

A THREAT TO OUR DEMOCRACY: ELECTION SUBVERSION IN THE 2021 LEGISLATIVE SESSION

2021 has been a historic year for voting rights, with some discouraging setbacks occurring in state legislatures across the country. From Texas to Florida to Georgia, millions of voters have watched as state lawmakers around the country erect new and unnecessary barriers to the ballot box, adopting policies that will curtail participation in our democracy.

These efforts to restrict voter access have been fueled by rampant disinformation campaigns, which ran for months ahead of the 2020 election, successfully invalidating the election results in the minds of millions of Americans. The spread of disinformation has not only created a window for lawmakers to pass restrictive laws. It has degraded trust in our elections system so severely that even efforts to modernize and expand access to our election system invite accusations of fraud — as we saw in [Georgia](#) or in the recent [California](#) recall election.

In this climate of distrust, a quiet but deeply disturbing legislative trend has emerged — one that threatens not just voter access but the most elemental foundations of our democracy: bills shifting the allocation of power in election administration to partisan actors, criminalizing non-partisan elections administrators and initiating sham election reviews to instill further doubt in elections.

The Big Picture

So far this session, more than 180 bills shifting election authority have been introduced. These new laws have taken a variety of forms. Some give partisan actors more power to shape and control election outcomes, or limit the autonomy of local election officials. Some give partisan poll watchers the ability to intimidate and harass voters. Others criminalize election workers for simply doing their jobs. The most concerning bills would enable partisan state legislatures to overturn election results. And, of course, several states are conducting, or considering conducting, highly partisan and unnecessary reviews of election results – some of which only apply to, or specifically target, certain counties.

Election subversion bills have either been enacted or seen significant momentum in key battleground states, including Arizona, Florida, Georgia, Nevada, Ohio, Pennsylvania, Texas, Wisconsin, and others. Taken together, these actions – legislative and otherwise – threaten to

inject partisanship where it never belongs: into our election systems themselves. This dangerous crop of [legislation](#) has driven toward several alarming outcomes:

1.	2.	3.
Legislatures interfering with nonpartisan local election administration and consolidating power to administer and determine elections results themselves.	Lawmakers proposing or initiating costly, highly partisan election reviews that undermine election security and erode trust in our election system.	Legislatures accelerating the mass exodus of experienced election officials by imposing chilling criminal penalties, crippling civil penalties, and parroting disinformation that results in serious safety threats.

The impact of election subversion legislation, if it takes hold, is likely to be felt far beyond the 2022 midterms and 2024 presidential election. The following is a breakdown of the types of election subversion legislation taking shape around the country.

Increased Partisanship in Election Administration

[Seventeen](#) state legislatures have introduced bills that would allow the legislature or other partisan actors to exert greater control over the conduct of elections, or that would otherwise interfere with local election administration.¹ In the most extreme cases, partisan actors could usurp the role of state or local election officials, or simply certify the winner of their choice in a given election.

Arizona

Introduced

The legislature introduced several bills to place election administration and certification firmly in control of the legislature rather than state and local election officials. [One bill](#) would have allowed the legislature to ignore the statewide popular vote and certify the state’s presidential electors for the candidate of the legislature’s choice.

¹ See the columns titled “Legislative Control Over Election Results,” “Interference With Local Election Administration,” and “Usurping the Role of State Election Officials” in VRL’s [50-state survey of election subversion bills](#).

Arizona's [state budget bill](#), enacted in June, shifts control of election litigation from the secretary of state (currently a Democrat) to the attorney general (currently a Republican). The provision is designed to sunset on January 2, 2023, when a new attorney general potentially takes office.

Other bills would have allowed the legislature to simply refuse to certify results, to challenge results, or to interfere in the ballot counting process.

Georgia

Enacted

A provision in the [omnibus election bill](#) (S.B. 202) enacted in March would allow a partisan majority of the State Election Board to remove and replace local election administrators. The Board has already begun the process of [taking over election administration in Fulton County](#), the state's most populous and diverse county. Additionally, the law newly empowers the legislature to appoint the chair of the State Election Board, making a majority of the board beholden to partisan state legislators who have a clear interest in the outcome of elections and how they are administered.

S.B. 202 also explicitly allows partisan actors to make unlimited frivolous challenges to voter qualifications, forcing [counties to allow](#) hundreds of thousands of voters' registrations to be challenged wholesale.

Iowa

Enacted

A provision in the [omnibus election bill](#) enacted in March, S.F. 413, increases the Secretary of State's oversight of local election officials during the 60 days before and after an election.

Michigan

Introduced

Although [partisan challengers posed a problem](#) for election officials working to tabulate results in the 2020 general election, a number of Michigan bills introduced this session would further expand the ability of these challengers to disrupt elections:

- [H.B. 4897](#) would expand the number of challengers and the scope of what they are allowed to challenge;

- [H.B. 4963](#) would expand the rights and responsibilities for challengers and punishes clerks for impeding challengers' rights; and
- [S.B. 309](#) would expand and define the rights of challengers.

Pennsylvania

Introduced

A pending [election omnibus bill](#), substantially mirroring a [bill already vetoed by the governor](#) earlier this year, would shift general election oversight and rulemaking from local election administrators and the Secretary of the Commonwealth to partisan elected officials. The bill would have also allowed the Pennsylvania House of Representatives to intervene in election-related lawsuits to circumvent the ability of election officials to settle disputes.

Texas

Enacted

The recently-enacted election omnibus bill, [S.B. 1](#), prohibits local officials from modifying election procedures to better serve voters. It also increases the likelihood of partisan poll watchers disrupting polling places and ballot verification and counting locations. The bill increased the ability of poll watchers to move freely throughout an election location, including areas containing voters waiting in line, checking in, or casting their ballots.

Election judges may not remove disruptive poll watchers from election locations unless the judge first witnesses the poll watcher commit a violation of law, warns the poll watcher, and the watcher then commits a subsequent offense. Voters' reports of harassment or intimidation by poll watchers, if not witnessed by election judges, will not be sufficient to remove poll watchers.

Partisan Election Reviews

At least seven [states](#) have initiated or are trying to initiate reviews of the 2020 election despite a lack of evidence of wrongdoing. Generally, these investigations would be conducted by partisan actors or third parties hired by partisan actors.

Arizona

In process and introduced

Members of the Arizona Senate hired a third party to conduct a review of the 2020 results in the race for President and Senate in Maricopa County. The review has cost taxpayers [nearly \\$3.5 million](#), including the cost to decertify and replace voting equipment in Maricopa County at a [projected cost near \\$3 million](#). Another [\\$5.7 million](#) was contributed by private donors. The parties conducting the review projected its completion by late April/early May, and an apparently final version of the [report](#) was finally released on September 23. A spokesperson for the review [confirmed](#) the results in the report. After significant cost, time, and unsubstantiated doubt about the state's election results, the review confirmed the certified election results and found no evidence of widespread fraud.

Meanwhile, Arizona lawmakers introduced at least [four bills](#) that would have granted the legislature direct access to voting records so it could pursue future partisan reviews of election results without [litigation](#) or evidence.

Florida

Prefiled

A lawmaker recently [prefiled](#) a bill for the 2022 session requiring an independent third party to conduct an undefined "forensic" review of the results of the 2020 election in more populous counties.

Michigan

Introduced

Despite [250 legitimate audits around the state](#) that revealed no problems, a [bill introduced in the House](#) would require a review of the 2020 election conducted jointly by state officials and an independent third party. The bill would allot \$2.5 million to cover the costs of the review. The bill singles out Detroit and subjects it to higher scrutiny than anywhere else in the state.

Pennsylvania

In process and introduced

A [bill introduced in the Senate](#) would require the Auditor General to conduct an extensive review of the conduct of the 2020 election. The Auditor General would have the authority to subpoena witnesses and documents to conduct their investigation.

On September 15, as part of a pending, partisan election review of Pennsylvania's 2020 election results, the Republican-controlled Senate Intergovernmental Operations Committee [voted to issue a subpoena](#) for detailed state election records, including the names of who voted in last year's presidential election, their birth date, address, driver's license number, and the last four digits of their Social Security number. Current Pennsylvania law prohibits the public release of a voter's driver's license number and Social Security number.

Texas

In process & passed first chamber

The Texas Senate quickly advanced [S.B. 97](#) at the end of the second special session. The bill was introduced and passed by a committee and the full Senate within 48 hours. While S.B. 97 ultimately did not pass in the second special session, it has already been [re-filed](#) for the next Texas special session, which begins on September 20, 2021.

S.B. 97 would allow a county or state party chair to require one or more counties to review the results of the November 2020 election. It would also authorize losing candidates and partisan officials to initiate reviews in *future* elections based on an unsubstantiated allegation of any deviation in election procedures or discrepancy in precinct results.

Texas lawmakers introduced several other bills during the second special session that would authorize similar reviews without evidence of wrongdoing:

- [House Bill 244](#) - This bill is identical to Senate Bill 97.
- [House Bill 26](#) - This bill would require state officials to appoint an independent third party to conduct a review of 2020 election results in all counties with a population of at least 415,000.
- [Senate Bill 88](#) - This bill would require the Secretary of State and the Attorney General to review every precinct in every county where there is a discrepancy between total number of votes counted and the number of voters counted as having voted.

- [House Bill 95](#) - This bill would require a recount of 10% of the ballots cast in each county. County party chairs, rather than neutral election officials, would select the precincts that would be subject to recount.

On September 23, former President Trump sent Governor Abbott a [letter](#) urging him to add election review to the call for the third special session. Later that evening, the Secretary of State's office [announced](#) that it would conduct a "forensic audit" of four of Texas's most populous counties (Harris, Dallas, Tarrant, and Collin).

Wisconsin

Passed first chamber

In March, the Assembly passed a [resolution](#) authorizing a review of the 2020 election. Reports indicate that this review, like the recounts requested by the Trump campaign, is likely to focus on Milwaukee and Dane counties. The review is just beginning, yet [lawmakers have already earmarked \\$680,000](#) to cover its costs.

Criminalization of Election Officials & Civil Causes of Action

[Sixteen](#) state legislatures have introduced legislation threatening election officials with felony prosecution, or creating misdemeanor penalties for even inadvertent, technical noncompliance with election rules.² Other states have introduced legislation creating civil causes of actions and penalties for election officials. The threat of financial or criminal sanction will likely deter local officials from taking necessary action to ensure voters have sufficient access to the democratic process – and will accelerate the mass exodus of experienced election officials.

Arizona

Enacted

A [bill enacted in June](#) threatens local officials with felony prosecution for providing mail ballots to voters who do not first request them.

Florida

Enacted

² See the column titled "Criminalizing Election Officials" in VRL's 50-state survey of election subversion bills.

An [omnibus election bill](#) enacted in May imposes a \$25,000 civil penalty on election supervisors who operate a ballot drop box contrary to statutory requirements.

Iowa

Enacted

An [omnibus election bill](#) threatens election officials with felony prosecution for “failing to perform election duties” and a misdemeanor for failing to conduct voter list maintenance as prescribed by law. The new law also permits the Secretary of State to impose fines against local election officials of up to \$10,000 for each “technical infraction” of the state’s election code. Local election officials can be suspended from office if they are unable to pay the fine.

Texas

Enacted

The [newly-enacted election omnibus bill](#), S.B. 1, threatens local officials with criminal (sometimes felony) prosecution for distributing mail ballot applications or ballots to voters who do not first request them. Local officials will also face greater oversight of registered voter list maintenance that includes the possibility of termination of their employment and civil penalties.

Election judges who remove disruptive poll watchers contrary to new, specific requirements in S.B. 1 can also be subject to prosecution for a Class A misdemeanor.

Wisconsin

Passed by both chambers

A [bill ultimately vetoed by Governor Tony Evers](#) would have threatened election officials with a felony for assisting voters with curing minor issues on their mail ballots.

Against the Will of the People

As state lawmakers accelerate shifts in election authority, national polling shows bipartisan opposition to policies that increase partisanship in election administration or undermine the safety of election administrators. [A recent poll](#) commissioned by Secure Democracy and Protect Democracy found that:

- **85% of voters** would support a law to ensure that officials cannot influence election procedures to benefit a particular candidate or political party.
- **83% of voters** believe that the federal government should pass laws to ensure that partisan officials cannot influence election outcomes.
- **67% of voters** support making it more difficult for Members of Congress to object to Electoral College votes based on their personal preference.

The poll also found that voters are concerned about increased threats to election officials and workers:

- **79% of voters** support allowing election officials to request that a court step in to protect them from intimidation.
- **78% of voters** support issuing guidelines to election administrators on how to respond to intimidation or interference with the voting and ballot-counting processes.
- **78% of voters** are concerned about the increase in threats of violence and intimidation facing election workers.
- **71% of voters** are concerned about the challenge of recruiting enough election workers due to concerns over threats of violence and intimidation.

Federal Defense Against Election Subversion

On September 14, Democrats in the U.S. Senate introduced [the Freedom to Vote Act](#). Among its provisions, the bill would create nationwide standards for early voting, mail voting, voting restoration, voter identification, and voter registration. It would also help protect against some election subversion tactics.

Some protections against election subversion in the Freedom to Vote Act include:

- Allowing statewide election administrators to suspend, remove, or relieve the duties of a local election administrator *only* based on gross negligence, neglect of duty, or malfeasance in office.
- Making intimidation, threats, or coercion of an election official a federal offense.
- Extending existing protections for the preservation of election records and papers to electronic records and election equipment.
- Preventing poll watchers from coming within eight feet of a voter or ballot at a polling location or a ballot during processing, scanning, tabulation, canvassing, or certification.
- Mandating that election officials conduct systematic, non-partisan, random, risk-limiting audits following each election.

On September 21, House Democrats introduced the [Protecting Our Democracy Act](#). While most of the bill's provisions would curtail abuses of power by sitting presidents and their staff, the bill also contains important protections against foreign interference in U.S. elections and uses of official positions for political campaign purposes.

While the Freedom to Vote Act would help mitigate the impact of some state legislation – including new laws enacted in [Georgia](#) and [Iowa](#) this year – it is important to note that many of the state laws passed this session would not be addressed by the Freedom to Vote Act or the Protecting Our Democracy Act – or any federal legislation to come – making continued vigilance and activism on the state level all the more important.

Track the Election Subversion Trend

When Voting Rights Lab launched a few years ago, we knew we'd be busy tracking many disturbing, and oftentimes veiled efforts to suppress the vote of historically excluded Americans. What we couldn't have anticipated at that time was that current officeholders would warp the election process itself, opening the door to partisan interference while ballots are cast and counted. Unchecked, this trend could destroy the credibility of our election system as a whole.

You can follow this trend in real time using the [shifts in election authority](#), [observation process and observer qualifications](#), [election official crimes](#), and [reviews of certified 2020 election results](#) sections of our [State Voting Rights Tracker](#). You can also use [this election subversion resource](#) that is regularly updated by Voting Rights Lab experts.