

# Fair Elections During a Crisis:

*Urgent Recommendations in Law, Media, Politics,  
and Tech to Advance the Legitimacy of, and the Public's  
Confidence in, the November 2020 U.S. Elections*

April 2020

AD HOC COMMITTEE FOR  
2020 ELECTION FAIRNESS AND LEGITIMACY

## UCI Law

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LAW ★ POLITICS ★ MEDIA ★ TECH

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## Executive Summary

Even before the worldwide COVID-19 pandemic arrived in the United States, close observers of American democracy worried about the public's faith and confidence in the results of the upcoming November 2020 U.S. elections. Although a decade ago concerns about peaceful transitions of power were less common, Americans can no longer take for granted that election losers will concede a closely-fought election after election authorities (or courts) have declared a winner.

Current American politics feature severe hyperpolarization and an increasingly partisan media and social media environment. Mistrust is high. It is harder for voters to get reliable political information. Incendiary rhetoric about rigged or stolen elections is on the rise, and unsubstantiated claims of rigged elections find a receptive audience especially among those who are on the losing end of the election. American elections are highly decentralized, leaving pockets of weak election administration which can further undermine voter confidence in the process. The COVID-19 pandemic, which hit the United States hard beginning in March 2020, has only exacerbated concerns about the fairness and integrity of the 2020 elections.

The reasons for growing voter concern about the fairness and legitimacy of the U.S. election process are multifaceted, raising issues in law, media, politics and norms, and tech. This means that solutions to bolster American confidence in the fairness and accuracy of the elections must be multifaceted as well.

Recognizing the need for multifaceted solutions to the issue of the legitimacy and acceptance of fair election results in the United States, Richard L. Hasen, Chancellor's Professor of Law and Political Science at UC Irvine, convened both a conference and an ad hoc committee made up of a diverse group of leading scholars and leaders to tackle this issue from an interdisciplinary perspective. After public meetings and further online deliberations, this Committee makes the following fourteen recommendations for *immediate* change that should be implemented to increase voter confidence in the fairness and legitimacy of the 2020 elections. These recommendations listed below call for specific action from: journalists and editors deciding on headlines, what, and how to cover the election up to and including the election night itself; tech companies in the fray; legislators from federal to state to local levels; and nonprofits, citizens, and social media influencers:



April 7, 2020 Wisconsin Election: Linda Anne Valentino, who is immunocompromised, casts her vote at the Wilmot Fire Station after the absentee ballot she requested mid-March never arrived. (Kenosha News/Jill Tatge Rozell – Reprinted with permission)

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## Legal Changes for 2020

**Recommendation 1:** States should adopt reforms to improve the absentee ballot and provisional ballot processes—both in terms of access and security. In particular, states should reduce the extent to which the counting of such ballots might be subject to counting delays that could cause significant shifts in vote margins after in-precinct returns are reported on election night. States should provide transparent information about absentee and provisional ballot counting and the number of ballots remaining to be counted.

**Recommendation 2:** States should develop or revise election emergency plans well in advance of the elections so that they are robustly able to handle foreseeable contingencies, including the new threat to the November 2020 elections posed by COVID-19. These guidelines should provide generous opportunities for eligible voters to safely and securely cast ballots.

**Recommendation 3:** States should modify election procedures as necessary to deal with the rise of COVID-19. Having a diversity of avenues for voting—in-person, absentee, curbside, on-site at hospitals and other such facilities—enhances the stability of the system, maximizing the likelihood that elections may continue despite whatever unexpected threat emerges. Online return of ballots should not be contemplated for the November 2020 elections. States should take steps to protect the transmission and accurate counting of the expected increase in the number of absentee ballots.

**Recommendation 4:** The community of election law scholars should develop a non-partisan set of protocols for how best to resolve, consistent with rule-of-law and constitutional principles, vote-counting disputes that might render uncertain the outcome of the presidential election, including protocols for resolving interpretative ambiguities concerning the Electoral Count Act insofar as it governs the role of Congress in receiving and counting Electoral College votes from the states.

## Media Changes for 2020

**Recommendation 5:** Media organizations should engage in a public information effort to provide voters with accurate information about the process by which election officials count votes and determine election winners. The public education effort should include a simple citizen’s guide to election coverage and a one-stop shop for online information about election processes and outcomes. This information should be translated into as many languages as possible.

**Recommendation 6:** Nonprofit organizations should facilitate journalistic training and coverage planning to help reporters and media outlets appropriately set expectations about the timing of election results and election procedures before the election and to accurately report on events as they develop. It is especially important for the media to convey to the public the idea that, given an expected increase in absentee ballot voting in the November 2020 elections, delays in election reporting are to be expected, not evidence of fraud, and that the 2020 presidential election may be “too early to call” until days after election day.

## Politics and Norms Changes for 2020

**Recommendation 7:** COVID-19 is going to increase the costs of elections as more voters, when they can, will choose to vote-by-mail and as safety precautions increase the costs of in-person voting. Congress and states should provide adequate funding to deal with the increased election costs that will be associated with COVID-19.

**Recommendation 8:** Nonprofit organizations and foundations should establish an independent bipartisan Election Crisis Commission well before the elections to affirm a set of core principles that should govern elections and warn against the erosion of core democratic norms. The Commission should encourage candidates and other political actors to embrace those principles, and it should weigh in on post-election disputes, if necessary, to resolve them consistent with those principles.

**Recommendation 9:** Election officials, government leaders, and others should embrace the democratic principle that all eligible voters, and only eligible voters, should be able to register and vote in a fair election with accurate vote-counting. Losers of fair elections should quickly accept election results once they are final. Elections, even those conducted during a crisis or emergency such as COVID-19, should be resolved consistent with fair election principles, recognizing and resolving disputes in good faith.

**Recommendation 10:** Leaders in social media, election officials, government leaders, and others should promote the equal protection voting norm, enshrined in the Voting Rights Act and the Fourteenth and Fifteenth Amendments, which ban targeting voters based on race or ethnicity in an effort to suppress or dilute their vote. Social media companies have a unique responsibility to prevent the use of their platforms for efforts that would suppress votes through the spread of misinformation about voting.

## Tech Changes for 2020

**Recommendation 11:** To the extent possible, states should use paper ballots or electronic machinery that produces a voter-verifiable record of the voter's choices, in the November 2020 elections to ensure the integrity of the outcome. States should audit election results, and work towards incorporating risk-limiting audits.

**Recommendation 12:** Election administrators should create a resilient election infrastructure to deal with the unexpected, including complications related to COVID-19. Resiliency measures include having enough ballots on hand to accommodate high voter turnout, redundant election machinery, and paper copies of e-pollbook voter registration records.

**Recommendation 13:** Election officials should obtain a .gov domain for an authenticated internet presence. They should secure "verified" status for their official accounts on social media platforms.

**Recommendation 14:** State election officials should monitor and audit state voter registration databases.

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## Acknowledgements

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A number of speakers at the first public day of the conference, held February 28, 2020, provided valuable insight and wisdom for this Committee and the public. Thanks for the participation of the Honorable Jocelyn Benson, Patty Hansen, Jessica Huseman, Neal Kelley, the Honorable Frank LaRose, Noah Praetz, Amy Wilentz, and Kim Zetter. None of these conference speakers participated in the Committee deliberations or in the drafting of this report.

Bruce Cain, Ned Foley, Liz Howard, and Brendan Nyhan served admirably as subgroup leaders on this Committee. Jonathan Cervas, Nathan Cisneros, Hannah Green, and Kennedy Holmes served as steady scribes for the Committee's deliberations at its private meetings. Hannah Bartlett and Kayley Berger provided terrific additional research assistance in support of this Committee's work.

This Committee offers enormous thanks to everyone who contributed to this effort to support a vibrant and well-functioning American election system.



Voters waiting to cast ballots at Washington High School, in Milwaukee, Wisconsin, April 7, 2020. (AP Photo/Morry Gash—Reprinted with permission)

## Background

### *The State of U.S. Elections and Voters' Confidence in Election Results*

Even before the worldwide COVID-19 pandemic arrived in the United States, close observers of American democracy worried about the public's faith and confidence in the results of the upcoming November 2020 U.S. elections. Although a decade ago concerns about peaceful transitions of power were less common, Americans can no longer take for granted that election losers will concede a closely-fought election after election authorities (or courts) have declared a winner.

Current American politics feature severe hyperpolarization<sup>1</sup> and an increasingly partisan media and social media environment.<sup>2</sup> Mistrust is high. Incendiary rhetoric about rigged or stolen elections is on the rise, and unsubstantiated claims of rigged elections find a receptive audience especially among those who are on the losing end of elections.<sup>3</sup> Election lawsuits have nearly tripled in the post-2000 period compared to the period before 2000, in part because of poorly drafted election laws and unclear or unfair election procedures.<sup>4</sup>

Unlike nationalized elections using uniform procedures and machinery as exists in most other advanced democracies, elections in the United States are administered at the local level, meaning up to 10,000 different electoral jurisdictions must conduct a single election for President ending on a single day in November.<sup>5</sup> Most election administrators in the United States do an admirable job often under severe budget constraints, but pockets of election administrator incompetence and changes in election rules and technology contribute to concerns that

the November 2020 elections will not be run in a fair way and will not be perceived to have produced a clear winner and a legitimate result. For example, the 2020 Iowa Democratic caucus (which was run by the state party, not Iowa election officials) turned into a debacle, with the party unable to produce results on election night due to changes in election reporting procedures and problems with voting technology.<sup>6</sup>

Meanwhile, it is harder for voters to get reliable political information. Technological changes, including the rise of social media, have both undermined traditional sources of reliable information for voters and enabled the spread of misinformation about elections, campaigns, politicians, and the state of the world more generally.<sup>7</sup> In the 2016 U.S. elections, Russian government actors attempted to sow discord via social media, steal and release damaging political information, and probe state voter registration databases, further giving voters reasons to doubt the fairness and security of the U.S. election system.<sup>8</sup>

It is no wonder that recent polling has found that a substantial share of the U.S. population is worried that the 2020 general election will not be conducted fairly, and it may be susceptible to foreign influence. In a PBS/NPR/Marist poll conducted in January 2020 before the COVID-19 pandemic hit, “[f]orty-one percent of those surveyed said they believed the U.S. is not very prepared or not prepared at all to keep November's election safe and secure.”<sup>9</sup> Similarly, a Gallup World Poll found that “[f]our in 10 Americans (40%) interviewed in 2019 said they are confident in the honesty of elections in the country, while the majority (59%) said they are not.”<sup>10</sup>

The COVID-19 pandemic, which hit the United States hard beginning in March 2020, has only exacerbated concerns about the fairness

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and integrity of the 2020 elections. Ohio postponed its primary the day before it was to take place because of public health concerns,<sup>11</sup> and Wisconsin officials fought about whether its April 2020 election should be delayed, with split opinions from the United States Supreme Court and the Wisconsin Supreme Court coming just hours before polls were scheduled to open.<sup>12</sup> A number of other states postponed their primaries, moving them into late spring and summer. Some states that went ahead with their primaries saw polling place closures, missing poll workers and election judges, and concerns about proper sanitary conditions at in-person voting sites.<sup>13</sup>



(Flickr/User C x 2)

To cope with COVID-19, some states relaxed their rules to allow for the easier casting of absentee ballots. But absentee ballot rejection rates are higher than in-person ballots<sup>14</sup> and absentee ballot rejection rates potentially have a racially disparate effect on minority voters.<sup>15</sup> Further, although in-person voter fraud is rare,<sup>16</sup> absentee ballot tampering is a legitimate concern because ballots are out of the control of election officials and observers.

Congress so far has allocated \$400 million to states for increased costs associated with running an election during the COVID-19 pandemic;<sup>17</sup> estimates of the full additional

costs range from \$1.5 to \$2 billion.<sup>18</sup> We have nonetheless witnessed an emerging partisan divide over whether increased use of the vote-by-mail option should be encouraged for the 2020 elections,<sup>19</sup> and seen new concerns arise about the financial viability of the United States Postal Service, which delivers vote-by-mail ballots. Further, it is easy to imagine election misinformation related to the virus—such as false information about the safety of voting machines, polling place closures, or election delays—confusing voters and potentially undermining voters' confidence that a fair election may be conducted in November 2020. Although we do not know what the conditions on the ground will look like during the fall voting season, it appears that virus-related concerns will put extra strain on already stretched election administrators seeking to conduct elections in a fair, safe, and inclusive manner and in a way that will lead American voters to have confidence in the vote count.

## *The Need for Multifaceted Solutions: Law, Media, Politics and Norms, and Tech*

The reasons for growing voter concern about the fairness and legitimacy of the U.S. election process are multifaceted, raising issues in law, media, politics and norms, and tech. This means that solutions to bolster American confidence in the fairness and accuracy of the elections must be multifaceted as well.

For example, both Michigan and Pennsylvania recently changed election procedures so that anyone who wishes to vote-by-mail in the November 2020 election may do so without an excuse.<sup>20</sup> Even before the rise of COVID-19, election officials had been bracing for a flood of new vote-by-mail ballot requests and absentee ballots to

process.<sup>21</sup> Such processing takes additional resources and time, and raises questions especially about the ability of large cities in these states to process absentee ballots fairly and expeditiously. Due to these changes, the winner of the presidential election may not be known on election night, and it is possible that one candidate could be ahead on election night in these states—perhaps even claiming victory and casting doubt over the ballots yet to be counted—while a week or so later a different candidate is declared the winner.<sup>22</sup> There could then be competing candidates claiming victory.

Minimizing the chances of such a problem scenario requires changes before the election in law, media, politics and norms, and tech. Legal changes for the processing of absentee ballot envelopes and clarification of the rules for dealing with competing slates of electors sent to Congress might be necessary. The media should educate the public, well before election day, about the possibility of delays in vote counting and how such delays do not necessarily mean that anything nefarious is being done with ballots. Elected officials should ensure that local election officials have adequate resources and competent leadership to process an expected flood of absentee ballots. Political leaders should come together and speak out against candidates or groups who declare victory early or raise false claims about ballot tampering. Social media companies need to take action to counter misinformation about voting procedures and the fairness of the vote count.

Each of these steps can help minimize the chances of an election meltdown in the November 2020 elections. The more steps that can be taken from disparate areas of American society and culture, the lower the risk of a significant portion of the American public viewing the 2020 elections as illegitimate.

## *The Work of the Ad Hoc Committee*

Recognizing the need for multifaceted solutions to the issue of the legitimacy and acceptance of fair election results in the United States, Richard L. Hasen, Chancellor's Professor of Law and Political Science at the University of California, Irvine, convened both a conference and an ad hoc Committee to tackle these questions from an interdisciplinary and diverse perspective. (Appendix II lists brief biographies of members of the Committee.) With generous funding from the Democracy Fund, the Hewlett Foundation, and the Mertz Gilmore Foundation, the University of California, Irvine, School of Law, in conjunction with the University of California, Irvine's Jack W. Peltason Center for the Study of Democracy, held a conference on February 28, 2020, entitled: "Can American Democracy Survive the 2020 Elections?"<sup>23</sup> Participants at the conference included members of the Committee, as well as election administrators, journalists, and the Secretaries of State of Ohio (Frank LaRose) and Michigan (Jocelyn Benson).

On February 29, 2020, members of the Committee (but not the election administrators, journalists, and Secretaries of State) met for a private meeting, facilitated by Suzanne Rotondo, dividing into subgroups in law, media, politics and norms, and tech. The charge to each group was the same: come together with 3-4 concrete suggestions for steps that could be taken in advance of the 2020 elections to ensure the legitimacy of, and voter confidence in, the November 2020 U.S. elections. The subgroups came back together as a single ad hoc committee to exchange ideas and feedback.

Members of the Committee recognized that there were many medium- to long-term

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solutions that might be desirable for improving the conduct of elections in the United States. Many other groups and commissions have issued detailed reports for doing so, with some focused on particular issues such as election security or voting during emergencies. (Appendix I of this report lists and links to some of those other reports.) The Committee limited itself to considering improvements in law, media, politics and norms, and tech that could be accomplished before the 2020 elections, especially in light of the COVID-19 pandemic.

Following the meeting, the four subgroups wrote up their draft recommendations, and Professor Hasen then integrated the four subgroup reports into a larger draft report. Committee members then gave feedback on the draft report. The final recommendations in each of the four areas are set out in the resulting report.

This report of the Ad Hoc Committee for 2020 Election Fairness and Legitimacy represents the personal views of its members in their personal capacities. Members do not speak for their employers, organizations, or funders.



## Recommendations

### Legal Changes for 2020

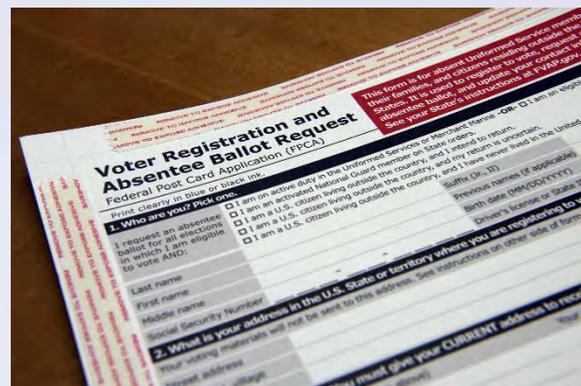
**Recommendation 1:** States should adopt reforms to improve the absentee ballot and provisional ballot processes both in terms of access and security. In particular, states should reduce the extent to which the counting of such ballots might be subjected to counting delays that could cause significant shifts in vote margins after in precinct returns are reported on election night. States should provide transparent information about absentee and provisional ballot counting and the number of ballots remaining to be counted.

States should adopt reforms to improve the absentee ballot and provisional ballot processes. To begin with, delays in reporting election results should be limited and the process for reporting the post-election daily updates of newly counted ballots should be clear, public, and transparent.

Several trends in the ways that states administer elections have led to a longer time to count ballots, report results, and certify election results. The longer time to count, report, and certify results is particularly problematic for the tight timeline of a presidential election. Some states' anticipated timeline leaves them dangerously close to the time that presidential electors cast their ballots and even closer to the six-day safe harbor deadline that precedes it, leaving little time for recounts and contests to be resolved in time.<sup>24</sup> More importantly, the delay in counting, reporting, and certifying invites a distrust of the election process by some who do not understand why there are counting delays at all and are particularly distrustful of the daily changes in

election totals after the initial election night count. Therefore, it is imperative that states ensure that all eligible voters will have ample time to receive and cast a ballot that will be counted.

To the extent permitted by each state's laws, election officials should also amend regulations or change policies to allow the processing of absentee ballots as early as possible.<sup>25</sup> They should complete all steps in the tabulation process except for the actual determination of the number of votes each candidate received so that as many ballots as possible are counted by the end of election night. Particularly, if an unusually large number of absentee ballots are cast as a result of COVID-19, delays in processing them increases the likelihood that the candidate who is the apparent winner in a state on election night (with "100% of precincts reporting") will not ultimately be declared the winner there. Last-minute shifts in the outcome of a state's election due to late-counted ballots, even when the process is completely fair and honest, can substantially undermine public confidence in the integrity of the process and accuracy of the outcome.



The increase in mail and provisional ballots combined with policies in particular states are two of the chief drivers of a longer counting and certification timeline. Worries about running an election in the time of

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COVID-19 may increase both types of ballots in the November 2020 elections.

States should examine mail ballots as soon as possible after they arrive to identify potential problems with mail ballot envelopes including signatures and missing voter information. For ballots that lack required information, where state law or a court decision requires, states should provide voters an opportunity to 'cure' their ballots by providing the missing information. For ballots with requisite envelope information, states should begin processing those ballots before election day, opening envelopes, preparing the ballots to be scanned, and generally moving ballots through the process for everything short of the final tabulation.

To clarify the vote counting process and boost the confidence of skeptical voters, states should institute a two-part process.

1. Prior to the election, states should publish clear, plain language explanations of their counting process and indicate why votes may not all be counted on election night and how the daily post-election process for counting and reporting ballots takes place. In lieu of or in addition to this state process, outside groups might also publish such guidance before the election, especially in competitive states likely to see election reporting delays.
2. Immediately following the election, states should publish regular updates on the counting process, the likely remaining outstanding ballots, and a detailed, at least daily, accounting of the sources of newly counted ballots.

State election officials should publish what they know about outstanding ballots. This could include states being clear about the difference between percentage of precincts

reporting and percentage of outstanding ballots. They should try to identify, as best as possible, the number of provisional ballots outstanding that might be counted and the universe of outstanding mail ballots (both the total number of mail ballots issued vs. those returned and the estimated likely return percentage).<sup>26</sup> Private groups may seek to supplement state reporting.

**Recommendation 2:** States should develop or revise election emergency plans well in advance of the elections so that they are robustly able to handle foreseeable contingencies, including the new threat to the November 2020 elections posed by COVID 19. These guidelines should provide generous opportunities for eligible voters to safely and securely cast ballots.

As the rapid spread of COVID-19 demonstrates, elections may be disrupted by a wide range of unexpected calamities ranging from natural disasters, such as hurricanes and earthquakes, to public health crises and terrorist attacks. In the short run, election officials must be aware of the full extent of their legal discretion and authority under the laws that ordinarily govern elections to mitigate such crises' impact. They should also develop contingency plans to exercise extraordinary authority under their jurisdiction's election emergency statutes, if any, as well as more general state-of-emergency laws. Over the longer term, and ideally before the November 2020 elections, states should adopt election emergency statutes that grant the appropriate political or election officials the power necessary to respond to election emergencies in order to preserve voting rights; ensure fair and accurate election outcomes; and deter and prevent fraud,

mistake, and other irregularities, even in unexpected and difficult circumstances.<sup>27</sup>

Specifically, with regard to the threat posed by COVID-19, election officials in most jurisdictions can generally take steps to safely facilitate voting in a variety of ways. To the extent they have discretion, they can increase the number of polling places and decline to consolidate polling places. By minimizing the number of voters assigned to each location, election officials can reduce crowd size, shorten lines, and promote social distancing. For jurisdictions that conduct elections at larger, countywide vote centers, they can consider having a separate area in each location for self-identified older, vulnerable, or immune-compromised voters, helping to reduce their risk of exposure.

States should follow guidance from the Centers for Disease Control and Prevention (CDC) about conducting safe public activities. If necessary, in November 2020, voters should be required to line up outside the polling place, rather than indoors, and poll workers should use tape to mark off six-foot intervals so that voters do not congregate too closely together while waiting. Each polling place should be well-stocked with masks and gloves for poll workers, as well as hand sanitizer for voters to use upon entering and exiting. Poll workers should remain six feet away from voters and minimize direct physical contact. And all equipment—including touchscreens, pens, and voting booths—should be disinfected following CDC guidelines.

Regardless of the steps taken to reduce the risks of in-person voting, however, election officials should also take steps to expand alternate avenues for voting. Absentee voting will play an even greater role in the 2020 election than it has in previous years. Election officials should proactively make it easier for voters to obtain absentee ballots.



(Flickr/User ep\_jhu)

For jurisdictions that have excuse-based absentee voting, either the chief election officer or attorney general should make an announcement as early as possible that the risks associated with COVID-19 categorically constitute “cause” for casting an absentee ballot. Appropriate state officials should act as early in the process as possible to minimize any confusion or uncertainty about people’s eligibility to cast absentee ballots. And, perhaps most importantly, election officials should ensure that they have sufficient resources to conduct an election based primarily on absentee ballots. They should ensure they have sufficient paper ballots to mail to each voter in the jurisdiction, if necessary, along with the equipment necessary to process and tabulate such an unusually large number of votes. (See **Recommendation 12.**)

Election officials should also expand alternate means of voting to the full extent permitted by state law and consistent with sound and secure election administration practices. Many jurisdictions allow election officials to bring ballots to senior citizens or patients confined to hospitals, assisted living facilities, or other such places. In some other places, curbside voting is available to certain voters. Again, either the chief election official or the attorney general should issue a formal interpretation of these provisions as early as

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possible in the election cycle to construe them as broadly as reasonably possible. States should expand the number of different venues available to voters to cast ballots, and election officials need as much advance notice as possible to ensure they are able to fully implement these alternatives. Even now, election officials should consider reaching out to facilities that squarely fall within such statutes to discuss ways of providing their residents with an opportunity to vote while maintaining medically safe practices and procedures.

As states plan for November, now is the time for election administrators to procure supplies and arrange contracts for printing and other election equipment and support. Supply chains may continue to be disrupted because of the pandemic, and planning that waits until the fall may well be too late.

**Recommendation 3:** States should modify election procedures as necessary to deal with the rise of COVID 19. Having a diversity of avenues for voting in person, absentee, curbside, on site at hospitals and other such facilities enhances the stability of the system, maximizing the likelihood that elections may continue despite whatever unexpected threat emerges. Online return of ballots should not be contemplated for the November 2020 elections. States should take steps to protect the transmission and accurate counting of the expected increase in the number of absentee ballots.

Some jurisdictions have election emergency laws that grant election officials additional powers in the context of certain disasters that impact impending or ongoing elections. Even in jurisdictions that lack these emergency-specific statutes, many states

more broadly allow the governor to suspend state statutes or deadlines during a declared emergency. Broadly speaking, a state may respond to an election emergency in three ways. Election modifications allow election officials to change rules, suspend requirements, or extend deadlines as necessary to respond to an emergency. Election postponements allow election officials to reschedule an election that is disrupted by a major unexpected catastrophe (such as the 9/11 attacks) for another day, typically within another week or two. Election cancellations occur when widespread evacuations or devastation make it impossible to conduct the election, and an entirely new election must be held several weeks or months later.

Given the unique context and both constitutional and federal statutory constraints that apply to presidential elections, governors and election officials should contemplate *only* election modifications as a response to COVID-19. In exercising power under election emergency laws or more general state-of-emergency laws to modify or suspend certain requirements, state officials must balance two equally important considerations. On the one hand, they must ensure voters are given adequate opportunity to vote despite the unique challenges posed by COVID-19. On the other hand, they must ensure they do not suspend important checks on the integrity of the process that assure voters that their votes will not be improperly diluted or nullified by votes from ineligible people, illegally cast votes, or even fraudulent votes. This is especially true for an election in which a disproportionately higher percentage of absentee votes will be cast since, historically, when election fraud has occurred, it has more commonly involved absentee ballots.<sup>28</sup>

Likewise, states should not allow the return of completed absentee ballots to elected officials via e-mail or other online means. Most experts agree that online voting is not securable with any currently known technology.<sup>29</sup> And given the ongoing threat of foreign hackers seeking to manipulate election results, allowing online transmission of ballots creates too great a risk of facilitating such intrusions. Rather than such potentially problematic measures, election officials and governors should instead consider suspending limitations on eligibility to engage in curbside voting, notarization requirements for absentee ballots, and deadlines for requesting absentee ballots.

The unavoidable possibility of election emergencies underscores a key structural requirement for any robust electoral system: a diversity of methods for voting. Focusing primarily or exclusively on a single mechanism for voting, such as vote-by-mail, exposes the electoral process to tremendous systemic risk. Another anthrax scare, a postal strike, widespread sickness of postal workers, problems with the postal service's financial operations, or destruction of key postal facilities could cripple a jurisdiction's ability to conduct a mail-based election. Having a diversity of avenues for voting—in-person, absentee, curbside, on-site at hospitals and other such facilities—enhances the stability of the system, maximizing the likelihood that elections may continue despite whatever unexpected threat emerges.



**Recommendation 4:** The community of election law scholars should develop a non-partisan set of protocols for how best to resolve, consistent with rule of law and constitutional principles, vote counting disputes that might render uncertain the outcome of the presidential election, including protocols for resolving interpretative ambiguities concerning the Electoral Count Act insofar as it governs the role of Congress in receiving and counting Electoral College votes from the states.

Even before the arrival of the COVID-19 pandemic, election law scholars were concerned about the elevated risk that the 2020 presidential election would end up disputed. Political conditions—including the aftermath of impeachment, the stability of voter preferences in the contemporary era of hyperpolarization, and the likelihood that the election would be closely contested—meant that small margins in pivotal states would be prone to disputation. Add to this developments in electoral practices—including the risk that more votes would be counted, not on election night, but in the ensuing process leading to certification of results—the consequence was a significantly increased probability that the reported result of the presidential election would be subject to litigation and related challenges, rather than acceptance in a conventional concession speech.

COVID-19 only exacerbates this problem, elevating even further the risk that the result of the presidential election will be disputed. Because many more ballots are likely to be cast by mail, and because mailed ballots are much more prone to disputation, basic math indicates that there is now an even greater chance that vote tallies will be contested. Any hope of settling the election in a way

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that the losing candidate accepts a final result requires clear rules for determining how any such vote-counting disputes must be resolved.

We recommend that election law scholars, to the extent possible, develop a non-partisan set of protocols on how potential vote-counting disputes should be resolved. (This work should be done in coordination with the bipartisan Election Crisis Commission described in **Recommendation 8**.) These protocols should be developed in advance of the election itself, behind the proverbial “veil of ignorance,” so that the non-partisan recommendations are based on general principles and not tailored to advantage any particular candidate or party. These protocols could build on the work of the American Law Institute, which in its Principles of Law project on Election Administration, addressed some of the issues that might be subject to vote-counting disputes.<sup>30</sup> But additional protocols could extend the same type of work to new circumstances that have arisen since completion of that ALI project, including new issues that might arise specifically because of the effect of COVID-19 on the voting process this fall.

Moreover, scholarship both old and new has recognized the inadequacies of the Electoral Count Act<sup>31</sup> in the event that a disputed presidential election reaches the joint session of Congress required by the Twelfth Amendment for the receiving and counting of Electoral College votes from the states.<sup>32</sup> The statute is a morass of ambiguity, which is the exact opposite of what is required in this situation. While it would be desirable for Congress to amend the statute to eliminate those ambiguities, on the assumption that Congress will fail to do that before the November 2020 election, the next best thing would be a scholarly consensus on how such ambiguities should be resolved from a non-

partisan perspective, without any particular electoral dispute at stake in the moment.

Thus, there is a particular need for scholarly protocols for resolving disputed elections with a focus on the possible circumstances that could arise concerning opposite interpretations of the Electoral Count Act. These circumstances could be envisioned even before the COVID-19 crisis occurred. But they are even easier to imagine given the occurrence of this pandemic. For example, because of the greater need to rely on absentee ballots, and because of the greater possibility of litigating over absentee ballots than conventional in-precinct votes, one can readily imagine a fight in Congress over the counting of absentee ballots from a state that is pivotal to determining the winner of the Electoral College.

No one is so naïve to think that a set of scholarly protocols on how such interpretative ambiguities should be resolved would eliminate the risk of congressional contestation over these issues. Nonetheless, a strong scholarly consensus adopted in advance of election day on the better way to settle these ambiguities can help reduce the extent to which such congressional contestation could spin out of control, leading to the ultimate crisis of a still-disputed election at noon on January 20, when the winner is supposed to be inaugurated for the beginning of the new presidential term. Anything that would reduce the chances of that happening, even if only marginally so, would be advantageous. Hence, we call for non-partisan scholarly protocols to give particular attention to these Electoral Count Act ambiguities.<sup>33</sup>

## Media Changes for 2020

**Recommendation 5:** Media organizations should engage in a public information effort to provide voters with accurate information about the process by which election officials count votes and determine the election winners. The public education effort should include a simple citizen's guide to election coverage and a one stop shop for online information about election processes and outcomes. This information should be translated into as many languages as possible.

The legitimacy of the November 2020 elections depends on public understanding of and confidence in the electoral process. We therefore recommend (1) additional public education to provide information about the process by which votes are counted and the election winner is determined, and (2) journalistic training and coverage planning to help reporters and media outlets appropriately set expectations before the election and to accurately report on events as they develop. These efforts are likely to provide the strongest defense against misinformation about the electoral process or false allegations of widespread voter fraud, which media outlets should of course also seek to avoid amplifying.

We propose two resources for promoting public understanding of elections and greater resistance to possible misinformation about election fraud: a summary of key facts about election processes and returns that is optimized for sharing on social media, and an authoritative website that aggregates key facts about how elections work that could be promoted by technology platform companies as a resource for voters.

## *A citizen's guide to breaking news for election processes/returns*

The WNYC show *On the Media* has created an image (reproduced in Figure 1) called “The Breaking News Consumer’s Handbook” that is frequently shared in the aftermath of events such as school shootings. The image reminds news consumers about the error-prone nature of breaking news coverage and recommends some simple rules people can follow to avoid falling victim to—and spreading—misinformation. This approach was so effective that the show produced related versions about issues ranging from “fake news” to infectious diseases to the Mueller investigation.

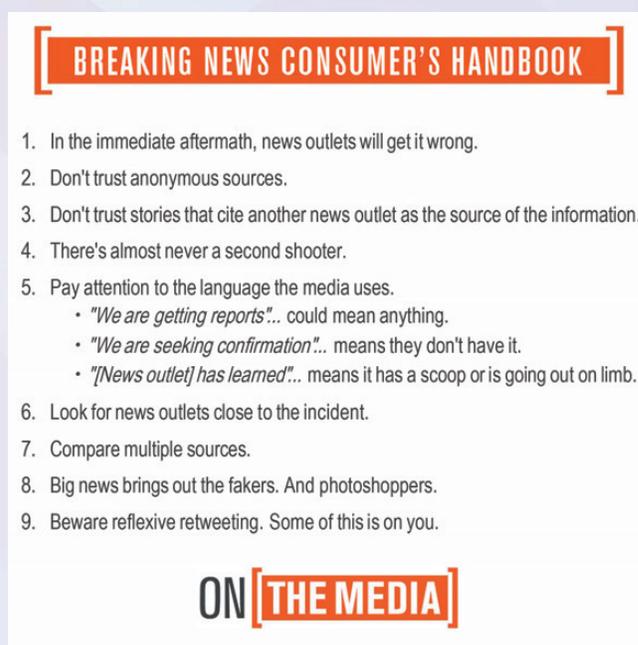


Figure 1<sup>34</sup>

We recommend that the show or others produce a new version about the coverage of election results. A new version could be widely shared in the period before the election, reaching key influencers and media figures. It could then be employed up to and during the vote count itself, aiding citizens, journalists, and public figures who want to provide more accurate information. A

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partnership with Univision or Telemundo to make a Spanish version would also be highly desirable. It should be translated into as many languages as possible for voters.



(Flickr/User Scott Beale/Laughing Squid)

## *A one-stop shop for online information about election processes and outcomes*

The decentralized American election process is difficult to understand, particularly given the variation in state election processes and the complications introduced by widespread vote-by-mail and absentee voting. Americans can of course visit the website of their Secretary of State to learn more about voting in their state, but these sites often fail to provide clearly accessible explanations of the election process and frequently rely on legalistic language. There is no authoritative website where people can go to learn about how elections are administered in this country, which may help to create an information vacuum in which misinformation can thrive.

To address this gap, we recommend the creation of a bipartisan election administration site modeled on the COVID-19 site of the CDC.<sup>35</sup> The goal of this site would be to create a resource that platforms could direct citizens to in the same way as they refer people to the CDC coronavirus website

when people search for information about COVID-19. We recommend that such a site not replicate existing state-specific sites; instead, it should provide accurate information in an accessible FAQ style, while sending people to Secretary of State websites for specific information about elections in their state. The site, which could be created by the Bipartisan Policy Center in conjunction with the National Association of Secretaries of State, the U.S. Election Assistance Commission, or the National Council of State Legislatures, should also include information about how to stay safe while voting either by voting by mail or maintaining social distancing during in-person voting.

**Recommendation 6:** Nonprofit organizations should facilitate journalistic training and coverage planning to help reporters and media outlets appropriately set expectations about the timing of election results and election procedures before the election and to accurately report on events as they develop. It is especially important for the media to convey to the public the idea that, given an expected increase in absentee ballot voting in the November 2020 elections, delays in election reporting are to be expected, not evidence of fraud, and that the 2020 presidential election may be “too early to call” until days after election day.

Direct public education is important, but the media remain the most important source of political news for most Americans. We therefore recommend providing resources and training to aid journalists in preparing for covering election results in a responsible and accurate manner. In addition, we offer a set of best practices for journalists to follow

in covering election results during the vote count.

## ***Preparing for election results coverage***

We recommend that the Bipartisan Policy Center, the MIT Election Lab, or other authoritative expert sources partner with journalist training experts and funders, such as the Poynter Institute, American Press Institute, or the Knight Foundation, to conduct trainings or convene conferences to help newsrooms prepare for their election night coverage. These meetings should cover the following topics:

- The expected timeline for counts and why the result is likely to remain unresolved on election night, especially as vote-by-mail becomes more widely used
- Why shifts in the vote margin over time are expected and not indicative of fraud
- The need to avoid amplifying unverified anecdotes that further misinformation about the electoral process or results
- Why the media should avoid forecast probabilities and report vote share estimates instead (particularly at the state level)

We also recommend that the Bipartisan Policy Center compile a vetted source list that consists of a bipartisan set of former election administrators and secretaries of state plus academic experts whom newsrooms can consult with about the process.

## ***Best practices for election night coverage***

Irresponsible media coverage risks endangering the perceived legitimacy of the election. News outlets need to prepare the public to understand a process that is unlikely to provide a quick resolution and whose results are likely to change as votes

are tallied. We offer the following best practices as recommendations to the media:

- Prepare to report the results as “too early to call;” emphasize the need for a careful count rather than reporting that the timeline reflects an institutional failure
- Explain more votes will be counted after all precincts report due to mail ballots
- Report estimates of expected votes outstanding or other information besides percentage of precincts reported (but beware of changes in those estimates, which may confuse people and create fears of fraud)
- Explain why shifts in vote margins are routine as counts of mail ballots are conducted and not indicative of fraud
- Avoid putting isolated events and unverified claims into live coverage (especially TV) but be prepared to debunk viral misinformation if it reaches large audiences or is amplified by national politicians or political figures
- Forecasts and exit poll projections are frequently incorrect; avoid emphasizing them for fear of affecting turnout or causing unfounded suspicions of fraud if they miss the mark
- Have election procedure experts on call to help inform reporters and editors

Journalists should report that vote counts continuing beyond election day are normal and that errors and delays are not necessarily indicators of nefarious intent. Opportunistic elites will seek to take advantage of this confusion, particularly if it can harm the standing of the side that is likely to win. Irresponsible coverage that amplifies such claims runs the risk of encouraging more fundamental challenges to accepting the outcome of the election itself, a compact that is at the very heart of democracy.

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## Politics and Norms Changes for 2020

**Recommendation 7:** COVID 19 is going to increase the costs of election as more voters, when they can, will choose to vote by mail and as safety precautions increase the costs of in person voting. Congress and states should provide adequate funding to deal with the increased election costs that will be associated with COVID 19.

While specific election administration responses to COVID-19 will vary across the country, the need for financial resources to fund these responses is shared among all election officials. The Bipartisan Policy Center estimates that election officials will require at least \$1.5 billion and the Brennan Center has estimated that election-related COVID-19 costs will exceed \$2 billion.<sup>36</sup> The most recent COVID-19 stimulus package, signed by President Trump on March 27, includes only \$400 million in elections funding.<sup>37</sup> This is simply not enough, and it is likely very unreasonable to expect counties or states to pick up the shortfall as they are likely facing significant dips in revenue. Congress should provide more elections funding or risk significant meltdowns on the road to November 2020. There is bipartisan agreement from election officials across the country that more funding is needed, now.

Specific proposals, recommendations, and considerations in response to COVID-19 have been published by many. The materials released by the Bipartisan Policy Center,<sup>38</sup> the Brennan Center for Justice,<sup>39</sup> the National Task Force on Election Crises,<sup>40</sup> and Nate Persily and Charles Stewart,<sup>41</sup> merit immediate attention by policy makers, election officials, and other interested parties as we barrel forward to the general election in the middle of a pandemic.

**Recommendation 8:** Nonprofit organizations and foundations should establish an independent bipartisan Election Crisis Commission well before the election to affirm a set of core principles that should govern elections and warn against the erosion of core democratic norms. The Commission should encourage candidates and other political actors to embrace those principles, and it should weigh in post election, if necessary, on resolution of election disputes consistent with those principles.

Nonprofit organizations and foundations should establish an Independent Election Crisis Commission before the 2020 general election to clarify and reaffirm the commitment to basic electoral norms and to think through some of the problems that could arise as a consequence of emergency contingencies of various sorts. The Commission should have national and state bipartisan representation. Initially, it should have a wide diversity of notable public figures and experts from diverse backgrounds, including former officials who have been elected to statewide or national office. It should also include as members or advisors subject matter experts from a variety of fields, including election administration, public health, civil rights, and democratic norms. The Commission should also include members from traditionally underrepresented groups, including racial, ethnic, and language minorities, and persons of differing abilities.

Before the election, the Commission would come together to affirm a set of core principles that should govern elections and warn against the erosion of core democratic norms. These norms include the idea that all candidates, parties, and political actors should accept the results of elections that

comply with principles of fundamental fairness and to use legal means to resolve election disputes. It also includes the principle set forth in the next recommendation, that all eligible voters, but only eligible voters, should be able to register and vote in a fair election with accurate vote-counting.

After the Commission adopts its set of principles, it should urge voters and groups, such as the National Association of Secretaries of State, to get commitments from politicians, other political actors, and election officials to pledge to adhere to these principles in the upcoming election for the sake of preserving system legitimacy and stability.

The Commission should remain available post-election in the event there are disputes over 2020 election results. In a post-election environment, the Commission should consider weighing in, as appropriate, on the conduct of the campaigns and other political actors in terms of the democratic norms that the Commission articulated at the first stage of its work.

The initial Commission work should be funded by an array of foundations, and efforts after the election might be directed into needed legislation to fill in gaps and problems that cannot be handled by voluntary efforts alone.



**Recommendation 9:** Election officials, government leaders, and others should embrace the democratic principle that all eligible voters, and only eligible voters, should be able to register and vote in a fair election with accurate vote counting. Losers of fair elections should quickly accept election results once they are final. Elections, even those conducted during a crisis or emergency such as COVID 19, should be resolved consistent with fair election principles, recognizing and resolving disputes in good faith.

Our core democratic commitment is to a system that accurately reveals the will of the people in all stages of voting and representation.<sup>42</sup> This can only happen if the electoral system fosters conditions and rules that do the following:

1. They enable voters to make informed choices (e.g. freedom of speech, association, and the press);
2. They encourage full and inclusive participation; and
3. They secure the process of casting and counting ballots from fraud and error.

Although laws govern the conduct of democratic elections, they are also shaped by a set of informal norms.<sup>43</sup> We should strive for a system that upholds democratic principles that are embodied in both law and norms, one in which all eligible voters, and only eligible voters, can easily cast a vote that can be fairly and accurately counted. Striking a reasonable balance between competing values of full participation and fraud prevention is a necessary and critical goal, one that must be evidence-based, resolved in good faith, and favoring no party over another.

There are increasing signs of erosion of these norms. A winner-take-all mentality in a time

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of high political polarization contributes to claims of stolen and rigged elections. Elected officials, political leaders, and others should embrace basic democratic principles about fair election contestation, and should continue to ensure the peaceful transition of power and acceptance of election results when on the losing end of a hard-fought, but fair, election.<sup>44</sup> Once fair election decisions are final, losers should concede rather than raise unsubstantiated claims of fraud or incompetence.

The ongoing COVID-19 crisis has already disrupted the 2020 primary elections. Upholding the norms of ballot access for all eligible voters, while respecting election integrity and public health imperatives, will be especially crucial if these challenges persist through November.

**Recommendation 10:** Leaders in social media, election officials, government leaders, and others should promote the equal protection voting norm, enshrined in the Voting Rights Act and the Fourteenth and Fifteenth Amendments, which bans targeting voters based on race or ethnicity in an effort to suppress or dilute their vote. Social media companies have a unique responsibility to prevent the use of their platforms for efforts that would suppress votes through the spread of misinformation about voting.

One of the democratic principles set forth in **Recommendation 9** recognizes the right of all eligible voters to cast a ballot in a fair election. Included within this idea is a principle of non-discrimination: *all* eligible voters includes voters from across the political spectrum and of every racial, ethnic, and religious group in the United States. These equal protection principles are

enshrined in the Voting Rights Act and the Constitution's Fourteenth and Fifteenth Amendments which ban the targeting of voters based on race or ethnicity in an effort to suppress or dilute their vote.

The commitment to equality in voting extends to efforts to target individuals or communities for the purpose of suppressing or diluting their vote through the spread of voting misinformation. In particular, there is an increasing danger that political or foreign actors will game political participation for tactical advantage through the spread of misinformation about when, where, and how to vote, as evidenced by the targeting of Black voters with this kind of information in the 2016 and 2018 elections.<sup>45</sup>

Much of this suppressive activity in the 2016 and 2018 elections occurred via social media. Social media companies can and must strike a balance between providing for robust political debate and equal protection norms. We recommend that social media platforms monitor especially closely, and then disclose and filter, to the extent they have a realistic capacity to do so, misinformation or other discriminatory efforts to generate or spread factually inaccurate information about voting, such as false assertions about the time or date of elections, eligibility to vote, the closing or moving of polling places in the wake of COVID-19, and the presence of immigration or law enforcement officials at polling places. We recognize the platforms will have the most capacity to effectively intervene against voting-related misinformation that can be easily identified as false in real time such as the time or date of elections.

## Tech Changes for 2020

**Recommendation 11:** To the extent possible, states should use paper ballots or electronic machinery that produces a voter verifiable record of the voter's choices, in the November 2020 elections to ensure the integrity of the outcome. States should audit election results, and work towards incorporating risk limiting audits.

Most voters will rely on some form of paper ballot in 2020 recording their votes, either voting directly on paper or on electronic machines that produce a paper with the voter's choice on it. Paper provides an independent way to verify that the announced results of an election agree with the choices made by voters. For all elections, they provide the evidence that can be used for post-election audits. In extreme cases, they provide the independent evidence needed to resolve close elections through recounts or contests. In all instances, maintaining control over the chain of custody of ballots is critical not only to ensure that the initial count is accurate, but to ensure that any disputes that arise are resolved based on the votes cast.

To ensure that election results actually agree with the choices made by voters, it is necessary to audit the ballots cast by voters.<sup>46</sup> Although the vast majority of states now require a random audit after an election, very few require that this be done using a more powerful post-election auditing method, the Risk-Limiting Audit (RLA).<sup>47</sup> RLAs require paper ballots or records, and a degree of chain-of-custody over ballots that few states and local jurisdictions currently require. Although most states are a long way from implementing RLAs, and few will do so in 2020, all states should take action that

moves them further down the path to eventual implementation.

Paper ballots are the best protection against hacking, mistakes, or bugs in the voting machines and computers that aggregate election results. But paper ballots only protect a democratic election if there is a systematic way to examine them, and systematic protection of the ballot boxes until they can be examined.

The most effective and efficient way to examine the paper ballots or records is an RLA: that is, inspection of *just enough* randomly chosen paper ballots to make sure that what the voters marked on them is consistent with the election outcome claimed by the voting system. Not every "random audit" is an RLA. The term *risk limit* means a guaranteed level of assurance that the election outcome will be correct (that is, correspond to what is on the paper ballots). Many states have some sort of random audit, but many older state statutes are ineffective (*i.e.*, provide no guaranteed level of assurance about the outcome of the election) or inefficient (*i.e.*, recount far more ballots than needed). There are scientific methods to conduct RLAs, and several states have experience with them: a few states will be using RLAs in November 2020, and several more states are well underway to pilot RLAs.

As long as a jurisdiction relies on paper ballots, then election officials can conduct RLAs. As of March 2020, 42 states use paper ballots (of one form or another) as the primary polling location equipment statewide.<sup>48</sup> Nonetheless, most states do not yet use RLAs or any other systematic method of recounts or random audits that can guarantee a certain level of assurance that the reported outcome is correct (consistent with what is actually marked on the paper ballots).

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Most states should conduct pilot RLAs (for practice and training) before ramping up to full-scale statewide RLAs. RLAs must be designed for a state's own election procedures and formats, require training and practice for election administrators, and require logistical preparation. All states should do pilot RLAs, and, even without RLAs, there are still steps to take in 2020 to make better use of the protections that their paper ballots afford. For example, the several states that do a fixed-percentage-of-precincts audit are still protecting themselves better than no audit at all.

The steps that a state might take in 2020 toward eventually implementing RLAs would not just help with this long-term goal, but could bring immediate benefits as well. For instance, consider recounts. The re-examination of paper ballots is usually the centerpiece of a recount. Recounts are likely to go more smoothly if chain-of-custody procedures and protections are in place to demonstrate to the public (and the candidates) that the ballots have been in continuous official custody from the time the polls closed to the time the recount started. Election officials can review now whether their chain-of-custody procedures and protections could provide that demonstration. If this review indicates that procedural improvements are needed, or if poll worker training needs to be improved, then these improvements should be made before November.<sup>49</sup>

In addition to moving toward the implementation of RLAs through the conduct of pilots and improvement of the logistics of handling paper ballots, further research is needed into how to communicate to the public about them. Although there is widespread agreement that RLAs are an integral component of a resilient election system, some initial research has indicated that the simple use of the term “audits” by

election officials evoke questions in the minds of voters about the integrity of elections. If effective means of communicating the importance of RLAs to the public cannot be developed, then their promise as a confidence-building activity will be unfulfilled.



(Flickr/User steevithak)

We also recommend that election officials conduct RLAs and/or RLA pilots in a transparent manner. Offering access to members of the public or the press so that they can observe the post-election procedures that provide confirmation of the accuracy of the outcome will likely increase voter confidence. Where possible, election officials should live-stream RLAs and other post-election audits, and should publish the software and methods used in those audits.

Finally, we recognize that in light of the COVID-19 health crisis, it is likely that the number of ballots cast by mail in the 2020 presidential election will be historically high. This deluge of paper ballots in many states will require election officials to rethink how mail ballots are managed throughout the chain of voting, from mailing a ballot to a voter to receiving it back, verifying it, and

tabulating it. As procedures governing how mail ballots are rethought in many states, there is an opportunity to institute procedures that will increase security and facilitate RLAs in future elections.

**Recommendation 12:** Election administrators should create a resilient election infrastructure to deal with the unexpected, including complications related to COVID 19. Resiliency measures include having enough ballots on hand to accommodate high voter turnout, redundant election machinery, and paper copies of e pollbook voter registration records.

As election administrators well know, elections should be made resilient against the unexpected: greater turnout than anticipated, equipment failures, paper jams, concerted hacking that causes e-pollbooks to fail, last-minute voter-registration database hacking that drops voters from the e-pollbooks, power failures, and so on. Many of these problems can be avoided by proper preparation at polling places. We recommend the following procedures to increase resilience in the 2020 elections:

- Where preprinted hand-marked paper ballots are used, provide enough paper ballots for 100% of registered voters, as this will be a high-turnout election. Where same-day registration is permitted, consider supplying enough for 110%.
- Where precinct-count optical scan (PCOS) machines are used, the standard fallback procedure when the machines fail or jam is to allow voters to cast their ballots into a ballot box for later scanning. Election officials should be prepared to use this fallback sooner rather than later, so that long lines do not develop at the polling place.
- Where BMDs or direct-recording electronic machines (DREs) are used, provide enough preprinted emergency ballots that can be hand-marked for 2-3 hours of peak voting in case the BMDs or DREs fail. The same applies where ballot-on-demand printers are used for hand-marked optical-scan ballots. (A significant advantage of preprinted hand-marked paper ballots is that *they are their own emergency ballots*, and no other emergency ballots need be printed.)
- Where vote centers handle a large number of ballot styles, and where the “number of registered voters” might mean as many of the county’s voters that choose to use this vote center, it is not such a simple matter to supply preprinted emergency ballots. But a supply adequate for 3 hours of voting is still a good idea, even though the logistics may be difficult.
- Where e-pollbooks are used, provide paper-backup pollbooks at the polling place to recover in case of e-pollbook failure, e-pollbook hacking, or power failure. This is a better solution, where available, than the use of provisional ballots, because it guarantees to the voter legitimately registered at this location that their vote will be counted. Where multiple simultaneous vote centers are used, that critically rely on online connection of linked e-pollbooks, there is no clear solution; the only solution may be the use of provisional ballots.
- Where polling locations are remote or may be otherwise challenging to access, have a plan for the emergency printing and delivery of additional paper ballots within 3 hours to prevent running out of ballots after the exhaustion of the 3-hour supply of emergency paper ballots.
- All states should implement a cyber navigator program that provides election security and cybersecurity professional

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services to local election officials. These programs include cyber navigators with responsibility for geographic zones who work across the state with local election officials to train relevant personnel, and lead risk assessments and evaluations, among other things. They fill a role akin in many ways to that of a chief information security officer for counties. Their assessment and evaluation efforts will help officials identify vulnerabilities and determine where additional resources may be needed to shore up cyber defenses. The program's other principal components are infrastructure, improvement, and information sharing.

All these situations can be handled by local action in the polling place. Much more severe regional emergencies require a more drastic response, as discussed elsewhere (see the Law section of this report).

**Recommendation 13:** Election officials should obtain a .gov domain for an authenticated internet presence. They should secure “verified” status for their official accounts on social media platforms.

Election officials should obtain a .gov domain. The .gov domain is a top-level domain name that was established to easily identify official government accounts. Since .gov is only available to bona fide U.S.-based government organizations, using it signals trust and credibility. In addition, the Cybersecurity & Infrastructure Security Agency (CISA) and the National Institute of Standards and Technology (NIST) provide free monitoring of namespace issued to .gov users.

Use of a .gov domain also makes it easier for election officials to obtain authentication or

verified status on social media platforms. Social media authentication signals trust and credibility, which is critical when election officials need to distribute important information about emergencies or other timely election administration information that may impact voters.

Similarly, election officials should obtain “verified” status for their social media accounts. Official verification marks signal to the public that the account is an authentic, official source of information. Any election office seeking to verify their social media should take specific steps to prepare their accounts. For Facebook, the account should be specific to the election office and include a cover photo.<sup>50</sup> On top of these requirements, Twitter asks that accounts also add two-factor authentication and include an associated government email, a description of the purpose of the office, and a link to an official website.<sup>51</sup>

Collaboration between the National Association of Secretaries of State (NASS), National Association of State Election Directors (NASSED), Facebook, and Twitter helps simplify the verification process on social media pages for election offices. Once the prerequisites are in place, election offices can simply contact their Chief Election Official, who will work with NASS/NASED to submit their account for verification to the social media companies.

**Recommendation 14:** State election officials should monitor and audit state voter registration databases.

Voter registration database security is a key component of secure and smooth elections. This data is used to verify voter eligibility at the polls on election day (or at vote centers prior to election day). Voter registration

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databases are also used to communicate with voters in a given jurisdiction, such as to notify them where their in-person precinct is located or to mail them an application for an absentee ballot.

With the likelihood that some states that are not typically “vote-by-mail” or “vote-at-home” states may mail ballots to all voters in 2020—or at least an absentee ballot application—because of the COVID-19 crisis, the integrity of voter registration databases will be even more important for the coming elections than it has been in the past.

The critical nature of voter registration databases in the 2020 elections raises the importance of constantly monitoring these databases for accuracy and to detect changes to the databases—due to mistakes or malicious activity—that could interfere with the ability of a voter to cast a ballot.

Just as ballots can be audited, so, too, can voter registration databases. Currently, two major examples of such auditing and monitoring exist. The first is VoteShield, an online Web application “which uses basic statistics, machine learning and data visualization to analyze changes in local voter databases and flag unusual activity.”<sup>52</sup> The second is illustrated through a collaboration between researchers at Caltech and the election director in Orange County, California, in which the Caltech team developed a series of techniques to monitor changes in the Orange County voter file and produce a series of reports back to the county based on implementing those techniques.<sup>53</sup>



## Conclusion

The 2020 elections got off to an inauspicious start with the botched Iowa caucuses in February 2020, reminding those in the United States of the many stresses on the decentralized American electoral system. The shock of COVID-19 only adds to concerns about the fairness and integrity of the November 2020 elections and the public's perception of the elections as legitimate.

Rather than despair over American's current low opinion of the election system, members of the Ad Hoc Committee for 2020 Election Fairness and Legitimacy have offered concrete solutions to minimize the chances of an election meltdown in November. The stresses on the American electoral system are multifaceted, demanding pinpointed solutions in law, media, tech, and politics. Enacting each of the specific proposals put forth by this Committee would go a long way toward helping ensure a fair political process for 2020, and one seen by many more American voters as legitimate. It is the responsibility of each of us to do our part to help ensure the integrity of the 2020 elections. Our democracy depends on it.

## Endnotes

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- <sup>26</sup> For each update of election results (at least daily), state election officials should identify the source of newly counted ballots, whether they were (a) Newly received mail ballots; (b) Favorably resolved provisional ballots; (c) Ballots found that were not included in election night totals; (d) Resolution of counting errors or misreported results from election night totals; and (e) Any other category that affects the post-election count.
- <sup>27</sup> Similarly, over the longer term, and ideally before November 2020, legislatures should adopt election emergency laws to ensure that officials have the discretion they need to be able to adopt modifications, postponements, and even cancellations (for non-presidential elections) as necessary to respond to various types of emergencies. These statutes must carefully address the particular circumstances under which the emergency powers may be triggered, the officials who are permitted to invoke them, the voters or geographic areas to which any such alterations will apply, and the types of responses that are appropriate or categorically impermissible for various types of threats. Addressing these issues in advance enables election officials to engage in contingency planning more effectively. It also gives states the opportunity to ensure they are responding most effectively to various types of threats, rather than having to develop plans in the midst of an impending or ongoing crisis. And having such measures in place reduces the likelihood that, as a default, emergencies will wind up being addressed by generalist courts, as a matter of constitutional law, in the context of rushed, often *ex parte* proceedings with limited—and often partisan—presentation of the pertinent facts, law, administrative, and budgetary considerations. For an introduction to the literature on the law and election emergencies, see Michael T. Morley, *Election Emergencies: Voting in the Wake of Natural Disasters and Terrorist Attacks*, 67 EMORY L.J. 545 (2018); ERIC A. FISCHER ET AL., CONG. RESEARCH SERV., RL 32654, SAFEGUARDING FEDERAL ELECTIONS FROM POSSIBLE TERRORIST ATTACK: ISSUES AND OPTIONS FOR CONGRESS (2004), [https://www.everycrsreport.com/files/20041027\\_RL32654\\_9299d912cd96f86e144ae4135ae01ca89541e0af.pdf](https://www.everycrsreport.com/files/20041027_RL32654_9299d912cd96f86e144ae4135ae01ca89541e0af.pdf) [<https://perma.cc/B4TP-6P3G>]; John C. Fortier & Norman J. Ornstein, *If Terrorists Attacked Our Presidential Election*, 3 ELECTION L.J. 597 (2004), <https://doi.org/10.1089/elj.2004.3.597> [<https://perma.cc/XQL8-MPQ4>]; Jerry H. Goldfeder, *Could Terrorists Derail a Presidential Election?*, 32 FORDHAM URB. L.J. 523 (2005); Steven F. Huefner, *Withstanding Election Day Terrorism*, ELECTION L. @ MORITZ (July 19, 2004), [http://moritzlaw.osu.edu/electionlaw/ebook/part7/elections\\_preso2.html](http://moritzlaw.osu.edu/electionlaw/ebook/part7/elections_preso2.html) [<https://perma.cc/3NSP-KYFR>].
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- <sup>42</sup> Deane E. Neubauer, *Some Conditions of Democracy*, 61 AM. POL. SCI. REV. 1002 (1967).
- <sup>43</sup> Julia R. Azari & Jennifer K. Smith, *Unwritten Rules: Informal Institutions in Established Democracies*, 10 PERSPS. POL. 37 (2012).
- <sup>44</sup> Thad E. Hall & Tova Wang, *Show Me the ID: International Norms and Fairness in Election Reform*, 10 PUB. INTEGRITY 97 (2008).
- <sup>45</sup> Reports prepared for the Senate Intelligence Committee analyzing disinformation in the 2016 general elections—including a report produced by researchers at Oxford and another from Columbia—reveal that racism in the United States is a substantial vulnerability to the integrity of its elections. See PHILIP N. HOWARD, ET AL., THE IRA, SOCIAL MEDIA AND POLITICAL POLARIZATION IN THE UNITED STATES, 2012-2018 (2019) <https://comprop.oii.ox.ac.uk/research/ira-political-polarization/> [<https://perma.cc/B9QL-BX4Y>]; RENEE DIRESTA, ET AL., NEW KNOWLEDGE, THE TACTICS & TROPES OF THE INTERNET RESEARCH AGENCY (2018), <https://disinformationreport.blob.core.windows.net/disinformation-report/NewKnowledge-Disinformation-Report-Whitepaper.pdf> [<https://perma.cc/24KF-5TYQ>]. It provides a pathway for manipulation of the electorate by both foreign and domestic influences. For example, in the 2016 general elections and to a more limited extent in the 2018 midterms, Russian interlopers disproportionately targeted African Americans for malevolent purposes to exacerbate racial tensions and negatively influence voter engagement. See Scott Shane & Sheera Frenkel, *Russian 2016 Influence Operation Targeted African-Americans in Social Media*, N.Y. TIMES (Dec. 17, 2018), <https://www.nytimes.com/2018/12/17/us/politics/russia-2016-influence-campaign.html> [<https://perma.cc/S4FT-3ETN>]; Scott Shane & Alan Blinder, *Secret Experiment in Alabama Senate Race Imitated Russian Tactics*, N.Y. TIMES (Dec. 19, 2018), <https://www.nytimes.com/2018/12/19/us/alabama-senate-roy-jones-russia.html> [<https://perma.cc/A24B-RAH6>].
- <sup>46</sup> See generally *Post-Election Audits*, BRENNAN CTR. FOR JUST. <https://www.brennancenter.org/issues/defend-our-elections/election-security/post-election-audits> [<https://perma.cc/56CY-NUZK>].
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- <sup>50</sup> *How Do I Request a Verified Badge on Facebook*, FACEBOOK: HELP CENTER, <https://www.facebook.com/help/1288173394636262> [<https://perma.cc/ST4T-NB5L>].
- <sup>51</sup> *Verified Account FAQs*, TWITTER: HELP CENTER, <https://help.twitter.com/en/managing-your-account/twitter-verified-accounts> [<https://perma.cc/W3DQ-JZA4>].
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- <sup>53</sup> Emily Velasco, *Caltech Partners with Orange County to Assess Integrity of June Primary Elections*, CALTECH (May 23, 2018), <https://www.caltech.edu/about/news/caltech-partners-orange-county-assess-integrity-june-primary-elections-82357> [<https://perma.cc/QE3U-YSH8>].

## Appendix I: Other Reports on Election Reforms

Organizational Author	Title	Link
Bauer-Ginsberg Report	The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration	<a href="http://web.mit.edu/supportthevoter/www/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf">http://web.mit.edu/supportthevoter/www/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf</a>
Belfar Center	The State and Local Election Cybersecurity Playbook	<a href="https://www.belfercenter.org/publication/state-and-local-election-cybersecurity-playbook">https://www.belfercenter.org/publication/state-and-local-election-cybersecurity-playbook</a>
Bipartisan Policy Center	Logical Election Policy	<a href="https://bipartisanpolicy.org/report/logical-election-policy/">https://bipartisanpolicy.org/report/logical-election-policy/</a>
Brennan Center	A Review of Robust Post-Election Audits	<a href="https://www.brennancenter.org/sites/default/files/2019-11/2019_011_RLA_Analysis_FINAL_o.pdf">https://www.brennancenter.org/sites/default/files/2019-11/2019_011_RLA_Analysis_FINAL_o.pdf</a>
Brennan Center	Defending Elections: Federal Funding Needs for State Election Security	<a href="https://www.brennancenter.org/sites/default/files/2019-08/Report_Defending_Elections.pdf">https://www.brennancenter.org/sites/default/files/2019-08/Report_Defending_Elections.pdf</a>
Brennan Center	Election Integrity: A Pro-Voter Agenda	<a href="https://www.brennancenter.org/sites/default/files/publications/Election_Integrity.pdf">https://www.brennancenter.org/sites/default/files/publications/Election_Integrity.pdf</a>
Brennan Center	Noncitizen Voting: The Missing Millions	<a href="https://www.brennancenter.org/sites/default/files/2019-08/Report_2017_NoncitizenVoting_Final.pdf">https://www.brennancenter.org/sites/default/files/2019-08/Report_2017_NoncitizenVoting_Final.pdf</a>
Brookings	Is Seeing Still Believing? The Deepfake Challenge to Truth in Politics	<a href="https://www.brookings.edu/research/is-seeing-still-believing-the-deepfake-challenge-to-truth-in-politics/">https://www.brookings.edu/research/is-seeing-still-believing-the-deepfake-challenge-to-truth-in-politics/</a>
Center for American Progress	Election Security in All 50 States	<a href="https://www.americanprogress.org/issues/democracy/reports/2018/02/12/446336/election-security-50-states/">https://www.americanprogress.org/issues/democracy/reports/2018/02/12/446336/election-security-50-states/</a>
Center for American Progress	Ending Foreign-Influenced Corporate Spending in U.S. Elections	<a href="https://www.americanprogress.org/issues/democracy/reports/2019/11/21/477466/ending-foreign-influenced-corporate-spending-u-s-elections/">https://www.americanprogress.org/issues/democracy/reports/2019/11/21/477466/ending-foreign-influenced-corporate-spending-u-s-elections/</a>
Center for Election Innovation & Research	Voter Registration Database Security	<a href="https://electioninnovation.org/wp-content/uploads/2018/09/2018-VRDB-Security-Report.pdf">https://electioninnovation.org/wp-content/uploads/2018/09/2018-VRDB-Security-Report.pdf</a>
Center for Strategic and International Studies	Countering Adversary Threats to Democratic Institutions	<a href="https://csis-prod.s3.amazonaws.com/s3fs-public/publication/180214_Spaulding_CounteringAdversaryThreats_Web2.pdf">https://csis-prod.s3.amazonaws.com/s3fs-public/publication/180214_Spaulding_CounteringAdversaryThreats_Web2.pdf</a>

# Fair Elections During a Crisis

Common Cause	Email and Internet Voting: The Overlooked Threat to Election Security	<a href="https://www.commoncause.org/wp-content/uploads/2018/10/ElectionSecurityReport.pdf">https://www.commoncause.org/wp-content/uploads/2018/10/ElectionSecurityReport.pdf</a>
Democracy Fund	What Comes Next: Lessons for the Recovery of Liberal Democracy	<a href="https://www.democracyfund.org/media/uploaded/2018_WhatComesNext_vFINAL.pdf">https://www.democracyfund.org/media/uploaded/2018_WhatComesNext_vFINAL.pdf</a>
Kofi Annan Foundation	Protecting Electoral Integrity in the Digital Age	<a href="https://www.kofiannanfoundation.org/app/uploads/2020/01/fo35dd8e-kaf_kacedda_report_2019_web.pdf">https://www.kofiannanfoundation.org/app/uploads/2020/01/fo35dd8e-kaf_kacedda_report_2019_web.pdf</a>
NAACP LDF	Democracy Defended: Analysis of Barriers to Voting in the 2018 Midterm Elections	<a href="https://www.naacpldf.org/wp-content/uploads/Democracy_Defended__9_6_19_final.pdf">https://www.naacpldf.org/wp-content/uploads/Democracy_Defended__9_6_19_final.pdf</a>
NAACP LDF	Democracy Diminished: State and Local Threats to Voting Post-Shelby County, Alabama v. Holder	<a href="https://www.naacpldf.org/wp-content/uploads/Democracy-Diminished-Redraft-D-10-7-19.pdf">https://www.naacpldf.org/wp-content/uploads/Democracy-Diminished-Redraft-D-10-7-19.pdf</a>
National Academies	Securing the Vote: Protecting American Democracy	<a href="https://www.nap.edu/read/25120/chapter/1">https://www.nap.edu/read/25120/chapter/1</a> **this report is behind a paywall
National Task Force on Election Crises	COVID-19 Election Guide	<a href="https://www.electiontaskforce.org/s/COVIDguidance">https://www.electiontaskforce.org/s/COVIDguidance</a>
Pen	Truth on the Ballot: Fraudulent News, the Midterm Elections, and Prospects for 2020	<a href="https://pen.org/wp-content/uploads/2019/03/Truth-on-the-Ballot-report.pdf">https://pen.org/wp-content/uploads/2019/03/Truth-on-the-Ballot-report.pdf</a>
Penn Wharton Public Policy Initiative	The Business of Voting: Market Structure and Innovation in the Election Technology Industry	<a href="https://publicpolicy.wharton.upenn.edu/live/files/270-the-business-of-votin">https://publicpolicy.wharton.upenn.edu/live/files/270-the-business-of-votin</a>
Pew Research Center	U.S. Media Polarization and the 2020 Election	<a href="https://www.journalism.org/2020/01/24/u-s-media-polarization-and-the-2020-election-a-nation-divided/">https://www.journalism.org/2020/01/24/u-s-media-polarization-and-the-2020-election-a-nation-divided/</a>
Rand Corp.	Countering Russian Social Media Influence	<a href="https://www.rand.org/pubs/research_reports/RR2740.html">https://www.rand.org/pubs/research_reports/RR2740.html</a>
Stanford Cyber Policy Center	Securing American Elections: Prescriptions for Enhancing the Integrity and Independence of the 2020 U.S. Presidential Election and Beyond	<a href="https://fsi-live.s3.us-west-1.amazonaws.com/s3fs-public/stanford_cyber_policy_center-securing_american_elections.pdf">https://fsi-live.s3.us-west-1.amazonaws.com/s3fs-public/stanford_cyber_policy_center-securing_american_elections.pdf</a>
Stern Center for Business and Human Rights	Disinformation and the 2020 Election: How the Social Media Industry Should Prepare	<a href="https://issuu.com/nyusterncenterforbusinessandhumanri/docs/nyu_election_2020_report?fr=sY2QzYzloMjMwMA">https://issuu.com/nyusterncenterforbusinessandhumanri/docs/nyu_election_2020_report?fr=sY2QzYzloMjMwMA</a>

## Appendix II: Brief Biographies of Ad Hoc Committee Members



### Andrew W. Appel

Andrew W. Appel is a Eugene Higgins Professor of Computer Science at Princeton University. His research is in software verification, computer security, programming languages and compilers, and technology policy. He has studied voting machines and election policy since 2003, and served on the National Academy of Sciences, Engineering, and Medicine study committee that produced the 2018 report, “Securing the Vote: Protecting American Democracy.”

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### Julia Azari

Julia Azari is an Associate Professor of Political Science at Marquette University. She is working on a book about weak parties and strong partisanship. She is the author of “Delivering the People’s Message: The Changing Politics of the Presidential Mandate,” (Cornell, 2014) and writes regularly for FiveThirtyEight.com and for the political science blog “The Mischiefs of Faction.”

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### Bruce Cain

Bruce E. Cain is a Professor of Political Science at Stanford University and the Spence and Cleone Eccles Family Director of the Bill Lane Center for the American West. A pioneer in computer-assisted redistricting, he is a prominent scholar of elections, political regulation, and the relationships between lobbyists and elected officials. Prior to joining Stanford, Professor Cain was Director of the Institute of Governmental Studies at UC Berkeley from 1990-2007 and Executive Director of the UC Washington Center from 2005-2012. He was elected the American Academy of Arts and Sciences in 2000 and has won awards for his research (Richard F. Fenno Prize, 1988), teaching (Caltech 1988 and UC Berkeley 2003) and public service (Zale Award for Outstanding Achievement in Policy Research and Public Service, 2000). He is currently working on state regulatory processes and stakeholder involvement in the areas of water, energy and the environment.

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### Jack Doppelt

Jack Doppelt is the Hamad bin Khalifa Al Thani Professor of Journalism at Medill and a faculty associate at Northwestern’s Institute for Policy Research. He is also the principal investigator at Social Justice News Nexus and the publisher of Immigrant Connect. He has served as a Charles Deering McCormick Professor of Teaching Excellence at Northwestern and as an Open Society Fellow, working with Al-Quds University in the West Bank to develop its journalism program. Doppelt’s expertise is media law and ethics, the reporting of legal and immigrant affairs, and the emerging tenets of social justice journalism.



## Tiana Epps-Johnson

Tiana Epps-Johnson is the Executive Director of the Center for Technology and Civic Life (CTCL), working to make U.S. elections more inclusive and secure. Prior to CTCL, she was the New Organizing Institute's Election Administration Director and previously she worked on the Voting Rights Project for the Lawyers' Committee for Civil Rights. In 2015, Epps-Johnson joined the inaugural class of Technology and Democracy Fellows at the Ash Center for Democratic Governance and Innovation at the Harvard Kennedy School. And, in 2018 she was selected to join the inaugural class of Obama Foundation Fellows.

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## Edward B. Foley

Edward B. Foley holds the Ebersold Chair in Constitutional Law at The Ohio State University, where he also directs its election law program. His new book, *Presidential Elections and Majority Rule* (Oxford University Press, 2020), excavates the long-forgotten philosophical premises of how the Electoral College is supposed to work, as revised by the Twelfth Amendment to the U.S. Constitution, and then uses a historical analysis to provide a feasible basis for reform of state laws that would enable the Electoral College to operate according to majority-rule objectives it was designed to achieve. His book *Ballot Ballots: The History of Disputed Elections in the United States* (Oxford University Press, 2016) was named Finalist for the David J. Langum, Sr. Prize in American Legal History and listed as one of 100 "must-read books about law and social justice."

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## John C. Fortier

John C. Fortier is the Director of Governmental Studies for the Bipartisan Policy Center. Prior to joining BPC in April 2011, he was a research fellow at the American Enterprise Institute, where he served as the principal contributor to the AEI Brookings Election Reform Project, the executive director of the Continuity of Government Commission, and the project manager of the Transition to Governing Project. He was a regular contributor to AEI's Election Watch series. He also served as the Director of the Center for the Study of American Democracy at Kenyon College.

Fortier is the author of *Absentee and Early Voting: Trends, Promises and Perils*, the author and editor of *After the People Vote: A Guide to the Electoral College*, and the author and co-editor with Norman Ornstein of *Second Term Blues: How George W. Bush Has Governed*, and numerous academic articles in political science and law journals.



## Richard L. Hasen, Committee Chair

Professor Richard L. Hasen is Chancellor's Professor of Law and Political Science at the University of California, Irvine. Hasen is a nationally recognized expert in election law and campaign finance regulation, and is co-author of a leading casebook on election law. From 2001-2010, he served (with Dan Lowenstein) as founding co-editor of the quarterly peer-reviewed publication, *Election Law Journal*. He is the author of over 100 articles on election law issues, published in numerous journals including the *Harvard Law Review*, *Stanford Law Review* and *Supreme Court Review*. He was elected to The American Law Institute in 2009 and served as an Adviser on ALI's law reform project, *Principles of Election Law: Resolution of Election Disputes*. Hasen's latest book is *Election Meltdown: Dirty Tricks, Distrust, and the Threat to American Democracy* (Yale University Press 2020).

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## Liz Howard

Liz Howard serves as Counsel for the Brennan Center's Democracy Program, focusing on cybersecurity and elections. Prior to that, she was the Deputy Commissioner for the Virginia Department of Elections coordinating many election administration modernization projects – including the adoption of online, paperless absentee ballot applications for which the department received a 2017 Innovations in American Government Bright Ideas Award from the Ash Center for Democratic Governance and Innovation at the Harvard Kennedy School. Additionally, Howard worked as general counsel at Rock the Vote, a nonprofit organization dedicated to engaging young people in politics. Before that she worked as a senior associate at Sandler Reiff in Washington, D.C.

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## David Kaye

David Kaye is a Clinical Professor of Law at the University of California, Irvine, and the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. His 2019 book, *Speech Police: The Global Struggle to Govern the Internet* (Columbia Global Reports), explores the ways in which companies, governments and activists struggle to define the rules for online expression.



## Jack Lerner

Jack Lerner works to find solutions to problems at the intersection of law and technology, particularly how technology law and policy affect creative expression and innovation. He has written and spoken widely on copyright, privacy and other areas of technology law. Professor Lerner is a Clinical Professor of Law at the University of California, Irvine School of Law and Director of the UCI Intellectual Property, Arts, and Technology Clinic. In the Clinic, law students counsel and represent policymakers, artists, innovators, nonprofit organizations, and others on a range of IP and technology issues. Among other accomplishments, under Professor Lerner's supervision students have obtained exemptions to the Digital Millennium Copyright Act on behalf of a wide coalition of documentary filmmakers that is helping filmmakers exercise their fair use rights, and worked with policy-makers in the developing world to conduct a major study of copyright limitations and exceptions among Pacific Rim economies. In 2016, Professor Lerner was named "*California Lawyer* Attorney of the Year" for his work obtaining changing copyright law in ways that affect documentary filmmakers and authors nationwide.

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## Michael T. Morley

Michael T. Morley is Assistant Professor of Law at Florida State University College of Law, where he teaches and writes in the areas of election law, federal courts, remedies, and constitutional law. Professor Morley previously taught at Harvard Law School as a Climenko Fellow and Lecturer on Law. Prior to entering academia, he served as Special Assistant to the General Counsel of the Army in the Pentagon and clerked for Judge Gerald B. Tjoflat of the U.S. Court of Appeals for the Eleventh Circuit. Professor Morley also was a litigator at Williams & Connolly LLP and in the Supreme Court & Appellate group at Winston & Strawn, LLP, both in Washington, D.C. Professor Morley earned his bachelor's degree magna cum laude from Princeton University and a J.D. from Yale Law School. His work has been cited in U.S. Supreme Court opinions and published in journals such as the *Northwestern University Law Review*, *Emory Law Journal*, and *Boston College Law Review*.

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## Janai S. Nelson

Janai S. Nelson is Associate Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc. (LDF). As an organizational thought-leader at LDF, Nelson works with the President and Director-Counsel to determine and execute LDF's strategic vision and oversee the operation of its programs, including having served as interim director of LDF's Thurgood Marshall Institute. She is also a member of LDF's litigation and policy teams, and was one of the lead counsel in *Veasey v. Abbott* (2018), a federal challenge to Texas's voter ID law. She has testified before Congress on voter suppression, algorithmic bias, and in support of the Voting Rights Advancement Act. Prior to joining LDF in June 2014, Nelson was Associate Dean for Faculty Scholarship and Associate Director of the Ronald H. Brown Center for Civil Rights and Economic Development at St. John's University School of Law where she was also a full professor of law.



## Brendan Nyhan

Brendan Nyhan is a Professor in the Department of Government at Dartmouth College. His research, which focuses on misperceptions about politics and health care, has been published in journals including the American Journal of Political Science, Journal of Politics, Proceedings of the National Academy of Sciences, Pediatrics, and Vaccine. He has been named an Andrew Carnegie Fellow by the Carnegie Corporation of New York and a Belfer Fellow by the Anti-Defamation League and is a contributor to The Upshot at The New York Times. Nyhan received his Ph.D. from the Department of Political Science at Duke University and previously served as a RWJ Scholar in Health Policy Research and Professor of Public Policy at the University of Michigan. He co-edited the non-partisan watchdog *Spinsanity*, co-authored *All the President's Spin*, a New York Times bestseller, from 2001-2004 and served as a media critic for Columbia Journalism Review from 2011-2014

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## Cailin O'Connor

Cailin O'Connor is a philosopher of science and applied mathematician specializing in models of social interaction. She is Associate Professor of Logic and Philosophy of Science and a member of the Institute for Mathematical Behavioral Science at the University of California, Irvine. Her book, *The Misinformation Age*, was published in 2019 with Yale Press, and her book, *The Origins of Unfairness*, was published in 2019 with Oxford University Press.

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## Norman Ornstein

Norman Ornstein is a resident scholar at the American Enterprise Institute (AEI), where he studies politics, elections, and the US Congress. He is a cohost of AEI's Election Watch series, a contributing editor and columnist for National Journal and The Atlantic, a BBC News election analyst, and the chairman of the Campaign Legal Center. Dr. Ornstein previously served as codirector of the AEI-Brookings Election Reform Project and senior counselor to the Continuity of Government Commission. A longtime observer and analyst of American politics and the US Congress, he has been involved in political reform for decades, particularly campaign finance reform and the reform of Senate committees. He has also played a part in creating the Congressional Office of Compliance and the House Office of Congressional Ethics. Dr. Ornstein was elected fellow of the American Academy of Arts and Sciences in 2004.



## Nina Perales

Nina Perales is Vice President of Litigation for MALDEF, the Mexican American Legal Defense and Educational Fund. In that role, Perales supervises the legal staff and litigation docket in MALDEF's offices throughout the United States. Perales is best known for her work in voting rights, including redistricting and vote dilution cases. Her litigation has included successful statewide redistricting cases in Texas and Arizona including *LULAC v. Perry* (2006), a Voting Rights Act challenge to Texas congressional redistricting which Perales led through trial and argued successfully in the U.S. Supreme Court. Perales also led the challenge under the National Voter Registration Act to an Arizona voter law and secured a favorable ruling from the U.S. Supreme Court in *Arizona v. ITCA* (2013) and the challenge to Texas legislative redistricting in which the U.S. Supreme Court found racial gerrymandering of Latino voters in 2018 (*Abbott v. Perez*). Perales also specializes in immigrants' rights litigation, including leading the case striking down an anti-immigrant housing ordinance in Farmers Branch, Texas and the defense of DACA in a multi-state challenge to that initiative. Perales earned a Bachelor's degree from Brown University and a J.D. from Columbia University School of Law.

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## Nate Persily

Nate Persily is the James B. McClatchy Professor of Law at Stanford Law School, with appointments in the departments of Political Science, Communication, and FSI. He is co-director of the Stanford Project on Democracy and the Internet, the Stanford Cyber Policy Center, and Social Science One, an initiative to facilitate greater sharing of privacy-protected Facebook data to social scientists. Professor Persily's scholarship focuses on voting rights, political parties, campaign finance, redistricting, and election administration. His current work, for which he has been honored as an Andrew Carnegie and CASBS Fellow, examines the impact of changing technology on political communication, campaigns, and election administration. He has served as a special master or court-appointed expert to craft legislative districting plans for numerous states and as the Senior Research Director for the Presidential Commission on Election Administration. He is co-author of the leading election law casebook, *The Law of Democracy* (2016) and a member of the American Academy of Arts and Sciences. He also serves as a commissioner on the Kofi Annan Commission on Elections and Democracy in the Digital Age.



## Richard H. Pildes

Richard H. Pildes is the Sudler Family Professor of Constitutional Law at New York University School of Law, an elected member of the American Academy of Arts and Sciences and the American Law Institute, and a Guggenheim and Carnegie fellow. He is one of the country's leading experts on legal issues concerning American democracy and the structure of American government, including voting rights, elections, redistricting, the Voting Rights Act, campaign finance, the powers of the President and Congress, as well as constitutional law more generally. His co-authored casebook, *The Law of Democracy: Legal Regulation of the Political Process*, created this area as a field of study in the law schools. A law clerk to Justice Thurgood Marshall at the United States Supreme Court, Professor Pildes also has successfully argued cases before the Court and his work is frequently cited there. As a public commentator, he was the legal analyst for the NBC team nominated for an Emmy Award for outstanding coverage of the 2000 Presidential election litigation. Some of his major recent academic articles include *Populism and Institutional Design: Methods of Selecting Candidates for Chief Executive*; *Romanticizing Democracy, Political Fragmentation, and the Decline of American Government*; *Law and the President*; *Why the Center Does Not Hold: The Causes of Hyperpolarized Democracy in America*; *Is the Supreme Court a "Majoritarian" Institution*; *The Constitutionalization of Democratic Politics*; and *Separation of Parties, Not Powers*.

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## Bertrall Ross

Bertrall Ross is the Chancellor's Professor of Law at Berkeley Law. His research is driven by a concern about democratic responsiveness and accountability, as well as the inclusion of marginalized communities in the political process. Bertrall's past scholarship in the areas of election law, constitutional law, and statutory interpretation has been published in several law reviews including the *Columbia*, *NYU*, and the *University of Chicago*. He is currently working on two book projects: one on gerrymandering and the other on voter data as a tool for disfranchisement. Bertrall earned his J.D. from Yale Law School and Masters degrees from the London School of Economics and Princeton University's Woodrow Wilson School of Public and International Affairs. Prior to joining Berkeley Law, he was a Kellis Parker Academic Fellow at Columbia Law School.

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## Alex Stamos

Alex Stamos is a cybersecurity expert, business leader and entrepreneur working to improve the security and safety of the Internet through his teaching and research at Stanford University. Stamos is an Adjunct Professor at Stanford's Freeman-Spogli Institute and a visiting scholar at the Hoover Institution

# Fair Elections During a Crisis



## Charles Stewart III

Charles Stewart III is the Kenan Sahin Distinguished Professor of Political Science at MIT, where he has been on the faculty since 1985, a Fellow of the American Academy of Arts and Sciences, and formerly an Andrew Carnegie Fellow. While at MIT, he has served in a number of leadership capacities, including Head of the Department of Political Science and Associate Dean of Humanities, Arts, and Social Sciences.

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## Michael Tesler

Michael Tesler is Associate Professor of Political Science at UC Irvine, where he teaches courses on public opinion, racial politics, elections, political psychology, American government, and quantitative research methods. He is author of *Post-Racial or Most Racial? Race and Politics in the Obama Era* (University of Chicago Press, 2016), and co-author with David O. Sears of *Obama's Race: The 2008 Election and the Dream of a Post-Racial America* (University of Chicago Press, 2010). His latest book, co-authored with John Sides and Lynn Vavreck *Identity Crisis: The 2016 Presidential Campaign and the Battle for the Meaning of America*, was published by Princeton University Press in October 2018.

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## Ciara Torres-Spelliscy

Ciara Torres-Spelliscy is a professor of law at Stetson University College of Law, teaching courses in Election Law, Corporate Governance, Business Entities, and Constitutional Law. Prior to joining Stetson's faculty, Professor Torres-Spelliscy was counsel in the Democracy Program of the Brennan Center for Justice at NYU School of Law where she provided guidance on the issues of money in politics and the judiciary to state and federal lawmakers. She was an associate at Arnold & Porter LLP and a staffer for Senator Richard Durbin. She holds degrees from Harvard and Columbia Law School.

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## James Owen Weatherall

James Owen Weatherall is Professor of Logic and Philosophy of Science at the University of California, Irvine, where he is also a member of the Institute for Mathematical Behavioral Sciences and the Center for Cosmology. He is the co-author, most recently, of *The Misinformation Age: How False Beliefs Spread*, with Cailin O'Connor; his previous books include *Void: The Strange Physics of Nothing* and the *New York Times* bestselling *The Physics of Wall Street: A Brief History of Predicting the Unpredictable*.