhelmingly support it, and ranked-choice voting is associated with lower rates of voter error than traditional, non-ranked-choice voting.<sup>200</sup> New research shows that ranked-choice voting increases representation, mobilization, and turnout.<sup>201</sup>

Nevertheless, as with adopting open, non-partisan primaries, ranked-choice voting

is not a panacea for combating electoral extremism. Critics argue that ranked-choice voting is complicated and that many voters will still only rank one candidate.<sup>202</sup> But voter education campaigns have been successful in promoting engagement with ranked-choice voting.<sup>203</sup> To allow voters to express their preferences across a range of ideological choices, voters must first be given that range of ideological choices. This is why ranked-choice voting pairs well with open, nonpartisan primaries.

Open, nonpartisan primaries and ranked choice voting may enable elected officials to feel free to break on occasion from the partisan party line. For example, three of the Republican senators who voted to convict President Trump at his second impeachment trial came from states with either non-partisan primaries or ranked-choice voting. Similarly, Congressman Jared Golden of Maine was one of the few Democratic House members to vote against President Biden's

196 See FairVote, Research and Data on RCV, *supra* note 151; David C. Kimball & Joseph Anthony, Voter Participation with Ranked Choice Voting in the United States (Oct. 2016) (unpublished manuscript), <https://www.umsl.edu/~kimballd/KimballRCV.pdf> (finding that voter turnout was approximately nine or ten percentage points higher in localities that adopted ranked-choice voting than it was in control cities before); Pildes, Political Reforms, *supra* note 92; JEREMY ROSE, FAIRVOTE, PRIMARY RUNOFF ELECTIONS AND DECLINE IN VOTER TURNOUT 2 (2022) (determining that turnout decline is nearly universal in runoff elections with a median decline in turnout of forty percent).

197 See FairVote, Research and Data on RCV, *supra* note 151.

198 See *Ranked Choice Voting Information*, FAIRVOTE, <https://fairvote.org/our-reforms/ranked-choice-voting-information/#where-is-ranked-choice-voting-used> (last visited June 4, 2025).

199 See *id.*

200 See *id.*

201 See Eveline Dowling & Caroline Tolbert, *What We Know About Ranked Choice Voting, Updated for 2025*, A.B.A. (Mar. 6, 2025), [https://www.americanbar.org/groups/public\\_interest/election\\_law/american-democracy/our-work/what-we-know-about-ranked-choice-voting-2025/](https://www.americanbar.org/groups/public_interest/election_law/american-democracy/our-work/what-we-know-about-ranked-choice-voting-2025/).

202 See *id.* See also Jerry H. Goldfeder, *Don't Lose Your Vote – Rank All 5!*, AMNYLAW (June 11, 2025), [https://www.cozen.com/Templates/media/files/Don't%20Lose%20Your%20Vote%20-%20Rank%20All%205!\\_Goldfeder\\_amnylaw-june-11-digitaledition.pdf](https://www.cozen.com/Templates/media/files/Don't%20Lose%20Your%20Vote%20-%20Rank%20All%205!_Goldfeder_amnylaw-june-11-digitaledition.pdf).

203 See *id.*

Build Back Better bill and in favor of Trump-era policies on immigration.

To date, the ABA has not supported ranked-choice voting. The Task Force recommends that the ABA further study<sup>204</sup> the various methods of ranked-choice voting and adopt the concept as ABA policy.

### 3. Fusion voting

A third method to combat hyper-partisan polarization and the gridlock in governance that such polarization produces is fusion voting. In general elections, fusion voting allows two or more parties to nominate the same candidate, with that candidate's consent.<sup>205</sup> Such candidates appear on the ballot under the banner of each legally recognized party. Votes are tallied separately by party and then added together to produce the final outcome.<sup>206</sup> Importantly, fusion

voting eliminates the so-called “spoiler” or “wasted vote” dilemma that threatens to make third parties irrelevant or counterproductive. Instead, it allows voters to back a candidate with a feasible chance of winning, but to do so under a party banner that better reflects the voter's values. Fusion voting thus disrupts the restrictive two-party binary.

Fusion voting was common and uncontroversial until the end of the 19<sup>th</sup> century, when “anti-fusion” laws were adopted to inhibit cross-party collaboration.<sup>207</sup> At that time, anti-fusion laws were favored by white supremacists who sought to reduce the influence of minority voters.<sup>208</sup> Unfortunately, few states have lifted these laws, and the Supreme Court held they were constitutional.<sup>209</sup> The anti-fusion law in New Jersey is currently being challenged in litigation.<sup>210</sup> Only two

204 We note that the ABA Young Lawyers Division, in collaboration with the Standing Committee on Election Law and others, has conducted programming on ranked-choice voting and committed to considering the Working Paper presented by the Task Force, [What We Know About Ranked Choice Voting, Updated for 2025](#) in order to find consensus among election-lawyers as to implementation of ranked-choice voting when adopted.

205 See Pildes, Political Reforms, *supra* note 92.

206 See *Fusion Voting*, BALLOTPEDIA, [https://ballotpedia.org/Fusion\\_voting](https://ballotpedia.org/Fusion_voting) (last visited June 4, 2025).

207 See Lee Drutman, Tabatha Abu El-Haj, & Beau Tremiere, *Reviving the American Tradition of Fusion Voting*, A.B.A. (May 31, 2024), [https://www.americanbar.org/groups/public\\_interest/election\\_law/american-democracy/our-work/reviving-american-tradition-fusion-voting/](https://www.americanbar.org/groups/public_interest/election_law/american-democracy/our-work/reviving-american-tradition-fusion-voting/). For a longer history of fusion voting, see Peter H. Argersinger, “A Place on the Ballot”: *Fusion Politics and Antifusion Laws*, 85 AM. HIST. REV. 287 (1980).

208 See *id.*

209 See *Timmons v. Twin Cities Areas New Party*, 520 U.S. 351 (1997). But voters have continued to challenge fusion voting, and later cases are in tension with *Timmons*. See Drutman et al., *supra* note 207; Pildes, Political Reforms, *supra* note 92. In Wisconsin, a group has challenged the state's anti-fusion law, arguing that it violates Wisconsinites' rights to freedom of speech and association and to “free government” guaranteed under the state constitution. See Sarah Lehr, *Wisconsin Once Allowed ‘Fusion Voting.’ A Lawsuit Aims to Bring It Back.*, WIS. PUB. RADIO (Apr. 29, 2025), <https://www.wpr.org/news/wisconsin-fusion-voting-lawsuit-bring-back>.

210 See Br. for Historians as Amicus Curiae, In re Malinowski, No. A-003542-21 (N.J. Super. Ct. App. Div. July 10, 2023), <https://protectdemocracy.org/wp-content/uploads/2022/07/Amicus-Brief-Historians-Argersinger-et-al.pdf>.



states—New York and Connecticut—permit full fusion voting today.<sup>211</sup>

States should consider lifting their “anti-fusion” laws. Fusion voting allows for cross-partisan collaboration and permits voters to support minority parties without “wasting” their votes.<sup>212</sup> Given that over 40% of voters identify as independent, it is worth giving voters the opportunity to deviate from their registered party affiliation.<sup>213</sup> Fusion can also temper extremism, forcing candidates to appeal to a broader audience and face a fractured opposition. Organizations across the ideological spectrum have come out in support of fusion voting.<sup>214</sup>

In sum, the Task Force is convinced that the partisan primary system that currently predominates in the United States is a source of much of the partisan gridlock. But it is a problem that can be solved. And it is a problem that states are increasingly attempting

to solve. While every voting system has advantages and disadvantages to weigh, this is not a reason to tolerate the status quo.

## D. Reducing Partisan Influence in Election Administration

Confidence in the accuracy of U.S. elections remains low in some quarters.<sup>215</sup> In recent years, some Americans have come to believe that election officials conspire to skew election results in support of their preferred candidates.<sup>216</sup> Even after protestors stormed the United States Capitol on January 6, 2021, to stop the certification of electoral votes based on the false belief that the Democratic Party stole the 2020 election, that claim was repeated even after President Biden was inaugurated and during his tenure.<sup>217</sup> Given the persistence of the stolen election myth, faith in American elections was an issue, especially among certain Republican voters,

211 See Pildes, Political Reforms, *supra* note 92.

212 See *id.*

213 See Drutman et al., *supra* note 207.

214 See *id.*

215 See, e.g., PUB. AFFS. COUNCIL, *Few Americans Believe 2024 Elections Will Be ‘Honest and Open’* (Oct. 2023), <https://pac.org/impact/few-americans-believe-2024-elections-will-be-honest-and-open>; WORLD JUST. PROJECT, *The U.S. Now Ranks 43rd on Election Confidence* (Oct. 23, 2024), <https://worldjusticeproject.org/news/us-now-ranks-43rd-election-confidence>.

216 See Anthony Salvanto et al., *Americans See Politicized Election System in U.S.*, CBS NEWS (Sept. 4, 2022), <https://www.cbsnews.com/news/elections-democracy-opinion-poll-2022-09-04> (polling indicates that almost two thirds of Americans think that election procedures are being politicized and separately that at least some election officials may refuse to certify results).

217 Linley Sanders & Nicholas Riccardi, *Republicans’ Trust in Accuracy of US Elections Jumps After Trump’s Win*, AP-NORC Poll Finds, AP NEWS (Jan. 3, 2025), <https://apnews.com/article/voting-election-security-republicans-trump-ap-poll-6171a25bd64dbb47505b8c907ddcb037>.

until President Trump’s victory in 2024.<sup>218</sup> For their part, certain Democratic voters exhibited similar outcome-oriented reasoning in 2024, as their confidence in the outcome of the elections dipped—albeit much more slightly than Republicans’ confidence increased—after President Trump won.<sup>219</sup> Notwithstanding skewed partisan perceptions, elections in the recent past—through and since the COVID-19 pandemic—have been conducted properly, with minimal and inconsequential incidents of errors or abuse. Indeed, 2020 was the most scrutinized and most secure election in American history.<sup>220</sup>

## PROBLEM STATEMENT

Almost all election administration in this country is done at the state, county, or local level. Meanwhile, election laws and procedures vary widely from state to state, and often within states.<sup>221</sup> Election administration

requires a permanent staff of civil servants, buttressed during election season by tens of thousands of temporary poll workers who handle ministerial tasks.<sup>222</sup> Every state has a senior official with overall responsibility for election administration, often the secretary of state; though the precise nature of the role varies, it generally includes maintaining state voter rolls and certifying election results.<sup>223</sup> The federal government plays no direct role in election administration, but the United States Election Assistance Commission provides technical support and guidance to local election authorities.<sup>224</sup>

Across the country, state election officials are selected through political processes. Each state’s top election authority is either elected or directly appointed by someone who was elected.<sup>225</sup> At the local level, around 60% of election officials are themselves elected.<sup>226</sup> Even poll workers are sometimes picked from lists assembled by local party officials.<sup>227</sup> In the

218 *Id.* In October 2024, only two in ten registered Republicans were confident that the election would be conducted properly. Once the results came in, that number jumped to six in ten. *See id.*

219 *Id.*

220 THE CTR. FOR ELECTION INNOVATION & RSCH., ONE YEAR SINCE JANUARY 6, at 1-2 (2021), <https://electioninnovation.org/research/one-year-since-january-6/>.

221 *See Election Administration at State and Local Levels*, NAT’L CONF. OF STATE LEGISLATURES (Dec. 12, 2023), <https://www.ncsl.org/elections-and-campaigns/election-administration-at-state-and-local-levels>.

222 *See id.*; U.S. ELECTION ASSISTANCE COMM’N, POLL WORKERS AND POLLING PLACES 2 (2017).

223 *See generally*, ELECTION REFORMERS NETWORK, THE POWERS AND DUTIES OF STATE-LEVEL SECRETARIES OF STATE (2022).

224 *See About the EAC*, U.S. ELECTION ASSISTANCE COMM’N, <https://www.eac.gov/about> (last visited July 14, 2025). The EAC is itself controversial, with its detractors arguing that it is irrelevant, ineffective, and covertly partisan. *See, e.g.*, THEO MENNEN ET AL, BIPARTISAN POL’Y CTR., THE NUANCED CHALLENGES OF THE U.S. ELECTION ASSISTANCE COMMISSION (2024).

225 In thirty-one states, a single elected official, typically the secretary of state, has primary responsibility. *See* Al Vanderklipp, *Which States Have Election Commissions or Boards*, ELECTION REFORMERS NETWORK (Apr. 29, 2021), <https://www.electionreformers.org/articles/which-states-have-election-commissions-or-boards>. In ten states, a board, typically selected by politicians, has responsibility, and in nine states an elected official shares responsibility with a board. *See id.*

226 *See* David C. Kimball & Martha Kropf, *The Street-Level Bureaucrats of Elections: Selection Methods for Local Election Officials*, 23 REV. POL’Y RSCH. 1257, 1261 (2006).

227 *See* GRACE GORDON & RACHEL OREY, BIPARTISAN POL’Y CTR., FORTIFYING ELECTION SECURITY THROUGH POLL WORKER POLICY 2 (2022).

vast majority of states, there are few formal checks on the power of senior election officials to manipulate elections on behalf of favored candidates, including even themselves.<sup>228</sup> In all, this structure is highly unusual among democratic countries, where elections are typically run by constitutionally independent bodies.<sup>229</sup> Among peer democratic nations, the United States ranks near the very bottom in terms of perceived election integrity among election experts.<sup>230</sup>

Most alarmingly, as a result of the myth that the 2020 election was stolen, state and local

election officials themselves are becoming overtly political. Since 2020, there has been a concerted push for certain highly partisan individuals to win election or appointment as election officials.<sup>231</sup> A number of election officials across the country denied the legitimacy of the 2020 presidential election and peddled the false claim that it was “stolen.”<sup>232</sup> Some refused to certify valid election results after the 2022 midterm elections.<sup>233</sup> Certain state legislatures have considered laws that would further politicize election administration by giving the legislature a

228 See ROPES & GRAY, CHIEF ELECTION OFFICERS AND CONFLICTS OF INTEREST 6 (2020) (only two states have any kind of conflict-of-interest laws for the secretary of state). In the words of former Connecticut Secretary of State Miles Rappoport, “[o]f course I played it straight, but I didn’t have to.” KEVIN JOHNSON ET AL., ELECTION REFORMERS NETWORK, GUARDRAILS FOR THE GUARDIANS 31 (2020).

229 See Grace Gordon et al., *The Dangers of Partisan Incentives for Election Officials*, BIPARTISAN POL’Y CTR. (Apr. 6, 2022), <https://bipartisanpolicy.org/report/the-dangers-of-partisan-incentives-for-election-officials>.

230 See HOLLY ANN GARNETT, TOBY S. JAMES & SOFIA CAAL-LAM, ELECTORAL INTEGRITY PROJECT, ELECTORAL INTEGRITY GLOBAL REPORT 8–9 (2024); see also WORLD JUST. PROJECT, *supra* note 215.

231 This is true of both major parties. See Isaac Arnsdorf, *Heeding Steve Bannon’s Call, Election Deniers Organize to Seize Control of the GOP — and Reshape America’s Elections*, PROPUBLICA (Sept. 2, 2021), <https://www.propublica.org/article/heeding-steve-bannons-call-election-deniers-organize-to-seize-control-of-the-gop-and-reshape-americas-elections> (discussing a concerted effort to seize control of election machinery by running extreme right partisans to fill key election roles, from secretaries of state to county election clerks); Clay Masters, *Why Democrats See Opportunity in this Key State Office*, NPR (Nov. 3, 2018), <https://www.npr.org/2018/11/03/662802539/why-democrats-see-opportunity-in-this-key-state-office> (discussing efforts by state Democratic parties to seize control of secretary of state offices in key states).

232 See *Where Do Election Deniers Oversee Elections as Secretary of State?*, ELECTION REFORMERS NETWORK (Feb. 1, 2024), <https://www.electionreformers.org/articles/where-do-election-deniers-oversee-elections-as-secretary-of-state>; BRENNAN CTR. FOR JUST., *Election Denial in Races for Election Administration Positions*, <https://www.brennancenter.org/series/election-denial-races-election-administration-positions> (last visited May 29, 2025); Emma Brown, *An Elections Supervisor Embraced Conspiracy Theories. Officials Say She Has Become an Insider Threat*, WASH. POST (Sept. 26, 2021), [https://www.washingtonpost.com/investigations/an-elections-supervisor-embraced-conspiracy-theories-officials-say-she-has-become-an-insider-threat/2021/09/26/ee60812e-1a17-11ec-a99a-5fea2b2da34b\\_story.html](https://www.washingtonpost.com/investigations/an-elections-supervisor-embraced-conspiracy-theories-officials-say-she-has-become-an-insider-threat/2021/09/26/ee60812e-1a17-11ec-a99a-5fea2b2da34b_story.html).

233 See Doug Bock Clark, *Some Election Officials Refused to Certify Results. Few Were Held Accountable*, PROPUBLICA (Mar. 9, 2023), <https://www.propublica.org/article/election-officials-refused-certify-results-few-held-accountable>.

role in various key election functions like the certification of results.<sup>234</sup>

Election officials have variable levels of professionalism. Many senior-level election officials lack any formal training in election administration.<sup>235</sup> At lower levels, some officials may have certification or training provided by their state, the federal government, or non-governmental organizations, but training is not mandatory in all jurisdictions.<sup>236</sup> Although all states require some level of training for poll workers, the level and content of this training vary widely.<sup>237</sup>

Voters' confidence that the 2024 elections were conducted fairly and accurately varied by party affiliation. According to the Public Religion Research Institution, confidence in the 2024 election was much higher among Republican voters (66%) than among Democratic voters (44%).<sup>238</sup> 63% of Republican voters continue to believe that the 2020 election was stolen, a view that Democrats almost unanimously reject.<sup>239</sup> It therefore appears that confidence

in the veracity of election results is tied, unfortunately, to satisfaction with those results.

## PROPOSED SOLUTIONS

Some jurisdictions have professionalized election administration. One of the more promising models for state-level non-partisan election administration in the United States is Wisconsin's Government Accountability Board.<sup>240</sup> The Board—which was made up of retired judges who were not members of any political party or otherwise connected to partisan politics—had a track record of fairly and even-handedly resolving election disputes that would otherwise have been committed to elected or appointed political officials.<sup>241</sup> Unfortunately, the nonpartisan and highly praised Board was replaced in 2016 by a “stalemated and ineffective” Elections Commission, returning politics to Wisconsin's election administration.<sup>242</sup> At the local level, depoliticized election practices

234 See STATES UNITED DEMOCRACY CTR., *A DEMOCRACY CRISIS IN THE MAKING: 2024 ELECTION THREATS EMERGING 12-22* (2023).

235 See JOHNSON ET AL., *supra* note 228, at 29–30 (since 2010, only about a third of secretaries of state had experience or knowledge relevant to election administration, with a significantly lower share of relevant experience among Republican secretaries).

236 See *Election Administration at State and Local Levels*, *supra* note 221 (noting that thirty-two states require training for LEOs).

237 See generally U.S. ELECTION ASSISTANCE COMM'N, *STATE-BY-STATE COMPENDIUM – ELECTION WORKER LAWS & STATUTES* (2023) (overview of laws governing election workers across the country); see also *Poll Worker Training*, NAT'L CONF. OF STATE LEGISLATURES (Dec. 4, 2023), <https://www.ncsl.org/elections-and-campaigns/poll-worker-training> (discussing challenges and variation in training within and between districts).

238 Pub. Religion Rsch. Inst., *Analyzing the 2024 Presidential Vote: PRRI's Post-Election Survey* (Dec. 13, 2024), <https://www.prri.org/research/analyzing-the-2024-presidential-vote-prris-post-election-survey/>.

239 *Id.*

240 See J. MIJIN CHA & LIZ KENNEDY, DEMOS, *MILLIONS TO THE POLLS – PRACTICAL POLICIES TO FULFILL THE FREEDOM TO VOTE FOR ALL AMERICANS* 43 (2014).

241 See *id.*

242 Vanessa Swales, *With All Eyes on Wisconsin, Partisan Gridlock at State Elections Commission Frustrates Voters and Local Officials*, PROPUBLICA: ELECTIONLAND (Oct. 26, 2020), <https://www.propublica.org/article/with-all-eyes-on-wisconsin->

exist, but they vary. In states like Maine, New Hampshire, and Oregon, elections are run by a non-partisan elected clerk, while states like Virginia and New York use bipartisan boards appointed by local politicians.<sup>243</sup>

The Task Force endorses state-level reform measures to professionalize officials, offices, and commissions with responsibility for election administration. To the extent that a statewide elected office shares other important political responsibilities, as may be the case for the secretary of state, the role of the top state election official may be separated from the political roles of the office. Alternatively, the office of the secretary of state may itself be made a non-partisan position. If practicable, lower-level election officials should be made non-partisan, even if they remain elected. Such reforms are broadly popular with Americans regardless of political affiliation.<sup>244</sup> Although there are very few substantiated allegations of misconduct by election officials, the appearance of partisanship is troubling to

many voters, so depoliticizing local election administration could go a long way towards improving public trust.<sup>245</sup>

The Task Force also recommends developing and requiring professional certifications and ethical standards for election officials and workers. While there are institutions that offer certification programs for election workers, as noted above, many states do not require any training for election officials, and none require certification.<sup>246</sup> No state imposes qualifications on its chief election officer. All states should require some level of training and, ideally, certification for election officials at all levels. Election integrity should not depend entirely on the personal ethics of election officials. A strong, enforceable code of professional responsibility would help curb potential abuses and provide much needed guidance to poll workers and other elections officials in the field.<sup>247</sup> Even the conduct of election workers engaged in purely ministerial tasks is important for maintaining trust in

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partisan-gridlock-at-state-elections-commission-frustrates-voters-and-local-officials.

243 See Kimball & Kropf, *supra* note 226 at 1266–68.

244 See CHARLES STEWART III, MIT ELECTION DATA + SCI. LAB, *HOW WE VOTED IN 2020: A TOPICAL LOOK AT THE SURVEY OF THE PERFORMANCE OF AMERICAN ELECTIONS* 32 (2021), <https://electionlab.mit.edu/sites/default/files/2021-03/HowWeVotedIn2020-March2021.pdf>.

245 See Miles Parks, *Partisan Election Officials Are “Inherently Unfair” But Probably Here To Stay*, NPR (Nov. 29, 2018), <https://www.npr.org/2018/11/29/671524134/partisan-election-officials-are-inherently-unfair-but-probably-here-to-stay>.

246 See GRACE KLINEFELTER, WILLIAM T. ADLER, RACHEL OREY, BIPARTISAN POL’Y CTR., *TRAINING FOR ELECTION OFFICIALS: A 50-STATE ANALYSIS* (2025). See also *Certified Elections Registration Administrator (CERA) Certification*, ELECTION CTR., <https://electioncenter.org/certification/cera-individual-certification/> (last visited July 14, 2025); *Certificate in Election Administration*, U. MINN., <https://www.hhh.umn.edu/certificate-programs/certificate-election-administration> (last visited July 14, 2025).

247 The National Association of Secretaries of State has adopted and repeatedly affirmed a voluntary code of ethics. See *Resolution Affirming the Conduct of Elections in a Nonpartisan Manner*, NAT’L ASS’N OF SEC’YS OF STATE (Feb. 2, 2020), <https://www.nass.org/node/114>.



the fairness and integrity of elections. They, too, can and should be held to robust ethical standards.<sup>248</sup>

## E. Increasing Election Worker Safety

Election workers are vital to the administration of fair and free elections.<sup>249</sup> They are responsible for the smooth functioning of elections nationwide, setting up voting equipment, processing eligible voters, and counting ballots. Today, election workers at all levels find themselves the targets for those seeking to undermine American democracy.<sup>250</sup> Not only do these attacks take a toll on the individual victims, but they also risk depleting

the ranks of experienced officials pivotal to the effective administration of elections.<sup>251</sup>

### PROBLEM STATEMENT

After the 2020 elections, election workers became the scapegoats for the election results and the target of harassment.<sup>252</sup> Experts consider the recent uptick in threats and doxing against election workers a byproduct of election deniers' false narratives.<sup>253</sup> Once obscure, election administrators have been catapulted into the center of politically-charged conspiracy theories.<sup>254</sup> For example, Former Philadelphia City Commissioner Al Schmidt testified in the January 6 Congressional Committee hearings that he and his family received graphic death threats following tweets about his refusal to impugn the 2020 election results.<sup>255</sup> Additionally,

<sup>248</sup> See, e.g., *King v. Whitmer*, 71 F.4th 511, 527 (6th Cir. 2023) (noting that “rank partisanship among election workers . . . undermines public confidence”). Wisconsin, for instance, requires poll workers to swear an oath to uphold and protect the Constitution before they can be hired. See Lauren Miller Karalunas, *Wisconsin Election Officials: Rules and Constraints*, BRENNAN CTR. FOR JUST. (Mar. 18, 2024), <https://www.brennancenter.org/our-work/research-reports/wisconsin-election-officials-rules-and-constraints>; see also *Poll Worker Training*, *supra* note 237 (some local election officials “reported concerns about the possibility of poll workers who could take some nefarious action ‘from the inside.’ One [official] requires poll workers to sign a code of conduct to help guard against these issues; it has been well received by poll workers in that jurisdiction.”).

<sup>249</sup> See DEREK TISLER & LAWRENCE NORDEN, BRENNAN CTR. FOR JUST., *SECURING THE 2024 ELECTION* 15 (2023), <https://www.brennancenter.org/our-work/policy-solutions/securing-2024-election> [hereinafter TISLER & NORDEN, *SECURING THE 2024 ELECTION*].

<sup>250</sup> See Ruby Edlin & Lawrence Norden, *Poll of Election Officials Shows High Turnover Amid Safety Threats and Political Interference*, BRENNAN CTR. FOR JUST. (Apr. 25, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/poll-election-officials-shows-high-turnover-amid-safety-threats-and>.

<sup>251</sup> See Jane C. Timm, *The DOJ Is Investigating Dozens of Threats against Election Workers*, NBC NEWS (Mar. 25, 2024), <https://www.nbcnews.com/politics/elections/doj-investigating-dozens-threats-election-workers-rcna145014>.

<sup>252</sup> See TISLER & NORDEN, *SECURING THE 2024 ELECTION*, *supra* note 249, at 11.

<sup>253</sup> See Cat Zakrzewski, *Election Workers Brace for a Torrent of Threats: “I KNOW WHERE YOU SLEEP,”* WASH. POST (Nov. 8, 2022), <https://www.washingtonpost.com/technology/2022/11/08/election-workers-online-threats>.

<sup>254</sup> See *id.*

<sup>255</sup> See 6abc Digital Staff & Annie McCormick, *Fmr. Philadelphia City Commissioner Describes ‘Specific, Graphic’ Threats Made after Trump Tweet*, ABC NEWS (June 14, 2022), <https://6abc.com/al-schmidt-testimony-philadelphia->

Georgia election workers Wandrea Shaye Moss and her mother, Ruby Freeman, became targets of sexual and racist attacks after they were featured in a video falsely claiming to show workers scanning fake ballots.<sup>256</sup> Charleston County's Executive Election Officer, Isaac Cramer, testified before the U.S. Senate that a local group traveled to election sites to harass poll managers during the June 2022 primaries.<sup>257</sup> These incidents illustrate challenges that election workers encounter daily.

In response to threats and doxing, in 2021, the U.S. Department of Justice launched the Election Threats Task Force to assess election workers' allegations of threats directed against them.<sup>258</sup> Stemming from these complaints,

the Justice Department charged 20 people and secured over 15 convictions.<sup>259</sup> However, election officials and voting rights advocates have criticized the Election Threats Task Force for prosecuting what they perceive to be an insufficient number of cases given the scale of threats surrounding the 2020 election.<sup>260</sup> Many election workers report that the number of prosecutions and convictions represents only a fraction of the abuse and intimidation they have experienced.<sup>261</sup> It remains to be seen whether the Election Threats Task Force will continue operations in 2025 and beyond.<sup>262</sup>

The hostility that began in 2020 continued in the 2024 election. Election workers endured heightened public scrutiny, harassment, assault, and even stalking.<sup>263</sup> More than half of

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city-commissioner-january-6-insurrection-capitol-attack/11955093.

- 256 See Joseph Marks & Aaron Schaffer, *Threats against Election Workers Could Have Bad Consequences*, WASH. POST (June 22, 2022), <https://www.washingtonpost.com/politics/2022/06/22/threats-against-election-workers-could-have-bad-consequences>.
- 257 See *Testimony of Mr. Isaac Cramer Before the S. Comm. on Rules & Admin.*, 118th Cong. (2024) (statement of Isaac Cramer, Exec. Dir., Charleston Cnty. Bd. of Voter Registration & Elections). One of the leaders threatened on social media that “[w]e have the enemy on their back foot, press the attack.” *Id.*
- 258 See Memorandum for All Federal Prosecutors from Lisa Monaco, Deputy Att’y Gen., Guidance Regarding Threats against Election Workers (June 25, 2021), <https://www.justice.gov/dag/file/1160226-0/dl?inline> [hereinafter Memorandum for All Federal Prosecutors].
- 259 See Timm, *supra* note 251; Laura Romero & Peter Charalambous, *DOJ Task Force, Formed In 2021 to Fight Election Threats, Has Brought Only 20 Cases*, ABC NEWS, (Sept. 5, 2024), <https://abcnews.go.com/US/doj-task-force-formed-2021-fight-election-threats/story?id=113355654>.
- 260 See Romero & Charalambous, *supra* note 259; Zakrzewski, *supra* note 253.
- 261 See Romero & Charalambous, *supra* note 259; Zakrzewski, *supra* note 253.
- 262 See, e.g., Letter from Alex Padilla, U.S. Senator, et al. to Pam Bondi, U.S. Attorney General (Mar. 17, 2025), [https://www.warner.senate.gov/public/\\_cache/files/6/b/6bbaf61a-866c-449e-bfeb-12d384bd5124/8ABE8D1454D4AE EA0B7BC4D7F8A01F726F7177A10641E2011BA1AAB718B24CE3.03.17.25-election-threats-task-force-letter-final.pdf](https://www.warner.senate.gov/public/_cache/files/6/b/6bbaf61a-866c-449e-bfeb-12d384bd5124/8ABE8D1454D4AE EA0B7BC4D7F8A01F726F7177A10641E2011BA1AAB718B24CE3.03.17.25-election-threats-task-force-letter-final.pdf).
- 263 See Billie Jean Shaw, *SLED Investigating After Fight Breaks Out at Orangeburg County Early Voting Location*, WIS 10 (Oct. 30, 2024), <https://www.wistv.com/2024/10/31/authorities-investigating-after-fight-breaks-out-orangeburg-county-early-voting-location/>; Kristin Dean & David Lynch, *BCSO: Voter Punches Poll Worker When Reminded Texas Law Requires Removal of MAGA Hat at Election Site*, KENS5 (Oct. 25, 2024), <https://www.kens5.com/article/news/local/election-official-assaulted-at-early-voting-location-on-the-southwest-side-elections-officials-say/273-c95bac23-14f1-4427-8403-c403fd59a355>; Amanda Engel, *Election Worker Followed Leaving a Polling Site in Carroll County*, WMAR-2

local election officials report being concerned about their colleagues' safety, and one in three election administrators report facing threats, harassment, and abuse.<sup>264</sup> In October 2024, the Justice Department unsealed a complaint against a Philadelphia man accused of threats to skin alive and kill a volunteer poll watcher recruiter. Police also arrested an Arizona man over shootings at a Democrat campaign office. A Florida man faced arrest after repeatedly threatening an election official. Another Arizonan set fire to a mailbox, damaging 20 ballots.<sup>265</sup> According to a survey from the Brennan Center for Justice, one in six election officials has experienced threats, and more than half of these cases have not been reported to law enforcement.<sup>266</sup>

As a result, there was a “tsunami” of election officials departing from their roles prior to the 2024 election.<sup>267</sup> The turnover was higher in 2022 than at any point over the past two decades.<sup>268</sup> More than one-third of local election officials knew at least one person

who resigned in part due to safety concerns ahead of the 2024 election.<sup>269</sup>

The exodus of experienced election officials raises concerns about the smooth operation of elections and public confidence in the electoral process.<sup>270</sup> A high turnover rate means a loss of institutional knowledge, increasing the likelihood of errors and further undermining public confidence in the electoral process.<sup>271</sup> As newer, less experienced workers fill the gap, their heightened vulnerability to mistakes, combined with growing safety concerns, only deepens the instability. In all, election workers' increasing sense of insecurity no doubt undermines the effective administration of voting and confidence in the election outcomes. To maintain a functioning democracy, election workers must be able to administer elections free from improper partisan influences, threats of violence, and intimidating conduct.<sup>272</sup> Recent executive branch proposals to substantially reduce federal funding for the Cybersecurity and Infrastructure Security Agency (CISA), coupled with concerns that the Election Threats Task

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(Oct. 31, 2024), <https://www.wmar2news.com/news/national-politics/america-votes/election-worker-followed-leaving-a-polling-site-in-carroll-county>.

264 Edlin & Norden, *supra* note 250.

265 Glenn Thrush, Adam Goldman, Alan Feuer & Eileen Sullivan, *Election Officials Face Torrent of Threats as Nov. 5 Looms*, N.Y. TIMES (Oct. 25, 2024), <https://www.nytimes.com/2024/10/25/us/politics/election-officials-workers-threats.html>.

266 See BRENNAN CTR. FOR JUST., LOCAL ELECTION OFFICIALS SURVEY 7 (2022), <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-march-2022>.

267 Joshua Ferrer, Daniel M. Thompson, & Rachel Orey, *Election Official Turnover Rates From 2000-2024*, BIPARTISAN POL'Y CTR. (Apr. 9, 2024), <https://bipartisanpolicy.org/report/election-official-turnover-rates-from-2000-2024/>.

268 *Id.*

269 Edlin & Norden, *supra* note 250.

270 See Ferrer, Thompson, & Orey, *supra* note 267.

271 See GRACE GORDON ET AL., BIPARTISAN POL'Y CTR., DETERRING THREATS TO ELECTION WORKERS 2 (2022), [https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2022/07/BPC\\_Deterring-Threats-to-Election-Workers\\_R04.pdf](https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2022/07/BPC_Deterring-Threats-to-Election-Workers_R04.pdf) [hereinafter GORDON ET AL., DETERRING THREATS].

272 See Memorandum for All Federal Prosecutors, *supra* note 258.

Force may be disbanded, threaten to exacerbate existing vulnerabilities and undermine public confidence in the integrity of U.S. elections.

There is no reason to assume this turmoil was limited to the 2020 and 2024 election cycles.

## PROPOSED SOLUTIONS

Election worker safety remains a key concern following the 2024 election; thus, continued efforts are necessary. The Task Force recognizes existing ABA policy and advocacy regarding election worker safety,<sup>273</sup> and endorses the following three additional measures to strengthen election worker safety:

### 1. Federal funding

A substantial investment is necessary for the administration of safe elections. Prior to the 2024 election, the Brennan Center estimated that approximately \$300 million was necessary to guarantee that election workers are physically secure.<sup>274</sup> In calculating these costs, the Brennan Center recommended four key measures to bolster election workers' safety: bullet-proofing windows and doors of election offices, installing panic alarm

systems, implementing key card access restrictions and video surveillance, and providing personal information protection.<sup>275</sup> Given the number of armed protests held outside of election offices in Arizona, Michigan, Nevada, and Pennsylvania, some local officials upgraded their offices' security with bulletproof designs in anticipation of the 2024 elections.<sup>276</sup> Some offices also allowed staff access to restricted entrances to polling locations, where members of the public cannot confront them.<sup>277</sup>

To enable states to update the physical safety features of election sites, in 2023, the Department of Homeland Security announced a change in its Homeland Security Grant Program. This change required states to dedicate at least 3% of the money they receive to election security.<sup>278</sup>

Overall, the reduced severity of threats to election workers following the 2024 general election may reflect the impact of increased federal investment and enhanced protective measures; alternatively, it may correlate with the outcome of the election itself. Regardless of causation, the Task Force recommends sustained and increased federal funding to support election security initiatives and

<sup>273</sup> See *Safeguarding Elections: Decades of ABA advocacy has helped ensure access to the ballot box*, ABA JOURNAL (Aug. 1, 2024), <https://www.abajournal.com/magazine/article/safeguarding-elections-decades-of-aba-advocacy-has-helped-ensure-access-to-the-ballot-box>.

<sup>274</sup> See Derek Tisler & Lawrence Norden, *Estimated Costs for Protecting Election Workers from Threats of Physical Violence*, BRENNAN CTR. FOR JUST. (May 3, 2022), <https://www.brennancenter.org/our-work/research-reports/estimated-costs-protecting-election-workers-threats-physical-violence> [hereinafter Tisler & Norden, *Estimated Costs*].

<sup>275</sup> See *id.*

<sup>276</sup> For example, an election administrator in Chaffee County, Colorado installed bullet-resistant barriers in her office to keep her staff safe. See *id.*

<sup>277</sup> See Tisler & Norden, *Estimated Costs*, *supra* note 274.

<sup>278</sup> See Press Release, U.S. Dep't of Homeland Sec., DHS Announces \$2 Billion in Preparedness Grants (Feb. 27, 2023), <https://www.dhs.gov/news/2023/02/27/dhs-announces-2-billion-preparedness-grants>.



strongly opposes any efforts to reduce resources—particularly for agencies such as CISA, which plays a critical role in safeguarding election infrastructure at all levels.

## 2. Expanding legal protections

Thirty-five states and Washington, D.C., have laws addressing protections for election administrators, ten of which were enacted since 2020.<sup>279</sup> The Task Force endorses state legislatures' recent and continued efforts to increase election workers' legal protections. These safeguards are essential to protect election workers both in their official capacities and when facing threats outside their places of work, which is an increasing reality for these officials.

How each state protects its election officials and poll workers varies. Thirty-four states have criminalized general intimidation and interference with election officials.<sup>280</sup> In April 2022, Maine passed An Act to Make Interfering with an Election Official a Class C Crime, which raised penalties for a person who intentionally interferes with a public official performing official election functions through force, violence, or intimidation.<sup>281</sup> While this law is a necessary step toward securing election worker safety, Maine's law fails to encapsulate the entire scope of threatening

conduct directed at election workers, including doxing. Election workers serve a wider variety of roles for a longer period since voting options have expanded post-COVID-19.<sup>282</sup> Threats against election officials are no longer constrained to Election Day but rather extend before, during, and after.

Legislation in multiple states, including Arizona, Colorado, Maryland, Minnesota, Montana, and Oregon, extends Maine's approach to protect election officials beyond their official duties.<sup>283</sup> Arizona passed SB-1061 in 2023, which addresses doxing and allows public officials to remove their personal information from the public record if they believe that their life or safety is endangered.<sup>284</sup> Similarly, Colorado passed the Election Official Protection Act in June 2020, which increases protections for full- and part-time election officials alike.<sup>285</sup> The Colorado law prohibits threatening and intimidating election workers and also bars the release of personal information about election officials and their families to curb potential doxing. The aforementioned states' legislative efforts recognize critical lacunas of protection for election workers. We recommend that other states adopt approaches similar to these laws to ensure that legal protections cover threats against full- and part-time workers and those issued outside polling sites. Further, state

279 *State Laws Providing Protection for Election Officials and Staff*, NAT'L CONF. OF STATE LEGISLATURES (Jan. 13, 2025), <https://www.ncsl.org/elections-and-campaigns/state-laws-providing-protection-for-election-officials-and-staff>.

280 *Id.*

281 See 2021 Me. Laws 1. Specifically, this falls under ME. REV. STAT. ANN. tit. 21-A, § 674 (2023).

282 See TISLER & NORDEN, SECURING THE 2024 ELECTION, *supra* note 249, at 15.

283 See S.B. 1061, 56th Leg., 1st Reg. Sess. (Ariz. 2023); H.B. 22-1273, 2022 Gen. Assemb., Reg. Sess. (Colo. 2022); H.B. 585, 2024 Gen. Assemb., Reg. Sess. (Md. 2024); H. File 3, 93rd Leg., Reg. Sess. (Minn. 2023); S.B. 61, 68th Leg., Reg. Sess. (Mont. 2025); H.B. 4144, 81st Leg., Reg. Sess. (Or. 2022).

284 See Ariz. S.B. 1061.

285 See Colo. H.B. 22-1273.



legislatures should provide pathways for civil relief against persons who dox or make illegal threats, such as offering a restraining order.<sup>286</sup>

### 3. Guidance to local law enforcement

The Task Force also endorses the U.S. Department of Justice’s Election Crimes Task Force’s efforts to provide further guidance to local law enforcement on how to improve systems for investigating improper conduct.<sup>287</sup> Launching the Election Crimes Task Force was a major step in combating intimidation, but many still criticize the Justice Department’s response as inadequate. A number of perpetrators have successfully avoided prosecution.<sup>288</sup> Some election officials have also felt discouraged when investigators appear not to have taken their allegations seriously or fail to follow up.<sup>289</sup> Law enforcement has attributed enforcement issues to challenges in locating anonymous harassers.<sup>290</sup> Nevertheless, federal, state, and local law enforcement must close the accountability gaps by enforcing anti-intimidation laws and thoroughly investigating allegations.

To facilitate implementation of these recommendations, the Task Force endorses

continued support for the Department of Justice’s Election Crimes Task Force—particularly given recent efforts to dismantle other election integrity initiatives.

### 4. Pro Bono Assistance

Under the leadership of long-time election lawyers Ben Ginsburg and Robert Bauer, an effort was launched to provide free legal assistance to election workers under threat or who were improperly or improvidently charged with civil offenses or crimes. This is a worthy model for others to emulate.

## F. Increasing Access to Voting

The United States lags behind other democratic nations in overall voter participation.<sup>291</sup>

The story of voting rights in this country has been one of slow expansion in the face of unrelenting opposition. The U.S. Constitution originally delegated authority to make decisions about who was qualified to vote to

<sup>286</sup> See TISLER & NORDEN, *SECURING THE 2024 ELECTION*, *supra* note 249, at 15. The Brennan Center recommends that states model a civil provision based on the Voting Rights Act, which creates a private right of action to sue for an injunction, restraining order, or equitable relief. *See id.*

<sup>287</sup> See GORDON ET AL., *DETERRING THREATS*, *supra* note 271, at 5–6.

<sup>288</sup> See Linda So & Jason Szep, *Terrorized U.S. Election Workers Get Little Help From Law Enforcement*, REUTERS (Sept. 8, 2021), <https://www.reuters.com/legal/government/terrorized-us-election-workers-get-little-help-law-enforcement-2021-09-08>.

<sup>289</sup> *See id.*

<sup>290</sup> *See id.*

<sup>291</sup> See Drew Desilver, *Turnout in U.S. Has Soared in Recent Elections but by Some Measures Still Trails That of Many Other Countries*, PEW RSCH. CTR. (Nov. 1, 2022), <https://www.pewresearch.org/short-reads/2022/11/01/turnout-in-u-s-has-soared-in-recent-elections-but-by-some-measures-still-trails-that-of-many-other-countries>. While turnout for the 2024 presidential election was the second-highest in U.S. history, it was still well below that of other democratic nations. *Compare Election Results, 2024: Analysis of Voter Turnout in the 2024 General Election*,

the individual states. During the Founding Era, most state legislatures restricted voting rights to white male property owners. It was not until after the Civil War that the Fifteenth Amendment officially prohibited voter disenfranchisement on the basis of race.<sup>292</sup> Women did not secure the right to vote until ratification of the Nineteenth Amendment in 1920. Even then, many states instituted policies, including literacy tests, poll taxes, and English-language requirements.<sup>293</sup> These egregious methods of voter suppression were met with protests from civil rights activists who called upon the federal government to ensure equal voting rights for all. In 1965, Congress heeded the call and passed the Voting Rights Act<sup>294</sup> with bipartisan support.<sup>295</sup> Among other things, the Act reaffirmed the right to vote regardless of race by barring many of the practices states had been employing to limit certain populations from voting.<sup>296</sup>

Despite this progress, barriers to voting—from onerous voter registration requirements to

voter identification laws—continue to hinder full democratic participation.

## PROBLEM STATEMENT

The ease with which citizens can access the voting process varies from state to state. In all states except North Dakota, voters must be registered before they can cast a ballot.<sup>297</sup> However, different states have different requirements regarding when, where, and how a person may complete their registration. Some states allow eligible citizens to register to vote at their local DMV<sup>298</sup> or at third-party registration drives.<sup>299</sup> Other states offer same-day voter registration, and a small number of states have automatic voter registration laws, under which residents are automatically registered to vote when they interact with certain state agencies.<sup>300</sup> The lack of uniformity across and within states regarding voter registration policies can cause confusion about registration deadlines, particularly for individuals who have recently relocated from a state with different registration requirements. Other people may incorrectly assume they

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BALLOTPEDIA, [https://ballotpedia.org/Election\\_results\\_2024:\\_Analysis\\_of\\_voter\\_turnout\\_in\\_the\\_2024\\_general\\_election](https://ballotpedia.org/Election_results_2024:_Analysis_of_voter_turnout_in_the_2024_general_election) (last visited June 4, 2025) (noting turnout was 66.6% in the 2024 presidential elections) with Desilver, *supra* (noting Sweden had 84.2% turnout in 2022).

292 See U.S. CONST. amend. XV.

293 See *Voting Rights: A Short History*, CARNEGIE CORP. OF N.Y. (Nov. 18, 2019), <https://www.carnegie.org/our-work/article/voting-rights-timeline>.

294 52 U.S.C. §§ 10301–10314, 10501–10508, 10701–10702 (1982).

295 *Voting Rights: A Short History*, *supra* note 293.

296 See *Voting Rights Act of 1965*, NAACP, <https://naacp.org/find-resources/history-explained/legislative-milestones/voting-rights-act-1965> (last visited July 15, 2025).

297 See Jacob Carrel, *Legal Services Centers as Voter Registration Centers: A Stop-Gap Solution to Support Clients' Civic Engagement*, 78 NAT'L LAWS. GUILD REV. 58, 60 (2022).

298 *Id.*

299 See *Restrictions on 3rd Party Voter Registration Drives*, MOVEMENT ADVANCEMENT PROJECT (Apr. 2, 2024), [https://www.lgbtmap.org/democracy-maps/third\\_party\\_voter\\_registration\\_drives](https://www.lgbtmap.org/democracy-maps/third_party_voter_registration_drives).

300 Carrel, *supra* note 297, at 61.

are registered to vote and fail to discover that they have been removed from the official list of registered voters until after their state's registration deadline has passed.<sup>301</sup>

Even when registration requirements are followed, there are several other factors that can make it difficult to vote. According to the U.S. Census Bureau, 73.6% of people eligible to vote successfully registered to vote, but only 65.3% actually cast a ballot.<sup>302</sup> Explanations for this disparity include the inability to spend time away from work or other responsibilities to vote;<sup>303</sup> a lack of physical polling locations near a person's home;<sup>304</sup> long lines at polling locations deterring those who would otherwise vote in person;<sup>305</sup> voter identification requirements imposed by some states;<sup>306</sup> and lack of equipment and training needed to assist individuals with disabilities, those who do not speak English as their

primary language, and other voters who require additional support.<sup>307</sup>

Once a ballot is cast and submitted to state election administrators, it faces scrutiny before it can be counted. Ballots may be rejected for a number of reasons that vary by state. Common reasons include missing signatures, a mismatch between the signature on the ballot and the one on record, missing affidavit information, unnotarized ballots, or unsigned carrier envelopes.<sup>308</sup> Each state has different procedures for notifying voters about deficient ballots and offering a "cure" period. In some states, like Oklahoma, there is no opportunity to correct a rejected ballot—it is simply not counted.<sup>309</sup>

When citizens participate in our democracy by voting, they are more likely to feel represented by their government, have faith

301 See NAT'L ASS'N OF SEC'YS OF STATE, NASS REPORT: MAINTENANCE OF STATE VOTER REGISTRATION LISTS 7 (2017), <https://www.nass.org/node/1266>.

302 Press Release, U.S. Census Bureau, 2024 Presidential Election Voting and Registration Tables Now Available (Apr. 30, 2025), <https://www.census.gov/newsroom/press-releases/2025/2024-presidential-election-voting-registration-tables.html>.

303 See Jacey Fortin, *Why Only Some Workers Get Time Off to Vote on Election Day*, N.Y. TIMES (Nov. 6, 2018), <https://www.nytimes.com/2018/11/06/us/politics/election-day-holiday.html>.

304 See VOTING RTS. LAB, POLLING PLACE CONSOLIDATION NEGATIVELY IMPACTS ON TURNOUT AND EQUITY 4 (2020), <https://votingrightslab.org/2020/07/15/polling-place-consolidation-negative-impacts-on-turnout-and-equity>.

305 *Id.* at 3.

306 See *generally* MOVEMENT ADVANCEMENT PROJECT, THE ID DIVIDE: HOW BARRIERS TO ID IMPACT DIFFERENT COMMUNITIES AND AFFECT US ALL (2022), <https://www.mapresearch.org/file/MAP-Identity-Documents-report-2022.pdf> [hereinafter MOVEMENT ADVANCEMENT PROJECT, *The ID Divide*].

307 See *generally* CTR. FOR AM. PROGRESS, ENHANCING ACCESSIBILITY IN U.S. ELECTIONS (2021), <https://www.americanprogress.org/article/enhancing-accessibility-u-s-elections>.

308 See *Ballot Curing Rules*, VOTEAMERICA, <https://www.voteamerica.com/ballot-curing> (last updated Oct. 21, 2024).

309 *Id.*

in the electoral process, trust the outcome of elections, and vote in future elections.<sup>310</sup>

## PROPOSED SOLUTIONS

The Task Force notes that the ABA has in the past supported improved access to voting,<sup>311</sup> and encourages further efforts in this area. The Task Force recommends that states consider automatic voter registration, same-day voting, and early voting. The Task Force also advises that states maintain their voter registration lists, repeal their voter identification laws, and take a cautious approach to curing ballot errors. Finally, the Task Force notes that Congress may wish to consider making Election Day a federal holiday.

### 1. Automatic voter registration

States can expand the pool of registered voters by adopting automatic voter registration. Compared to other developed countries, the United States has a relatively high level of registered voter turnout.<sup>312</sup> However, the rate at which eligible voters register lags behind other countries. In 2024, less than 70% of all eligible adults

were registered to vote, compared to approximately 90% in Australia and Germany.<sup>313</sup> In a majority of American states, individuals must affirmatively indicate their desire to register to vote.<sup>314</sup> Automatic voter registration converts the traditional opt-in voter registration process into one in which individuals must opt-out if they wish to decline registration. Automatic voter registration increases overall registration rates, especially among demographic groups currently underrepresented in voter registration lists.<sup>315</sup> It eliminates confusion about registration deadlines and incorporates the registration process into a routine transaction. And it makes it easier for states to maintain accurate voter rolls, minimizing the need to use provisional ballots that can be costly to process.<sup>316</sup> As of 2024, twenty-five states and the District of Columbia have implemented some form of automatic voter registration.<sup>317</sup> Eight of these states and the District of Columbia provide automatic voter registration exclusively through their DMVs; sixteen provide automatic voter registration through additional state agencies; and Alaska conducts automatic voter registration with its Permanent Fund Dividend Program.<sup>318</sup>

310 See Robert A. Kelly, *Improving Participation in the Democratic Process 1* (A.B.A. Task for Am. Democracy, Working Paper No 6, 2024).

311 See ABA Election Administration Guidelines and Commentary, adopted by the House of Delegates as ABA policy, most recently at the 2023 Annual Meeting, Resolution 607; JACK YOUNG & JASON KAUNE, A.B.A., *IMPROVING ACCESS TO VOTING* 6 (May 6, 2024), [https://www.americanbar.org/groups/public\\_interest/election\\_law/american-democracy/our-work/improving-access-to-voting/](https://www.americanbar.org/groups/public_interest/election_law/american-democracy/our-work/improving-access-to-voting/).

312 See Aaron Mendelson, *What Voter Turnout Shows, and Hides, About Elections* (Nov. 18, 2022), <https://publicintegrity.org/politics/what-voter-turnout-shows-and-hides-about-elections>.

313 See *supra* note 291.

314 See *Automatic Voter Registration*, NAT'L CONF. OF STATE LEGISLATURES, <https://www.ncsl.org/elections-and-campaigns/automatic-voter-registration> (last updated Sept. 24, 2024).

315 Eckman, *supra* note 81, at 22.

316 See Nat'l Conf. of State Legislatures, *supra* note 314.

317 See *id.*

318 U.S. Census Bureau, *supra* note 302.

## 2. Same-day voting

States could also remove barriers to same-day voter registration. As the name suggests, same-day registration allows qualified individuals to register to vote on Election Day.<sup>319</sup> Same-day voter registration allows a greater number of eligible people to vote because it removes the possibility that a person who misses a registration deadline will be barred from voting. It also helps ensure that individuals can still vote if they discover an error in their registration materials or if there is a system-wide issue with a voter registration database. As of 2024, twenty-three states and the District of Columbia currently offer same-day voter registration; twenty of those states offer same-day registration on Election Day, while one state only offers same-day registration during the early voting period.<sup>320</sup> Opponents of same-day voter registration have raised concerns that it imposes higher administrative costs and may actually deter voting by flooding election offices with last-minute registration requests that require expedited processing.<sup>321</sup> These concerns can be ameliorated by providing automatic voter registration in

conjunction with same-day voter registration and reforming strict voter identification laws, as will be discussed further.

## 3. Early voting

In 2024, 30.7% of all American voters voted early, and 29% cast ballots by mail.<sup>322</sup> The COVID-19 pandemic and the consolidation of many physical polling locations have contributed to these high numbers and made these alternative voting methods commonplace. Early/mail-in voting is used at particularly high rates by voters with disabilities.<sup>323</sup> Despite the popularity of these voting methods, there is currently a patchwork of policies in place governing when and how voters can take full advantage of early/mail-in voting opportunities. Early voting periods range from three to forty-six days, and states have different requirements when it comes to who qualifies for an absentee ballot.<sup>324</sup> The Task Force recommends that states standardize deadlines and procedures. Prior to and during the early voting period, districts should notify voters about polling hours, locations, and accessibility.<sup>325</sup> Additionally, states should extend their early voting periods to maximize in-person voter turnout and allow for earlier

319 See Eckman, *supra* note 81, at 23.

320 See *Same-Day Voter Registration*, NAT'L CONF. OF STATE LEGISLATURES, <https://www.ncsl.org/elections-and-campaigns/same-day-voter-registration> (last updated Oct. 25, 2024).

321 *Id.* at 24.

322 Jacob Fabina, *Voter Registration in 2022 Highest in 20 Years for Congressional Elections*, U.S. CENSUS BUREAU (May 2, 2023), <https://www.census.gov/library/stories/2023/05/high-registration-and-early-voting-in-2022-midterm-elections.html>.

323 See HAZEL MILLARD & DEREK TISLER, BRENNAN CTR. FOR JUST., *HOW TO MAKE EARLY VOTING MORE ACCESSIBLE IN NEW YORK* (2023), <https://www.brennancenter.org/our-work/research-reports/how-make-early-voting-more-accessible-new-york>.

324 See *Early In-Person Voting*, NAT'L CONF. OF STATE LEGISLATURES (Mar. 12, 2024), <https://www.ncsl.org/elections-and-campaigns/early-in-person-voting>; NAT'L CONF. OF STATE LEGISLATURES, *VOTING OUTSIDE OF THE POLLING PLACE: ABSENTEE, ALL MAIL, AND OTHER VOTING AT HOME OPTIONS* (2024).

325 YOUNG & KAUNE, *supra* note 311, at 6.



correction of registration errors and issues with voting devices.<sup>326</sup>

#### 4. Maintain voter registration lists

State and local election officials can take steps to ensure that voter registration lists are regularly maintained, and individuals can easily check their voter registration status. The Help America Vote Act of 2002, or “HAVA”<sup>327</sup> requires all states to have “a single, uniform, centralized, interactive and computerized statewide voter registration list defined, maintained, and administered at the state level.”<sup>328</sup> HAVA significantly improved the registration process by consolidating voter lists that were previously only maintained by local election offices. Regular list maintenance strengthens the integrity of elections by determining and preventing voter fraud.<sup>329</sup> Under the National Voter Registration Act of 1993,<sup>330</sup> states must make a reasonable effort to remove the names of people who are no longer eligible to vote from registration lists.<sup>331</sup> Beyond the minimum guidelines established

by the NVRA, states have different criteria for when individuals can be “purged” from voter registration lists.

Several states have laws that allow for removal based on inactivity in subsequent elections and a failure to respond to an address confirmation mailing.<sup>332</sup> Unfortunately, these mailed notices have been proven overwhelmingly ineffective at informing voters of their imminent removal.<sup>333</sup> As such, these policies result in the improper or inadvertent de-registration of hundreds of thousands of voters each year.<sup>334</sup> To combat this problem, states should enhance the process for notifying voters of their removal from the state’s voter registration list. At a minimum, states should notify voters via email as well as by mail if they are moved to an inactive status.<sup>335</sup> The notice should provide more information than is currently required by the NVRA about why a voter is being removed from the registration list and how they can either reactivate their registration or request a transfer of address. The notification

326 See *Expand Early Voting*, BRENNAN CTR. FOR JUST. (Feb. 4, 2016), <https://www.brennancenter.org/our-work/research-reports/expand-early-voting>.

327 Pub. L. No. 107-252, 116 Stat. 1666 (codified in scattered sections of 2, 5, 10, 36, and 52 U.S.C.).

328 NAT’L ACAD. PRESS, *IMPROVING STATE VOTER REGISTRATION DATABASES: FINAL REPORT 5* (2010), <https://nap.nationalacademies.org/read/12788/chapter/3>.

329 See *id.*

330 52 U.S.C. §§ 20501–20511.

331 See NAT’L CONF. OF STATE LEGISLATURES, *VOTER REGISTRATION LIST MAINTENANCE* (2023), <https://www.ncsl.org/elections-and-campaigns/voter-registration-list-maintenance>.

332 *Voter Roll Purges Based Solely on Infrequent Voting*, MOVEMENT ADVANCEMENT PROJECT (Apr. 2, 2024), <https://www.lgbtmap.org/img/maps/citations-voter-roll-purges.pdf>.

333 Paul M. Smith, “Use It or Lose It”: *The Problem of Purges from the Registration Rolls of Voters Who Don’t Vote Regularly*, A.B.A.: HUM. RTS. MAG. (Feb. 9, 2020), [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/voting-rights/-use-it-or-lose-it---the-problem-of-purges-from-the-registration0](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-rights/-use-it-or-lose-it---the-problem-of-purges-from-the-registration0).

334 *Voter Roll Purges Based Solely on Infrequent Voting*, *supra* note 332. States have also erroneously purged voters because state officials suspected they were noncitizens. Jude Joffe-Block, NPR (Oct. 30, 2024), <https://www.npr.org/2024/10/29/nx-s1-5169204/virginia-noncitizen-voter-purge>.

335 See YOUNG & KAUNE, *supra* note 311, at 4.

should also provide information about the exact process that is required to register in a new jurisdiction.<sup>336</sup>

## 5. Permit a variety of forms of voter identification

Voters who wait in line at their polling location are sometimes turned away for noncompliance with a state's voter identification laws. Thirty-six states require voters to show some form of identification at the polls.<sup>337</sup> Many of these states require voters to present an identification document that has a photo, such as a driver's license, state-issued identification card, military identification, or tribal identification.<sup>338</sup> Other states with less strict identification requirements allow voters to present alternative documents like utility bills, bank statements, government checks, and paychecks,<sup>339</sup> or sign a declaration of identity attesting to voter identity.<sup>340</sup> While strict voter identification laws are justified on the grounds that they safeguard against people fraudulently casting ballots under a different name, there is little evidence to suggest that they are particularly effective

at deterring in-person fraud.<sup>341</sup> One study found that from 2000 to 2012, there were only thirty-one credible allegations of voter impersonation that stricter voter identification laws could have prevented.<sup>342</sup> Further, studies indicate that strict voter identification laws disproportionately impact certain communities, including people of color, people with disabilities, low-income voters, and students.<sup>343</sup> These groups face unique obstacles that make it more difficult to obtain a valid photo identification document. As of 2022, only 79% of Black adults and 77% of Hispanic adults nationwide had a valid driver's license.<sup>344</sup> Among transgender adults, only 32% have a valid driver's license that reflects their correct gender markers.<sup>345</sup>

Moreover, even when a person possesses a photo identification document, only certain forms of identification are accepted at the polls. For example, Texas allows handgun licenses for voting, but does not accept student identification cards.<sup>346</sup> North Carolina does not accept public assistance and state employee identification cards, which Black voters more commonly hold.<sup>347</sup> To reduce

<sup>336</sup> See *id.*

<sup>337</sup> NAT'L CONF. OF STATE LEGISLATURES, VOTER ID LAWS, <https://www.ncsl.org/elections-and-campaigns/voter-id> (last updated June 2, 2025) [hereinafter Nat'l Conf. of State Legislatures, Voter ID Laws].

<sup>338</sup> *Id.*

<sup>339</sup> *Id.*

<sup>340</sup> YOUNG & KAUNE, *supra* note 311, at 3.

<sup>341</sup> *Fact Sheet on Voter ID Laws*, ACLU (Aug. 2021), <https://www.aclu.org/documents/oppose-voter-id-legislation-fact-sheet>.

<sup>342</sup> *Id.*

<sup>343</sup> *Voter ID: Overview*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/issues/ensure-every-american-can-vote/vote-suppression/voter-id> (last visited July 21, 2025).

<sup>344</sup> See MOVEMENT ADVANCEMENT PROJECT, *The ID Divide*, *supra* note 306, at 10 (providing examples of systemic and historical barriers to obtaining identification documents).

<sup>345</sup> *Id.* at 20.

<sup>346</sup> See Nat'l Conf. of State Legislatures, Voter ID Laws, *supra* note 337.

<sup>347</sup> *Fact Sheet on Voter ID Laws*, *supra* note 341.

the discriminatory effect of strict voter identification laws and increase voter turnout, states should enact policies that would allow voters to use more forms of identification documents to vote. Additionally, states should make it easier for individuals to obtain or renew valid identification documents by reducing the cost to get an identification document and simplifying the state-specific procedures that individuals must follow to do so.<sup>348</sup> A few states have already undertaken efforts to make the process more accessible. Michigan, for example, has installed over 160 self-service stations across the state that allow people to renew their identification documents and register to vote.<sup>349</sup> Virginia has established a program called DMV Connect that brings identification document services to people who may not otherwise be able to travel to a DMV.<sup>350</sup> Other states should follow suit and expand access to identification document services to all eligible individuals.

## 6. Curing ballot errors

The Task Force recommends that states improve processes for curing ballot errors. Currently, only thirty-three states have laws that require election officials to contact voters to inform them of an error with their ballot.<sup>351</sup> States also have different criteria for determining which types of ballot errors are curable. In some states, both ballots that

have a mismatching signature and those with a missing signature can be corrected. In other states, only ballots with a mismatching signature can be fixed. For other types of errors, local election officials are often forced to decide for themselves how to apply ballot curing requirements with little guidance from the state.<sup>352</sup> States should develop comprehensive guidelines for local election offices to follow when evaluating ballots for errors. These guidelines should specify which types of ballot errors are able to be corrected and should provide a detailed procedure for correcting each type of error that election administrators and voters can follow, as well as a timeline for doing so. Additionally, states should require election officials to notify voters upon discovering an error with their ballot and explain to them exactly how they can correct the deficiency. Clarifying the ballot curing process will hopefully reduce the number of ballots that are unnecessarily rejected during an election.

## 7. Federal holiday

Finally, Congress should renew legislation similar to the Election Day Holiday Act,<sup>353</sup> introduced by Representative Anna G. Eshoo (D-CA) in the 118<sup>th</sup> Congress in February 2024.<sup>354</sup> The Act would remove job-related impediments to voting for public-sector employees. On the state level, the nineteen

<sup>348</sup> See MOVEMENT ADVANCEMENT PROJECT, *The ID Divide*, *supra* note 306, at 24.

<sup>349</sup> *Id.* at 25.

<sup>350</sup> *Id.*

<sup>351</sup> Table 15: *States with Signature Cure Processes*, NAT'L CONF. OF STATE LEGISLATURES, <https://www.ncsl.org/elections-and-campaigns/table-15-states-with-signature-cure-processes> (last updated Jan. 6, 2025).

<sup>352</sup> Rachel Orey & Owen Bacskai, *The Low Down on Ballot Curing*, BIPARTISAN POL'Y CTR. (NOV. 4, 2020), <https://bipartisanpolicy.org/blog/the-low-down-on-ballot-curing>.

<sup>353</sup> H.R. 7329, 118th Cong. (2024).

<sup>354</sup> See *id.*

states that have not already done so<sup>355</sup> should consider passing laws to either make Election Day a state holiday or require employers to provide paid time off for voting.

## G. Role of the Press and Social Media in Promoting our Democracy

A free and fair election depends in large part on the public's access to reliable news sources to make informed political choices. Today, the rise of alternative news sources and the influx of generative artificial intelligence have greatly complicated the media coverage of our democracy in action.<sup>356</sup>

### PROBLEM STATEMENT

The good news is that experts believe that social media has had a positive effect on civic

engagement, registration, and early voting.<sup>357</sup> Social media platforms encourage election participation on their channels, provide links to voter registration portals, and promote ways to submit ballots. They also provide instantaneous political content; create spaces for new voices to be heard; and offer a diversity of content, from short digestible videos to accessible blogs.<sup>358</sup>

The bad news is that social media platforms far too often amplify false and misleading information in political discourse.<sup>359</sup> Direct, user-upload platforms also do not employ the same rigorous verification process that established news outlets do.

AI-generated content compounds the problem.<sup>360</sup> The explosion of generative-AI and deepfakes has contributed to the proliferation of “disinformation,” or false information deliberately spread to deceive.<sup>361</sup> Deepfakes are artificial videos, images, audio, and text generated from a machine learning system that digitally and convincingly alter a person's image, voice, or words.<sup>362</sup>

355 See *Election Day Holiday and Paid Time Off to Vote*, MOVEMENT ADVANCEMENT PROJECT (Apr. 9, 2024), <https://www.lgbtmap.org/img/maps/citations-election-day-holiday-paid-time-off-to-vote.pdf>.

356 See DIANA OWEN, *THE NEW MEDIA'S ROLE IN POLITICS*, BBVA OPEN MIND (2018), <https://www.bbvaopenmind.com/en/articles/the-new-media-s-role-in-politics>.

357 See Magdalena Saldaña et al., *Social Media as a Public Space for Politics: Cross-National Comparison of News Consumption and Participatory Behaviors in the United States and the United Kingdom*, 9 INT'L J. COMMUN. 3304, 3309–11 (2015).

358 See *id.*

359 See generally Erik C. Nisbet et al., *The Presumed Influence of Election Misinformation on Others Reduces Our Own Satisfaction with Democracy*, 1 HARV. KENNEDY SCH. MISINFO. REV. 1 (Mar. 12, 2021), <https://misinforeview.hks.harvard.edu/article/the-presumed-influence-of-election-misinformation-on-others-reduces-our-own-satisfaction-with-democracy>.

360 See OWEN, *supra* note 356.

361 See *What the Heck Is a Deepfake?*, U. VA.: UVA INFO. SEC., <https://security.virginia.edu/deepfakes> (last visited July 15, 2025).

362 See CYBERSECURITY & INFRASTRUCTURE SEC. AGENCY, *RISK IN FOCUS: GENERATIVE A.I. AND THE 2024 ELECTION CYCLE 1* (2024), [https://www.cisa.gov/sites/default/files/2024-01/Consolidated\\_Risk\\_in\\_Focus\\_Gen\\_AI\\_Elections\\_508c.pdf](https://www.cisa.gov/sites/default/files/2024-01/Consolidated_Risk_in_Focus_Gen_AI_Elections_508c.pdf).

Because a majority of Americans now rely on digital platforms for news, deepfakes' ability to spread misinformation at low-cost and high-speed poses an acute threat to election security.<sup>363</sup> Malicious actors exploit deepfake technology to manipulate political landscapes, harm political candidates and election officials, and impugn the veracity of election results.<sup>364</sup> Even when experts create programs to identify deepfakes, developers simply respond with more sophisticated tactics to evade detection.<sup>365</sup>

In the United States, politicians and malicious third-party actors alike leverage generative-AI to serve their respective agendas. For example, Florida Governor Ron DeSantis's unsuccessful presidential campaign released political ads in 2023 with deepfake images of President Trump embracing Dr. Anthony Fauci, a source of deep suspicion and aggravation

within Trump's political base.<sup>366</sup> Such specious content is especially pernicious in the days before an election, when there is little time to debunk the material—or “unring the bell.”<sup>367</sup> Deceptive advertising is intended to influence both the manner in which voters cast their ballots and their decision to cast ballots at all. In 2024, robocalls using President Joe Biden's voice encouraged New Hampshire residents to abstain from participating in the primary election.<sup>368</sup> Thus, deepfakes can deprive the public of the accurate information they need to make informed decisions in elections.<sup>369</sup>

Meanwhile, the “liar's dividend”—the strategic exploitation of public uncertainty surrounding AI-generated content—enables politicians to discredit authentic materials by falsely attributing them to artificial manipulation. This dynamic, in turn, creates a powerful means for evading accountability,

363 See generally TODD C. HELMUS, RAND CORP., *ARTIFICIAL INTELLIGENCE, DEEPFAKES, AND DISINFORMATION 1* (July 6, 2022), <https://doi.org/10.7249/PEA1043-1>. For example, one professor was able to make a deepfake of himself in eight minutes for eleven dollars. See Shannon Bond, *It Takes a Few Dollars and 8 Minutes to Create a Deepfake. And That's Only the Start*, NPR (Mar. 23, 2023), <https://www.npr.org/2023/03/23/1165146797/it-takes-a-few-dollars-and-8-minutes-to-create-a-deepfake-and-thats-only-the-start>.

364 See N. David Bleisch, *Deepfakes and American Elections*, A.B.A. (May 6, 2024), [https://www.americanbar.org/groups/leadership/office\\_of\\_the\\_president/american-democracy/resources/deepfakes-american-elections](https://www.americanbar.org/groups/leadership/office_of_the_president/american-democracy/resources/deepfakes-american-elections).

365 See U.S. GOV'T ACCOUNTABILITY OFF., GAO-24-107292, *SCIENCE & TECH SPOTLIGHT: COMBATING DEEPFAKES* (2024).

366 Conservative vitriol against Dr. Anthony Fauci stems from his COVID-19 mitigation policies. See Shannon Bond, *DeSantis Campaign Shares Apparent AI-Generated Fake Images of Trump and Fauci*, NPR (June 8, 2023), <https://www.npr.org/2023/06/08/1181097435/desantis-campaign-shares-apparent-ai-generated-fake-images-of-trump-and-fauci>.

367 For example, a deepfake audio recording of pro-Western candidate Michael Šimečka talking about rigging the election went viral in the days before Slovakia's October 2023 election. Experts believe this video influenced the results. See Daniel I. Weiner & Lawrence Norden, *Regulating AI Deepfakes and Synthetic Media in the Political Arena*, BRENNAN CTR. FOR JUST. (Dec. 5, 2023), <https://www.brennancenter.org/our-work/research-reports/regulating-ai-deepfakes-and-synthetic-media-political-arena>.

368 See News Press, N.H. Dep't of Just., *Voter Suppression AI Robocall Investigation Update* (Feb. 6, 2026), <https://www.doj.nh.gov/news/2024/20240206-voter-robocall-update.html>.

369 See Chris Burnett, *Regulating AI Deepfakes and Synthetic Media in the Political Arena*, BRENNAN CTR. FOR JUST. (Dec. 5, 2023), <https://www.brennancenter.org/our-work/research-reports/regulating-ai-deepfakes-and-synthetic-media-political-arena>.



as politicians can dismiss legitimate evidence of wrongdoing as fabricated.<sup>370</sup> For instance, Warren County Mayor Jim Fouts claimed in 2021 that audio tapes of him making derogatory comments were phony and engineered, though they were in fact authentic.<sup>371</sup> Once people are armed with the knowledge that deepfakes exist and are prevalent, they are quicker to question the authenticity of the events portrayed in videos or photos.<sup>372</sup>

Like social media and AI-generated content, conventional news outlets' reporting practices can undercut the public's uptake of election information. Previous elections demonstrate how news outlets play a critical role in the public's understanding and acceptance of election outcomes.<sup>373</sup> Particularly on election night, live broadcast shows can fuel concerns over the integrity of elections by incorrectly or prematurely "calling" a district or state. Although election-night reporting may appear definitive, actual vote counts are not finalized until sometime later. In fact, final election

totals may differ from those reported on election night.<sup>374</sup>

Lawsuits against mainstream media outlets pose a serious threat to freedom of the press and democratic accountability.<sup>375</sup> By targeting crucial election reporting, these suits risk chilling constitutionally protected speech and undermining the public's right to an informed electorate.<sup>376</sup> Rather than correcting misinformation, unfounded lawsuits against news outlets often aim to punish unfavorable coverage and impose financial or reputational burdens that deter robust journalism.<sup>377</sup> The First Amendment was designed precisely to prevent this kind of interference.<sup>378</sup> As the Supreme Court famously explained in *New York Times Co. v. Sullivan*, "uninhibited, robust, and wide-open" debate on public issues is indispensable to a functioning of democracy.<sup>379</sup> Weaponizing lawsuits against

370 See Josh A. Goldstein & Andrew Lohn, *Deepfakes, Elections, and Shrinking the Liar's Dividend*, BRENNAN CTR. FOR JUST. (Jan. 23, 2024), <https://www.brennancenter.org/our-work/research-reports/deepfakes-elections-and-shrinking-liars-dividend>.

371 See *New Audio Clips Catch Warren Mayor Jim Fouts Allegedly Talking About Black People, Women*, CBS NEWS (Jan. 16, 2017), <https://www.cbsnews.com/detroit/news/new-audio-clips-allegedly-catch-warren-mayor-jim-fouts-taking-about-black-people-old-women>.

372 See Goldstein & Lohn, *supra* note 370.

373 See EDWARD B. FOLEY, A.B.A., *INCREASING TRUST IN OUR ELECTIONS* (May 6, 2024), [https://www.americanbar.org/groups/public\\_interest/election\\_law/american-democracy/our-work/increasing-trust-our-elections/](https://www.americanbar.org/groups/public_interest/election_law/american-democracy/our-work/increasing-trust-our-elections/).

374 See SARAH J. ECKMAN ET AL., CONG. RSCH. SERV., R46565, *FEDERAL ELECTION RESULTS: FREQUENTLY ASKED QUESTIONS 3* (2022).

375 See FREEDOM OF THE PRESS FOUND., *We Plan to Sue If Paramount Settles with Trump over CBS Lawsuit*, FREEDOM PRESS FOUND. (May 23, 2025), <https://freedom.press/issues/we-plan-to-sue-if-paramount-settles-with-trump-over-cbs-lawsuit/>.

376 See Aissatou Diallo, *The Chilling Effect: Trump's Legal Challenge on Free Speech and Journalistic Independence*, COLUM. UNDERGRAD. L. REV. (June 2, 2025), <https://www.culawreview.org/current-events-2/the-chilling-effect-trumps-legal-challenge-on-free-speech-and-journalistic-independence>.

377 See Ellen Ioanes, *Trump's Media Lawsuits Could Do Serious Damage to America's Free Press*, VOX (Dec. 18, 2024), <https://www.vox.com/donald-trump/391810/trump-media-lawsuits-abc-slapp-des-moines-register>.

378 U.S. CONST. amend. I.

379 376 U.S. 254 (1964)

the press endangers that principle and erodes public trust in election outcomes.

## PROPOSED SOLUTIONS

Public and private actors can take steps to combat the dissemination of election falsehoods.

In February 2025, the ABA House of Delegates passed a resolution concerning GenAI digital replicas.<sup>380</sup> The report accompanying the resolution called for federal legislation to address the proliferation of unauthorized digital replicas and deepfakes. The Task Force endorses this.

Congress can adopt state-tested solutions and amend election disclosure requirements to include AI-generated content. There are, at present, two forms of legislation pending in Congress and state legislatures: (1) those requiring disclosure of AI-generated campaign ads, and (2) those prohibiting the use of deceptive deepfakes intended to harm candidates or influence election outcomes.<sup>381</sup>

The Task Force concurs with the view that regulators should not be empowered to designate content “fake news”—an authority with potential for misuse in a free society. Instead of laws that would wholly bar AI-generated campaign ads, which would likely be unconstitutional, the Task Force encourages disclosure requirements that are not unduly burdensome and are more likely to pass constitutional muster.<sup>382</sup> Laws regulating and requiring disclosure present the most viable path to addressing the spread of deceptive deepfakes. Regulating AI-generated election content through disclosure laws ensures that citizens are cognizant of manipulated video, images, and text.

State legislatures have already made great strides in this area. As of June 2024, state legislatures had put forth over 100 bills in forty-two states to regulate deepfakes.<sup>383</sup> Two states have stood apart in their approach to combat deepfakes: Wisconsin and Arizona.<sup>384</sup> On March 21, 2024, Wisconsin Governor Tony Evers signed into law A.B. 664, which requires political campaign-affiliated entities to add a disclaimer when using generative AI for released content.<sup>385</sup> A.B. 664 broadly defines “synthetic media” to reach “audio or video

380 The 2025 Resolution was sponsored by the Section on Intellectual Property Law. It states: RESOLUTION RESOLVED, that the American Bar Association supports, in principle, federal legislation protecting an individual’s right to authorize or prevent any use of their voice, visual likeness, or image in a realistic computer-generated electronic representation; FURTHER RESOLVED, that any such legislation should include strong safeguards to ensure the legislation’s compatibility with the First Amendment; and, FURTHER RESOLVED, that any such legislation should consider its impact on the right of publicity and the right of privacy under state, territorial or tribal law, technological innovation and creations, and potential third-party liability.

381 See FOLEY, *supra* note 373.

382 See L. PAIGE WHITAKER, CONG. RSCH. SERV., IF12468, ARTIFICIAL INTELLIGENCE (AI) IN FEDERAL ELECTION CAMPAIGNS: LEGAL BACKGROUND AND CONSTITUTIONAL CONSIDERATIONS FOR LEGISLATION 2 (2023).

383 See *New State Legislative Efforts to Stem the Tide of AI-Generated Election Disinformation*, VOTING RTS. LAB (Mar. 26, 2024), <https://votingrightslab.org/2024/03/26/new-state-legislative-efforts-to-stem-the-tide-of-ai-generated-election-disinformation>.

384 *Id.*

385 See 2024 Wis. Sess. Laws 123.

content that is substantially produced in whole or in part by means of generative [AI]<sup>386</sup> but narrowly applies to campaign-affiliated entities.<sup>387</sup> Failure to comply is punishable by a \$1,000 fine.

On May 21, 2024, Arizona passed two bills into law, H.B. 2394 and S.B. 1359, to combat deceptive AI practices in political ads. Unlike Wisconsin’s legislation, both Arizona laws are limited to AI-generated impersonations of candidates or officials. Both laws also carve out exceptions for media, satire, internet providers covered by Section 230 of the Communications Decency Act, and “public figures”<sup>388</sup> in view of potential First Amendment concerns. Under S.B. 1359, offenders face criminal penalties for failure to disclaim the use of generative-AI for content released ninety days prior to an election.<sup>389</sup> Under H.B. 2394, private actors can bring a civil cause of action against individuals spreading AI-generated material and seek an injunction or monetary damages.<sup>390</sup> We support states’ creative efforts to combat disinformation through deepfake disclosure laws.

At the federal level, there has been legislation offered in Congress regarding AI-generated content. The Task Force supports this legislation. The Protect Elections from Deceptive AI Act, introduced by Senator Amy Klobuchar (D-MN) in the 119<sup>th</sup> Congress would amend the Federal Election Campaign Act of

1971 to prohibit a person, political committee, or other entity from intentionally distributing “materially deceptive” AI-generated media in carrying out a Federal election activity or of a covered individual for the purpose of (1) influencing an election or (2) soliciting funds.<sup>391</sup> The legislation directly bars election content meant to deceive, but it would only reach deliberately deceptive and fraudulent political ads. Additionally, the bill creates a civil cause of action for aggrieved candidates to seek an injunction or monetary damages and does not impose criminal sanctions.<sup>392</sup>

To be sure, the interplay of mandatory disclosure laws, individual privacy rights, and constitutional protections of free speech complicate attempts to legislate in this area. But the Task Force recommends that Congress consider the proposals in the Protect Elections from Deceptive AI Act as important bulwarks to protect the integrity of election information and any further legislative options to address the growing concern of AI-generated ads in election cycles.

Second, the Task Force encourages private industry to continue to adopt policies that guard against the spread of deceptive AI in elections. Private industry has already taken several positive steps. In February 2024, twenty-seven leading tech companies signed the Munich Security Conference tech accord,

<sup>386</sup> *Id.*

<sup>387</sup> Political-campaign affiliated entities include a candidate committee, legislative campaign committee, political action committee, independent expenditure committee, political party, recall committee, or referendum committee. *See id.*

<sup>388</sup> *See New State Legislative Efforts to Stem the Tide of AI-Generated Election Disinformation*, *supra* note 383.

<sup>389</sup> *See id.*

<sup>390</sup> *See id.*

<sup>391</sup> *See* Protect Elections from Deceptive AI Act, S. 1213, 119th Cong. (2025).

<sup>392</sup> *See id.*

including Google, Meta, Microsoft, OpenAI, and TikTok.<sup>393</sup> These signatories acknowledged the danger of deceptive AI and its power to deceive the public in ways that threaten the integrity of electoral processes.<sup>394</sup> Each company agreed to eight commitments, each pledging to: develop technology to prevent creation of deceptive AI election content; assess AI models for election-related risks; detect deceptive AI election content on platforms; respond effectively to deceptive AI election content; collaborate across the industry to counter AI-drive election risks; increase transparency in AI election policies; engage with civil society and experts; and educate the public on AI-generated election content.<sup>395</sup> However, some have criticized the accord for its lack of enforceable regulation.<sup>396</sup> This Task Force concurs with the view that policymakers should establish enforcement mechanisms, transparency requirements, and safeguards to help assess real progress and address AI-related election risks.

Likewise, the Task Force supports continued efforts by key social media companies as they update their policies to guarantee greater transparency of content creation. Companies with such policies include: Google, which now requires that verified election advertisers disclose the use of generative-AI;<sup>397</sup> Meta, which mandates that political advertisers disclose the use of AI or digital manipulation;<sup>398</sup> and Microsoft, which recently piloted its “Content Credentials as a Service” program to flag AI created or edited content.<sup>399</sup> Private initiatives to establish industry norms against generated-AI are critical to protecting the integrity of the electoral process.

Finally, news media outlets can implement enhanced election night reporting to contextualize fluctuating results and combat disinformation.<sup>400</sup> Media outlets must continue to adhere to responsible reporting practices on election night.<sup>401</sup> Although speedily “calling” races is important, news organizations must

393 See Abdiaziz Ahmed, Owen Doyle, David Evan Harris, & Lawrence Norden, *Tech Companies Pledged to Protect Elections from AI — Here’s How They Did*, BRENNAN CTR. FOR JUST. (Feb. 13, 2025), <https://www.brennancenter.org/our-work/research-reports/tech-companies-pledged-protect-elections-ai-heres-how-they-did>; Allison Mollenkamp & Clara Apt, *Tracking Tech Company Commitments to Combat the Misuse of AI in Elections*, JUST SEC. (Mar. 28, 2024), <https://justsecurity.org/93823/tracking-tech-company-commitments-to-combat-the-misuse-of-ai-in-elections>.

394 See Ahmed et al., *supra* note 393.

395 See *id.*; *A Tech Accord to Combat Deceptive Use of AI in 2024 Elections*, MSC, <https://securityconference.org/en/aielectionsaccord/> (last visited July 21, 2025).

396 See Ahmed et al., *supra* note 393.

397 See *Updates to Political Content Policy (September 2023)*, GOOGLE, <https://support.google.com/adspolicy/answer/13755910?hl=en> (last visited May 31, 2024).

398 See *Meta Requires Political Advertisers to Mark When Deepfakes Used*, BBC (Nov. 9, 2023), <https://www.bbc.com/news/technology-67366311>.

399 See Brad Smith & Teresa Hutson, *Microsoft Announces New Steps to Help Protect Elections*, MICROSOFT (Nov. 7, 2023), <https://blogs.microsoft.com/on-the-issues/2023/11/07/microsoft-elections-2024-ai-voting-mtac>; see also Brad Smith, *Meeting the Moment: Combating AI Deepfakes in Elections Through Today’s New Tech Accord* (Feb. 16, 2024), <https://blogs.microsoft.com/on-the-issues/2024/02/16/ai-deepfakes-elections-munich-tech-accord>.

400 See FOLEY, *supra* note 373.

401 See *id.*

also play the essential role of contextualizing unofficial results as they are released.<sup>402</sup> There is an enormous obligation on journalists to help the public understand results and trends. This includes informing the public that each district has its own rules, and variation in the timing of races being called is not a sign of fraud or other problems.

In the 2020 elections, news outlets incorporated new techniques around projecting and announcing election outcomes. For example, most news outlets exercised caution in the terminology they used while projecting election results, distinguishing races that were “too early to call” from those “too close to call.”<sup>403</sup> However, these distinctions may still be insufficiently clear to the public. Most major news outlets also reported estimated percentages of total ballots counted rather than percentages of precincts with completed counts, because the latter was increasingly misleading due to the rise in mailed-in ballots.<sup>404</sup>

News organizations took further precautionary measures ahead of the 2024 election. The Associated Press took additional steps to explain its reporting methodologies. The New York Times assigned reporters on election night to search for conspiracy theories in hopes of debunking false stories quickly.

Similarly, NBC News created a Vote Watch team that monitored misinformation efforts and assigned reporters to keep watch in areas where the election was expected to be close.<sup>405</sup> An ongoing challenge for news organizations will be determining whether the public interest is better served by exposing and correcting false claims through coverage, or whether such exposure risks amplifying and entrenching the misinformation, or, worse still, the risk that news organizations are themselves accused of bias. The Task Force encourages news outlets to continue responsible reporting practices and supports ongoing work to improve and build upon them.<sup>406</sup> For example, efforts to delineate terms such as “calling” versus “projecting” election results will be essential to promote transparency and minimize the risk of public misperception.

## H. Role of Cyberspace in the Democratic Process

The cybersecurity of our election infrastructure is essential to preserving the integrity of election results.<sup>407</sup> In the aftermath of the 2016 elections, Congress and other government agencies adopted a

<sup>402</sup> See BIPARTISAN POL’Y CTR. & AP, HOW MEDIA OUTLETS CALL RACES FROM UNOFFICIAL ELECTION RESULTS (2024), [https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2024/10/BPC\\_AP\\_Media\\_Election\\_Explainer.pdf](https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2024/10/BPC_AP_Media_Election_Explainer.pdf).

<sup>403</sup> See *id*.

<sup>404</sup> See *id*.

<sup>405</sup> David Bauder, *To Fight Misinfo, News Outlets Are Putting Plans In Place to Combat False Election Night Stories*, AP NEWS (Oct. 25, 2024), <https://apnews.com/article/misinformation-trump-harris-election-night-65c7dd8f9d7eb2e6e5c47afd837da2e1>.

<sup>406</sup> See Nic Cheeseman, *Don’t Call the Race Too Early*, FOREIGN POL’Y (Nov. 3, 2020), <https://foreignpolicy.com/2020/11/03/dont-call-the-race-too-early>.

<sup>407</sup> See Butler, *supra* note 11.



proactive posture to guarantee that election cybersecurity is defensible and resilient. In 2017, the Department of Homeland Security (DHS) designated election infrastructure as critical following Russian cyberattacks.<sup>408</sup> That classification provides states and localities with necessary access to cybersecurity protections. Additionally, Congress created the Cybersecurity and Infrastructure Security Agency (CISA) as a component of DHS to protect critical infrastructure from physical and cyber threats, including for elections.<sup>409</sup> The threat landscape continues to evolve. Foreign malign actors deploy advanced hacking tools to infiltrate systems, undermine trust, and interfere with the integrity of the election process.<sup>410</sup> As threats to the election systems develop, the United States must adjust to safeguard the democratic process. The Task Force recommends continued and systemic efforts to patch vulnerabilities in our democracy to foreign interference and

influence. The Task Force also denounces calls to roll back funding of CISA.

## PROBLEM STATEMENT

The 2016 election highlighted the potential for a cyberattack by foreign adversaries on election infrastructure. By 2018, the Senate Intelligence Committee and the Department of Justice both confirmed that Russia attempted attacks on election systems.<sup>411</sup> Although the Committee found no evidence that Russia manipulated actual votes, this is little consolation when many voting systems in this country provide no auditable paper trail to verify vote counts.<sup>412</sup>

Since 2016, the United States has taken critical steps to improve election cybersecurity.<sup>413</sup> This included designating the U.S. election system as part of the nation’s “critical infrastructure;”<sup>414</sup> incorporating the newly-created CISA cybersecurity sensors in state and local election offices;<sup>415</sup> transitioning away

408 See Statement by Secretary Jeh Johnson on the Designation of Election Infrastructure as a Critical Infrastructure Subsector, U.S. DEP’T OF HOMELAND SEC. (Jan. 6, 2017), <https://www.dhs.gov/archive/news/2017/01/06/statement-secretary-johnson-designation-election-infrastructure-critical> [hereinafter Statement by Secretary Jeh Johnson].

409 See 132 Stat. 4168 (2018).

410 See Bleisch, *supra* note 364.

411 See *generally Open Hearing on Foreign Influence Operations’ Use of Social Media Platforms (Third Party Expert Witnesses): Hearing on S Hrg. 115-397 Before the Select Comm. on Intel.*, 115th Cong. 397 (2018) (discussing how the Russian government directed extensive activity, beginning in at least 2014 and carrying into at least 2017, against U.S. election infrastructure at the state and local level).

412 See Butler, *supra* note 11.

413 Congress has invested over \$805 million to updates election security. See Andrea Córdova McCadney et al., *2020’s Lesson for Election Security*, BRENNAN CTR. FOR JUST. (Dec. 16, 2020), <https://www.brennancenter.org/our-work/research-reports/2020s-lessons-election-security> (citing *Election Security Grants*, U.S. ELECTION ASSISTANCE COMM. (Apr. 16, 2024), <https://www.eac.gov/grants/election-security-funds>).

414 See Statement by Secretary Jeh Johnson, *supra* note 408. Critical infrastructure refers to “[s]ystems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.” 42 U.S.C. § 5195c(e).

415 See Statement by Secretary Jeh Johnson, *supra* note 408.

from voting machines that lack paper records of voters' ballots;<sup>416</sup> pursuing active efforts to disable foreign hacking groups;<sup>417</sup> and utilizing technology better equipped at detecting coordinated disinformation campaigns.<sup>418</sup> As a result, the 2020 election was in fact one of the most secure from cyberattacks in American history.<sup>419</sup>

The 2024 elections faced and weathered similar disinformation and critical infrastructure cyberattacks. Days before the 2024 election, the Office of the Director of National Intelligence (ODNI), FBI, and CISA labeled Russia as the "most active threat" among foreign adversaries that aimed to undermine public confidence in the integrity of U.S. elections and stoke divisions among Americans.<sup>420</sup> Russian attacks included

false videos and articles claiming swing state officials planned to orchestrate election fraud and had manufactured fake overseas ballots to favor Vice President Harris.<sup>421</sup> Iran generated fake media to suppress votes, stoke violence, and compromise former President Trump's campaign.<sup>422</sup> The U.S. intelligence community properly identified threats heading into the 2024 election and pointed voters towards information from trusted sources such as state and local election officials. Ultimately, by all accounts, 2024 was a safe and secure election.<sup>423</sup> CISA stated that it found no evidence that any malicious activity had a material impact on the security or integrity of the election.<sup>424</sup>

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- 416 See Joseph Marks & Tonya Riley, *The Cybersecurity 202: The 2020 Election Is Far More Secure than Four Years Ago. But Experts Are Still Eyeing These Five Things.*, WASH. POST (Nov. 3, 2020), <https://www.washingtonpost.com/politics/2020/11/03/cybersecurity-202-2020-election-is-far-more-secure-than-four-years-ago-experts-are-still-eyeing-these-five-things>.
- 417 See Julian E. Barnes, *U.S. Cyber Command Expands Operations to Hunt Hackers From Russian, Iran, and China*, N.Y. TIMES (Mar. 3, 2023), <https://www.nytimes.com/2020/11/02/us/politics/cyber-command-hackers-russia.html?smid=tw-share>.
- 418 Ellen Nakashima & Josh Dawsey, *Russian Hackers Who Disrupted 2016 Election Targeting Political Parties Again, Microsoft Says*, WASH. POST (Sept. 10, 2020), [https://www.washingtonpost.com/national-security/russian-hackers-who-disrupted-2016-election-targeting-political-parties-again-microsoft-says/2020/09/10/301dd5fe-f36c-11ea-bc45-e5d48ab44b9f\\_story.html](https://www.washingtonpost.com/national-security/russian-hackers-who-disrupted-2016-election-targeting-political-parties-again-microsoft-says/2020/09/10/301dd5fe-f36c-11ea-bc45-e5d48ab44b9f_story.html).
- 419 The CISA found no evidence that the voting system was compromised in 2020. See Press Release, Cybersecurity & Infrastructure Sec. Agency, Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees (Nov. 12, 2020), <https://www.cisa.gov/news-events/news/joint-statement-elections-infrastructure-government-coordinating-council-election>; see generally MAJOR GARRETT & DAVID BECKER, *THE BIG TRUTH* (Diversion Books 2022).
- 420 Press Release, Cybersecurity and Infrastructure Sec. Agency, Joint ODNI, FBI, and CISA Statement (Nov. 4, 2024), <https://www.cisa.gov/news-events/news/joint-odni-fbi-and-cisa-statement-1>.
- 421 *Id.*
- 422 *Id.*
- 423 Steve Inskeep, *Cybersecurity Expert Discusses the Integrity of the 2024 Election*, NPR (Nov. 6, 2024), <https://www.npr.org/2024/11/06/nx-s1-5172879/cybersecurity-expert-discusses-the-integrity-of-the-2024-election>.
- 424 Press Release, Jen Easterly, Director of Cybersec. & Infrastructure Sec. Agency, Statement from CISA Director Easterly on the Security of the 2024 Elections (Nov. 6, 2024), <https://www.cisa.gov/news-events/news/statement-cisa-director-easterly-security>.

Although officials have made great progress toward election cybersecurity, critical gaps persist. COVID-19 necessitated a great expansion of voting options, like vote-by-mail, absentee voting, and early voting. These voting mechanisms (which we support) have enabled voter participation, and, at the same time, exacerbated concerns about ballot security.<sup>425</sup> Foreign hackers continue to attempt to infiltrate election systems.<sup>426</sup> Election deniers encourage suspicion by capitalizing on the public's heightened awareness of potential foreign influence.<sup>427</sup> Taken together, these conditions create an environment ripe for politicized claims of election interference. When the public loses faith in the defensibility of election security, they lose faith in the integrity of the entire democracy. The Task Force recommends that the Nation continue to consider and adopt measures to secure voting equipment and systems.

There are essentially five offensive cyber techniques that could be deployed against election systems:<sup>428</sup>

- Distributed denial-of-service (DDoS) attacks interrupt users' access to computer systems by flooding the systems with illegitimate traffic.<sup>429</sup> Such an attack could hinder a voter's ability to access voting information.<sup>430</sup>
- Malware, which is malicious software that introduces spyware, viruses, and ransomware into a system, which then gives hackers control over records.<sup>431</sup> In the election context, a ransomware attack could leak voter registration data or lock down systems during critical operation periods.<sup>432</sup>
- Structured query language (SQL) injections, like malware, are coding techniques that insert malicious bugs into user-end devices,<sup>433</sup> allowing hackers to access

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2024-elections.

<sup>425</sup> See L. PAIGE WHITAKER, CONG. RSCH. SERV., LSB10470, ELECTION 2020 AND THE COVID-19 PANDEMIC: LEGAL ISSUES IN ABSENTEE AND ALL-MAIL VOTING 1 (2020).

<sup>426</sup> See Eric Manpearl, *Securing U.S. Election Systems: Designating U.S. Election Systems as Critical Infrastructure and Instituting Election Security Reforms*, 24 B.U. J. SCI. & TECH. L. 168, 175 (2018).

<sup>427</sup> See Sue Halpern, *Behind the Campaign to Put Election Deniers in Charge of Elections*, NEW YORKER (Sept. 20, 2022), <https://www.newyorker.com/news/daily-comment/behind-the-campaign-to-put-election-deniers-in-charge-of-elections>.

<sup>428</sup> See Daniel Barabander, *Cyberattacks and Election Integrity*, 4 GEO. L. TECH. REV. 665, 665 (2020).

<sup>429</sup> See *id.*

<sup>430</sup> See *Cybersecurity Toolkit and Resources to Protect Elections*, CYBERSEC. & INFRASTRUCTURE SEC. AGENCY, <https://www.cisa.gov/cybersecurity-toolkit-and-resources-protect-elections> (last visited July 21, 2025).

<sup>431</sup> See Barabander, *supra* note 428, at 666 (“[A]ttackers can also use malware to attack these election systems to produce a specific desired result, such as manipulating vote counts on a voting machine or changing a person’s voting registration status on an e-pollbook.”).

<sup>432</sup> See *Cybersecurity Toolkit and Resources to Protect Elections*, *supra* note 430.

<sup>433</sup> See *How to Protect Against SQL Injection Attacks*, U.C. BERKELEY, <https://security.berkeley.edu/education-awareness/how-protect-against-sql-injection-attacks> (last visited July 21, 2025).

and destroy data.<sup>434</sup> SQL injections have previously resulted in data leaks and voter registration delays.<sup>435</sup>

- Phishing attacks, which masquerade as a trusted entity, prompt a victim to provide sensitive information to the attacker.<sup>436</sup> An attacker can then use the information to obtain access to otherwise restrictive voting systems.<sup>437</sup>
- Disinformation campaigns, which use false accounts and content to spread lies designed to sway public opinion on individual candidates or parties, divide Americans, or undermine confidence in the integrity of the electoral process, especially in swing states.

Malicious actors commonly attempt to target voting machines. There are two types of voting machines in elections: optical-scan machines and direct recording electronic machines (DREs). Optical-scan machines digitally record

a voter's hand-marked paper ballot.<sup>438</sup> This system provides a paper trail that voters and post-election auditors can reference to confirm a digital vote's veracity. By comparison, DREs record votes digitally.<sup>439</sup> Some DREs provide a paper record of a voter's electronic selection; then, the voter can confirm that the vote indicated through the user interface reflects the vote recorded in the paper receipt. Others provide no record.<sup>440</sup> On these paperless computerized voting systems, voters indicate their candidate choices through a user interface, and the computer program transmits and tallies them.

CISA and various cybersecurity experts list paperless electronic voting machines as one of the top vulnerabilities in the voting systems.<sup>441</sup> When voting machines do not produce paper trails, the only record of the vote is the machine itself, which canvassers cannot audit.<sup>442</sup> Federal law largely refrains from regulating states' voting technology choices. However, paperless, computer-based

434 See Marian K. Schneider, *Election Security: Increasing Election Integrity by Improving Cybersecurity*, in *THE FUTURE OF ELECTION ADMINISTRATION* 243, 252 (Mitchell Brown et al. eds., 2019).

435 Chuck Goudie & Christine Tressel, *How the Russians Penetrated Illinois Election Computers*, ABC7 (July 4, 2020), <https://abc7chicago.com/russia-russian-hacking-elections-illinois/3778816/>.

436 See *Phishing Attacks*, IMPERVA, <https://www.imperva.com/learn/application-security/phishing-attack-scam> (last visited June 5, 2024).

437 See Matthew Cole et al., *Top-Secret NSA Report Details Russian Hacking Effort Days Before 2016 Election*, INTERCEPT (June 5, 2017), <https://theintercept.com/2017/06/05/top-secret-nsa-report-details-russian-hacking-effortdays-before-2016-election> (describing the phishing attacks on Arizona and Illinois's election systems).

438 See *The Verifier – Voting Equipment – November 2020*, VERIFIEDVOTING, <https://verifiedvoting.org/verifier/#mode/navigate/map/ppEquip/mapType/normal/year/2022> (last visited July 21, 2025).

439 See *id.*

440 See Kimberly Breedon & A. Christopher Bryant, *Counting the Votes: Electronic Voting Irregularities, Election Integrity, and Public Corruption*, 49 UNIV. MEM. L. REV. 979, 989 (2019).

441 See Andrew Appel, *Is Internet Voting Trustworthy? The Science and the Policy Battles*, 21 U.N.H. L. REV. 523, 531 (2023); see also Marc Schneider, *Protect Public Trust by Auditing Elections: It's Easier Than You Might Think*, THE HILL (Nov. 3, 2018), <https://thehill.com/opinion/campaign/414631-protect-public-trust-by-auditing-elections-its-easier-than-you-might-think>.

442 See Appel, *supra* note 441, at 527.



voting systems are so inherently insecure that courts in New Jersey and Georgia have found them unconstitutional.<sup>443</sup> In those cases, New Jersey and Georgia election sites had relied on DREs that were indirectly connected to the internet via an election-management system (EMS).<sup>444</sup> The New Jersey court held that election systems may not be indirectly connected to the internet through the EMS, given cybersecurity concerns.<sup>445</sup> Similarly, the Georgia court enjoined the use of paperless DRE voting machines, which precipitated the use of paper ballots in the 2020 elections.<sup>446</sup>

Malicious actors also target voter registration databases. These databases reflect a single, computerized list containing personal identification of every legally registered voter in the state. Experts consider voter registration databases the most vulnerable aspect of election systems because they are almost always connected to the Internet and thus susceptible to hacking and manipulation.<sup>447</sup> The impact of hacking voter registration databases can be severe. Malicious cyber actors can render voters ineligible to vote in the state by, for example, marking them as felons; delete voter entries in databases, thereby forcing voters to cast provisional ballots; change a voter's address information, create entries for voters, or add fictitious voters to the database; and launch a DDoS attack to disrupt the database and connected e-pollbooks.<sup>448</sup>

Given the array of emerging cyberthreats, protecting the security of voting machines and voter registration databases must be a top priority for future elections.

## PROPOSED SOLUTIONS

Our Nation must continue to enhance the cyber resilience of state and federal election infrastructure to safeguard the integrity of future elections. As the lead federal agency for national election security, CISA has made tremendous strides in helping local governments enhance their election systems' cyber-capabilities. CISA offers state and local governments a comprehensive toolkit of free resources for cyber threat prevention, protection, response, and recovery.<sup>449</sup> However, CISA must remain proactive in its approach to adapt to an ever-evolving threat landscape. Although a hyper-technical analysis is beyond the scope of this report, there are various preventative practices that all state and local governments can implement to ensure that future elections remain secure. The Task Force recommends implementing stronger cybersecurity protocols; encouraging partnerships between government at all levels, the private sector, and the global community; transitioning nationwide to hand-marked paper ballot voting machines; and affirming

<sup>443</sup> See generally *Gusciora v. McGreevey*, 929 A.2d 599, 599 (N.J. Super. Ct. App. Div. 2006), *rev'd sub nom.* *Gusciora v. Corzine*, No. MER-L-2691-04, 2010 N.J. Super. Unpub. LEXIS 2319, at \*1 (N.J. Super. Ct. L. Div. Feb. 1, 2010); *Curling v. Raffensperger*, 397 F. Supp. 3d 1334, 1339 (N.D. Ga. 2019).

<sup>444</sup> See *Gusciora*, 2010 N.J. Super. Unpub. LEXIS 2319, at \*27; see also *Curling*, 397 F. Supp. 3d at 1350.

<sup>445</sup> See *Gusciora*, 2010 N.J. Super. Unpub. LEXIS 2319, at \*353.

<sup>446</sup> See *The Verifier – Voting Equipment – November 2020*, *supra* note 438.

<sup>447</sup> See *Manpearl*, *supra* note 426, at 175.

<sup>448</sup> See *id.*

<sup>449</sup> See *Cybersecurity Toolkit and Resources to Protect Elections*, *supra* note 430.



election results with post-election risk-limiting auditing.

The aforementioned efforts, which have been historically spearheaded by CISA, and the recommendations to follow require sustained staffing and reliable federal funding. Robust and continuous investment in CISA is critical to ensure the Agency's capacity to lead efforts in threat monitoring, incident reporting, infrastructure enhancement, and the coordination of federal, state, and local election security protocols. The Task Force opposes recent and proposed cuts that would significantly diminish CISA's operational capacity. Such reductions would impair the Agency's ability to defend election infrastructure and jeopardize the security and legitimacy of the democratic process. To maintain public confidence and ensure the continued integrity of elections, it is imperative that CISA be adequately resourced to meet the complex and growing cybersecurity demands of the electoral system.

## 1. Cybersecurity protocols

We recommend that state-level authorities adopt pre-election cybersecurity measures that leverage new techniques to respond to emerging threats. This includes strengthening election systems' cyber hygiene by requiring regular software updates, two-factor authentication, and strong password policies;

mandating employee cybersecurity training to minimize human-errors in phishing attempts; ensuring that election systems are not connected directly or indirectly to the Internet; leveraging automated threat intelligence programs to sift through global data and uncover offensive cyber-trends; using machine learning to assess networks for anomalous activity that may indicate a cyber breach; and creating an incident response protocol to mitigate any repercussions from cyberattacks efficiently.<sup>450</sup> State authorities should also participate in nationwide information sharing networks to preempt cyberattacks. Currently, CISA facilitates the federal-state exchange of threat intelligence through the Multi-State Information Sharing and Analysis Center and the Elections Infrastructure Information Sharing and Analysis Center.<sup>451</sup> CISA also provides weekly reports on election vulnerabilities to nearly 1,000 election infrastructure stakeholders.<sup>452</sup> To ensure that CISA is sharing the fullest information, states must actively contribute to these information platforms.

## 2. Private, public, and global partnerships

Beyond state-wide efforts, CISA should foster public-private sector partnerships to leverage private companies' capabilities.<sup>453</sup> Today, private tech companies innovate faster than government bureaucracies can keep

<sup>450</sup> See Emil Sayegh, *Election 2024: Championing Proactive Cybersecurity To Fortify National Security*, FORBES (Apr. 23, 2024), <https://www.forbes.com/sites/emilsayegh/2024/04/23/election-2024-championing-proactive-cybersecurity-to-fortify-national-security/?sh=1550e7004500>.

<sup>451</sup> See *Cybersecurity Toolkit and Resources to Protect Elections*, *supra* note 430.

<sup>452</sup> Jen Easterly, *Opening Statement by CISA Director Jen Easterly at the Update on Foreign Threats to the 2024 Elections Hearing*, CYBERSEC. & INFRASTRUCTURE SEC. AGENCY: BLOG (May 15, 2024), <https://www.cisa.gov/news-events/news/opening-statement-cisa-director-jen-easterly-update-foreign-threats-2024-elections-hearing>. Additionally, CISA has cleared 230 election officials to receive classified briefings. See *id.*

<sup>453</sup> See Sayegh, *supra* note 450.

pace.<sup>454</sup> Rather than grow complacent with outdated security systems, the government should capitalize on these achievements and encourage private companies' support in securing future elections. In February 2024, twenty-seven leading tech companies signed the Munich Security Conference tech accord.<sup>455</sup> The signatories agreed to detect misleading AI-generated content and attach provenance signals to identify the content's origin where feasible.<sup>456</sup> Additionally, CISA should strengthen alliances with global partners to bolster cross-border cooperation and incident responses to cyberattacks.<sup>457</sup> Such efforts would be part of a broader, long-term strategy to form international agreements aimed at cyber norm-setting. For instance, the Carnegie Endowment has proposed drafting a new agreement that would prohibit cyber-attacks on critical infrastructure and develop a global accountability mechanism for cyberspace.<sup>458</sup> Such an agreement would protect U.S. election systems under their new status as "critical

infrastructure."<sup>459</sup> CISA should foster private and global collaboration to counter the cyberthreat landscape.

### 3. Paper-ballot voting systems

Next, we recommend that states continue to transition to hand-marked optical-scan voting machines.<sup>460</sup> Recent trends reflect states' rapid transition to hand-marked ballot voting machines. Counties in all but two states, Louisiana and Texas, have moved to voting systems with a paper trail.<sup>461</sup> In 2016, about 22% of registered voters lived in jurisdictions using electronic voting machines with no paper trail.<sup>462</sup> By the November 2024 elections, it was estimated that around 98% of all votes would be cast on paper, representing an increase from 93% of votes in 2020.<sup>463</sup> Beyond the rulings in the New Jersey and Georgia courts, other states like Indiana, Kentucky, Mississippi, and Texas have also passed laws mandating that voting systems produce a paper record of every vote.<sup>464</sup> The Task Force

454 See James Andrew Lewis, *National Security and the Innovation Ecosystem*, CSIS (Oct. 1, 2021), <https://www.csis.org/analysis/national-security-and-innovation-ecosystem>.

455 See Mollenkamp & Apt, *supra* note 393; Ahmed et al., *supra* note 393.

456 See *A Tech Accord to Combat Deceptive Use of AI in 2024 Elections*, *supra* note 395.

457 See Sayegh, *supra* note 450.

458 See Patryk Pawlak & Aude Géry, *Why the World Needs a New Cyber Treaty for Critical Infrastructure*, CARNEGIE ENDOWMENT (Mar. 28, 2024), <https://carnegieendowment.org/research/2024/03/why-the-world-needs-a-new-cyber-treaty-for-critical-infrastructure?lang=en&center=europe>.

459 See Statement by Secretary Jeh Johnson, *supra* note 408. For a definition of critical infrastructure, see *supra* note 415.

460 See Breedon & Byrant, *supra* note 440, at 992.

461 Derek Tisler & Lawrence Norden, *Some Good News for Donald Trump: We Already Use Paper Ballots*, BRENNAN CTR. FOR JUST. (Aug. 23, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/some-good-news-donald-trump-we-already-use-paper-ballots> [hereinafter Tisler & Norden, *Some Good News*].

462 See *id.*

463 See *id.*

464 See Derek Tisler & Turquoise Baker, *Paper Ballots Helped Secure the 2020 Election — What Will 2022 Look Like?*, BRENNAN CTR. FOR JUST. (May 10, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/paper-ballots-helped-secure-2020-election-what-will-2022-look>.

supports states' efforts to shift away from DRE machines in favor of voting systems with a paper trail.

No known technology can currently secure internet voting.<sup>465</sup> Variations of internet voting—for instance, cryptographic protocols that create an audit trail—are still vulnerable to hacks targeting the end-user's device.<sup>466</sup> Machines that produce paper trails insulate votes from electronic tampering and facilitate post-election audits.<sup>467</sup> Then, election workers can verify that votes cast accurately reflect votes counted.

After collecting paper ballots through reliable voting machines, states should use machine tabulation for initial ballot counts and post-election audits.<sup>468</sup> We support machine tabulation as more accurate, trustworthy, and efficient than hand-counting.<sup>469</sup> In recent years, election deniers have expressed unfounded concerns that voting tabulation

systems are programmed to mis-record votes. Some election officials have heeded these concerns and spearheaded efforts to replace tabulation with hand-counting. For instance, Arizona officials unsuccessfully petitioned the Pima County Superior Court to prohibit voting tabulation systems given their “untrustworthy” nature.<sup>470</sup> Despite pockets of aversion to machine tabulation, it is used in over 90% of U.S. election jurisdictions and enjoys wide support by security experts.<sup>471</sup> Using scanners to mechanize the counting process circumvents concerns with clerical errors.<sup>472</sup>

In this vein, we believe states should pair machine counting systems with robust, post-election, or risk-limiting auditing (RLAs).<sup>473</sup> Using paper provides a chain of evidence that auditors can assess for the correctness of the count. Specifically, RLAs spot-check for discrepancies between electronic and paper records with reported outcomes at a pre-

<sup>465</sup> See Breedon & Byrant, *supra* note 440, at 991–92.

<sup>466</sup> See Appel, *supra* note 441, at 529.

<sup>467</sup> See Matt Zdun, *Machine Politics: How America Casts and Counts Its Votes*, REUTERS (Aug. 23, 2022), <https://www.reuters.com/graphics/USA-ELECTION/VOTING/mypmnewdlvr>.

<sup>468</sup> See ALICE CLAPMAN, BRENNAN CTR. FOR JUSTICE, *HOW STATES CAN PREVENT ELECTION SUBVERSION IN 2024 AND BEYOND* 17 (2023).

<sup>469</sup> See generally Ansolabehere et al., *Learning from Recounts*, 12 ELECTION L. J. 100 (2018).

<sup>470</sup> See Bob Christie, *Arizona County's Plan to Hand-Count Ballots Blocked by Judge*, AP NEWS (Nov. 7, 2022), <https://apnews.com/article/2022-midterm-elections-arizona-government-and-politics-714a45e76973de132c84cbde0ca5c1b2>.

<sup>471</sup> See Rachel Orey et al., *How Ballot Tabulators Improve Elections*, BIPARTISAN POL'Y CTR. (Apr. 25, 2022), <https://bipartisanpolicy.org/explainer/how-ballot-tabulators-improve-elections/>; see also CLAPMAN, *supra* note 468.

<sup>472</sup> See Zdun, *supra* note 467.

<sup>473</sup> The ABA Election Administration Guidelines and Commentary, adopted by the ABA House of Delegates as policy, addresses risk-limited auditing in Section 10.5: “To enhance voter confidence in reported election results, election authorities are encouraged to conduct post-election risk-limiting audits on all contested election races.” See also *An Overview of Election Auditing*, American Bar Association (last visited Aug. 30, 2025), <https://learningcenter.americanbar.org/courses/79368>; *An Overview of Election Auditing*, The Chicago Bar Association (Oct. 26, 2023), <https://learn.chicagobar.org/products/an-overview-of-election-auditing-102623>.

determined level of confidence.<sup>474</sup> For instance, an RLA with a risk tolerance of 10% has a 90% chance of correcting the recorded outcome if wrong. Not only do RLAs increase public confidence in election results, but experts have determined them “robust enough to detect [vote-changing] cyberattacks.”<sup>475</sup> Even if CISA has found no evidence of election interference, strong auditing procedures promise to detect any vote tampering, thereby increasing the public’s trust in election results. We recommend incorporating RLAs into the state’s post-election practices.

## I. Lawyers’ Obligations to the Rule of Law and Democracy

Lawyers must play an essential role in upholding the rule of law. Indeed, “[t]he cornerstone of the American system of justice is an independent judiciary and an independent bar willing to tackle unpopular cases, however daunting.”<sup>476</sup> In many cases, lawyers are the last line of defense when individuals are deprived of their rights. By helping aggrieved parties access their day in court, lawyers enhance the process and

legitimacy of our governing institutions. And if and when their clients’ rights are vindicated, lawyers prevent actual injustice from befalling the American people. However, both legitimacy and justice are imperiled when the stability, predictability, and finality of our legal system are lost to political vicissitudes. In light of troubling recent developments, strengthening the legal profession’s commitment to constitutional democracy and the rule of law must be top priorities.

### PROBLEM STATEMENT

Rule of law values, long unquestioned by the legal profession, are under tremendous strain. Politicians, lawyers, and law professors have suggested that government officials are entitled to disregard court orders they disagree with.<sup>477</sup> Though President Trump has said on several occasions that he will respect the federal courts when they rule against him,<sup>478</sup> his Administration’s actions have at times spoken louder than these words. Slow compliance with Judge Paula Xinis’s (D. Md.) order to facilitate the return of Kilmar Ábrego-García—a Salvadoran man granted withholding of removal in 2019 yet unlawfully deported without due process in March 2025—and a Supreme Court ruling affirming most

<sup>474</sup> See Foley, *supra* note 373; see also KAREN L. SHANTON, CONG. RSCH. SERV., IF11873, ELECTION ADMINISTRATION: AN INTRODUCTION TO RISK-LIMITING AUDITS 1 (2021).

<sup>475</sup> See Breedon & Byrant, *supra* note 440, at 995 (citing Eric Geller, *Colorado to Require Advanced Post-Election Audits*, POLITICO (July 17, 2017), <https://www.politico.com/story/2017/07/17/colorado-post-election-audits-cybersecurity-240631>).

<sup>476</sup> See Wilmer Cutler Pickering Hale and Dorr LLP v. Exec. Off. of President, No. CV 25-917 (RJL), 2025 WL 1502329 at \*1 (D.D.C. May 27, 2025).

<sup>477</sup> Charlie Savage & Minho Kim, *Vance Says ‘Judges Aren’t Allowed to Control’ Trump’s ‘Legitimate Power’*, N.Y. TIMES (Feb. 9, 2025), <https://www.nytimes.com/2025/02/09/us/politics/vance-trump-federal-courts-executive-order.html>.

<sup>478</sup> See, e.g., Brett Samuels, *Trump says he’ll abide by court orders that block parts of his agenda*, THE HILL (Feb. 11, 2025).



of that order<sup>479</sup> raised serious questions as to whether the Trump Administration would openly defy the judiciary.<sup>480</sup> Despite admitting that Ábrego-García's deportation was a mistake, administration officials argued they were under no obligation to bring him back for minimal procedural hearings guaranteed by the Constitution.<sup>481</sup> "Drawing the country toward the brink of a constitutional crisis," the Administration eventually took two months to return Ábrego-García from a notorious Salvadoran prison.<sup>482</sup>

Further, several judges have been threatened by members of Congress and the President with articles of impeachment for their decisions, drawing a rare rebuke from Chief Justice John Roberts, who noted that punishing judges for rendering decisions at odds with

an administration's policy preferences has been disfavored in this country for over two-hundred years.<sup>483</sup>

The House of Representatives recently passed legislation that would limit federal judges' ability to punish those who disobey court orders; the provision was removed before the bill became law.<sup>484</sup> Without access to the contempt power, the judiciary would lose a vital tool that helps promote institutional respect for and compliance with its decisions.<sup>485</sup> This calls to mind President Andrew Jackson's famous quip that Chief Justice John Marshall "has made his decision[,] now let him enforce it."<sup>486</sup>

The legal profession itself is also under direct threat. Numerous major law firms have

479 Hamed Aleaziz & Alan Feuer, *How Trump Officials Debated Handling of the Abrego Garcia Case: 'Keep Him Where He Is'*, N.Y. TIMES (May 21, 2025), <https://www.nytimes.com/2025/05/21/us/politics/trump-abrego-garcia-el-salvador-deportation.html>.

480 See, e.g., Lawrence Hurley & Ken Dilanian, *What Happens if a President and the Federal Government Fail to Follow a Judge's Orders?*, NBC NEWS (Apr. 16, 2025), <https://www.nbcnews.com/politics/politics-news/president-defies-judges-orders-contempt-rcna201455>.

481 Michael Kunzelman, *Trump Administration Argues Judge Cannot Order Return of Man Mistakenly Deported to El Salvador*, AP NEWS (Apr. 5, 2025), <https://apnews.com/article/trump-el-salvador-prison-kilmar-abrego-garcia-5a92d6bd7f893eed64c2607cc129a6f9>.

482 Katherine Faulders, James Hill & Alexander Mallin, *Kilmar Abrego Garcia Brought Back to US, Appears in Court on Charges of Smuggling Migrants*, ABC NEWS (June 6, 2025), <https://abcnews.go.com/US/mistakenly-deported-kilmar-abrego-garcia-back-us-face/story?id=121333122>.

483 Lisa Mascaro, *Republicans Eye Actions Against the Courts and Judges as Trump Rails Against Rulings*, AP NEWS (Mar. 25, 2025), <https://apnews.com/article/trump-judge-boasberg-musk-impeachment-1019459fc9517231204b814fd6f36127>. For a list of the federal judges threatened with impeachment so far, see N.Y.C. Bar, *Statement Condemning Threats to Impeach Federal Judges Based on Disagreement with Rulings* (Mar. 31, 2025), <https://www.nycbar.org/press-releases/statement-condemning-threats-to-impeach-federal-judges-based-on-disagreement-with-rulings/>.

484 Michael Gold, *Republican Bill Would Limit Judges' Contempt Power*, N.Y. TIMES (May 22, 2025), <https://www.nytimes.com/2025/05/22/us/politics/trump-policy-bill-judges-contempt.html>. See One Big Beautiful Bill Act, Pub. L. No. 119-21, H.R. 1, 119th Cong. (2025).

485 See Nicholas R. Parrillo, *The Endgame of Administrative Law: Governmental Disobedience and the Judicial Contempt Power*, 131 HARV. L. REV. 685 (2018).

486 President Jackson is quoted as having made this statement in response to *Worcester v. Georgia*, 31 U.S. 515 (1832), in which the Supreme Court held that the state of Georgia could not apply its laws to lands belonging to the



been targeted for engaging in client advocacy that the current administration opposes in an effort to chill constitutionally protected speech and petition.<sup>487</sup> Despite drawing universal rebuke from the courts, which have so far weighed in on this issue,<sup>488</sup> the current Administration continues to make “absurd” claims to punish the President’s political rivals and all others willing to stand in his way.<sup>489</sup> The Administration also issued a blanket warning to the legal profession in the form of a directive instructing the Attorney General and the Secretary of Homeland Security to aggressively pursue sanctions and other disciplinary actions against lawyers who sue the federal government.<sup>490</sup> Taking aim at the ABA, the Attorney General has alleged that the almost 150-year-old non-partisan organization—which is currently comprised of lawyers who represent a broad cross-section of American political and social life—secretly favors the Democratic Party.<sup>491</sup> Lawyers are

uniquely qualified to support and defend the Constitution and the rule of law; they must neither be complicit with nor intimidated by these blatant scare tactics.

Lawyers who bravely refuse political demands to violate the law should be celebrated, not condemned. Erez Reuveni, the lawyer in charge of defending the government in the Ábrego-García case, was fired by Attorney General Pam Bondi for failing to “zealously advocate on behalf of the United States.”<sup>492</sup> Behind closed doors, Reuveni bravely adhered to legal principles and counseled bringing Ábrego-García back to the country after he was mistakenly deported, as was standard practice in prior administrations (including during President Trump’s first term).<sup>493</sup> Then, in front of Judge Xinis, Reuveni admitted that Ábrego-García was mistakenly removed.<sup>494</sup> In what one of his colleagues perceived as “an act of intimidation” and as part of an effort

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Cherokee. Matthew Washauer, *Andrew Jackson and the Constitution*, THE GILDER LEHRMAN INST. OF AM. HIST. (2009), <https://www.gilderlehrman.org/history-resources/essays/andrew-jackson-and-constitution>.

487 Harold Hongju Koh, Fred Halbhuber & Inbar Pe’er, *No, The President Cannot Issue Bills of Attainder*, JUST SEC. (Apr. 9, 2025), <https://www.justsecurity.org/110109/president-cannot-issue-attainder-bills/> (“27 former senior government officials of both political parties, who served in the last seven presidential administrations, confirmed that they ‘have never before seen or condoned an *ad hominem* punitive, and retaliatory order of this kind, attacking and intimidating lawyers and a law firm on the basis of their lawful activities.’”).

488 See Zach Montague, *Trump Loses Another Battle in His War Against Elite Law Firms*, N.Y. TIMES (May 27, 2025), <https://www.nytimes.com/2025/05/27/us/politics/trump-law-firms-wilmerhale.html>; see also *Wilmer Cutler Pickering Hale and Dorr LLP v. Exec. Off. of President*, No. CV 25-917 (RJL), 2025 WL 1502329 (D.D.C. May 27, 2025); *Perkins Coie LLP v. U.S. Dep’t of Just.*, No. CV 25-716 (BAH), 2025 WL 1276857 (D.D.C. May 2, 2025); *Jenner & Block LLP v. U.S. Dep’t of Just.*, No. CV 25-916 (JDB), 2025 WL 1482021 (D.D.C. May 23, 2025).

489 See *Wilmer Cutler Pickering Hale and Dorr LLP*, 2025 WL 1502329 at \*9.

490 Shayna Jacobs, *New Trump Memo Seen as Threat to Lawyers, Attempt to Scare Off Lawsuits*, WASH. POST (Mar. 23, 2025), <https://www.washingtonpost.com/national-security/2025/03/22/trump-litigation-lawyers-pam-bondi/>.

491 Tiana Headley, *Bondi Eliminates ABA’s Role in Vetting Trump Judicial Nominees*, BLOOMBERG L. (May 29, 2025), <https://news.bloomberglaw.com/us-law-week/bondi-eliminates-abas-role-in-vetting-trump-judicial-nominees>.

492 Aleaziz & Feuer, *supra* note 479.

493 *Id.*

494 *Id.*

to put Department of Justice lawyers “in an impossible position where [they] have to decide between keeping [their] job pushing a partisan agenda, or maintaining [their] ethical obligation to the court and thus [their] bar license,” Reuveni was promptly let go.<sup>495</sup> Rather than being summarily terminated, lawyers like Reuveni who abide by their best legal judgments and obligations of candor toward tribunals—as state supreme court rules of professional conduct require<sup>496</sup>—should be recognized for their integrity and courage.<sup>497</sup>

In sum, the rule of law is under siege. Lawyers must lead the defense. Without a recommitment to democracy, we may not remain an “Empire of Laws, and not of men” for much longer.<sup>498</sup>

## PROPOSED SOLUTIONS

### 1. Clarify and strengthen standards of professional conduct

The Task Force recommends that the ABA, state, and local bar associations continue recent efforts to address threats to democracy, the rule of law, and the independence and legitimacy of the courts.

The ABA has spoken out several times in recent months in defense of the rule of law.<sup>499</sup> So too have many state and local bar associations. The New York State Bar Association hosted a webinar earlier this year dedicated to discussing challenges to the rule of law.<sup>500</sup> In March 2025, more than 50 metropolitan, affiliate, specialty, regional, and local bar associations signed a joint statement condemning the President’s executive orders targeting law firms.<sup>501</sup> The State Bar of California released a similar statement reaffirming lawyers’ right and duty to represent even the most unpopular

495 *Id.* (quoting Erin Ryan, a former Department of Justice trial lawyer who resigned in response to Reuveni’s firing).

496 *See, e.g.*, MODEL RULES OF PRO. CONDUCT r. 1.1, 1.2(d) (A.B.A. 2023).

497 *See* Jeffrey Toobin, Opinion, *For Trump, Investigations Are the Real Punishment*, N.Y. TIMES (June 18, 2025), <https://www.nytimes.com/2025/06/18/opinion/trump-investigations-damage.html>.

498 *See* John Adams, THOUGHTS ON GOVERNMENT (1776), reprinted in 4 THE ADAMS PAPERS 86 (Robert J. Taylor ed., 1979).

499 *See, e.g.*, A.B.A., *The ABA Supports the Rule of Law* (Feb. 10, 2025), <https://www.americanbar.org/news/abanews/aba-news-archives/2025/02/aba-supports-the-rule-of-law/>; A.B.A., *The ABA Rejects Efforts to Undermine the Courts and the Legal Profession* (Mar. 3, 2025), <https://www.americanbar.org/news/abanews/aba-news-archives/2025/03/aba-rejects-efforts-to-undermine-courts-and-legal-profession/>; Bill Bay, *The Next Day*, A.B.A. J. (June-July 2025), <https://www.abajournal.com/magazine/article/the-next-day>.

500 Rebecca Melnitsky, *New York State Bar Association To Examine Hot-Button Issue of Challenges to the Rule of Law*, N.Y. STATE BAR ASS’N (Mar. 6, 2025), <https://nysba.org/new-york-state-bar-association-to-examine-hot-button-issue-of-challenges-to-the-rule-of-law/>.

501 N.Y.C. Bar Ass’n, *In Defense of the Rule of Law and the Independence of the Legal Profession* (Mar. 24, 2025), <https://www.nycbar.org/press-releases/in-defense-of-the-rule-of-law-and-the-independence-of-the-legal-profession/>.

clients.<sup>502</sup> The Task Force commends these bar organizations for their willingness to speak out; their words send an invaluable signal to their memberships, the legal profession, the American people, and the world that our rule of law will persist. But bar associations can and should do more than proclaim their principles. The Task Force recommends the following:

### Revise the Oath of Admission

Upon being licensed by a state supreme court to practice law in a jurisdiction, attorneys take an oath of admission.<sup>503</sup> The precise wording of this oath varies from state to state. However, many oaths include a commitment to civility and integrity, the rules of professional conduct, and the state and federal constitutions.<sup>504</sup> Given growing threats to democracy and the rule of law, and the vital role that lawyers can play in safeguarding these important principles, the Task Force recommends that oaths of admission be updated to include a commitment to upholding democracy and the rule of law. To this end, we recommend that the ABA propose model language for state supreme courts to add to their oath of admission. The model language could be as simple as “I do solemnly swear to support democracy and the rule of law.” While simple,

this addition would allow the legal profession to signal (and hopefully internalize) a clear-eyed, unambiguous commitment to these basic but important principles.

### Reform Lawyer Professional Responsibility

Going a step further, the Task Force recommends that a commitment to upholding democracy and the rule of law become a matter of professional responsibility for all lawyers, with particular focus on lawyers in public service. Specifically, the Task Force recommends the following:

First, bar associations should reiterate that government lawyers—federal, state, and local—are subject to the rules of professional conduct like all other members of the Bar. In April 2025, the Ethics Committee of the New York City Bar Association issued an opinion which declared “[a]ny lawyer who violates . . . Rules [of Professional Conduct] at the behest of a client or employer—whoever that client or employer may be—is still subject to professional discipline for such violation.”

<sup>505</sup> The opinion focused specifically on the obligation of government lawyers who may be instructed by their superiors to act in ways they perceive to be contrary to law.<sup>506</sup> The

<sup>502</sup> State Bar of Cal., *Statement on Recent Executive Actions Threatening the Availability of Legal Counsel and the Rule of Law* (May 9, 2025), <https://www.calbar.ca.gov/About-Us/News/News-Releases/statement-on-recent-executive-actions-threatening-the-availability-of-legal-counsel-and-the-rule-of-law>.

<sup>503</sup> Robert Anthony Gottfried, *The Anatomy of Our Oath to Support the US Constitution*, A.B.A. (Jan. 8, 2021), [https://www.americanbar.org/groups/young\\_lawyers/resources/after-the-bar/professional-development/anatomy-of-our-oath/](https://www.americanbar.org/groups/young_lawyers/resources/after-the-bar/professional-development/anatomy-of-our-oath/).

<sup>504</sup> See, e.g., *Attorney Oath of Office: State of Alabama*, ALABAMA STATE BAR ASS’N, <https://www.alabar.org/assets/2015/03/WEBSITE-Oath-of-Office.pdf> (last visited July 21, 2025).

<sup>505</sup> Pro. Ethics Comm., N.Y.C. Bar Ass’n, *Formal Opinion 2025-1: Ethical Responsibilities of Lawyers Representing Government Officers and Agencies* (Apr. 4, 2025), <https://www.nycbar.org/reports/formal-opinion-2025-1-ethical-responsibilities-of-lawyers-representing-government-officers-and-agencies/>.

<sup>506</sup> *Id.*

Task Force recommends that the ABA consider issuing a similar ethics opinion

Second, the Task Force *discourages* rules that defer state disciplinary proceedings against certain government lawyers until after they leave public office. For example, Rule 3-7.16(d) of the Florida Bar Rules of Discipline states that “[i]nquiries raised or complaints presented to the Florida Bar about the conduct of a constitutional officer who is required to be a member in good standing of the Florida Bar must be commenced within 6 years after the constitutional officer vacates office.”<sup>507</sup> In our view, regulators should at least have the discretion to begin proceedings while the government attorney is still in office.<sup>508</sup> While the Task Force appreciates the burdens and responsibilities of public office (some Task Force members have themselves been government lawyers), government attorneys are subject to state laws and rules, and local federal court rules, governing attorneys in each state where such attorney engages in that attorney’s duties, to the same extent and in the same manner as other attorneys in that state.<sup>509</sup> If anything, the privilege of public office should demand a higher degree of professional ethics, not a lower one. A rule requiring deferral of an investigation and proceeding effectively derails accountability for government lawyers while the matter is

fresh and accountability matters most. By the time the attorney leaves public office, recollections and resolve will almost certainly have faded. Meanwhile, the public may face the prospect of ongoing, irreparable harm by a malfeasant government attorney undeterred by the prospect of disciplinary proceedings at some point off in the future.

Third, the Task Force recommends that the Department of Justice consider strengthening its guidance to government lawyers regarding their obligations to the courts. This might take the form of an amendment to the Justice Manual, which in part defines the standards of conduct for attorneys at the Department of Justice.<sup>510</sup> We also encourage the Professional Responsibility Advisory Office at the Department of Justice to develop and share best practices with client federal departments and agencies, as well as state and federal bar associations, so that all attorneys who appear in court on behalf of any governmental entity understand that they are both legally and ethically bound by court orders.

Finally, the Task Force recommends that the ABA, state and local bar associations, state-level supreme courts, and other state-level regulatory bodies provide further guidance concerning the special obligations of lawyers to respect and promote the rule of law, our

507 See Jay Weaver, *Group accuses Bondi of ‘misconduct’ as Attorney General; Florida Bar rejects complaint*, Miami Herald (June 7, 2025), <https://www.miamiherald.com/news/politics-government/article307770070.html#storylink=cpy>. See also Florida’s Rules of Discipline Rule 3-7.16(d) (“Inquiries raised or complaints presented by or to The Florida Bar about the conduct of a constitutional officer . . . must be commenced within 6 years after the constitutional officer vacates office.”)

508 See James Kobak and Albert Feuer, *State Bars Must Probe Misconduct Claims, Even If It’s The AG*, Law360 (July 10, 2025), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5347584](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5347584).

509 See the “McDade-Murtha Amendment,” now codified in federal law at 28 U.S.C. 530B, which states that federal government lawyers are bound by the professional responsibility rules of the state and territorial jurisdictions in which they practice.

510 See U.S. Dep’t of Just., Just. Manual § 1-4.000 (2018).



democracy, the courts, and adherence to court orders. The Task Force appreciates that this is easier said than done. Support for democracy and the rule of law are not now well-defined principles. These concepts could mean different things to different regulators at different times, in different circumstances. Further, lawyers should be free to advocate for changes in law, or on occasion (and in good faith) even test the outer boundaries in existing law. Respect for the “rule of law” or our democracy should not be regarded as an intractable adherence to the legal status quo.

Arguably, the ABA’s Model Rules and the preamble to the Model Rules already go far in promoting these principles:

- Paragraph 1 of the Preamble: “A lawyer, as a member of the legal profession, is a representative of clients, *an officer of the legal system and a public citizen having special responsibility for the quality of justice*” (emphasis added).
- Paragraph 5 of the Preamble: “A lawyer’s conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer’s business and personal affairs. A lawyer should use the law’s procedures only for legitimate purposes and not to harass or intimidate others. *A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer’s duty, when necessary, to challenge the rectitude of official action, it is also a lawyer’s duty to uphold legal process*” (emphasis added).
- Paragraph 6 of the Preamble: “. . . [A] lawyer should further the public’s understanding of and confidence in the rule of law and the

justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority . . .” (emphasis added).

- Rule 3.3, Comment 2: “*This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process . . . although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false*” (emphasis added).
- Rule 3.2(b): “A lawyer shall not . . . knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.”
- Rule 8.2, Comment 3: “To maintain the fair and independent administration of justice, lawyers *are encouraged to continue traditional efforts to defend judges and courts unjustly criticized*” (emphasis added).

However, these provisions offer general guidance. Lawyers should be provided with more specific guidance regarding their professional obligation to promote and protect democracy, the rule of law, and the independence and legitimacy of the courts. Further guidance can be provided through bar association opinions interpreting existing rules of professional conduct, and standards that, though not themselves enforceable through professional discipline, express the legal profession’s norms, expectations, and aspirations. Lastly, the Task Force



recommends that the ABA, state and local bar associations, state-level supreme courts, and other state-level regulatory bodies assess whether there are gaps in existing rules of conduct, enforceable by discipline, that should be filled to advance these principles. Given the current and evolving environment, we consider this essential.

## 2. CLE for democracy and rule of law courses

Most state supreme courts require attorneys to complete a certain number of Continuing Legal Education (CLE) credits in the years following bar admission.<sup>511</sup> CLE credit can be earned from a variety of courses, workshops, conferences, and volunteer opportunities, which are developed and hosted by hundreds of providers, including the ABA.<sup>512</sup> States vary in their CLE requirements, and attorneys are generally free to fulfill their CLE requirements as they see fit, through any combination of approved programs. With its widespread, flexible structure, CLE provides a promising avenue for initiating conversations between attorneys about their role in our constitutional democracy. For example, CLE credits could be offered for attending a course about election law or a workshop on the legal ethics of making statements about the electoral system, whether in a representational role or not.<sup>513</sup>

The ABA is a leading provider of CLE courses. The Task Force recommends that the ABA continue to develop courses focused on democracy and the rule of law, which attorneys throughout the United States may take to fulfill their CLE requirements. Alternatively, while state supreme courts set CLE requirements independently, the ABA can encourage states to award CLE credits for courses, workshops, and conferences focused on the law of democracy and the promotion of free and fair elections.

## 3. Engage with volunteer voter protection efforts

Lawyers can contribute to protecting democracy by volunteering on and around Election Day with voter protection organizations that answer voters' questions, help voters navigate the specific election-related procedures of their town or state, and respond to access issues that arise. Most well-known is the [Election Protection](#) hotline organized by the Lawyers' Committee for Civil Rights Under Law, which operates call centers and organizes field volunteers at polling places.<sup>514</sup> Several similar organizations supporting election access and integrity also seek pro bono volunteers, such as the [Election Official Legal Defense Network](#), which provides legal support for election officials;<sup>515</sup> [VoteRiders](#), which helps prospective voters navigate complex voter ID laws;<sup>516</sup> and the voting rights initiatives

511 See, e.g., *MCLE Requirements*, STATE BAR OF CAL., <https://www.calbar.ca.gov/Attorneys/MCLE-CLE/Requirements>.

512 See *Welcome to the ABA Learning Center*, A.B.A.: LEARNING CTR., <https://learningcenter.americanbar.org/> (last visited July 21, 2025).

513 Cf. *King v. Whitmer*, 71 F.4th 511, 532–33 (6th Cir. 2023) (affirming imposition of CLE requirement as part of sanction for frivolous election-related lawsuit).

514 *Election Protection Volunteers*, ELECTION PROTECTION, <https://866ourvote.org/volunteer/> (last visited June 6, 2025).

515 Election Off. Legal Defense Network, *Attorney and Law Firm Sign Up*, CTR. FOR ELECTION INNOVATION & RSCH., <https://eoldn.org/attorney-law-firm-sign-up/> (last visited June 6, 2025).

516 *Volunteer with VoteRiders*, VOTERIDERS, <https://www.voteriders.org/volunteer/> (last visited June 6, 2025).

organized by [Campaign Legal Center](#)<sup>517</sup> and the [Brennan Center for Justice](#).<sup>518</sup> A database of opportunities for legal volunteering on longer-term projects to improve voting access can be found through [We the Action](#), a collaboration between the Lawyers' Committee and Civic Nation.<sup>519</sup>

Lawyers can also work or volunteer as election workers or observers in their home state. Doing so provides lawyers with a firsthand view of a given state's election procedures and any issues that might arise. The ABA Standing Committee on Election Law has recently sought to enlist lawyers as election workers through its "Poll Worker, Esq." program.<sup>520</sup> In addition, eight states (Florida, Indiana, Iowa, Kentucky, Nebraska, Ohio, South Carolina, and Virginia) currently offer CLE credit for lawyers who get trained and work the polls.<sup>521</sup> Alternatively, lawyers could volunteer as poll watchers (also referred to as election observers), whose role is simply to monitor elections and ensure that proper procedures are being followed.<sup>522</sup> While the rules vary by state, many poll watchers observe elections on behalf of a particular political party,

candidate, nonprofit organization, pollster, academic institution, or government agency.

#### 4. Expand opportunities for engagement with the "law of democracy"

While a growing number of law schools offer electives on "Election Law"<sup>523</sup> and the "Law of Democracy,"<sup>524</sup> not all lawyers have an opportunity to engage with these topics during law school. This means that many lawyers do not get an opportunity to explore the crucial role of the law—and lawyers—in creating conditions for a healthy democracy.

In addition to creating opportunities for such exploration through CLE, the ABA can develop a repository of accessible materials, from handouts to blog posts, about key issues surrounding the law of democracy. These resources could be housed, for example, in the ABA's Division for Public Education.<sup>525</sup> This would allow lawyers (and other interested parties) to self-study how the law shapes our political system. This knowledge could raise lawyers' awareness of the role they

<sup>517</sup> *Information for Lawyer Volunteers*, CAMPAIGN LEGAL CTR., <https://campaignlegal.org/information-lawyer-volunteers> (last visited June 6, 2025).

<sup>518</sup> *Partner With Us*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/get-involved/partner-us> (last visited June 6, 2025).

<sup>519</sup> WE THE ACTION: CONNECTING LAWYERS WITH CAUSES, <https://wetheaction.org> (last visited June 6, 2025).

<sup>520</sup> Jason Douglas Kaune, *Poll Worker, Esq.: How Lawyers Can Serve on Democracy's Frontline*, A.B.A. (Feb. 22, 2024), [https://www.americanbar.org/groups/young\\_lawyers/resources/after-the-bar/public-service/poll-worker-esq-how-lawyers-can-serve-on-democracys-frontline](https://www.americanbar.org/groups/young_lawyers/resources/after-the-bar/public-service/poll-worker-esq-how-lawyers-can-serve-on-democracys-frontline).

<sup>521</sup> *Id.*

<sup>522</sup> *Poll Watchers*, U.S. ELECTION ASSISTANCE COMM'N (Oct. 3, 2024), <https://www.eac.gov/election-officials/poll-watchers>.

<sup>523</sup> See, e.g., *Election Law – Law 382-001*, ANTONIN SCALIA L. SCH., GEO. MASON UNIV., [https://www.law.gmu.edu/assets/files/academics/schedule/2023/spring/quinnvonspakovsky\\_382-s.pdf](https://www.law.gmu.edu/assets/files/academics/schedule/2023/spring/quinnvonspakovsky_382-s.pdf) (last visited June 6, 2025).

<sup>524</sup> See, e.g., *Law of Democracy*, STAN. L. SCH., <https://law.stanford.edu/courses/law-of-democracy> (last visited June 6, 2025).

<sup>525</sup> Division for Pub. Educ., *Resources*, A.B.A., [https://www.americanbar.org/groups/public\\_education/resources/](https://www.americanbar.org/groups/public_education/resources/) (last visited June 6, 2025).

can play in upholding democracy and equip them to engage with pro-democracy causes more effectively. Because lawyers often serve as trusted sources of information about the law for the larger community, more democratically informed lawyers are vital resources at a moment when distrust in elections and election-related information remains pervasive.<sup>526</sup>

## J. Curbing Frivolous Election-Related Lawsuits

Frivolous election-related lawsuits are not a new phenomenon, but the 2020 presidential election saw a nationwide barrage of litigation challenges. Dozens of lawsuits were filed across the country by both Democrats and Republicans.<sup>527</sup> Since the 2020 election, baseless election lawsuits are becoming more common in state and local elections.<sup>528</sup>

In fact, prior to Election Day 2024, more voting-related lawsuits had already been filed than during the entirety of 2020:<sup>529</sup> 217 voting-related lawsuits had been filed by November 5, surpassing the 157 filed in the entirety of 2020 and the 175 filed in 2022 during the

midterm election.<sup>530</sup> Meanwhile, there was a decline in post-election-related litigation in 2024 compared to 2020, but it is unclear whether this reduction is attributable to the outcome of the election or to the efficacy of legal, procedural, or administrative measures implemented to deter frivolous claims. Nevertheless, the reality underscores the need to examine institutional and procedural reforms and for continued investment in legal safeguards to deter frivolous election litigation.

### PROBLEM STATEMENT

Frivolous election lawsuits present two challenges. First, by their very nature, they are high-profile, filed and litigated on an expedited basis, and threaten to sidetrack an election. Judges assigned to hear them are under extreme pressure. Second, the mere existence of such lawsuits serves to feed baseless conspiratorial suspicions about the integrity of our democracy. Even if a “wrong” lower-court decision is reversed by an appellate court, the damage may already be done, with the outcome of the election irreparably tainted in the minds of the public.<sup>531</sup> Thus, although the lawsuit is ultimately dismissed as baseless,

<sup>526</sup> See CAMPAIGN LEGAL CTR., *supra* note 517.

<sup>527</sup> See generally *Litigation in the 2020 Election*, A.B.A. (Oct. 27, 2022), [https://www.americanbar.org/groups/public\\_interest/election\\_law/litigation](https://www.americanbar.org/groups/public_interest/election_law/litigation).

<sup>528</sup> For instance, an Arizona gubernatorial candidate engaged in a protracted legal campaign to challenge her loss at the polls in the 2022 election. See Jen Fifield, *Why Kari Lake Is Still, Six Months After Losing, in Arizona Courts Arguing the 2022 Election Was Stolen*, VOTE BEAT ARIZ. (May 17, 2023), <https://www.votebeat.org/arizona/2023/5/17/23726884/kari-lake-lawsuit-fundraising-maricopa-signatures>.

<sup>529</sup> Matt Cohen, *2024 Is Already The Most Litigated Election On Record*, DEMOCRACY DOCKET (Nov. 4, 2024), <https://www.democracydocket.com/news-alerts/2024-is-already-the-most-litigated-election-on-record/>.

<sup>530</sup> *Id.*

<sup>531</sup> In his dissent from the Supreme Court’s denial of certiorari for a challenge to Pennsylvania’s mail-in ballot procedure, Justice Thomas observed the limitations of judicial review on allegations of election fraud: “In short, the postelection system of judicial review is at most suitable for garden-variety disputes. It generally cannot

the fact of its filing supports a narrative that the election itself was unfair, and the fact of its dismissal may feed suspicions of the same conspiracy. On the other hand, it is important to preserve access to the courts for challenges to election procedures and outcomes. Corrupt or biased political conduct must be rooted out, and civil lawsuits provide an important avenue to do so.<sup>532</sup>

## PROPOSED SOLUTIONS

The Task Force recommends legislation at the federal and state levels to require challenges to election procedures and outcomes to go before three-judge panels, accompanied by an expedited appellate pathway.<sup>533</sup> The combined scrutiny of three trial-level judges should help to reduce errors of law. It will also prevent “forum shopping” for specific judges perceived as beholden to certain political interests. Federal law already has a provision that allows for three-judge district courts for certain types of cases.<sup>534</sup> For example, three-judge district court panels were once required in lawsuits seeking injunctive relief against

the enforcement of state statutes in federal court, where the parties had a right to appeal directly to the Supreme Court.<sup>535</sup> Current federal law requires a three-judge panel for apportionment challenges under the Voting Rights Act.<sup>536</sup> Expanding panels at the federal level and instituting them at the state level will maintain confidence in the outcome of elections by ensuring that any challenges are streamlined, swift, and, most of all, correct.

The Task Force also recommends that states explore changes in law that allow for special motions to dismiss, cost shifting, and sanctions if a party is found to file a frivolous election-related lawsuit. Most states already have laws to deter frivolous defamation lawsuits, known as strategic litigation against public participation, or “SLAPP.”<sup>537</sup> SLAPP litigants file frivolous defamation suits as a tactic to punish speech they dislike, forcing the target to engage expensive legal counsel even if the lawsuit is entirely without merit and quickly dismissed.<sup>538</sup> Anti-SLAPP statutes protect against these kinds of lawsuits by allowing the target to seek dismissal of the case at an early stage, and often permit the

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restore the state of affairs before an election. And it is often incapable of testing allegations of systemic maladministration, voter suppression, or fraud that go to the heart of public confidence in election results. That is obviously problematic for allegations backed by substantial evidence. But the same is true where allegations are incorrect.” *Republican Party v. Degraffenreid*, 141 S. Ct. 732, 737 (2021) (Thomas, J., dissenting from denial of certiorari).

532 Indeed, President Trump prevailed in a small minority of his lawsuits challenging the 2020 election. See Russell Wheeler, *Trump’s Judicial Campaign to Upend the 2020 Election: A Failure, but not a Wipe-Out*, BROOKINGS INST. (Nov. 30, 2021), <https://www.brookings.edu/articles/trumps-judicial-campaign-to-upend-the-2020-election-a-failure-but-not-a-wipe-out>.

533 See CLAPMAN, *supra* note 468, at 6.

534 See 28 U.S.C. § 2284.

535 See Michael E. Solimine & James L. Walker, *The Strange Career of the Three-Judge District Court: Federalism and Civil Rights, 1954–76*, 72 CASE W. RES. L. REV. 909, 914–16 (2022).

536 See *id.* at 921–22.

537 See DAN GREENBURG ET AL., INST. FOR FREE SPEECH, ANTI-SLAPP STATUTES: A REPORT CARD 3 (Oct. 2023).

538 See *id.* at 4–5.

recovery of legal costs and fees, thus providing a measure of deterrence for those considering filing such frivolous lawsuits.<sup>539</sup> The Task Force recommends that all states adopt anti-SLAPP statutes to protect against frivolous election-related lawsuits designed to undermine confidence in election results.

The Task Force recognizes that, while anti-SLAPP statutes offer a powerful tool to dismiss meritless election-related lawsuits at an early stage, their practical limitations must be considered. As a result, the Task Force also recommends that courts consider the imposition of attorneys' fees or judicial sanctions when judges determine that a lawsuit was frivolous, unfounded, or filed in bad faith.

This approach is not novel. Courts already have the authority to impose such penalties in a variety of contexts—most notably under Rule 11 of the Federal Rules of Civil Procedure, which permits sanctions for filings that lack legal merit or are intended to harass.<sup>540</sup> Analogous provisions exist in many state courts. New Jersey's Frivolous Litigation Act and Rule 1:4-8 of the state's Rules of Court are prime examples of mechanisms that state courts can adopt to address meritless claims.<sup>541</sup> Similarly, New York's Uniform Rule 130-1.1 vests the court with discretion to award attorneys' fees and sanctions in response to frivolous conduct.<sup>542</sup> Courts have already used these sanctions in

the realm of civil litigation to deter abusive litigation tactics and compensate prevailing parties for the cost of defending against baseless claims.<sup>543</sup>

Applying this framework to election-related litigation would serve as a deterrent against lawsuits aimed primarily at casting doubt on legitimate electoral outcomes. Courts can help protect the integrity of the electoral process without chilling legitimate legal claims by signaling that bad-faith legal challenges may carry financial consequences for the attorneys and parties involved. In all, fee-shifting and judicial sanctions provide a well-established and potentially more adaptable means of curbing frivolous election-related lawsuits.

The ABA has conducted programming to help judges navigate the rise in election law litigation.<sup>544</sup> The Task Force urges the ABA Judicial Division to continue efforts to examine the trends and drivers of election-related lawsuits and explore policies, practices, and laws that will help courts respond to concerns over frivolous lawsuits without infringing the fundamental right of access to the judicial system.

<sup>539</sup> See *id.*

<sup>540</sup> See FED. R. CIV. P. 11.

<sup>541</sup> See N.J. REV. STAT. § 2A:15-59.1 (2022); N.J. CT. R. 1:4-8. See also Seth M. Rosenstein, Fighting Back Against Frivolous Lawsuits and Meritless Claims, ANSELL.L., <https://ansell.law/fighting-back-against-frivolous-lawsuits-and-meritless-claims/> (last visited July 21, 2025).

<sup>542</sup> See N.Y. COMP. CODES R. & REGS. tit. 22, § 130-1.1 (1987).

<sup>543</sup> See, e.g., Citigroup Global Markets, Inc. v. Fiorilla, 2018 NY Slip Op. 31919(U)

<sup>544</sup> See *U.S. courts prepare for increase in election lawsuits*, ABA News & Insights (Oct. 28, 2024), <https://www.americanbar.org/news/abanews/aba-news-archives/2024/10/courts-prepare-for-election-lawsuits/>.



## K. Enhance Law School Training on our Democracy and Rule of Law

The Task Force endorses the [June 18, 2024, letter](#) signed by over 100 law school deans, committing to a greater focus on the rule of law in law school courses and other offerings. The goal should be to train the next generation of lawyers to sustain our constitutional democracy and the rule of law.

### PROBLEM STATEMENT

Lawyers play a critical role in upholding the rule of law and sustaining America's constitutional democracy. At a time when the judiciary, democratic norms, and independent institutions of higher education are all under threat, law schools can play a critical role in promoting a greater focus on the rule of law for the next generation of lawyers. At the very least, law schools should prepare their students to make the difficult choices sometimes required to fulfill the oaths they take when admitted to the bar to uphold the Constitution and the rule of law.

### PROPOSED SOLUTIONS

Law schools can play a leading role in training lawyers to uphold the rule of law and our constitutional democracy and can host events that encourage the general public to engage in these important topics. As a number of law school deans pledged in their June 18, 2024, letter to all members of the legal profession,

training for the next generation of lawyers should include the following elements:

- Teaching students to uphold the highest standards of professionalism, which includes a duty to support our constitutional democracy and, per the Preamble to the Model Rules of Professional Conduct, to “further the public’s understanding of and confidence in the rule of law and the justice system;”
- Offering courses, workshops, and events that engage with the rule of law and democracy, and sharing teaching resources through a [new clearinghouse](#) that the American Bar Association has created;
- Teaching students to disagree respectfully and to engage across partisan and ideological divides;
- Encouraging students to support and defend the Constitution and the rule of law through clinical work, public education, and advocacy; and
- Supporting public education and events focused on the rule of law and the values of our constitutional democracy.

The Task Force endorses these commitments to enable the next generation of attorneys to participate in rebuilding respect for the rule of law and the American constitutional democracy.

## L. “Disagree Better”

Task Force member and former federal appellate Judge Thomas Griffith is a strong advocate for “Disagree Better,” an initiative

launched by Utah Governor Spencer Cox and Tennessee Governor Bill Lee in July 2023.<sup>545</sup> The essence of the “Disagree Better” initiative is to foster a culture of civic discourse grounded in mutual respect and constructive engagement. The objective is not merely to cultivate a more courteous or congenial populace—though such outcomes are beneficial—but rather to reframe disagreement as a pathway to problem-solving and policy making.<sup>546</sup> By promoting open and civilized dialogue over polarization, the initiative aspires to enable Americans to navigate conflict productively, thereby enhancing effective governance. As Governor Cox puts it:

*“I started Disagree Better because I’m deeply concerned at the division and hatred consuming the country. We’ll never make progress on important issues when each side thinks the other is the enemy. Politicians need to do better, but there is a role for everyone. There are practical steps, like service, we can all take to heal the divide. I hope the campaign inspires more Americans to discover the transformative power of volunteer service in their communities.”<sup>547</sup>*

The Task Force applauds “Disagree Better” and recommends similar initiatives within legislatures, town councils, bar associations, colleges and universities, high schools, churches, community groups, and beyond.

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<sup>545</sup> See *Disagree Better*, NAT’L GOVERNORS ASS’N, <https://www.nga.org/disagree-better/> (last visited July 21, 2025).

<sup>546</sup> *Id.*

<sup>547</sup> Press Release, Nat’l Governors Ass’n, Governors Cox and Lee Host Disagree Better Panel (May 14, 2024), <https://www.nga.org/news/press-releases/governors-cox-and-lee-host-disagree-better-panel/>.

## IV. Conclusion

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The Task Force hopes its work and the recommendations herein will foster and strengthen the Nation's timeless, non-partisan values of democracy and rule of law.

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